

KING & WOOD
MALLESONS
金杜律师事务所

M & A

2024

IN
THE
CITY

AUSTRALIAN MERGER CLEARANCE REFORMS | IMPACTS FOR M&A

WHAT'S HAPPENING?

- Existing informal process and merger authorisation regime to be replaced by a new mandatory and suspensory merger clearance regime
- Proposed by the Government to commence January 2026 but deals in 2025 will be impacted
- Reforms will require parties to give strategic consideration to the timing of upcoming deals and the transition arrangements
- Reforms likely to result in more deals requiring Australian Competition and Consumer Commission (ACCC) clearance and the ACCC having a broader scope to oppose deals

WHAT MORE DO WE KNOW NOW?

The Government has introduced into Parliament the Bill for the new merger control regime. It sets out the legal framework for the new regime, including what types of transactions cannot proceed without ACCC clearance, the timeframes for the ACCC's review and the appeal rights from any ACCC decision. The Senate has referred the provisions of the Bill to the Senate Economics Legislation Committee for inquiry and report by 13 November 2024.

The proposed notification thresholds have also been released. Consultation in relation to the thresholds and key details that will determine how they apply is ongoing.

WHAT'S GOING TO BE THE IMPACT ON M&A?

- 1 More deals subject to ACCC clearance:**

The notification thresholds are likely to capture deals that would not typically be notified to the ACCC under the existing regimes, including acquisitions by large corporations or funds that have no competitive effects or overlaps, and some land and patent acquisitions.

- 2 More timing certainty for some deals:**

Statutory timeframes will provide greater timing certainty for transactions that do not raise any competition issues (e.g. a 15 business-day fast track approval process) but more complicated reviews are still likely to take many months (e.g. a 90 business-day timeframe but with scope for significant delays).

- 3 Broader powers for ACCC to block deals but quicker appeal route:**

The ACCC will be given a broader scope to block deals (due to changes to the legal threshold) and the appeal rights for a decision by the ACCC to block a merger will be more limited than what is currently available for ACCC decisions in the informal merger clearance process. However, appeals of ACCC decisions may become more common, as the appeal process will be substantially quicker and cheaper.

- 4 The transition arrangements will impact deals in 2025:**

Parties should carefully consider transaction timelines to avoid delay or risk during the transition period (e.g. having to restart a review under the new regime).

DOES MY DEAL NEED ACCC CLEARANCE?

1

Is it an acquisition of either:

- a controlling interest of shares, unit trusts, or managed investment scheme; or
- the **assets** of a person or corporation?





Control

- **Aligned to s50AA definition in Corps Act** (capacity to determine the financial standing and operating policies of a body corporate)
- **'Bright line' test** requiring notification of all acquisitions of more than 20% shares in private/unlisted companies where one merger party has more than \$200 million turnover
- **Safe harbour** for acquisitions of < 20% voting power in listed companies/schemes or unlisted companies with > 50 members

2

Does it fall within one of the notification thresholds?

 <p>1 'Economy wide' monetary threshold</p>	<p>Combined Australian turnover of merger parties (including acquirer group) is at least \$200 million AND</p> <ul style="list-style-type: none"> • EITHER the Australian turnover is at least \$50 million for each of at least two of the merger parties OR the global transaction value is at least \$250 million • Target has material connection to Australia (i.e. carrying on or intending to carry on a business in Australia) 	<p>Turnover/ Acquirer group</p> <ul style="list-style-type: none"> • Definitions of 'turnover' and 'acquirer group' to be included in regulations (which are yet to be released).
 <p>2 'Very large acquirer' threshold</p>	<ul style="list-style-type: none"> • Acquirer group Australian turnover is at least \$500 million AND • The Australian turnover is at least \$10 million for each of at least two of the merger parties 	
 <p>3 3 year cumulative turnover threshold</p>	<ul style="list-style-type: none"> • Combined Australian turnover of merger parties (including acquirer group) is at least \$200 million AND • The cumulative Australian turnover from acquisitions in the same or substitutable goods or services over a 3 year period is at least \$50 million AND • Target has greater than \$2 million in Australian turnover <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Combined Australian turnover of merger parties (including acquirer group) is at least \$500 million AND • The cumulative Australian turnover from acquisitions in the same or substitutable goods or services over a 3 year period is at least \$10 million AND • Target has greater than \$2 million in Australian turnover 	<p>3 year look back</p> <ul style="list-style-type: none"> • Practically, it's unclear at what point in time the turnover of the assets/businesses previously acquired should be assessed - the date of the previous acquisition or the current date (at which point the turnover would presumably be consolidated with the acquirer group's other business and therefore double-counted)
 <p>4 Targeted thresholds</p>	<ul style="list-style-type: none"> • Set by Ministerial instrument • The Government has said it will use this power to mandate that every merger in supermarket sector will be notified • Considering whether to also target deals in sectors such as fuel, liquor and oncology radiology 	





**NEXT
STEPS**

10 October 2024
Legislation introduced
into Parliament

30 Jun 2025
Last day to lodge merger
authorisation application

1 Jan 2026
New regime of mandatory
notification commences

Q4 2024 – Q1 2025
Consultation on review
timelines, fees & guidelines

1 July 2025
Parties can voluntarily notify
under the new regime

If you would like to discuss any aspect of the merger reform and what this means for your business - Please reach out to our author [Christopher Kok](#), or another of our [competition partners](#).



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