Merger notification waivers: Interim guidance

December 2025

The ACCC has prepared this guidance to provide information about the merger notification waiver process which will be available from 1 January 2026.

From 1 January 2026, it is mandatory for businesses to notify the Australian Competition and Consumer Commission (ACCC) of certain acquisitions that meet specified notification thresholds. Businesses must not complete these acquisitions without approval.

The notification waiver process enables businesses to apply to the ACCC for a decision that their acquisition is not required to be notified. It is intended to provide a simple and fast way to enable acquisitions which clearly do not raise material risks to competition or consumers to go ahead quickly.

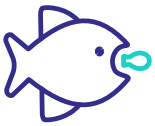
This interim guidance provides information about:

- the types of acquisitions that may be suitable for a notification waiver application
- how to apply for a notification waiver
- the ACCC's process for considering notification waiver applications
- factors the ACCC considers when making a decision about a notification waiver application.

The ACCC expects that as its approach to notification waivers will evolve with experience and over time, its public guidance on notification waivers may be further refined.

This guidance has been prepared on an interim basis and will ultimately be included in the merger process guidelines.

Overview



The ACCC's merger control regime

Australia's merger control regime aims to identify and prevent anti-competitive acquisitions, while allowing those that do not raise competition issues to proceed as quickly as possible.

Notification of acquisitions

From 1 January 2026, it is mandatory for certain acquisitions that meet specified thresholds to be notified to the ACCC and for the ACCC to determine whether the acquisition can proceed.

Businesses may voluntarily notify acquisitions which are, or may be, below the thresholds to obtain certainty and remove any risk of legal action under section 50 of the *Competition and Consumer Act 2010* (Cth). Section 50 prohibits acquisitions that are likely to substantially lessen competition.

Notification waiver process

In some cases, businesses may apply to the ACCC for a notification waiver which, if granted, removes the need to notify the acquisition, even if it meets the thresholds.

In exercising its discretion on whether to grant a notification waiver, the ACCC will consider the information provided with the application and will have regard to certain factors including whether the acquisition is likely to meet the notification thresholds and whether it is likely to have the effect of substantially lessening competition.

Set timelines

The ACCC expects to deal with the bulk of notification waiver applications quickly.

If the ACCC has not made a decision about an application within 25 Business Days, the ACCC must not grant the notification waiver.

Transparency

Details of applications and the ACCC's decision will be published on the ACCC's Acquisitions Register within 1 Business Day of the ACCC making its decision.

About notification waivers

Notification waivers are intended to be a fast and low-cost way for parties to seek a decision from the ACCC that their acquisition does not need to be notified, for example, because the thresholds are unlikely to be met, and/or because the acquisition clearly does not present a material risk of harm to competition or consumers.[1] The process is intended to reduce regulatory burden on businesses, while ensuring that acquisitions with potential competition concerns remain subject to the ACCC's review.[2]

The notification waiver process is not suitable for all acquisitions, and it should not be regarded as an initial step before progressing to notification. It is not appropriate as a clearance process for acquisitions that raise material competition issues, and businesses should lodge a notification in those circumstances.

To satisfy the objective that the notification waiver process be fast and efficient, notification waiver applications are most suitable for acquisitions that clearly do not raise material competition issues and are capable of being assessed very quickly on the upfront information provided when the application is made. By contrast, acquisitions that clearly meet the thresholds and potentially raise material competition issues should be notified rather than submitted as a notification waiver application.

The notification waiver process will operate differently to the pre-assessment process conducted under the informal merger review process, where the ACCC would often request further information from the merger parties and, in some cases, conduct inquiries with third parties.

The ACCC does not expect to go back and forth with a notification waiver applicant to request further information nor to undertake third party consultation as part of its assessment of notification waiver applications. If the ACCC considers that it cannot grant a notification waiver based on the information provided in the application, the ACCC generally will not grant the notification waiver and the parties to the acquisition will need to notify the acquisition in order to obtain certainty from the ACCC.

ACCC's assessment of notification waivers

While the ACCC has broad discretion in determining whether to grant a notification waiver, there are 4 mandatory factors that the ACCC must have regard to (the mandatory factors):

- the object of the *Competition and Consumer Act 2010* (Cth) (the Act) – which is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection
- the interests of consumers
- the likelihood that, if the acquisition were put into effect, the notification thresholds would apply
- the likelihood that the acquisition would, if put into effect, have the effect, or be likely to have the effect, of substantially lessening competition in any market.[3]

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1 Applying for a notification waiver is separate from the notification exemptions set in legal rules made by a Treasury Minister, which apply automatically (without an application) to specified categories of acquisitions, such as certain land acquisitions.

2 Explanatory Memorandum paragraph 2.74.

3 Section 51ABV(2)(b) of the Act.

The ACCC will assess each notification waiver application on a case-by-case basis having regard to all of the mandatory factors.

Consistent with the process being fast and low-cost, it may not be necessary for the ACCC to reach a concluded view on whether an acquisition meets the thresholds if there are clearly no material competition issues raised by the acquisition.

If the ACCC has not made a decision about whether to grant or not grant the notification waiver within **25 Business Days,**[4] the ACCC must not grant the notification waiver.[5]

Once a decision is made, the ACCC will give the applicant written notice of the determination which will include an explanation of why it made the determination.[6] The ACCC will publish its determination on the Acquisitions Register within 1 Business Day of making the determination.[7] This will provide transparency about the acquisitions which have been granted or not granted a notification waiver, and the ACCC's reasons.

If the ACCC does not grant a notification waiver for an acquisition that meets the thresholds and is not subject to any exemptions, the parties will need to notify and wait for the ACCC to determine if the acquisition may be put into effect before the acquisition can proceed.[8]

For acquisitions that clearly do not meet the thresholds but raise competition issues, in deciding whether to exercise its discretion to grant or not grant the notification waiver, the ACCC will consider all of the mandatory factors, including the materiality of the competition issues that are raised. If the notification waiver is not granted in these circumstances, the applicant has the option of voluntarily notifying the acquisition to obtain certainty.

When it may be suitable to apply for a notification waiver

Applications for a notification waiver will be most appropriate for straightforward acquisitions that are capable of being assessed based on the information provided with the application and without the need for further investigation.

Straightforward acquisitions are those that plainly do not give rise to any plausible competition issues and do not present a material risk of harm to competition or consumers.

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4 A 'Business Day' is a day that is not a Saturday, a Sunday, a public holiday in the Australian Capital Territory, or a day occurring between 23 December in any year and the following 10 January (inclusive of those days). See section 51ABK of the Act.

5 See item 8 of Schedule 2 of the *Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025*, which inserts section 6-4 into the *Competition and Consumer (Notification of Acquisitions) Determination 2025*. This provides that, if the ACCC has not made a determination in relation to a notification waiver application during the period beginning on the first day after the notification waiver application is received, and ending on the 25th Business Day after that day, the ACCC must make a determination not to grant a notification waiver on the first Business Day after that period ends.

6 Section 51ABV(5) of the Act.

7 Consistent with items 2 and 3 of Schedule 2 of the *Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025*, which amends section 5-2 of the *Competition and Consumer (Notification of Acquisitions) Determination 2025*. This provides that the ACCC must update the Acquisitions Register within 1 Business Day of the determination being made or, if that is not practicable, as soon as possible after that day, subject to limited exceptions for surprise hostile takeovers and voluntary transfers under the *Financial Sector (Transfer and Restructure) Act 1999* (Cth).

8 Review of ACCC notification waiver determinations may be available in the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) or in the original jurisdiction of the Federal Court under section 39B of the *Judiciary Act 1903* (Cth) on a question of law (judicial review). Judicial review is concerned only with whether the decision was made lawfully, focusing on legal errors and whether the decision maker acted within their powers.

The ACCC has identified the following non-exhaustive list to assist businesses to consider whether a notification waiver application may be suitable for a particular acquisition:

- There is **no or very limited competitive overlap**, **market definition is clear** (or the decision can be made without reaching a view on market definition) and **market concentration is low** – for example, where the acquisition would result in a low combined market share (such as 5%) across the narrowest plausible markets in which the businesses supply the same goods or services, and there are many alternative suppliers available.
- There are **no vertical or conglomerate issues** or, where there are vertical or conglomerate considerations, both the market concentration and market shares of each of the merger parties in the relevant market(s) are low (for example, market shares of less than 5%).
- There are **no complex scenarios or legal issues**, such as:
    - a potential loss of future competition, such as where the target is a potential new entrant (or is a nascent competitor with the potential to expand) in the acquirer's market, or the acquirer might be a potential entrant or nascent competitor in the target's market (such as an overseas company that would be likely, absent the acquisition, to enter the Australian market in which the target operates),
    - market concentration is already significant or high,
    - the target appears to be a vigorous and effective competitor,
    - a failing firm scenario, or
    - complicated market definitions or the merger parties operate across multiple segments.
- There is unlikely to be risk of harm to consumers as a result of the acquisition.
- There are no issues that are likely to warrant consultation by the ACCC and/or inquiries with third parties.

The above list is not intended to be a checklist. In exercising its discretion on whether to grant a notification waiver, the ACCC will consider the facts, having regard to the mandatory factors.

For acquisitions involving assets where the asset is an input to a business (such as acquisitions of vacant land that are acquired to be used for a head office or warehouse), applying for a notification waiver is likely to be appropriate where assets of that type are not scarce, there are no barriers to rivals obtaining similar assets (for example, planning approval barriers) and the counterfactual will not lead to a more competitive market.

Things to consider before applying for a notification waiver

When deciding whether to apply for a notification waiver or notify an acquisition, businesses should consider the following:

- Acquisitions continue to be subject to section 50 of the Act even when a notification waiver is granted. Section 50 prohibits acquisitions that would have or would be likely to have the effect of substantially lessening competition in a market. Where an acquisition does not meet the thresholds and raises material competition issues, the ACCC expects that these acquisitions would be notified under the merger control regime before proceeding to obtain certainty.
- Deal timing may be impacted if a notification waiver is not granted, because if the ACCC does not grant a notification waiver and the acquisition meets the thresholds, it will need to be notified before proceeding, unless any exemptions apply. This would involve all the requirements for notification, including payment of the notification fee, provision of information required by the notification form and the commencement of a Phase 1 timeline. Businesses should take this possibility into account when deciding whether to apply for a notification waiver or proceed directly to notification.
- Stale acquisitions[9] cannot be cured with a notification waiver. Therefore, notification waivers are not appropriate for acquisitions that have previously been notified, including notified acquisitions that have become stale after 12 months. These acquisitions will need to be re-notified in order to proceed.
- It is not possible to apply for a notification waiver where the acquisition is not an 'acquisition' for the purposes of the merger regime provisions.[10] For example, this would include an acquisition of assets which is *clearly* in the ordinary course of business and so is not an 'acquisition' as defined by the Act.[11] Where it is not clear whether an acquisition is in the ordinary course of business, the parties and their legal advisers will be best placed to assess the legal position on whether the transaction is an acquisition under the merger regime. The notification waiver process is not suitable for the type of fact-based assessment that is likely to be required to determine whether an acquisition is in the ordinary course of business. An application which does not relate to an 'acquisition' for the purposes of the merger regime provisions will not be considered, and the applicant will be advised of this and the fee will be refunded.

For more information, see chapter 2 'Acquisitions required to be notified' in the interim merger process guidelines.

9 If a notified acquisition has not been put into effect within 12 months of the ACCC granting approval, the notification becomes 'stale' and the acquisition is 'stayed' (section 51ABE(5) of the Act). Stayed acquisitions must not be put into effect (section 45AY of the Act).

10 See Division 1 of Part IVA and section 4(4) of the Act.

11 Different rules apply to acquisitions of assets if the asset is land, or an interest in land, or a patent, or an interest in a patent. Acquisitions of this kind can fall within the definition of 'acquisition' even if made in the ordinary course of business – see sections 4(4)(b) and 51ABN(2) of the Act.

How to apply for a notification waiver

Acquisitions portal

Applications should be submitted through the secure online portal from 1 January 2026.

Information about using the portal is available on the ACCC's website.

Form and fee

When you apply for a notification waiver, you will need to provide the information required by the application form and pay any applicable fee.

See the notification waiver application form and guidance.

Payment of fee

Your application must be accompanied by the relevant fee of A$8,300, unless you are a small business eligible for a fee exemption.

You can obtain payment details and pay the fee through the acquisitions portal.

While businesses may contact the ACCC before applying for a notification waiver, in many cases, it will be appropriate to lodge an application without prior engagement.

A notification waiver application should relate to a specific acquisition. If a party is undertaking multiple acquisitions of different shares or assets, and they are seeking notification waivers for each of them, separate applications should be made.

Due to the short timeframes and risk-based nature of the ACCC's assessment, it is important that businesses provide sufficient information upfront as part of their application.

If a notification waiver application does not contain sufficient information to enable the ACCC to make an effective and timely determination, the ACCC may determine not to grant the notification waiver without further engagement with the applicant.

If the ACCC does not grant a notification waiver, businesses will have the opportunity to engage with the ACCC prior to lodging any notification.

Further information

- **Interim merger process guidelines:** These guidelines explain the ACCC's usual processes when we receive a notification of an acquisition. The interim guidelines are available at: https://www.accc.gov.au/about-us/publications/merger-process-guidelines
- **Merger assessment guidelines:** These guidelines explain our approach to analysing the potential effects of acquisitions on competition. The guidelines are available at: https://www.accc.gov.au/about-us/publications/merger-assessment-guidelines

Merger enquiries

If you have a question about merger reform or the merger control regime, email MergerReformInfo@accc.gov.au. We will attempt to respond directly to queries we receive where possible. We may also provide responses in our *Frequently Asked Questions* on our website so the information is available more broadly.