



Statement of Goals for Merger Reform Implementation

10 October 2024

Acknowledgement of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission

Land of the Ngunnawal people

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This Statement of Goals outlines the goals and intended objectives of the Australian Competition and Consumer Commission (ACCC) in delivering the Government's merger reforms, subject to the Bill passing through Parliament.

As outlined in the ACCC's April 2024 [Statement of Intent](#) in response to the Government's Statement of Expectations, a key objective for the ACCC is to prevent anti-competitive mergers.¹ This also includes supporting the delivery of merger reform, adopting a risk-based approach, making use of enhanced data and economic analysis, and providing increased transparency and updated guidance.

The ACCC has in place clear and ongoing accountability mechanisms to ensure it is effectively delivering the merger reforms and this performance will be assessed at the three-year review conducted by Treasury.

This Statement of Goals may be updated over time to keep stakeholders informed of any changes as the ACCC progresses its implementation of the new regime.

¹ In this document, the terms "merger" and "acquisition" are used interchangeably regardless of the legal structure of the transaction.

Merger reforms and what to expect

The ACCC welcomes the Government's introduction into Parliament of the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024* to amend the *Competition and Consumer Act 2010*. In this 50th year of Australian competition and consumer protection law, the Bill proposes major amendments to the *Competition and Consumer Act 2010* (Cth) and to significantly reform Australia's merger laws.

The new merger control regime represents a major change for the ACCC, business and the Australian community. Australia will move from a judicial enforcement model to a primarily administrative regime, with the ACCC as the first instance decision maker on each notified acquisition.

These changes are relevant not just for businesses when they are contemplating a merger, but also for businesses that can be affected by a merger such as suppliers, business customers in the supply chain and rivals. The changes will benefit these business stakeholders by providing greater transparency and opportunity to comment on transactions before the ACCC. It will also provide an avenue for the wider community, including consumers and small businesses, to comment on mergers relevant to them.

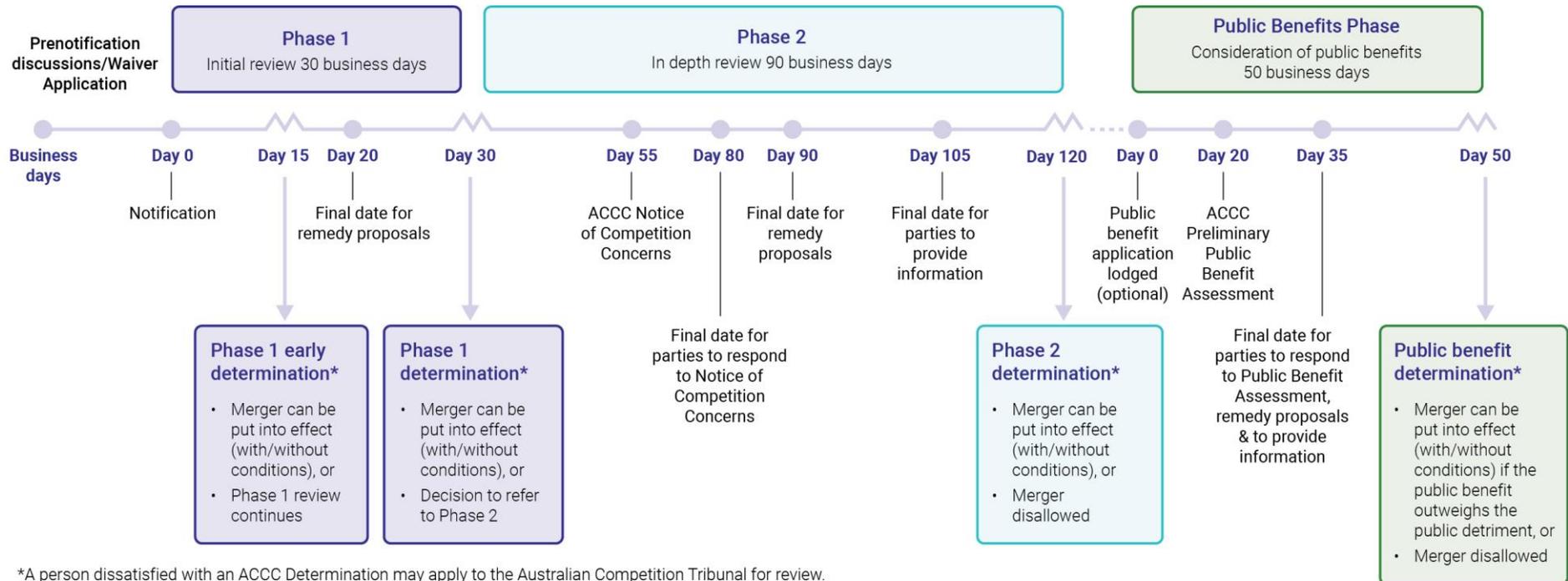
The ACCC is committed to making these reforms a success and there is significant implementation work underway to prepare us and business and their advisers for these changes.

In anticipation of the Bill passing through Parliament, outlined below are some of the key changes that business should expect to see when the new regime is rolled out from 1 July 2025 on a voluntary basis and then on a mandatory basis from 1 January 2026.

Faster timeframes

Statutory timeframes impose strict timing requirements on the ACCC and will provide greater certainty and quicker decisions for merger parties, particularly for notified acquisitions that are less likely to raise competition concerns or harm consumers. The key timeframes contained in the legislation are depicted below

Key timeframes



If a determination is not made by the ACCC within the statutory timeframe, subject to any allowable extensions, the acquisition will be deemed approved and can be put into effect. This will hold the ACCC accountable in meeting statutory deadlines. This is a significant shift from the current flexible timeframes for reviews in the informal regime that can be varied by the ACCC.

The new regime consists of a 30 business day Phase 1 and a 90 business day Phase 2, with scope for extension in limited circumstances. Within Phase 1, a determination can be made as quickly as 15 business days after notification where the ACCC considers no competition concerns arise. While the ACCC cannot predict the overall number of notified mergers and how many of these will be concluded within each phase, we expect to make a determination for around 80% of mergers in 15 to 20 business days via an early Phase 1 determination or the notification waiver process. This is consistent with the ACCC's commitment to expedite non-contentious mergers and focus its resources and attention on the more complex and contentious mergers.

The ACCC supports merger parties also having the option of applying for a binding 'notification waiver' to remove the obligation to notify in appropriate cases. In granting a notification waiver the ACCC will consider relevant matters including the likelihood that the acquisition would meet notification thresholds and the likelihood that it would substantially lessen competition. For example, a notification waiver may be granted for acquisitions that have minimal competitive overlap or no vertical integration. In order to be effective, the ACCC proposes that it have the ability to grant a notification waiver within a very short period where there is sufficient information provided.

As noted, the regime allows for extensions to the Phase 1, Phase 2 and public benefits timelines in limited circumstances. These ensure that, in addition to the discipline imposed on the ACCC by the prescribed timelines, where parties do not provide complete information or provide misleading information or where there is a material change of circumstances or remedies proposed, that the timelines can be extended to ensure that the ACCC has additional time to assess the acquisition. It is expected that with full and frank disclosure by merger parties and an open dialogue with the ACCC, the need for such extensions can be limited. Separately, the applicants may themselves request that the timeline be extended and agree this with the ACCC.

Greater transparency

The new regime will provide for greater transparency for all mergers considered by it.

All notified acquisitions will be published on an ACCC public register with the exception of a small range of acquisitions which will not be made public for a temporary period (such as surprise hostile takeovers unless withdrawn or certain voluntary transfers under the *Financial Sector (Transfer and Restructure) Act 1999*). This is a significant shift from the current regime where pre-assessments, which currently account for around 93% of all reviews, are assessed on a confidential basis and are not placed on a public register. This means there will be increased transparency of the acquisitions under review and the stage of review, allowing opportunities for all stakeholders to comment on mergers before they are considered by the ACCC.

The reasons for final determinations on all notified matters will be published under the new regime. This is a significant shift from the current enforcement-based regime where

decisions on public reviews may be limited to a short public register summary and media release.

While we anticipate the reasons being short and simple for straightforward fast-track matters, it will be clear why the ACCC made its decision. For more complex matters decided in Phase 1 or Phase 2, the reasons will reflect the level of complexity of the review. The Notice of Competition Concerns (excluding any confidential information) provided to merger parties by the 25th business day in Phase 2 will also provide further transparency during the ACCC's review, and merger parties will have the opportunity to respond and make their case for clearance. The Notice of Competition Concerns will also be made public on the ACCC's public register for the benefit of third parties and more broadly to inform the business and wider community.

The ACCC will also provide an explanation of its decision to refer a matter from Phase 1 to Phase 2, including the nature of the theory(s) of harm and the matters it intends to investigate during Phase 2.

Collectively, the ACCC's published decisions will over time create a useful database and point of reference for stakeholders and advisors, the broader business and wider community.

Clear notification requirements for parties

The effectiveness of the regime with its strict review timelines, relies on the ACCC having access to the appropriate information and data needed to conduct the assessment. The ACCC will outline what information is required when lodging a notification and will balance the importance of informed decision making with regulatory burden. The ACCC will consult with relevant stakeholders on the notification forms in early 2025.

We will encourage pre-lodgement engagement with merger parties to facilitate, where needed, discussions regarding their notification, timing considerations and information requirements, including exploring what data the parties maintain during their regular course of business. This will enable us to identify upfront whether and why any additional information should be provided at the outset to assist the notification being considered expeditiously. The approach to pre-lodgement discussions will be tailored taking into account the complexity of each matter and our prior level of knowledge of the market/s under consideration.

Pre-lodgement discussions may also assist merger parties to manage uncertainty regarding notification thresholds, including around whether past serial acquisitions need to be aggregated for notification purposes. Pre-lodgement discussions will also assist to ensure regulatory burden is minimised and only information relevant to the ACCC's review is required.

The ACCC will also consult on the online lodgement process, to ensure it is easy to understand and accessible for users.

Risk-based approach underpinned by enhanced data and economic analysis

The ACCC is committed to a risk-based approach, with resources prioritised to acquisitions most likely to harm the community. The ACCC intends to enhance its use of economic and data analysis to identify risks to the community, including any risks of long-term harm to consumers which the ACCC will take into account in reaching a final determination on each merger. The final determination will be to either: approve as notified; approve on the basis of commitments (undertakings) given by the parties; approve on the basis of conditions imposed by the ACCC or Tribunal; or not approve.

Utilising a risk-based approach underpinned by economic analysis will assist the ACCC in the following ways:

- determining the level of review required according to the risk and whether matters could be approved via an early Phase 1 decision, approved in Phase 1 or proceed to Phase 2 for a further in-depth review
- conducting the competition analysis at each stage of the process
- conducting reviews of past ACCC decisions
- in our new surveillance capabilities that will monitor for non-compliance with notification requirements and to help identify sectors where future merger activity might pose heightened competition risks.

It will also assist with efficient resource prioritisation and allocation. Currently, the ACCC expends less than 15% of its mergers resourcing assessing over 90% of mergers, with the remaining resourcing focussed on reviewing those with high risks to competition and substantive harm to consumers. We will adopt a similar approach to prioritisation in the new regime.

The ACCC is committed to enhanced economic analysis supported by data at each stage of a merger review. The ACCC currently utilises data and economic analysis within merger reviews, and we will look to further enhance this under the new regime.

For example, where appropriate and subject to available data, commonly used economic tools such as diversion ratios to test the degree of competition between relevant products and services and Gross Upward Pricing Pressure Index (GUPPI) analysis to test post-merger incentives to raise prices will be more frequently utilised within merger assessments and published in determinations. Where appropriate, we will also seek to use further data sources for market share analysis within our assessments and determinations.

The ACCC also intends for certain public decisions, particularly for contentious matters, to be supported by more in-depth and extensive economic and data analysis. This will contribute to consistent economic analysis over time in ACCC decision making and will help guide merger parties. However, the use of enhanced data and economic analysis will significantly rely upon the provision of adequate data and information from parties, preferably provided upfront in their notification, or through use of compulsory information gathering tools as required.

The ACCC as an expert decision maker along with the Australian Competition Tribunal (comprising of a Federal Court judge and two members with relevant expertise, such as business or economic expertise) will also be well placed to consider economic frameworks for merger reviews.

Economy-wide competition research and ACCC accountability

The ACCC proposes to establish a new internal workstream focussed on economy-wide competition analysis and reviews of past ACCC decisions in the new regime. This work will draw upon data from various sources including merger reviews, Business Longitudinal Analysis Data Environment (BLADE), other government data, public data and other commercial data sources, to assess and report on issues such as:

- the effectiveness of the new merger regime
- the extent to which the notification thresholds are adequately capturing mergers of potential competitive concern
- whether there are industries that the ACCC should apply particular attention to
- any notable changes in competitive dynamics in certain industries, including from technological change.

The output from this work will also contribute to annual reporting on the ACCC mergers work and may contribute to or otherwise be involved in the publication of research papers. It will also result in broader engagement with other regulators and academics working with similar data to consider economy-wide or broader competition issues beyond individual transactions. The ACCC is committed to publishing merger-related data where it is public and appropriate, including the ACCC's merger analysis statistics.

The ACCC will also undertake analysis and report on past ACCC decisions or categories of decisions. This may include testing whether the assumptions or predictions made during reviews were appropriate, whether issues were missed or whether remedies were effective. We note that the depth of such work would be limited in the absence of compulsory information gathering powers being made available to the ACCC, which would provide a richer source of data to inform its analysis and future decision making.

New analytical and process guidelines

The ACCC will publish new analytical and process guidelines for business, the community and interested stakeholders for the new regime. We will consult publicly on the draft analytical and process guidelines in early 2025.

The new analytical guidelines will better reflect the current approach to competition assessments and evolving markets and will be more accessible for businesses, assisting them to better assess the competition risks of a proposed acquisition.

New process guidelines will provide clear guidance to businesses and their advisers on when and how to engage with the ACCC in the new regime, including notification waivers and pre-lodgement discussions. The ACCC is committed to ensuring stakeholders are well informed on the new process and regime requirements.

Clear path to transition

This is a significant change for the ACCC, business and the broader community. The ACCC is committed to working with all stakeholders during the upcoming transition period to ensure that there is clear communication regarding the options available to manage this period and facilitate effective implementation and a smooth transition.

To assist with managing the transition, the ACCC has agreed to bring forward implementation so that merger parties will have the ability to notify the ACCC on a voluntary basis from 1 July 2025 before mandatory notification commences on 1 January 2026.

Merger parties can continue to apply for merger authorisation until 30 June 2025, and may continue using the informal regime until 31 December 2025. Where informal clearance has been granted between 1 July 2025 and 31 December 2025 and the acquisition is put into effect within 12 months of receiving clearance, merger parties will not be required to notify under the new regime.

While the transitional arrangements will assist merger parties to manage this period, there may be some mergers with informal reviews ongoing as of 1 January 2026 that require notification under the new regime. The ACCC will actively engage with merger parties about how best to transition their merger review into the new regime efficiently. The ACCC is committed to minimising disruption and duplication for parties with ongoing reviews by taking into account information already provided to the ACCC and the time elapsed in the informal review process.

The ACCC will publish clear guidelines on the transition period to ensure stakeholders are well informed and are aware of where to direct inquiries.

Improved internal capacity and streamlined processes

The ACCC will be funded to ensure we can effectively administer the new regime and deliver on our goals and the Government's expectations.

While the ACCC will leverage existing capacity and expertise across the agency, a significant increase in the tools and capacity will be needed to make the new system operate effectively. This funding will ensure the ACCC has the necessary resources to administer the new regime effectively and is able to allocate resources efficiently. It will ensure low-risk matters are dealt with quickly and the ACCC will be equipped to provide greater transparency and make evidenced-based decisions backed by economic and data analysis.

Further resources will also be committed to monitoring and surveillance for non-compliance with notification requirements, ensuring there is adequate compliance with the new regime and to minimise anti-competitive acquisitions proceeding.

The ACCC will also renew and expand its Performance Consultative Committee to advise on the ACCC's merger review functions as well as the broad range of the ACCC's responsibilities.

Our Performance Consultative Committee will consist of a range of stakeholders including consumer, business, and legal representatives. The Committee will provide feedback on ACCC initiatives and a forum for exchange of perspectives on key issues.

Conclusion and next steps for implementation

The objectives set by the Government for the reforms have been to achieve a faster, stronger, simpler, more targeted and a more transparent merger regime.

The ACCC is committed to ensuring that the new merger control regime delivers on these objectives over time and provides benefits to business and the wider community. For business, it will provide a more efficient and predictable merger process for having their transactions assessed and a clear avenue to have ACCC decisions reviewed. It will be underpinned by enhanced data and economic analysis, which will also contribute to broader economy-wide competition research beyond the ACCC.

For the wider community, it will provide confidence that transactions that may adversely affect competition are subject to adequate scrutiny based on the risks raised – this contrasts to the current situation where only a small proportion of the estimated 1000-1500 mergers that occur each year in Australia are notified to the ACCC.

A priority for the ACCC with the commencement of the new regime will be its surveillance and monitoring functions to ensure that the mandatory notification obligations are complied with. Without active monitoring and enforcement of the new regime, the benefits may not be fully achieved.

A key element of the new regime will be increased transparency. This will allow for greater awareness and avenues for participation for key stakeholders on particular mergers but also for the wider business community and the broader community who are impacted by these merger decisions due to the flow on effects to competition. Over time, the increased level of transparency will provide a rich source of data to assess the effectiveness of the new merger control regime.

Key dates

Some of the key implementation milestones ahead for the Bill include:

October 2024	<ul style="list-style-type: none">▪ Legislation is introduced into Parliament
Q1 2025	<ul style="list-style-type: none">▪ Public consultation on draft process guidelines▪ Public consultation on draft analytical guidelines▪ Public consultation on notification forms
Q2 2025	<ul style="list-style-type: none">▪ Guidance published on the transitional arrangements, including engagement with merger parties and stakeholders on what to expect in the lead up to mandatory notification commencing
1 July 2025	<ul style="list-style-type: none">▪ Voluntary notification available under the new regime
During 2025	<ul style="list-style-type: none">▪ Merger authorisations applications will be accepted up until 30 June 2025▪ Merger authorisations lodged before 30 June 2025 will continue to be considered until the ACCC or Tribunal makes a determination on the application
During 2025 and 2026	<ul style="list-style-type: none">▪ For informal merger reviews that are ongoing as at 31 December 2025, the ACCC will continue engaging with merger parties and third parties as the review transitions over to the new regime from 1 January 2026▪ For mergers that the ACCC does not object to in the informal system between 1 July 2025 and 31 December 2025 and which are completed within 12 months of the ACCC's decision - these will not require notification under the formal regime
1 January 2026	<ul style="list-style-type: none">▪ Mandatory notification for the formal regime commences
1 January 2027	<ul style="list-style-type: none">▪ A review of the notification thresholds will be conducted
1 January 2029	<ul style="list-style-type: none">▪ A review of the formal regime will be conducted three years after commencement, informed by evidence around the impact of mergers on the economy and the performance of the ACCC