



Australian Government
The Treasury



Merger Reform

Faster, stronger and simpler merger system
for a more competitive economy

April 2024



Consultation feedback on current approach to merger control in Australia

For business and market participants



Insufficient transparency for merger parties, customers, suppliers and competitors



Timing delays in merger reviews can be very costly for businesses



Uncertainty for businesses about when to notify compared to overseas



Outcomes can be unpredictable for advisors and businesses

For competition agency



Parties provide insufficient or inaccurate information to the ACCC



Multiple review pathways facilitates strategic behaviour



Current test is not able to adequately capture serial or creeping acquisitions

For the economy and the community



Greater transparency would support community engagement in merger review and improve predictability



Increased economic and business expertise would improve decision-making process



Ability to consider public benefits should be retained, especially with Net Zero transition

A faster, stronger and simpler merger system for a more competitive economy



The ACCC will be better placed to efficiently and effectively differentiate benign mergers and stop anti-competitive mergers



Notification

ACCC administrative decision-maker

Mandatory notification of certain mergers

Clear suspensory timeline to allow time for review and give certainty to business

Upfront information

Cost-recovery fees



Assessment

Transparency and certainty with reasons for decision and public register

ACCC must decide that merger is likely to substantially lessen competition which includes if it creates, strengthens or entrenches a position of substantial market power

Cumulative effect of all mergers within the previous 3 years by merger parties captured in assessment

ACCC can approve an anti-competitive merger if substantial offsetting public benefits



Review

Limited merits review by the Australian Competition Tribunal

Tribunal is a more appropriate forum with its legal, economic and business expertise

Judicial review by the Federal Court

Better use of data for merger evaluation



- Merger database to evaluate the impact of mergers
 - Based on the ABS's Business Longitudinal and Analysis Data Environment (BLADE)
- Evaluation of the effectiveness of the new merger system
 - Publication of information on mergers to facilitate *ex post* merger evaluation within BLADE and using other industry data sources
 - Inform the 3-year Statutory Review of the new merger system in 2029

Next Steps



- Exposure draft legislation consultation – expected mid-2024
- Further consultation expected in 2024 on merger notification thresholds
- ACCC consultation expected in 2025 on notification form and ACCC guidance on the new system
- The new merger control system will apply from 1 January 2026

Merger reform for a more competitive economy



Stronger – the ACCC will be significantly **better equipped** to **detect, review, and act** against mergers that substantially lessen competition



Simpler – with all mergers above a certain **threshold** subject to a **single mandatory and suspensory administrative system**



Targeted – ACCC merger reviews will be **risk-based** to **quickly differentiate** and **approve benign mergers** from those requiring greater scrutiny



Faster – indicatively, mergers with **no competition concerns** raised can **proceed** within 30 working days, with the option of a **fast-track determination** if no concerns are identified after 15 working days



Transparent – the ACCC will be required to **clearly identify up-front information** needed for merger reviews, and maintain a **public register** of reviews and give **reasons for determinations**