PiperAlderman

Article Information

Author: Andrew Rankin

Service: Banking & Finance, Corporate & Commercial, Dispute Resolution & Litigation, Employment & Labour, Intellectual Property & Technology, Projects & Construction, Property & Development, Restructuring & Insolvency, Superannuation, Taxation

Sector: Aged Care & Senior Living, Agriculture & Food, Defence, Education, Energy & Resources, Financial Services, Health & Life Sciences, Hospitality, Tourism & Gaming, Infrastructure, IT & Telecommunications, Not-for-Profit, Private Clients, Real Estate, Transport & Logistics

---

ACCC Merger Law Reforms: Latest reveal by Federal Treasury

In April, the Federal Treasurer unveiled new merger law reforms that promise to reshape the Australian business landscape. Starting 1 January, 2026, Australia will transition from a voluntary to a mandatory and suspensory merger review system. This significant shift aims to ensure the consumers are protected by regulating mergers and acquisitions in a manner consistent with overseas regimes. Alongside this announcement, an exposure draft of the proposed legislation has been released for public feedback, inviting stakeholders to contribute to shaping the future of merger regulations. Please refer to our earlier Insight article.

As foreshadowed in our previous article, notification thresholds will form part of the new merger control regime. These thresholds will determine which mergers and acquisitions must be notified to the ACCC for review and approval before completion.

Federal Treasury has recently released a consultation paper on the proposed thresholds for public feedback. Both monetary and market concentration thresholds will be used to determine which transactions will be notifiable to the ACCC.

The table below summarizes the monetary thresholds and the market concentration thresholds that are proposed to be implemented. ACCC review will be required if at least one of the monetary or market concentration thresholds limbs are met. (The table below is reproduced from the table on page 6 of the executive summary of the consultation paper.)

ACCC review required if a least one of the monetary or market concentration threshold limbs are met

	Limb 1		**Limb 2**
Monetary thresholds	a. Combined Australian turnover of merger parties is at least **$200 million** AND b. Either the Australian turnover is at least **$40 million** for each of at least two of the merger parties OR the global transaction value is at least **$200 million**	**OR**	a. Acquirer group Australian turnover is at least **$500 million** AND b. Either the Australian turnover is at least **$10 million** for each of at least two of the merger parties OR the global transaction value is at least **$50 million**

OR

	Limb 1		Limb 2
Market concentration thresholds	a. Combined share of the merger parties is at least **25%** AND b. Australian turnover is at least **$20 million** for each of at least two of the merger parties	**OR**	a. Combined share of the merger parties is at least **50%** AND b. Australian turnover is at least **$10 million** for each of at least two of the merger parties

Monetary thresholds

The monetary thresholds relate to the size of the merger based on the financial measures of turnover and transaction value.

To address concerns regarding serial acquisitions, all acquisitions within the previous 3 years within the same product or service markets (irrespective of location) by the acquirer are proposed to be aggregated for the purposes of assessing whether an acquisition meets the monetary turnover threshold only, irrespective of whether those acquisitions were themselves individually notifiable.

In addition to the thresholds being based on Australian turnover, the target business or asset should have a material connection to Australia. This will include being registered or located in Australia, the supply of goods or services to Australian consumers, or generating revenue in Australia. The requirement of a material connection to Australia will ensure that the monetary thresholds only capture acquisitions that impact Australian consumers, but without capturing foreign acquisitions with minimal operations in Australia that may otherwise be captured by the global transaction value threshold.

Market Concentration thresholds

The new market concentration thresholds will be used to capture acquisitions not captured by the monetary thresholds by acquirers with substantial market power and other acquisitions that give rise to a significant degree of consolidation in the relevant market or industry. This is particularly the case for acquisitions in small, regional and local markets. The paper notes that the localised and concentrated nature of these markets means that smaller mergers can still cause significant harm to consumers that might otherwise be too small to be captured by the monetary thresholds.

In terms of the market concentration thresholds Treasury is seeking feedback on whether “market share” or “share of supply” measures should be used for these thresholds. Market share would be determined by the combined parties’ portion of the total market size, either by sales volume or sales value. The share of supply of goods or services would be based on the activities of the acquirer and the target in the areas in which they are both active.

The market share thresholds have been a feature of the informal merger clearance for many years. The ACCC’s current merger guidelines use market shares as the notification threshold. They encourage parties to notify their transaction to the ACCC if the products of the merger parties are substitutable and the merged firm will have a post merger market share of greater than 20% in the relevant markets.

Other circumstances requiring notification to the ACCC

The paper acknowledges that there are other risk factors that could raise specific competition concerns, such as small acquisitions within specific sectors or local markets that do not meet the thresholds but which should be voluntarily notified. In addition, such acquisitions could also be required to be notified as a result of a Ministerial determination, for example, small acquisitions in the grocery retailing sector.

Feedback on these proposed thresholds closes 20 September 2024. Once the government has finalised its preferred approach, further consultation will be undertaken on the basis of subordinate legislation for the thresholds. We will report back at that time.


Best Lawyers
LAWYER
OF THE YEAR
ANDREW RANKIN
COMPETITION LAW
BRISBANE
2022