

Article Information

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Service: Banking & Finance, Capital Markets & Capital Raisings, Competition & Consumer, Corporate Governance, Dispute Resolution & Litigation, Foreign Investment & Trade, Mergers & Acquisitions, Regulatory Compliance & Investigations

Sector: Aged Care & Senior Living, Agriculture & Food, Education, Electricity & Gas Regulation, Energy & Resources, Financial Services, Government, Health & Life Sciences, Hospitality, Tourism & Gaming, Infrastructure, IT & Telecommunications, Mining, Oil & Gas, Power & Utilities, Private Clients, Real Estate, Renewables, Transport & Logistics

Transformative reforms to Australia's merger laws announced today by Treasurer Jim Chalmers

Treasurer Jim Chalmers has today announced transformative reforms to Australia's merger laws. The new merger laws will mandatorily require companies to notify the Australian Competition and Consumer Commission (ACCC) of merger transactions above certain monetary or market share thresholds. These changes will bring Australia into line with international standards whereby most OECD countries have a mandatory notification regime to their competition regulator.

In announcing the changes today, the Treasurer said that market concentration had trended up in recent decades and that Australia's existing merger review laws are no longer fit for purpose. He said that some mergers can cause serious economic harm and strangle innovation, productivity and reduce the choice available for consumers. The new laws he said will result in a stronger, simpler, targeted, faster and more transparent system for the assessment of mergers.

The Chair of the ACCC publicly stated today that the ACCC welcomes and supports the changes and that the reforms would deliver the outcomes and the objectives that the ACCC had long argued for.

Stronger

Under the current system, merger parties do not need to notify the ACCC of proposed transactions or to wait for clearance from the regulator before proceeding to completion. Under the current model, if the ACCC considers a transaction to be anti-competitive, it must take action in the Federal Court to prevent the matter proceeding or to unwind the transaction.

The substantive test will remain essentially the same, namely, the focus will continue to be on prohibiting mergers or acquisitions that would result in a substantial lessening of competition. However, it will be expressly stated in the legislation that mergers which create, strengthen or entrench a position of substantial market power in any market are to be regarded as substantially lessening competition.

Simpler

The ACCC will be responsible for a single merger approval pathway replacing the present three course voluntary pathways available under the Competition and Consumer Act 2010 (Cth). All mergers which exceed the stipulated thresholds will be subject to the same approval system.

The amount of the monetary thresholds and the size of the market share thresholds which will trigger the requirements of notification will be the subject of a further round of consultation by the Federal Treasury.

The new changes will also seek to prevent companies from increasing their market share through smaller acquisitions that fall below the merger notification thresholds by allowing the ACCC to review the parties' acquisitions over the last 3 years

when determining whether a merger meets the notification threshold.

Targeted

With parties being required to address clear information requirements upfront, the ACCC will be able to quickly determine and approve innocuous mergers from those mergers requiring greater scrutiny. All merger notifications will require payment of an assessment fee to the ACCC. The amount of the fee will depend on the size and complexity of the deal, but are likely to be in the range of \$50,000 to \$100,000. An exemption from fees will be available for small businesses.

Faster

Under the reforms, the ACCC will have 30 working days to approve mergers that do not raise competition concerns, with the option to “fast-track” determinations if no concerns are identified after 15 working days. Where competition concerns are identified, the ACCC will have a 4 and a half month period in which to undertake an in-depth assessment.

Transparent

The ACCC will be required to establish and maintain a public register which will be created for transparency. The register will set out details of notified mergers and the reasons for determinations.

Timing

The new laws will come into effect on 1 January 2026. In the meantime, the current merger clearance system will continue to run.

Future steps

Federal Treasury will seek consultation in 2024 on the following:

1. exposure draft legislation to implement these reforms;
2. Merger notification thresholds, including what is a notifiable merger;
3. Merger review timelines;
4. Proposed fees;
5. Procedural safeguards; and
6. Penalties which are to apply for non-compliance.

We will continue to keep you informed of these developments.