

By Ayman Guirguis, James, Gray, Tess Kane, Jenna Yim, Jessica Lim

From 1 January 2026, parties to acquirers of shares or assets in Australia (or affecting Australia) must notify the Australian Competition and Consumer Commission (ACCC) if the acquisition satisfies certain monetary and "control" thresholds. Definitions of key terms (Australian revenue, connected entities, control and "all or substantially of the assets of a business") are set out in the following pages.

Monetary Thresholds for Acquisitions of Shares

Economy-Wide Threshold

- The combined Australian revenue of the acquirer (and each of its connected entities) and the target (and each connected entity being indirectly acquired) is **AU\$200 million** or more, *and* either:
 - The Australian revenue of the target (and each connected entity being indirectly acquired) is **AU\$50 million** or more; *or*
 - The transaction value of the acquisition is **AU\$250 million** or more.

Monetary Thresholds for Acquisitions of Assets That Amount to Acquisitions of All, or Substantially All, of the Assets of a Business

Economy-Wide Threshold

- The combined Australian revenue of the acquirer (and each of its connected entities) and the target to the extent that it is attributable to the business is **AU\$200 million** or more, *and* either:
 - The Australian revenue of the target to the extent that it is attributable to the business is **AU\$50 million** or more; *or*
 - The transaction value of the acquisition is **AU\$250 million** or more.

Very Large Acquirer Threshold

- The Australian revenue of the acquirer (and each of its connected entities) is **AU\$500 million** or more, *and*
- The Australian revenue of the target (and each connected entity being indirectly acquired) is **AU\$10 million** or more.

Note: The AU\$250 million transaction value test under the economy-wide threshold also applies to transactions involving very large acquirers—the tests are cumulative.

Very Large Acquirer Threshold

- The Australian revenue of the acquirer (and each of its connected entities) is **AU\$500 million** or more, *and*
- The Australian revenue of the target to the extent that it is attributable to the business is **AU\$10 million** or more.

Note: The AU\$250 million transaction value test under the economy-wide threshold also applies to transactions involving very large acquirers—the tests are cumulative.

Source: K&L Gates, 2026

Consideration of Serial Acquisitions

In addition to the above analysis, the acquirer must also consider the serial acquisitions threshold for acquisitions of shares or all, or substantially all, of the assets of a business.*

Economy-Wide Threshold

- The combined Australian revenue of the acquirer (and each of its connected entities) and
 - In relation to **acquisitions of shares**, the Australian revenue of the target (and each connected entity being indirectly acquired); or
 - In relation to acquisitions of **all, or substantially all, of the assets of a business**, the Australian revenue of the target to the extent that it is attributable to the business,
is **AU\$200 million** or more; and
- The cumulative Australian revenue from acquisitions involving the same or substitutable goods or services in the previous three years is at least **AU\$50 million**.

*Note: Certain acquisitions to be disregarded for the purposes of calculating serial or creeping acquisition thresholds:

- Acquisitions of assets which do not amount to all, or substantially all, of the assets of a business.
- Acquisitions previously notified to the ACCC, except those notified under the creeping or serial acquisitions threshold (this does not include informal clearances or notification waivers).
- Acquisitions below **AU\$2 million** Australian revenue.
- Acquisitions of assets no longer held by the acquirer or its connected entities.
- Acquisitions of shares where neither the acquirer nor its connected entities has control of the target.

Very Large Acquirer Threshold

- The Australian revenue of the acquirer (and each of its connected entities) is **AU\$500 million** or more; and
- The cumulative Australian revenue from acquisitions involving the same or substitutable goods or services in the previous three years is at least **AU\$10 million**.

What Is a Connected Entity?

One entity is a “connected entity” of another if: (i) it is a subsidiary, holding company or a related body corporate of the other entity; (ii) it, either alone or together with one or more of its associates, controls or is controlled by the other entity (such as by way of a shareholders agreement or similar); or (iii) if both entities are under the common control of another entity.

How Is Australian Revenue Calculated?

Australian revenue refers to the relevant entity’s gross revenue, determined in accordance with accounting standards, for the entity’s most recently ended 12-month financial reporting period, which is attributable to transactions or assets within Australia, or transactions into Australia.

Subject to consistency with accounting standards, Australian revenue calculations should be limited to revenue derived from sales to customers in Australia. Revenue from overseas customers (e.g. derived from exports) need not be considered.

What Amounts to “All, or Substantially All, of the Assets of a Business”?

There is no definition for this phrase—it is a question of fact. The Explanatory Statement to the Amending Determination states that if an asset acquisition enables the acquirer to effectively continue operating a business that is similar to the business currently operated using the acquired assets, this typically constitutes an acquisition of “all, or substantially all, of the assets in a business”.

What Is Control?

Transactions must be notified to the ACCC if the acquirer gains “control” over the target and if the monetary thresholds displayed left are met. Control will be assessed according to the test in section 50AA of the *Corporations Act 2001* (Cth). The acquirer will have control over the target if it has the capacity to determine the outcome of decisions about the second entity’s financial and operating policies (such as by way of majority ownership of voting rights, the ability to appoint or remove a majority of the board, or other contractual or practical arrangements that confer decisive influence).

However, there are also certain circumstances in which acquirers will be “deemed” to have control even if they do not have effective control of the target (see below). These acquisitions must be notified to the ACCC.

Acquisitions do not need to be notified if the acquirer had control of the target immediately prior to completion of the acquisition.

Notification is not required for acquisitions of shares in a Chapter 6 entity if the acquirer will hold less than 20% of voting rights post-completion.

Circumstances Where Acquirers Are “Deemed” to Have Control

Despite the principle that acquisitions need only be notified to the ACCC if the acquirer gains control over the target, the Amendment Determination introduced “deemed control” provisions, thereby requiring notification (if the transaction exceeds the monetary thresholds) as follows:

Note: These provisions are only in effect for transactions completed after 1 April 2026.

All Bodies Corporate	Unlisted Bodies Corporate Not Widely Held
Where an acquisition of shares in a body corporate results in the acquirer’s voting power increasing from between 20% and 50% to 50% or more.	Where an acquisition of shares in an unlisted body corporate results in the acquirer’s voting power increasing from ≤ 20% to > 20%.
Chapter 6 Entity Already Controlled	Chapter 6 Entity Not Controlled Before or After Acquisition
Where an acquisition of shares in a Chapter 6 entity results in the acquirer’s voting power increasing from ≤ 20% to > 20%, and the acquirer controlled the Chapter 6 entity immediately before the acquisition.	Where an acquisition of shares in a Chapter 6 entity results in the acquirer’s voting power increasing from < 20% to ≥ 50%, and the acquirer does not control the Chapter 6 entity immediately before or immediately after the acquisition.

Thresholds for Acquisitions of Assets Which Do Not Amount to All, or Substantially All, of the Assets of a Business

Note: These thresholds commence on 1 April 2026. Until then, acquisitions of assets which do not amount to all, or substantially all, of the assets of a business will remain subject to the existing AU\$250 million transaction value test.

Economy-Wide Threshold

- The Australian revenue of the acquirer (and each of its connected entities) is **AU\$200 million or more**; and
- The transaction value of the acquisition is **AU\$200 million** or more.

Very Large Acquirer Threshold

- The Australian revenue of the acquirer (and each of its connected entities) is **AU\$500 million or more**; and
- The transaction value of the acquisition is **AU\$50 million** or more.

Source: K&L Gates, 2026

Exceptions to Notification

Asset or Land-Based Exemptions to the Notification Requirements	Financial Securities or Restructure Exemptions to the Notification Requirements
<p> Ordinary Course of Business</p> <p>Acquisitions of legal or equitable interests in land undertaken in the ordinary course of business. This appears to have very broad application.</p>	<p> External Administration, etc.</p> <p>Acquisitions by a person in the ordinary course of performing their duty as an external administrator (e.g. judicial manager, acting trustee, etc.).</p>
<p> Residential Property and Land Development</p> <p>Acquisitions of interests in land are exempt from notification requirements if they are for the purpose of:</p> <ul style="list-style-type: none"> (i) Developing residential premises; or (ii) Carrying on a business primarily engaged in buying, selling, leasing or developing land, other than a purpose relating to operating a commercial business on the land (excludes commercial activities ancillary or incidental to the primary purpose). 	<p> Financial Market Infrastructure</p> <p>Including transactions that arise in the ordinary course of clearing and settlement activities, and acquisitions of shares or assets that occur under a contract for the exercise of a right to close out a transaction or otherwise set off or combine accounts.</p>
<p> Other Types of Land Acquisitions</p> <p>Including acquisitions of interests in entities whose only noncash asset is land (or an interest in a special purpose vehicle) which it holds for the purposes of land development or developing residential property; lease extensions and renewals; acquisitions of land development rights; and sale and leaseback arrangements.</p>	<p> Acquisitions Occurring by Operation of Law</p> <p>Acquisitions which happen automatically based on principles set out in a state-based or commonwealth law, without any specific action or agreement by the parties involved. Parties have no discretion as to whether or how the acquisition occurs.</p>
<p> Acquisitions of Further Interests in Land or Quasi-Land Rights After Initial Interest Was Notified</p> <p>Acquisitions of a legal or equitable interest in land or quasi-land rights are exempt if the same land or entitlements were the subject of a previous acquisition that was notified to the ACCC (or received a notification waiver). Acquirer, land size and ownership proportion must remain the same between the initial and subsequent acquisition.</p>	<p> Financial Securities</p> <p>Acquisitions relating to the capital-raising process (e.g. acquisitions resulting from rights issues, dividend reinvestment or share bonus plans, underwriting of fundraising, buy-backs, derivatives and foreign exchange contracts).</p>
<p> Nominees and Other Trustees</p> <p>Acquisitions of interests in securities by a person acting as a bare trustee for a beneficiary, where the beneficiary has a relevant interest in the securities arising from a presently enforceable and unconditional right to acquire them. Acquisitions made by a provider for custodial or depository services in the ordinary course of providing that service are also exempt. Exemptions also apply to nominee acquisitions arising from the conversion of an APRA-regulated capital instrument, provided the conversion and acquisition occur in accordance with prudential standards.</p>	<p> Superannuation Entities</p> <p>Acquisitions by a trustee of a superannuation entity from another trustee, for the purpose of transferring member benefits from one superannuation entity to another, or an acquisition by a trustee as a direct result of being appointed as trustee of a superannuation entity where the share or asset is being acquired from a person who is or was a trustee of the superannuation entity.</p>

Waivers, Short-Form Applications and Long-From Applications: Type of Application Required

Depending on the level of competitive overlap between the parties (or competitive impact likely to arise from the acquisition), parties may apply for a notification waiver, rather than submit a formal notification to the ACCC.

Applications of a notification waiver are most appropriate for straightforward acquisitions where there is no or very limited competitive overlaps, or which can be assessed by the ACCC with a lesser degree of information.

Where formal notification is required, the parties must either make a short-form or long-form notification to the ACCC. The ACCC expects that the long-form notification will be used in the following circumstances:

- *Horizontal acquisitions* resulting in a combined post-completion market share of:
 - $\geq 40\%$, and where the increment resulting from the acquisition is $\geq 2\%$; or
 - 20%–40%, and where the increment resulting from the acquisition is $\geq 5\%$;
- *Vertical acquisitions* where the party active in the upstream market has a market share $\geq 30\%$ and the other party has a downstream market share $\geq 30\%$ and vice versa; and
- *Conglomerate acquisitions* where the parties supply adjacent goods or services, where one of the parties has an estimated market share $\geq 30\%$.

Documentary Requirements for Each Type of Application

Notification Waiver Application	Short-Form Notification	Long-Form Notification
<p>Applicants seeking a notification waiver are required to provide the following information:</p> <ul style="list-style-type: none"> ▪ Details about the parties to the acquisition (including party names, contact details, identifying numbers and role in the acquisition); ▪ Descriptions of the goods or services offered by the parties (including competitive overlaps and related market shares and market definitions); ▪ Descriptions of what will be acquired, the process or transaction structure, and the transaction value; ▪ The type of acquisition (horizontal, vertical or conglomerate); ▪ The commercial rationale for the acquisition; and ▪ Details about the notification thresholds triggered by the acquisition. <p>Applicants are also required to provide final or most-recent versions of all transaction documents (e.g. sale and purchase agreements, HOAs, offer documents, etc.).</p>	<p>Parties submitting a short-form notification must provide the same information as notification waiver applicants, as well as the following additional information:</p> <ul style="list-style-type: none"> ▪ The parties' Australian revenue for the last three years; ▪ Details about previous acquisitions in the prior three-year period; ▪ Where there are competitive overlaps, estimates of market shares based on volume and capacity in addition to revenue; ▪ Competitor and customer contact details; and ▪ Whether the relevant contract contains any goodwill protection provisions. <p>Additional documents required to be provided:</p> <ul style="list-style-type: none"> ▪ Most-recent audited financial reports or income statements relating to the supply of the relevant goods or services; and ▪ Organisation charts or diagrams that show the ownership structure of each party. 	<p>The long-form notification requires notifying parties to provide the same information as notification waiver applications and short-form notifications, as well as additional information relating to:</p> <ul style="list-style-type: none"> ▪ Barriers to entry and expansion in the relevant market (including real-world examples); ▪ Responses to specific questions about market dynamics, depending on whether the transaction is a horizontal, vertical or conglomerate acquisition; ▪ Third-party data sets or reports used to estimate and analyse market shares; ▪ Documents relating to the acquisition presented to the board or senior management; and ▪ Most-recent versions of all transaction documents.

Source: K&L Gates, 2026

Time Frames Under the New Regime

Pre-Engagement Process

The ACCC has stressed that it expects material engagement with notifying parties prior to lodgement of the application (i.e. before the clock has started)—particularly in relation to formal notifications rather than notification waiver applications.

Transacting parties need to factor into their transaction timelines the time required for their legal advisors to consider competition issues and whether the monetary thresholds are triggered, as well as the time required to prepare a submission.

Notification Waiver Applications

The ACCC has a statutory time frame of 25 business days to consider notification waiver applications. If it is unable to do so within this period, it must not grant the waiver.

The ACCC has stated informally that it will seek to consider notification waiver applications within 10 business days, but it has also stated that time frames are dependent on the quality and amount of information that is provided to it.

Formal Notifications

Phase 1:

- The ACCC has 30 business days to conduct an initial review of any potential competition concerns.
- Where the ACCC does not have any competition concerns, it may issue a “fast track” determination 15 business days after the notification has been received.
- Notifying parties have 20 business days to offer certain conditions (e.g. commitments or undertakings) to the ACCC to remedy any potential competition concerns.

Phase 2 (Where the ACCC Considers That the Acquisition Could Substantially Lessen Competition):

- Statutory time limit of 90 business days for the ACCC to provide its determination.
- Within 25 business days after the start of the Phase 2 review period, or as soon as practicable thereafter, the ACCC may provide the merger parties with a written “notice of competition concerns”.
- Merger parties then have 25 business days after receiving the notice of competition concerns to make oral or written submissions to the ACCC in relation to the grounds set out in the notice.

Public Benefit Application (If the ACCC Determines in Phase 2 That an Acquisition Must Not Be Put Into Effect):

- Application must be made within 21 days of the ACCC’s determination.
- ACCC then has a further 50 business days to issue a public benefit determination. It must issue an “Initial Public Benefit Assessment” within 20 business days—notifying parties then have 15 business days to make oral or written submissions in response.

Notification Fees

Type of Review	Fee
Notification Waiver Application	AU\$8,300
Merger Notification (Phase 1)	AU\$56,800
Merger Notification (Phase 2)	
Slide scale of fees based on the greater of the market values of the assets or shares being acquired or the consideration received or receivable for the assets or shares being acquired:	
< AU\$50 million	AU\$475,000
AU\$50 million to AU\$1 billion	AU\$855,000
> AU\$1 billion	AU\$1,595,000
Public Benefits Application	AU\$401,000