



Australian Government
The Treasury



Merger reform

Notification thresholds – Consultation

September 2024



Proposed notification thresholds

Under the new system, we are proposing three types of notification thresholds:



Monetary thresholds



Market concentration thresholds



Additional targeted notification requirements

The thresholds are designed to be **risk based** and **targeted** and achieve the following objectives:

Capture anti-competitive and economically significant acquisitions, including serial acquisitions

Ensure scrutiny of acquisitions by acquirers with substantial market power, including acquisitions of nascent competitors

Target acquisitions that directly affect Australian consumers

Focusing on acquisitions that give rise to the capacity to control or influence the competitive behaviour of the target business can act as a further filter.

Monetary thresholds

An acquisition is notifiable under the monetary thresholds if at least one of the two limbs are met and there is a material connection to Australia:

Limb 1

- a. Combined Australian turnover of merger parties (including acquirer group) 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

Limb 2

- 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**

The regulations will further clarify how turnover and transaction value are calculated for the purposes of whether the monetary thresholds are met. In other jurisdictions turnover is typically calculated by reference to where the customer is located.

**Material connection to Australia could mean the target business or asset has a material connection to Australia, for example, being registered or located in Australia, supplying goods or services to Australian customers, or generating revenue in Australia.*

Market concentration thresholds

An acquisition is notifiable under the market concentration thresholds if at least one of the two limbs are met:

Limb 1

- a. Combined share of the merger parties is at least **25 per cent** AND
- b. Australian turnover (including acquirer group) is at least **\$20 million** for each of at least two of the merger parties

OR

Limb 2

- a. Combined share of the merger parties is at least **50 per cent** AND
- b. Australian turnover (including acquirer group) is at least **\$10 million** for each of at least two of the merger parties

Treasury is consulting on the use of **market share** and **share of supply** under the market concentration thresholds.

Treasury is also consulting on an alternative administrative approach where prior registration of certain goods/services in certain locations is required but would only be notifiable if the ACCC advises this within 5-10 business days.

Additional targeted notification requirements

- A Treasury Minister will have the power to introduce **targeted notification requirements** in response to **evidence-based concerns regarding high-risk mergers**.
- There will be **clear procedural requirements** for the ACCC and the Treasury Minister to follow.
 - This could include clear timelines, criteria the Minister must consider and steps to facilitate transparency and consultation.
- The Government is not currently consulting on any additional targeted notification requirements.
 - To support community understanding, the consultation paper sets out illustrative examples.

Notification waiver

- To address uncertainty in determining whether an acquisition is notifiable, businesses could seek a 'notification waiver' from the ACCC that would **relieve their obligation to notify**.
- Granting a notification waiver would mean the ACCC would not be able to take action against an acquisition for not notifying.
 - However, the ACCC could still take action under other provisions of the CCA.
- The ACCC would have **30 business days** to provide a notification waiver.

Serial acquisitions – three-year aggregation

To capture serial acquisitions, acquisitions by the **acquirer and acquirer corporate group** within the **previous three years** will be aggregated, regardless of whether those **acquisitions were themselves individually notifiable**.

This is proposed to apply only to:

- the **monetary turnover thresholds** (but not monetary transaction value thresholds); and
- acquisitions within the **same product or service** market/s (irrespective of geographic location).

Asset acquisitions

- Asset (as well as business) acquisitions are also covered by the thresholds. Regardless of how a business sale is structured (as a sale of shares or assets), the turnover of the business will be used to attribute turnover to those assets and be agnostic on legal form.
- They will be notifiable where:
 - The transaction value of the asset being acquired exceeds the **transaction value thresholds**.
 - The turnover attributable to the asset being acquired (such as lease income from property acquisitions) exceeds the **turnover thresholds**.
- Assets acquired in the ordinary course of a business (except for land and patents) are exempt from notification.

Estimates of notifications

- Expect 300-500 notifications out of 1500 or more mergers that reportedly occur per year.
- Based on ACCC data, merger databases (including Bloomberg and Refinitiv) and proprietary property data but there is a high level of uncertainty.
- The projected number of notifications are subject to a substantial margin of error as there is no complete database on mergers and there are limitations in the historical data that is available.
- Regular reviews to promote process efficiency and review the number of notifications.

Next steps

Treasury is seeking feedback on the proposed notification thresholds. The thresholds consultation paper is available on the [Treasury website](#).

Submissions close **Friday, 20 September 2024**

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