

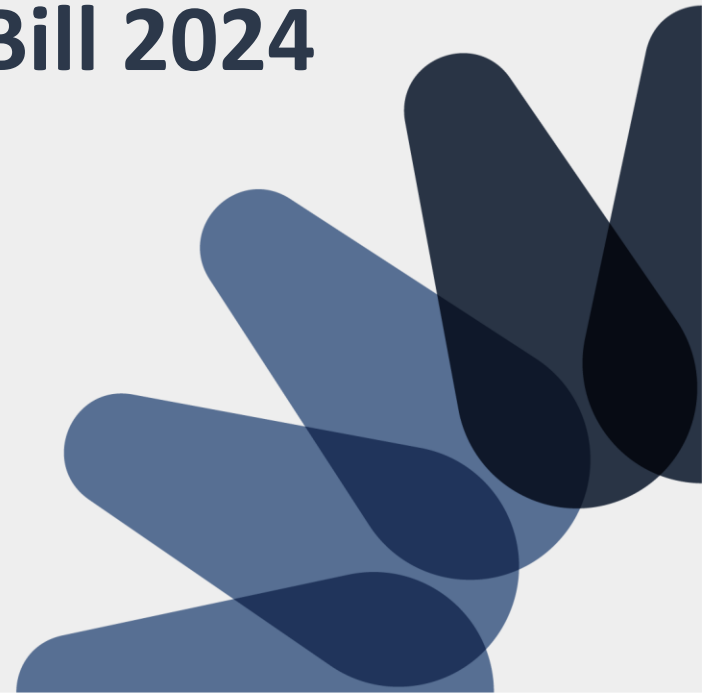


Australian Government
The Treasury

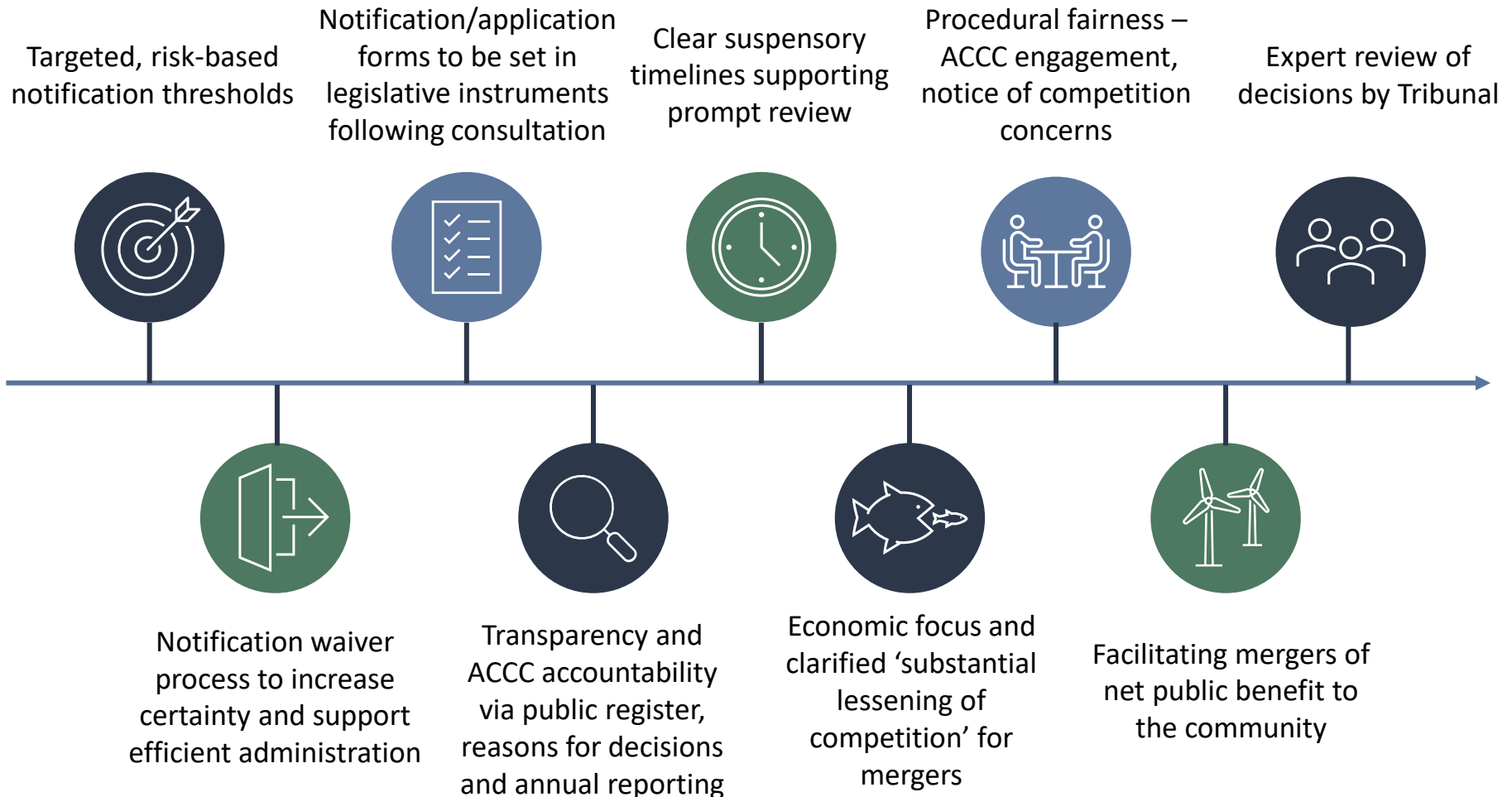


Merger Reform: Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024

October 2024



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



Notification thresholds

There will be one economy-wide monetary threshold ...

Economy-wide
monetary
threshold



An acquisition is notifiable if it meets the following limbs, AND the target has a material connection to Australia:

- a. Combined Australian turnover of merger parties (including acquirer group) is at least **\$200 million AND**
- b. EITHER the Australian turnover is at least **\$50 million** for each of at least two of the merger parties OR the global transaction value is at least **\$250 million**

... with an additional targeted threshold for very large acquirers of smaller businesses or assets ...

Very large
acquirer
threshold




An acquisition is notifiable if:

- a. Acquirer group Australian turnover is at least **\$500 million AND**
- b. The Australian turnover is at least **\$10 million** for each of at least two of the merger parties

... and a separate three-year cumulative threshold to address serial acquisitions

Three-year
cumulative
turnover
threshold



| | For medium to large sized mergers | For very large acquirers |
|--|--|---|
| | <p>An acquisition is notifiable if:</p> <ol style="list-style-type: none"> a. Combined Australian turnover of merger parties (including acquirer group) is at least \$200 million AND b. The cumulative Australian turnover from acquisitions in the same or substitutable goods or services over a 3 year period is at least \$50 million | <p>An acquisition is notifiable if:</p> <ol style="list-style-type: none"> a. Acquirer group Australian turnover is at least \$500 million AND b. The cumulative Australian turnover from acquisitions in the same or substitutable goods or services over a 3 year period is at least \$10 million |
| | <ul style="list-style-type: none"> • Acquisitions below \$2 million Australian turnover would be excluded | |

Other details and exemptions relating to monetary thresholds



A target has a **material connection to Australia** if they are **‘carrying on a business in Australia’** OR **have plans to carry on a business in Australia**



To ensure **benign land acquisitions are not captured**, there will an **exemption from notification for land acquisitions** made in relation to **residential property development** or by any business that is **primarily engaged in buying, selling or leasing property and which does not intend to operate a commercial business (other than leasing) on the land**, unless those acquisitions are captured by additional targeted notification requirements

Subject to the passage of the legislation, the thresholds and related details will be set in subordinate legislation and subject to consultation

Ministerial determinations will ensure adequate scrutiny

The Government also intends to ensure there is adequate scrutiny of:



Acquisitions by **supermarkets**



Acquisitions by **unlisted or private companies** that result in them holding an interest in a target above 20% AND meet the monetary notification thresholds




Acquisitions that result in **changes in the level of control** AND meet the monetary notification thresholds

Subject to the passage of the legislation, these will be set in subordinate legislation and subject to consultation

Monetary notification threshold:

Scenario 1

Economy-wide threshold – An acquirer group with \$160 million in Australian turnover acquires a business with \$80 million in Australian turnover and a global transaction value of \$100 million.



| | | Limb | Scenario | Notifiable? |
|---|---|--------|----------|-------------------|
| Economy-wide monetary threshold  | Combined Australian turnover | \$200m | \$240m ✓ | Notifiable |
| | and either | | | |
| | Turnover of at least two parties/target | \$50m | \$80m ✓ | |
| | Transaction value | \$250m | \$100m | |

Therefore, the acquisition must be notified to the ACCC under the **economy-wide monetary threshold**

Monetary notification threshold:

Scenario 2

Economy-wide and very large acquirer thresholds– An acquirer with \$600 million in Australian turnover (including the acquirer group) acquires a business with \$20 million in Australian turnover and a global transaction value of \$50 million.

| | | Limb | Scenario | | Notifiable? |
|---|---|--------|----------|---|------------------------------|
| Economy-wide monetary threshold  | Combined Australian turnover | \$200m | \$620m | ✓ | <i>Not notifiable</i> |
| | and either | | | | |
| | Turnover of at least two parties/target | \$50m | \$20m | ✗ | |
| | Transaction value | \$250m | \$50m | ✗ | |
| Very large acquirer threshold  | Acquirer Australian turnover | \$500m | \$600m | ✓ | <i>Notifiable</i> |
| | and | | | | |
| | Turnover of at least two parties/target | \$10m | \$20m | ✓ | |

Therefore, the acquisition must be notified to the ACCC under the **very large acquirer threshold**

Monetary notification threshold:

Scenario 3

Three-year cumulative turnover thresholds – An acquirer with at least \$500 million Australian turnover makes the following acquisitions. The \$10 million cumulative threshold applies.


| # | Year | Goods or services of the target | Turnover of the target | Aggregated or notifiable? | Cumulative turnover |
|---|------|---------------------------------|------------------------|---|---------------------|
| 1 | 2024 | Pet food | \$1 million | Not aggregated or notifiable – less than \$2m | \$0 million |
| 2 | 2024 | Pet food | \$3 million | Aggregated for pet food but not notifiable | \$3 million |
| 3 | 2024 | Pet food | \$16 million | Not aggregated – notifiable separately under the very large acquirer threshold | \$3 million |
| 4 | 2025 | Pet food | \$4 million | Aggregated for pet food but not notifiable | \$7 million |
| 5 | 2026 | Pet food | \$4 million | Aggregated and notifiable – cumulative turnover for pet food is \$11 million, which exceeds the \$10 million cumulative threshold | \$11 million |
| 6 | 2026 | Pet food | \$4 million | Aggregated and notifiable – cumulative turnover for pet food is \$15 million, which exceeds the \$10 million cumulative threshold | \$15 million |
| 7 | 2026 | Pet food | \$1.5 million | Not aggregated or notifiable even though the cumulative threshold is met – less than \$2m | \$15 million |

- The turnover of past acquisitions aggregated will be the **turnover at the point of acquisition**
- Only acquisitions where the **cumulative turnover would exceed the cumulative thresholds will be notifiable** – past acquisitions where the cumulative thresholds were not met are **not retrospectively notifiable** (but may be taken into account by the ACCC in assessing whether the acquisition may result in a substantial lessening of competition).


Land acquisitions scenarios

An acquirer with at least \$500 million in Australian turnover acquires the following land with at least \$10 million in attributable turnover

1. A large block of land to develop residential properties on

| | | Limb | Scenario | Notifiable? |
|---|--|--------|----------|-----------------------------------|
| Very large acquirer threshold  | Acquirer Australian turnover | \$500m | \$500m ✓ | <u>No – land exemption</u> |
| | and | | | |
| | Turnover of at least two parties/target | \$10m | \$10m ✓ | |
| Land exemption? | Yes – the land was purchased to develop residential properties on | | | ✓ |


2. A commercial office building by a large property investor

| | | Limb | Scenario | Notifiable? |
|---|--|--------|----------|-----------------------------------|
| Very large acquirer threshold  | Acquirer Australian turnover | \$500m | \$500m ✓ | <u>No – land exemption</u> |
| | and | | | |
| | Turnover of at least two parties/target | \$10m | \$10m ✓ | |
| Land exemption? | Yes – the acquirer is a property investor that primarily engages in buying and leasing property and does not intend to operate a commercial business on the land other than leasing | | | ✓ |

Land acquisitions scenarios - continued

An acquirer with at least \$500 million in Australian turnover acquires the following land with at least \$10 million in attributable turnover

3. A large block of land to operate a hardware retail store on

| | | Limb | Scenario | | Notifiable? |
|---|--|--------|----------|---|--------------------------------|
| Very large acquirer threshold  | Acquirer Australian turnover | \$500m | \$500m | ✓ | Notifiable – not exempt |
| | and | | | | |
| Turnover of at least two parties/target | \$10m | \$10m | ✓ | | |
| Land exemption? | No – a commercial business of a hardware retail store is intended to be operated on the land | | | ✗ | |

Next steps

Further detail on thresholds will be consulted on through the development of subordinate legislation later in 2024-25.

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