

EXPOSURE DRAFT

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Competition and Consumer Act 2010

Competition and Consumer (Notification of Acquisitions) Determination 2025

The *Competition and Consumer (Notification of Acquisitions) Determination 2025* (the Determination) is a legislative instrument made under the *Competition and Consumer Act 2010* (the CCA).

Section 51ABP of the CCA provides that the Minister may determine the circumstances in which acquisitions are required to be notified to the Australian Competition and Consumer Commission (the Commission).

Section 51ABQ of the CCA provides that the Minister may determine a class of acquisitions which are required to be notified to the Commission.

Subsection 51ABS(6) of the CCA provides that the Minister may determine a class of acquisitions of shares in the capital of a body corporate which are required to be notified to the Commission.

Subsection 51ABY(5) of the CCA provides that the Minister may determine a form in relation to a notification. It also provides that the Minister may determine information or documents to be included in or accompanied by a notification.

The *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024* (the Mergers Act) introduced a new merger control system in the CCA. This new system requires certain acquisitions of shares or assets to be notified to the Commission for assessment prior to completion.

The purpose of the Determination is to support the new system by:

- determining the circumstances where acquisitions require notification;
- determining exceptions to the general circumstances;
- determining the classes of acquisitions requiring notification; and
- determining forms and the information and documents required to accompany forms.

Part 1 of the Determination introduces concepts of connected entity, major supermarket, a share or asset connected with Australia, as well as the turnover tests and definitions. These concepts are used in determining the circumstances in which acquisitions require notification, and in determining the classes of acquisitions requiring notification.

Part 2 of the Determination specifies the general circumstances where acquisitions require notification, and exceptions to those general circumstances. Clear definitions and rules enable businesses to identify whether they are required to notify under the new system.

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Part 3 of the Determination identifies acquisitions by Coles and Woolworths and connected entities of a supermarket business required to be notified to the Commission. Part 3 also identifies certain types of land acquisitions as a class of acquisitions that are required to be notified to the Commission.

Parts 4 and 5 of the Determination will provide rules for the notification waiver process, and what details the Commission will be required to publish on its acquisitions register.

Part 6 of the Determination sets out content and format of the notification forms. It is made under section 51ABY of the CCA. That section also specifies that a determination made under it is exempt from disallowance, as provided by section 44 of the *Legislation Act 2003*. As such, Part 6 of the Determination is exempt from disallowance.

Part 7 of the Determination indexes the notification thresholds. Indexation is based on the proportionate change in the GDP implicit price deflator over the previous year. Part 7 also contains an anti-avoidance provision.

Part 10 of the Determination sets out the transitional matters.

Subsection 51ABQ(3) of the CCA requires the Minister to consider the following matters in making a determination that certain classes of acquisitions are required to be notified:

- the likely effect of making the instrument on the interests of consumers, promoting competition, and the public interest;
- the likely regulatory impact of requiring the class of acquisitions to which the Determination relates to be notified; and
- any other matters the Minister considers relevant (for example, any relevant reports).

Part 3 of the Determination is made under section 51ABQ of the CCA. In making an instrument under section 51ABQ, the Minister must consider certain matters as outlined in subsection 51ABQ(3). As part of a submission to this consultation, stakeholders may provide feedback on these matters as they relate to Part 3 of the Determination.

Subsection 51ABQ(4) of the CCA provides that in making an instrument, the Minister may also consider any reports or advice of the Commission.

Subsection 51ABQ(6) provides that Part 3 of this Determination sunsets on the fifth anniversary of its registration on the Federal Register of Legislation.

The Determination (other than Part 6) is subject to disallowance by Parliament.

Section 4 of the *Acts Interpretation Act 1901* enables the Determination to be made in anticipation of the commencement of the relevant authorising provisions in the Mergers Act.

Details of the Determination, including commencement, are set out in [Attachment A](#).

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Office of Impact Analysis (OIA) has been consulted (OIA23-06015) and agreed that an Impact Analysis is not required.

**Details of the Competition and Consumer (Notification of Acquisitions)
Determination 2025**

Part 1 - Preliminary

Section 1-1 – Name

This section provides that the name of the instrument is the *Competition and Consumer (Notification of Acquisitions) Determination 2025* (the Determination).

Section 1-2 – Commencement

Part 1 of the Determination commences on the later of the day after the instrument is registered on the Federal Register of Legislation and 1 July 2025.

Parts 2, 4, 5, 6, 7 and 10 of the Determination commence at the same time as Part 1.

Part 3 of the Determination commences on the later of the 30th day after the instrument is registered on the Federal Register of Legislation and 1 January 2026.

Section 1-3 – Authority

The Determination is made under the *Competition and Consumer Act 2010* (the CCA).

Section 1-4 – Definitions

This section provides definitions for various terms used throughout the Determination. Specific definitions for the Determination are sign-posted.

A key definition, specific to the Determination that is not sign-posted, is ‘contract date’. This term means, in relation to the acquisition of a share or asset, the date on which a contract, arrangement or understanding has been entered, pursuant to which the acquisition of the share or asset is to take place. The definition is central to the circumstances outlined in sections 2-1, 2-2 and 2-3 of the Determination, which outline when merger parties are required to notify the Commission of an acquisition.

Section 1-5 – Meaning of *connected entity*

This section defines the term ‘connected entity’. This is a key concept for acquisitions made by a major supermarket, and for the general notification thresholds in Division 1 of Part 2 of the Determination.

There are two tests for whether an entity is a connected entity.

The first test is given by subsection 1-5(1). It provides that a first entity is a connected entity of a second entity [if the second entity is an associated entity of the first entity. Associated entity is as defined by section 50AAA of the *Corporations Act 2001* (the Corporations Act).] An important difference between the first test and the second test is that under the first test, a connected entity can also be downstream from the target.

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Whereas in the second test, a connected entity can only be upstream of the target (for the reasons discussed below).

The first test also picks up the concept of ‘control’ unmodified by section 51ABS of the CCA. ‘Control’ as defined in section 50AA of the Corporations Act refers to the capacity of one entity to determine the outcome of decisions about another entity’s financial and operating policies. In determining whether someone has that capacity, it is the practical influence that they can exert (rather than the rights they can enforce) that is to be considered. Any practice or pattern of behaviour affecting a body corporate’s financial and operating policies is also to be taken into account (even if it involves a breach of agreement or trust).

The second test is given by subsection 1-5(2). *[It provides that a first entity is also a connected entity of a second entity if the first entity controls the second entity. Control is determined within the meaning given by section 50AA of the Corporations Act. However, unlike the test in subsection 1-5(1), the meaning of control in section 50AA is modified by subsection 51ABS(2) of the CCA.]*

The subsection 51ABS(2) modifications were introduced into the CCA by the Mergers Act to clarify situations where ‘control’ would be held after an acquisition. The intended operation of subsection 51ABS(2) of the CCA is discussed in paragraphs 2.53 to 2.56 of the Explanatory Memorandum to the Mergers Act.]

Section 1-6 – Meaning of *connected with Australia*

For the new system to apply to an acquisition, the acquisition must be of a share or asset that is ‘connected with Australia’. A share or asset is connected with Australia if:

- in relation to the share – the share is in the capital of a body corporate that carries on a business in Australia [*or intends to carry on a business in Australia*]; or
- in relation to an asset that is an interest in an entity (other than a share in the capital of a body corporate) – the entity carries on a business in Australia [*or intends to carry on a business in Australia*]; or
- in all other cases – the asset is used in, or forms part of, a business carried on in Australia.

[Two concepts] central to being connected with Australia are whether the entity or body corporate ‘carries on a business in Australia’ [and whether an entity or body corporate ‘intends to carry on a business in Australia’.]

‘Carrying on a business in Australia’ is defined in section 21 of the Corporations Act and is a core concept of competition, consumer, privacy, tax and corporations law. Whether an entity or body corporate is carrying on a business in Australia is largely a question of fact. Courts have looked at all of the circumstances surrounding the entity or body corporate and its activities when determining whether it is carrying on a business in Australia.

[Whether an entity or body corporate intends to carry on a business in Australia is also a question of fact. The words ‘intends to carry on a business’ will carry their ordinary

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meaning. Courts have considered that where a company aims to, and has a prospect of, making a profit, it is presumed the company intends to carry on a business.^{1]}

Section 1-7 – Meaning of major supermarket

Part 3 of the Determination only applies to major supermarkets. This section defines a major supermarket as Coles and Woolworths and connected entities of Coles and Woolworths. It is appropriate to only apply Part 3 to Coles and Woolworths as supermarket retailing in Australia is an oligopoly. While Coles and Woolworths face competition from other rivals, such as ALDI and Metcash, these rivals are not close competitors. As the Commission notes, ‘Coles’ and Woolworths’ market shares are increasing and they face no rivals of comparable scope and scale’.² Coles and Woolworths account for 67 per cent of supermarket retail sales nationally.³

Section 1-8 – Combined acquirer/target turnover test

The ‘combined acquirer/target turnover test’ is relevant to determining whether the merger parties are required to notify the Commission of an acquisition pursuant to sections 2-1 and 2-3 of the Determination. These provisions require notification if an acquisition would result in large or larger corporate groups, or an acquisition is part of a series of creeping or serial acquisitions. These provisions are located in Division 1 of Part of the Determination.

An acquisition will satisfy the combined acquirer/target turnover test at a time if, at that time, the sum of all of the following is \$200 million or more:

- the current GST turnover of the principal party to the acquisition (paragraph 1-8(1)(a));
- the current GST turnover of each connected entity of the principal party to the acquisition (paragraph 1-8(1)(b));
- where the acquisition is in shares in a body corporate – the current GST turnover of the body corporate (paragraph 1-8(1)(c));
- the current GST turnover of each connected entity of the body corporate that is the subject of the acquisition of shares in it (other than an entity not being indirectly acquired as a result of the acquisition) (paragraph 1-8(1)(d));
- where the acquisition is of an asset – the current GST turnover of the target to the acquisition to the extent that it is attributable to the asset (paragraph 1-8(1)(e)).

The ‘principal party to the acquisition’ has the same meaning as section 51ABI of the CCA, that being the person who acquires the shares, assets or determined thing. As such,

¹ See *American Leaf Blending Co Sdn Bhd v Director-General of Inland Revenue* [1979] AC 676, and *Inland Revenue Commissioners v Westleigh Estates Co Ltd* [1924] 1 KB 390.

² ACCC, Supermarkets Inquiry Final Report, 23 March 2025, pp. 1, 10. The Report can be found at: <https://www.accc.gov.au/about-us/publications/serial-publications/supermarkets-inquiry-2024-25-reports/supermarkets-inquiry-february-2025-final-report>

³ ACCC, Supermarkets Inquiry Final Report, 23 March 2025, pp. 28–29. The Report can be found at: <https://www.accc.gov.au/about-us/publications/serial-publications/supermarkets-inquiry-2024-25-reports/supermarkets-inquiry-february-2025-final-report>

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paragraphs 1-8(1)(a) and (b) require calculating the turnover for the acquiring party and its connected entities (see discussion of ‘connected entities’ above).

Paragraphs 1-8(1)(c) to (e) focus on calculating the turnover for the target and its connected entities. Importantly, paragraph 1-8(1)(d) modifies the operation of the meaning of connected entities to ensure that the turnover of the seller of the target is not captured.

In this context, ‘current GST turnover’ has the same meaning as in section 188-15 of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). Under this definition, the current GST turnover of an entity at a time is the sum of the values of all the supplies that the entity made or is likely to make in the period of 12 months ending with the current month. This calculation excludes certain supplies, including input taxed supplies, supplies that are not for consideration, and supplies that are not made in connection with a business or other enterprise that the entity carries on.

‘GST turnover’ is used for this calculation because businesses are already required to report the value of their taxable and GST free supplies in their Business Activity Statements. This will allow businesses to use this information that they already must collect for the purposes of the Business Activity Statement in determining whether their acquisitions meet the general notification thresholds and are required to be notified to the Commission.

In calculating whether the relevant thresholds are met, the current GST turnover of a relevant entity is not included if the entity is a member of a ‘GST group’ (defined in the GST Act) and the current GST turnover of another entity that is a member of the GST group has already been included. This is because the current GST turnover of a member of a GST group is the current GST turnover of the whole group. This rule prevents double counting, ensuring that the current GST turnover of a GST group is only included once in the calculation even if multiple members of the group are relevant entities.

Section 1-9 – Acquired shares or assets turnover tests

The acquired shares or assets turnover tests are relevant to determining whether the merger parties are required to notify the Commission of an acquisition under sections 2-1, 2-2 and 2-3 of the Determination. These sections respectively relate to acquisitions resulting in large or larger corporate groups, acquisitions by very large corporate groups of smaller targets, and creeping or serial acquisitions. These provisions are located in Division 1 of Part 2 of the Determination.

There are two cases, one general and one special, in which this test can apply.

General case: One corporate group acquires another corporate group (or parts thereof)

There are two separate thresholds for the general case. One is where the turnover is \$50 million or more. The other is where the turnover is \$10 million or more. For both thresholds, calculating the value of the turnover occurs at a time and comprises the sum of all the following at that time:

- where the acquisition is in shares in a body corporate – the current GST turnover of the body corporate (paragraphs 1-9(1)(a) and 1-9(2)(a));

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- the current GST turnover of each connected entity of the body corporate mentioned in paragraph (a) (other than an entity not being indirectly acquired as a result of the acquisition) (paragraphs 1-9(1)(b) and 1-9(2)(b));
- where the acquisition of an asset – the current GST turnover of the target to the acquisition to the extent that it is attributable to the asset (paragraphs 1-9(1)(c) and 1-9(2)(c)).

As with section 1-8, the concept of ‘GST turnover’ from the GST Act is used to calculate whether the \$50 million or \$10 million thresholds are met. As in that case, a rule is included to prevent the current GST turnover of a GST group from being double counted if the body corporate, its connected entities, and the target of the acquisition include more than one member of the same GST group.

Also, like section 1-8, in calculating whether the thresholds are met, paragraphs 1-9(1)(b) and 1-9(2)(b) excludes the seller of the target.

Special case: More than two parties to the acquisition

As with the general case, there are two separate thresholds for the special case. One is where the turnover is \$50 million or more. The other is where the turnover is \$10 million or more. For both thresholds, calculating the value of the turnover occurs at a time and comprises the sum of all the following at that time. An acquisition will satisfy the relevant test if:

- there are more than two parties to a contract, arrangement or understanding, pursuant to which the acquisition is to take place; and
- the contract, arrangement or understanding involves more than one acquisition of shares and assets; and
- any one of the acquisitions under the contract, arrangement or understanding satisfies the test for the general case, namely one corporate group acquires another corporate group (or parts thereof) and whichever threshold is relevant to that – that is, \$50 million or more, or \$10 million or more (subsections 1-9(1) and 1-9(2)).

This special case is intended to address acquisitions where there are more than two parties involved in a contract, arrangement or understanding which would involve at least two acquisitions. Further, this circumstance is captured if at least one acquisition among the acquisitions proposed would satisfy the relevant test for the general case. Put simply, where there are multiple parties involved in multiple acquisitions and one of those acquisitions is caught by the general case test, all other acquisitions are caught.

Section 1-10 – Accumulated acquired shares or assets turnover test

The ‘accumulated acquired shares or assets turnover test’ is relevant to determining whether the merger parties are required to notify the Commission of an acquisition under section 2-3 of the Determination, which relates to the circumstance where there are creeping or serial acquisitions. This section is located in Division 1 of Part 2 of the Determination.

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There are two thresholds for this test.

The first threshold is where the acquisition satisfies the \$50 million accumulated acquired shares or assets turnover test (subsection 1-10(1)). This is relevant where the combined acquirer/target turnover test has been satisfied for the purposes of notifying creeping or serial acquisitions under section 2-3.

The second threshold is where the acquisition satisfies the \$10 million accumulated acquired shares or assets turnover test (subsection 1-10(2)). This is relevant where the very large corporate group turnover test has been satisfied for the purposes of notifying creeping or serial acquisitions under section 2-3.

For both thresholds, an acquisition satisfies the relevant test at a time if, at that time:

- the acquisition is of shares or assets (the current shares or assets) (paragraphs 1-10(1)(a) and 1-10(2)(a)); and
- the principal party to the acquisition, or a connected entity of the principal party, acquired other shares or assets (the previous shares or assets) in the 3-year period ending at the time of the turnover test (paragraphs 1-10(1)(b) and 1-10(2)(b)); and
- both the current shares or assets and the previous shares and assets relate, directly or indirectly, to the carrying on of a business involving the supply or acquisition of the same goods or services, or goods and services that are substitutable for, or otherwise competitive with, each other (disregarding any geographic factors or limitations) (paragraphs 1-10(1)(c) and 1-10(2)(c)); and
- the acquisition of the previous shares or assets and the current shares or assets which, if treated as a single acquisition, would satisfy the \$50 million acquired shares or assets turnover test or the \$10 million acquired shares or assets turnover test – whichever is relevant (paragraphs 1-10(1)(d) and 1-10(2)(d)).

For both tests, certain acquisitions are to be disregarded (see subsection 1-10(3) of the Determination). These are the acquisition of a previous share or asset (see paragraphs 1-10(1)(b) and 1-10(2)(b)) where:

- *[the acquisition of that previous share or asset was a notified acquisition (other than because of, in combination with other provisions of the Act and the Determination, a previous operation of this section and section 2-3); or]*
- the acquisition of that previous share or asset satisfied the small acquisition test at the time it was put into effect (see section 1-13 for ‘small acquisition test’ – discussed below); or
- the acquisition of the previous share or asset was not connected with Australia (see section 1-6 for ‘connected with Australia’ test – discussed above).

[The effect of subsection 1-10(3) is that acquisitions notified under sections 2-1, 2-2, Part 3 or otherwise voluntarily notified are to be disregarded for the purposes of the accumulated acquired shares or assets turnover test. However, section 7-30 of the Determination, the anti-avoidance provision, will regulate any efforts to circumvent notification under section 2-3 through strategic prior notifications.]

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The disregarding of previously notified acquisitions, other than those notified under section 2-3 which deals with creeping or serial acquisitions, is intended to balance appropriate oversight of creeping or serial acquisitions with administrative burden on the merger parties.]

As in section 1-8 of the Determination, ‘principal party to the acquisition’ has the same meaning as section 51ABI of the CCA. It means the person who acquires the shares, assets or determined thing. As such, paragraphs 1-10(1)(b) and 1-10(2)(b) require calculating the turnover for the acquiring party and its connected entities (see discussion of ‘connected entities’ above).

For an acquisition to be captured by this test, the current acquisition must be of a target supplying the same or substitutable goods or services as the previously acquired targets. The intent is to capture a series of acquisitions by a principal party that would increase market concentration in a sector. It is not intended to capture acquisitions involving different goods or services.

Section 1-11 – Transaction value test

The concept of ‘transaction value test’ is relevant to determining whether the general notification thresholds in Division 1 of Part 2 of the Determination are met. Namely, it looks at acquisitions resulting in large or larger corporate groups in section 2-1.

An acquisition will meet the transaction value test if the greater of the following is \$250 million or more:

- the sum of the market values of all the shares and assets being acquired as part of the contract, arrangement or understanding, pursuant to which the acquisition is to take place;
- the consideration received or receivable for all of the shares and assets being acquired as part of the contract, arrangement or understanding, pursuant to which the acquisition is to take place.

Satisfying one of the above tests will constitute meeting the transaction value test.

Both tests require examination of the contract, arrangement or understanding which, in turn, indicates whether the shares or assets are domestic or international.

The first test looks at the acquisition in terms of its ‘market value’. The concept of market value is to take its ordinary meaning, as the price that a willing, but not anxious, purchaser would, as at the date in question, have had to pay to a vendor who was not unwilling, but not anxious, to sell. This is consistent with the High Court reasoning in *Spencer v Commonwealth* (1907) 5 CLR 418.

The alternative test looks at the consideration received or receivable for the acquisition. ‘Consideration’ is also to take its ordinary meaning, namely the amount paid for the target, and includes cash and non-cash consideration.

The reason for having two tests, being market value and consideration, is that a principal party may pay a premium for an acquisition in anticipation of a target’s potential earnings or to remove a competitor from the market.

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Section 1-12 – Very large corporate group turnover test

The ‘very large corporate group turnover over test’ is relevant to determining whether the general notification thresholds in Division 1 of Part 2 of the Determination are met. It is used in sections 2-2 and 2-3, which relate to acquisitions by very large corporate groups, and creeping or serial acquisitions.

An acquisition will satisfy this test if, at a time, the sum of all of the following at that time is \$500 million or more:

- the current GST turnover of the principal party to the acquisition;
- the current GST turnover of each connected entity of the principal party to the acquisition.

The concepts of ‘current GST turnover’, ‘principal party to the acquisition’ and ‘connected entity’ should be interpreted consistently with sections 1-8, 1-9 and 1-10 of the Determination. These are discussed above.

Again, a rule is included to prevent the current GST turnover of a GST group from being double counted if the principal party and the connected entities of the principal party include more than one member of the same GST group. This is consistent with sections 1-8, 1-9 and 1-10 of the Determination and is also discussed above.

Section 1-13 – Small acquisition test

This test is relevant to determining whether the general notification thresholds in Division 1 of Part 2 of the Determination are met. It is used in section 2-3 which relates to circumstances of creeping or serial acquisitions.

An acquisition will satisfy the small acquisition test, at a time, if the sum of all of the following, at that time, is less than \$2 million:

- where the acquisition is in shares in a body corporate – the current GST turnover of the body corporate;
- the current GST turnover of each connected entity of the body corporate mentioned in paragraph (a) [*other than the entity not being indirectly acquired as a result of the acquisition*];
- where the acquisition is of an asset – the current GST turnover of the target to the acquisition to the extent that it is attributable to the asset.

The concepts of ‘current GST turnover’ and ‘connected entity’ should be interpreted consistently with sections 1-8, 1-9 and 1-10 of the Determination. These are discussed above.

Also consistent with sections 1-8, 1-9 and 1-10 of the Determination, a rule is included to prevent the current GST turnover of a GST group from being double counted if the body corporate, its connected entities and the target entity include more than one member of the same GST group. This is also discussed above.

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Part 2

This Part contains two divisions. Division 1 sets out the circumstances where an acquisition needs to be notified to the Commission. Division 2 sets out exceptions to these circumstances.

Section 2-1 – Circumstance – acquisitions resulting in large or larger corporate groups

One circumstance requiring notification to the Commission is where an acquisition results in a large or larger corporate group.

By setting a combined turnover threshold of \$200 million or more and requiring the target to have turnover of \$50 million or more, the intent is to allow the Commission to assess acquisitions involving large entities.

The merger parties will need to notify the Commission if:

- the acquisition is of shares or assets that are connected with Australia (see section 1-6, discussed above); and
- the combined turnover of the principal party and the target is \$200 million or more on the date on which the contract, arrangement or understanding pursuant to which the acquisition is to take place is entered (see ‘contract date’ discussed above), thus satisfying the combined acquirer/target turnover test (see section 1-8 – discussed above); and
- either:
 - the target has turnover of \$50 million or more (the \$50 million acquired shares or assets turnover test – see subsection 1-9(1), discussed above) on the contract date; or
 - the transaction value of the acquisition is \$250 million or more (the transaction value test – see section 1-11, discussed above).

Section 2-2 – Circumstance – acquisitions by very large corporate groups

Another circumstance requiring notification to the Commission is where a very large corporate group acquires a target with turnover of at least \$10 million.

The merger parties will need to notify the Commission if:

- the acquisition is of shares or assets that are connected with Australia; and
- the principal party’s turnover is \$500 million or more on the contract date; and
- the target’s turnover is \$10 million or more on the contract date.

By setting the principal party’s turnover at \$500 million or more and the target’s turnover at \$10 million or more, the intent is to capture businesses that are of substantial size in the

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context of the Australian economy acquiring smaller businesses that are still of a significant size in the context of the Australian economy.

The very large corporate group turnover test is set out in section 1-12 of the Determination and discussed above. The \$10 million acquired shares or assets turnover test is set out in subsection 1-9(2) of the Determination and discussed above. The meaning of ‘connected with Australia’ is set out in section 1-6 of the Determination and the meaning of ‘contract date’ is set out in section 1-4. Both are discussed above.

Division 2 of Part 2 sets out exceptions to when notification of an acquisition is required. These are discussed below.

Section 2-3 – Circumstance – Creeping or serial acquisitions

Another circumstance requiring notification to the Commission is where a principal party makes a series of acquisitions within a 3-year period that were not otherwise notified under sections 2-1, 2-2, Part 3 or voluntarily notified, and are of targets with turnover of at least \$2 million.

The merger parties will need to notify the Commission if:

- the acquisition does not meet the ‘small acquisitions test’, meaning the acquisition must be at least \$2 million (see section 1-13 for small acquisitions test, discussed above); and
- the acquisition is not excluded by Division 2 of Part 2; and
- either the combined acquirer/target turnover test or the very large corporate group turnover test is satisfied on the contract date (see sections 1-8 and 1-12, discussed above); and
- where the combined acquirer/target turnover test is satisfied – the acquisition satisfies the \$50 million accumulated acquired shares or assets turnover test on the contract date (see subsection 1-10(1) for the test, discussed above); or
- where the very large corporate group turnover test is satisfied – the acquisition satisfies the \$10 million accumulated acquired shares or assets turnover test on the contract date (see subsection 1-10(2) for the test, discussed above).

The threshold is intended to capture the combined effect of all acquisitions involving the same or substitutable goods or services in the past 3 years by the principal party (including its connected entities). In practice, this means that all relevant acquisitions, which were not otherwise notified, made in a 3-year period are aggregated when determining if this threshold is met.

- The following scenario illustrates when notification is required:
 - The principal party, ScanCo, is a business supplying pathology and diagnostic imaging services and has current GST turnover of \$190 million at the relevant time when all of the below acquisitions are made.
 - Notification is required under section 2-3 on three occasions, when ScanCo acquires ECo, FCo and HCo (see rows 5, 6 and 8 of Table 1 below).

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Table 1 – Example of creeping or serial acquisitions

Acqui-sition	Year	Target	Goods or services supplied by the target	Current GST turnover of the target	Aggregated or notifiable?	Accumulated turnover
1	2024	ACo	Pathology and Diagnostic Imaging Services	\$10M	Aggregated for Pathology and Diagnostic Imaging Services but not notifiable	\$10M
2	2024	BCo	Pathology and Diagnostic Imaging Services	\$10M	Aggregated for Pathology and Diagnostic Imaging Services but not notifiable	\$20M
3	2024	CCo	Pathology and Diagnostic Imaging Services	\$10M	Aggregated for Pathology and Diagnostic Imaging Services but not notifiable	\$30M
4	2025	DCo	Pathology and Diagnostic Imaging Services	\$10M	Aggregated for Pathology and Diagnostic Imaging Services but not notifiable	\$40M
5	2026	ECo	Pathology and Diagnostic Imaging Services	\$10M	Aggregated and notifiable because combined turnover of ScanCo and ECo is \$200M thus satisfying the combined acquirer/target turnover test (see section 1-8) and the \$50M accumulated acquired shares or assets turnover test is satisfied (see subsection 1-10(1)) because aggregated turnover of acquisitions 1 to 5 is \$50M.	\$50M
6	2026	FCo	Pathology and Diagnostic Imaging Services	\$4M	Aggregated and notifiable because the combined turnover is \$244M comprising FCo's \$4M turnover and ScanCo's \$240M turnover (because it includes the turnover of ACo, BCo, CCo, DCo and ECo). The \$50M accumulated acquired shares or assets turnover test is satisfied because the aggregated turnover of acquisitions 1 to 6 is \$54M.	\$54M

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Acqui-sition	Year	Target	Goods or services supplied by the target	Current GST turnover of the target	Aggregated or notifiable?	Accumulated turnover
7	2026	GCo	Pathology and Diagnostic Imaging Services	\$1.5M	Not aggregated or notifiable because turnover of the target is less than \$2M	\$54M
8	2028	HCo	Pathology and Diagnostic Imaging Services	\$27M	Aggregated and notifiable because combined turnover of ScanCo and HCo is \$261M, comprising HCo's \$27M turnover and ScanCo's \$244M turnover. The accumulated acquired shares or assets turnover test is satisfied because aggregated turnover of acquisitions 4, 5, 6 and 8 is \$51M. Acquisitions 1 to 3 are disregarded because more than 3 years ago.	\$51M

Section 2-20 – Certain land acquisitions

This section exempts certain land acquisitions from being notified to the Commission.

Subsection 2-20(1) exempts two categories of land acquisitions from notification:

- residential property developments – acquisitions made for the purpose of developing residential premises.
- certain commercial property acquisitions – acquisitions by businesses primarily engaged in buying, selling or leasing land, where the acquisition is for a purpose other than operating a commercial business on the land.

The exemption covers property development activity, for example, property developers who are acquiring land for the purpose of carrying on their business. It does not extend to acquisitions where land acquisition is a component of a broader transaction, or where the acquired land is used to operate a commercial business, such as Woolworths or Coles buying land to operate a supermarket on it.

Subsection 2-20(2) provides that an acquisition of a legal or equitable interest in land is exempt from notification if the acquisition is the extension or renewal of a lease over land on which a commercial business is currently being operated. This is to facilitate routine lease renewals or extensions for land already in commercial use.

Section 2-21 – Liquidation, administration, receivership etc

This section exempts acquisitions by an administrator, receiver, receiver and manager, or liquidator from being notified to the Commission. This is because such actions are

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generally undertaken in an official capacity (for example, for the purposes of insolvency proceedings).

‘Administrator’, ‘receiver’, ‘receiver and manager’ and ‘liquidator’ are all within the meaning of section 9 of the Corporations Act.

However, this exemption does not cover instances where an entity is acquiring shares or assets *from* the administrator, receiver, receiver and manager, or liquidator. Such transactions are still subject to the notification requirements if the thresholds are met.

Section 2-22 – Succession

This section exempts acquisitions which take place pursuant solely to a testamentary disposition, intestacy or a right of survivorship under a joint tenancy from being notified to the Commission. These acquisitions are not generally the result of commercial decisions. Similar exemptions apply to merger control in the United States of America and Canada.

This exemption applies despite the rule in subsection 51ABN(2) of the CCA, which removes the ‘ordinary course of business’ exception for acquisitions of land and patents. This means that, while acquisitions of land or patents are generally subject to notification requirements (under section 51ABN), acquisitions of land or patents that arise solely due to inheritance, intestacy, or joint tenancy survivorship remain excluded from notification requirements under this exemption.

Section 2-23 – Financial securities

This section exempts acquisitions related to certain fundraising activities from the notification requirement to avoid undue disruption to capital markets.

The capital-raising process involves transactions where an underwriter acquires shares under an underwriting arrangement, or a shareholder increases their percentage holding due to a shortfall in a rights issue.

The Corporations Act facilitates capital raising by providing exceptions to the general takeover prohibitions under section 606 of that Act. Consistent with this approach, acquisitions that result from and satisfy the conditions of the relevant items in section 611 of the Corporations Act are also exempt from merger notification requirements.

This section applies to acquisitions resulting from:

- rights issues (including accelerated rights issues),
- dividend reinvestment or share bonus plans,
- underwriting of fundraising, and
- buy-backs.

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Rights issues

Subsection 2-23(2) applies the notification exemption to acquisitions resulting from rights issues that satisfy the conditions in item 10 of section 611 of the Corporations Act. The nature of rights issues justifies their exemption because:

- each holder has an equal opportunity to avoid dilution of their existing holding by participating in the offer; and
- compared to other issues of securities, it is less likely that any one holder's percentage holding will increase substantially.

Subsection 2-23(3) extends the exemption to accelerated rights issues satisfying the conditions in notional item 10A of section 611, inserted by the *ASIC Corporations (Takeovers—Accelerated Rights Issues) Instrument 2015/1069*. Both the standard rights issue and the accelerated rights issue exemptions cover acquisitions by an underwriter or sub-underwriter (under subsection 2-23(4)).

Dividend reinvestment etc and underwriting of fundraising

Subsection 2-23(5) exempts acquisitions resulting from dividend reinvestment plans or bonus share plans that satisfy the conditions in item 11 of the table in section 611 of the Corporations Act. These common corporate actions allow shareholders to acquire additional shares instead of receiving a cash dividend or distribution.

This subsection also applies to acquisitions by an underwriter or sub-underwriter of a fundraising satisfying the conditions in item 13 of the table in section 611 of the Corporations Act.

Item 13 applies to acquisitions that involve the following two circumstances:

- the acquisition results from an issue of securities to a person as underwriter or sub-underwriter when the issue is made under a disclosure document; and
- the effect of the acquisition on the person's voting power is disclosed in the disclosure document.

Buy-backs

Subsection 2-23(6) exempts acquisitions resulting from a share buy-back as authorised by section 257A of the Corporations Act, as provided by item 19 of the table in section 611 of the same Act. A share buy-back involves a company acquiring its own shares from shareholders, generally to return capital to shareholders and increase share value. Buy-backs are unlikely to raise competition concerns as they do not alter market structure.

Section 2-24 – Money lending and financial accommodation

This section provides an express exemption for the taking of security.

While subsection 4(4) of the CCA excludes acquisitions of assets by way of charge, no equivalent exclusion exists for shares.

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The exemption applies to acquisitions of security interests over shares or assets from the notification requirement where:

- the interest is acquired in the ordinary course of a person's business of providing financial accommodation and on ordinary commercial terms; and
- the person granting the security interest is not an associate of the lender.

'Security interest' and 'property' have the meaning given by section 9 of the Corporations Act.

Sections 11 to 17 of the Corporations Act are relevant to define 'associate'.

A reference to a security interest includes a reference to a negative pledge.

The requirements for this exemption are modelled on subsection 609(1) of the Corporations Act. That section excludes security interests taken in the ordinary course of a financial accommodation business from giving rise to a 'relevant interest' under the takeover rules.

The exemption applies whether the lender takes the security interest directly or it is taken by another person for the lender's benefit. However, it does not apply if the borrower is an associate of the lender or another person benefiting from the security. This limitation manages the risk of control transactions being structured as financial accommodation arrangements to avoid notification.

Section 2-25 – Nominees and other trustees

This section applies to an acquisition of interests in securities. The acquisition must be by a person acting as bare trustee for a beneficiary. Additionally, the beneficiary must have a 'relevant interest' in the securities arising from a presently enforceable and unconditional right to acquire them. It exempts the acquisition of such interests from the notification requirement.

Applying the takeovers concept of 'relevant interest', the exemption recognises that it is the beneficiary (not the bare trustee) who is the true owner of the interest in these circumstances. As the trustee does not obtain any real interest that could shift control or raise other competition issues, requiring notification would serve no proper purpose.

The exemption is modelled on the equivalent nominee exemption in subsection 609(2) of the Corporations Act. The note to this section clarifies that the exemption can apply to a person holding securities as a nominee for the beneficial owner.

'Securities' has the meaning given by subsection 92(3) of the Corporations Act.

'Relevant interest' has the meaning given by section 9 of the Corporations Act.

Section 2-26 – Exchange traded derivatives

This section exempts the acquisition of exchange traded derivatives from the notification requirement.

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The ownership of a derivative may confer an equitable interest in an underlying asset. Therefore, in some cases, the acquisition of the derivative may entail the acquisition of an equitable interest in the underlying asset.⁴ This section exempts any such acquisition from the notification requirement.

This exemption does not apply to the acquisition of an interest in the underlying asset that results from the exercise of any rights under the derivative.

‘Derivative’ has the meaning given by section 761D of the Corporations Act.

‘Financial market’ has the meaning given by section 767A of the Corporations Act.

Part 3

Section 3-1 – Class of acquisitions – supermarket business

Part 2 of the Determination sets general notification thresholds that apply across all sectors of the economy. Part 3 specifies certain transactions within the supermarket sector that must be notified, regardless of whether those transactions meet the general notification thresholds. Section 3-1 specifies an acquisition is in a class that must be notified if:

- The acquisition is of shares or assets, and
- The effect of the acquisition is that a major supermarket acquires, in whole or in part, a supermarket business.

A major supermarket is defined as Coles and Woolworths, and their connected entities.

A supermarket business is defined by reference to section 5 of the *Competition and Consumer (Industry Codes – Food and Grocery) Regulations 2024*. That is, a supermarket business means a business if:

- the main purpose of the business is the retail sale of grocery products to consumers; and
- a substantial proportion of those grocery products is food that is not for in-store consumption.

It is appropriate to have a consistent definition of supermarket business throughout the statute book.

As explained in note 1 to the section, the effect is that transactions by Coles or Woolworths (or their connected entities) that result in them acquiring a supermarket business are notifiable acquisitions. Notifiable acquisitions must be notified to the Commission under the new system.

⁴ For example, the creation of an option over shares for value creates an equitable interest in the holder of the option: *Trade Practices Commission v Arnotts Ltd* [1990] FCA 12, [6] (Beaumont J).

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Note 2 of the section clarifies that this section covers acquisitions of units in a unit trust, or an interest in a managed investment scheme, by directing the reader to section 51ABC of the CCA. Section 51ABC provides that those types of acquisitions are treated the same as if the units were shares in the capital of a body corporate. This means that any indirect acquisition of land through the acquisition of units in unit trusts which contain land that meets the above criteria are notifiable acquisitions.

Section 3-2 – Class of acquisitions – land for supermarket business

This section specifies an acquisition is in a class that must be notified if:

- The acquisition is of shares or assets,
- The acquisition will have the effect that a major supermarket acquires a legal or equitable interest in land (in whole or in part). Note 3 to section 1-4 provides that the expression ‘land’ is defined in section 2B of the *Acts Interpretation Act 1901*
- The land meets the size requirements outlined below, and
- The acquisition is *not* a lease extension or renewal for land that has a currently operating commercial business.

The fourth criterion provides that certain extensions or renewals of leases are exempt from the notification requirements. This is important to avoid a supermarket that has been operating on a site with an existing lease having to notify because its lease needs to be renewed. This criterion has been limited to circumstances where a commercial business is currently being operated, to avoid extending it to sites that are being held for future development of a store.

This condition applies to lease renewals or extensions that maintain the continuity of an existing business operation at the same site. It does not apply where the acquisition involves a new or significantly expanded site. In such cases, the acquisition may be notifiable if it otherwise meets the relevant criteria.

Note 1 to the section clarifies that acquisitions by Coles or Woolworths (or their connected entities) resulting in them acquiring land within the size requirements must be notified to the Commission.

Note 2 to the section clarifies that this section covers acquisitions of units in a unit trust, or an interest in a managed investment scheme, by directing the reader to section 51ABC of the CCA.

Land size requirements

Where the land has a commercial building on it (except a building that is reasonably intended or expected to be demolished), the size requirement in paragraph 3-2(2)(a) applies. This type of land meets the size requirements if the gross lettable area of the building is greater than 700 square metres.

Subsection 3-2(3) provides how to work out the gross lettable area of a building. Industry practice is to rely on the Property Council of Australia’s (PCA) definition and calculations, outlined in their document ‘Method of Measurement for Lettable Area’. It is inappropriate

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to incorporate the PCA document by reference into the Determination as the PCA document requires payment to access. It is also inappropriate to repeat the PCA document's contents in the Determination. As such, the Determination provides that in working out the gross lettable area, the building must be measured by someone qualified and in accordance with generally accepted industry practice.

Where the land does *not* have a commercial building on it (or has a building upon it that is reasonably intended or expected to be demolished), the size requirement in paragraph 3-2(2)(b) applies. This type of land meets the size requirements if the land is greater than 1,400 square metres.

Adjacent acquisitions

Subsection 3-2(4) ensures that major supermarkets cannot subvert the land size requirements by acquiring land acquisitions below the land size requirements but adjacent to existing land to be aggregated. The subsection provides that where a party makes an acquisition of land directly adjacent to a piece of land they have an existing interest in, both pieces of land are treated as if they were a single parcel of land. The pieces of land are also considered together when working out if the land meets the size requirements.

The note to the subsection clarifies that where multiple lots of land adjacent to existing land are acquired, this subsection applies to the acquisition of each separate lot of land.

Section 3-3 – Class of acquisitions not resulting in control that are required to be notified

This section specifies a class of acquisitions of shares in the capital of bodies corporate for the purposes of this Determination.

The note to the section clarifies that any acquisition of shares in a supermarket business or land for a supermarket business by a major supermarket must be notified to the Commission, regardless of whether control is acquired.

Section 3-4 – Sunsetting of this Division

This section specifies that this Division is repealed on the fifth anniversary of the registration of this instrument (as originally made).

Part 6 – Forms

Division 1 – Determination of forms, information and documents

Section 6-1 – Notification of proposed acquisition

Under section 51ABY of the CCA, the Minister may determine a form in relation to a notification. The Minister may also determine information or documents to be included in or accompany said notification (see paragraphs 51ABY(5)(a) and (b) of the CCA). The extent to which the notification is in that form, or includes or is accompanied by such information, are matters to which the Commission may have regard. The Commission is to have regard to those matters in considering whether the notification is materially incomplete, materially misleading, or contains information that is false in a material particular (see subsection 51ABY(2) and paragraphs 51ABY(4)(a) and (b) of the CCA).

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This section determines the forms to be used by the notifying party, and determines the information and documents required to accompany the forms. There is a short form and a long form (at Divisions 2 and 3 to Part 6 of the Determination). These ensure that an applicant provides the relevant information the Commission considers necessary to facilitate the efficient and effective review of an acquisition.

Merger parties will be required to submit a ‘simple’ shorter notification form for acquisitions unlikely to raise competition concerns, and a more detailed longer notification form for others.

Explanatory notes are included to remind the notifying party that they must give the Commission enough information to determine whether the acquisition may be put into effect or must not be put into effect. A notifying party should consider consulting with the Commission before making a notification. This is to discuss the scope and range of information and documents needed in the context of the particular proposed acquisition to which the notification relates. This is also to obtain guidance about whether the short form or long form is appropriate for the notification of the acquisition. Guidance material is available on the Commission website.

Division 2 – Notification of proposed acquisition: short form

Division 2 sets out the requirements for the short notification form.

Item 1 – Parties to the acquisition

Item 1 of Division 2 requires that information about each party to the acquisition, such as party name, ABN and contact details, be provided.

ABN has the meaning given by the *A New Tax System (Australian Business Number) Act 1999*.

Items 2 to 4 – Details of acquisition

Item 2 of Division 2 requires the notifying party to provide a non-confidential summary of the acquisition.

Item 3 of Division 2 requires the notifying party to provide further details. These include the commercial rationale for the acquisition and, if applicable, the transaction value calculated for the purposes of the transaction value test.

Item 4 of Division 2 requires details of the GST turnover for each of three 12-month periods before the day the notification is made for each party to the acquisition. This includes connected entities of each party (if, and where, relevant).

Item 5 – Past relevant acquisitions

Item 5 of Division 2 requires each notifying party to list any acquisitions put into effect by the parties during the three 12-month periods prior to the notification being made.

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Items 6 and 7 – Competitive effects of acquisition

Item 6 of Division 2 requires certain information in relation to each relevant product or service supplied or potentially supplied by the parties to the acquisition.

Note 1 to the item clarifies when a product or service is a relevant product or service in relation to an acquisition. It is ‘relevant’ if the parties to the acquisition supply, or potentially supply, similar products or services in the same or a similar geographical area. It is also ‘relevant’ if the parties have a supply relationship, or where the products or services are related in some other way.

Note 2 of the item clarifies that in determining the relevant market definition or definitions, parties should choose the definition or definitions that are most appropriate for the product or service. Parties are to have regard to the definition or definitions where the acquisition is likely to result in the largest market share or largest increment in market share based on certain factors. These factors include the turnover, volume or capacities of the parties as well as customer, product, geographical and functional dimensions.

Item 7 of Division 2 requires, for each of the three 12-month periods prior to the date the notification is made, estimated market shares for each of the parties to the acquisition. This includes connected entities of the parties and other key suppliers for each relevant market.

The intention of these two items is to seek information from the parties to better allow the Commission to assess the competitive effects of the acquisition.

Item 8 – Competitor and customer contacts

Item 8 of Division 2 requires contact details for certain competitors and customers for each relevant product or service supplied.

Items 9 and 10 – Additional information

Item 9 of Division 2 requires (as applicable) information about goodwill protection provisions in the contract pursuant to which the acquisition would take place, whether the notifying party intends to request confidential review, and a copy of the certificate of transfer if the acquisition (or part thereof) is a voluntary transfer of business within the meaning of the *Financial Sector (Transfer and Restructure) Act 1999*.

Item 10 of Division 2 requires the notifying party to provide any other information or documents that would reasonably be considered by an objective third party to be relevant to the Commission’s assessment of the acquisition.

Items 11 to 13 – Documents required

Item 11 of Division 2 requires final or most recent versions of all transaction documents. Examples include the sale and purchase agreement, heads of agreement, offer documents, and any other agreements between the parties related to the acquisition.

Item 12 of Division 2 requires the most recent audited financial reports and income statements relating to the supply of relevant products or services be provided to each party to the acquisition.

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Item 13 of Division 2 requires an organisation chart or diagram showing the structure of ownership and control of the parties to the acquisition. This must also show related bodies corporate involved in the supply of the relevant products or services.

Item 14 – Declaration

Item 14 of Division 2 requires an authorised person of each notifying party to declare that, to the best of their knowledge and belief, the information and documents provided are true, correct and complete. They must all declare that complete copies of documents required by the form have been supplied, that all estimates are the best estimates based on the underlying facts, and that all opinions expressed are genuinely held.

Division 3 – Notification of proposed acquisition: long form

Division 3 sets out the requirements for the long notification form.

Item 1 – Parties to the acquisition

Item 1 of Division 3 requires that information about each party to the acquisition, such as party name, ABN and contact details, be provided.

Items 2 to 6 – Details of acquisition

Item 2 of Division 3 requires the notifying party to provide a non-confidential summary of the acquisition.

Item 3 of Division 3 requires the notifying party to provide further details, such as the commercial rationale for the acquisition and, if applicable, the transaction value calculated for the purposes of the transaction value test.

Item 4 of Division 3 requires the notifying party to describe any existing or proposed commercial relationships between the parties to the acquisition (and the connected entities of those parties).

Item 5 of Division 3 requires the notifying party to provide details of the sales process undertaken in relation to the target. For example, a competitive bid process or an unsolicited offer. This item also requires details of any alternative proposals in the 12 months prior to the date this notification is made to sell all or part of the target to a different acquirer, including from any competitive bidding process, and the reasons for not proceeding with those proposals.

Item 6 of Division 3 requires details of the GST turnover for each of three 12-month periods before the day the notification is made for each party to the acquisition including connected entities of each party (if, and where, relevant).

Item 7 – Past relevant acquisitions

Item 7 of Division 3 requires each notifying party to list any acquisitions put into effect by the parties during the three 12-month periods prior to the notification being made.

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Items 8 and 9 – Competitive effects of acquisition

Item 8 of Division 3 requires certain information in relation to each relevant product or service supplied or potentially supplied by the parties to the acquisition.

Note 1 to the item clarifies that a product or service is a relevant product or service in relation to an acquisition if the parties to the acquisition supply, or potentially supply, similar products or services in the same or a similar geographical area, have a supply relationship, or where the products or services are related in some other way.

Note 2 to the item clarifies that in determining the relevant market definition or definitions, parties should choose the definition or definitions that are most appropriate for the product or service. In doing this, parties must have regard to the definition or definitions where the acquisition is likely to result in the largest market share or largest increment in market share based on the turnover, volume or capacities of the parties as well as customer, product, geographical and functional dimensions.

Item 9 of Division 3 requires, for each of the three 12-month periods prior to the date the notification is made, estimated market shares for each of the parties (including connected entities of the parties) and other key suppliers for each relevant market.

Items 10 to 12 – Barriers to entry

Item 10 of Division 3 requires the notifying party to identify entry into the market for the supply of the goods or services to which the acquisition relates by the notifying parties or competitors. The notifying party must identify an entry which has occurred in the three 12-month periods prior to the date this notification is made, or any expected future entry in relation to the relevant products or services.

Item 11 of Division 3 requires the notifying party to identify suppliers who have ceased supply of the relevant products or services during the three 12-month periods prior to the date this notification is made.

Item 12 of Division 3 requires the notifying party to describe factors influencing entry into the market for the supply of the relevant products or services.

Items 13 to 15 – Data

Item 13 of Division 3 requires the notifying party to identify any third-party datasets or reports used by the parties to the acquisition to estimate or analyse its own and competitors' market shares in the supply of the relevant products or services. Examples include materials produced by industry bodies, research organisations, government or non-government organisations (public or otherwise).

Item 14 – Competitor and customer contacts

Item 14 of Division 3 requires contact details for certain competitors and customers for each relevant product or service supplied.

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Items 15 and 16 – Additional information

Item 15 of Division 3 requires (as applicable) information about goodwill protection provisions in the contract pursuant to which the acquisition would take place, whether the notifying party intends to request confidential review, and a copy of the certificate of transfer if the acquisition (or part thereof) is a voluntary transfer of business within the meaning of the *Financial Sector (Transfer and Restructure) Act 1999*.

Item 16 of Division 3 requires the notifying party to provide any other information or documents that would reasonably be considered by an objective third party to be relevant to the Commission's assessment of the acquisition.

Items 17 to 22 – Documents required

Item 17 of Division 3 requires final or most recent versions of all transaction documents. Examples include the sale and purchase agreement, heads of agreement, offer documents, and any other agreements between the parties related to the acquisition.

Item 18 of Division 3 requires the most recent audited financial reports and income statements relating to the supply of relevant products or services be provided to each party to the acquisition.

Item 19 of Division 3 requires an organisation chart or diagram showing the structure of ownership and control of the parties to the acquisition. This must also show related bodies corporate involved in the supply of the relevant products or services.

Item 20 of Division 3 requires certain documents relating to the proposed acquisition in the possession, power or control of each of the parties that were prepared by or for, or received by, any member of the Board or Board Committee (or equivalent body) or the shareholders' meeting of the party within the 3 years prior to the date this notification is made.

Item 21 of Division 3 requires certain documents (including, but not limited to, reports, presentations, studies, internal analyses, industry/market reports or analysis, including customer research and pricing studies) in the possession, power or control of each of the parties that were prepared, received or published within the 3 years prior to the date this notification is made.

Item 22 of Division 3 requires the notifying party to identify the documents provided in response to items 19 to 23 of Division 3 that the parties consider, or a reasonable objective third party would consider, to most comprehensively support the responses given in this notification.

Items 23 to 25 – Appendices

Item 23 of Division 3 requires additional questions to be answered if the acquisition is a horizontal acquisition. A note to the item clarifies that an acquisition is a horizontal acquisition if the parties to the acquisition are suppliers or buyers, or potential suppliers or buyers, of the same or similar products or services in a market.

Item 24 of Division 3 requires additional questions to be answered if the acquisition is a vertical acquisition. A note to the item clarifies that an acquisition is a vertical acquisition

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if the parties to the acquisition engage, or potentially engage, in activities in relation to products or services at different functional levels (upstream or downstream) of the same vertical supply chain in a market. For example, a manufacturer of a product, such as a processor of raw milk, and a retail or wholesale distributor of the processed product operate on the same vertical supply chain for that product. An electricity generator and an electricity retailer operate on the same vertical supply chain for electricity.

Item 25 of Division 3 requires additional questions to be answered if the acquisition is a conglomerate acquisition. Notes to the item clarify that an acquisition is a conglomerate acquisition if the parties to the acquisition are actual or potential suppliers or buyers of adjacent products or services. A product or service is adjacent if they are not in the same market or in the same supply chain, but are repeated in another way. For example, products targeting similar customers or that may be purchased or supplied together.

Item 26 – Declaration

Item 26 of Division 3 requires an authorised person of each notifying party to complete a declaration.

Appendix A – Horizontal acquisitions

A1 of Appendix A to Division 3 requires a description of how competition works for each relevant product or service where the parties overlap or potentially overlap.

Appendix B – Vertical acquisitions

B1 of Appendix B to Division 3 requires information and evidence on whether the merged entity would have the ability and incentive to engage in input and/or customer foreclosure.

B2 of Appendix B to Division 3 requires details including average upstream and average downstream prices for a relevant fiscal period and current or future exclusivity agreements that either of the parties to the acquisition is a party to relating to the products and services.

Appendix C – Conglomerate acquisitions

C1 of Appendix C to Division 3 requires information and evidence on whether the merged entity would be in a position post-acquisition to foreclose competitors.

Part 7 - Miscellaneous

Section 7-1 – Indexing relevant amounts

This section ensures the notification thresholds are annually indexed, starting from 1 January 2027. Indexation starts from that date because the notification requirements of the new system commence on 1 January 2026. Indexation of the thresholds is required because, without it, the thresholds could decline or increase in value relative to inflation or deflation.

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This section also prescribes the method for calculating the indexation factor for 1 January each financial year. That method requires use of the GDP implicit price deflator value as discussed below.

Section 7-2 – Meaning of implicit price deflator value

This section defines the term ‘GDP implicit price deflator value’ as the value published by the Australian Statistician and directs to where that can be viewed on the internet. It also clarifies which published GDP implicit price deflator value is to be used for the purposes of section 7-1.

Section 7-30 – Schemes entered into for the purpose of avoiding notification of an acquisition

A scheme (or part of a scheme) must be disregarded where it would be reasonable to conclude that it was entered into or carried out for the purpose of avoiding the notification requirement.

Part 10 - Application and Transitional Rules

Section 10-1 – When an acquisition is required to be notified – Application

This section provides that Parts 2 and 3 of the Determination apply in relation to an acquisition that is put into effect on or after 1 January 2026.

The note to the section clarifies that notifications may be made on or after 1 July 2025. However, a requirement to notify only applies in relation to an acquisition that is put into effect on or after 1 January 2026. This is consistent with the application of the relevant provisions of the Mergers Act.

Section 10-2 – When a notification is made

This section provides that Parts 5 and 6 of the Determination (the Acquisitions Register and Forms) apply to notifications made on or after 1 July 2025. This facilitates early notification under the new system.