

EXPOSURE DRAFT



EXPOSURE DRAFT

Competition and Consumer (Notification of Acquisitions) Determination 2025

I, Jim Chalmers, Treasurer, make the following determination.

Dated 2025

Dr Jim Chalmers **[DRAFT ONLY—NOT FOR SIGNATURE]**
Treasurer

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
1-1 Name	1
1-2 Commencement.....	1
1-3 Authority	1
1-4 Definitions.....	2
1-5 Meaning of <i>connected entity</i>	3
1-6 Meaning of <i>connected with Australia</i>	3
1-7 Meaning of <i>major supermarket</i>	4
1-8 Combined acquirer/target turnover test	4
1-9 Acquired shares or assets turnover tests	4
1-10 Accumulated acquired shares or assets turnover test	5
1-11 Transaction value test	6
1-12 Very large corporate group turnover test	7
1-13 Small acquisition test.....	7
Part 2—Circumstances where acquisitions require notification	8
Division 1—General circumstances	8
2-1 Circumstance—acquisitions resulting in large or larger corporate groups	8
2-2 Circumstance—acquisitions by very large corporate groups.....	8
2-3 Circumstance—creeping or serial acquisitions.....	8
Division 2—Exceptions to the general circumstances	10
2-20 Certain land acquisitions.....	10
2-21 Liquidation, administration, receivership etc.....	10
2-22 Succession	10
2-23 Financial securities	10
2-24 Money lending and financial accommodation	11
2-25 Nominees and other trustees	11
2-26 Exchange-traded derivatives.....	12
Part 3—Classes of acquisitions requiring notification	13
Division 1—Supermarkets	13
3-1 Class of acquisitions—supermarket businesses	13
3-2 Class of acquisitions—land for supermarket businesses.....	13
3-3 Class of acquisitions not resulting in control that are required to be notified	14
3-4 Sunsetting of this Division.....	14
Part 4—Waivers	15
Division 1—Notification waiver applications	15
Division 2—Waiver determinations	16
Part 5—Acquisitions Register	17
Division 1—Contents of the register	17
Part 6—Forms	18
Division 1—Determination of forms, information and documents	18
6-1 Notification of proposed acquisition.....	18

EXPOSURE DRAFT

Division 2—Notification of proposed acquisition: short form	19
Division 3—Notification of proposed acquisition: long form	24
Part 7—Miscellaneous	34
Division 1—Indexation	34
7-1 Indexing relevant amounts.....	34
7-2 Meaning of <i>GDP implicit price deflator value</i>	34
Division 2—Tribunal review	36
Division 3—Anti-avoidance	37
7-30 Schemes entered into for the purpose of avoiding notification of an acquisition.....	37
Part 10—Application and transitional rules	38
Division 1—Instrument as made	38
10-1 When an acquisition is required to be notified.....	38
10-2 When a notification is made	38

EXPOSURE DRAFT

Preliminary **Part 1**

Section 1-1

Part 1—Preliminary

1-1 Name

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

1-2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Part 1 and anything in this instrument not elsewhere covered by this table	The later of: (a) the day after this instrument is registered; and (b) 1 July 2025.	
2. Part 2	At the same time as the provisions covered by table item 1.	
3. Part 3	The later of: (a) the 30 th day after this instrument is registered; and (b) 1 January 2026.	
4. Parts 4, 5, 6, 7 and 10	At the same time as the provisions covered by table item 1.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

1-3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

Note 1: Section 51ABP of the Act provides that the Minister may determine the circumstances in which acquisitions are required to be notified to the Commission. The circumstances are to be determined wholly or partly by reference to the acquisitions meeting a specified threshold.

Note 2: Section 51ABQ of the Act provides that the Minister may determine that certain classes of acquisitions are required to be notified to the Commission.

Note 3: Subsection 51ABS(6) of the Act provides that the Minister may determine that a class of acquisitions of shares in the capital of a body corporate is required to be notified to the Commission.

EXPOSURE DRAFT

Part 1 Preliminary

Section 1-4

- Note 4: A different sunset period applies to Part 3 of this instrument than under the *Legislation Act 2003*—see subsection 51ABQ(6) of the Act.
- Note 5: Under subsection 51ABY(5) of the Act, the Minister may determine a form in relation to a notification or information or documents to be included in or accompany a notification. 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 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)).

1-4 Definitions

- Note 1: Expressions have the same meaning in this instrument as in the *Competition and Consumer Act 2010* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.
- Note 2: The expressions ‘asset’ and ‘acquisition of an asset’ have the meanings affected by section 51ABN of the *Competition and Consumer Act 2010*.
- Note 3: The expression ‘land’ is defined in section 2B of the *Acts Interpretation Act 1901*.

In this instrument:

\$10m accumulated acquired shares or assets turnover test—see subsection @1-10(2).

\$50m accumulated acquired shares or assets turnover test—see subsection @1-10(1).

\$10m acquired shares or assets turnover test—see subsections @1-9(2) and (5).

\$50m acquired shares or assets turnover test—see subsections @1-9(1) and (4).

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

ACN has the meaning given by the *Corporations Act 2001*.

combined acquirer/target turnover test—see section @1-8.

connected entity has the meaning given by section @1-5.

connected with Australia—see section @1-6.

contract date, in relation to the acquisition of a share or asset, means the date on which a contract, arrangement or understanding has been entered into, pursuant to which the acquisition of the share or asset is to take place.

current GST turnover has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*.

derivative has the meaning given by the *Corporations Act 2001*.

exchange-traded derivative means a derivative traded on a financial market.

exempt investor means a person:

- (a) offered securities in circumstances that do *not* need disclosure under Part 6D.2 of the *Corporations Act 2001* because of subsections 708(8) to (12) of that Act; or

(b) offered securities as a wholesale client (as defined in section 761G of that Act).

financial market has the meaning given by the *Corporations Act 2001*.

GDP implicit price deflator value—see subsection @7-2(1).

major supermarket has the meaning given by section @1-7.

residential premises has the same meaning as in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise; or
- (c) any combination of 2 or more things that are schemes because of paragraph (a) or (b).

securities has the meaning given by subsection 92(3) of the *Corporations Act 2001*.

security interest has the meaning given by the *Corporations Act 2001*.

small acquisition test—see section @1-13.

supermarket business has the meaning given by section 5 of the *Competition and Consumer (Industry Codes—Food and Grocery) Regulations 2024*.

the Act means the *Competition and Consumer Act 2010*.

transaction value test—see section @1-11.

very large corporate group turnover test—see section @1-12.

1-5 Meaning of *connected entity*

- (1) An entity (the *first entity*) is a connected entity of another entity (the *second entity*) if the second entity is [an associated entity of the first entity for the purposes of section 50AAA of the *Corporations Act 2001*.
- (2) An entity (the *first entity*) is also a connected entity of another entity (the *second entity*) if the first entity controls the second entity for the purposes of section 50AA of the *Corporations Act 2001*, as modified by subsection 51ABS(2) of the Act.]

1-6 Meaning of *connected with Australia*

For the purposes of this instrument, a share or asset is connected with Australia if:

- (a) in relation to a 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

EXPOSURE DRAFT

Part 1 Preliminary

Section 1-7

- (b) 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
- (c) in all other cases—the asset is used in, or forms part of, a business carried on in Australia.

1-7 Meaning of *major supermarket*

Each of the following entities is a major supermarket:

- (a) Coles Group Limited (ABN 11 004 089 936);
- (b) each connected entity of the entity mentioned in paragraph (a);
- (c) Woolworths Group Limited (ABN 88 000 014 675);
- (d) each connected entity of the entity mentioned in paragraph (c).

1-8 Combined acquirer/target turnover test

- (1) For the purposes of this instrument, an acquisition satisfies the combined acquirer/target turnover test at a time if the sum of all of the following, at that time, is \$200 million or more:
 - (a) the current GST turnover of the principal party to the acquisition;
 - (b) the current GST turnover of each connected entity of the principal party to the acquisition;
 - (c) where the acquisition is in shares in a body corporate—the current GST turnover of the body corporate;
 - (d) the current GST turnover of each connected entity of the body corporate mentioned in paragraph (c) (other than an entity *not* being indirectly acquired as a result of the acquisition);
 - (e) 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.

Example: For paragraph (e): a principal party acquires one store from a corporation that owns 10 stores; or the bottle manufacturing arm of a bottled drink producer and supplier; or the dog grooming business of a pet supplies corporation. The current GST turnover to be included in the calculation is that part of the current GST turnover of the target as is attributable to the store, bottle manufacturing arm or dog grooming business.

- (2) For the purposes of subsection (1), do *not* include the current GST turnover of any entity mentioned in a paragraph in subsection (1) if the entity is a member of a GST group (within the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*) and the current GST turnover of another member of the GST group is already included in the calculation.

1-9 Acquired shares or assets turnover tests

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

- (1) For the purposes of this instrument, an acquisition satisfies the \$50m acquired shares or assets turnover test at a time if the sum of all of the following, at that time, is \$50 million or more:

EXPOSURE DRAFT

- (a) where the acquisition is in shares in a body corporate—the current GST turnover of the body corporate;
 - (b) 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);
 - (c) 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.
- (2) For the purposes of this instrument, an acquisition satisfies the \$10m acquired shares or assets turnover test at a time if the sum of all of the following, at that time, is \$10 million or more:
- (a) where the acquisition is in shares in a body corporate—the current GST turnover of the body corporate;
 - (b) 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);
 - (c) 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.
- (3) For the purposes of subsections (1) and (2), do *not* include the current GST turnover of any entity mentioned in a paragraph in subsection (1) or (2) if the entity is a member of a GST group (within the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*) and the current GST turnover of another member of the GST group is already included in the calculation.

Special case: more than 2 parties to the acquisitions

- (4) For the purposes of this instrument, an acquisition also satisfies the \$50m acquired shares or assets turnover test if:
- (a) there are more than 2 parties to a contract, arrangement or understanding, pursuant to which the acquisition is to take place; and
 - (b) the contract, arrangement or understanding involves more than one acquisition of shares and assets; and
 - (c) any one of the acquisitions under the contract, arrangement or understanding satisfies subsection (1).
- (5) For the purposes of this instrument, an acquisition also satisfies the \$10m acquired shares or assets turnover test if:
- (a) there are more than 2 parties to a contract, arrangement or understanding, pursuant to which the acquisition is to take place; and
 - (b) the contract, arrangement or understanding involves more than one acquisition of shares and assets; and
 - (c) any one of the acquisitions under the contract, arrangement or understanding satisfies subsection (2).

1-10 Accumulated acquired shares or assets turnover test

- (1) For the purposes of this instrument, an acquisition satisfies the \$50m accumulated acquired shares or assets turnover test at a time, if, at that time (the *test time*):
- (a) the acquisition is of shares or assets (the *current shares or assets*); and

EXPOSURE DRAFT

Part 1 Preliminary

Section 1-11

- (b) 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 test time; and
 - (c) both the current shares or assets and the previous shares or 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); and
 - (d) the acquisition of the previous shares or assets and the current shares or assets, if treated as a single acquisition, would satisfy the \$50m acquired shares or assets turnover test.
- (2) For the purposes of this instrument, an acquisition satisfies the \$10m accumulated acquired shares or assets turnover test at a time, if, at that time (the *test time*):
- (a) the acquisition is of shares or assets (the *current shares or assets*); and
 - (b) 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 test time; and
 - (c) both the current shares or assets and the previous shares or 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); and
 - (d) the acquisition of the previous shares or assets and the current shares or assets, if treated as a single acquisition, would satisfy the \$10m acquired shares or assets turnover test.

Certain acquisitions of previous shares or assets are to be disregarded

- (3) In determining whether an acquisition satisfies the \$50m accumulated acquired shares or assets turnover test under subsection (1) or the \$10m accumulated acquired shares or assets turnover test under subsection (2), disregard the acquisition of a previous share or asset where:
- [(a) *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 this instrument, a previous operation of this section and section @2-3); or*
 - (b) the acquisition of that previous share or asset satisfied the small acquisition test at the time it was put into effect; or
 - (c) the acquisition of the previous share or asset was *not* connected with Australia.

1-11 Transaction value test

For the purposes of this instrument, an acquisition satisfies the transaction value test if the greater of the following is \$250 million or more:

- (a) 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;

- (b) 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.

1-12 Very large corporate group turnover test

- (1) For the purposes of this instrument, an acquisition satisfies the very large corporate group turnover test at a time if the sum of all of the following, at that time, is \$500 million or more:
 - (a) the current GST turnover of the principal party to the acquisition;
 - (b) the current GST turnover of each connected entity of the principal party to the acquisition.
- (2) For the purposes of subsection (1), do *not* include the current GST turnover of any entity mentioned in a paragraph in subsection (1) if the entity is a member of a GST group (within the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*) and the current GST turnover of another member of the GST group is already included in the calculation.

1-13 Small acquisition test

- (1) For the purposes of this instrument, an acquisition satisfies the small acquisition test at a time if the sum of all of the following, at that time, is less than \$2 million:
 - (a) where the acquisition is in shares in a body corporate—the current GST turnover of the body corporate;
 - (b) 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*];
 - (c) 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.
- (2) For the purposes of subsection (1), do *not* include the current GST turnover of any entity mentioned in a paragraph in subsection (1) if the entity is a member of a GST group (within the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*) and the current GST turnover of another member of the GST group is already included in the calculation.

EXPOSURE DRAFT

Part 2 Circumstances where acquisitions require notification

Division 1 General circumstances

Section 2-1

Part 2—Circumstances where acquisitions require notification

Division 1—General circumstances

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

Under subsection 51ABP(1) of the Act, the following circumstances are determined for the purposes of paragraph 51ABO(a) of the Act in relation to an acquisition:

- (a) the acquisition is of shares or assets; and
- (b) the shares or assets are connected with Australia; and
- (c) the acquisition satisfies the combined acquirer/target turnover test on the contract date; and
- (d) one of the following is met:
 - (i) the acquisition satisfies the \$50m acquired shares or assets turnover test on the contract date;
 - (ii) the acquisition satisfies the transaction value test; and
- (e) the acquisition is *not* covered by Division 2 of this Part.

2-2 Circumstance—acquisitions by very large corporate groups

Under subsection 51ABP(1) of the Act, the following circumstances are determined for the purposes of paragraph 51ABO(a) of the Act in relation to an acquisition:

- (a) the acquisition is of shares or assets; and
- (b) the shares or assets are connected with Australia; and
- (c) the acquisition satisfies the very large corporate group turnover test on the contract date; and
- (d) the acquisition satisfies the \$10m acquired shares or assets turnover test on the contract date; and
- (e) the acquisition is *not* covered by Division 2 of this Part.

2-3 Circumstance—creeping or serial acquisitions

Under subsection 51ABP(1) of the Act, the following circumstances are determined for the purposes of paragraph 51ABO(a) of the Act in relation to an acquisition:

- (a) the acquisition is of shares or assets; and
- (b) the shares or assets are connected with Australia; and
- (c) the acquisition satisfies either the combined acquirer/target turnover test or very large corporate group turnover test, on the contract date; and
- (d) one of the following is met:
 - (i) where the combined acquirer/target turnover test is satisfied—the acquisition satisfies the \$50m accumulated acquired shares or assets turnover test on the contract date;

EXPOSURE DRAFT

Circumstances where acquisitions require notification **Part 2**

General circumstances **Division 1**

Section 2-3

- (ii) where the very large corporate group turnover test is satisfied—the acquisition satisfies the \$10m accumulated acquired shares or assets turnover test on the contract date; and
- (e) the acquisition does *not* satisfy the small acquisition test; and
- (f) the acquisition is *not* covered by Division 2 of this Part.

EXPOSURE DRAFT

Part 2 Circumstances where acquisitions require notification

Division 2 Exceptions to the general circumstances

Section 2-20

Division 2—Exceptions to the general circumstances

2-20 Certain land acquisitions

- (1) This Division covers an acquisition that has the effect that a person will acquire a legal or equitable interest in land (including vacant and developed land) for any of the following purposes:
 - (a) developing residential premises;
 - (b) any purpose of the person in carrying on a business primarily engaged in buying, selling or leasing land, other than a purpose relating to operating a commercial business on the land.
- (2) This Division also covers an acquisition of a legal or equitable interest in land if the acquisition is an extension or renewal of a lease for land upon which a commercial business is currently being operated.

2-21 Liquidation, administration, receivership etc

This Division covers an acquisition by a person in the person's capacity as an administrator, receiver, receiver and manager or liquidator (all within the meaning of section 9 of the *Corporations Act 2001*).

2-22 Succession

This Division covers an acquisition that takes place solely because of a testamentary disposition, intestacy or a right of survivorship under a joint tenancy.

2-23 Financial securities

- (1) This Division covers an acquisition to which subsection (2), (3), (5) or (6) applies.

Rights issues
- (2) This subsection applies to an acquisition that results from an issue of securities that satisfies all of the conditions in item 10 of the table in section 611 of the *Corporations Act 2001*, as affected by section 615 of that Act.
- (3) This subsection applies to an acquisition that results from an issue of securities that would satisfy all of the conditions in item 10 of that table (as affected by section 615) if the following matters were disregarded:
 - (a) some or all persons who are offered securities as an exempt investor may:
 - (i) receive the offers before other persons to whom offers are made; or
 - (ii) be given a period of time to accept the offers which is less than the period of time given to other persons to whom offers are made;
 - (b) the securities may be issued to a person as an exempt investor before securities are issued to other persons under the offers, provided that under the terms of the offers any such issue to an exempt investor is to occur no

EXPOSURE DRAFT

Circumstances where acquisitions require notification **Part 2**

Exceptions to the general circumstances **Division 2**

Section 2-24

earlier than 2 months before the issue of securities to other persons who are *not* exempt investors;

- (c) under the terms of the offers:
- (i) offerees who are *not* exempt investors are able to trade rights to be issued securities under the offers on a prescribed financial market until a specified time for acceptances of offers has closed; and
 - (ii) offerees who are exempt investors are *not* able to trade rights to be issued securities under the offers.

Note: This subsection reflects the modification of the table in section 611 of the *Corporations Act 2001* by section 5 of the *ASIC Corporations (Takeovers—Accelerated Rights Issues) Instrument 2015/1069*.

- (4) Subsections (2) and (3) extend to an acquisition by a person as underwriter to the issue or sub-underwriter.

Dividend reinvestment etc and underwriting of fundraising

- (5) This subsection applies to an acquisition that results from an issue of securities that satisfies all of the conditions in item 11 or item 13 of the table in section 611 of the *Corporations Act 2001*.

Buy-backs

- (6) This subsection applies to an acquisition that results from a buy-back authorised by section 257A of the *Corporations Act 2001*.

2-24 Money lending and financial accommodation

This Division covers an acquisition of a share or asset, that is a security interest, by a person if:

- (a) the security interest is taken or acquired:
 - (i) in the ordinary course of the person's business of the provision of financial accommodation by any means and on ordinary commercial terms; or
 - (ii) for the benefit of one or more other persons in relation to financial accommodation provided by them in the ordinary course of their business of the provision of financial accommodation by any means and on ordinary commercial terms; and
- (b) the person whose property is subject to the security interest is *not* an associate of any other person mentioned in this section.

2-25 Nominees and other trustees

This Division covers an acquisition of an asset, that is an interest in securities, by a person as a bare trustee if a beneficiary under the trust has a relevant interest in the securities because of a presently enforceable and unconditional right of the kind referred to in subsection 608(8) of the *Corporations Act 2001*.

Note: This section will often apply to a person who holds securities as a nominee.

EXPOSURE DRAFT

Part 2 Circumstances where acquisitions require notification

Division 2 Exceptions to the general circumstances

Section 2-26

2-26 Exchange-traded derivatives

This Division covers:

- (a) an acquisition of an asset in the form of an exchange-traded derivative; and
- (b) if, at the time of that acquisition, the derivative confers an equitable interest in a share or asset—the acquisition of that equitable interest.

EXPOSURE DRAFT

Part 3—Classes of acquisitions requiring notification

Division 1—Supermarkets

3-1 Class of acquisitions—supermarket businesses

Under subsection 51ABQ(1) of the Act, an acquisition is in a class of acquisitions determined for the purposes of paragraph 51ABO(b) of the Act, if:

- (a) the acquisition is of shares or assets; and
- (b) the acquisition will have the effect that an entity, being an entity that is a major supermarket, acquires, in whole or in part, a supermarket business.

Note 1: An acquisition is required to be notified to the Commission if the acquisition is a class of acquisitions covered by this section.

Note 2: The Act provides that the acquisition provisions apply to the acquisition of units in a unit trust, or an interest in a managed investment scheme, as if the units were shares in the capital of a body corporate (see section 51ABC).

3-2 Class of acquisitions—land for supermarket businesses

(1) Under subsection 51ABQ(1) of the Act, an acquisition is in a class of acquisitions determined for the purposes of paragraph 51ABO(b) of the Act if:

- (a) the acquisition is of shares or assets; and
- (b) the acquisition will have the effect that an entity, being an entity that is a major supermarket, acquires a legal or equitable interest in land (in whole or in part); and
- (c) the land meets the size requirements in subsection (2) of this section; and
- (d) the acquisition is *not* the extension or renewal of a lease for land upon which a commercial business is currently being operated by the entity.

Note 1: An acquisition is required to be notified to the Commission if the acquisition is a class of acquisitions covered by this section.

Note 2: The Act provides that the acquisition provisions apply to the acquisition of units in a unit trust, or an interest in a managed investment scheme, as if the units were shares in the capital of a body corporate (see section 51ABC).

(2) Land meets the size requirements in this subsection if it satisfies one of the following:

- (a) for land that has a commercial building upon it (other than a building that is reasonably intended or expected to be demolished)—the gross lettable area of the building is greater than 700 square metres;
- (b) for land that does *not* have a commercial building upon it (or has a building upon it that is reasonably intended or expected to be demolished)—the land is greater than 1,400 square metres.

Working out gross lettable area of a building

(3) In working out the gross lettable area of a building for the purposes of this section, the building must be measured:

- (a) by someone having suitable professional qualifications or experience to carry out the measurement; and
- (b) in accordance with generally accepted industry practices.

EXPOSURE DRAFT

Part 3 Classes of acquisitions requiring notification

Division 1 Supermarkets

Section 3-3

Acquisitions of land adjacent to existing holdings of land

- (4) Where:
- (a) the party to an acquisition has an existing interest in land (the *existing land*); and
 - (b) the acquisition will have the effect that the party will acquire land (the *new land*) that is located directly adjacent to the existing land;
- then in determining whether subsection (2) has been satisfied, treat the existing land and the new land as if both were a single parcel of land.

Note: Where multiple lots of land are acquired which are adjacent to the existing land, this subsection applies in relation to the acquisition of each separate lot of land.

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

- (1) Under subsection 51ABS(6) of the Act, the class of acquisitions covered by subsection (2) of this section is determined for the purposes of paragraph 51ABS(5)(b) of the Act.
- (2) A class of acquisitions is covered by this subsection if:
 - (a) it is an acquisition of shares in the capital of a body corporate; and
 - (b) the acquisition has all of the characteristics specified in paragraph 3-1(b) or paragraphs 3-2(1)(b) and (c).

Note: Despite subsection 51ABS(1) of the Act, which provides that some acquisitions that do not result in control are not required to be notified to the Commission, a class of acquisitions covered by this section must be notified to the Commission even where that acquisition does not result in control.

3-4 Sunsetting of this Division

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

EXPOSURE DRAFT

Waivers

Part 4

Notification waiver applications **Division 1**

Section 3-4

Part 4—Waivers

Division 1—Notification waiver applications

[Requirements in relation to making a notification waiver application to be inserted – s51ABU]

EXPOSURE DRAFT

Part 4 Waivers

Division 2 Waiver determinations

Section 3-4

Division 2—Waiver determinations

[Requirements in relation to determining waiver applications to be inserted – s51ABV]

EXPOSURE DRAFT

Acquisitions Register
Part 5
Contents of the register **Division 1**

Section 3-4

Part 5—Acquisitions Register

Division 1—Contents of the register

[Requirements in relation to contents of the register to be inserted – s51ABZZI]

EXPOSURE DRAFT

Part 6 Forms

Division 1 Determination of forms, information and documents

Section 6-1

Part 6—Forms

Division 1—Determination of forms, information and documents

6-1 Notification of proposed acquisition

- (1) Under paragraph 51ABY(5)(a) of the Act, the forms set out in Divisions 2 and 3 of this Part are determined for paragraph 51ABY(4)(a) of the Act, in relation to the notification of a proposed acquisition.
- (2) Under paragraph 51ABY(5)(b) of the Act, the information and documents required to accompany the forms, as set out in forms in Divisions 2 and 3 of this Part, are determined for paragraph 51ABY(4)(b) of the Act, in relation to the notification of a proposed acquisition.

[Placeholder: Public benefit form to be inserted]

EXPOSURE DRAFT

Forms

Part 6

Notification of proposed acquisition: short form **Division 2**

Section 6-1

Division 2—Notification of proposed acquisition: short form

Note: See section @6-1.

AUSTRALIAN GOVERNMENT

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

NOTIFICATION OF PROPOSED ACQUISITION: SHORT FORM

Note 1: A notifying party must give the Commission enough information to determine that the acquisition may be put into effect or must not be put into effect. In making a determination, the Commission must have regard to the object of the *Competition and Consumer Act 2010* and all relevant matters, including the interests of consumers.

Note 2: A notifying party should consider consulting with the Commission before making a notification to discuss the scope and range of information and documents needed in the context of the particular proposed acquisition to which the notification relates and for guidance about whether the short form or long form is appropriate for the notification of the acquisition.

Note 3: Guidance material is available at <https://www.accc.gov.au/>.

PARTIES TO THE ACQUISITION

1. Provide the information in the table below for each party to the acquisition:

	Party	Legal representative (if any)
Name	Party name (including business or trading name, if different): Identifying number, if applicable (e.g. ACN, ABN or international equivalent):	Law firm name:
Contact details	Contact person: Phone: Email: Address for service of documents?*[Y/N]	Contact person: Phone: Email: Address for service of documents?*[Y/N]
Role in the acquisition	[Principal party / Target / Other]	N/A
Notifying party	[Y/N]	N/A

* A party may tick 'yes' in response to either the party's or the legal representative's email address. By doing this, the party is agreeing to accept service of documents from the Commission in relation to this matter at the email address specified. If the response is 'no' to both options, the party must provide the Commission with an alternative email or other address for service.

DETAILS OF ACQUISITION

2. Provide a non-confidential plain language summary of the acquisition (up to 500 words), including the following:
- a description of the parties, (including their legal and, if different, their business or trading names);

EXPOSURE DRAFT

Part 6 Forms

Division 2 Notification of proposed acquisition: short form

Section 6-1

- (b) a brief description of the products or services (including relevant brands) supplied by the parties, focussing on the products and services most relevant to the acquisition;
- (c) a description of what will be acquired and the process or transaction structure by which it will occur.

Example: A full or partial acquisition of particular shares, or acquisition of particular assets, by way of scheme of arrangement, market or off-market takeover bid.

Note: The non-confidential summary may be published on the acquisitions register.

- 3. Provide the following details in relation to the acquisition:
 - (a) any further information needed to respond to question 2 that could not be provided due to the word limit, or due to the information being confidential;
 - (b) the commercial rationale for the acquisition;
 - (c) the consideration payable in Australian dollars (A\$), including its form and amount;
 - (d) if applicable, the transaction value calculated for the purposes of the transaction value test;
 - (e) if the acquisition has, or will have, related filings in other foreign countries, details of each country, the related filings and the date notified (if applicable).

Note: For paragraph (e)—if you consent to give a confidentiality waiver in relation to those other countries, upload signed confidentiality waiver document(s).

- 4. For each party to the acquisition (including connected entities of each party (if, and where, relevant)), complete for each of the 3 12-month periods before the day this notification is made (in A\$), detailing the months covered for each 12-month period:

Entity (including relationship to a party)	12-month period (including months and years covered)	GST turnover

Note 1: If the acquisition is of an asset, state the turnover attributable to the asset.

Note 2: Monetary figures must be stated in A\$. If figures are also provided in other currencies, those currencies must be clearly identified.

PAST RELEVANT ACQUISITIONS

EXPOSURE DRAFT

Forms

Part 6

Notification of proposed acquisition: short form **Division 2**

Section 6-1

5. List any acquisitions put into effect by the parties during the 3 12-month periods prior to the date this notification is made. Exclude transactions under A\$2 million:

Party	Entity acquired	Shares or assets acquired	Date acquisition was put into effect	GST turnover

Note 1: For a period before 1 July 2025, include any transaction that would be an acquisition to which the acquisitions provisions of the Act would apply under section 51ABB of the Act if the Act were in force at that time.

Note 2: Monetary figures must be stated in A\$. If figures are also provided in other currencies, those currencies must be clearly identified.

Note 3: If the acquisition is of an asset, state the turnover attributable to the asset.

COMPETITIVE EFFECTS OF ACQUISITION

6. For each relevant product or service supplied or potentially supplied by the parties to the acquisition:
- describe the product or service and the geographic areas in Australia where it is supplied; and
 - identify other key suppliers in Australia; and
 - provide the class code and title for the party, by reference to the Australian and New Zealand Standard Industrial Classification; and
 - provide a relevant market definition or definitions, in which the parties carry on business, together with a statement of the parties' reasons for identifying those definitions.

Note 1: 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 geographic area, have a supply relationship, or where the products or services are related in some other way.

Note 2: In determining the relevant market definition or definitions, parties should choose the definition or definitions that are most appropriate for the product or service having 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, geographic and functional dimensions.

Note 3: If the acquisition is an acquisition of vacant land, the relevant market definitions should have regard to the acquirer's potential use of the land.

7. For each relevant market definition, provide estimated market shares for each of the parties (including connected entities of the parties) and other key suppliers (calculated by reference to turnover, volume and if available, capacity) for each of the 3 12-month periods prior to the date this notification is made. Provide details on how those estimates were made (including how turnover, volume and

EXPOSURE DRAFT

Part 6 Forms

Division 2 Notification of proposed acquisition: short form

Section 6-1

capacity were calculated), including any assumptions made. Provide a machine-readable file containing the underlying data used in the calculations.

Market definition	Year	Supplier	Turnover (A\$)	Turnover (%)	Volume	Market share (by volume) (%)	Capacity	Market share (by capacity) %
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Note 1: Monetary figures must be stated in A\$. If figures are also provided in other currencies, those currencies must be clearly identified.

Note 2: **Capacity**, for working out the market share of a producing unit or entity, means the maximum potential production of an output or group of outputs by the unit or entity.

COMPETITOR AND CUSTOMER CONTACTS

8. Provide contact details for the following competitors and customers for each relevant product or service supplied:
 - (a) the top 5 closest competitors based on estimated market shares;
 - (b) the top 5 largest customers based on spend in the last financial year;
 - (c) the 5 customers closest to the median spend of customers in the last financial year.

Details for each competitor or customer must include, to the extent possible, a specific contact person and full contact details including direct email address (for example, john.smith@xyz.com, not info@xyz.com) and direct telephone number (not a general contact number).

ADDITIONAL INFORMATION

9. Provide the following information (as applicable):
 - (a) Does the acquisition meet the criteria in paragraph 51ABX(1)(d) of the Act? [Y/N]
 - (b) Does the contract, pursuant to which the acquisition is to take place, contain any goodwill protection provisions? [Y/N]

If yes, identify and provide details of the goodwill protection provisions, and describe why they are necessary for the protection of the purchaser in respect of the goodwill of the business.

- (c) Do you intend to make a request under paragraph 51ABZZL(1)(d) of the Act for the Commission to apply section 51ABZZL of the Act (surprise hostile takeovers) to the notification, for a confidential review? [Y/N]

If yes, provide the details of the statements to be made under subsection 51ABZZL(2) of the Act.

EXPOSURE DRAFT

Forms

Part 6

Notification of proposed acquisition: short form **Division 2**

Section 6-1

(d) Is the acquisition, or part of the acquisition, a voluntary transfer of business (within the meaning of the *Financial Sector (Transfer and Restructure) Act 1999*)? [Y/N]

If yes, provide a copy of the certificate of transfer.

10. 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.

Note: Document means any record of information and includes (among other things) anything on which there is writing and anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them—see section 2B of the *Acts Interpretation Act 1901*.

DOCUMENTS REQUIRED

11. Provide final or most recent versions of all transaction documents, such as the sale and purchase agreement, heads of agreement, offer documents, and any other agreements between the parties related to the acquisition.
12. For each party to the acquisition, provide the most recent audited financial reports and income statements that relate to the supply of the relevant products or services.
13. Provide an organisation chart or diagram that shows the structure of ownership and control of the parties to the acquisition and related bodies corporate involved in the supply of the relevant products or services. Include the full names and any applicable ACN/ABN/equivalent identifiers, director names, and identify the nature of the ownership or control arrangements (for example, 51% or 100% ownership of share capital).

DECLARATION

14. An authorised person of the notifying party must complete the following declaration. If there is more than one notifying party, a separate declaration must be completed for each notifying party.

I declare that, to the best of my knowledge and belief, the information and documents given in response to questions in this form are true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are the best estimates based the underlying facts, and that all opinions expressed are genuinely held. I am aware that giving false or misleading information to the Commission is a serious offence and criminal penalties apply.

.....
Signature of authorised person

EXPOSURE DRAFT

Part 6 Forms

Division 3 Notification of proposed acquisition: long form

Section 6-1

Division 3—Notification of proposed acquisition: long form

Note: See section @6-1.

AUSTRALIAN GOVERNMENT

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

NOTIFICATION OF PROPOSED ACQUISITION: LONG FORM

Note 1: A notifying party must give the Commission enough information to determine that the acquisition may be put into effect or must not be put into effect. In making a determination, the Commission must have regard to the object of the *Competition and Consumer Act 2010* and all relevant matters, including the interests of consumers.

Note 2: A notifying party should consider consulting with the Commission before making a notification to discuss the scope and range of information and documents needed in the context of the particular proposed acquisition to which the notification relates and for guidance about whether the short form or long form is appropriate for the notification of the acquisition.

Note 3: Guidance material is available at <https://www.accc.gov.au/>.

PARTIES TO THE ACQUISITION

1. Provide the information in the table below for each party to the acquisition:

	Party	Legal representative (if any)
Name	Party name (including business or trading name, if different): Identifying number, if applicable (e.g. ACN, ABN or international equivalent):	Law firm name:
Contact details	Contact person: Phone: Email: Address for service of documents?*[Y/N]	Contact person: Phone: Email: Address for service of documents?*[Y/N]
Role in the acquisition	[Principal party / Target / Other]	N/A
Notifying party	[Y/N]	N/A

* A party may tick 'yes' in response to either the party's or the legal representative's email address. By doing this, the party is agreeing to accept service of documents from the Commission in relation to this matter at the email address specified. If the response is 'no' to both options, the party must provide the Commission with an alternative email or other address for service.

DETAILS OF ACQUISITION

2. Provide a non-confidential plain language summary of the acquisition (up to 500 words), including the following:

EXPOSURE DRAFT

Forms

Part 6

Notification of proposed acquisition: long form **Division 3**

Section 6-1

- (a) a description of the parties, (including their legal and, if different, their business or trading names);
- (b) a brief description of the products or services (including relevant brands) supplied by the parties, focussing on the products and services most relevant to the acquisition;
- (c) a description of what will be acquired and the process or transaction structure by which it will occur.

Example: A full or partial acquisition of particular shares, or acquisition of particular assets, by way of scheme of arrangement, market or off-market takeover bid.

Note: The non-confidential summary may be published on the acquisitions register.

3. Provide the following details in relation to the acquisition:

- (a) any further information needed to respond to question 2 that could not be provided due to the word limit, or due to the information being confidential;
- (b) the commercial rationale for the acquisition;
- (c) the consideration payable in Australian dollars (A\$), including its form and amount;
- (d) if applicable, the transaction value calculated for the purposes of the transaction value test;
- (e) if the acquisition has, or will have, related filings in other foreign countries, details of each country, the related filings and the date notified (if applicable).

Note: For paragraph (e)—if you consent to give a confidentiality waiver in relation to those other countries, upload signed confidentiality waiver document(s).

4. Describe any existing or proposed commercial relationships between the parties to the acquisition (and the connected entities of those parties).

5. Provide in relation to the acquisition:

- (a) details of the sales process undertaken in relation to the target (for example, a competitive bid process or an unsolicited offer); and
- (b) 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.

6. For each party to the acquisition (including connected entities of each party (if, and where, relevant)), complete for each of the 3 12-month periods before the day this notification is made (in A\$), detailing the months covered for each 12-month period:

Entity (including relationship to a party)	12-month period (including months and years covered)	GST turnover
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EXPOSURE DRAFT

Part 6 Forms

Division 3 Notification of proposed acquisition: long form

Section 6-1

- Note 1: If the acquisition is of an asset, state the turnover attributable to the asset.
- Note 2: Monetary figures must be stated in A\$. If figures are also provided in other currencies, those currencies must be clearly identified.

PAST RELEVANT ACQUISITIONS

7. List any acquisitions put into effect by the parties during the 3 12-month periods prior to the date this notification is made. Exclude transactions under A\$2 million:

Party	Entity acquired	Shares or assets acquired	Date acquisition was put into effect	GST turnover

- Note 1: For a period before 1 July 2025, include any transaction that would be an acquisition to which the acquisitions provisions of the Act would apply under section 51ABB of the Act if the Act were in force at that time.
- Note 2: Monetary figures must be stated in A\$. If figures are also provided in other currencies, those currencies must be clearly identified.
- Note 3: If the acquisition is of an asset, state the turnover attributable to the asset.

COMPETITIVE EFFECTS OF ACQUISITION

8. For each relevant product or service supplied or potentially supplied by the parties to the acquisition:
- describe the product or service and the geographic areas in Australia where it is supplied; and
 - identify other key suppliers in Australia; and
 - provide the class code and title for the party, by reference to the Australian and New Zealand Standard Industrial Classification; and
 - provide a relevant market definition or definitions, in which the parties carry on business, together with a statement of the parties' reasons for identifying those definitions; and
 - identify whether any of the parties have non-controlling shareholdings or cross directorships in companies that supply the same or similar products or services as other parties to the acquisition (e.g. the acquirer has a minority shareholding or common directors in a company that is active in an area that another party to the transaction supplies).

- Note 1: 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 geographic area, have a supply relationship, or where the products or services are related in some other way.

EXPOSURE DRAFT

Forms

Part 6

Notification of proposed acquisition: long form Division 3

Section 6-1

Note 2: In determining the relevant market definition or definitions, parties should choose the definition or definitions that are most appropriate for the product or service having 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, geographic and functional dimensions.

Note 3: If the acquisition is an acquisition of vacant land, the relevant market definitions should have regard to the acquirer's potential use of the land.

9. For each relevant market definition, provide estimated market shares for each of the parties (including connected entities of the parties) and other key suppliers (calculated by reference to turnover, volume and if available, capacity) for each of the 3 12-month periods prior to the date this notification is made. Provide details on how those estimates were made (including how turnover, volume and capacity were calculated), including any assumptions made. Provide a machine-readable file containing the underlying data used in the calculations.

Market definition	Year	Supplier	Turnover (A\$)	Turnover (%)	Volume	Market share (by volume) (%)	Capacity	Market share (by capacity) %
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Note 1: Monetary figures must be stated in A\$. If figures are also provided in other currencies, those currencies must be clearly identified.

Note 2: **Capacity**, for working out the market share of a producing unit or entity, means the maximum potential production of an output or group of outputs by the unit or entity.

BARRIER TO ENTRY

10. Identify entry into the market for the supply of the goods or services to which the acquisition relates by the notifying parties or competitors that has occurred in the 3 12-month periods prior to the date this notification is made or any expected future entry in relation to the relevant products or services.
11. Identify suppliers who have ceased supply of the relevant products or services during the 3 12-month periods prior to the date this notification is made.
12. Describe factors influencing entry into the market for the supply of the relevant products or services, including the following:
 - (a) estimated total costs of entry, including:
 - (i) the costs of establishing infrastructure required to supply the relevant products or services; and
 - (ii) the time required to put these in place;
 - Example: The cost of, and time required for, building or obtaining access to key production or supply assets, important technologies or distribution channels.
 - (b) for the costs identified for paragraph (a), provide an estimate of the portion that would not be recoverable if the party ceased supplying within 3 years after entry;

EXPOSURE DRAFT

Part 6 Forms

Division 3 Notification of proposed acquisition: long form

Section 6-1

- (c) any barriers that may impact the costs or timeliness of entry, including:
 - (i) access to inputs, including patents and intellectual property rights; and
 - (ii) legal or regulatory requirements;
- (d) estimated expected revenues, including revenues necessary to gain minimum viable scale and the corresponding market share (for example, 5%) and the expected time required to reach minimum viable scale;
- (e) barriers that may impact expected revenues, including customer switching costs, or supply characterised by long term supply contracts;
- (f) the importance of economies of scale and scope and of network effects for production or distribution.

DATA

13. 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, such as materials produced by industry bodies, research organisations, government or non-government organisations (public or otherwise). Explain how the parties use the data sets identified.

COMPETITOR AND CUSTOMER CONTACTS

14. Provide contact details for the following competitors and customers for each relevant product or service supplied:
 - (a) the top 5 closest competitors based on estimated market shares;
 - (b) the top 10 largest customers based on spend in the last financial year;
 - (c) the 10 customers closest to the median spend of customers in the last financial year.

Details for each competitor or customer must include, to the extent possible, a specific contact person and full contact details including direct email address (for example, john.smith@xyz.com, not info@xyz.com) and direct telephone number (not a general contact number).

ADDITIONAL INFORMATION

15. Provide the following information as applicable:
 - (a) Does the acquisition meet the criteria in paragraph 51ABX(1)(d) of the Act? [Y/N]
 - (b) Does the contract pursuant to which the acquisition is to take place contain any goodwill protection provisions? [Y/N]

If yes, identify and provide details of the goodwill protection provisions, and describe why they are necessary for the protection of the purchaser in respect of the goodwill of the business.

EXPOSURE DRAFT

Forms

Part 6

Notification of proposed acquisition: long form **Division 3**

Section 6-1

- (c) Do you intend to make a request under paragraph 51ABZZL(1)(d) of the Act for the Commission to apply section 51ABZZL of the Act (surprise hostile takeovers) to the notification, for a confidential review? [Y/N]

If yes, provide the details of the statements to be made under subsection 51ABZZL(2) of the Act.

- (d) Is the acquisition, or part of the acquisition, a voluntary transfer of business (within the meaning of the *Financial Sector (Transfer and Restructure) Act 1999*)? [Y/N]

If yes, provide a copy of the certificate of transfer.

16. 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.

Note: **Document** means any record of information and includes (among other things) anything on which there is writing and anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them—see section 2B of the *Acts Interpretation Act 1901*.

DOCUMENTS REQUIRED

17. Provide final or most recent versions of all transaction documents, such as the sale and purchase agreement, heads of agreement, offer documents, and any other agreements between the parties related to the acquisition.
18. For each party to the acquisition, provide the most recent audited financial reports and income statements that relate to the supply of the relevant products or services.
19. Provide an organisation chart or diagram that shows the structure of ownership and control of the parties to the acquisition and related bodies corporate involved in the supply of the relevant products or services. Include the full names and any applicable ACN/ABN/equivalent identifiers, director names, and identify the nature of the ownership or control arrangements (for example, 51% or 100% ownership of share capital).
20. Provide documents 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 (whether prepared internally or by an external consultant) that:
- (a) describe the rationale for the acquisition (including but not limited to the benefits of, or investment case for, the acquisition) for the purposes of assessing or making a decision in relation to the acquisition, and any minutes or record of the decision made; or
 - (b) assess or analyse the acquisition; or
 - (c) assess or analyse the valuation of the target for the purposes of the acquisition.

This includes, but is not limited to, any post-acquisition business plans or strategy (including integration plans and financial forecasts) and Information

EXPOSURE DRAFT

Part 6 Forms

Division 3 Notification of proposed acquisition: long form

Section 6-1

Memoranda prepared by or for the parties that specifically relate to the sale of the target. If no such Information Memoranda exist, explain what information or document(s) given to any of the parties is meant to serve the function of an Information Memorandum.

21. Provide 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 which:
 - (a) have been prepared by or for, or received by, any member of the Board or Board Committee of a party (whether prepared internally or by external consultants); and
 - (b) describe or analyse the competitive conditions, market conditions, market shares, competitors, or the business plans of a party in relation to the relevant products or services.
22. Identify the documents provided in questions 17 to 21 that the parties consider, or a reasonable objective third party would consider, to most comprehensively support the responses given in this notification.

APPENDICES

23. If the acquisition is a horizontal acquisition, answer the additional questions at Appendix A.

Note: 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.

24. If the acquisition is a vertical acquisition, answer the additional questions at Appendix B.

Note: An acquisition is a **vertical acquisition** 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.

25. If the acquisition is a conglomerate acquisition, answer the additional questions at Appendix C.

Note 1: An acquisition is a **conglomerate acquisition** if the parties to the acquisition are suppliers or buyers, or potential suppliers or buyers, of adjacent products or services.

Note 2: A product or service is an **adjacent product or service** in relation to another product or service if the products or services are not in the same market or in the same supply chain, but are related in another way. For example, products targeting similar customers or that may be purchased or supplied together.

DECLARATION

EXPOSURE DRAFT

26. An authorised person of the notifying party must complete the following declaration. If there is more than one notifying party, a separate declaration must be completed for each notifying party.

I declare that, to the best of my knowledge and belief, the information and documents given in response to questions in this form are true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are the best estimates based the underlying facts, and that all opinions expressed are genuinely held. I am aware that giving false or misleading information to the Commission is a serious offence and criminal penalties apply.

.....
Signature of authorised person

APPENDIX A: HORIZONTAL ACQUISITIONS

Note: This information must be provided if the acquisition is a horizontal acquisition.

- A1. Describe how competition works for each relevant product or service where the parties overlap or potentially overlap, including the following information:
- (a) the nature of competition, including whether the relevant entities compete on price, quality, innovation, or any other element of competition, as well as the form of that competition, such as whether sales are made on an arm's length basis, negotiation or by tender processes;
 - (b) the closeness of competition between the parties and other key competitors. Include the extent to which the remaining competitors supply products or services that are substitutable, including with reference to factors such as geographic location and the needs and/or preferences of customers and groups of customers;
 - (c) if the relevant products or services are differentiated—an explanation of the extent to which they are differentiated, such as in terms of unique product features and functions, customer loyalty, geographic presence, and any other quality or product characteristics;
 - (d) an explanation of how the parties price the products or services, including with reference to the factors considered, whether uniform pricing is offered or there is discretionary pricing for particular customers and/or types of customers, and how often prices are reviewed;
 - (e) the cost and time it takes for customers to switch suppliers, including with reference to any features that may prevent or hinder switching, such as exclusive long term contracts or termination fees;
 - (f) if applicable, data regarding customers won and lost by all parties for the 2 12-month periods prior to the date this notification is made. Include in your response customer names, locations, types, volumes and revenue the customer accounts for, date of gain/loss and reason for gain/loss, and contract dates (other than data that is personal information within the meaning of the *Privacy Act 1988*);

EXPOSURE DRAFT

Part 6 Forms

Division 3 Notification of proposed acquisition: long form

Section 6-1

- (g) if applicable, the following information in respect of all requests for tender responded to by the parties and bidding processes participated in during the 3 12-month periods prior to the date this notification is made:
 - (i) details of the bids made by each party;
 - (ii) the outcomes of those processes.

Example: Whether the bids were won or lost by each party, the identity of the winning bidder (if different and known to the parties), and the reasons for the outcome (if known).

APPENDIX B: VERTICAL ACQUISITIONS

Note: This information must be provided if the acquisition is a vertical acquisition.

- B1. Provide information and evidence on whether the merged entity would have the ability and incentive to engage in input and/or customer foreclosure, including the following:
 - (a) a description of the input's role in the vertical supply chain and its importance to any downstream product or service;
 - (b) for each input identified in response to paragraph (a):
 - (i) other key suppliers of that input available to competitors post-acquisition; and
 - (ii) total revenue earned by the parties of that input; and
 - (iii) an estimated proportion of competitors' cost that the input accounts for;
 - (c) where a downstream customer of a product or service is being acquired, a description of:
 - (i) the importance of the party being acquired as a customer of the upstream product or service (for example, to the scale of the merger parties' business); and
 - (ii) alternative sales opportunities for competing suppliers.
- B2. For the supply of relevant products or services where the merger parties have a vertical relationship, provide details of:
 - (a) components of gross profit margins, including related details on revenues and each of the components of costs; and
 - (b) whether the costs identified in response to paragraph (a) are fixed or variable; and
 - (c) average upstream and average downstream prices for a relevant fiscal period; and
 - (d) current or future exclusivity agreements that either of the parties to the acquisition is a party to and that relate to the products and services.

APPENDIX C: CONGLOMERATE ACQUISITIONS

Note: This information must be provided if the acquisition is a conglomerate acquisition.

- C1. Provide information and evidence on whether the merged entity would be in a position post-acquisition to foreclose competitors including the following:

EXPOSURE DRAFT

Forms

Part 6

Notification of proposed acquisition: long form **Division 3**

Section 6-1

- (a) an explanation of current commercial and/or technical links between the relevant products or services;
- (b) an explanation of the role of each of the adjacent products or services, including whether they are important for competitors or customers;
- (c) identification of customers that purchase (or prefer to purchase) the products or services together as a bundle or from the same supplier;
- (d) identification of any suppliers that provide the products or services together;
- (e) the components of costs used in the production of products or services in which the potentially foreclosed competitors participate;
- (f) whether the costs identified in response to paragraph (e) are fixed or variable;
- (g) an explanation of the degree of economies of scale, direct and indirect network effects in the market or markets in which the potentially foreclosed competitors participate;
- (h) an explanation of whether the acquisition would provide the merged entity with increased cross-selling within an ecosystem of products or services, or would enable that to occur.

EXPOSURE DRAFT

Part 7 Miscellaneous

Division 1 Indexation

Section 7-1

Part 7—Miscellaneous

Division 1—Indexation

7-1 Indexing relevant amounts

- (1) Each amount mentioned in subsections @1-8(1), @1-9(1) and (2), @1-12(1), and @1-13(1), and section @1-11, is to be indexed on the first day of each calendar year starting on or after 1 January 2027 by multiplying the amount by its indexation factor for 1 January in the preceding financial year.

Note 1: Section @1-9 of this instrument sets a threshold for the \$10m acquired shares or assets turnover test and the \$50m acquired shares or assets turnover test.

Note 2: Section @1-8 provides a threshold for the post-acquisition turnover test and section @1-12 sets a threshold for the very large corporate group turnover test.

Note 3: Section @1-13 provides a threshold for the small acquisition test.

Note 4: Section @1-11 provides a threshold for the transaction value test.

- (2) The indexation factor for 1 January in a financial year is the number worked out as follows:

Method statement

- Step 1. Determine the GDP implicit price deflator value for the previous calendar year.
- Step 2. Determine the GDP implicit price deflator value for the calendar year immediately prior to the calendar year referred to in step 1.
- Step 3. The *indexation factor* for 1 January in the financial year is the amount under step 1 divided by the amount under step 2.

- (3) The indexation factor is to be worked out to 3 decimal places, rounding up if the fourth decimal place is 5 or more.
- (4) Amounts indexed in accordance with this section must be rounded up to the nearest \$1,000,000.

7-2 Meaning of *GDP implicit price deflator value*

- (1) The GDP implicit price deflator value for a calendar year means the GDP implicit price deflator value that was published by the Australian Statistician for the last calendar year that ended before the calendar year.

Note: The GDP implicit price deflator value could, in 2025, be viewed on the Australian Bureau of Statistics website (<https://www.abs.gov.au>).

- (2) Subject to subsection (3), if, at any time before or after the commencement of Part 1 to this instrument:
- (a) the Australian Statistician has published or publishes a GDP implicit price deflator value in respect of a calendar year; and

EXPOSURE DRAFT

Miscellaneous **Part 7**
Indexation **Division 1**

Section 7-2

(b) that value is in substitution for a GDP implicit price deflator value previously published by the Australian Statistician in respect of that calendar year;

disregard the publication of the later GDP implicit price deflator value for the purposes of this section.

(3) If, at any time before or after the commencement of Part 1 to this instrument, the Australian Statistician has changed or changes the index reference period for the GDP implicit price deflator value, then, for the purposes of applying this section after the change took place or takes place, have regard only to values published in terms of the new index reference period.

EXPOSURE DRAFT

Part 7 Miscellaneous

Division 2 Tribunal review

Section 7-2

Division 2—Tribunal review

[Requirements in relation to Tribunal review to be inserted – ss100A, 100B, 100C, 100D]

EXPOSURE DRAFT

Miscellaneous **Part 7**
Anti-avoidance **Division 3**

Section 7-30

Division 3—Anti-avoidance

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

For the purposes of Parts 2 and 3 of this instrument, disregard the effects of a scheme if it would be reasonable to conclude that the purpose of the person, or one of the persons, who enters into or carries out the scheme or any part of the scheme is to avoid an acquisition being an acquisition that is required to be notified.

EXPOSURE DRAFT

Part 10 Application and transitional rules

Division 1 Instrument as made

Section 10-1

Part 10—Application and transitional rules

Division 1—Instrument as made

10-1 When an acquisition is required to be notified

Parts 2 and 3 of this instrument apply in relation to an acquisition that is put into effect on or after 1 January 2026.

Note: Notifications may be made on or after 1 July 2025, but a requirement to notify only applies in relation to an acquisition that is put into effect on or after 1 January 2026: see Division 6 of Part XIII of the Act.

10-2 When a notification is made

Parts 5 and 6 of this instrument apply to notifications made on or after 1 July 2025.