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[Reform of Australia's competition policies and laws — Recent good progress but more is needed](#)

— *Marcus Bezzi*

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The articles discusses the Australian Treasury's reform process through the 'Competition Review'. It has driven reforms, including merger control, small but important improvements to ACCC investigative powers and the revitalisation of National Competition Policy ('NCP'). The new merger control system aligns Australia with international best practices, introducing mandatory notification thresholds and enhancing the Australian Competition and Consumer Commission's ('ACCC') role in preventing anti-competitive mergers while enabling appropriate review by the Australian Competition Tribunal. Future reforms are being progressed focused on revitalising National Competition Policy and on addressing non-compete clauses and other restraints on labor mobility and higher wages. The revitalised NCP aims to support economic growth and productivity by fostering competitive market conditions and reducing barriers to trade and commerce. Ongoing reform has the potential to ensure Australia's competition policies and laws continue to support a dynamic and prosperous economy.

[Australia's new merger control regime: Have we built a Lamborghini or a lemon?](#)

— *Geoff Carter, Annabel Green and Ji Sheng*

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This article examines Australia's new merger notification regime which establishes a mandatory and suspensory process administered by the Australian Competition and Consumer Commission. While the Government promotes the reform as 'faster, stronger, simpler, more targeted and more transparent', this article examines whether these objectives will be realised in practice. The analysis identifies significant design flaws including an overly broad definition of 'control' that captures routine minority shareholding transactions, inclusion of individual asset acquisitions beyond operating businesses with complex revenue attribution requirements, and low monetary thresholds that sweep in many competitively benign transactions. These cumulative choices, coupled with severe penalties for non-compliance, risk creating a regime that is more complex and prone to over-capturing transactions with minimal competitive impact. While the regime is undoubtedly 'stronger' in terms of oversight, it may not be faster due to high volumes of low-risk notifications; moreover, its transparency is dependent with very limited to access to the regulator's case file. This article concludes that whilst the reform is a significant legislative milestone, substantial recalibration is required to ensure Australia's new merger control regime achieves its intended policy objectives without imposing unnecessary burdens on the economy.

Evaluating Australia's merger reform: Misdiagnosis, overreach, and unintended consequences

— *Jacqueline Downes, Louisa Kefford, Karen Chau, Thomas Choo and Mikaela Wan*

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The passing of the Treasury Laws Amendment (Mergers and Acquisitions Reform) Act in November 2024 marked the most significant change to Australian merger control since the inception of the Trade Practices Act ('TPA'). Australia's new merger regime commenced formally on 1 January 2026.

Australia previously operated under an 'enforcement' merger regime which prohibited acquisitions that have the effect, or likely effect, of substantially lessening competition in any market. Under this system, the Australian Competition and Consumer Commission ('ACCC') was required to commence court action to establish whether a contravention has occurred and seek orders for injunctions, divestiture of shares or assets and pecuniary penalties. This model allowed parties to voluntarily notify the ACCC of transactions which may raise competition concerns and the ACCC would conduct a review and advise whether it intends to commence court proceedings in the Federal Court if the parties decide to complete. As of 1 January 2026, the ACCC no longer conducts informal reviews and Australia's merger control regime has shifted to a new mandatory, suspensory and administrative system, under entirely new legislative provisions.

The previous system allowed the ACCC to build a targeted, risk-based merger regime where only transactions which deserve higher scrutiny were escalated to public market review. The ACCC provided transparency through the publication of regulatory guidance for parties indicating when notification is advisable, and revised these guidelines over time, as appropriate.

However, despite previously advocating against a mandatory regime on the basis that the informal merger regime provides a 'high degree of transparency', the introduction of the new merger regime followed more recent advocacy from the ACCC arguing that the voluntary merger framework in Australia was no longer fit for purpose. Principally, the ACCC contended that parties failed to notify harmful transactions, or did not give the ACCC sufficient time to consider such cases; that the previous substantially lessening competition test did not allow the ACCC to consider the competitive harm arising from creeping acquisitions; that the lack of statutory processes and transparency resulted in uncertainty for merger parties and the public alike as to the ACCC's approach to merger analysis; and the requirement for the ACCC to take court action to prevent harmful mergers created uncertainty and inefficiencies.

The new regime purports to remedy the 'failings' alleged by the ACCC through the introduction of notification thresholds, amendments to the competition test for acquisitions, introduction of statutory deadlines and publication of information about transactions on a public register. While the ACCC has succeeded in its push for a new mandatory regime, the jury is out on whether the new regime addresses the 'failings' which motivated reform or whether it has replaced an efficient regime, with one which is complex, difficult to navigate and will significantly increase the regulatory burden for businesses operating in Australia and the ACCC alike.

The ACCC's 2025 merger assessment guidelines: Expanding the scope of enforcement

— *Chris Hart and Chris Whelan*

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This article provides economic commentary on the ACCC's 2025 merger assessment guidelines. This is the first substantive update to the guidelines since 2008 and takes place in the context of major reforms to Australia's merger regime. We start by providing some background, before briefly summarising what the latest assessment guidelines cover. We then provide our economic commentary, noting from the outset that the ACCC's new merger guidelines are broadly sensible and retain key elements from the 2008 guidelines. However, from an economics perspective, there are some limitations and potential issues with the guidelines. In our view, certain sections are unclear or provide only limited guidance. This primarily relates to those areas that reflect an expanded scope of enforcement (including the approach to assessing so called 'serial acquisitions', a potentially broader approach to assessing conglomerate effects, and potential additional 'entrenchment' theories of harm). This illustrates the need for the guidelines to be updated as the ACCC assesses mergers under the new regime and, importantly, publishes more detailed reasons for its decisions.

Do we have an understanding? High Court rules against ACCC in appeal regarding anti-competitive understanding

— *Alice Waterston, James Keeves, Eimear O'Sullivan, Brian Wu, Christina Shin and Erika Serrano*

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In *Australian Competition and Consumer Commission v J Hutchinson Pty Ltd*, the High Court of Australia considered whether an 'understanding' arises for the purposes of ss 45E and 45EA of the Competition and Consumer Act 2010 (Cth) where a union makes a threat accompanied by a demand and the recipient decides to do that which is demanded but does not communicate to the union its commitment to do so. A majority of the Court held that in such circumstances, an understanding is not arrived at because there is no relevant consensus or 'meeting of the minds' between the parties. This article considers the practical implications of the decision, as well as possible options for reform of ss 45E and 45EA.