

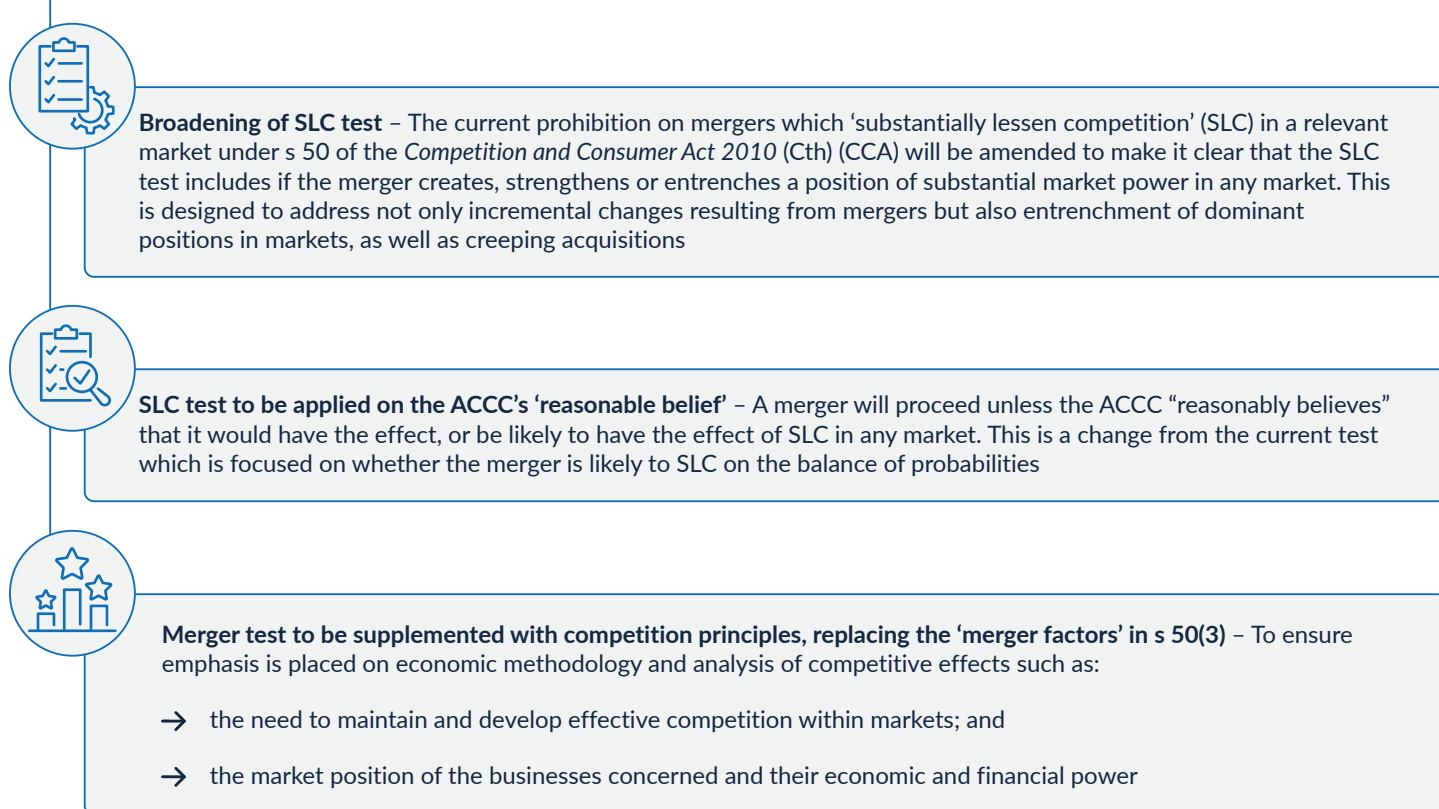
Government's Merger Reform Proposals 2024

In April 2024, the Australian Government announced its intention to introduce major reforms to Australian merger laws, to commence from 1 January 2026.

GOVERNMENT'S PROPOSED REFORMS TO MERGER REVIEW PROCESS



GOVERNMENT'S PROPOSED REFORMS TO SUBSTANTIVE MERGER TEST



TOP TAKEAWAYS

- 1. Thresholds still to be determined:** Proposed materiality thresholds have not yet been finalised. The ACCC has previously proposed deals involving companies with a turnover threshold of \$400 million or a global transaction value of \$35 million to trigger the proposed notification requirements (see Freedom of Information disclosure log submitted by the ACCC to Treasury in March 2023)
- 2. No change to the onus of proof:** The ACCC petitioned for the onus of proof to be shifted onto parties to establish positively to the ACCC's (or Tribunal's) satisfaction that an SLC is not likely to occur, which critics labelled as essentially creating a 'presumptive ban' on mergers. This reform has not been adopted by government and the ACCC must apply the SLC test based on its "reasonable belief"
- 3. Limited review of ACCC decisions:** Parties' sole recourse to challenge the merits of a decision by the ACCC is to the Tribunal, which can only conduct a "limited" merits review based on the information before the ACCC, effectively removing the traditional evidence giving process where both the ACCC and the merger parties call witnesses and test evidence through cross-examination in court
- 4. Impact on M&A activity and trends:** The mandatory regime may place increased transaction costs and regulatory burdens on M&A activity, including delays, increased deal risks and complexity
- 5. Businesses will need to overcome practical hurdles:** Businesses contemplating merger activity will need to build in the new mandatory regime into their transaction processes, completion timeframes and terms, ensuring sufficient time and resources to apply for and obtain relevant approvals

WHAT'S NEXT? – WATCH THIS SPACE!

- A comprehensive process of stakeholder consultation will occur. Key details of the new regime need to be fleshed out and refined, including materiality thresholds and finalisation of statutory review periods
- The government will then introduce legislation to implement the changes to Australia's merger control regime. The changes are intended to take effect from 1 January 2026, subject to the passage of the legislation through Parliament
- LexisNexis Practical Guidance will provide further updates and analysis on any developments including draft legislation, consultation terms of reference and submission deadlines

Read the government's response to Treasury's consultation on merger reform [here](#). For further details on the current merger control regime under the CCA, see our comprehensive topic on Mergers in [Practical Guidance Competition](#) including our Guidance Notes: The prohibition in section 50 and Mergers in Digital Markets.

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