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Merger Control 2025

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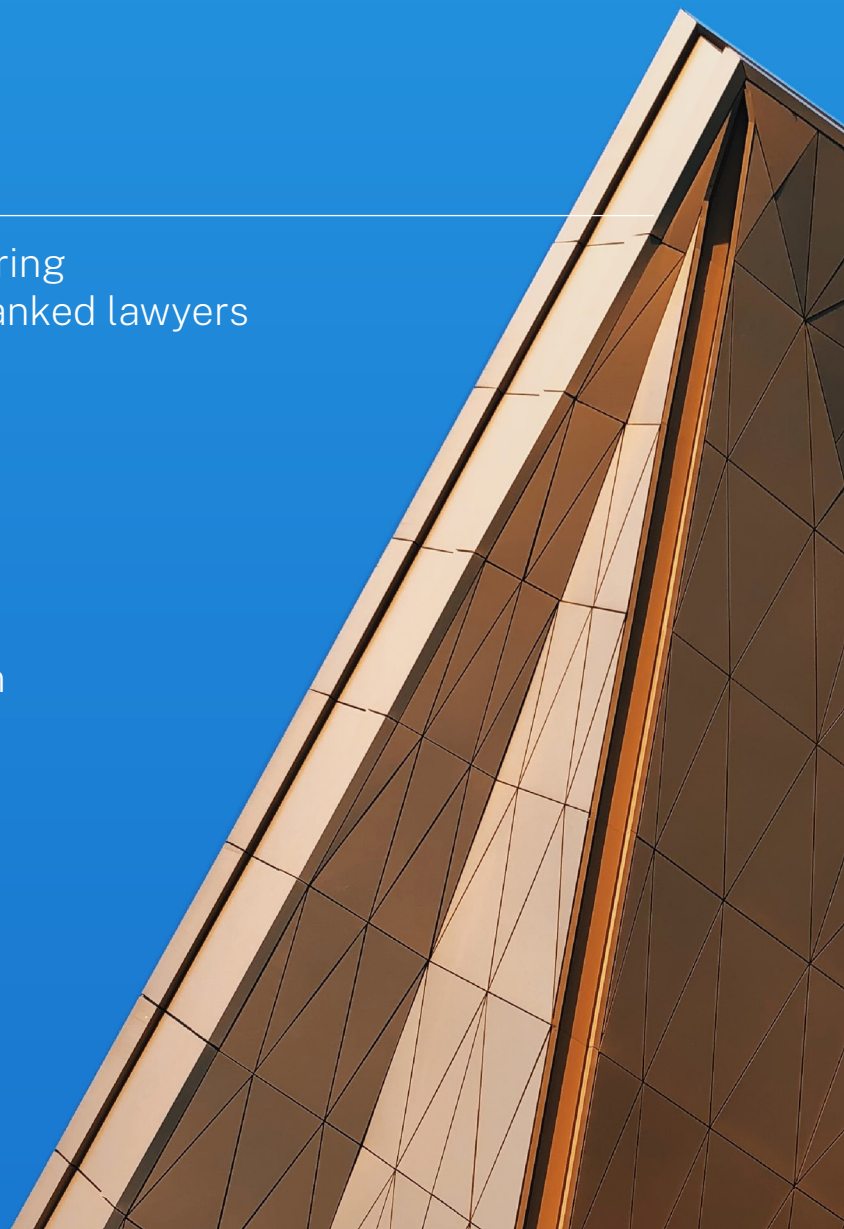

Australia: Law & Practice

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Clayton Utz

AUSTRALIA

Law and Practice

Contributed by:
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Clayton Utz has operated for over 180 years and has more than 180 partners and 1,600 employees across six offices in Australia. The firm has a reputation for innovative and incisive advice. The Clayton Utz competition group, based in the firm's Sydney office, provides a national service to clients and industries ranging from government to local Australian corporates, through listed ASX to global organisations. The team includes eight dedicated competition partners who work collaboratively with corporate and regulatory colleagues on mergers and other transactions, and with class action litigation colleagues on antitrust follow-on actions. Recent clients include media, technology, telecommunications and financial services providers, energy, resources and infrastructure companies, and global entities undertaking transactions in Australia.

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1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

The merger control legislation in Australia is the Competition and Consumer Act 2010 (Commonwealth) (the "Act") and instruments made under that Act. The Australian Competition and Consumer Commission (the ACCC, being the relevant regulator) has published process and substantive analytical guidance documents. It also publishes a FAQs document that is regularly updated.

Key subordinate instruments include the Competition and Consumer (Notification of Acquisitions) Determination 2025.

1.2 Legislation Relating to Particular Sectors

There is a specific foreign investment regime and a security of critical infrastructure regime.

The Foreign Acquisitions and Takeovers Act 1975 (FATA) and accompanying regulations create a mandatory, suspensory regime administered by the Foreign Investment Review Board (FIRB).

The Security of Critical Infrastructure Act 2018 imposes notification and risk-mitigation requirements for acquisitions of interests in "critical assets".

Media, banking, insurance, telecommunications, airport and shipping transactions are also subject to specific ownership or control caps under sectoral statutes (eg, the Broadcasting Services Act 1992 and the Financial Sector (Shareholdings) Act 1998).

1.3 Enforcement Authorities

The ACCC enforces the Act.

The FIRB, Australian Taxation Office (ATO) and, for security-sensitive assets, the Department of Home Affairs, may be involved in parallel foreign-investment or national-security reviews.

2. Jurisdiction

2.1 Notification

From 1 January 2026, notification is compulsory for acquisitions that meet specified monetary (Australian revenue and transaction value) thresholds (see **2.5 Jurisdictional Thresholds**). There are numerous exceptions, however, including:

- internal restructurings with no change of ultimate control;
- acquisitions of less than a total of 20% of the shares in a publicly listed entity without board representation or material or practical influence;
- intragroup transfers within the same corporate group;
- certain offshore transactions with no Australian nexus;
- certain land acquisitions, including land acquisitions in the ordinary course of business;
- acquisitions made in the ordinary course of clearing and settlement activities, such as the transfer of legal title to financial instruments to facilitate settlement of trades; and
- acquisitions that occur automatically under law, without commercial negotiation or agreement (eg, vesting of property in an executor under succession law.

2.2 Failure to Notify

Completion of a notifiable acquisition without notification/clearance will result in the acquisition being automatically void. Failure to notify may also trigger civil penalties of up to the greater of:

- AUD50 million; or
- three times the value of the "benefit" reasonably attributable to the contravention; or
- if the benefit cannot be quantified, 30% of annual Australian group turnover.

Individuals involved may incur penalties up to AUD2.5 million.

Penalties can only be imposed by the Federal Court if it finds there has been a contravention.

2.3 Types of Transactions

The notification regime applies to acquisitions of shares or assets, including:

- mergers and takeovers (public or private);
- asset purchases, business transfers, or leasehold acquisitions of substantial facilities; and
- formation of joint ventures (incorporated or unincorporated) where assets or shares are contributed.

Internal restructurings are excluded where there is no change in ultimate control. Pure contractual arrangements that do not involve any acquisition of a legal or equitable interest (eg, long-term exclusivity, shareholder agreements, amendments to constitutions) are not caught by the merger provisions but may be reviewed under section 45 (anticompetitive agreements) or section 46 (misuse of market power).

2.4 Definition of "Control"

"Control" is determined by reference to the meaning of control under the Corporations Act 2001 (Commonwealth). The Australian law on control considers whether an entity has the practical capacity (including together with associates) to determine the outcome of decisions of another entity's financial or operating policies. The importance of practical control means that minority shareholding interests below 20% may still be caught within the meaning of control if accompanied by contractual rights (eg, vetoes, special resolutions, board seats) that confer material influence. As noted above, Australian law also considers aggregated voting power between "associates" capable of control. Another party/shareholder of the target is considered to be an "associate" of the client if: (i) they are both controlled by the same entity (common control) or are in the same corporate group; and/or (ii) that party/shareholder has a relevant agreement or arrangement in place with the client which affects rights of control.

2.5 Jurisdictional Thresholds

Acquisitions Resulting in Larger Corporate Groups

- The combined Australian revenue of the transaction parties is at least AUD200 million; and
- the Australian revenue of the target asset or business being acquired is at least AUD50 million or the total transaction value is at least AUD250 million.

Acquisitions by Very Large Acquirers

- The acquirer's Australian revenue is at least AUD500 million; and
- the Australian revenue of the target asset or business being acquired is at least AUD10 million.

Serial/Creeping Acquisitions

- The combined Australian revenue of the transaction parties is at least AUD200 million and the acquirer's cumulative Australian revenue from acquisitions in the same or substitutable goods/services over a three-year period is at least AUD50 million; or
- the acquirer's Australian revenue is at least AUD500 million and the acquirer's cumulative Australian revenue from acquisitions in the same or substitutable goods/services over a three-year period is at least AUD10 million (acquisitions within the three-year period that are less than AUD2 million or have already been notified are excluded from any cumulative calculation).

Assets Which Do Not Form All, or Substantially All, of the Assets of a Business (Applying From 1 April 2026)

- The acquirer's Australian revenue is at least AUD200 million and the total transaction value (or market value of the asset) is at least AUD200 million; or
- The acquirer's Australian revenue is at least AUD500 million and the total transaction value (or market value of the asset) is at least AUD50 million.

No market-share thresholds apply.

2.6 Calculations of Jurisdictional Thresholds

Australian revenue is defined as an entity's gross revenue, determined in accordance with applicable accounting standards, for the most recent completed financial year (ie, 12-month period), that is attributable to transactions or assets within Australia, or transactions into Australia.

Foreign-currency figures must be converted to AUD by using the exchange rates in any financial report

or accounting record that the revenue amount was drawn from, or, if that is not applicable, using the relevant exchange rates published by the Reserve Bank of Australia (if the Reserve Bank of Australia does not publish the relevant exchange rate, then using a publicly and commercially available market exchange rate).

2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

Thresholds are calculated on a group-wide basis. "Group" encompasses the acquirer (including all the entities it controls) and, post-transaction, the target's business. Seller revenue is not counted unless the seller retains joint control post-closing. Significant acquisitions or divestments that close during the reference financial year must be pro-rated to reflect the period of ownership.

2.8 Foreign-to-Foreign Transactions

Foreign-to-foreign transactions are subject to merger control. A purely offshore deal is caught if the parties generate sufficient Australian turnover or hold Australian assets to meet the thresholds, or if the transaction is likely to have an effect of substantial lessening of competition (SLC) in any Australian market. No physical presence is required; sales into Australia suffice.

2.9 Market Share Jurisdictional Threshold

Australia does not employ market-share jurisdictional thresholds.

2.10 Joint Ventures

Joint ventures are reviewed where they involve an acquisition of assets or shares or amount to an "arrangement" likely to substantially lessen competition. Jurisdictional thresholds mirror those for other mergers. Green-field joint ventures with no pre-existing assets or revenue in Australia will rarely meet the monetary thresholds but may be notified voluntarily if competition issues arise.

2.11 Power of Authorities to Investigate a Transaction

While there is no specific "call in" power, the ACCC retains the power to investigate any transaction, completed or proposed, that may breach section 50 of the Act. The ACCC has previously investigated non-notified deals (eg, Spotless/Programmed 2017; and Healius/Healthscope pathology assets 2022). There is a time limit of three years for the ACCC (or other person) to seek a divestiture order from the court (or otherwise an order to the effect that the transaction was void).

For notified deals, the ACCC similarly has the power to seek, within three years of an acquisition being put into effect, court orders that a notified and cleared transaction is void because the ACCC cleared the transaction based on, among other requirements, false or misleading information provided by the notifying party, or where the transaction was cleared subject to a condition and that condition was not satisfied.

2.12 Requirement for Clearance Before Implementation

Since 1 January 2026, filing has been mandatory for notifiable acquisitions and closing of a transaction is suspended until ACCC clearance or expiry of statutory review periods.

2.13 Penalties for the Implementation of a Transaction Before Clearance

See **2.2 Failure to Notify** in relation to the possible consequences for implementing a transaction before clearance under the present regime. As the regime is new (having officially commenced on 1 January 2026), no penalties had been issued at the time of publication. The penalties under the new regime will be made public and will also apply to foreign-to-foreign transactions with a sufficient Australian nexus. Under the previous voluntary system, the most notable example of a penalty ordered for gun-jumping was the AUD1.05 million fine imposed on Cryosite in 2019.

2.14 Exceptions to Suspensive Effect

See **2.1 Notification** above for examples of exceptions to notification.

It is possible to seek a waiver and, if granted, notification will not be required. The fact that the target is a failing firm will not be determinative of whether a waiver is granted, because competition issues can arise depending on the acquirer of the failing firm.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

Carve-outs will need to be structured so that the global closing does not also amount to putting the transaction into effect in Australia without ACCC approval, if the transaction is notifiable.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

There is no set deadline for notification. The transaction must not be complete (or otherwise "put into effect") prior to obtaining ACCC approval (or the statutory timeframe for review expires). Failure attracts penalties (see **2.2 Failure to Notify**) and will be made public.

3.2 Type of Agreement Required Prior to Notification

A fully binding agreement is not required prior to notification. A signed implementation agreement, term sheet, heads of agreement or public proposal (eg, bidder's statement) may suffice. The ACCC may also accept notifications based on a good-faith intention to acquire, provided the structure, target and consideration are reasonably certain. Importantly, there must be sufficient detail for the ACCC to be able to make the relevant assessment. The ACCC will not accept notifications for purely hypothetical or preliminary proposals.

3.3 Filing Fees

A tiered fee applies to mandatory notifications.

There is a fee of AUD56,800 for transactions for which ACCC determination is made within Phase 1.

For transactions that need to move to Phase 2 assessment, the fees are:

- AUD475,000 for transactions valued below AUD50 million;
- AUD855,000 for transactions valued between AUD50 million and AUD1 billion; and
- AUD1,595,000 for transactions valued above AUD1 billion.

Other fees include:

- waiver applications – AUD8,300: and
- application for public benefit assessment – AUD401,000.

Fees are payable on filing; non-payment renders the notice invalid.

Fee exemptions may apply for relevant small businesses.

3.4 Parties Responsible for Filing

The "principal party" to the acquisition typically lodges the filing. If there is more than one acquirer, all acquirers (including each member of a bidding consortium) must jointly file (each being a "notifying party"). The target may file jointly but is not required to do so.

3.5 Information Included in a Filing

The information required, and the level of detail required, will ultimately depend on the complexity of each acquisition as well as whether the parties are submitting a long-form or short-form notification. Generally, some key items include:

- transaction description and rationale;
- corporate structure charts pre and post-transaction;
- financial statements (for previous three financial years) for parties' Australian and global operations;
- detailed revenue data by product/service and customer segment for the past three years;
- market-share estimates and key competitors;
- copies of the executed transaction documents or the latest versions of each relevant draft document;
- internal strategy, synergy and competition assessments prepared for the transaction (so-called "hot docs"); and
- an FIRB application (if any) and foreign filing list.

Documents must be filed in English. Foreign-language documents require certified English translations. A director's certificate attesting to its completeness and accuracy must accompany the filing.

The ACCC may require further information in addition to what has been provided as part of the notification.

3.6 Penalties/Consequences of Incomplete Notification

The ACCC may "stop the clock" and decide that a notification or application is not effective if the form or supporting documents are materially incomplete, and it will not commence formal review until the deficiencies are remedied.

3.7 Penalties/Consequences of Inaccurate or Misleading Information

Knowingly, or recklessly, furnishing false or misleading information is a criminal offence (maximum penalty: 12 months' imprisonment for individuals) and is also subject to substantial penalties (see **2.2 Failure to Notify**).

3.8 Review Process

The review process consists of two phases:

- phase 1 – 30 business days; and
- phase 2 – additional 90 business days.

The clock stops for information requests or remedy discussions.

The timing of the submission under the previous regime may have meant that the ACCC did not have sufficient time to complete the assessment of the merger prior to commencement of the new regime on 1 January 2026. In this case, parties may have had to notify the same acquisition under the new regime.

3.9 Pre-Notification Discussions With Authorities

Pre-notification engagement with the ACCC is strongly encouraged. Typical pre-notification meetings are expected to last approximately two weeks for simple deals, and longer (approximately four to six weeks, although it can take longer) for complex transactions. Pre-notification discussions are confidential.

3.10 Requests for Information During the Review Process

Request-for-information (RFI) volumes vary; for complex matters the ACCC may issue section 155 compulsory notices requiring large datasets, customer lists, board papers and emails. Under the new regime, failure to comply suspends the statutory clock.

3.11 Accelerated Procedure

There is a short-form notification appropriate for straightforward acquisitions that are unlikely to raise competition concerns. The ACCC expects that short forms will be appropriate for most notifications. Decisions can be made as early as 15 business days from the effective notification date, but not earlier. This is to provide an opportunity for third parties to engage with the ACCC on the proposed merger.

4. Substance of the Review

4.1 Substantive Test

The relevant test is whether the acquisition would or could, in all the circumstances, have the effect, or be likely to have the effect, of substantially lessening competition in any market, including whether the merger creates, strengthens, or entrenches substantial market power (and the ACCC will consider the cumulative effect of serial acquisitions).

4.2 Markets Affected by a Transaction

The ACCC applies the SSNIP test, focusing on demand-side and supply-side substitutability; functional levels (manufacturing, wholesale, retail); geographic scope; and temporal factors. Market definition is a tool, not an end in itself; the ACCC may analyse competitive effects without a definitive market if outcomes are clear. There are no official de minimis levels below which competitive concerns will be deemed unlikely but there is a separate waiver process for those relevant acquisitions with no competition issues. The ACCC will assess these under the waiver application process and waive the need to notify, if appropriate.

4.3 Reliance on Case Law

The ACCC routinely cites European Commission and US Department of Justice/Federal Trade Commission (DOJ/FTC) precedents, particularly for digital platforms, telecommunications and healthcare. It also references the New Zealand Commerce Commission (NZCC) and UK Competition and Markets Authority (CMA) decisions in trans-Tasman or global markets.

4.4 Competition Concerns

The ACCC examines:

- horizontal unilateral effects (price, quality, innovation);
- co-ordinated effects, especially in concentrated or transparent markets;
- vertical foreclosure (input or customer foreclosure);
- conglomerate or portfolio effects, notably in digital, FMCG and health sectors;
- loss of potential or dynamic competition; and
- impact on innovation and nascent competition.

4.5 Economic Efficiencies

The ACCC will consider efficiencies only to the extent that they are merger-specific and there is clear and compelling information or evidence that the merged firm will be incentivised to compete more vigorously (ie, rivalry-enhancing efficiencies) and counteract any adverse impact on competition likely to result from the proposed acquisition. Other types of efficiencies may be considered under a public benefit application.

4.6 Non-Competition Issues

Non-competition issues are not taken into account under Phase 1 or Phase 2 of the review. Following the ACCC's determination in relation to a proposed acquisition under either Phase 1 or Phase 2, parties can lodge an application for the ACCC to consider that the proposed acquisition can proceed on the basis of a net public benefit (the "Public Benefit Phase"). Under the Public Benefit Phase, the ACCC will take into account all relevant matters, including the interests of consumers, the welfare of Australians, consumer protection and any benefits that would result from the merger in any market. Public benefit is not defined in the Act. Separately, parallel regimes (eg, FIRB for national interest, critical infrastructure security, and media diversity) can impose additional conditions or block transactions irrespective of ACCC clearance. Australia has no foreign subsidies control, but foreign investment screening under FATA often scrutinises government-linked investors. Notification to FIRB is mandatory for certain acquisitions by foreign persons.

4.7 Special Consideration for Joint Ventures

The ACCC applies the same substantive test to JVs as other mergers. Examples of key focus areas for assessment in the context of JVs include whether the JV may:

- remove existing or potential competition between parents;
- facilitate information exchange or increase the likelihood of co-ordination; or
- foreclose rivals through collective market power.

For production JVs with minimal competitive overlap and clear efficiencies (eg, risk-sharing in R&D), clearance is common.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With Transactions

The ACCC has the administrative authority to approve or prohibit notifiable mergers with a limited merits review by the Australian Competition Tribunal (under the current regime, the Federal Court of Australia has the final authority to opine on mergers). Under the new regime, the ACCC with the administrative authority, may:

- prohibit a transaction or approve a transaction with or without conditions, prompting parties to abandon or modify the deal (the ACCC must find that the proposed merger would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia if the acquisition is put into effect);
- commence penalty proceedings in the Federal Court if parties attempt to put into effect a notifiable acquisition that has not received ACCC clearance;
- apply to the Federal Court for divestiture of completed transactions if the transaction is not notifiable under the new regime but the ACCC is concerned that it may substantially lessen competition; or
- defend any proceedings brought under administrative or judicial review by an affected party.

5.2 Parties' Ability to Negotiate Remedies

Parties may propose remedies at any stage of the review but the process is formalised and integrated into the statutory timeline. Structural remedies (divestment of overlapping business lines, key assets or customer contracts) remain preferred.

5.3 Legal Standard

The ACCC's approach to considering the substance of a remedy will differ on a case-by-case basis but generally the key consideration will be whether it will:

- eliminate the SLC or public detriment effectively;
- be effective, proportionate and capable of timely implementation and administration; and
- be capable of ongoing monitoring and enforcement by the ACCC.

As noted in **5.2 Parties' Ability to Negotiate Remedies**, the ACCC prefers structural remedies as they provide a relatively clear result with low monitoring and compliance requirements.

5.4 Negotiating Remedies With Authorities

See **5.1 Authorities' Ability to Prohibit or Interfere With Transactions**. The ACCC has the power to determine and impose conditions in a determination. This means that the ACCC has the discretion to determine the appropriate remedy rather than being confined to either accepting or rejecting those offered by the merger parties.

The ACCC may, through its determination, require conditions to be followed by the parties, or require parties to enter into an undertaking under section 87B of the Act, or a combination of both. Monitoring of and compliance with remedies is handled by the ACCC, and the ACCC may relevantly seek penalties for non-compliance, or, if the non-compliance is in relation to a section 87B undertaking, the ACCC may seek appropriate court orders.

5.5 Conditions and Timing for Divestitures

The ACCC is expected to generally consult with and seek submissions from third parties in relation to remedy offers and, where a divestiture is contemplated as part of the remedy, the consultation is likely to include potential purchasers. The ACCC may determine that an acquisition may proceed:

- with a condition either offered by the parties or enhanced by the ACCC;
- with a condition different to that offered by the parties;
- with a condition where no remedy offer has been made by the parties; or
- without any condition but subject to a separate section 87B undertaking.

Non-compliance with remedies or conditions is a contravention of the Act and exposes parties to significant penalties – including substantial civil penalties as already outlined, and a potential court order to the effect that the transaction is void.

5.6 Issuance of Decisions

The ACCC will issue a formal written decision to the parties, either permitting (with or without conditions) or prohibiting the transaction. A non-confidential version of each decision, including the ACCC's reasons and key facts, will be published on the ACCC's public register, with confidential information redacted. All notifiable mergers considered by the ACCC are listed on the public register, along with brief details of the parties, the transaction, affected products or services, and the review timeline. Tribunal review decisions are also published in full, with confidential information redacted.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

While there are no publicly available recent examples of foreign-to-foreign transactions cleared by the ACCC subject to undertakings (or the ACCC refusing clearance), there is no reason for the ACCC to treat foreign-to-foreign transactions differently, as long as there is a sufficient Australian nexus.

A more dated example is the merger between Thales (France) and Gemalto (Netherlands) which was cleared by the ACCC in 2019, subject to a combination of structural (divestiture of a certain part of their business) and behavioural (information firewalls for sensitive contracts) remedies.

Under the new regime that commenced on 1 January 2026, the ACCC continues to review foreign-to-foreign transactions that have a material effect on competition in Australia. Remedies may be required, or transactions may be prohibited, regardless of the location of the merging parties, if Australian markets are affected.

All such decisions are subject to the new regime's formal, mandatory and transparent processes.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

Ancillary restraints (eg, non-compete or non-solicit covenants limited in scope, duration and geography) are assessed under provisions that deal with cartel issues and other general anti-competitive agreements.

An exemption is provided in the Act for restraints in share or business sale contracts from contravening relevant cartel/anti-competitive agreement provisions of the Act only in so far as restraint is necessary for the protection of the purchaser in respect of the goodwill of the business to be acquired. The scope of this exemption remains largely untested.

However, the present regime has modified this absolute exemption such that the notification forms specifically require parties to identify any goodwill protection provision in the relevant sale agreements so the ACCC can consider such provision and, if necessary, declare in its determination that the statutory exception will not apply to that goodwill protection provision included in the sale agreement, on the basis that it is not necessary for the protection of the purchaser in respect of the goodwill of the business.

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation

7.1 Third-Party Rights

The ACCC invites submissions from third parties including from customers, suppliers, competitors, unions, and industry associations. Third parties may provide written or oral evidence, request confidentiality for sensitive information, and meet with the ACCC case team. The ACCC also routinely requests information from third parties for information that would support its review. Since the new regime commenced on 1 January 2026, third-party involvement has been formalised so that all notifiable mergers are listed on a public register, and the ACCC publicly invites submissions at key stages of the review. Third parties cannot compel the ACCC to prohibit or approve a transaction, but their views and evidence are given significant weight.

7.2 Contacting Third Parties

The ACCC commonly issues questionnaires, conducts phone interviews and holds industry round-tables. Proposed remedies are routinely market-tested with key stakeholders under confidentiality protocols.

7.3 Confidentiality

All notifiable mergers are listed on the ACCC's public acquisitions register from the time of notification, with the parties' names, a non-confidential transaction description, and key review dates. The ACCC also publishes key documents and its final determination (with reasons), subject to confidentiality.

Parties may request confidentiality over specific information (such as business secrets or commercially sensitive information/data). The ACCC will consider such requests and accept redactions or withhold publication if the claims are justified and the information is genuinely confidential.

7.4 Co-Operation With Other Jurisdictions

The ACCC co-operates with the NZCC, US DOJ/FTC, EC, CMA, Japan Fair Trade Commission (JFTC), Korea Fair Trade Commission (KFTC) and others under MOUs, and the International Competition Network (ICN) framework. It commonly exchanges agency-to-agency information subject to confidentiality waivers from the parties. In the absence of a waiver, information is shared only if permitted by law (eg, section 155AAA of the Competition and Consumer Act) and subject to confidentiality protections.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

With the introduction of the new regime, there is the option to apply for a limited merits review by the Tribunal of ACCC determinations. The Tribunal can affirm, vary or revoke the ACCC's determination, generally based on the material before the ACCC, although new

evidence may be permitted in certain circumstances. Decisions of the ACCC or the Tribunal remain subject to judicial review by the Federal Court on questions of law.

8.2 Typical Timeline for Appeals

Under the new regime, parties may apply to have an ACCC determination reviewed by the Tribunal within 14 calendar days of the ACCC's reasons for the determination being published in the acquisitions register. The Tribunal review must be completed within 90 days of the later of the last day on which an application for review could have been made or the day the applicant gives the Tribunal further information. As the present Tribunal review process is in its early days, there are no examples of successful appeals under the new regime as yet.

8.3 Ability of Third Parties to Appeal Clearance Decisions

Under the present regime, third parties dissatisfied with an ACCC determination may similarly apply to the Tribunal for a review of the ACCC's determination, provided that the Tribunal allows them to do so (which will turn on the level of "interest" of the third party, the efficient administration of the relevant laws, the prospects of success and any other matter that the Tribunal considers relevant). Again, as the present Tribunal review process is relatively new, there are no examples of successful appeals under the new regime as yet.

9. Foreign Direct Investment/Subsidies Review

9.1 Legislation and Filing Requirements

Australia operates a comprehensive, mandatory, suspensory foreign investment regime under the Foreign Acquisitions and Takeovers Act, administered by FIRB. Thresholds vary by sector, investor nationality and asset type; many sensitive sectors (media, telecoms, critical infrastructure, defence, land, agribusiness) require notification at any dollar value for foreign government investors, and above AUD0 or AUD347 million/AUD1.498 billion for private investors depending on treaty status.

There is currently no standalone "foreign subsidy" notification regime, but the Treasury is consulting on a possible transparency register for foreign-subsidised bids. FIRB filings are separate from merger control notifications, although the agencies co-ordinate closely and often align conditions.

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