



Law Council  
OF AUSTRALIA

*Business Law Section*

18 September 2025

Competition Taskforce  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [CompetitionTaskforce@treasury.gov.au](mailto:CompetitionTaskforce@treasury.gov.au)

Dear Sir/Madam,

### Merger Notification Waiver Form—Exposure Draft

1. The Competition and Consumer Law Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes this opportunity to engage with the Competition Taskforce (**Taskforce**) in response to the exposure draft (**Exposure Draft**) of the proposed Merger Notification Waiver Form (**waiver application form**).
2. For the reasons set out in section 0, the Committee makes the recommendations in section 0.

### Observations from Committee

3. The Committee is concerned that the information required by the waiver application form is too burdensome, and inconsistent with the purpose of the waiver process. As set out in the Explanatory Memorandum, the waiver process is “*intended to reduce the regulatory burden on businesses while ensuring that all acquisitions with potential competition concerns remain subject to the Commission’s review*”.<sup>1</sup>
4. In the context of the broad range of notifiable transactions, the waiver mechanism is a critical tool to ensure that the regulatory reach of the mandatory regime does not, via the imposition of additional costs time, deter legitimate business activity where there is no risk of harm.
5. The role of the waiver mechanism is also acknowledged by the ACCC, as intended:
  - ‘to be an efficient means of considering straightforward matters quickly and with a low burden on business’;<sup>2</sup>
  - to be a low burden on business;<sup>3</sup>
  - to be flexible;<sup>4</sup>

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<sup>1</sup> [EM at 2.74]

<sup>2</sup> ACCC, Merger process guidelines (Interim version) (30 June 2025) at [3.6]; see also Explanatory Memorandum, [Treasury Laws Amendment \(Mergers And Acquisitions Reform\) Bill 2024](#) at [1.34].

<sup>3</sup> ACCC, Merger process guidelines (Interim version) (30 June 2025) at [3.6]; see also Explanatory Memorandum, [Treasury Laws Amendment \(Mergers And Acquisitions Reform\) Bill 2024](#) at [2.74].

<sup>4</sup> ACCC, Merger process guidelines (Interim version) (30 June 2025) at [3.2]; see also Explanatory Memorandum, [Treasury Laws Amendment \(Mergers And Acquisitions Reform\) Bill 2024](#) at [2.74].

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- to provide a mechanism for acquisitions that ‘do not raise competition risks that need further investigation’;<sup>5</sup> and
  - to allow the ACCC to make decisions so that simple transactions that raise minimal concerns have a rapid and cheaper path to receive certainty.<sup>6</sup>
6. As the ACCC recognises, the types of acquisitions that will be facilitated by the notification waiver process are those that do not raise competition risks, or are unlikely to meet the monetary thresholds.<sup>7</sup>
  7. Given the wide and flexible role of the waiver process and form, we submit that it should be capable of being understood and completed by businesspeople without the need for legal advice and especially by competition law specialists. The current framing of the notification includes complex and difficult economic and legal concepts, legalistic language, and references that would not be able to be understood by a person who was not familiar with the regime and the legislation itself. This will undermine the waiver form’s effectiveness.
  8. We suggest that each question and each request for information in the form is framed by Treasury on a working assumption that it is being prepared by a businessperson with limited, if any, knowledge of the technical aspects of the regime and without specialist legal input. If this means that the form is not as comprehensive as is required, from time to time, the ACCC can request more information following initial engagement.
  9. In this context, while the Committee recognises the need for the ACCC to consider relevant facts related to the acquisition, as required in items 2 and 3, the waiver form should not require the detailed information requirements set out in items 6 and 7 of the proposed form relating to the requirement to describe all relevant markets and the shares in which the parties supply or potentially supply relevant goods or services. Market definitions and shares are highly complex legal and economic concepts. While recognising that the proposed form reduces the market share data from 3 years to one, waiver applicants would not typically have such information readily available; to be required to provide such detail where there is limited or no competitive overlap will add unjustifiable time and cost to applications and largely remove the ability of businesses to complete the application without significant input from specialist competition advisers, and (potentially) economists. This burden is at odds with the purpose of the waiver mechanism and risks deterring transactions that are benign and potentially welfare-enhancing while raising no competition risk.
  10. We note that, by virtue of section 51ABV(4) of the CCA, the Minister may by legislative instrument provide for review by the Tribunal of waiver determinations. The draft instrument has not made any provision for this, nor identified any requirements that the Commission must comply with under section 51ABV(2) beyond having regard to the items set out in section 51ABV(2)(b)(i)–(iv).
  11. Table 1 below compares the questions in both forms.
  12. There is an opportunity to make this process more efficient and we propose amendments to the form in section 0 below in that context.

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<sup>5</sup> ACCC, Merger process guidelines (Interim version) (30 June 2025) at [3.2].

<sup>6</sup> ACCC, [Regulatory reform opportunities: ACCC response](#) (1 August 2025) p16.

<sup>7</sup> ACCC, Merger process guidelines (Interim version) (30 June 2025) at [3.2].

## Recommendations from the Committee

13. The Committee considers that the waiver application form should be amended to better fit its regulatory purpose: that is for the efficient processing of straightforward transactions with a low burden to the business.
14. The Committee recommends:
  - sub-item 3(b) be amended to include an ‘Other’ category:  
Where there is no potential competitive overlap between the parties (ie they are not horizontal, vertical, conglomerate or business input transactions) it may be difficult for businesses to identify the response to this question. For example, where a Private Equity firm is acquiring a business in line with its investment mandate but has no related activities there should be an option for this to be indicated.
  - sub-item 3(f) be removed:  
At the time that the waiver is applied for, it is likely to be difficult to state with certainty all jurisdictions where filings will be made. Information on foreign filings should not be necessary for a straightforward acquisition that raises no competition concerns. This is not an explicit factor that the ACCC is required to take into account in its consideration;<sup>8</sup>
  - items 6 and 7 (regarding market definitions and market shares) be removed:  
All factual information relevant to the ACCC considering any possible competition concerns should be provided under items 2 and 3. Defining markets and providing market shares for all products and services “supplied or potentially supplied by the parties to the acquisition” is extremely burdensome and costly and should not be necessary for an acquisition that raises no competition concerns. If parties applying for a waiver wish to provide such information, to assist in explaining why they consider a waiver is appropriate, they should have the ability to provide such information voluntarily (e.g. in an optional free text field allowing parties to provide any other information which they consider relevant to the waiver application including information relevant to the factors that the ACCC must consider in making a waiver determination under section 51 ABV(2)).
  - an additional item be included to allow parties to identify where they consider an exemption to notification applies:  
The exemptions are technical and highly complex. In the absence of guidance from the ACCC as to the application of these, and in light of the consequences if the parties get the assessment wrong, parties may use the waiver form to confirm their understanding of the application of an exemption to their transaction. Suggested framing:

*‘Is the acquisition in a class of acquisitions which has been determined as exempt to the general circumstances in Division 2 of the Determination. If yes, provide brief reasons.’*

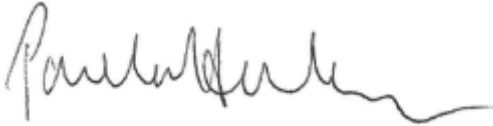
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<sup>8</sup> *Competition and Consumer Act 2010* (Cth) s 51ABV(2).

**Conclusion and further contact**

- 15. The Committee would be pleased to discuss any aspect of this submission.
- 16. Please contact the chair of the Committee Peta Stevenson [REDACTED] or deputy chair Simon Muys [REDACTED] if you would like to do so.

Yours faithfully



**Professor Pamela Hanrahan**  
**Chair**  
**Business Law Section**

## Annexure

**Table 1: Comparison between the short form and waiver application form**

Short form	Waiver application form	Comment/Additional explanation in draft waiver instrument
Item 1 (Parties)	Item 1 (Parties)	Identical.
Item 2 (Acquisition details)	Item 2 (Acquisition details)	<p>2. Provide a non-confidential plain language summary of the acquisition <del>(up to, including: 500 words), including:</del></p> <ul style="list-style-type: none"> <li>(a) a description of the parties, <del>(including their legal and, if different, their business or trading names); and</del></li> <li>(b) the class code and title for each of the parties to the acquisition, by reference to <u>the</u> ANZSIC; and</li> <li>(c) a description of the goods or services (including relevant brands) supplied by the parties, focussing on the goods and services most relevant to the acquisition and any vertical relationships or other overlaps between the parties; and</li> <li>(d) a description of the main industries in which the parties to the acquisition supply those goods and services; and</li> <li>(e) a description of what will be acquired and the process or transaction structure by which it will occur.</li> </ul> <p>Note <u>1</u>: The non-confidential summary may be published on the acquisitions register.</p> <p><u>Note 2: If the acquisition is a business input acquisition (see note 1 to question 3), such as vacant land, for the purposes of paragraph (c), focus on the goods or services that will be supplied by the principal party, and each connected entity of the principal party, in reliance on the acquired business input. Only a brief description of the goods and services supplied by the target is necessary in relation to a business input acquisition</u></p>
Item 3 (Additional acquisition details)	Item 3 (Additional acquisition details)	<p>3. Provide the following details in relation to the acquisition:</p> <ul style="list-style-type: none"> <li>(a) any further information required to give a complete response to question 2 <u>that could not be provided due to it being a plain language summary, or due to the information that could not be provided due to the word limit, or due to the information</u> <del>being confidential;</del></li> </ul>

Short form	Waiver application form	Comment/Additional explanation in draft waiver instrument
		<p>(b) the type of acquisition (for example, horizontal, vertical <del>or</del> conglomerate); <u>or business input</u>;</p> <p>(c) the commercial rationale for the acquisition;</p> <p>(d) 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, in Australian dollars (A\$), including its form and amount;</p> <p>(e) if applicable, the transaction value calculated for the purposes of the transaction value test;</p> <p>(f) 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).</p> <p>Note 1: For paragraph (b)—an acquisition is:</p> <p>(a) a <b>horizontal acquisition</b> if the parties to the acquisition are suppliers or buyers, or potential suppliers or buyers, of the same or similar goods or services in a market; and</p> <p>(b) a <b>vertical acquisition</b> if the parties to the acquisition engage, or potentially engage, in activities in relation to goods or services at different functional levels (upstream or downstream) of the same vertical supply chain; and</p> <p>(c) a <b>conglomerate acquisition</b> if the parties to the acquisition are suppliers or buyers, or potential suppliers or buyers, of adjacent goods or services; <del>and</del> <u>and</u></p> <p><u>(d) a business input acquisition if the parties to the acquisition are acquiring an asset that will be an input into their business activities (for example, purchasing or leasing land).</u></p> <p>Note 2: For paragraph (f)—if you consent to give a confidentiality waiver in relation to <u>the filings in</u> those other countries, provide signed confidentiality waiver document(s).</p>

Short form	Waiver application form	Comment/Additional explanation in draft waiver instrument
	Item 4 (Is a threshold satisfied?)	Required only in the waiver form
Item 4 (Financial data 3x12 months)		Not required in waiver form
	Item 5 (Does it fall within a class of acquisitions determined under section 51ABQ(1) of the Act for the purpose of paragraph 51ABO(b) of the Act?)	Required only in the waiver form
Item 5 (Creeping acquisition)		Not required in waiver form.
Item 6 (Market definition)	Item 6 (Market definition) <b>Recommendation is for deletion of this Item 6</b>	<p>6. For each relevant good or service supplied or potentially supplied by the parties to the acquisition:</p> <ul style="list-style-type: none"> <li>(a) describe the good or service and the geographic areas in Australia where it is supplied; and</li> <li>(b) identify other key suppliers of the good or service in Australia; and</li> <li>(c) provide a relevant market definition or definitions, for the good or service, together with a statement of the parties' reasons for identifying those definitions.</li> </ul> <p>Note 1: A good or service is a relevant good or service in relation to an acquisition if the parties to the acquisition:</p> <ul style="list-style-type: none"> <li>(a) supply, or potentially supply, goods or services that are the same as, or are substitutable for, the good or service in the same or a similar geographic area; or</li> </ul>

Short form	Waiver application form	Comment/Additional explanation in draft waiver instrument
		<p>(b) supply the good or service at different levels in the supply chain for that good or service; or</p> <p>(c) supply other goods or services that are <i>not</i> in the same market or in the same supply chain as the good or service but are related in some other way to that good or service.</p> <p>Example: Goods targeting similar customers or that may be purchased or supplied together.</p> <p><u>Note 2:</u> <u>If the acquisition is a business input acquisition, such as vacant land, the relevant goods and services are the goods or services that will be supplied by the principal party, and each connected entity of the principal party, in reliance on the acquired business input.</u></p> <p>Note <del>2</del><u>3</u>: In determining the relevant market definition or definitions, parties should choose the definition or definitions that are most appropriate for the good 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 revenue, volume, or capacities of the parties.</p> <p><del>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.</del></p>
Item 7 (Market share)	Item 7 (Market share) <b><i>Recommendation is for deletion of this Item 7</i></b>	7. For each relevant market definition, provide estimated market shares for each party to the acquisition and other key suppliers (calculated by reference to <del>revenue and, if available, volume and capacity</del> ) <u>for each of the 3 12-month revenue) for the most recent completed 12 month</u> financial reporting <del>periods</del> <u>period</u> prior <del>to the date this notification is made.</del> <u>Provide to the date this application is given to the Commission. Provide</u> details on how those estimates were made (including how revenue, <del>volume and was</del> <u>capacity were</u> calculated), including <del>any assumptions made. Provide a machine-readable</del> <u>any</u>

Short form	Waiver application form	Comment/Additional explanation in draft waiver instrument
		<p><u>assumptions made. Provide a machine-readable</u> file containing the underlying data used in the calculations.</p> <p>[Changes made in the template table to remove the need to provide market share based on volume and capacity]</p>
Item 8 (Competitor/customer contact)		Not required by waiver form.
Item 9 (Contracts and goodwill provisions)		Not required by waiver form.
Item 10 (Transaction documents)	Item 8 (transaction documents)	Identical.
Item 11 (Audited financial report)		Not required by waiver form.
Item 12 (Organisation chart)		Not required by waiver form.
Item 13 (Declaration)	Item 9 (Declaration)	<p><del>139.</del> An authorised person of the <del>notifying party of the acquisition</del><u>applicant</u> must complete the following declaration. If <u>the applicant is not the principal party to the acquisition, or if</u> there is more than one <del>notifying</del><u>principal</u> party, a separate declaration must be completed for <u>the applicant and</u> each <del>notifying</del><u>principal</u> party.</p>