Mandatory Merger Notification Regime

FACT SHEET

*HWLE Automotive Industry Group

AADA AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION

HWLE LAWYERS

1. Summary

1.1 Any merger or acquisition of shares or assets that meets the relevant notification thresholds and will be put into effect on or after 1 January 2026 will need to be notified to, and cleared by, the Australia Competition and Consumer Commission (**ACCC**) before it can be put into effect (**Mandatory Merger Notification Regime**).

1.2 Failure to comply with these requirements will mean the transaction is void and may also result in penalties of up to $50 million, three times the benefit of the illegal conduct or 30% of Australian group turnover.

1.3 The information below is provided as a high-level summary for the purposes of understanding the Mandatory Merger Notification Regime. For specific legal advice, we recommend contacting our office.

2. When is Notification Required?

2.1 Control Threshold for Share Acquisitions

A share purchase is not required to be notified if it does not result in the acquirer obtaining control over the target. 'Control' is the capacity to determine the outcome of decisions regarding the target's financial and operating policies, but it also includes joint control with an 'associate' and control by a special purpose vehicle.

2.2 Monetary Thresholds

Notification is compulsory for any acquisitions of shares or assets that will be put into effect on or after 1 January 2026 and meet one of the following monetary thresholds (except where a share purchase does not meet the control threshold or the acquisition is otherwise exempt from notification).

1. Acquisitions Resulting in Large or Larger Corporate Groups

(a) Combined Australian revenue of the merged group (i.e. purchaser and its connected entities, including the target) is at least $200 million; **AND**

(b) **EITHER:**

(i) the target has Australian revenue of at least $50 million;

(ii) the transaction value is $250 million or over; **OR**

(iii) cumulative Australian revenue of the target plus revenue associated with every other acquisition put into effect in the same industry by the acquirer group in the previous 3 years it at least $50 million.

2. Acquisitions By a Very Large Corporate Group

(a) The acquirer and its connected entities have Australian revenue of at least $500 million; **AND**

(b) **EITHER:**

(i) the target has Australian revenue of at least $10 million; **OR**

(ii) cumulative Australian revenue of the target plus revenue associated with every other acquisition put into effect in the same industry by the acquirer group in the previous 3 years it at least $10 million.

Note: 'small' acquisitions where Australian revenue is less than $2 million are excluded from cumulative calculation and notification requirements.

2.3 No 'Safe Harbour' for Smaller Acquisitions Which May Raise Competition Concerns

Importantly, acquisitions which do not satisfy the notification thresholds are still subject to the general prohibition on mergers or acquisitions which are likely to have the effect of substantially lessening competition in a market. Accordingly, it may be necessary in some cases to voluntarily notify an acquisition which does not meet the notification thresholds, but nonetheless may raise material competition concerns (e.g. where the acquisition occurs in a smaller but concentrated geographic market).

3. Pre-Notification Engagement

3.1 The ACCC recommends that parties engage with it prior to formally notifying an acquisition (i.e. pre-notification engagement). The nature and length of any pre-notification engagement will depend on the complexity of the transaction and the extent to which the transaction is likely to raise competition concerns.

4. Notifying an Acquisition

4.1 Notification Forms

There are two types of notification forms which prescribe the documents and information that must be provided when lodging a notification form. The ACCC has published guidance on when to use each form (which is based on market share thresholds), however in essence:

(a) the short form notification is more appropriate for straightforward acquisitions that are unlikely to raise competition risks; and

(b) the long form notification is more appropriate for acquisitions that may raise greater competition risks and / complexity.

These forms can be found on the ACCC website and may be submitted by email or via the ACCC online acquisition portal.

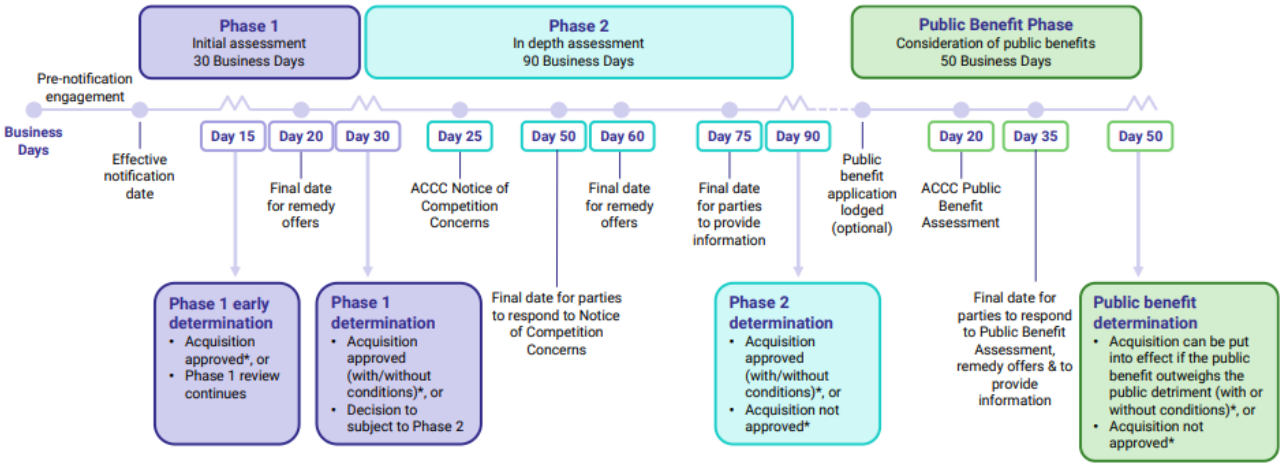
4.2 Waivers

From 1 January 2026, parties may apply for a non-confidential waiver from the notification requirements which, if granted, means that the acquisition does not need to be notified.

The ACCC's Interim Merger Process Guidelines indicate that the notification waiver process is intended to provide a flexible mechanism for businesses to seek relief from the notification requirement where acquisitions should not need to be notified including because, on the information provided, they do not raise competition risks that need further investigation. However, the notification waiver form and legislative guidance around when to use the notification waiver system are yet to be finalised.

4.3 Notification Process and Timeframe

Set out below is an extract from the ACCC's Interim Merger Process Guidelines, which summarises the notification process and timeframes. The ACCC has indicated that it expects that most notified acquisitions will be cleared during Phase 1. However, the timeframes set out below may understate the actual time required for the ACCC to assess a merger, including having regard to the time needed for pre-notification engagement and the ability for the ACCC to 'stop the clock' (e.g. where the ACCC requests additional information and the merger parties fail to respond within the requested timeframe).



*A person dissatisfied with an ACCC determination may apply to the Australian Competition Tribunal for review.

4.4 Filing fees

The table below sets out the current filing fees under the Mandatory Merger Notification Regime:

Stage	Fee
Pre-Notification Engagement	Nil
Waiver application	$8,300
Initial notification (i.e. Phase 1)	$56,800
Phase 2 (if necessary)	
a) Transactions valued at $50 million or less	$475,000
b) Transactions valued at more than $50 million but not more than $1 billion	$855,000
c) Transactions valued at more than $1 billion	$1,595,000
Public benefits application	$401,000

5. Further potential changes

Treasury recently foreshadowed further changes to the Mandatory Merger Notification Regime prior to 1 January 2026, including:

(a) new and wider exemptions for certain low-risk business activities;

(b) exempting leases and other interests in land in the ordinary course of business, unless subject to targeted notification requirements;

(c) simplifying the approach to monetary thresholds for asset acquisitions, including leases; and

(d) streamlining notification obligations around serial acquisitions.

However, the specifics of these changes are yet to be released.

6. HWLE Automotive Industry Group Contact Details

If you require any further information, please contact any of our Automotive Industry Group Partners below.

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