



Commencement of new merger control regime and interaction with the foreign investment framework

From 1 January 2026, a new mandatory merger control regime will commence for notifying the Australian Competition and Consumer Commission (ACCC) of proposed acquisitions that meet certain thresholds.

The Foreign Investment Portal is being updated to account for the mandatory notification to the ACCC.

While the foreign investment framework is independent of the ACCC's merger control regime, both frameworks require competition to be considered. Competition remains integral to national interest considerations for screening in the foreign investment framework under the *Foreign Acquisitions and Takeovers Act 1975*. Certain acquisitions will continue to be referred to the ACCC by Treasury. Treasury will review transactions in tandem with the ACCC under the respective frameworks.

Consistent with the Treasurer's May 2024 streamlining reforms¹, from 1 January 2026, information provided to the ACCC on competition issues by foreign merger parties will mostly be sufficient for the consideration of competition issues under the foreign investment framework. This will reduce regulatory duplication and streamline assessment of foreign investment submissions.

- Submissions under the foreign investment framework will require foreign investors to indicate, in the Foreign Investment Portal, whether their acquisition will be notified to the ACCC.
- For acquisitions involving foreign investors that are not required to be notified under the ACCC's merger control regime, Treasury may refer these acquisitions under the foreign investment framework to the ACCC for a competition assessment. If Treasury or the ACCC identifies potential competition issues, Treasury will progress the assessment in consultation with the ACCC. In those circumstances, investors may also wish to make a voluntary notification to the ACCC to assist with the assessment.

¹ <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/reforms-strengthen-australias-foreign-investment>

- For acquisitions involving foreign investors that are required to be notified under the ACCC's merger control regime, or where they choose to voluntarily notify the ACCC of acquisitions which are below the notification thresholds, a decision by the ACCC on a notification or a notification waiver application is required for the finalisation of the competition aspect of the assessment under the foreign investment framework. The national interest assessment of the acquisition under the foreign investment framework will continue to be progressed by Treasury while the ACCC conducts its assessment under the merger control regime.

Businesses can decide which application to submit first (that is, whether to notify their acquisition to the ACCC and then submit a foreign investment application, or do this simultaneously). While the timing and sequencing is ultimately up to the parties, factors that may be relevant in deciding when to engage with the ACCC and Treasury include:

- Whether the acquisition may raise competition concerns.
- Whether the acquisition may raise other national interest concerns. The expected completion date for the acquisition, noting that parties to notified acquisitions approved by the ACCC have up to 12 months from the date of the ACCC's determination to put the acquisition into effect before the notification becomes stale and re-notification to the ACCC is required.

What will change in the Foreign Investment Portal from 17 January 2026?

The questions on competition risks are similar to the existing questions in the Foreign Investment Portal.

To continue to minimise the burden on applicants, the information that foreign investors need to provide to Treasury via the Foreign Investment Portal has been calibrated according to whether the proposed acquisition is:

- Required to be notified to the ACCC or has been granted a notification waiver by the ACCC – parties should provide their reference number for their notification or waiver application and the outcome (when received) to Treasury as part of their foreign investment application. Businesses generally will only be required to provide information relating to the effects on competition to the ACCC and will not need to provide this information to Treasury.
- Not required to be notified to the ACCC and has been voluntarily notified to the ACCC – acquisitions that are voluntarily notified become subject to the requirements of the merger control regime. The ACCC will follow the same process as acquisitions that must be notified. Parties should provide their reference number for their notification or waiver application and the outcome (when received) to Treasury as part of their foreign investment application. Businesses generally will only be required to provide information relating to the effects on competition to the ACCC and will not need to provide this information to Treasury.
- Not required to be notified to the ACCC and has not been voluntarily notified to the ACCC – businesses may be asked to provide a base level of information relating to competition if they have interests in Australia, as part of screening under the *Foreign*

Acquisitions and Takeovers Act 1975 in the Foreign Investment Portal. This information will be provided to the ACCC by Treasury to enable the ACCC to provide a competition assessment of the acquisition.

Acquisitions that are below the notification thresholds that are not voluntarily notified to the ACCC are also subject to the section 50 of the *Competition and Consumer Act 2010*. To minimise the risk of delays, investors are encouraged to provide sufficient information on the likely competition effects of these transactions in any foreign investment applications.

If your acquisition is not required to be notified to the ACCC and has not been voluntarily notified to the ACCC, you will be required to complete the following questions in the Foreign Investment Portal:

- Do the investors (or any related entities) compete directly or indirectly with the target or operate upstream or downstream in any of the proposed target's supply chains?
- For each relevant product or service supplied or potentially supplied by the investors/ parties to the acquisition:
 - Describe the product or service and the geographical areas in Australia where it is supplied; and
 - Identify other key suppliers in Australia in the geographical areas identified above.
- Outline the likely effect of the proposed action(s) on competition (such as market shares).
- For each party (acquirer and target) to the acquisition (including any connected entities carrying on business in Australia), provide the total Australian revenue for the most recent 12-month financial reporting periods (in AUD \$).
 - This should include the following details ([spreadsheet for completion](#) can be found on the website):
 - : Entity name (including relationship to a party)
 - : 12-month period (including months and years covered)
 - : Australian revenue.

What will happen to foreign investment submissions lodged prior to the implementation of the ACCC's merger control regime?

- If a foreign investment submission was made prior to 1 January 2026 and the Investor has subsequently notified the ACCC under the merger control regime, the Investor should use the communications function available in the Foreign Investment Portal to advise Treasury that the proposed transaction has been notified to the ACCC.
- Parties should also provide Treasury with their ACCC reference number for their notification or waiver application and the outcome.

Enquiries

Further information is available on the Australian Competition & Consumer Commission website – [Merger reform | ACCC](#).