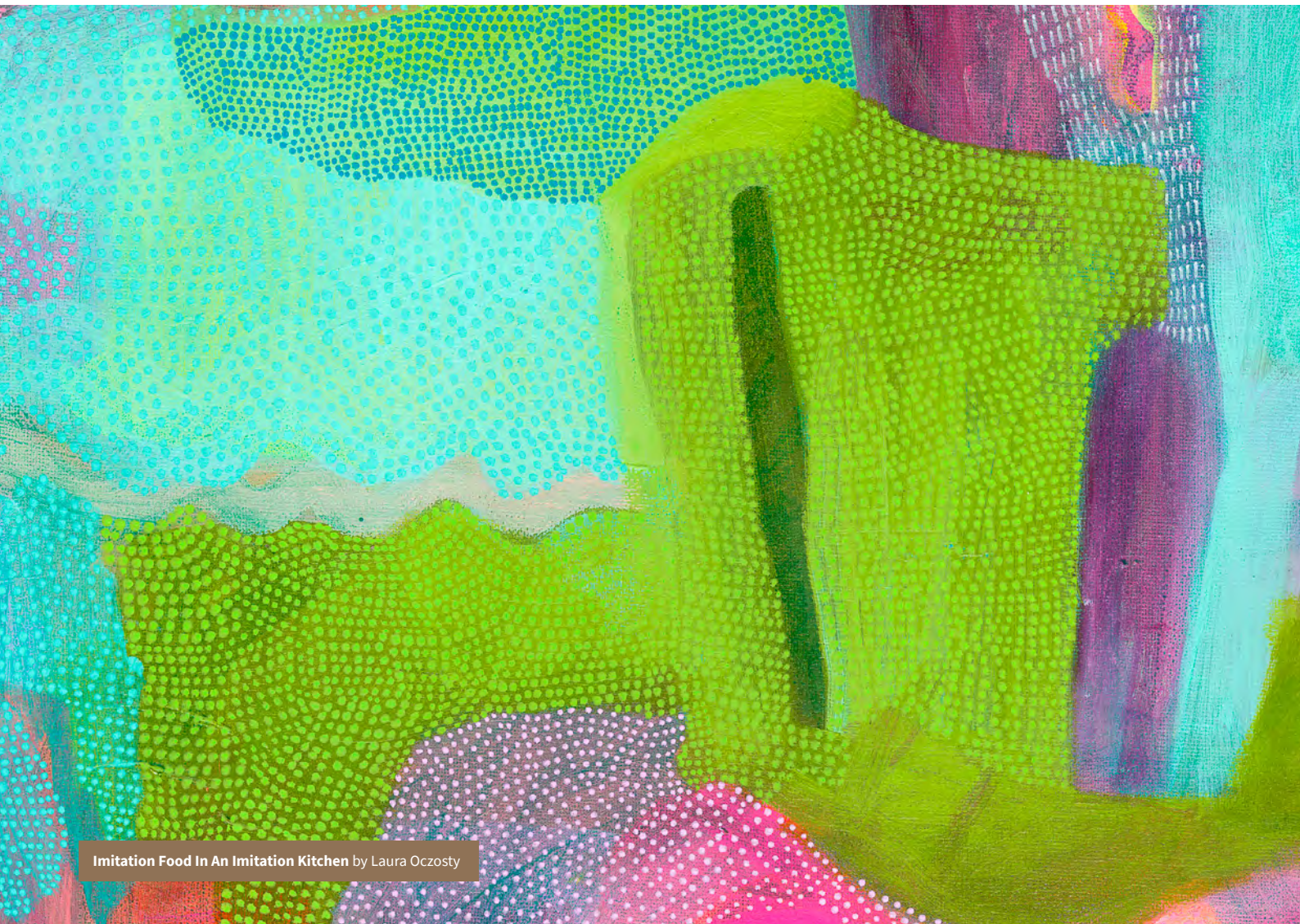


# IN PRIVATE

KWM M&A INSIGHTS | 2025



# GETTING SPONSORS IN SHAPE FOR AUSTRALIA'S NEW MERGER CLEARANCE REGIME

## NEW MERGER CONTROL REGIME IN AUSTRALIA

**From the beginning of next year, a new merger clearance regime will mean that larger scale financial sponsors will see most of their future transactions in Australia - including 'serial acquisitions' - likely require regulatory approval to proceed.<sup>1</sup>**

Under the new mandatory and suspensory regime, the ACCC must be notified of transactions that meet certain filing triggers - i.e. where the transaction is a 'notifiable acquisition', above a value threshold<sup>2</sup> or other specific industry threshold. These transactions must receive ACCC clearance before they can proceed. The change brings Australia into line with most foreign jurisdictions.

The regime also introduces new statutory timeframes, filing fees and penalties for failure to file and prescribed filing requirements.<sup>3</sup>

## WHAT DOES THIS MEAN FOR FINANCIAL SPONSORS?

Financial sponsors should think strategically and thoughtfully about efficiently engaging the ACCC under the new merger clearance regime to enable (at least for most of the non-contentious transactions) a smooth review process resulting in a quick and simple review process.<sup>4</sup>

Financial sponsors and their portfolio companies can also take steps to mitigate delay and completion risk by ensuring they have systems and processes in place to navigate the new regime when new deal opportunities arise.

The key to success is understanding pre-emptively what information and documents are required under the new regime and being conscious of the applicability of the transitional provisions in all upcoming acquisitions.

## What is needed for a filing?

The Treasury has released an exposure draft Ministerial Instrument which provides short and long forms of notification.<sup>5</sup> Merger parties will have the choice of making a short form notification or long form notification and are encouraged to engage with the ACCC regarding which form to adopt. Merger parties should use the 'simple' short form of notification where they do not expect the acquisition to raise competition concerns.

The table below summarises the required types of information and documents parties need to provide in a short form notification.<sup>6</sup>

The long form notification requires merger parties to provide significantly more information, data and documentation. Most critically, this includes board documents for the past 3 years that describe the rationale, assess or analyse the acquisition or assess or analyse the valuations of the target.<sup>7</sup> Both forms will require an authorised person to complete a declaration.

1. For a more detailed overview of the draft ministerial instrument regarding notification thresholds, see our previous article here: [https://www.kwm.com/au/en/insights/latest-thinking/instrumental-changes-treasury-consults-on-draft-notification-thresholds-instrument.html?utm\\_campaign=20250328%20INSIGHT%20GLOBAL%20CA%20merger%20reform%20process%20guidance&utm\\_medium=email&utm\\_source=Eloqua](https://www.kwm.com/au/en/insights/latest-thinking/instrumental-changes-treasury-consults-on-draft-notification-thresholds-instrument.html?utm_campaign=20250328%20INSIGHT%20GLOBAL%20CA%20merger%20reform%20process%20guidance&utm_medium=email&utm_source=Eloqua).

2. For a more detailed overview of the new regime, see our previous article here: <https://www.kwm.com/au/en/insights/latest-thinking/the-eagle-has-landed-new-merger-reform-bill-introduced-into-parliament-today.html>.

3. For a more detailed overview of the new regime, see our previous article here: <https://www.kwm.com/au/en/insights/topic/australian-merger-control-a-new-regime.html>.

4. The ACCC has provided greater timing certainty for some deals, ranging from a 15 business-day fast track approval process for deals that do not raise competition concerns, to a 90 business-day timeframe for more complicated deals.

5. See Part 6 of Competition and Consumer (Notification of Acquisitions) Determination 2025 - Exposure Draft at <https://treasury.gov.au/consultation/c2025-644619>.

6. For further detail, see Division 2 of Part 6 of Competition and Consumer (Notification of Acquisitions) Determination 2025 - Exposure Draft at <https://treasury.gov.au/sites/default/files/2025-03/c2025-644619-exposure-draft.pdf>.

7. For further detail, see Division 3 of Part 6 of Competition and Consumer (Notification of Acquisitions) Determination 2025 - Exposure Draft at <https://treasury.gov.au/sites/default/files/2025-03/c2025-644619-exposure-draft.pdf>.

| CATEGORY                                  | INFORMATION/DOCUMENTS TO BE PROVIDED  |
|---|---|
| <b>Parties to the acquisition</b>         | Party identification details, including ABN and contact details.  |
| <b>Details of acquisition</b>             | Non-confidential summary of the acquisition, including party descriptions, products/services supplied and transaction process and structure details.<br>Commercial rationale and transaction value of the acquisition, including each party's GST turnover in the three years leading up to the notification.   |
| <b>Past relevant acquisitions</b>         | Details of acquisitions made by the parties in the three years prior to the notification.   |
| <b>Competitive effects of acquisition</b> | Information regarding the relevant products/services supplied by parties to the acquisition, including details of geographical areas, key suppliers and relevant market definition. <sup>8</sup><br>For each party (including connected entities and key suppliers) to the acquisition, the estimated market shares for the three years prior to the acquisition. |
| <b>Competitor and customer contracts</b>  | Contact details for certain competitors and customers for each relevant product/service.  |
| <b>Additional information</b>             | Information regarding any goodwill protection provisions in the sale documents and/or a certificate of transfer (if relevant).<br>Any other information or documents that would reasonably be considered by an objective third party to be relevant to the Commission's assessment of the acquisition.  |
| <b>Further documents</b>                  | Most final versions of all transaction documents, financial reports, income statements relevant to the supply of relevant products/services and diagrams/charts relating to the organisation and transaction structures.  |
| <b>Declaration</b>                        | Declaration by an authorised person of each notifying party.  |

8. A product or service is 'relevant' if the parties to the acquisition supply, or potentially supply, similar products or services in the same or a similar geographical area. It is also 'relevant' if the parties have a supply relationship, or where the products or services are related in some other way.



### Will the transitional provisions apply to my deal?<sup>9</sup>

If a transaction closes after 31 December 2025, the new mandatory merger laws will apply.

Under the transitional provisions, deals that receive ACCC clearance under the current regime between 1 July to 31 December 2025 can rely on that clearance for 12 months post-clearance (i.e. without seeking a new clearance under the new mandatory regime).

However, if ACCC clearance is not received by 31 December 2025, the deal will need to be cleared under the new regime.

- The ACCC has given guidance that any clearance applications received after 'early October' – even simple cases with no material competition issues – risk not obtaining clearance before 31 December 2025, given the anticipated backlog at the end of the year. For deals that raise substantive competition issues, this 'deadline' is materially earlier.
- To address this issue, parties are able to seek clearance under the new regime from 1 July 2025 (i.e., the current and new regimes will operate in parallel in the last 6 months of the year).

The ACCC has confirmed that deals which receive ACCC clearance before 1 July 2025 will require an updated informal view from the ACCC if they will not complete by 31 December 2025. If the ACCC issues an updated view, there is no need to notify under the new regime, provided the deal completes within 12 months of the clearance letter. Without this updated view, parties will need to re-file or apply for a waiver after 1 January 2026.

9. For more information about the transitional regime, see our previous article here: <https://www.kwm.com/au/en/insights/latest-thinking/merger-clearance-reform-accc-transitional-guidelines-released.html#takeaways>.





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