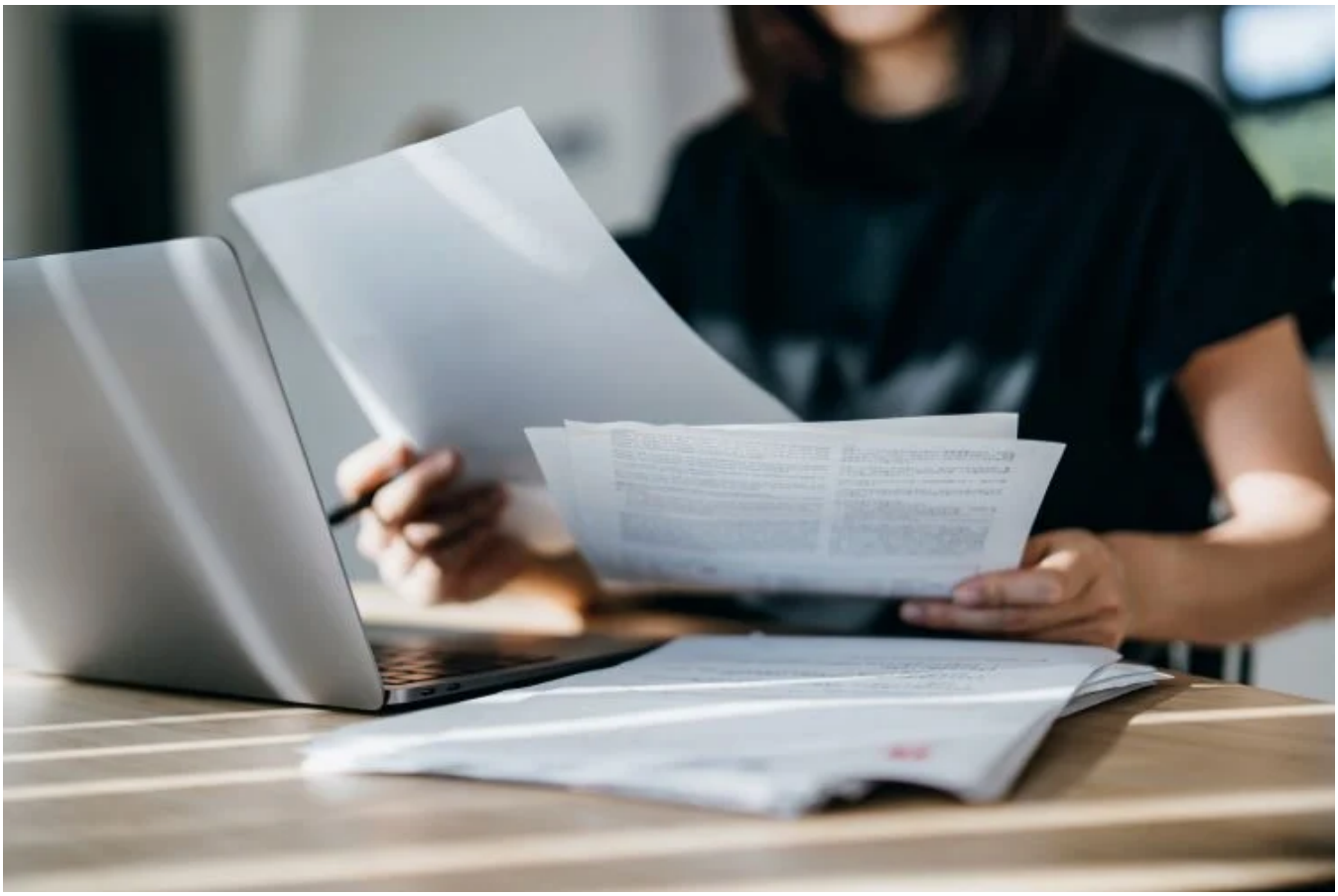
# New mandatory merger control regime

**By Fordham**

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In a landmark legislative move, the Australian Parliament has enacted the Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024, introducing the most significant overhaul of the nation's merger regulations in five decades. Passed on November 28, 2024, and receiving assent on December 10, 2024, this reform aims to strengthen competition, enhance market transparency, and prevent anti-competitive consolidations.

### Implementation timeline

The new merger regime is set to take effect on January 1, 2026, which applies to all deals completing on this date onwards. However, entities will have the option to voluntarily comply with the new notification requirements starting from July 1, 2025. This transitional period allows dealers to adapt to the new regulations ahead of mandatory enforcement.

### Mandatory notification requirements

Dealers will soon be obligated to notify the Australian Competition and Consumer Commission (ACCC) of proposed acquisitions that meet specific financial thresholds. Refer to table below for the type of transactions that will require ACCC clearance.

| **Acquisitions 'resulting' in large or larger corporate groups** | **Acquisitions 'by' very large corporate groups** |
|---|---|
| **1. Combined Australian revenue of acquirer and target is at least $200 million; AND**<br>**2. Any of the below:**<br>• **the target has Australian revenue of at least $50 million; OR**<br>• **the global transaction value is at least $250 million; OR**<br>• **the cumulative Australian revenue from the target and any similar acquisitions in the last three years is at least $50 million.** | **1. Acquirer has Australian revenue of at least $500 million; AND**<br>**2. Either of the below:**<br>• **the target has revenue of at least $10 million; OR**<br>• **the cumulative Australian revenue from the target and any similar acquisitions in the last three years is at least $10 million.** |

### Waivers and exemptions

Exemptions apply to specific types of transactions, including internal restructures, acquisitions made in the ordinary course of business, and certain transactions involving land or debt instruments.

From 1 January 2026, parties to an acquisition will be able to seek a waiver from notification and if granted by the ACCC, notification will not be required. The legislative instrument

relating to the waiver process has not yet been finalised and further guidance from treasury is expected in the coming months.

**Enhanced ACCC authority**

The ACCC will be empowered to block deals if it "reasonably suspects" they may lessen competition, a shift from the previous requirement of proving a "real chance" of reduced competition. This stance will aim to prevent anti-competitive consolidations that could harm consumers and the economy.

**Consequences of non-compliance**

The regime is both mandatory and suspensory, meaning transactions cannot proceed without prior ACCC approval. Completing a qualifying deal without such approval may render the acquisition void and expose the parties to significant civil penalties, up to the greater of:

- $50 million for corporations or $2.5 million for individuals;
- Three times the value of any benefit gained; or
- For corporations, 30% of annual turnover.

This reform represents a major shift in Australia's competition framework. Whilst these changes aim to safeguard market fairness and consumer interests, they also raise concerns about regulatory burdens and potential delays relating to dealership transactions.

The motor industry, given its frequent mergers and acquisitions, and traditionally high turnovers, will likely experience increased regulatory oversight, requiring ACCC approval for transactions that meet financial thresholds.

With regulatory compliance becoming a key factor in dealership transactions, dealers must adopt a proactive approach, ensuring strategic planning and early engagement with the ACCC to mitigate risks to ensure smooth deal approvals.

When considering your next acquisition, early engagement with your Fordham Motor Dealer Services Partner will be key to navigate through this new regulatory framework which has potential to lengthen settlement timelines and increase the associated costs of acquisition.

## Talk to us today

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