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# Early-stage economic analysis is increasingly valuable for ACCC merger notifications


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The changes to Australia's merger notification regime substantially expand the scope for early-stage economic analysis to support more effective and efficient filings for merging parties and their legal advisers. Economic analysis can help determine whether filings are necessary, that filings contain only the required level of detail, and that the economic data and analysis required for filings is complete, accurate, and helpful to the Australian Competition and Consumer Commission (ACCC). In this brief, we identify areas where early-stage economic analysis is likely to be particularly valuable in navigating the new notification process.


## INTRODUCTION

On 1 January 2026, a new **mandatory merger control regime** will come into effect in Australia.[1] The new regime changes Australia's merger control model from one with voluntary notification and judicial enforcement to a primarily administrative one where parties to mergers that meet certain thresholds or characteristics will need to notify the ACCC and wait for approval before the merger can proceed.[2]

Mergers that meet the notification thresholds can be notified on a **short form** or a **long form**.[3] The ACCC explains that the long form is for acquisitions that may raise greater competition risks and/or complexity. Correspondingly, the long form has far more onerous requirements in the amount of information and level of detail the parties need to provide, including of an economic nature. If the merging parties notify on the short form but the ACCC subsequently determines that they should have notified on the long form, there could be significant delays to obtaining clearance. Equally, using the long form to notify a merger that could have been notified on the short form would involve potentially substantial unnecessary effort and information gathering.

> *The changes to Australia's merger notification regime substantially expand the scope for early-stage economic analysis to support more effective and efficient filings.*

In this brief, we identify the areas where economic analysis can inform the decision on whether to file on the short or long form (Section 2), then explain where economic analysis can support the completion of the short form (Section 3) and the long form (Section 4). For the sake of brevity, we do not go into detail on the specific types of analyses that could be performed or their potential benefits or drawbacks. We have also not addressed the topics of remedies or the application for public benefit form, which are options available to merging parties if the ACCC does not approve an acquisition or approves it with conditions, nor have we addressed appeals in this brief, although there is likely a crucial role for economic analysis in relation to all of those aspects of the process.[4] Our assessment reflects the ACCC's guidance, although there is naturally some uncertainly about how it will be implemented, which will also likely evolve as practice under the new regime evolves.

## ASSESSING WHETHER TO FILE ON THE SHORT OR LONG FORM

Determining if a short or long form notification is needed involves (a) **identifying the current and potential overlaps** between the parties' offerings (i.e. whether horizontal, vertical and/or conglomerate); (b) **identifying candidate markets** in which any relevant (i.e. overlapping) offerings are supplied; and (c) **calculating the parties' market shares** in those candidate markets and establishing if certain thresholds apply and are exceeded, depending on the characteristics of the merger and nature of the overlaps.

The long form is needed when the market shares of the parties exceed certain thresholds, or even if the thresholds are not met, when (a) the merger involves '**a vigorous and effective competitor**' (i.e. a 'maverick') or (b) the merger involves acquisition of a firm '**developing a significant product**' in a market where there is a current or potential horizontal overlap between the parties. Economic analysis can help with each of the assessments required to determine which form to use:

- **Identifying overlaps**: In some cases, the presence and nature of overlaps between the parties' offerings may not be obvious, such as: (a) where the parties do not currently supply the same groups of customers or areas but could and would do so in response to a change in prices or other market conditions (i.e. horizontal overlaps) or (b) where one of the parties competes with a supplier/customer of the other party but the parties themselves are not in a customer-supplier relationship (i.e. vertical overlaps). Economic analysis can help identify the relevant overlaps and also rule out overlaps.

- **Market definition**: Defining the relevant markets in which the parties' offerings compete is a necessary step for calculating market shares. Market definition also provides the frame of reference for analysing the competitive effects of the merger. At the notification stage, parties are required to provide both a statement of reasons for the definitions they have applied and provide supporting evidence for those reasons. Defining markets is an inherently economic exercise, based on an analysis of customer substitution between products or services.[5]

- **Market shares**: Correctly estimating market shares is, in the vast majority of cases, the starting point for a competitive effects analysis. As the guidance itself notes, in many cases, it will not be straightforward to estimate shares, for example, because of a lack of data or uncertainty about the appropriate metrics to use to measure shares. Economic analysis can be pivotal for ensuring accurate and robust estimates of market shares.

- **Mavericks and potential entrants**: The ACCC's merger assessment guidance points to various factors that will be considered when identifying whether a merger involves the acquisition of a maverick. For example, aggressive pricing behaviour by the target, service levels, past and expected innovation, and other non-price competitive efforts from the target. Additionally, identifying whether a merger involves a firm developing a significant product or service in a market where there is a current or potential horizontal overlap between the parties involves potentially complex, forward-looking considerations for which economic analysis may be critical.

- **Pre-notification engagement**: Notably, the ACCC has indicated that it is open to pre-notification engagement with parties to help them decide which form to complete and what areas of focus, information, and data are likely to be most relevant to assessing the merger.[6]

## NOTIFYING ON THE SHORT FORM[7]

The areas where economic analysis is likely to be helpful for completing a short form notification are mostly the same as for determining which form to notify on, i.e. **identifying overlaps** (3b) between the parties and the nature of those overlaps, **identifying the candidate markets** (6b) within or between which those overlaps occur, and **estimating market shares** (7) of both parties and other key suppliers.

In addition to these, other areas where economic analysis is likely be useful for completing the form and/or identifying areas of potential concern where the parties and their advisers may want to develop and deploy advocacy include the parts of the form requesting details on:

- **Commercial rationale** (3c): Economic analysis can help ensure the claimed commercial rationale is consistent with the approach to competitive effects analysis, does not suggest a theory of competitive harm (e.g. a rationale predicated on increasing price), and ideally identifies and is in line with any pro-competitive/efficiency benefits that may be claimed at a later stage in a public benefits application.[8]

- **Related filings in other countries** (3f): Economic support can help ensure consistency of the arguments and evidence across jurisdictions and that arguments are tailored to the particular circumstances in each jurisdiction. This may be relevant where competitive dynamics differ across geographies and thus different approaches are necessary and valid.

- **Revenues** (4): Economic analysis can help ensure that any submissions of revenue data are consistent with the market share analysis or that projections are consistent with evidence on counterfactual and/or competitive effects analysis (e.g. on barriers to entry).

- **Past relevant acquisitions** (5): Economic analysis can help identify potential concerns or benefits (e.g. for economies of scale, investment, or innovation) from the pattern of past acquisitions and help identify any acquisitions that can be ignored for the purposes of this query because they do not relate to the same/substitutable/otherwise competitive goods or services.

- **Competitive effects assessment** (6): For the short form, this section is limited to the market definition and market share exercises (including the identification of key suppliers and their estimated market shares), but it does require a statement of the parties' reasons for these definitions and shares, for which economic analysis is likely to be relevant.

- **Competitor and customer contacts** (8): Economic support can make production of this information more efficient by extracting it from sales data used for the revenue and market share analyses and help ensure that competitors identified are consistent with the market shares. The form asks for the top five 'closest' competitors to be identified – or customers, in the case of vertically related markets.

> *Economic analysis can help determine whether filings are necessary, that filings contain only the required level of detail, and that the economic data and analysis required for filings is complete, accurate, and helpful to the ACCC.*

## NOTIFYING ON THE LONG FORM[9]

The long form is much more onerous than the short form and involves substantially greater need for economic input. In addition to requirements in common with the short form, the main part of the long form also asks the parties to provide information on the following areas where economic analysis is likely to be helpful:

- **Existing/proposed commercial relationships between the parties** (4): This section relates to overlaps and can be a crucial determinant of the competitive effects of the merger. Economic analysis can be essential for explaining why a merger is non-problematic or beneficial for competition relative to existing or potential contractual arrangements.

- **Non-controlling shareholdings or cross-directorships** (7d): In addition to helping identify when such shareholdings or cross-directorships may involve goods or services that are the same or similar, economic analysis can help identify potential concerns arising from these relationships (e.g. from information exchanges or alignment of incentives).

- **Barriers to entry** (9–11): This requires detailed information on episodes of actual entry during the past three years and anticipated future entry (9), as well as exits in the past three years (10) from the relevant markets. In addition, the form asks for detailed analysis of barriers to entry (11). All of these are issues for which economic analysis is likely to be crucial.

- **Document requests** (16–21): This requires the provision of a large and varied set of documents relating to issues identified above as ones where economic input is likely to be relevant, including on: rationale, valuation, competitive conditions, market shares, etc. Economic support can help analyse the extent to which these documents are helpful for and consistent with planned submissions and identify any risks.

Finally, the form includes additional queries in Appendices A, B and C that relate to horizontal, vertical and conglomerate overlaps, respectively. These appendices are likely to require detailed and potentially quite sophisticated economic analysis. A full discussion of the relevant economic analyses is beyond the scope of this brief, but we summarise the requests under each appendix below. More than one appendix may be relevant for a given merger.

- **Horizontal acquisitions** (Appendix A): This requires a description of how competition works for each relevant horizontally overlapping product or service, along with information on the **nature of competition**, **closeness of competition, product differentiation, price formation** and extent of **price discrimination, switching costs,** detailed **win/loss** and/or **switching analysis,** and **bidding/tender data** and analysis.

- **Vertical acquisitions** (Appendix B): This requires detailed information and evidence on whether the merged entity would have the **ability and incentive to engage in input or customer foreclosure**.

- **Conglomerate acquisitions** (Appendix C): This requires information and evidence on whether the merged firm would be in a position to **foreclose competitors**.

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## ENDNOTES

[1] Until 31 December 2025, there is a transition phase during which merger parties can notify on a voluntary basis under the new regime. (*See* https://www.accc.gov.au/business/mergers-and-acquisitions/merger-reform and https://www.accc.gov.au/about-us/publications/merger-assessment-guidelines)

[2] The thresholds are primarily based on the combined Australian turnover of the parties, with the potential for some additional specific thresholds and requirements depending on the characteristics of the merger. We do not comment further on these thresholds or characteristics in this brief, though note that determining whether they apply may require economic analysis. (*See* https://www.legislation.gov.au/F2025L00753/asmade/text)

[3] *See* guidance: https://www.accc.gov.au/system/files/merger%20control-regime-guidance-long-notification-form.pdf, the short form: https://www.accc.gov.au/system/files/notification-proposed-acquisition-short-form-july-2025.pdf, and the long form: https://www.accc.gov.au/system/files/notification-proposed-acquisition-long-form-july-2025.pdf.

[4] If the ACCC does not approve an acquisition or approves it with conditions, businesses have the option to apply for approval based on sufficient **public benefits**. Merger parties also have the option to offer **remedies** to the ACCC during its Phase 1 and/or Phase 2 reviews. Notified acquisitions are initially assessed in 'Phase 1' review that can last up thirty business days. If the ACCC considers that the merger could be likely to substantially lessen competition, it may decide that a further in-depth 'Phase 2' review is required, which can last up to ninety business days. If the merger parties (or third parties in some circumstances) are dissatisfied with an ACCC merger decision, they may apply to the Competition Tribunal for **review** of the decision. (*See* https://www.accc.gov.au/system/files/merger-control-regime-process-quick-guide-for-business.pdf)

[5] The guidance and forms note that, when calculating market shares, the parties should select the market definition they consider most appropriate for the good or service but should also consider the market definition that would give rise to the largest market share or largest increment in market share.

[6] *See* discussion: https://www.accc.gov.au/business/mergers-and-acquisitions/merger-control-regime and pre-notification engagement request form: https://www.accc.gov.au/system/files/notification-proposed-acquisition-pre-notification-engagement-request-july-2025.pdf.

[7] Numbers in parentheses in this section are references to the section of the short form to which the topic relates.

[8] Similar considerations may also apply to transaction value (3d, e), i.e. identifying any potential concerns that may arise based on the value, even if calculating the relevant values themselves is a straightforward matter.

[9] Numbers in parentheses in this section are references to the section of the long form to which the topic relates.