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M & A

2024

IN
THE
CITY

MERGER CLEARANCE REFORMS - WHAT YOU NEED TO KNOW

AUSTRALIAN MERGER CLEARANCE REFORM

- **Existing informal process and merger authorisation regime to be replaced by new mandatory and suspensory clearance regime** with significant changes including to the legal test and appeal process
- Proposed by the Government **to commence January 2026**
- **Thresholds for notification yet to be set:** consultation ongoing

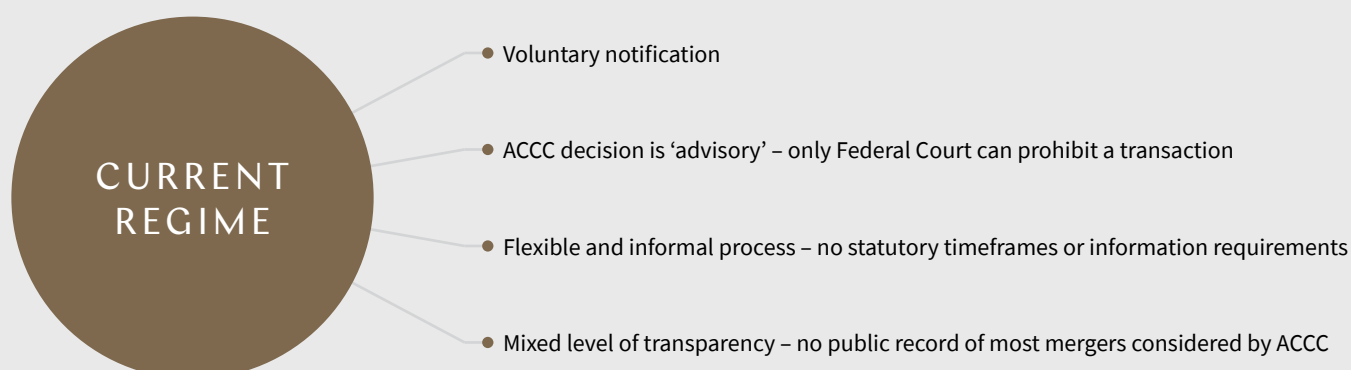
IMPACT ON M&A

The reforms will impact deals that don't currently require ACCC clearance – but will also change the landscape for deals that would go to the ACCC in the current regime







Current scenario	Impact of reforms
Deal has no or minimal competition impacts – no ACCC scrutiny under current regime	<ul style="list-style-type: none">• ACCC clearance required where deal value/ turnover/ market share thresholds are met, regardless of competition impacts – so more deals will be notified to and require ACCC clearance compared to current situation• More certainty over which deals will require ACCC clearance• More certainty on the timeframe for ACCC clearance for 'straightforward' clearance applications through envisaged fast track process
Deal would likely go to the ACCC under current regime	<ul style="list-style-type: none">• ACCC now has power to block mergers without taking Court action• Appeals of ACCC decisions may become common – as Competition Tribunal process cheaper and quicker compared to existing Court process• Potentially greater certainty of timing for ACCC review than current system – but we could still see extended processes for complex matters (see key unknowns)

DETAILS OF REFORMS

The key changes to merger clearance in the proposed new regime include:




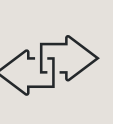




NEW REGIME

 <p>Obligation to get ACCC clearance</p>	<p>Mandatory: deals above specified thresholds cannot complete until ACCC provides clearance</p>	 <p>Timing</p>	<p>Fast track: 15 days Phase 1: 30 days* Phase 2: +90 days* Public benefit submission: +50 days* Tribunal: 60 days <i>*Reality will be longer for complex cases - see 'key unknowns' below.</i></p>
 <p>Decision Maker</p>	<p>ACCC has legal power to prohibit merger – no longer up to the Federal Court</p>	 <p>Legal Test</p>	<p>To block: ACCC must have reasonable belief that merger is likely to substantially lessen competition (which will include strengthening/ entrenching market power) and no net public benefits</p>
 <p>Fees + Confidentiality</p>	<p>Scaled to complexity and risk. Indicative range of \$50,000-100,000 No confidential process once notification made to ACCC: all mergers put on ACCC register</p>	 <p>Appeal</p>	<p>Limited merits review to Australian Competition Tribunal</p>



KEY UNKNOWNNS

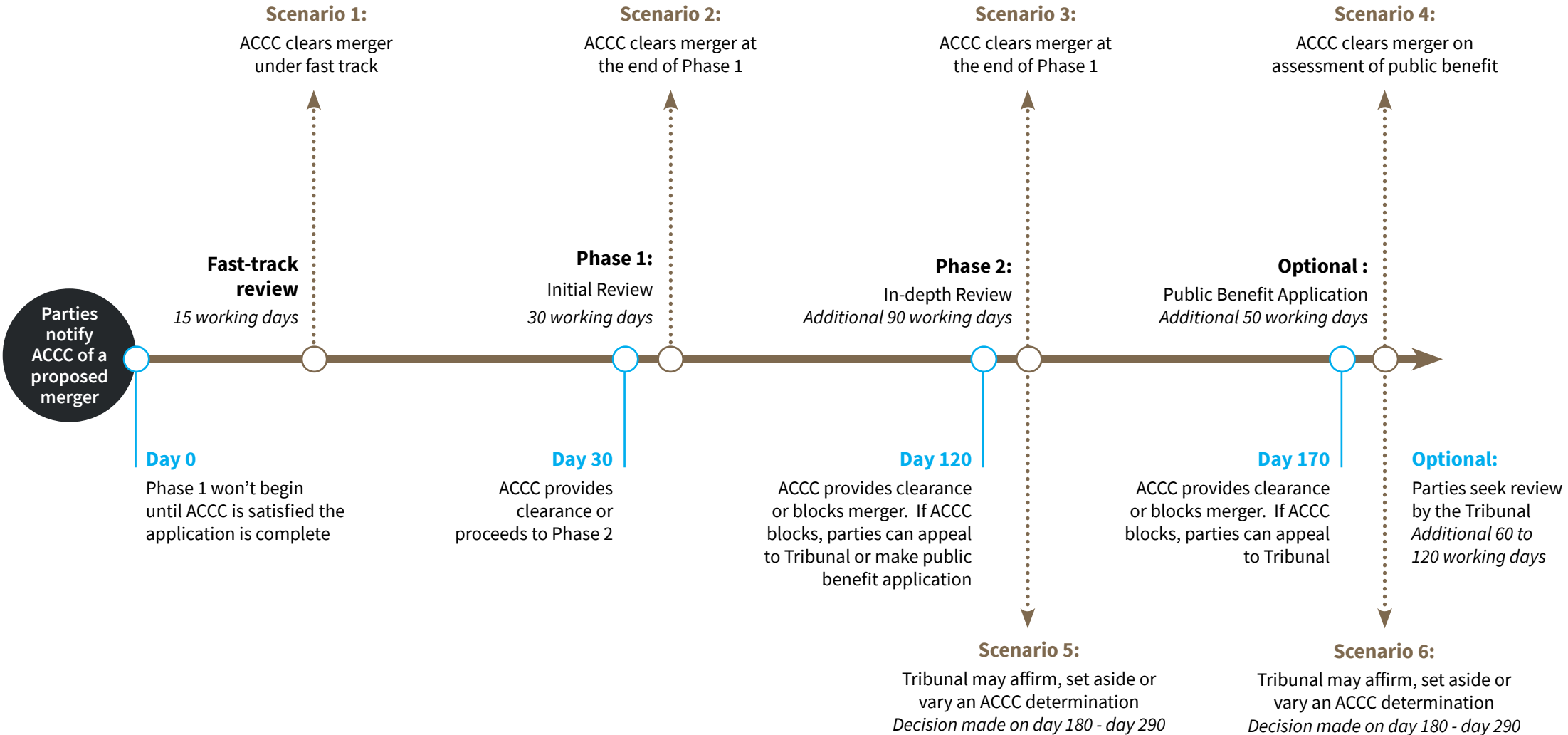
					
<p>Interaction with FIRB</p>	<p>Notification Thresholds</p>	<p>Transitional arrangements (deals signed in the lead up to January 2026)</p>	<p>Circumstances in which ACCC can 'stop and start the clock' for the timeframes</p>	<p>Timing for public takeovers</p>	<p>Application to minority interests and joint ventures</p>

If you would like to discuss any aspect of the merger reform and what this means for your business - Please reach out to our author **Christopher Kok**, or another of our **competition partners**.



MERGER CLEARANCE REFORM:

New clearance timeline





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