

# EXPOSURE DRAFT

## **EXPOSURE DRAFT EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Minister for Productivity, Competition, Charities and Treasury and Parliamentary Secretary to the Treasurer**

#### *Competition and Consumer Act 2010*

#### *Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025: Amendments relating to notification waiver applications*

The *Competition and Consumer (Notification of Acquisitions) Determination 2025* (Principal Determination) is a legislative instrument made under the *Competition and Consumer Act 2010* (CCA).

The *Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025: Amendments relating to notification waiver applications* (Amendment Determination) inserts an application for notification waiver form (waiver application form) into the Principal Determination.

The waiver application form establishes upfront information requirements for notification waivers. This ensures that an applicant provides relevant information to facilitate the Australian Competition and Consumer Commission (the Commission) in carrying out an efficient and effective assessment of an acquisition.

The Amendment Determination adds ‘Division 5—Application for notification waiver’ to Part 6. This new Division sets out the requirements for the application for notification waiver form. An application for a notification waiver must be made in accordance with these requirements (see subsection 51ABU(2) of the CCA).

Two explanatory notes are included. The first notes that guidance material for completing the form is available on the Commission’s website. The second notes that a notification waiver application must be accompanied by a fee determined under subsection 7-50(1) of the Principal Determination.

There are nine items in the form that require responses from the party submitting the notification waiver application (applicant).

#### *Item 1 – Parties to the acquisition*

All references to a ‘party to the acquisition’ in this Division are references to each principal party of the acquisition, the target of the acquisition, and each connected entity of the principal party and target, unless the contrary intention is stated.

This item requires that information about each party to the acquisition, such as party name, identifying number if applicable (for example, ABN, ACN or equivalent or unique identifier), and contact details be provided.

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### *Items 2 and 3 – Details of acquisition*

Item 2 requires the applicant to provide a non-confidential summary of the acquisition, which Note 1 to item 2 explains may be published on the acquisitions register. There are five paragraphs that need to be addressed for this item – listed (a) to (e).

Paragraph 2(b) must be answered by providing relevant ANZSIC references. The applicant may also answer paragraph 2(d) by providing relevant ANZSIC references.

- ANZSIC is the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006 (1292.0) published by the Australian Statistician. It is a standard classification developed for use in Australia and New Zealand.
- At the time the Amendment Determination was registered, this document was freely available on the Australian Bureau of Statistics' (ABS) website (<http://www.abs.gov.au>). ANZSIC is used as a standard means of classifying business units into industry sectors.
- The applicant can search the ANZSIC by keyword on the ABS' website to find ANZSIC references and their activity descriptions. General classification principles, methods and issues are outlined in the above document. The basic method for classifying units to categories in the ANZSIC is to classify each unit according to its predominant activity. The applicant should classify units to the lowest level of detail of the classification in addressing paragraph 2(b) and may provide all relevant ANZSIC references of the main industries in the which the parties to the acquisition supply the goods and services in addressing paragraph 2(d).

Paragraph 2(c) requires the applicant to describe the goods or services supplied by the parties to the acquisition.

A business input acquisition is defined under item 3 as an acquisition in which a party is acquiring an asset that is an input into their business activities (such as land). Note 2 to item 2 explains that in answering paragraph 2(c) for a business input acquisition, the applicant is required to:

- describe the goods or services that will be supplied by the principal party (i.e. the acquirer) and its connected entities using the input being acquired; and
- provide a brief description of the goods or services supplied by the target.

Item 3 requires the applicant to provide further details in relation to the acquisition, being:

- any further information that could not be provided in response to item 2 because it is confidential or could not be provided in a plain language summary;
- the type of acquisition (with horizontal, vertical, conglomerate and business input acquisitions being identified as examples and a note below item 3 explaining what these types of acquisitions involve);
- the commercial rationale for the acquisition;

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- the consideration received or receivable (both cash and non-cash forms of consideration) for all of the shares and assets being acquired as part of the contract etc. in Australian dollars;
- the total transaction value calculated by the parties to the acquisition when applying the transaction value test (which is provided for in section 1-12 of the Principal Determination); and
- if the acquisition has, or will have, related filings in other countries, details of each country, the related filings and the date notified (if applicable).
  - A note below item 3 explains that signed confidentiality waiver documents should be provided if the applicant consents to give a confidentiality waiver in relation to the other countries.

### *Items 4, 5, 6 and 7 – Basis for seeking notification waiver*

Item 4 requires the applicant to inform whether the acquisition meets any specified threshold – namely the circumstances set out Division 1 of Part 2 of the Principal Determination – does not meet any specified threshold, or that the party is unsure whether any specified threshold is met. If the answer is yes, the party is directed to provide brief reasons why the threshold is met. If the answer is no or unsure, the party is directed to provide brief reasons why the threshold is not met or may not be met with reference to each specified threshold, together with supporting information and evidence.

Item 5 requires the applicant to answer yes, no, or unsure to whether the acquisition is in a class of acquisitions determined under subsection 51ABQ(1) of the CCA for the purposes of paragraph 51ABO(b) of the CCA. Namely, classes listed in Part 3 of the Principal Determination. If the answer is yes, the party is directed to provide brief reasons why the acquisition is of the determined class. If the answer is no or unsure, the party is directed to provide brief reasons why the acquisition is not or may not be in the determined class with reference to the determined class, together with supporting information and evidence.

Item 6 requires the applicant to provide the following for each relevant good or service supplied or potentially supplied by the parties to the acquisition:

- describe the good or service and the geographic areas in Australia where it is supplied and other key suppliers of the good or service in Australia; and
- provide a relevant market definition or definitions, for the good or service, together with a statement of the parties' reasons for identifying those definitions.

There are three notes below item 6.

- Note 1 seeks to clarify when a good or service is a relevant good or service in relation to an acquisition and includes the example of goods targeting similar customers or that may be purchased or supplied together.
- Note 2 explains that if the acquisition is a business input acquisition – such as the acquisition of vacant land – relevant goods or services are the goods or services that will be supplied by the principal party (i.e. the acquirer) and its connected entities using the business input.

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- Note 3 seeks to clarify how to determine the relevant market definition or definitions.

Item 7 requires that, for each relevant market definition, the applicant must provide estimated market shares for each party to the acquisition and other key suppliers for the most recently completed 12 month financial reporting period prior to the date the application is submitted to the Commission. The item requires the applicant to provide the estimates in the following format:

- Market definition
- Year
- Supplier
- Australian revenue (A\$)
- Market share (by revenue) (%).

A note below item 7 explains that the monetary figures must be stated in Australian dollars, and if figures are also provided in other currencies, those currencies must be clearly identified.

### *Item 8 – Documents required*

This item requires the applicant to provide final or most recent versions of all transaction documents, such as the sale and purchase agreement, heads of agreement, offer documents, and any other agreements between the parties related to the acquisition, including any supply or other ancillary agreements that are conditional on the acquisition.

### *Item 9 – Declaration*

This item requires that an authorised person of the applicant for the notification waiver must complete the declaration set out in the form. If the applicant is not the principal party to the acquisition, or if there is more than one principal party, a separate declaration must be completed for the applicant and each principal party.