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

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 *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024* (the Mergers Act) introduced a new merger control system in the CCA. This new system requires certain acquisitions of shares or assets to be notified to the Australian Competition and Consumer Commission (the Commission) for assessment prior to completion.

Subsection 51ABS(6) of the CCA provides that the Minister may determine a class of acquisitions of shares in the capital of a body corporate which are required to be notified to the Commission.

Subsection 51ABU(3) of the CCA provides that the Minister may determine requirements for making a notification waiver application.

Subsection 51ABV(3) of the CCA provides that the Minister may determine requirements the Commission must comply with in making a notification waiver determination.

The *Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025* (Amendment Determination) amends the Principal Determination. The purpose of the Amendment Determination is to support the new system by:

- determining certain classes of acquisitions that may not result in control or where the person already has control which are still required to be notified (Schedule 1); and
- determining certain requirements for making a notification waiver application and requirements the Commission must comply with in making a determination in respect of a waiver application (Schedule 2).

Details of the Amendment Determination are set out in Attachment A.

ATTACHMENT A

Details of the Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025

Section 1 – Name

This section provides that the name of the instrument is the *Competition and Consumer (Notification of Acquisitions) Amendment (2025 Measures No. 1) Determination 2025* (Amendment Determination).

Section 2 – Commencement

Schedules 1 and 2 to the Amendment Determination commence on the day after the Amendment Determination is registered on the Federal Register of Legislation or 1 January 2026, whichever is later.

Section 3 – Authority

The Amendment Determination is made under the *Competition and Consumer Act 2010* (CCA).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

All references are to the *Competition and Consumer (Notification of Acquisitions) Determination 2025* (Principal Determination) unless otherwise stated.

Schedule 1

Item 1

This item inserts Division 2 at the end of Part 3, which sets out notification requirements for certain classes of acquisitions that do not result in control under section 51ABS of the CCA.

Context and legislative pathway

Under section 51ABO of the CCA, an acquisition is required to be notified to the Commission if it:

- occurs in circumstances determined under section 51ABP (notification thresholds); or
- is in a class of acquisitions determined under section 51ABQ (class determinations).

Section 51ABP enables the Minister, by legislative instrument, to determine the circumstances in which acquisitions must be notified. The Principal Determination gives

effect to that power and sets out both the monetary thresholds and sector-specific classes of acquisitions that trigger mandatory notification.

The notification obligation in section 51ABO is, however, subject to several statutory exemptions contained in Subdivision B of Division 2 of Part IVA of the CCA, including:

- the Chapter 6 entity exemption in section 51ABT; and
- the control exemption in section 51ABS.

Section 51ABT – Chapter 6 entity exemption

The Chapter 6 entity exemption excludes acquisitions of shares in Chapter 6 entities where the person's voting power remains below 20 per cent. Under section 51ABJ, a *Chapter 6 entity* means a listed company, a listed registered scheme, or an unlisted company with more than 50 members.

The 20 per cent threshold in section 51ABT corresponds to the point at which takeovers of widely-held entities are regulated under Chapter 6 of the *Corporations Act 2001* (the Corporations Act), ensuring consistency between the merger notification system and takeover law.

Section 51ABS – Control exemption

Section 51ABS sets out the control exemption, adopting the definition of control in section 50AA of the Corporations Act as modified by subsection 51ABS(2) of the CCA. These modifications are designed to ensure that control may still be established where:

- there is joint control,
- a special purpose vehicle is the acquirer, or
- certain legal obligations apply because the acquirer is a subsidiary of a body corporate.

Subsection 51ABS(5) provides that, despite the operation of these exemptions, an acquisition must still be notified if it falls within a class of acquisition determined under subsection 51ABS(6). That latter subsection provides a Ministerial power to determine classes of share acquisitions that must be notified even though the control exemption applies, if required to be notified under either limb of section 51ABO. Subsection 51ABS(7) clarifies that such classes may be defined by reference to either the size of an interest or the nature of a person's control.

Division 2 —Certain classes of acquisition that do not result in control still required to be notified

Under subsection 51ABS(1) of the CCA, certain acquisitions by a person are not required to be notified for the purposes of that section because:

- the person already controlled the body corporate before the acquisition; or

- the person does not control the body corporate immediately after the acquisition is put into effect.

Division 2 sets out the classes of acquisitions that must nonetheless be notified to the Commission in those circumstances, but only where the acquisition also meets the thresholds determined under section 51ABP or if the acquisition is in a class determined under section 51ABQ. This ensures that the mergers system remains risk-based and proportionate, targeting acquisitions that are both material in scale and capable of influencing competition. The notification thresholds operate as a revenue and transaction value filter, while Division 2 defines the types of shareholdings that, because of their effect on voting power or corporate influence, require notification even where control (within the meaning of section 50AA of the Corporations Act as modified by subsection 51ABS(2) of the CCA) may not be established.

The first note to Division 2 explains how this instrument interacts with subsection 51ABS(1). Generally, under subsection 51ABS(1) of the CCA, an acquisition of shares is not required to be notified if, immediately after the acquisition, the person does not control the body corporate, or if the person already controlled it before the acquisition. However, as this note clarifies, this general control exemption does not apply to acquisitions that fall within a class determined under subsection 51ABS(6).

The second note includes a reference to the separate exemption in section 51ABT, which applies to acquisitions in Chapter 6 entities (for example, listed or widely-held companies). Where the Chapter 6 entity exemption applies, notification is not required.

Sections 3-10, 3-12, 3-11 and 3-13, use the concept of voting power to define four classes of acquisitions that must be notified to the Commission even where they do not result in the person obtaining control of the target or where the person already has control.

- Sections 3-10 and 3-11 do not require parties to determine whether an acquisition results in control for the purposes of section 50AA of the Corporations Act (as modified by section 51ABS of the CCA). Instead, whether an acquisition is required to be notified under these provisions depends solely on the movement of a person's voting power across the voting power thresholds.
- Sections 3-12 and 3-13 also operate by reference to voting power movements, but apply specifically where a principal party already controls the target body corporate before the acquisition (section 3-12), or where a principal party does not control the target body corporate either before or after the acquisition (section 3-13).

Accordingly, Division 2 applies to acquisitions that meet the thresholds (or fall into a determined class) and that have the potential to confer strong influence over a target's financial or operating policies (despite not meeting the definition of control in section 50AA of the Corporations Act as modified by section 51ABS of the CCA) or involve competitively significant changes in the nature or degree of existing control.

Shareholders can influence the operations of an entity by voting on key business decisions. The number of votes that can be cast by a shareholder generally will correspond with their level of influence over the direction of business activities. Voting power is therefore used as a proxy for determining when a shareholder may be in a position to exercise control over the competitive behaviour and strategic activities of an entity. It is also a concept that

is familiar to businesses in Australia and can be ascertained by having regard to voting shares.

Voting power has the meaning given in the Corporations Act. It is the total number of votes attached to voting shares in a body corporate that a person or their associates have a *relevant interest* in, expressed as a percentage of the total votes attached to all voting shares in that body corporate. Voting power is therefore determined by aggregating all relevant interests of a person and their associates.

Division 2 applies differently across entity types to balance transparency, regulatory burden, and competition risk:

- Chapter 6 entities are generally already subject to continuous disclosure and takeover protections. For these entities, notification focuses on acquisitions that alter existing control relationships or crossings of majority (over 50 per cent) thresholds.

- Foreign listed entities are already subject to regulatory oversight under listing rules and applicable laws in their home jurisdictions. They are captured where acquisitions cross majority (50 per cent) thresholds.

- Non-Chapter 6 entities, which include private and non-widely held entities, are generally not subject to comparable public disclosure obligations. Their ownership structures are often less transparent and more amenable to contractual control arrangements. To ensure appropriate visibility of competitively significant private transactions, Division 2 requires notification of such transactions where someone's voting power crosses the 20 per cent threshold, or the 50 per cent or more threshold.

Crossing the 20% voting power threshold — unlisted bodies corporate, not widely-held

Section 3-10 determines acquisitions of shares in non-Chapter 6 entities and entities not listed on a foreign approved stock exchange where the acquisition results in a person's voting power increasing from 20 per cent or below to more than 20 per cent.

An acquisition from any point at or below 20 per cent (including 0 per cent) to more than 20 per cent crosses the threshold and is required to be notified if the notification thresholds are also met.

This provision is intended to ensure visibility of acquisitions in private and unlisted entities that may confer substantial influence without formal control. Private entities often have concentrated ownership and bespoke contractual arrangements, making them more susceptible to governance or veto structures that deliver significant competitive influence.

The 20 per cent threshold is adopted as a bright-line proxy for material influence, consistent with the *Foreign Acquisitions and Takeovers Act 1975* (where 20 per cent constitutes a substantial interest). It provides a clear and administrable standard that avoids subjective inquiries into control while ensuring the Commission is notified of transactions that could alter market dynamics.

Crossing the 20% voting power threshold— already controlled widely-held body corporate

Section 3-12 determines acquisitions of shares in a Chapter 6 entity where:

- the principal party already controls the body corporate immediately before the acquisition (within the meaning of section 50AA of the Corporations Act as modified by subsection 51ABS(2) of the CCA, outlined above); and

- the acquisition results in a person's voting power increasing from 20 per cent or below to more than 20 per cent.

Practical control below 20 per cent can arise through contractual rights, board representation or association arrangements. This section makes sure that when the principal party increases its shareholding beyond 20 per cent, the transaction is required to be notified if it meets the monetary thresholds and no other exemptions apply.

This operates as an integrity safeguard, addressing a potential gap that could otherwise arise where a person already controls a listed or widely-held entity below the 20 per cent threshold.

For example, without this rule, a principal party who establishes control of a listed company while holding less than 20 per cent voting power could subsequently increase their voting power above 20 per cent without notification, as:

- the initial acquisition would be exempt under section 51ABT (below 20 per cent voting power in a Chapter 6 entity); and

- subsequent acquisitions would be exempt under paragraph 51ABS(1)(b) (the person already has control).

Crossing the 50% voting power threshold (from a starting point at or above 20%)— all body corporates

Section 3-11 determines acquisitions of shares in any body corporate (including Chapter 6 entities, non-Chapter 6 entities and foreign listed entities) where the acquisition results in a person's voting power increasing from 20 per cent or more to 50 per cent or more.

This provision captures transitions to majority control that represent qualitative changes from shared or constrained decision-making to substantial autonomy in corporate governance matters. For instance, the point at which a principal party gains the capacity to unilaterally pass ordinary resolutions, appoint or remove directors, and shape corporate strategy, are shifts in governance power that can significantly alter market behaviour, even where the person may already have had some level of influence.

The 50 per cent threshold is adopted as a bright-line marker for majority control and applies consistently across all entity types. The provision also captures acquisitions resulting in exactly 50 per cent voting power, recognising that such holdings can still confer significant influence (including, but not limited to, where the remainder of the shares are widely dispersed). For example, this would give the acquirer voting power to block key corporate actions, with the potential to significantly affect competition.

The rule applies regardless of whether the person had pre-existing control under section 50AA of the Corporations Act (as modified by section 51ABS of the CCA), recognising that although control (within the meaning of those sections) is a binary concept, incremental changes in ownership concentration can significantly alter competitive dynamics.

Crossing the 50% voting power threshold (from a starting point below 20%)— do not control widely held body corporate before or after acquisition

Section 3-13 determines acquisitions of shares in a Chapter 6 entity where:

- the principal party does not control the body corporate immediately before or after the acquisition (within the meaning of section 50AA of the Corporations Act as modified by subsection 51ABS(2) of the CCA); and

- the acquisition results in someone's voting power increasing from below 20 per cent to 50 per cent or more.

This provision fills a potential residual gap for Chapter 6 entities if a principal party gains 50 per cent or more of voting power without obtaining statutory control. It ensures that acquisitions moving directly from minimal shareholdings (including 0 per cent) to 50 per cent or more are subject to notification where they could confer substantial influence over strategic decisions.

It also captures exactly 50 per cent holdings as an integrity measure. Section 3-13 ensures such transactions are notified, giving the Commission visibility.

Item 2

Paragraph 5-2(1)(d) of the Principal Determination provides that certain information must be included on the acquisitions register under paragraph 51ABZZI(6)(b) of the CCA if the Commission consults with persons under paragraph 51ABZZD(2)(d).

Paragraph 51ABZZD(2)(d) of the CCA provides that, before making an acquisition determination, the Commission may consult with such persons as the Commission believes to be reasonable and appropriate for the purposes of making the determination.

Paragraph 5-2(1)(d) of the Principal Determination provides that if such consultation occurs, the Commission must publish a statement that consultation is occurring and the nature of the consultation.

This item repeals paragraph 5-2(1)(d) and replaces it with an equivalent requirement if the Commission gives a person written notice inviting them to make a submission under paragraph 51ABZZD(2)(a) of the CCA. In such circumstances, the acquisitions register must include a statement that this form of consultation is occurring and details about the consultation process. The intent for this amendment is to effectively provide for market consultation by the Commission, which is consistent with one of the purposes of the acquisition register, being to allow relevant stakeholders to be aware of intended acquisitions so they can engage with the Commission review. The transparency objectives of the acquisitions register are better achieved by requiring the publication of the Commission's market consultation process so that a broad range of interested persons are

able to make submissions. It is considered that the previous paragraph 5-2(1)(d) did not achieve this and risked requiring the disclosure of sensitive discussions.

Schedule 2

Schedule 2 to the Amendment Determination contains new provisions establishing the process for notification waiver applications. The notification waiver process allows parties to an acquisition to request that the Commission relieve them of the obligation to notify an acquisition that would otherwise be required to be notified.

Item 1

Section 1-3 provides for the authority under which the Principal Determination is made. This item amends section 1-3 to insert Note 4A. The new Note 4A informs that the authority for the requirements for a notification waiver application is provided by subsection 51ABU(3) of the CCA, which allows the Minister to determine these requirements. Additionally, Note 4A informs that the authority for the requirements that the Commission must comply with when determining a notification waiver application is provided by subsection 51ABV(3), which allows the Minister to determine these requirements.

The intent is for Note 4A to provide guidance to readers.

Items 2, 3 and 4

Paragraph 5-2(1)(a) of the Principal Determination provides that certain information must be included on the acquisitions register under paragraph 51ABZZI(6)(b) of the CCA if a person has applied for a notification waiver.

Item 2 repeals paragraph 5-2(1)(a) and replaces the subsection with a reformatted version of the provision. The amendment does not alter the substance of the provision. In other words, the requirements of the provision are the same. These are that, if a person has applied for a notification waiver in relation to an acquisition, the Commission is to publish on the acquisitions register a statement to that effect, and a summary of the details of the acquisition as well as a summary of any decision of the Commission in relation to the application. It is expected that the summary of the details of the acquisition will be a brief presentation of the most relevant details of the acquisition. The summary of the decision may be a copy of the written notice and explanation of the determination that the ACCC must provide to the applicant pursuant to subsection 51ABV(5) of the CCA.

Paragraph 51ABZZI(6)(c) provides that the Minister may determine a time period for information or documents that are determined under paragraph 51ABZZI(6)(b)) to be included on the acquisitions register. Item 3 inserts new paragraph 5-2(2)(aa), which provides that information or a document mentioned in paragraph 5-2(1)(a) must be included on the acquisitions register within 1 business day of the relevant decision on the notification waiver application being made or, if that is not practicable, as soon as practicable after that day. This will ensure that the public is made aware of decisions on notification waiver applications in a timely manner.

Item 4 inserts a note at the end of subsection 5-2(2). The note informs that in certain special circumstances, some information and documents may not be added to the

acquisitions register, or can only be included at a later time, and directs attention to new sections 6-5 and 6-6. These new provisions provide for the treatment of a notification waiver application made in relation to a surprise hostile takeover or voluntary transfers under the *Financial Sector (Transfer and Restructure) Act 1999* (FSTR Act), which have different requirements.

Items 5 and 6

Item 5 repeals the heading to Part 6, which was 'Forms' and substitutes 'Part 6—Forms and manner of determining applications'.

Item 6 repeals the heading to Division 1 of Part 6, which was 'Division 1—Determination of forms, information and documents' and substitutes 'Division 1—Determination of forms, information and documents, and manner for determining applications'.

These amendments reflect the expanded contents of Part 6.

Item 7

This item inserts new sections 6-3, 6-4, 6-5 and 6-6 into Division 1 of Part 6.

Requirements for making a notification waiver application

Section 6-3, which is made for the purposes of subsection 51ABU(3) of the CCA, provides the requirements for making a notification waiver application. These are that the application be made in the form set out in Division 5 of Part 6 and accompanied by the information and documents set out in that form. Further, that the determined fee (if any), must be paid. A note below section 6-3 informs that the fee must accompany a notification waiver application as per subsection 7-50(1).

Commission determination of notification waiver applications: general case

Section 6-4, which is made under subsection 51ABV(3) of the CCA, provides for determining a general case notification waiver application (these are notification waiver applications other than those covered by sections 6-5 or 6-6, surprise hostile takeovers and voluntary transfers under the FSTR Act). If the Commission has not decided to grant or not grant the notification waiver by the end of the 25th business day from the day after the notification waiver application was received by the Commission then, on the first business day after this, the Commission must make a determination to not grant the notification waiver. This strict timeframe is intended to support timely and efficient determinations of notification waiver applications and provide certainty to notification waiver applicants.

Commission determination of notification waiver applications: surprise hostile takeovers

The publication of details of a notification waiver application on the acquisitions register may unduly impact the ability to make a surprise hostile takeover bid where on-market acquisitions commence immediately after a bid is made public. To accommodate these kinds of takeover bids, a bidder proposing to acquire shares in a Chapter 6 entity through a bid that has not been made public may request that the notification waiver application be kept confidential for a period. Section 6-5 is intended to give effect to this.

Section 6-5 provides for determining a notification waiver application made in relation to a surprise hostile takeover acquisition. For this provision to apply, subsection 6-5(1) requires that the acquisition and body corporate must satisfy paragraph 51ABZZL(1)(a), (b) and (c) of the CCA; the application request that section 6-5 apply; and the request satisfies subsection 6-5(2).

For a request to satisfy subsection 6-5(2), the request needs to state the information set out in paragraphs 51ABZZL(2)(a) and (b) of the CCA. These are that the body corporate is a Chapter 6 entity and the acquisition is a takeover acquisition in relation to a proposed takeover bid, and that the bidder (within the meaning of the Corporations Act) will, if the Commission makes a determination to grant the notification waiver, give a bidder's statement (within the meaning of the Corporations Act) to the Commission and the acquisition target no later than 5 business days after the day on which the Commission gives the applicant the written notice and explanation required by subsection 51ABV(5) of the CCA. Additionally, the bidder will, after the proposed bid has been made public, notify the Commission, in writing, that the bid has been made public within 1 business day of the bid having been publicly proposed, or if that is not practicable, as soon as practicable after that day.

Subsection 6-5(3) provides that, despite the requirement in paragraph 5-2(1)(aa), the Commission must not include information or documents on the acquisitions register for a notification waiver application regarding a surprise hostile takeover before receiving the bidder's statement for the acquisition. Once the bidder's statement is received, the Commission must include, on the acquisitions register, the information required by paragraph 5-2(1)(a) within 2 business days or, if that is not practicable, as soon as practicable after that day.

Subsection 6-5(4) provides that if the Commission has not made a determination in relation to a notification waiver application for a surprise hostile takeover by the end of the 25th business day from the day after the application is received, the Commission must make a determination to refuse the notification waiver on the first business day after the period ends. As with the general case, set out in section 6-4, this strict timeframe is intended to support timely and efficient determinations of notification waiver applications and provide certainty to notification waiver applicants.

Subsection 6-5(5) provides that the Commission may, at any time within 15 business days from the day after a notification waiver application for a surprise hostile takeover is received, determine that the provisions for dealing with a notification waiver application for a surprise hostile takeover do not apply. The Commission may only make this decision if satisfied that a matter set out in paragraph 51ABZZL(5)(c), (d) or (e) applies in relation to the acquisition. Subsection 6-5(6) requires the Commission to give the applicant written notice of this decision and provides that section 6-5 is taken to have never applied to the notification waiver application.

Commission determination of notification waiver applications: voluntary transfers under the Financial Sector (Transfer and Restructure) Act 1999

The intent for section 6-6 is to extend the availability of confidential reviews of certain voluntary transfers to notification waiver applications.

Section 6-6 provides for determining a notification waiver application made in relation to an acquisition that is the result of a voluntary transfer under the FSTR Act. For this provision to apply, subsection 6-6(1) provides that the notification waiver application must relate to an acquisition that satisfies paragraphs 51ABZZQ(1)(a) and (b) of the CCA.

Subsection 6-6(2) provides that the Commission must not include information or documents on the acquisitions register for a notification waiver application made regarding a voluntary transfer under the FSTR Act that satisfies paragraphs 51ABZZQ(1)(a) and (b) before whichever of the following occurs:

- the Commission makes a determination to grant the notification waiver. In this case, the information required by paragraph 5-2(1)(a) must be included on the acquisitions register within 1 business day after the determination is made or, if that is not practicable, as soon as practicable after that day;

- the Commission makes a determination not to grant the notification waiver and then, subsequently, makes a final decision whether to put the acquisition into effect (pursuant to subsection 51ABZE of the CCA). In this case, the Commission must include the information required by paragraph 5-2(1)(a) on the acquisitions register within 1 business day after the determination made under subsection 51ABZE(1) or, if that is not practicable, as soon as practicable after that day.

A note below subsection 6-6(2) explains that if neither event mentioned in paragraphs (a) or (b) occurs, then no information or documents are to be published on the acquisitions register in relation to the application.

Subsection 6-6(3) is made for the purposes of subsection 51ABV(3) of the CCA, which allows the Minister to determine requirements that the Commission must have regard to when deciding whether to grant or refuse a notification waiver application. This subsection provides that, if the Commission has not made a determination in relation to a notification waiver application for an acquisition pursuant to voluntary transfer under the FSTR Act by the end of the 25th business day from the day after receipt of a valid and complete application, the Commission must make a determination to refuse to grant the notification waiver on the first business day after the period ends.