JOHNSON | WINTER | SLATTERY

# The 3 month lookback

## JWS Merger Regime Analysis

Quarter 1, 2026

# This Report

On 1 January 2026, Australia introduced a new mandatory and suspensory merger regime.

This quarterly report provides a summary of ACCC decisions to date including clearance rates for waivers and notifications, time taken for decisions, key reasons for clearance and rejection decisions, private vs public deals and industry statistics.


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Sar has over 25 years' experience advising multinational and ASX-listed clients on all aspects of competition and consumer law. He has been involved in landmark cases relating to mergers, cartels, misuse of market power and access to infrastructure.

He is consistently ranked in international directories including Who's Who Legal, Chambers (Asia Pacific), Legal 500, Best Lawyers, GCR100 and Client Choice.


**A special thanks to Morgan Blaschke-Broad, Katia Zotova and Ethan Parker who provided invaluable assistance in preparing this report.**

# Findings

1. Over **90%** of notifications (waivers and Phase 1) have been **cleared**.
2. Only **6 of 76** waivers and **2 of 33** Phase 1 notifications have been **rejected**.
3. There have been **more than double the number** of waivers (76) compared to Phase 1 notifications (33).
4. The ACCC is taking **less than half of the allotted 25 business days** for waiver decisions (average 11 business days).
5. The ACCC is taking **just over half of the allotted 30 business days** to provide Phase 1 clearance (average 18 business days).
6. The **key reasons for granting of waivers** are: competitive alternatives; no or limited horizontal overlap; and low concentration/ market shares.
7. The **key reasons for rejecting waivers** are: removal of competition; horizontal overlaps; and limited competitive alternatives.
8. The **key reasons for granting Phase 1 notifications** are: no or limited horizontal overlap; competitive alternatives; and small Australian presence.
9. **Almost two thirds** of notifications (waivers and Phase 1) are acquisitions by **private entities**.
10. Approximately **60-70%** of notifications (waivers and Phase 1) have a **foreign or international element**.
11. All types of transactions (majority, minority, shares, assets, property) are being caught but **60% are majority share acquisitions**.
12. **One quarter** of notifications (waivers and Phase 1) are in the software, technology and AI sectors.
13. There are **yet to be any Phase 2 or public benefits** decisions.

# Commentary

## Clearance rates

The very high clearance rates for waivers and Phase 1 notifications (over 90%) demonstrate that the **vast majority of deals in Australia are unlikely to raise competition concerns**. Indeed, the number of waivers (which are "no brainer" deals from a competition perspective) more than double the number of Phase 1 notifications. This is not surprising and it is consistent with views expressed by us prior to the new merger regime commencing.

## Waivers

Despite the large number of and high clearance rates for waivers, the ACCC has made it very clear that **waivers are the exception to the new regime**, **not the rule** and will only be granted where:

- there are absolutely zero competition issues with a transaction.
- the ACCC does not require further information from the merger parties.
- the ACCC considers it does not need market feedback on the transaction.

## Phase 2 matters

The two matters that have proceeded to Phase 2 are of no surprise.

The *Ampol/EG* transaction involves over 500 petrol sites and the *Coles/supermarket and liquor site* is a designated transaction that must be notified under the regime. Both are likely to raise **serious competition concerns** such that it would be challenging for the ACCC to be satisfied that there was no substantial lessening of competition within the Phase 1 review timelines and process.

## Timing

The ACCC should be commended for its quick turnaround on waivers and Phase 1 notifications to date. Making **decisions in approximately half of the allotted time** is positive for business but this does not reflect the preparation time and associated costs that are incurred before a waiver or notification application is accepted as valid by the ACCC. Accordingly, while waiver decisions will be made within 25 business days and Phase 1 notifications within 30 business days, actual time from start of preparation to ACCC decision and completion can be **many months**.

## Private, foreign, and deals of all sorts

As anticipated, disclosure of transactions on the ACCC register has revealed that:

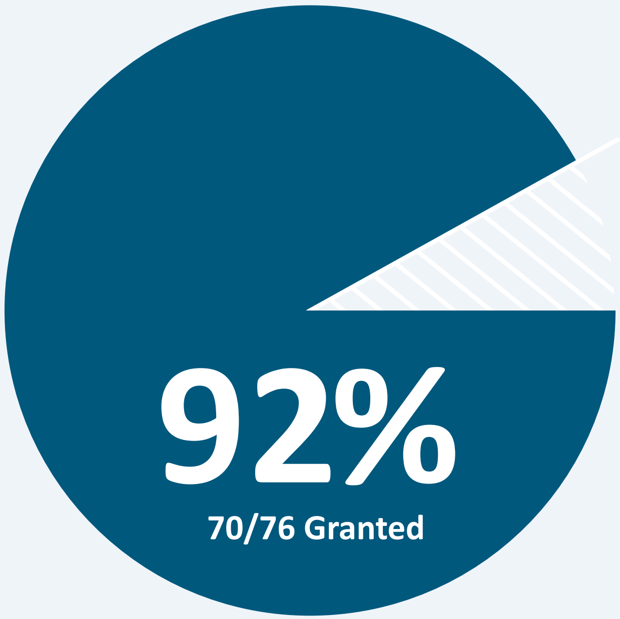
- **two thirds of transactions involve private entities**. The ACCC and the market can now view acquisition trends in various sectors including private equity roll up strategies.
- many deals have a **foreign or international element** (60-70%) demonstrating that international dealmakers are actively engaging with the new regime from the outset.
- a number of non-traditional deal structures are being notified, including property acquisitions, non-property asset deals, minority shareholdings, and combined share-and-asset transactions. This diversity suggests the **regime's broad jurisdictional reach** is operating as intended.

## The upshot

The merger regime is working as intended after the first 3 months. The ACCC has been successful in its administration. The key issues for merger parties continue to be **extended timelines for preparation of applications, higher costs, more upfront work and disclosure**.

# Waivers

## Clearance Rate




**6 rejected**

3 of 6 have proceeded to Phase 1 (to date)

## Timing

**11**

**Business days**
Average for *cleared* decisions

**11**

**Business days**
Average for *rejected* decisions

## Type

**71%**

by Private Companies

**61%**

with Foreign Elements

MOST WAIVERS IN...

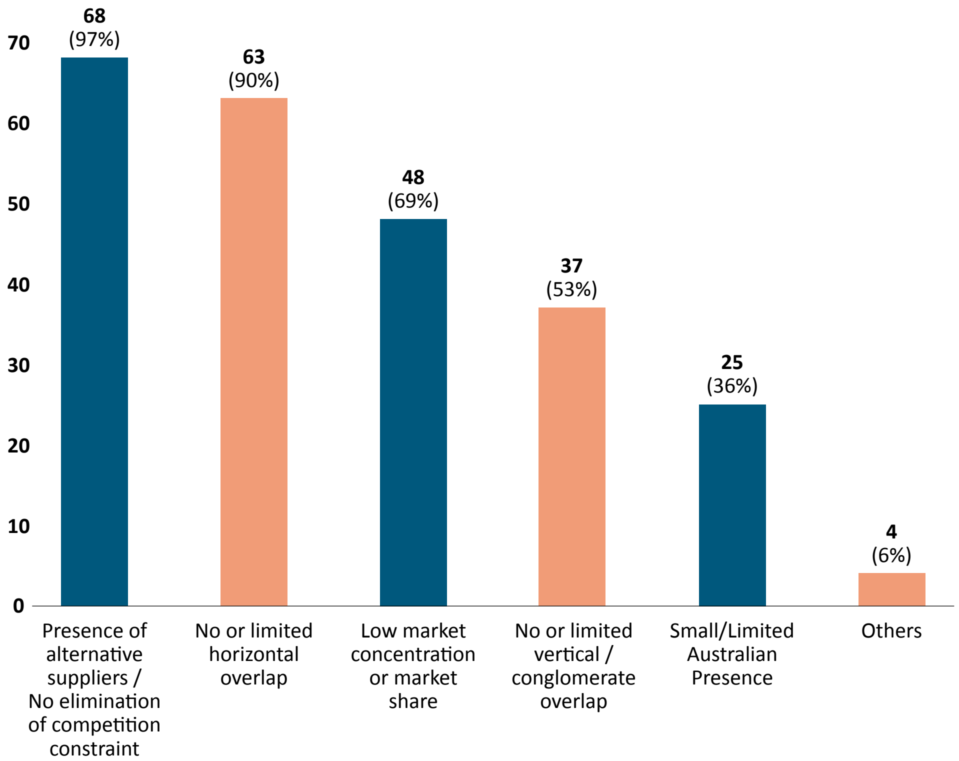
Industrials

Software

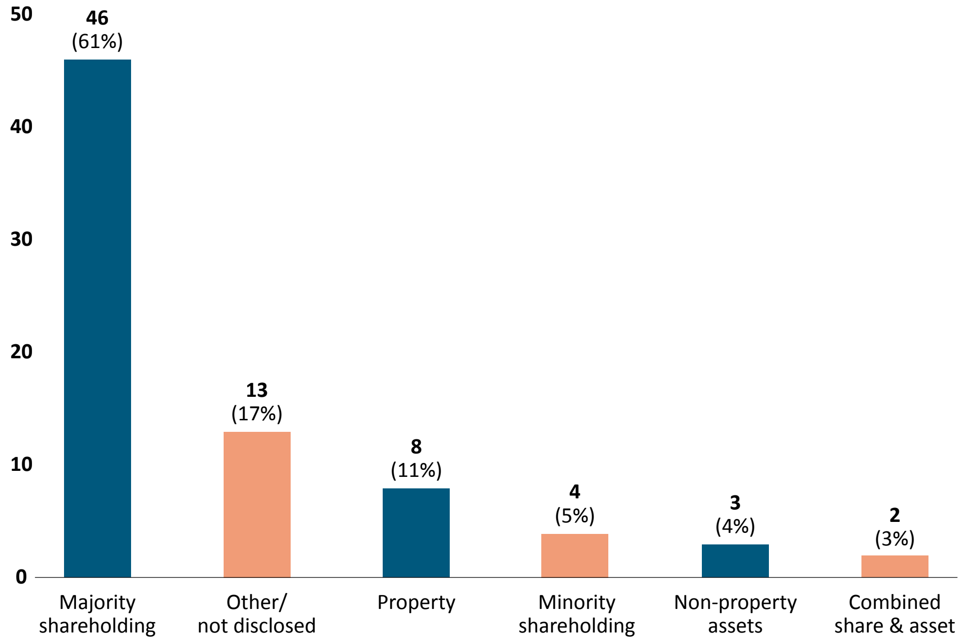
Health

# Waivers

## Reasons for approval



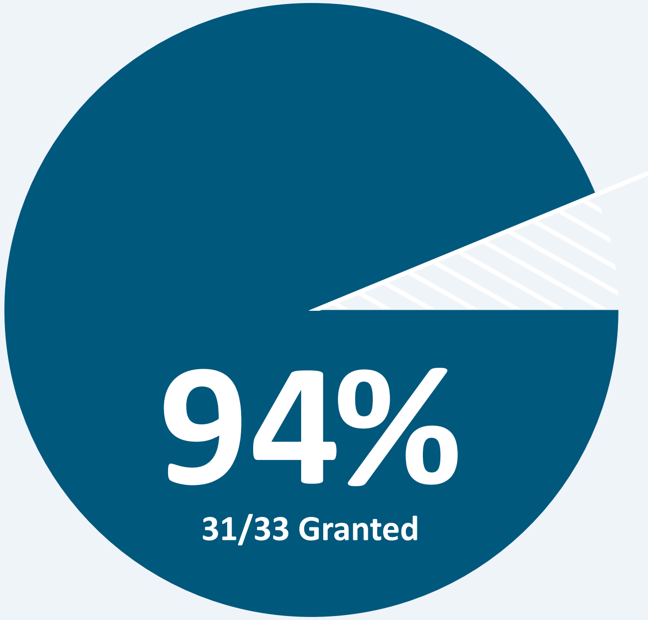

## Type of acquisition




Percentage is calculated against the total number for waivers/notifications.

# Phase 1

## Clearance Rate




**2 rejected**

2 of 2 have proceeded to Phase 2

## Timing

**18**

**Business days**
Average for *cleared* decisions

**44***

**Business days**
Average for *rejected* decisions

## Type

**45%**

by Private Companies

**70%**

with Foreign Elements

MOST PHASE 1 IN...

Software

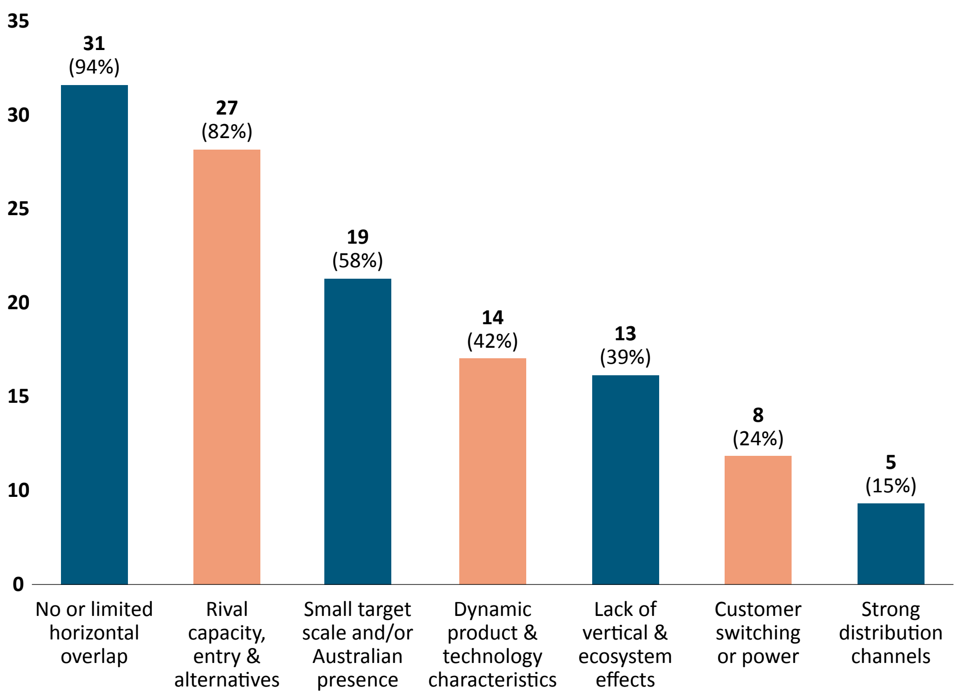
Health

Food & Beverage

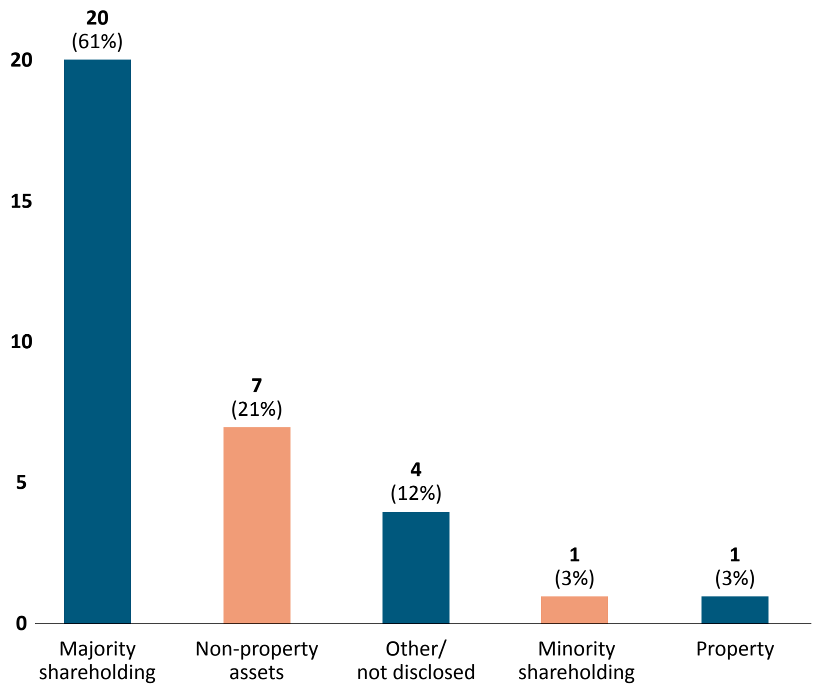
*The extended timeline for Ampol-EG Australia deal was due to Ampol's request of extension

# Phase 1

## Reasons for approval



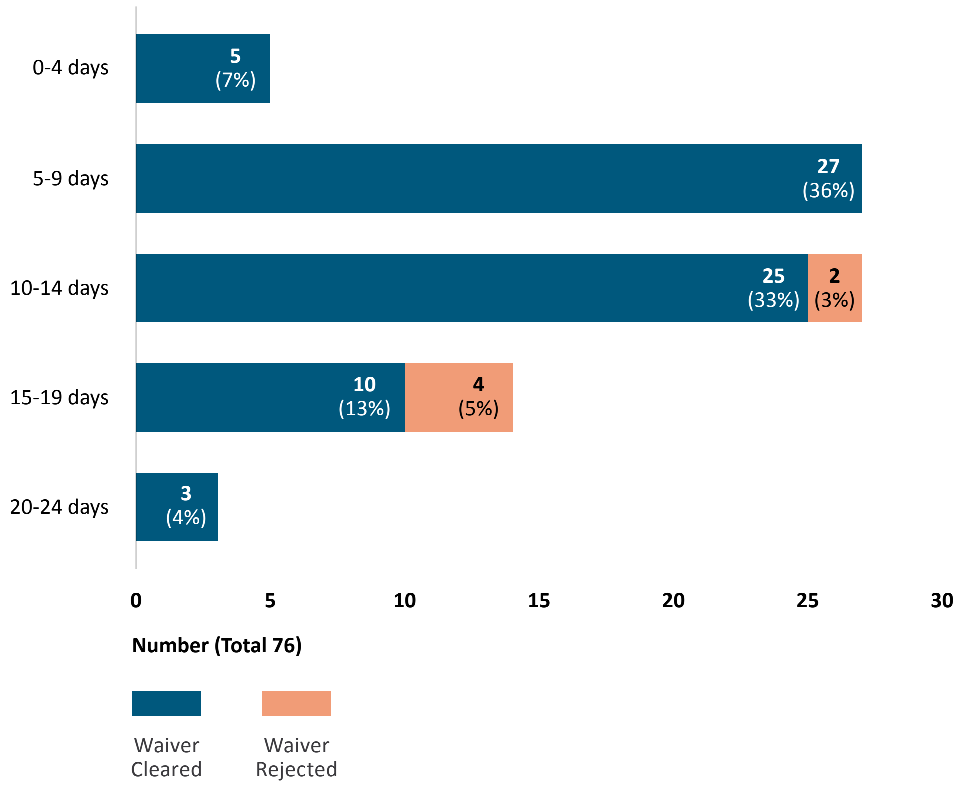

## Type of acquisition



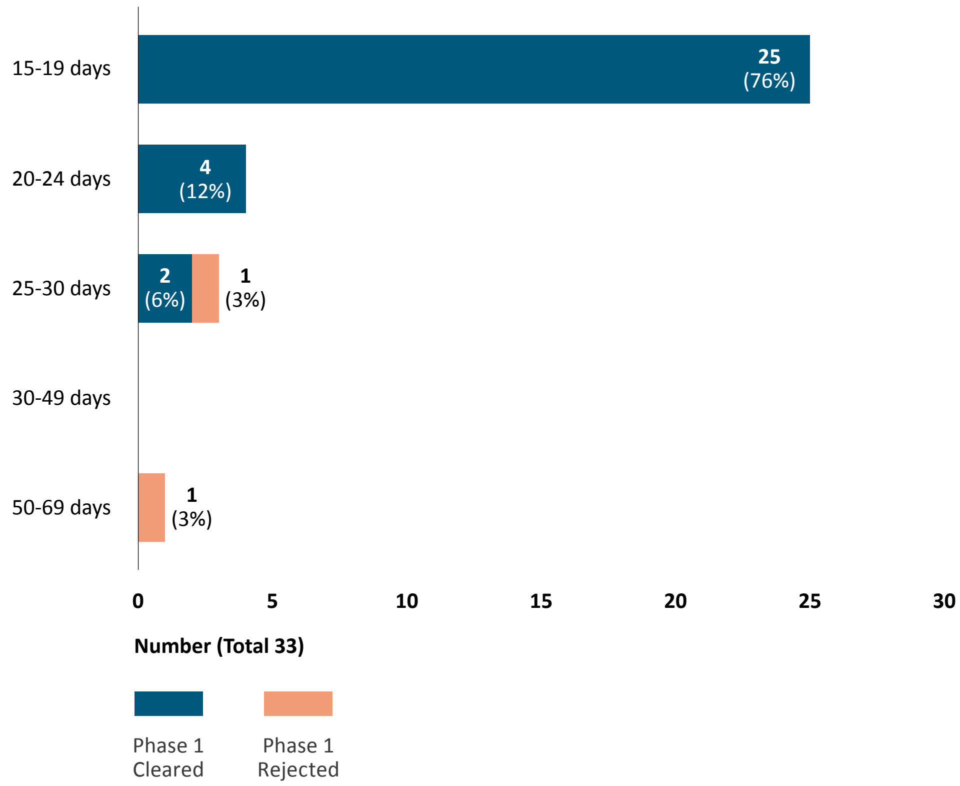

Percentage is calculated against the total number for waivers/notifications.

# Timing

## Waiver



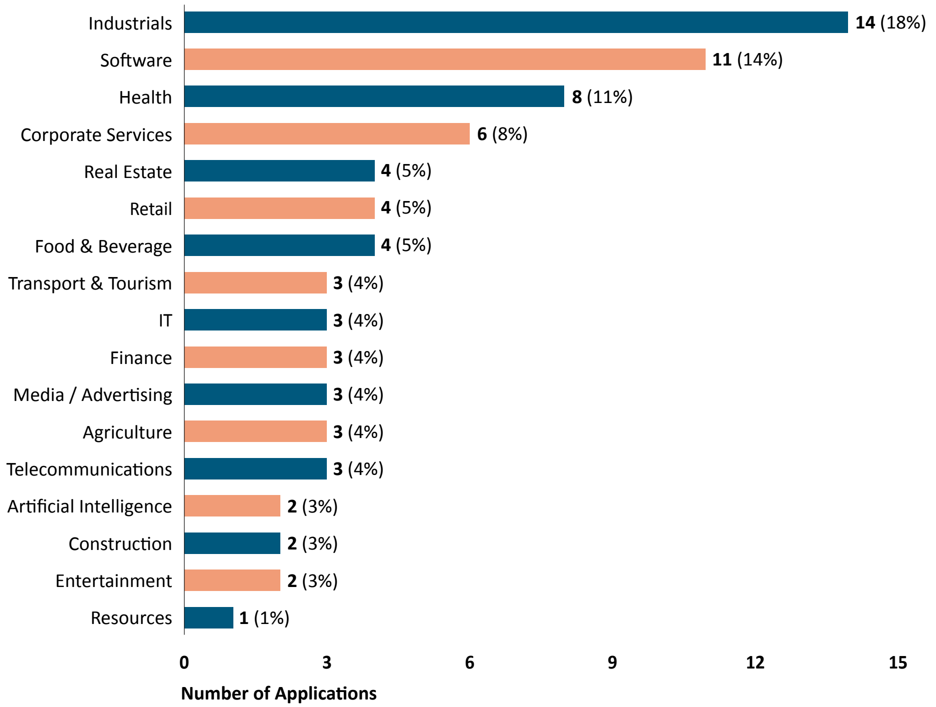

## Phase 1



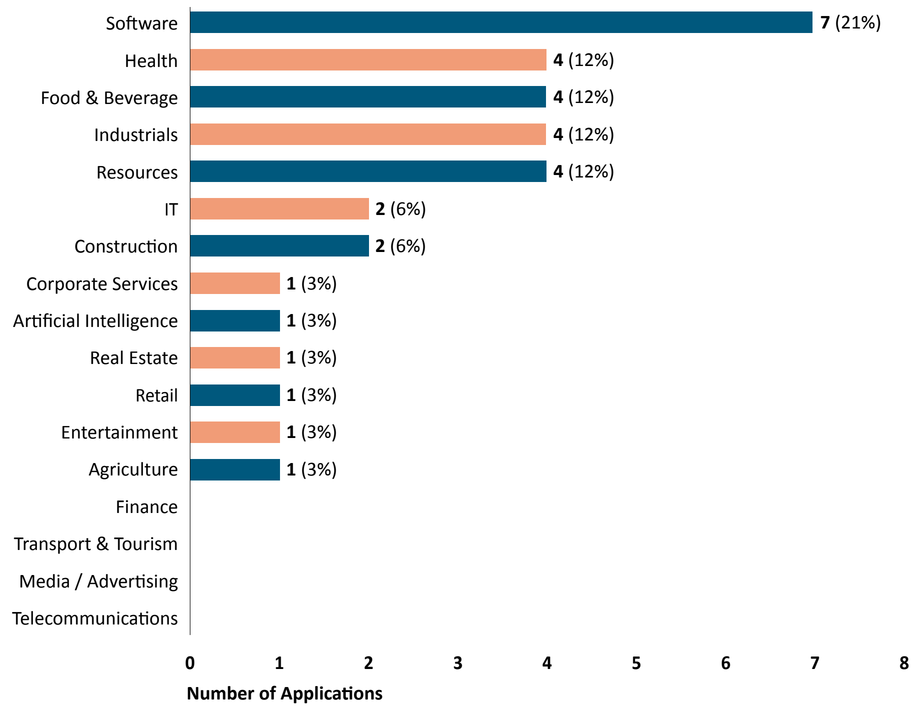

The ACCC is required to wait 15 business days to allow time for 3rd parties comment on the notified acquisition.

# Industry statistics

## Waiver




## Phase 1



# Our deals

**Are Media:** ACCC clearance for acquisition of Pacific Magazines from Seven Media

**Bayer AG:** ACCC clearance for acquisition of Monsanto

**Domain:** ACCC clearance for acquisitions of IDS and Realbase

**Elders:** Advising on acquisition of Delta Agribusiness

**EQT:** ACCC clearance for acquisition of VetPartners

**Flinders Logistics:** ACCC clearance for sale of stevedoring and logistics business to Aurizon

**Illion:** ACCC clearance for sale to Experian

**Jetstar:** Multi-jurisdictional antitrust clearances for coordination strategy between 9 airlines in Asia (Australia, New Zealand, Singapore, Taiwan, Japan, China and Vietnam)

**Lineage Logistics:** ACCC clearance for acquisition of Freemantle City Coldstores

**Liverpool Partners:** ACCC clearance for acquisition of fertility businesses including Genea

**Origin Energy:** ACCC clearance for acquisition of One Bill and MyConnect

**PepsiCo:** ACCC clearance for PepsiCo's acquisition of SodaStream

**Perenti:** ACCC clearance for acquisition of DDH1

**PLBY Inc:** ACCC clearance for acquisition of Honey Birdette

**Qantas:** Advising on ACCC clearance for acquisition of Alliance

**Qantas:** Multi-jurisdictional antitrust clearances for global strategic partnership with Emirates (Australia, New Zealand, EU and US)

**Ruralco:** ACCC clearance for sale to Nutrien

**Spotify:** ACCC clearance for acquisition of Whooshkaa

**Unilever:** ACCC clearance for acquisition of Weis

**University of Adelaide:** Advising on amalgamation with the University of South Australia

**Yahoo!:** ACCC clearance for global search agreement (Bing) with Microsoft

## About us

Johnson Winter Slattery represents Australian and international clients on their most strategic, complex and demanding transactions and disputes throughout Australia and surrounding regions.

Our competition team is widely regarded as one of the leading teams in Australia on all aspects of competition law including mergers and acquisitions, ACCC investigations and litigation, advisory and compliance work and economic regulation.

We act for multinationals, ASX listed companies, large private organisations and hedge fund and private equity firms. We also act for the ACCC.

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