

ARA SUBMISSION

MERGERS REFORM – NOTIFICATION THRESHOLDS INSTRUMENT – EXPOSURE DRAFT

MAY 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to provide feedback on the Exposure Draft of the *Competition and Consumer (Notification of Acquisitions) Determination 2025*.

The ARA and NRA, which propose to amalgamate into the Australian Retail Council (ARC), represent a **\$430 billion sector**, and **employs 1.4 million Australians** – making retail the largest private sector employer in the country and a significant contributor to the Australian economy.

Our membership spans the full spectrum of Australian retail, from family-owned small and independent retailers that make up 95% of our membership, through to our largest national and international retailers that employ thousands of Australians and support both metropolitan and regional communities every day.

With a significant portion of every dollar spent in retail flowing back to employees, suppliers, super funds, and local communities, a thriving retail sector benefits all Australians. After a uniquely challenging five-year period, which has had significant impacts on the sector, we are united in advocating for policies, reform and collaboration that will drive growth, resilience, and prosperity for the retail sector and all Australians.

EXECUTIVE SUMMARY

The ARA and NRA support the Government's intent to modernise and enhance Australia's merger notification regime to ensure the merger control framework remains fit-for-purpose and protects competition. We welcome the structured approach to merger notification thresholds, exemptions, and forms outlined in the Exposure Draft.

This is a major reform that impacts a wide cross section of the Australian economy. It is imperative the determination enacts the Government's objectives for the reform, to replace Australia's current approach to merger control with "a faster, stronger, simpler, targeted, more transparent and streamlined system" that better addresses anti-competitive mergers and acquisitions and reduces any impact that constrains productive growth and innovation.

Routine, low-risk transactions common across the retail sector should not be captured under the regime. This is to ensure the ACCC's limited resources are not consumed with issues that are unlikely to raise any substantive competition law concerns. Cumulative thresholds, creeping acquisition rules, and supermarket-specific notification requirements should not inadvertently capture ordinary business expansion, lease renewals, or small format retail acquisitions that raise no competition concerns.

At this stage, the impact of the reforms are relatively unknown and checks and balances are needed to ensure the regime operates as intended. Public reporting and a strong, measurable commitment to finalise 80% of merger reviews within 15–20 business days is critical. Additionally, further consultation post submissions closing and before the Determination is finalised and the voluntary regime begins on July 1 will enable any final issues to be

ironed out. A review at 12 months is important to ensure the regime is operating as intended, resources are sufficient, and thresholds set appropriately.

RECOMMENDATIONS

Recommendation 1

Ensure notification requirements are proportionate to transaction risk

The ARA and NRA recommend that the notification thresholds, particularly those relating to creeping and serial acquisitions (Section 2-3), be calibrated to minimise capture of small, low-risk transactions, domestic mergers aimed at increasing international competitiveness and those mergers of multinational with only notional connection to Australia.

Routine investment activities, such as site leasing, expansion into new regions, and acquisition of small independent stores, should not be subject to disproportionate regulatory burden where there is minimal risk to competition.

Clear guidance should be developed in close consultation with industry to distinguish genuinely competition-affecting transactions from ordinary growth activity.

Recommendation 2

Clarify supermarket business acquisition notification to avoid capturing low-risk expansions

Retail developments anchored by major supermarkets deliver important access to goods and services for communities across Australia and employ hundreds of thousands of team members. We do not want to see these important developments unnecessarily constrained or undermined where this can be avoided through small, practical changes to the current drafting of the Determination.

The ARA and NRA recommend that the Government refine the application of Division 1 of Part 3 (Supermarket Classes of Acquisitions) to ensure:

- **No double notifications:** Notification should not be required both at Agreement for Lease (AFL) and lease execution stages where the transaction is materially the same. AFLs are critical for development certainty, and dual assessments risk delaying or undermining new projects.
- **More practical adjacent land thresholds:** Current thresholds for adjacent land acquisitions are too low and not reflective of typical large-scale retail developments. Thresholds should be increased and only triggered where there is a material impact on competition—not for minor expansions or amenity improvements.
- **Clearer definition of ‘supermarket business’:** A more targeted definition is needed to avoid capturing unrelated retail operations or creating uncertainty for sectors outside the Determination’s intent.
- **Exemption for small format stores:** Acquisitions of small sites, such as convenience stores, should only be notifiable above a higher threshold (e.g. 1,000 sqm), in line with international standards and the low risk such stores pose in competitive markets.

We support a competition-focused model, not a blanket obligation, to avoid unnecessary regulatory burden on low-risk, community-serving developments.

Recommendation 3

Refine turnover tests and thresholds to avoid unintended captures

The ARA and NRA recommend that the turnover thresholds and methodologies used to trigger notification be reviewed and refined to ensure they are practical, proportionate, and targeted at transactions with a meaningful local economic presence. This includes both the design of turnover attribution mechanisms and the minimum financial thresholds that determine when a transaction becomes notifiable to:

- Ensure that businesses are not inadvertently captured through aggregation of unrelated transactions over three years.
- Exclude lease renewals or expansions where no acquisition of a business or substantial assets occurs.
- Ensure that turnover attribution methodologies for leases and greenfield sites are practical, simple, and not overly burdensome for businesses to calculate. At this stage, it is difficult to discern how these transactions will be assessed.
- Ensure the turnover definitions and methodologies appropriately focus only on Australian earnings/presence.
- Increase the turnover threshold for both the acquirer and target to at least \$50 million in Australian turnover to avoid capturing transactions with limited activity in Australia.

Clearer ACCC guidance on turnover attribution and thresholds would assist businesses to comply without disproportionate cost.

Recommendation 4:

Simplify notification for serial and creeping acquisitions where no substantial competition concerns arise

The ARA and NRA recommend the Government ensure that creeping acquisition notification requirements (Section 2-3 and Section 1-10) focus on:

- Aggregations that raise genuine risks of substantial lessening of competition.
- Avoiding notification where acquisitions relate to different geographic markets, or where cumulative turnover reflects administrative aggregation rather than economic concentration.

Routine expansions into non-overlapping markets or categories should not require repeated notification and fees, where there is no impact on market structure.

Recommendation 5:

Minimise compliance burden by ensuring notification forms are practical and scalable

The ARA and NRA support the principle of short and long notification forms (Part 6) but recommend further refinement to ensure proportionality and practicality. In particular, the long form should be better tailored to transaction risk and complexity, with opportunities for improvement captured through the recommended 12-month review.

Key areas for refinement include:

- Avoiding duplication by recognising that the long form already captures the short form content.
- Streamlining or deferring questions that impose excessive burden, such as:
 - **Question 5:** Requesting detailed sales process history may be better suited to follow-up post-notification.

- **Question 7:** We recommend narrowing the scope to include only acquisitions completed in Australia within the past three years involving the same or substitutable products or services. This aligns with the ACCC's Assessment Guidelines, which reference a "past history of entry into related markets."
- **Questions 8 & 9:** Market definitions and share calculations should reflect the most appropriate market for the transaction, using a single relevant metric (e.g. volume, turnover or capacity) rather than requiring all three.
- **Question 16:** The request for any document "reasonably considered relevant" is overly broad and duplicative, creating unnecessary administrative burden with limited additional benefit.
- **Question 20:** The requirement to produce all board-level documents from the past three years is overly broad and risks capturing irrelevant or unrelated material. While transparency is important, we recommend narrowing this requirement to focus on documents directly relevant to the transaction and its potential competitive impact.

Additionally, the notification system should ensure:

- Minor or low-value acquisitions are not subject to long form assessments.
- Clear, expedited pathways exist for time-sensitive, low-risk transactions.

These refinements would better align the forms with the Government's stated aims of efficiency and proportionality and allow the ACCC to focus resources where they are most needed.

Recommendation 6:

Commit to a 12-Month Post-Implementation Review

The ARA and NRA recommend that Treasury undertake a formal review of the notification thresholds instrument 12 months after commencement, in line with the ACCC's commitment to review its guidance and forms.

This would ensure the new regime is operating as intended, that notification triggers are not unintentionally capturing low-risk transactions, and that guidance and implementation processes are fit for purpose.

We encourage the Government to continue collaborating with industry bodies to ensure the merger notification system supports a dynamic, competitive and growing economy without unduly burdening Australia's retailers.

Thank you again for the opportunity to provide a submission on the exposure draft. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.