



# **Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024**

**No. 137, 2024**

**An Act to amend the *Competition and Consumer Act  
2010*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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	<i>2024</i>	



# Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024

No. 137, 2024

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## An Act to amend the *Competition and Consumer Act 2010*, and for related purposes

[Assented to 10 December 2024]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024*.

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No. 137, 2024      *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act*      1  
2024

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2024
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	11 December 2024
3. Schedule 1, Part 2	1 July 2025.	1 July 2025
4. Schedule 1, Part 3	1 January 2026.	1 January 2026
5. Schedule 2, Part 1	1 January 2026.	1 January 2026
6. Schedule 2, Parts 2 to 5	The day after this Act receives the Royal Assent.	11 December 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Acquisitions**

### **Part 1—Amendments commencing day after Royal Assent**

#### *Competition and Consumer Act 2010*

##### **1 After subsection 88(1)**

Insert:

- (1A) The application must be made on or before 30 June 2025 if any of the specified provisions is section 50.

## Part 2—Amendments commencing 1 July 2025

### Division 1—Amendment of the Competition and Consumer Act 2010

#### *Competition and Consumer Act 2010*

#### 2 Before Part 1

Insert:

### Chapter 1—Preliminary

#### 3 At the end of subsection 2B(1)

Add:

; (d) the acquisitions provisions.

#### 4 Section 2BA (heading)

Omit “Part IV”, substitute “Parts IV and IVA”.

#### 5 Subsection 2BA(1)

Omit “Part IV applies”, substitute “Parts IV and IVA apply”.

#### 6 Subsection 4(1)

Insert:

***acquisition determination***, in respect of a notification of an acquisition, means:

- (a) a determination made under subsection 51ABZE(1) in respect of the notification; or
- (b) a determination made under subsection 51ABZW(1) in respect of a public benefit application relating to the notification.

***acquisitions provision*** means any of the following provisions:

- (a) a provision of Division 1A of Part IV;
- (b) a provision of Part IVA;
- (c) a provision of Division 1B of Part IX;



- (d) another provision of this Act, to the extent that it relates to a provision covered by paragraph (a), (b) or (c).

**acquisitions register** means the register kept by the Commission under subsection 51ABZZH(1).

**business day**: in Part IVA, **business day** has the meaning given by section 51ABK.

**Chapter 6 entity** has the meaning given by subsection 51ABJ(1).

**determination period**:

- (a) for a notification of an acquisition—has the meaning given by subsection 51ABZI(3); and
- (b) for a public benefit application—has the meaning given by subsection 51ABZZ(2).

**effective application date**, of a public benefit application, has the meaning given by subsection 51ABZP(6), paragraph 51ABZR(1)(a), subsection 51ABZS(5) and paragraph 51ABZT(2)(a).

**effective notification date**, of a notification of an acquisition, has the meaning given by subsection 51ABW(4), paragraph 51ABZ(1)(a), subsection 51ABZA(5) and subparagraph 51ABZB(2)(a)(i).

**finally considered**, in relation to a notification of an acquisition, has the meaning given by subsection 51ABF(1).

**goodwill protection provision**: a provision of a contract is a **goodwill protection provision** of the contract if:

- (a) the contract is for the sale of a business or of shares in the capital of a body corporate carrying on a business; and
- (b) the provision is solely for the protection of the purchaser in respect of the goodwill of the business.

## **7 Subsection 4(1) (paragraph (b) of the definition of *merger authorisation*)**

Before “Part IV”, insert “Division 1 or 2 of”.

## 8 Subsection 4(1)

Insert:

*no longer subject to review*, in relation to an acquisition determination, has the meaning given by subsection 51ABF(2).

*notice of competition concerns* has the meaning given by subsection 51ABZK(1).

*notification*, of an acquisition, means a notification of the acquisition that is made to the Commission in accordance with subsection 51ABX(1).

Note: For the acquisitions to which subsection 51ABX(1) applies, see Subdivision B of Division 1 of Part IVA.

*notification waiver application* has the meaning given by subsection 51ABU(5).

*notified acquisition* has the meaning given by subsection 51ABW(2).

Note: See also subsection 51ABZD(6).

*notifying party*, of a notification of an acquisition, has the meaning given by subsection 51ABW(3).

*participant*, in proceedings for review under Division 1B of Part IX, does not include the Commission.

## 9 Subsection 4(1) (definition of party)

Repeal the definition, substitute:

*party*:

- (a) to an acquisition—has the meaning given by subsections 51ABI(1) and (2); and
- (b) to a contract that is a covenant—includes a person bound by, or entitled to the benefit of, the covenant.

## 10 Subsection 4(1)

Insert:

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**phase 1 determination period**, for a notification of an acquisition, has the meaning given by subsection 51ABZI(4).

**phase 2 determination period**, for a notification of an acquisition, has the meaning given by subsection 51ABZI(5).

**principal party**, to an acquisition, has the meaning given by paragraph 51ABI(1)(a) and subsection 51ABI(2).

**public benefit application** has the meaning given by subsection 51ABZP(5).

**public benefit assessment** has the meaning given by subsection 51ABZZA(1).

**purportedly puts into effect**, in relation to an acquisition, has the meaning given by subsection 45AV(2).

**required to be notified**, in relation to an acquisition, has the meaning given by sections 51ABO and 51ABS and subsections 51ABT(1) and 51ABV(6).

**stale**, in relation to a notification of an acquisition, has the meaning given by section 51ABG.

**stayed**, in relation to an acquisition, has the meaning given by section 51ABE and subsections 51ABZZM(2) and (3).

**subject** to a condition: for when putting a notified acquisition into effect is **subject** to a condition, see section 51ABH.

**subject to phase 2 review** has the meaning given by paragraph 51ABZJ(2)(a).

**takeover acquisition**, in relation to a takeover bid, means:

- (a) an acquisition that results from the acceptance of an offer under the bid; or
- (b) an acquisition, by or on behalf of the bidder (within the meaning of the *Corporations Act 2001*), of securities in the bid class (within the meaning of that Act), that:
  - (i) results from an on-market transaction (within the meaning of that Act); and
  - (ii) occurs during the bid period.

*takeover bid* has the same meaning as in the *Corporations Act 2001*.

*target*, of an acquisition, has the meaning given by subsection 51ABI(3).

**11 Subsection 4A(5A)**

After “and VII”, insert “and the acquisitions provisions”.

**12 After paragraph 5(1)(f)**

Insert:

(fa) the acquisitions provisions;

**13 Paragraph 6(2)(h)**

After “or 151AJ”, insert “, in an acquisitions provision”.

**14 Subsection 6(2A)**

Before “Part IV”, insert “Division 1 or 2 of”.

**15 Before subsection 6(2C)**

Insert:

*Cartel conduct*

**16 After subsection 6(2E)**

Insert:

*Acquisitions*

(2EA) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:

(a) any references in the acquisitions provisions to an acquisition were, by express provision, confined to an acquisition put into effect:

(i) in the course of, or in relation to, trade or commerce between Australia and places outside Australia; or

- (ii) in the course of, or in relation to, trade or commerce among the States; or
    - (iii) in the course of, or in relation to, trade or commerce within a Territory, between a State and a Territory or between 2 Territories; and
  - (b) each reference in the acquisitions provisions (other than in paragraph 51ABC(2)(b)) to a corporation included a reference to a person not being a corporation.
- (2EB) Subsection (2EA) has effect in relation to a participating Territory as if the words “within a Territory,” were omitted from subparagraph (2EA)(a)(iii). For this purpose, ***participating Territory*** means a Territory that is a participating Territory within the meaning of Part XIA but is not named in a notice in operation under section 150K.
- (2EC) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:
- (a) any references in the acquisitions provisions to an acquisition were, by express provision, confined to an acquisition to the extent to which putting the acquisition into effect involves the use of, or relates to, a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; and
  - (b) each reference in the acquisitions provisions to a corporation (other than in paragraph 51ABC(2)(b)) included a reference to a person not being a corporation.
- (2ED) In addition to the effect that this Act (other than Parts IIIA, VIIA and X) has as provided by another subsection of this section, this Act (other than Parts IIIA, VIIA and X) has, by force of this subsection, the effect it would have if:
- (a) any references in the acquisitions provisions to an acquisition were, by express provision, confined to an acquisition to the extent to which the acquisition is put into effect in, or relates to, a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); and

- (b) each reference in the acquisitions provisions (other than in paragraph 51ABC(2)(b)) to a corporation included a reference to a person not being a corporation.

*Payment surcharges*

**17 Before subsection 6(3)**

Insert:

*Certain provisions of Australian Consumer Law*

**18 Before subsection 6(5A)**

Insert:

*Offences relating to cartel conduct*

**19 Paragraph 29(1A)(a)**

After “IV,”, insert “IVA,”.

**20 Section 37**

Repeal the section, substitute:

**37 Constitution of Tribunal for particular matters**

For the purpose of hearing and determining proceedings, the Tribunal must be constituted by a Division of the Tribunal consisting of:

- (a) in any case—a presidential member of the Tribunal and 2 members of the Tribunal who are not presidential members; or
- (b) if the proceedings are proceedings on a review under Division 1A of Part IX—a presidential member of the Tribunal.

**21 Before Part IIIA**

Insert:

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## **Chapter 2—Access to services**

### **22 Section 44ZZNA (heading)**

After “IV”, insert “, IVA”.

### **23 Section 44ZZNA**

After “IV”, insert “, IVA”.

### **24 Before Part IV**

Insert:

## **Chapter 3—Restrictive trade practices**

### **25 After section 45AM**

Insert:

#### **45AMA Acquisition subject to notification**

- (1) Sections 45AF and 45AJ do not apply in relation to the making of a contract that contains a cartel provision, in so far as the cartel provision provides for an acquisition if the contract is subject to a condition that the provision will not come into force unless and until the acquisition becomes a notified acquisition.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

- (2) A person who wishes to rely on subsection (1) in relation to a contravention of section 45AJ bears an evidential burden in relation to that matter.

### **26 At the end of section 45AT**

Add:

- (3) Sections 45AF, 45AG, 45AJ and 45AK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides for an acquisition, if the acquisition is a notified acquisition.

**Schedule 1** Acquisitions

**Part 2** Amendments commencing 1 July 2025

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and subsection (4) of this section).

- (4) A person who wishes to rely on subsection (3) in relation to a contravention of section 45AJ or 45AK bears an evidential burden in relation to that matter.

**27 After Division 1 of Part IV**

Insert:

**Division 1A—Acquisitions**

**Subdivision A—Preliminary**

**45AV Purportedly putting acquisitions into effect**

- (1) A reference in this Division to putting an acquisition into effect includes a reference to purportedly putting the acquisition into effect.
- (2) A person *purportedly puts into effect* an acquisition if the person engages in conduct that, apart from this Division, would constitute putting the acquisition into effect.

**Subdivision B—Obligations**

**45AW Commission must be notified of acquisitions**

A person contravenes this section if:

- (a) the person is a principal party to an acquisition; and
- (b) the acquisition is required to be notified; and
- (c) the acquisition is put into effect; and
- (d) when the acquisition is put into effect:
- (i) the acquisition is not a notified acquisition; or
- (ii) no notification of the acquisition has an effective notification date (see section 51ABZ); or
- (iii) the latest notification of the acquisition that has an effective notification date is stale.



- Note 1: For when an acquisition is *required to be notified*, see Division 2 of Part IVA.
- Note 2: For when an acquisition is *stale*, see section 51ABG.
- Note 3: For enforcement, see Part VI.

**45AX Commission must be notified of material changes of fact in relation to notified acquisitions**

- (1) This section applies if:
- (a) a person is the notifying party of a notification of an acquisition; and
  - (b) a change of fact occurs; and
  - (c) the change of fact is material to the Commission making a determination under subsection 51ABZE(1) in respect of the notification; and
  - (d) the person becomes aware of the change of fact at a time:
    - (i) occurring on or after the effective notification date of the notification; and
    - (ii) at which the Commission has not decided to cease considering the notification under section 51ABZD; and
    - (iii) at which the Commission has not made a determination in respect of the notification under subsection 51ABZE(1); and
    - (iv) if the notification is subject to phase 2 review—occurring at least 15 business days (within the meaning of section 51ABK) before the end of the phase 2 determination period for the notification.
- (2) For the purposes of this section, the person is taken to become aware of the change of fact at the earliest time at which the person is:
- (a) aware of the change of fact; and
  - (b) aware that the change of fact is material in the way described in paragraph (1)(c).
- (3) This section also applies if:
- (a) a person is the notifying party of a notification of an acquisition; and

- (b) the notifying party has made a public benefit application in relation to the notification; and
  - (c) a change of fact occurs; and
  - (d) the change of fact is material to the Commission making a determination under subsection 51ABZW(1) in respect of the application; and
  - (e) the person becomes aware of the change of fact at a time:
    - (i) occurring on or after the effective application date of the application; and
    - (ii) at which the Commission has not decided to cease considering the application under section 51ABZV; and
    - (iii) at which the Commission has not made a determination under subsection 51ABZW(1) in respect of the application.
- (4) For the purposes of this section, the person is taken to become aware of the change of fact at the earliest time at which the person is:
- (a) aware of the change of fact; and
  - (b) aware that the change of fact is material in the way described in paragraph (3)(d).
- (5) The person contravenes this subsection if the Commission is not notified of the change of fact, as soon as practicable after the person becomes aware of the change, by:
- (a) if the person is the only notifying party of the notification of the acquisition—the person; or
  - (b) otherwise—all of the notifying parties jointly.
- Note: For enforcement, see Part VI.
- (6) For the purposes of this section, a person who ought reasonably to be aware of something is taken to be aware of it.

#### **45AY Stayed acquisitions must not be put into effect**

A person contravenes this section if:

- (a) the person puts an acquisition into effect; and
- (b) the acquisition is stayed.

Note 1: For when an acquisition is *stayed*, see section 51ABE.

Note 2: For enforcement, see Part VI.

#### **45AZ Conditions must be complied with**

- (1) This section applies to a person who puts a notified acquisition into effect, if putting the acquisition into effect is subject to conditions.

Note: For when putting an acquisition into effect is *subject* to conditions, see section 51ABH.

- (2) The person contravenes this subsection if any of those conditions are not complied with.

Note: For enforcement, see Part VI.

#### **Subdivision C—Acquisitions void if put into effect while stayed**

##### **45AZA Acquisitions void if put into effect while stayed**

- (1) This section applies to an acquisition that is put into effect, or purportedly put into effect, in contravention of section 45AY.
- (2) The acquisition is, and is taken always to have been, void by force of this subsection.

#### **Subdivision D—Miscellaneous**

##### **45AZB Providing false or misleading information**

A person contravenes this section if:

- (a) the person gives information to the Commission or the Tribunal under an acquisitions provision; and
- (b) the information is false or misleading in a material particular; and
- (c) the person knows that, or is reckless as to whether, the information is false or misleading in a material particular.

Note: For enforcement, see Part VI.

#### **28 At the end of subsection 45(7)**

Add “or a notified acquisition”.

**29 After subsection 45(8A)**

Insert:

- (8B) The making by a corporation of a contract is not a contravention of subsection (1) to the extent that the contract provides for an acquisition, if the contract is subject to a condition that the provision of the contract will not come into force unless and until the acquisition becomes a notified acquisition.
- (8C) Nothing in subsection (8B) prevents the giving effect by a corporation to such a provision of a contract from constituting a contravention of subsection (1).

**30 After subsection 50(5A)**

Insert:

*Notified acquisitions*

- (5B) This section does not apply to a notified acquisition.

*Definitions*

**31 Section 50A (at the end of the heading)**

Add “before 1 January 2026”.

**32 After subsection 50A(7)**

Insert:

- (7A) Subsection (1) does not apply to:
- (a) a notified acquisition; or
  - (b) an acquisition that is put into effect on or after 1 January 2026.

**33 Paragraph 51(1C)(b)**

Before “section 50 or 50A”, insert “Division 1A or”.

**34 Paragraph 51(2)(e)**

After “the business”, insert “and is not declared under subsection 51ABZG(1)”.

### **35 After Part IV**

Insert:

## **Part IVA—Notification of acquisitions**

### **Division 1—Preliminary**

#### **Subdivision A—Simplified outline**

##### **51ABA Simplified outline of this Part**

Certain acquisitions, including acquisitions of shares in the capital of a body corporate or of any assets of a person, are required to be notified to the Commission before they are put into effect if they are determined under Division 2.

Division 3 provides for persons to notify proposed acquisitions to the Commission (including acquisitions that are not required to be notified).

The Commission may determine that a notified acquisition may be put into effect if the Commission is satisfied it would not substantially lessen competition (Division 4).

If the Commission does not make such a determination, the notifying parties may ask the Commission to determine that the proposed acquisition would be of public benefit (Division 5).

Note: For the consequences of failing to notify the Commission of an acquisition, or for putting into effect an acquisition that the Commission has neither determined may be put into effect nor determined would be of public benefit, see Division 1A of Part IV.

#### **Subdivision B—Acquisitions to which acquisitions provisions apply**

##### **51ABB Acquisitions to which acquisitions provisions apply**

- (1) Subject to section 51ABD, the acquisitions provisions apply to the following acquisitions:
-

- (a) an acquisition by a corporation of shares in the capital of a body corporate;
  - (b) an acquisition by a corporation of any assets of a person;
  - (c) an acquisition by a corporation of anything determined under paragraph (2)(a) of this section;
  - (d) an acquisition of shares in the capital of a corporation;
  - (e) an acquisition of any assets of a corporation;
  - (f) an acquisition of anything, relating to a corporation, determined under paragraph (2)(a).
- (2) The Minister may, by legislative instrument, determine:
- (a) a thing for the purposes of paragraphs (1)(c) and (f); or
  - (b) a person or entity, in relation to an acquisition to which paragraph (1)(c) or (f) of this section applies, for the purposes of paragraph 51ABI(3)(c).

**51ABC Acquisition of units in unit trusts and interests in managed investment schemes**

- (1) The acquisitions provisions apply to the acquisition of units in a unit trust:
- (a) as if:
    - (i) the trust were a body corporate; and
    - (ii) units in the trust were shares in the capital of the body corporate; and
  - (b) with such other modifications as are determined under paragraph (3)(a) for the purposes of this paragraph in relation to the trust.

Note: For when a reference to a corporation includes a reference to the unit trust, see paragraph 51ABZZK(2)(c) or (3)(c).

- (2) The acquisitions provisions apply to the acquisition of an interest in a managed investment scheme (within the meaning of the *Corporations Act 2001*):
- (a) as if:
    - (i) the scheme were a body corporate; and
    - (ii) interests in the scheme were shares in the capital of the body corporate; and

- (b) as if the body corporate were a corporation if the following person is a corporation:
    - (i) if the scheme is a registered scheme (within the meaning of that Act)—the scheme’s responsible entity (within the meaning of that Act);
    - (ii) if the scheme is not a registered scheme—the holder of the office (by whatever name it is known) in relation to the scheme that corresponds most closely to the office of responsible entity of a registered scheme; and
  - (c) with such other modifications as are determined under paragraph (3)(b) for the purposes of this paragraph in relation to the scheme.
- (3) The Minister may, by legislative instrument, determine:
- (a) modifications of the acquisitions provisions for the purposes of paragraph (1)(b) in relation to a unit trust; or
  - (b) modifications of the acquisitions provisions for the purposes of paragraph (2)(c) in relation to a managed investment scheme.

#### **51ABD Internal restructures and reorganisations**

- (1) The acquisitions provisions do not apply to an acquisition that is, or is part of, a restructure or reorganisation of a group of persons who are related:
- (a) in the ways referred to in section 4A (related bodies corporate); or
  - (b) by means of trust or partnership.
- (2) Paragraph (1)(a) applies as if:
- (a) the Commonwealth, a State or a Territory were a body corporate; and
  - (b) each authority of the Commonwealth, a State or a Territory were a subsidiary of the Commonwealth, the State or the Territory.
- (3) However, for the purposes of paragraph (1)(a), subsection (2) does not affect when an authority of the Commonwealth, a State or a Territory is related to another authority of the Commonwealth, the State or the Territory.

## Subdivision C—Definitions relating to acquisitions and notifications

### 51ABE When acquisitions are *stayed*

(1) An acquisition to which any of the following subsections applies is *stayed*.

(2) This subsection applies to an acquisition that:

- (a) is required to be notified; but
- (b) is not a notified acquisition.

Note: For when an acquisition is *required to be notified*, see Division 2.

(3) This subsection applies to a notified acquisition if the most recent notification of the acquisition has not been finally considered.

Note: For when a notification has been *finally considered*, see section 51ABF.

(4) This subsection applies to a notified acquisition if:

- (a) the most recent determination under subsection 51ABZE(1) in respect of a notification of the acquisition is a determination that the acquisition must not be put into effect; and
- (b) since making that determination, the Commission has not made a determination under paragraph 51ABZW(1)(a) in respect of the notification.

(5) This subsection applies to a notified acquisition if the most recent notification of the acquisition is stale.

Note: For when a notification is *stale*, see section 51ABG.

### 51ABF When notifications have been *finally considered*

(1) A notification of an acquisition has been *finally considered* if:

- (a) the Commission has made a determination under subsection 51ABZE(1) in respect of the notification; and
- (b) the determination made under subsection 51ABZE(1) is no longer subject to review; and



- (c) if the determination made under subsection 51ABZE(1) includes conditions, or is a determination that the acquisition must not be put into effect:
- (i) in the case of a determination that includes conditions—a public benefit application in relation to the notification has not been made; or
  - (ii) in the case of a determination that the acquisition must not be put into effect—a public benefit application in relation to the notification has not been made, and the period during which such an application could be made has ended; or
  - (iii) in any case—a public benefit application in relation to the notification has been made, and the Commission has decided under section 51ABZV to cease considering the application; or
  - (iv) in any case—a public benefit application in relation to the notification has been made, the Commission has made a determination under subsection 51ABZW(1) in respect of the application, and the determination made under subsection 51ABZW(1) is no longer subject to review.

Note: A notification has not been *finally considered* if:

- (a) it does not have an effective notification date; or
- (b) the Commission has decided to cease considering the notification under section 51ABZD.

- (2) An acquisition determination is *no longer subject to review* if:
- (a) both:
    - (i) an application has not been made under subsection 100C(1) for review of the determination; and
    - (ii) the period during which such an application could be made has ended; or
  - (b) an application has been made under subsection 100C(1) for review of the determination, and:
    - (i) the application has been withdrawn under subsection 100E(1) and the period during which a participant may apply for reinstatement of the application under subsection 100E(2) has ended without an application for reinstatement being made; or

- (ii) the Tribunal has dismissed the application; or
- (iii) the Tribunal has made a determination on the review under paragraph 100N(1)(a).

**51ABG When notifications become *stale***

A notification of an acquisition becomes *stale* 12 months after the time (if any) at which the Commission:

- (a) unless paragraph (b) of this section applies—makes a determination under paragraph 51ABZE(1)(a) in respect of the notification; or
- (b) if the Commission makes a determination under paragraph 51ABZW(1)(a) in respect of a public benefit application that relates to the notification—makes that determination.

**51ABH When notified acquisitions are *subject* to conditions**

Putting a notified acquisition into effect is *subject* to a condition if:

- (a) both:
  - (i) the most recent determination in respect of a notification of the acquisition under subsection 51ABZE(1) includes that condition; and
  - (ii) since making that determination, the Commission has not made a determination under paragraph 51ABZW(1)(a) in respect of the notification; or
- (b) both:
  - (i) the most recent determination in respect of a notification of the acquisition under subsection 51ABZW(1) includes that condition; and
  - (ii) since making that determination, the Commission has not made a determination under subsection 51ABZE(1) in respect of a notification of the acquisition.

### **51ABI Parties to acquisitions**

- (1) Each of the following is a **party** to an acquisition of shares in the capital of a body corporate, any assets of a person or a thing determined under subsection 51ABB(2):
  - (a) the person (a **principal party** to the acquisition) who acquires the shares, assets or determined thing;
  - (b) without limiting paragraph (a)—a person that is a party to a contract, arrangement or understanding pursuant to which the acquisition takes place.
- (2) To avoid doubt, a reference to a **party** or **principal party** to an acquisition that has not been put into effect is a reference to a person that would be a party or principal party to the acquisition if the acquisition were put into effect.
- (3) The **target**:
  - (a) of an acquisition of shares in the capital of a body corporate—is the body corporate; and
  - (b) of an acquisition of any assets of a person—is the person; and
  - (c) of an acquisition to which subparagraph 51ABB(1)(c) or (f) applies—is the person or entity determined under paragraph 51ABB(2)(b) for the purposes of this paragraph in relation to the acquisition.

### **Subdivision D—Other definitions**

#### **51ABJ Meaning of *Chapter 6* entity**

- (1) A **Chapter 6 entity** is:
  - (a) a listed company (within the meaning of the *Corporations Act 2001*); or
  - (b) an unlisted company with more than 50 members (within the meaning of that Act); or
  - (c) a listed registered scheme (within the meaning of that Act).
- (2) In determining whether a company has more than 50 members for the purposes of paragraph (1)(b), count joint holders of a particular parcel of shares as 1 person.

- (3) A reference in sections 603, 604 and 605A of the *Corporations Act 2001* to Chapter 6 of that Act is taken to include a reference to:
- (a) subsections (1) and (2) of this section; and
  - (b) Subdivision B of Division 2 of this Part; and
  - (c) Subdivision D of Division 6 of this Part.

### **51ABK Meaning of *business day***

For the purposes of this Part, a *business day* is a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory; or
- (d) a day occurring between:
  - (i) 23 December in any year; and
  - (ii) the following 10 January.

### **Subdivision E—Other provisions**

#### **51ABL Conditional contracts, arrangements and understandings**

For the purposes of the acquisitions provisions, if:

- (a) a person enters into a contract, arrangement or understanding pursuant to which the person will acquire:
  - (i) shares in the capital of a body corporate; or
  - (ii) any assets of another person; or
  - (iii) a thing determined under paragraph 51ABB(2)(a); and
- (b) the provisions of the contract, arrangement or understanding pursuant to which the acquisition is to take place do not become binding on the person until one or more conditions are met;

the person does not acquire shares, assets or a determined thing under the provisions unless and until the provisions become binding.

#### **51ABM Changes in joint ownership**

- (1) This section applies to joint holders of a particular parcel of shares in the capital of a body corporate.

- (2) For the purposes of the acquisitions provisions, one of those persons is taken to acquire those shares if the person begins to hold the shares alone.

### **51ABN Acquisition of assets**

- (1) The acquisitions provisions apply in relation to any of the following that is not an asset in the same way as they apply in relation to an asset:
- (a) any kind of property;
  - (b) a legal or equitable right that is not property;
  - (c) without limiting paragraphs (a) and (b):
    - (i) part of, or an interest in, an asset referred to in paragraph (a) or (b); or
    - (ii) goodwill or an interest in it; or
    - (iii) an interest in an asset of a partnership; or
    - (iv) an interest in a partnership that is not covered by subparagraph (iii).
- (2) For the purposes of the acquisitions provisions, the reference in paragraph 4(4)(b) to an acquisition of an asset in the ordinary course of business is taken not to apply if the asset is:
- (a) land, or an interest in land; or
  - (b) a patent, or an interest in a patent.

## **Division 2—Acquisitions that are required to be notified**

### **Subdivision A—Acquisitions that are required to be notified**

#### **51ABO When acquisitions are *required to be notified***

Subject to Subdivisions B and C, an acquisition is *required to be notified* if it:

- (a) occurs in circumstances determined under subsection 51ABP(1) for the purposes of this paragraph in relation to the acquisition; or
- (b) is in a class of acquisitions determined under subsection 51ABQ(1) for the purposes of this paragraph.

## Schedule 1 Acquisitions

### Part 2 Amendments commencing 1 July 2025

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Note 1: An acquisition is **required to be notified** only if it is an acquisition to which this Division applies. For the acquisitions to which this Division applies, see Subdivision B of Division 1.

Note 2: See also subsection 51ABS(5).

#### 51ABP Notification thresholds

- (1) The Minister may, by legislative instrument, determine circumstances for the purposes of paragraph 51ABO(a) in relation to an acquisition.
- (2) The circumstances must be determined wholly or partly by reference to the acquisition meeting a specified threshold.
- (3) Without limiting subsection (2) of this section, the specified threshold may be a threshold relating to:
  - (a) the value of an acquisition or of a contract, arrangement or understanding; or
  - (b) the turnover of a person, a business or part of a business; or
  - (c) the level of concentration in a market; or
  - (d) any assets of a person.
- (4) To avoid doubt, an instrument made under subsection (1) does not affect the meaning of **substantially lessening competition**.

#### 51ABQ Classes of acquisitions

- (1) The Minister may, by legislative instrument, determine a class of acquisitions for the purposes of paragraph 51ABO(b).
- (2) Without limiting subsection (1) of this section, the Minister may determine a class of acquisitions under that subsection wholly or partly by reference to:
  - (a) a party, or a class of parties, to an acquisition or to a contract, arrangement or understanding; or
  - (b) an asset or a class of assets; or
  - (c) a business or a class of businesses; or
  - (d) a market or a class of markets; or
  - (e) an industry or a class of industries; or
  - (f) another acquisition, or a class of acquisitions.

- (3) In making an instrument under subsection (1), the Minister must consider all of the following:
- (a) the likely effect of making the instrument on:
    - (i) the interests of consumers; and
    - (ii) promoting competition; and
    - (iii) the public interest;
  - (b) the likely regulatory impact of requiring the class of acquisitions to which the determination relates to be notified;
  - (c) any other matters the Minister considers relevant.
- (4) In making an instrument under subsection (1) of this section, the Minister may consider any reports or advice of the Commission (including any reports given under subparagraph 51ABR(2)(a)(ii)).
- Note: For consultation requirements, see section 17 of the *Legislation Act 2003*.
- (5) An instrument made under subsection (1) must not be expressed to commence earlier than the 30th day after the instrument is registered under the *Legislation Act 2003*.
- (6) This subsection repeals an instrument made under subsection (1) on the fifth anniversary of the registration of the instrument under the *Legislation Act 2003*, unless the instrument is repealed earlier.
- (7) To avoid doubt, an instrument made under subsection (1) does not affect the meaning of ***substantially lessening competition***.

### **51ABR Classes of acquisitions—Commission reports**

- (1) Before making an instrument under subsection 51ABQ(1), the Minister may ask the Commission to analyse the matters in paragraphs 51ABQ(3)(a) to (c) in relation to the instrument.
- (2) If the Minister does so:
- (a) the Commission must:
    - (i) analyse the matters; and
    - (ii) give to the Minister a written report of its analysis; and
  - (b) the Minister must cause the report to be published on the Department's website; and

- (c) the Minister must not make the instrument earlier than 60 days after the report is published.
- (3) This section does not limit:
  - (a) subsection 51ABQ(4) of this Act; or
  - (b) section 17 of the *Legislation Act 2003* (consultation requirements).

## **Subdivision B—Provisions relating to particular kinds of acquisitions**

### **51ABS Acquisitions that do not result in control**

- (1) Subject to subsection (5), an acquisition by a person of shares in the capital of a body corporate is not *required to be notified* if:
  - (a) immediately after the acquisition is put into effect, the person does not control (within the meaning of section 50AA of the *Corporations Act 2001*) the body corporate; or
  - (b) the person controlled the body corporate immediately before the acquisition was put into effect.
- (2) For the purposes of subsection (1) of this section:
  - (a) despite subsection 50AA(3) of the *Corporations Act 2001*, the person is taken to control the body corporate if the first person and one or more associates (within the meaning of Chapter 6 of that Act) jointly have the capacity referred to in subsection 50AA(3) of that Act in relation to the body corporate; and
  - (b) disregard subsection 50AA(4) of that Act if the person is a special purpose vehicle; and
  - (c) disregard paragraph 50AA(4)(b) of that Act to the extent it applies to a legal obligation the person has as a subsidiary of someone that is a body corporate.
- (3) For the purposes of subsection (1) of this section, disregard the effects of a scheme if it would be reasonable to conclude that the purpose of the person, or one of the persons, who enters into or carries out the scheme or any part of the scheme is to enable that subsection to apply to an acquisition.

Note: See section 4F (references to purpose).

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- (4) For the purposes of subsection (3), a *scheme* is:
- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or
  - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise; or
  - (c) any combination of 2 or more things that are schemes because of paragraph (a) or (b) of this subsection.

*Ministerial determinations*

- (5) Despite subsection (1), an acquisition of shares in the capital of a body corporate is **required to be notified** if:
- (a) paragraph (1)(a) or (b) applies to the acquisition; and
  - (b) the acquisition is in a class of acquisitions determined under subsection (6).
- (6) For the purposes of paragraph (5)(b), the Minister may, by legislative instrument, determine a class of acquisitions of shares in the capital of bodies corporate.
- (7) Without limiting subsection (6), the Minister may determine a class of acquisitions under that subsection wholly or partly by reference to:
- (a) the size of an interest in a body corporate; or
  - (b) the nature of a person's control of a body corporate.

**51ABT Acquisitions of shares in the capital of Chapter 6 entities**

- (1) An acquisition of shares in the capital of a body corporate is not **required to be notified** if:
- (a) the body corporate is a Chapter 6 entity; and
  - (b) the acquisition does not result in someone's voting power (within the meaning of the *Corporations Act 2001*) in the body corporate increasing:
    - (i) from 20% or below to more than 20%; or
    - (ii) from a starting point that is above 20% and below 100%.
- (2) For the purposes of paragraph (1)(b), if:

- (a) a person enters into a contract, arrangement or understanding pursuant to which the person will acquire shares in the capital of a Chapter 6 entity; and
- (b) the provisions of the contract, arrangement or understanding pursuant to which the acquisition is to take place do not become binding on the person until one or more conditions are met;

then, in working out someone's voting power, treat the person as not acquiring a relevant interest (within the meaning of the *Corporations Act 2001*) in the shares under the provisions unless and until the provisions become binding.

### Subdivision C—Waivers

#### 51ABU Notification waiver applications

- (1) A person may apply to the Commission for a determination that an acquisition is not required to be notified.
- (2) The application must be made in accordance with any requirements determined under subsection (3).
- (3) For the purposes of subsection (2), the Minister may, by legislative instrument, determine requirements for making a notification waiver application.
- (4) Without limiting subsection (3), the requirements may include the payment of a fee.
- (5) If the application is made in accordance with subsection (2), it is a **notification waiver application** in relation to the acquisition.

#### 51ABV Waivers

- (1) If a notification waiver application in relation to an acquisition is made, the Commission may, in writing, determine:
  - (a) that the acquisition is not required to be notified; or
  - (b) not to make the determination applied for.
- (2) In making a determination under subsection (1), the Commission must:

- (a) comply with any requirements determined under subsection (3); and
- (b) subject to paragraph (a) of this subsection, have regard to:
  - (i) the object of this Act; and
  - (ii) the interests of consumers; and
  - (iii) if circumstances are determined under subsection 51ABP(1)—the likelihood that, if the acquisition were put into effect, those circumstances would apply; and
  - (iv) the likelihood that the acquisition would, if put into effect, have the effect mentioned in paragraph 51ABZE(2)(c).
- (3) The Minister may, by legislative instrument, determine requirements for the purposes of paragraph (2)(a) of this section.
- (4) Without limiting subsection (3), an instrument made under that subsection may:
  - (a) determine a requirement that, in specified circumstances, the Commission must not make the determination applied for; or
  - (b) provide for review by the Tribunal of decisions made under subsection (1).
- (5) The Commission must give:
  - (a) written notice of the determination under subsection (1); and
  - (b) a written explanation of why it made the determination; to the applicant.
- (6) If the Commission makes a determination under paragraph (1)(a) in respect of the application, the acquisition is not ***required to be notified***.

### **Division 3—Notification of acquisitions**

#### **Subdivision A—Notification of acquisitions**

##### **51ABW Notifications of acquisitions**

- (1) This section applies if the Commission is notified, in accordance with subsection 51ABX(1), of a proposed acquisition (whether or
-

not the acquisition is required to be notified, and whether or not a previous notification of the acquisition has been made).

Note: For the acquisitions to which this section applies, see Subdivision B of Division 1.

- (2) The acquisition is a **notified acquisition**.
- (3) The principal party that makes the notification, or each of the principal parties that jointly make the notification, is a **notifying party** of the notification.
- (4) Subject to paragraph 51ABZ(1)(a), subsection 51ABZA(5) and subparagraph 51ABZB(2)(a)(i), the **effective notification date** of the notification is the day the notification is made.
- (5) The Commission must give the notifying party, or at least one of the notifying parties, written notice:
  - (a) that the Commission has received the notification; and
  - (b) of the effective notification date.

### **51ABX Requirements for notifications**

- (1) A notification of a proposed acquisition is made in accordance with this subsection if:
  - (a) the notification is made in writing; and
  - (b) the notification is accompanied by the fee (if any) determined under subsection (2) for the purposes of this paragraph in relation to the notification; and
  - (c) the notification is made by:
    - (i) if there is only one principal party to the acquisition—the principal party; or
    - (ii) otherwise—all of the principal parties jointly; and
  - (d) any of the following subparagraphs apply when the notification is made:
    - (i) the acquisition is to take place pursuant to a contract, arrangement or understanding that has been entered into;
    - (ii) the proposed contract, arrangement or understanding pursuant to which the acquisition is to take place has not been entered into, but all of the proposed parties to the

- contract, arrangement or understanding pursuant intend to enter into it;
- (iii) the acquisition is to be a takeover acquisition in relation to a takeover bid and subsection (4) applies;
  - (iv) the acquisition is to take place pursuant to a proposed arrangement between a Part 5.1 body and its creditors or any class of them, or between a Part 5.1 body and its members or any class of them, under Part 5.1 of the *Corporations Act 2001*, and the arrangement has been publicly proposed by the Part 5.1 body.
- (2) The Minister may, by legislative instrument, determine a fee for the purposes of paragraph (1)(b) in relation to the notification.
- (3) To avoid doubt, the notification is taken not to be made before the fee (if any) required by paragraph (1)(b) is paid.
- (4) For the purposes of subparagraph (1)(d)(iii), this subsection applies if:
- (a) the bid has been publicly proposed; or
  - (b) the bid has been made; or
  - (c) the proposed principal party, or all of the proposed principal parties, to the acquisition, intend:
    - (i) that the bid will be a bid to which paragraphs (c) and (d) of item 2 of the table in section 611 of the *Corporations Act 2001* will apply; and
    - (ii) to make a request under paragraph 51ABZZL(1)(d) of this Act in relation to the acquisition.

*Notifications may cover multiple acquisitions*

- (5) If a proposal to put an acquisition into effect includes a proposal to put another acquisition into effect:
- (a) the proposed acquisitions may be notified in a single notification; and
  - (b) the acquisitions provisions apply in relation to such a notification as if:
    - (i) those acquisitions together constituted a single acquisition; and

- (ii) each party to those acquisitions were a party to that single acquisition; and
- (iii) each principal party to those acquisitions were a principal party to that single acquisition.

*Multiple notifying parties*

- (6) If there is more than one notifying party of a notification of an acquisition:
  - (a) a reference in this Part (other than this Subdivision) to giving a notice to the notifying party of the notification of the acquisition is taken to be a reference to giving a notice to any of those notifying parties; and
  - (b) a reference in this Part (other than this Subdivision) to the notifying party of the notification of the acquisition doing a thing (such as giving additional information or documents or making a request or application) is taken to be a reference to all of those notifying parties doing that thing jointly.

**Subdivision B—Powers of the Commission in response to incomplete and misleading notifications and changes of fact**

**51ABY Notifications that are materially incomplete or misleading**

- (1) The Commission may decide, in writing, that a notification of an acquisition should be taken not to have an effective notification date, if:
  - (a) the notification is not subject to phase 2 review; and
  - (b) the Commission has not made a determination in respect of the notification under subsection 51ABZE(1); and
  - (c) the Commission is satisfied that subsection (2) of this section applies to the notification.
- (2) This subsection applies to the notification if it:
  - (a) is materially incomplete; or
  - (b) is materially misleading; or
  - (c) contains information that is false in a material particular.

- (3) The decision must be made within a reasonable period after the Commission begins to be satisfied that subsection (2) applies to the notification.
- (4) In considering whether subsection (2) applies to the notification, the Commission may have regard to:
  - (a) the extent to which the notification is in the form determined under paragraph (5)(a) for the purposes of this paragraph in relation to the notification; or
  - (b) the extent to which the notification includes, or is accompanied by, any information or document determined under paragraph (5)(b) for the purposes of this paragraph in relation to the notification; or
  - (c) any additional information or documents given to the Commission as mentioned in section 51ABZA in response to any previous determination under subsection (1) of this section in relation to the notification; or
  - (d) any change of fact:
    - (i) of which the Commission becomes aware after the notification is made; and
    - (ii) that is material to the Commission making a determination under Division 4 in respect of the notification.
- (5) The Minister may, in writing, determine:
  - (a) a form for the purposes of paragraph (4)(a) in relation to the notification; or
  - (b) information or documents for the purposes of paragraph (4)(b) in relation to the notification.
- (6) A determination under subsection (5) may require the notification to specify any goodwill protection provisions of the contract pursuant to which the acquisition would take place.
- (7) A determination made under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.
- (8) To avoid doubt, subsection (2) can apply to the notification after the notification is made (for example, because of a change of fact)

even if subsection (2) did not apply to the notification when the notification was made.

**51ABZ Notifications that are materially incomplete or misleading—consequences of Commission’s decisions**

- (1) If the Commission makes a decision under subsection 51ABY(1) in relation to a notification of an acquisition:
  - (a) the notification is taken never to have had an *effective notification date*; and
  - (b) the Commission must give to the notifying party of the notification of the acquisition written notice of:
    - (i) the decision; and
    - (ii) the grounds on which the Commission is satisfied that subsection 51ABY(2) applies to the notification.

Note: For review of the decision, see section 51ABZZG.

- (2) The Commission must not make a determination under subsection 51ABZE(1) in respect of the notification if, because of a decision made under subsection 51ABY(1), the notification does not have an effective notification date.

**51ABZA Notifications that are incomplete or misleading—providing additional information and documents**

- (1) This section applies in relation to a notification of an acquisition if:
    - (a) because of a decision made under subsection 51ABY(1), the notification does not have an effective notification date; and
    - (b) the notifying party of the notification gives the Commission additional information or documents in response to the decision.
  - (2) The additional information or documents are given in accordance with this subsection if:
    - (a) in the case of information—the information is given in writing; and
    - (b) the information or documents are accompanied by the fee (if any) determined under subsection (3) for the purposes of this paragraph in relation to the information or documents and the notification of the acquisition.
-



- (3) The Minister may, by legislative instrument, determine a fee for the purposes of paragraph (2)(b) in relation to the information or documents and the notification.
- (4) To avoid doubt, the additional information or documents are taken not to be given before the fee (if any) required by paragraph (2)(b) is paid.
- (5) The *effective notification date* of the notification of the acquisition is the day the additional information or documents are given.
- (6) The Commission must give the notifying party written notice of the effective notification date.

### **51ABZB Material changes of fact**

- (1) This section applies in relation to a notification of an acquisition if:
    - (a) the Commission has not made a determination in respect of the notification under subsection 51ABZE(1); and
    - (b) the Commission becomes aware of a change of fact.
  - (2) If the Commission is satisfied that the change of fact is material to the Commission making a determination under subsection 51ABZE(1) in respect of the notification, the Commission may, in writing:
    - (a) if the notification is not subject to phase 2 review:
      - (i) decide that the *effective notification date* of the notification is the date on which the Commission becomes aware of the change of fact; or
      - (ii) decide that the phase 1 determination period for the notification is extended by the period mentioned in subsection (3); or
    - (b) if the notification is subject to phase 2 review—decide that the phase 2 determination period for the notification is extended by the period mentioned in subsection (3).
  - (3) For the purposes of subparagraph (2)(a)(ii) or paragraph (2)(b), the extension is for the period:
    - (a) starting on the day the Commission makes the decision under that subparagraph or paragraph; and
    - (b) including:
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- (i) each day on which the notifying party of the notification has not given to the Commission information or documents in response to the decision in accordance with subsection 51ABZC(2); and
  - (ii) the day (if any) on which the notifying party gives to the Commission information or documents in response to the decision in accordance with that subsection.
- (4) A decision under subsection (2) must be made within a reasonable period after the Commission becomes aware of the change of fact.
- (5) If the Commission makes a decision under subsection (2), the Commission must give written notice of the decision to the notifying party of the notification.

Note: For review of the decision, see section 51ABZZG.

- (6) If the Commission extends the phase 1 determination period for the notification under subparagraph (2)(a)(ii) of this section, the period mentioned in paragraph 51ABZZE(3)(a) in relation to making a determination under subsection 51ABZE(1) in respect of the notification is extended by the same number of days.
- (7) If the Commission extends the phase 2 determination period for the notification under paragraph (2)(b) of this section, the following paragraphs apply in relation to making a determination under subsection 51ABZE(1) in respect of the notification:
- (a) the 25 business days mentioned in section 51ABZK is increased by the number of days of the extension;
  - (b) the period mentioned in paragraph 51ABZZE(3)(b) is extended by the same number of days.

**51ABZC Material changes of fact—providing additional information and documents**

- (1) This section applies in relation to a notification of an acquisition if:
- (a) the Commission has made a decision under subparagraph 51ABZB(2)(a)(ii) or paragraph 51ABZB(2)(b) in relation to the notification because of a material change of fact; and
  - (b) the notifying party of the notification gives the Commission information or documents in response to the decision.
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- (2) The information or documents are given in accordance with this subsection if:
  - (a) in the case of information—the information is given in writing; and
  - (b) the information or documents are accompanied by the fee (if any) determined under subsection (3) for the purposes of this paragraph in relation to the information or documents and the notification of the acquisition.
- (3) The Minister may, by legislative instrument, determine a fee for the purposes of paragraph (2)(b) in relation to the information or documents and the notification.
- (4) To avoid doubt, the information or documents are taken not to be given before the fee (if any) required by paragraph (2)(b) is paid.

### **Subdivision C—When Commission may cease considering notifications**

#### **51ABZD When Commission may cease considering notifications**

- (1) This section applies to a notification of an acquisition if the Commission has not made a determination in respect of the notification under subsection 51ABZE(1).
- (2) The Commission must decide, in writing, to cease considering the notification if requested to do so, in writing, by the notifying party of the notification.
- (3) The Commission may also decide to cease considering the notification if the Commission is satisfied that the parties to the acquisition no longer intend to put the acquisition into effect.
- (4) Subsections (2) and (3) do not limit each other.
- (5) If the Commission decides under subsection (2) or (3) to cease considering the notification:
  - (a) the Commission must give written notice of the decision to the notifying party of the notification; and
  - (b) Subdivision B of this Division, and Division 4, do not apply to the notification.

Note: An effect of the decision is that the acquisition must not be put into effect (see section 45AY, subsection 51ABE(3) and section 51ABF).

- (6) To avoid doubt, a decision under subsection (2) or (3) of this section does not have the effect that the acquisition ceases to be a *notified acquisition*.

## **Division 4—Commission consideration of acquisitions: substantial lessening of competition**

### **Subdivision A—Commission consideration of acquisitions**

#### **51ABZE Commission consideration of acquisitions**

- (1) If the Commission is notified of a proposed acquisition in accordance with subsection 51ABX(1), the Commission may, in writing, determine:

- (a) that the acquisition may be put into effect; or
- (b) that the acquisition must not be put into effect.

Note: The determination may include:

- (a) conditions (see section 51ABZF); or
- (b) declarations relating to goodwill protection provisions (see section 51ABZG).

- (2) The Commission must not determine that the acquisition must not be put into effect unless:

- (a) the notification is subject to phase 2 review; and
- (b) the Commission has given a notice of competition concerns in relation to the notification in accordance with section 51ABZK; and
- (c) the Commission is satisfied that the acquisition, if put into effect, would, in all the circumstances, have the effect, or be likely to have the effect, of substantially lessening competition in any market.

- (3) In considering whether to determine that the acquisition may be put into effect or must not be put into effect, the Commission must have regard to:

- (a) the object of this Act; and
- (b) all relevant matters, including the interests of consumers.

- (4) The Commission must give:
- (a) written notice of the determination under subsection (1); and
  - (b) a written statement of the Commission's reasons for making the determination;

to the notifying party of the notification of the acquisition.

Note 1: If the Commission determines that the acquisition must not be put into effect, the notifying party may apply to the Commission under Division 5 for a determination that the acquisition would be of public benefit.

Note 2: For review of a determination made under subsection (1), see Division 1B of Part IX.

- (5) For the purposes of this Act (other than this Division, Subdivision B of Division 6 and paragraph 51ABZZM(2)(a)), the determination is taken to be made when the Commission includes a copy of it on the acquisitions register.

### **51ABZF Conditions**

- (1) A determination made under paragraph 51ABZE(1)(a) in respect of a notification of an acquisition may include conditions.

Example: A condition that a specified person must give an undertaking to the Commission for the purposes of section 87B and comply with the undertaking.

Note: If the determination includes conditions, the notifying party of the notification may apply to the Commission under Division 5 for a determination that the acquisition would be of public benefit.

- (2) The Commission must not include conditions in the determination unless the Commission is satisfied that, disregarding any conditions the Commission could include, the acquisition, if put into effect, could, in all the circumstances, have the effect of substantially lessening competition in any market.
- (3) In considering whether to include conditions in the determination, the Commission:
- (a) must have regard to all relevant matters; and
  - (b) may have regard to:
    - (i) the effect on the interests of consumers that compliance with the conditions would have, or be likely to have; or

- (ii) without limiting subparagraph (i) of this paragraph—  
any consumer benefits that would result, or be likely to  
result from compliance with the conditions.
- (4) To avoid doubt, a reference in this Act to a determination made  
under paragraph 51ABZE(1)(a) includes a reference to any  
conditions included in it.

### **51ABZG Goodwill protection provisions**

- (1) The Commission may declare, in a determination made under  
subsection 51ABZE(1) in respect of a notification of an  
acquisition, that paragraph 51(2)(e) does not apply to a goodwill  
protection provision of the contract pursuant to which the  
acquisition is to take place.
- (2) The Commission must not include a declaration under  
subsection (1) of this section in relation to a provision of the  
contract unless the Commission is satisfied that the provision is not  
necessary for the protection of the purchaser in respect of the  
goodwill of the business.
- (3) To avoid doubt, if the Commission does not include a declaration  
under subsection (1) in relation to a provision of the contract, the  
fact that the Commission does not include that declaration does  
not:
  - (a) affect the application of any other provision of this Act in  
relation to the provision; or
  - (b) limit the powers of the Commission or a court in relation to  
the provision of the contract, including the ability of the  
Commission to recognise or claim that paragraph 51(2)(e)  
does not apply to the provision.
- (4) To avoid doubt, a reference in this Act to a determination made  
under subsection 51ABZE(1) includes a reference to any  
declarations included in it under subsection (1) of this section.

## **Subdivision B—Substantial lessening of competition**

### **51ABZH Substantial lessening of competition**

- (1) This section applies to the Commission considering, for the purposes of this Part, whether an acquisition, if put into effect, would or could, in all the circumstances, have the effect, or be likely to have the effect, of substantially lessening competition in any market.

Note: For *lessening of competition*, see section 4G.

- (2) The Commission must have regard to all relevant matters.
- (3) Without limiting subsection (2), the Commission may have regard to any of the following matters:
- (a) the contract, arrangement or understanding, or proposed contract, arrangement or understanding, pursuant to which the acquisition is to take place;
  - (b) the commercial relationships of the parties to the acquisition (and, if any of the parties is a body corporate, of a body corporate that is related to that party).
- (4) For the purposes of this Part, the acquisition may have the effect or be likely to have the effect of substantially lessening competition in a market if the acquisition would, in all the circumstances, have the effect, or be likely to have the effect, of creating, strengthening or entrenching a substantial degree of power in the market.
- (5) Subsections 46(3) to (8) have effect for the purposes of this Part as if:
- (a) a reference in those subsections (other than in paragraph 46(8)(b)) to section 46 included a reference to this Part; and
  - (b) a reference in those subsections to a market were a reference to a market (within the meaning of this Part).

Note: Subsections 46(3) to (8) contain matters relevant to working out whether a corporation has a substantial degree of power in a market.

*Cumulative effects*

- (6) The Commission may treat the effect of the acquisition as being the combined effect of:
- (a) the acquisition (the *current acquisition*); and
  - (b) any one or more acquisitions:
    - (i) that are put into effect during the 3 years ending on the effective notification date of the notification of the current acquisition; and
    - (ii) the parties to which include any party to the current acquisition or, if a party to the current acquisition is a body corporate, include a body corporate that is related to that party; and
    - (iii) the targets of which are involved (directly or indirectly) in the supply or acquisition of the same goods or services or goods or services that are substitutable for, or otherwise competitive with, each other (disregarding any geographical factors or limitations).
- (7) Subsection (6) does not limit the circumstances in which an acquisition would or could, if put in effect, have the effect, or be likely to have the effect, of substantially lessening competition for the purposes of this Part.

*Effect outside this Part*

- (8) To avoid doubt, this Subdivision does not affect the meaning of *substantially lessening competition* outside this Part.

**Subdivision C—Process for considering acquisitions**

**51ABZI Time for making determinations**

*Earliest time for making determinations*

- (1) The Commission must not make a determination under subsection 51ABZE(1) in respect of a notification of an acquisition earlier than 15 business days after the effective notification date of the notification.



*Commission deemed to make determination at end of determination period*

- (2) The Commission is taken to determine under paragraph 51ABZE(1)(a), at the end of the determination period for a notification of an acquisition, that the acquisition may be put into effect, unless the Commission makes a determination under subsection 51ABZE(1) in respect of the notification before the end of that period.

Note: A determination the Commission is taken to make under this subsection does not include any conditions under subsection 51ABZF(1) or declarations under subsection 51ABZG(1).

*Determination periods*

- (3) The **determination period** for a notification of an acquisition is:
- (a) if the notification is not subject to phase 2 review—the phase 1 determination period for the notification; or
  - (b) if the notification is subject to phase 2 review—the phase 2 determination period for the notification.
- (4) The **phase 1 determination period** for a notification of an acquisition that has an effective notification date:
- (a) starts on the effective notification date; and
  - (b) subject to subparagraph 51ABZB(2)(a)(ii) and section 51ABZZE (extensions of determination periods), ends 30 business days after it starts.
- (5) If a notification of an acquisition is subject to phase 2 review, the **phase 2 determination period** for the notification:
- (a) starts immediately after the end of the phase 1 determination period for the notification; and
  - (b) subject to paragraph 51ABZB(2)(b), subsections 51ABZK(5), 51ABZL(4) and 51ABZN(2) and section 51ABZZE (extensions of determination periods), ends 90 business days after it starts.

*Invalid determinations etc.*

- (6) Subsection (7) applies if:

- (a) the Commission purports to make a determination in respect of a notification of an acquisition under subsection 51ABZE(1) before the end of the determination period; and
  - (b) the determination is invalid, or a court:
    - (i) sets the determination aside; or
    - (ii) remits the decision to make the determination back to the Commission to be remade.
- (7) A reference in subsection (2) of this section to making a determination before the end of the determination period includes a reference to purportedly making a determination as mentioned in paragraph (6)(a).

Note: The effect of this subsection is that the invalidity etc. does not result in the Commission being taken to have made a determination under subsection (2) at the end of the determination period.

**51ABZJ Phase 2 review—when notifications are *subject to phase 2 review***

- (1) During the phase 1 determination period for a notification of an acquisition, the Commission may, in writing, decide that the notification is to be subject to phase 2 review, if:
- (a) the Commission is satisfied that the acquisition to which the notification relates, if put into effect, could, in all the circumstances, have the effect, or be likely to have the effect, of substantially lessening competition in any market; and
  - (b) the Commission has not made a determination in respect of the notification under paragraph 51ABZE(1)(a).

Note: Deciding that the notification is to be subject to phase 2 review extends the time the Commission has to make a determination in respect of the notification under subsection 51ABZE(1) (see section 51ABZI).

- (2) If the Commission decides that the notification is to be subject to phase 2 review:
- (a) the notification is *subject to phase 2 review*; and
  - (b) the Commission must give to the notifying party of the notification:

- (i) written notice of the decision, including the matters specified under subsection (3); and
- (ii) written notice of the day by which, under paragraph (d) of this subsection, the fee (if any) mentioned in paragraph (c) must be paid; and
- (c) the Commission must not make a determination in respect of the notification of the acquisition under subsection 51ABZE(1) if the fee (if any) determined under paragraph (4)(a) of this section for the purposes of this paragraph in relation to the notification has not been paid; and
- (d) if the fee (if any) mentioned in paragraph (c) of this subsection is not paid on or before the day determined under paragraph (4)(b) for the purposes of this paragraph in relation to the notification—the Commission is taken to decide under subsection 51ABZD(2) on that day to cease considering the notification (if the Commission has not already made a decision under section 51ABZD to cease considering the notification).

Note: See also section 51ABZK (Commission must give notice of competition concerns).

- (3) The notice given under subparagraph (2)(b)(i) of this section must:
  - (a) identify the parties to the acquisition, and describe the economic activities in which they engage;
  - (b) explain the Commission’s satisfaction, including specifying:
    - (i) the nature of the theory of harm that is the basis for the Commission’s satisfaction; and
    - (ii) the matters the Commission intends to investigate before making a determination in respect of the notification under subsection 51ABZE(1).
- (4) The Minister may, by legislative instrument, determine:
  - (a) a fee for the purposes of paragraph (2)(c) in relation to the notification; or
  - (b) a day for the purposes of paragraph (2)(d) in relation to the notification.

## 51ABZK Phase 2 review—notices of competition concerns

### *Notices of competition concerns*

- (1) Subject to subsection (2), the Commission must give the notifying party of a notification of an acquisition a written notice (a **notice of competition concerns**) in accordance with subsections (3) and (4) if the notification is subject to phase 2 review.
- (2) The Commission is not required to give a notice of competition concerns if the Commission makes a determination in respect of the notification of the acquisition under paragraph 51ABZE(1)(a) on or before the 25th business day after the start of the phase 2 determination period for the notification.

### *Contents of notices of competition concerns*

- (3) The notice of competition concerns must set out:
  - (a) the Commission's preliminary assessment of whether the acquisition, if put into effect, would have the effect, or be likely to have the effect, of substantially lessening competition in any market; and
  - (b) the grounds on which the Commission makes the assessment, referring to the evidence or other material on which those grounds are based.

### *When notices of competition concerns must be given*

- (4) The notice of competition concerns must be given:
    - (a) no later than the 25th business day after the start of the phase 2 determination period for the notification of the acquisition; or
    - (b) if it is not practicable to give the notice of competition concerns by that day—as soon as practicable after that 25th business day.
  - (5) If the Commission does not give the notice of competition concerns in relation to the notification of the acquisition before the end of the 25th business day mentioned in paragraph (4)(a), the following paragraphs apply in relation to making a determination under subsection 51ABZE(1) in respect of the notification:
-

- (a) if the notifying party of the notification agrees in writing to this paragraph applying in relation to the notification—the phase 2 determination period is extended by the number of business days to which subsection (6) of this section applies (not including a day occurring on or after the day, if any, on which the notifying party withdraws its agreement);
  - (b) in any case (but subject to subsection (7) of this section)—the 15 business days mentioned in subsections 51ABZZD(3) and (5) are reduced by the number of business days to which subsection (6) of this section applies;
  - (c) in any case—the period mentioned in paragraph 51ABZZE(3)(b) is extended by the number of business days to which subsection (6) of this section applies.
- (6) This subsection applies to a business day if:
- (a) the day occurs after the 25th business day after the start of the phase 2 determination period for the notification of the acquisition; and
  - (b) the Commission does not give the notice of competition concerns on or before the day.
- (7) If the reduction under paragraph (5)(b) would be of more than 15 business days, subsections 51ABZZD(3) and (5) do not apply in relation to making the determination.

### **51ABZL Phase 2 review—submissions**

- (1) If the Commission gives the notifying party of a notification of an acquisition a notice of competition concerns in relation to the notification, the Commission:
- (a) must give the notifying party a reasonable opportunity to make, during the period:
    - (i) starting on the day on which the Commission gives the notice of competition concerns; and
    - (ii) ending on the 25th business day after that day;oral or written submissions to the Commission in relation to the matters set out in the notice of competition concerns; and
  - (b) subject to subsection (2) of this section, in making a determination under subsection 51ABZE(1) in respect of the notification of the acquisition, must not take into account

submissions received, as mentioned in paragraph (a) of this subsection, after that period.

- (2) For the purposes of paragraph (1)(b):
  - (a) the notifying party may, in writing, before the end of the period during which the notifying party may make submissions to the Commission in relation to the notice of competition concerns, request the Commission to extend the period; and
  - (b) if the notifying party does so, the Commission may, by written notice given to the notifying party, extend the period.
- (3) To avoid doubt, the Commission may extend the period more than once.
- (4) If the Commission extends the period, the following periods relating to making a determination under subsection 51ABZE(1) in respect of the notification are also extended by the same number of days:
  - (a) the phase 2 determination period for the notification;
  - (b) the period mentioned in paragraph 51ABZZE(3)(b).

**51ABZM Phase 2 review—determinations that acquisition may be put into effect**

Sections 51ABZK and 51ABZL do not limit the Commission's ability to make a determination in respect of a notification of an acquisition under paragraph 51ABZE(1)(a) at any time occurring before the end of the determination period for the notification.

**51ABZN Phase 2 review—false or misleading information**

- (1) This section applies in relation to a notification of an acquisition if:
    - (a) the notification is subject to phase 2 review; and
    - (b) the Commission has not made a determination in respect of the notification under subsection 51ABZE(1).
  - (2) If the Commission is satisfied that subsection (3) of this section applies to the notification, the Commission may, in writing, decide that the phase 2 determination period for the notification is extended by the period:
-

- (a) starting on the day the Commission makes the decision under this subsection; and
- (b) including:
  - (i) each day on which the notifying party of the notification has not given to the Commission information or documents in response to the decision in accordance with subsection 51ABZO(2); and
  - (ii) the day (if any) on which the notifying party gives to the Commission information or documents in response to the decision in accordance with subsection 51ABZO(2).
- (3) This subsection applies if:
  - (a) the notification:
    - (i) is materially misleading; or
    - (ii) contains information that is false in a material particular; or
  - (b) any information the notifying party gives to the Commission under an acquisitions provision in relation to the notification is false in a material particular.
- (4) The decision must be made within a reasonable period after the Commission begins to be satisfied that subsection (3) applies to the notification.
- (5) If the Commission makes a decision under subsection (2), the Commission must give written notice of the decision to the notifying party of the notification.

Note: For review of a decision under subsection (2), see section 51ABZZG.
- (6) If the Commission extends the phase 2 determination period for the notification under subsection (2) of this section, the following paragraphs apply in relation to making a determination under subsection 51ABZE(1) in respect of the notification:
  - (a) the 25 business days mentioned in section 51ABZK is increased by the number of days of the extension;
  - (b) the period mentioned in paragraph 51ABZZE(3)(b) is extended by the same number of days.

**51ABZO Phase 2 review—false or misleading information:  
providing additional information and documents**

- (1) This section applies in relation to a notification of an acquisition if:
  - (a) the Commission has made a decision under subsection 51ABZN(2) in relation to the notification; and
  - (b) the notifying party of the notification gives the Commission information or documents in response to the decision.
- (2) The information or documents are given in accordance with this subsection if:
  - (a) in the case of information—the information is given in writing; and
  - (b) the information or documents are accompanied by the fee (if any) determined under subsection (3) for the purposes of this paragraph in relation to the information or documents and the notification of the acquisition.
- (3) The Minister may, by legislative instrument, determine a fee for the purposes of paragraph (2)(b) in relation to the information or documents and the notification.
- (4) To avoid doubt, the information or documents are taken not to be given before the fee (if any) required by paragraph (2)(b) is paid.

**Division 5—Commission consideration of acquisitions:  
public benefit**

**Subdivision A—Public benefit applications**

**51ABZP Public benefit applications**

- (1) The notifying party of a notification of an acquisition may apply to the Commission for a determination that the acquisition would be of public benefit, if:
  - (a) both:
    - (i) the Commission has made a determination under paragraph 51ABZE(1)(a) in respect of the notification that includes conditions; and
    - (ii) the acquisition has not been put into effect; or



- (b) the Commission has made a determination under paragraph 51ABZE(1)(b) in respect of the notification.
- (2) The application must be:
  - (a) made no later than 21 days after the Commission makes the determination; and
  - (b) made in writing; and
  - (c) accompanied by the fee (if any) determined under subsection (3) for the purposes of this paragraph in relation to the application.
- (3) The Minister may, by legislative instrument, determine a fee for the purposes of paragraph (2)(c) in relation to the application.
- (4) To avoid doubt, the application is taken not to be made before the fee (if any) required by paragraph (2)(c) of this section is paid.
- (5) If the application is made in accordance with subsection (2), it is a **public benefit application** in relation to the notification.
- (6) Subject to paragraph 51ABZR(1)(a), subsection 51ABZS(5) and paragraph 51ABZT(2)(a), the **effective application date** of the application is the day the application is made.
- (7) The Commission must give the notifying party written notice:
  - (a) that the Commission has received the application; and
  - (b) of the effective application date.

**Subdivision B—Powers of the Commission in response to incomplete or misleading public benefit applications and changes of fact**

**51ABZQ Public benefit applications that are materially incomplete or misleading**

- (1) The Commission may decide, in writing, that a public benefit application in relation to a notification of an acquisition should be taken not to have an effective application date, if:
  - (a) the Commission has not made a determination in respect of the application under subsection 51ABZW(1); and

- (b) the Commission is satisfied that subsection (2) of this section applies to the application.
- (2) This subsection applies to the application if it:
  - (a) is materially incomplete; or
  - (b) is materially misleading; or
  - (c) contains information that is false in a material particular.
- (3) The decision must be made within a reasonable period after the Commission begins to be satisfied that subsection (2) applies to the application.
- (4) In considering whether subsection (2) applies to the public benefit application, the Commission may have regard to:
  - (a) the extent to which the application is made in the form determined under paragraph (5)(a) for the purposes of this paragraph in relation to the application; or
  - (b) the extent to which the application includes, or is accompanied by, any information or documents determined under paragraph (5)(b) for the purposes of this paragraph in relation to the application; or
  - (c) any additional information or documents given to the Commission as mentioned in section 51ABZS in response to any previous decision under subsection (1) of this section in relation to the application; or
  - (d) any change of fact:
    - (i) of which the Commission becomes aware after the notification is made; and
    - (ii) that is material to the Commission making a determination under subsection 51ABZW(1) in respect of the application.
- (5) The Minister may, in writing, determine:
  - (a) a form for the purposes of paragraph (4)(a) of this section in relation to the application; or
  - (b) information or documents for the purposes of paragraph (4)(b) of this section in relation to the application.

- (6) A determination made under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.
- (7) To avoid doubt subsection (2) can apply to the application after the application is made (for example, because of a change of fact) even if subsection (2) did not apply to the application when the application was made.

**51ABZR Public benefit applications that are materially incomplete or misleading—consequences of Commission’s decisions**

- (1) If the Commission makes a decision under subsection 51ABZQ(1) in relation to a public benefit application in relation to a notification of an acquisition:
  - (a) the application is taken never to have had an *effective application date*; and
  - (b) the Commission must give to the notifying party of the notification of the acquisition written notice:
    - (i) of the decision; and
    - (ii) the grounds on which the Commission is satisfied that subsection 51ABZQ(2) applies to the application.

Note: For review of the decision, see section 51ABZZG.

- (2) The Commission must not make a determination under subsection 51ABZW(1) in respect of the application if, because of a decision made under subsection 51ABZQ(1), the application does not have an effective application date.

**51ABZS Public benefit applications that are materially incomplete or misleading—providing additional information and documents**

- (1) This section applies in relation to a public benefit application in relation to a notification of an acquisition if:
  - (a) because of a decision made under subsection 51ABZQ(1), the application does not have an effective application date; and

- (b) the notifying party of the notification gives the Commission additional information or documents in response to the decision.
- (2) The additional information or documents are given in accordance with this subsection if:
  - (a) in the case of information—the information is given in writing; and
  - (b) the information or documents are accompanied by the fee (if any) determined under subsection (3) for the purposes of this paragraph in relation to the information or documents and the application.
- (3) The Minister may, by legislative instrument, determine a fee for the purposes of paragraph (2)(b) in relation to the information or documents and the application.
- (4) To avoid doubt, the additional information or documents are taken not to be given before the fee (if any) required by paragraph (2)(b) is paid.
- (5) The *effective application date* of the public benefit application is the day the additional information or documents are given.
- (6) The Commission must give the notifying party written notice of the effective application date.

**51ABZT Material changes of fact**

- (1) This section applies in relation to a public benefit application in relation to a notification of an acquisition if:
    - (a) the Commission has not made a determination in respect of the application under subsection 51ABZW(1); and
    - (b) the Commission becomes aware of a change of fact.
  - (2) If the Commission is satisfied that the change is material to the Commission making a determination under subsection 51ABZW(1) in respect of the application, the Commission may, in writing:
    - (a) decide that the *effective application date* of the application is the date on which the Commission becomes aware of the change of fact; or
-

- (b) decide that the determination period for the application is extended by the period mentioned in subsection (3) of this section.
- (3) For the purposes of paragraph (2)(b), the extension is for the period:
  - (a) starting on the day the Commission makes the decision under that paragraph; and
  - (b) including:
    - (i) each day on which the notifying party of the notification has not given to the Commission information or documents in response to the decision in accordance with subsection 51ABZU(2); and
    - (ii) the day (if any) on which the notifying party gives to the Commission information or documents in response to the decision in accordance with that subsection.
- (4) The decision must be made within a reasonable period after the Commission becomes aware of the change of fact.
- (5) If the Commission makes a decision under subsection (2) of this section, the Commission must give written notice of the decision to the notifying party of the notification.

Note: For review of the decision, see section 51ABZZG.
- (6) If the Commission extends the determination period for the public benefit application under paragraph (2)(b) of this section, the following paragraphs apply in relation to making a determination under subsection 51ABZW(1) in respect of the application:
  - (a) the 20 business days mentioned in section 51ABZZA is increased by the same number of days as the extension;
  - (b) the period mentioned in paragraph 51ABZZE(3)(c) is extended by the same number of days.

**51ABZU Material changes of fact—providing additional information and documents**

- (1) This section applies in relation to a public benefit application in relation to a notification of an acquisition if:

- (a) the Commission has made a decision under paragraph 51ABZT(2)(b) in relation to the application because of a material change of fact; and
  - (b) the notifying party of the notification gives the Commission information or documents in response to the decision.
- (2) The information or documents are given in accordance with this subsection if:
  - (a) in the case of information—the information is given in writing; and
  - (b) the information or documents are accompanied by the fee (if any) determined under subsection (3) for the purposes of this paragraph in relation to the information or documents and the application.
- (3) The Minister may, by legislative instrument, determine a fee for the purposes of paragraph (2)(b) in relation to the information or documents and the application.
- (4) To avoid doubt, the information or documents are taken not to be given before the fee (if any) required by paragraph (2)(b) is paid.

### **Subdivision C—When Commission may cease considering public benefit applications**

#### **51ABZV When Commission may cease considering public benefit applications**

- (1) This section applies to a public benefit application in relation to a notification of an acquisition if the Commission has not made a determination in respect of the application under subsection 51ABZW(1).
  - (2) The Commission must decide, in writing, to cease considering the application if requested to do so, in writing, by the notifying party of the notification.
  - (3) The Commission may also decide, in writing, to cease considering the application if the Commission is satisfied that the parties to the acquisition no longer intend to put the acquisition into effect.
  - (4) Subsections (2) and (3) do not limit each other.
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- (5) If the Commission decides under subsection (2) or (3) to cease considering the application:
- (a) the Commission must give written notice of its decision to the notifying party of the notification; and
  - (b) Subdivisions B, D and F do not apply to the application.

Note 1: An effect of making the decision is that the acquisition might not be able to be put into effect (see section 45AY, subsection 51ABE(3) and section 51ABF).

Note 2: For review of a decision under subsection (3) of this section, see section 51ABZZG.

## **Subdivision D—Commission consideration of public benefit applications**

### **51ABZW Determinations on public benefit applications**

- (1) If a public benefit application in relation to a notification of an acquisition is made, the Commission may, in writing, determine:
- (a) that the acquisition would be of public benefit; or
  - (b) not to make the determination applied for.

Note: The determination may include conditions (see section 51ABZX).

- (2) The Commission must not make a determination under paragraph (1)(a) unless the Commission is satisfied that, were the acquisition put into effect (and any conditions included in the determination under subsection 51ABZX(1) complied with):
- (a) the acquisition would, in all the circumstances, result, or be likely to result, in a benefit to the public; and
  - (b) the benefit would, in all the circumstances, outweigh the detriment to the public that would result, or be likely to result, from the acquisition.
- (3) In considering whether to determine that the acquisition would be of public benefit or not to make the determination applied for, the Commission must have regard to:
- (a) the object of this Act; and
  - (b) all relevant matters, including the interests of consumers.
- (4) The Commission must give:

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- (a) written notice of the determination made under subsection (1); and
  - (b) a written statement of the Commission's reasons for making the determination;
- to the notifying party of the notification of the acquisition.

Note: For review of a determination made under subsection (1), see Division 1B of Part IX.

- (5) For the purposes of this Act (other than this Division and Subdivision B of Division 6), the determination is taken to be made when the Commission includes a copy of it on the acquisitions register.

**51ABZX Conditions**

- (1) A determination made under paragraph 51ABZW(1)(a) may include conditions.

Example: A condition that a specified person must give an undertaking to the Commission for the purposes of section 87B and comply with the undertaking.

- (2) In considering whether to include conditions in a determination, the Commission:
  - (a) must have regard to all relevant matters; and
  - (b) may have regard to:
    - (i) the effect on the interests of consumers that compliance with the conditions would have, or be likely to have; or
    - (ii) without limiting subparagraph (i) of this paragraph—any consumer benefits that would result, or be likely to result from compliance with the conditions.

**Subdivision E—Public benefit**

**51ABZY Public benefit**

- (1) This section applies in relation to the Commission considering, for the purposes of this Part, whether, were an acquisition put into effect:
    - (a) the acquisition would, in all the circumstances, result, or be likely to result, in a benefit to the public; and
-



- (b) the benefit would, in all the circumstances, outweigh the detriment to the public that would result, or be likely to result, from the acquisition.
- (2) The Commission must have regard to all relevant matters.
- (3) Without limiting subsection (2), the Commission may have regard to the contract, arrangement or understanding, or proposed contract, arrangement or understanding, pursuant to which the acquisition is to take place.

### **Subdivision F—Process for considering public benefit applications**

#### **51ABZZ Time for making determinations in respect of public benefit applications**

*Commission deemed to make determination at end of determination period*

- (1) The Commission is taken to determine under paragraph 51ABZW(1)(b), at the end of the determination period for a public benefit application, not to make the determination applied for, unless the Commission makes a determination in respect of the application under subsection 51ABZW(1) before the end of that period.

*Meaning of determination period*

- (2) If a public benefit application in relation to a notification of an acquisition has an effective application date, the **determination period** for the application:
  - (a) starts on the effective application date; and
  - (b) subject to paragraph 51ABZT(2)(b), subsections 51ABZZA(4) and 51ABZZB(4) and section 51ABZZE (extensions of determination periods)—ends 50 business days after it starts.

*Invalid determinations etc.*

- (3) Subsection (4) of this section applies if:

- (a) the Commission purports to make a determination in respect of a public benefit application under subsection 51ABZW(1) before the end of the determination period; and
  - (b) the determination is invalid, or a court:
    - (i) sets the determination aside; or
    - (ii) remits the decision to make the determination back to the Commission to be remade.
- (4) A reference in subsection (1) of this section to making a determination before the end of the determination period includes a reference to purportedly making the determination as mentioned in paragraph (3)(a).

Note: The effect of this subsection is that the invalidity etc. does not result in the Commission being taken to have made a determination under subsection (1) at the end of the determination period.

## 51ABZZA Public benefit assessments

### *Public benefit assessments*

- (1) The Commission must give the notifying party of a notification of an acquisition a written notice (a **public benefit assessment**) in accordance with subsections (2) and (3) if a public benefit application in relation to the notification has an effective application date.

### *Content of public benefit assessments*

- (2) The public benefit assessment must set out:
- (a) the Commission's preliminary assessment of the benefits and detriments to the public that the Commission has identified could result, or be likely to result, from the acquisition, including an assessment of the significance of those benefits and detriments; and
  - (b) the grounds on which the Commission makes the assessment, referring to the evidence or other material on which those grounds are based.

### *When public benefit assessments must be given*

- (3) The Commission must give the public benefit assessment:
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- (a) no later than the 20th business day after the effective application date of the application; or
  - (b) if it is not practicable to give the public benefit assessment by that day—as soon as practicable after that 20th business day.
- (4) If the Commission does not give the public benefit assessment before the end of the 20th business day mentioned in paragraph (3)(a), the following paragraphs apply in relation to making a determination under subsection 51ABZW(1) in respect of the public benefit application:
- (a) if the notifying party of the notification of the acquisition agrees in writing to this paragraph applying in relation to the application—the determination period for the application is extended by the number of business days to which subsection (5) of this section applies (not including a day occurring on or after the day, if any, on which the notifying party withdraws its agreement);
  - (b) in any case (but subject to subsection (6) of this section)—the 15 business days mentioned in subsections 51ABZZD(3) and (5) are reduced by the number of business days to which subsection (5) of this section applies;
  - (c) in any case—the period mentioned in paragraph 51ABZZE(3)(c) is extended by the number of business days to which subsection (5) of this section applies.
- (5) This subsection applies to a business day if:
- (a) the day occurs after the 20th business day after the effective application date of the application; and
  - (b) the Commission does not give the public benefit assessment on or before the day.
- (6) If the reduction under paragraph (4)(b) would be of more than 15 business days, subsections 51ABZZD(3) and (5) do not apply in relation to making the determination.

**51ABZZB Public benefit assessments—submissions**

- (1) If the Commission gives the notifying party of a notification of an acquisition a public benefit assessment in respect of a public benefit application in relation to the notification, the Commission:
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- (a) must give the notifying party a reasonable opportunity to make, during the period:
    - (i) starting on the day the Commission gives the public benefit assessment; and
    - (ii) ending on the 15th business day after that day; oral or written submissions to the Commission in relation to the matters set out in the public benefit assessment; and
  - (b) subject to subsection (2) of this section, in making a determination under subsection 51ABZW(1) in respect of the application, must not take into account submissions received, as mentioned in paragraph (a) of this subsection, after that period.
- (2) For the purposes of subsection (1):
- (a) the notifying party may, in writing, before the end of the period during which the notifying party may make submissions to the Commission in relation to the public benefit assessment, request the Commission to extend the period; and
  - (b) if the notifying party does so—the Commission may, by written notice given to the notifying party, extend the period.
- (3) To avoid doubt, the Commission may extend the period more than once.
- (4) If the Commission extends the period, the following periods relating to making a determination under subsection 51ABZW(1) in respect of the public benefit application are extended by the same number of days:
- (a) the determination period for the public benefit application;
  - (b) the period mentioned in paragraph 51ABZZE(3)(c).

## **Division 6—Miscellaneous**

### **Subdivision A—Miscellaneous matters relating to Commission consideration of notifications**

#### **51ABZZC Commitments and undertakings**

- (1) In considering a notification of an acquisition under Division 4, the Commission must not have regard to a commitment or undertaking offered by a party to an acquisition:
  - (a) if the notification is not subject to phase 2 review—unless:
    - (i) the commitment or undertaking is offered no later than 20 business days after the effective notification date of the notification; or
    - (ii) subsection 51ABZZE(3) applies to the commitment or undertaking in relation to the phase 1 determination period; or
  - (b) if the notification is subject to phase 2 review—unless:
    - (i) the commitment or undertaking is offered no later than the 60th business day occurring on or after the start of the phase 2 determination period; or
    - (ii) subsection 51ABZZE(3) applies to the commitment or undertaking in relation to the phase 2 determination period.
- (2) In considering a public benefit application in relation to a notification of an acquisition under Division 5, the Commission must not have regard to a commitment or undertaking offered by a party to an acquisition unless subsection 51ABZZE(3) applies to the commitment or undertaking in relation to the determination period for the public benefit application.

#### **51ABZZD Information gathering**

- (1) This section applies in relation to the Commission making an acquisition determination in respect of a notification of an acquisition.
  - (2) Before making the acquisition determination, the Commission may do any of the following:
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- (a) give any persons who appear to the Commission to be interested a written notice inviting written submissions, to be made to the Commission within a specified period, in relation to the proposed acquisition;
  - (b) give any party to the acquisition a written notice requesting the party to give the Commission (orally or in writing), within a specified period, additional information relevant to making the determination;
  - (c) give a person a written notice requesting the person to give the Commission (orally or in writing), within a specified period, particular information relevant to making the determination;
  - (d) consult with such persons as the Commission believes to be reasonable and appropriate for the purposes of making the determination.
- (3) The Commission must not give a request under paragraph (2)(b) or (c) on or after the start of the 15 business days mentioned in subsection (5) unless:
- (a) the notifying party of the notification agrees in writing to the Commission making the request; or
  - (b) the request relates to information the Commission received before those 15 business days; or
  - (c) the determination is a determination under subsection 51ABZE(1) and the notification is not subject to phase 2 review.
- (4) In making the acquisition determination, the Commission:
- (a) must take into account any submissions or information received under paragraph (2)(a), (b) or (c) of this section within the period specified in the notice mentioned in that paragraph; and
  - (b) subject to subsection (5) may, but need not, take into account any submissions or information received after the end of those periods; and
  - (c) subject to subsection (5), must take into account any information obtained from consultations under paragraph (2)(d).
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- (5) The Commission must not take into account submissions or information received or obtained later than 15 business days before the end of:
- (a) if the determination is a determination under subsection 51ABZE(1) and the notification is subject to phase 2 review—the phase 2 determination period for the notification; or
  - (b) if the determination is a determination under subsection 51ABZW(1) in respect of a public benefit application—the determination period in relation to the application.
- Note: This subsection does not apply during the phase 1 determination period.
- (6) Subsection (5) does not apply to information given in accordance with a request made as mentioned in subsection (3).
- (7) Subsections (4) and (5) of this section do not limit:
- (a) section 51ABZL (submissions in response to notice of competition concerns); or
  - (b) section 51ABZZB (submissions in response to public benefit assessment).

### **51ABZZE Extensions of determination periods**

- (1) For the purposes of making an acquisition determination in respect of a notification of an acquisition, this section applies to any of the following periods (the *determination period*):
- (a) if the determination is a determination under subsection 51ABZE(1):
    - (i) the phase 1 determination period for the notification; or
    - (ii) the phase 2 determination period for the notification;
  - (b) if the determination is a determination under subsection 51ABZW(1)—the determination period for a public benefit application in relation to the notification.
- (2) The Commission may, during the determination period, give the notifying party of the notification of the acquisition a written notice (the *extension notice*) extending the determination period for a specified period, if any of the following paragraphs apply:

- (a) all of the following subparagraphs apply:
  - (i) a party to the acquisition offers, in writing, to make a commitment or undertaking (including giving an undertaking for the purposes of section 87B) in connection with the making of the acquisition determination;
  - (ii) subsection (3) of this section applies to the commitment or undertaking;
  - (iii) the extension is of no more than 15 business days;
- (b) all of the following subparagraphs apply:
  - (i) the Commission, before the end of the determination period, requests the notifying party, in writing, to give to the Commission, by a specified day, additional information relevant to making the acquisition determination;
  - (ii) the notifying party does not give the additional information to the Commission by the specified day;
  - (iii) the extension is of no more than the number of days occurring after the specified day on which the notifying party has not given the additional information to the Commission;
- (c) all of the following subparagraphs apply:
  - (i) before the end of the determination period, a party to the acquisition is served a notice (the **section 155 notice**) under subsection 155(1) requiring the party to furnish information, produce documents or appear before the Commission relating to the making of the acquisition determination;
  - (ii) the Commission gives the extension notice 10 business days or more after the section 155 notice is served;
  - (iii) the extension is of no more than the number of business days in the period commencing 10 business days after the section 155 notice is served and ending on the day on which the party furnishes the information, produces the documents or appears before the Commission;
- (d) both:



- (i) before the end of the determination period, the notifying party requests the Commission, in writing, to extend the period by a specified number of days; and
- (ii) the extension is of no more than that number of days.

Note: An extension under paragraph (c) of this subsection is reviewable under section 51ABZZG.

- (3) This subsection applies to a commitment or undertaking that is offered during the following period:
  - (a) if subparagraph (1)(a)(i) applies—the period:
    - (i) starting at the start of the determination period; and
    - (ii) ending 20 business days after it starts;
  - (b) if subparagraph (1)(a)(ii) applies—the period:
    - (i) starting on the 50th business day occurring on or after the start of the determination period; and
    - (ii) ending on the 60th business day occurring on or after the start of the determination period;
  - (c) if paragraph (1)(b) applies—the period:
    - (i) starting at the start of the determination period; and
    - (ii) ending 35 business days after it starts.
- (4) However, if the determination period is extended under paragraph (2)(b), (c) or (d) by a number of days, subsection (3) applies, in relation to a commitment or undertaking offered after that extension, as if the period mentioned in subsection (3) were extended by the same number of days.

### **51ABZZF Consequences of setting aside or remitting acquisition determinations**

#### *Determinations under subsection 51ABZE(1)*

- (1) If a court sets aside a determination made under subsection 51ABZE(1) in respect of a notification of an acquisition, Division 4 applies in relation to the notification with the following modifications:
  - (a) paragraphs 51ABZE(2)(a) and (b) and sections 51ABZJ to 51ABZO (phase 2 review) do not apply;

- (b) the phase 1 determination period for the notification is taken to start on the day the court sets aside the determination.
- (2) If a court remits a decision to make a determination under subsection 51ABZE(1) in respect of a notification of an acquisition back to the Commission to be made again, Division 4 applies in relation to the notification with the following modifications:
  - (a) paragraphs 51ABZE(2)(a) and (b) and sections 51ABZJ to 51ABZO (phase 2 review) do not apply;
  - (b) the phase 1 determination period for the notification is taken to start on the day the court remits the decision.

*Determinations under subsection 51ABZW(1)*

- (3) If a court sets aside a determination made under subsection 51ABZW(1) in respect of a public benefit application, Division 5 applies in relation to the application with the following modification: the determination period for the application is taken to start on the day the court sets aside the determination.
- (4) If a court remits a decision to make a determination under subsection 51ABZW(1) in respect of a public benefit application back to the Commission to be made again, Division 5 applies in relation to the application with the following modification: the determination period for the application is taken to start on the day the court remits the decision.

**51ABZZG Internal review of decisions**

- (1) This section applies to any of the following decisions (a *reviewable decision*):
  - (a) a decision under subsection 51ABY(1), 51ABZB(2), 51ABZD(3) or 51ABZN(2) in respect of a notification of an acquisition;
  - (b) a decision under subsection 51ABZQ(1), 51ABZT(2) or 51ABZV(3) in respect of a public benefit application in relation to a notification of an acquisition;
  - (c) a decision under paragraph 51ABZZE(2)(c) to extend a period in relation to making an acquisition determination in respect of a notification of an acquisition.

*Applications for internal review*

- (2) The notifying party of the notification may apply in writing to the Commission for review (an *internal review*) of the reviewable decision, if the decision was made by a delegate of the Commission who was not a member of the Commission.
- (3) An application for an internal review must be made within 7 days after the day on which the decision was made.

*Reconsideration by Commission*

- (4) Within 7 days after receiving an application under subsection (3) for internal review, the Commission must:
  - (a) review the decision; and
  - (b) affirm, vary or revoke the decision; and
  - (c) if the Commission revokes the decision—make such other decision (if any) that the Commission thinks appropriate.
- (5) The Commission must, within 1 business day after the day it makes a decision under subsection (4), give the notifying party a written statement of the Commission's reasons for the decision.
- (6) If the Commission's functions under subsections (4) and (5) are performed by a delegate of the Commission, the delegate who makes the decision under subsection (4):
  - (a) must not have been involved in making the original reviewable decision; and
  - (b) must hold a position or perform duties of a higher level than the delegate who made the original reviewable decision.

*Review by the Tribunal*

- (7) The notifying party may apply under Division 1A of Part IX to the Tribunal for review of the following decisions relating to the notification of the acquisition:
  - (a) a reviewable decision made by the Commission itself, or by a delegate of the Commission who was a member of the Commission; or
  - (b) an internal review decision made under subsection (4).

## **Subdivision B—Acquisitions register**

### **51ABZZH Acquisitions register**

- (1) The Commission must keep a register under this subsection.
- (2) The acquisitions register must be made available for public inspection on the internet.
- (3) The Commission may correct or update information or documents on the acquisitions register.

### **51ABZZI Contents of acquisitions register**

- (1) The acquisitions register must include, for each notified acquisition:
  - (a) the details, of each notification of the acquisition, determined under paragraph (6)(a) for the purposes of this paragraph; and
  - (b) a copy of each acquisition determination (if any) made in respect of the notification, and a statement of the Commission's reasons for making the determination; and
  - (c) if a notification of the acquisition is subject to phase 2 review—a copy of the notice given under subparagraph 51ABZJ(2)(b)(i) in relation to the notification.
- (2) The register must also include any other information or documents, relating to the operation of the acquisitions provisions, determined under paragraph (6)(b) of this section.
- (3) Details to which paragraph (1)(a) applies must be included on the acquisitions register within 1 business day after the effective notification date of the notification.
- (4) Information or documents to which paragraph (1)(b) or (c) applies must be included on the acquisitions register within 1 business day after the day the relevant determination or decision is made.
- (5) Information or documents to which subsection (2) applies must be included on the acquisitions register by the time determined under paragraph (6)(c) for the purposes of this subsection in relation to the information or documents.

- (6) The Minister may, by legislative instrument, determine:
  - (a) details of a notification for the purposes of paragraph (1)(a);  
or
  - (b) information or documents for the purposes of subsection (2);  
or
  - (c) a time for the purposes of subsection (5) in relation to information or documents.
- (7) Without limiting paragraph (6)(c), a determination made under that paragraph:
  - (a) may determine a time by reference to a decision of the Commission in relation to the information or documents; and
  - (b) may provide for review of such a decision.

## **Subdivision C—Partnerships and trusts**

### **51ABZZJ Treatment of partnerships**

- (1) The acquisitions provisions apply to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by the acquisitions provisions is imposed on each partner instead, but may be discharged by any of the partners.
- (3) An offence against the acquisitions provisions that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).
- (4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

- (5) A reference in the acquisitions provisions to a corporation is taken to include a reference to the partnership if all of the partners are corporations.
- (6) For the purposes of the acquisitions provisions, a change in the composition of a partnership does not affect the continuity of the partnership.

### **51ABZZK Treatment of unit trusts**

- (1) The acquisitions provisions apply to a unit trust as if it were a person, but with the changes set out in this section.

#### *Trusts with a single trustee*

- (2) If the unit trust has a single trustee:
  - (a) an obligation that would otherwise be imposed on the trust by the acquisitions provisions is imposed on the trustee instead; and
  - (b) an offence against the acquisitions provisions that would otherwise have been committed by the trust is taken to have been committed by the trustee; and
  - (c) a reference in the acquisitions provisions to a corporation is taken to include a reference to the trust if the trustee is a corporation.

#### *Trusts with multiple trustees*

- (3) If the unit trust has 2 or more trustees:
  - (a) an obligation that would otherwise be imposed on the trust by the acquisitions provisions is imposed on each trustee instead, but may be discharged by any of the trustees; and
  - (b) an offence against the acquisitions provisions that would otherwise have been committed by the trust is taken to have been committed by each trustee of the trust, at the time the contravention was committed, who:
    - (i) did the relevant act or made the relevant omission; or
    - (ii) aided, abetted, counselled or procured the relevant act or omission; or

- (iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee); and
- (c) a reference in the acquisitions provisions to a corporation is taken to include a reference to the unit trust if all of the trustees are corporations.

*Contraventions of civil penalty provisions*

- (4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

## **Subdivision D—Surprise hostile takeovers**

### **51ABZZL Surprise hostile takeovers**

- (1) Subject to subsection (6), this section applies in relation to a notification of an acquisition of shares in the capital of a body corporate if:
  - (a) the body corporate is a Chapter 6 entity; and
  - (b) the acquisition is a takeover acquisition in relation to a proposed takeover bid; and
  - (c) the proposed bid has not been publicly proposed; and
  - (d) when the notifying party makes the notification of the acquisition, the notifying party requests the Commission, in writing, to apply this section to the notification.
- (2) A request made under paragraph (1)(d) must state:
  - (a) that the bidder (within the meaning of the *Corporations Act 2001*) for the proposed takeover bid intends that the bid will be a bid to which paragraphs (c) and (d) of item 2 of the table in section 611 of the *Corporations Act 2001* will apply; and
  - (b) that the bidder has not:
    - (i) entered into an agreement with the board of the target (within the meaning of that Act) in relation to the proposed bid; or
    - (ii) obtained the board's support for the proposed bid; and
  - (c) that, if the Commission:

- (i) does not decide that the notification is to be subject to phase 2 review; and
  - (ii) makes a determination under paragraph 51ABZE(1)(a) of this Act in respect of the notification;
- the bidder will give a bidder's statement (within the meaning of the *Corporations Act 2001*) to the target within 1 business day after the day the Commission gives the notifying party written notice of the determination under subsection 51ABZE(4) of this Act.
- (3) The Commission must not include information or documents on the acquisitions register in relation to the notification before the 17th business day after the effective notification date of the notification.
  - (4) Furthermore, the Commission must not include information or documents on the acquisitions register in relation to the notification at all if, before that 17th business day, the Commission decides under section 51ABZD to cease considering the notification.

*Commission may determine that this section does not apply*

- (5) The Commission may, at any time occurring:
    - (a) after the notifying party makes the request under paragraph (1)(d); and
    - (b) on or before the 15th business day after the effective notification date of the notification;determine, in writing, that this section does not apply to the notification, if the Commission is satisfied that:
    - (c) the bid is not, or is not likely to be, a bid to which paragraphs (c) and (d) of item 2 of the table in section 611 of the *Corporations Act 2001* apply; or
    - (d) the bidder has done, or intends to do, any of the things mentioned in subparagraph (2)(b)(i) or (ii) of this section; or
    - (e) it is not likely that the bidder will give a bidder's statement as mentioned in paragraph (2)(c).
  - (6) If the Commission makes a determination under subsection (5):
    - (a) this section is taken never to have applied in relation to the notification; and
-



- (b) the Commission must give to the notifying party written notice of the determination.

**51ABZZM Acquisitions not stayed during period in which application for review may be made**

- (1) This section applies to a notification of an acquisition if:
  - (a) the Commission makes a determination in respect of the notification under paragraph 51ABZE(1)(a); and
  - (b) section 51ABZZL applies to the acquisition immediately before the Commission makes the determination.
- (2) Despite subsection 51ABE(3), the acquisition is not *stayed* during the period:
  - (a) starting when the determination is made; and
  - (b) ending:
    - (i) if no application is made under subsection 100C(1) for review of the determination—at the end of the period during which such an application could be made; or
    - (ii) if such an application is made—when the bidder (within the meaning of the *Corporations Act 2001*) for the takeover bid becomes aware that the application has been made.
- (3) Also, the acquisition is not *stayed* at the time it is put into effect, to the extent the acquisition results from an on-market transaction (within the meaning of the *Corporations Act 2001*) that occurs so soon after the bidder becomes aware that the application has been made that it is not reasonably possible for the bidder to prevent the transaction from occurring.
- (4) For the purposes of subsections (2) and (3), the bidder is taken to be aware that an application has been made if the bidder ought reasonably to be aware of it.

*Voting rights*

- (5) To the extent the acquisition is put into effect at a time at which, because of subsection (2) or (3), the acquisition is not stayed, the bidder is not entitled to exercise the voting rights attached to any of the shares.

- (6) Subsection (5) ceases to apply:
  - (a) if no application is made under subsection 100C(1) for review of the determination—at the end of the period during which such an application could be made; or
  - (b) if such an application is made—at the earliest time (if any) at which:
    - (i) the notification has been finally considered; and
    - (ii) subsection 51ABE(4) does not apply to the acquisition.

**51ABZZN ASIC’s power to exempt and modify**

- (1) ASIC may, in writing:
  - (a) exempt a person from subsection 51ABZZM(5); or
  - (b) declare that subsection 51ABZZM(5) applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
- (2) In deciding whether to give the exemption or declaration, ASIC must consider the purposes of Chapter 6 of the *Corporations Act 2001*, set out in section 602 of that Act.
- (3) The exemption or declaration may:
  - (a) apply to all persons, specified persons, or a specified class of person; and
  - (b) relate to all bid class securities, specified bid class securities or a specified class of bid class securities; and
  - (c) relate to any other matter generally or as specified.
- (4) An instrument made under subsection (1) of this section is a notifiable instrument if it applies only to:
  - (a) a specified person (other than a person specified by membership of a class); or
  - (b) a specified person (other than a person specified by membership of a class) and persons associated with that specified person.Otherwise, it is a legislative instrument.
- (5) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court

(within the meaning of the *Corporations Act 2001*) may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

- (6) An exemption or declaration given under subsection (2) applies in relation to shares after the relevant acquisition determination is no longer subject to review.
- (7) Subject to subsection (8) of this section, Subdivision A of Division 2 of Part 6.10 of the *Corporations Act 2001* applies in relation to a decision of ASIC under subsection (1) of this section in the same way as that Subdivision applies in relation to a decision of ASIC under section 655A of that Act.

Note: That Subdivision allows the Takeovers Panel to review decisions of ASIC.
- (8) For the purposes of subsection (7) of this section, treat a reference, in Subdivision A of Division 2 of Part 6.10 of the *Corporations Act 2001*, to Chapter 6 of that Act as including a reference to this Subdivision.

**51ABZZO ASIC’s power to exempt and modify—notice of decision and review rights**

- (1) Subject to subsection (2), ASIC must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by a decision under section 51ABZZN a notice, in writing or otherwise:
  - (a) of the making of the decision; and
  - (b) of the person’s right to have the decision reviewed by the Takeovers Panel under section 656A of the *Corporations Act 2001* (see subsection 51ABZZN(7) of this Act).
- (2) Subsection (1) does not require ASIC to give notice to a person affected by the decision or to the persons in a class of persons affected by the decision, if ASIC determines that giving notice to the person or persons is not warranted, having regard to:
  - (a) the cost of giving notice to the person or persons; and
  - (b) the way in which the interests of the person or persons are affected by the decision.

- (3) A failure to comply with this section does not affect the validity of the decision.

**51ABZZP Person must cease to hold shares**

- (1) If:
- (a) the Commission makes a determination under paragraph 51ABZE(1)(a) in respect of a notification of an acquisition; and
  - (b) the acquisition is put into effect to any extent at a time at which, because of subsection 51ABZZM(2) or (3), the acquisition is not stayed; and
  - (c) an application for review of the determination is made under subsection 100C(1); and
  - (d) either:
    - (i) on the review, the Tribunal determines that the acquisition must not be put into effect; or
    - (ii) the result of the review is that the acquisition is subject to a condition to which it would not have been subject apart from the review, that condition was not complied with and the non-compliance occurred before the Tribunal makes its determination on the review;
- then, within 12 months after the Tribunal makes that determination, the person must cease to hold the shares.
- (2) ASIC may extend the period within which the person must cease to hold the shares under subsection (1) if the person applies for the extension before the end of the period.
- (3) ASIC must not extend the period more than once.
- (4) Any voting rights attached to the shares cannot be exercised while the person continues to hold the shares.
- (5) If, at the end of the 12 months (or extended period), the person still holds the shares, the person commits an offence for each day while that situation continues.
- Penalty: 20 penalty units.
- (6) An offence based on subsection (5) is an offence of strict liability.
-

Note: For *strict liability*, see section 6.1 of the Criminal Code.

- (7) A contravention of this section does not affect the validity of any transaction.
- (8) Furthermore, if voting rights are exercised in contravention of subsection (4), the meeting or the resolution on which the voting rights were exercised will be invalid on that ground only if:
  - (a) the Court (within the meaning of the *Corporations Act 2001*) is of the opinion that:
    - (i) a substantial injustice has been caused or may be caused; and
    - (ii) the injustice cannot be remedied by any order of the Court; and
  - (b) the Court declares the meeting or resolution invalid.

### **Subdivision E—Voluntary transfers under the Financial Sector (Transfer and Restructure) Act 1999**

#### **51ABZZQ Certain voluntary transfers under the *Financial Sector (Transfer and Restructure) Act 1999***

- (1) This section applies to a notification of an acquisition if:
  - (a) the acquisition is, or is part of, a voluntary transfer of business (within the meaning of the *Financial Sector (Transfer and Restructure) Act 1999*); and
  - (b) the certificate of transfer (within the meaning of that Act) states that the voluntary transfer of business is necessary:
    - (i) to promote financial system stability in Australia; or
    - (ii) if the transferring body (within the meaning of that Act) is an ADI (within the meaning of that Act)—to protect the interests of depositors of the transferring body; or
    - (iii) if the transferring body is a life insurance company (within the meaning of that Act)—to protect the interests of policy owners or prospective policy owners of the transferring body.
- (2) If this section applies to the notification:

- (a) subsection 51ABZI(1) (earliest time for making determinations) does not apply in relation to the notification; and
- (b) the Commission must not include information or documents on the acquisitions register in relation to the notification unless and until the Commission makes a determination under subsection 51ABZE(1) in respect of the notification.

## **Subdivision F—Miscellaneous**

### **51ABZZR Delegation by Commission**

- (1) The Commission may, in writing, delegate any or all of the Commission's functions or powers under an acquisitions provision to a member of the staff of the Commission who is an SES employee or an acting SES employee.
- (2) The Commission may delegate a function or power to a person under subsection (1) only if the Commission is satisfied that the person has appropriate qualifications, training or experience to perform the function or exercise the power.
- (3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Commission.

### **51ABZZS Delegation by Minister**

- (1) The Minister may, in writing, delegate any or all of the Minister's functions or powers under an acquisitions provision to:
  - (a) in any case—an SES employee or acting SES employee in the Department; or
  - (b) in the case of the Minister's power under subsection 51ABY(5) or 51ABZQ(5):
    - (i) the Commission; or
    - (ii) a member of the Commission; or
    - (iii) a member of the staff of the Commission who is an SES employee or an acting SES employee.

- (2) Subsection (1) does not apply to the Minister's power under subsection 51ABB(2), 51ABC(3), 51ABP(1), 51ABQ(1) or 51ABS(6).
- (3) The Minister may delegate a function or power to a person under subsection (1) only if the Minister is satisfied that the person has appropriate qualifications, training or experience to perform the function or exercise the power.
- (4) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister.

### **51ABZZT Fees**

A fee determined under this Part must not be such as to amount to taxation.

### **51ABZZU Review of the operation of this Part etc.**

- (1) The Minister must cause a review to be conducted of the operation of:
  - (a) Division 1A of Part IV; and
  - (b) this Part; and
  - (c) Divisions 1A and 1B of Part IX.
- (2) The persons who conduct the review must:
  - (a) commence it no earlier than 1 December 2028; and
  - (b) complete it, and give the Minister a written report of the review, no later than 31 December 2029.
- (3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

## **Chapter 4—Provisions relating to particular industries, payment surcharges etc.**

### **36 Before Part VI**

Insert:

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## Chapter 5—Enforcement and remedies

### 37 Before section 75B

Insert:

### Division 1—Preliminary

### 38 After section 75B

Insert:

### Division 2—Pecuniary penalties

### 39 After subsection 76(4)

Insert:

- (4AA) Subsection (3) does not apply to conduct to the extent it constitutes a contravention of both:
- (a) section 45AW; and
  - (b) section 45AY.

### 40 After section 77C

Insert:

### Division 3—Orders relating to acquisitions

#### 77D Orders relating to void acquisitions

- (1) This section applies if an acquisition:
  - (a) is void to any extent by force of subsection 45AZA(2); or
  - (b) would be void to any extent by force of that subsection apart from an order under this section.
- (2) The Federal Court may, on the application of the Commission or any other person, make any of the following orders that the Court believes appropriate:
  - (a) an order that subsection 45AZA(2) is to be taken not to apply, and never to have applied, to the acquisition;



- (b) such other order as the Court believes appropriate (including, if the Court does not make any order under paragraph (a), such other order as the Court believes appropriate to give effect to the voiding or to deal with the consequences of the voiding).
- (3) The application must be made no later than 6 years after the acquisition was put into effect or purportedly put into effect.
- (4) Before making an order under paragraph (2)(a), the Court must have regard to the seriousness of the related contravention of section 45AY, including the effect of the contravention on persons who are not parties to the acquisition.
- (5) If an application is made under subsection (2) by a person other than the Commission:
  - (a) the Court must give a copy of the application to the Commission; and
  - (b) the Commission may intervene in the proceedings on the application.
- (6) If the Commission intervenes in a proceeding under paragraph (5)(b), the Commission is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

## **Division 4—Offences**

### **41 After section 79**

Insert:

## **Division 5—Other provisions**

### **42 Subsection 80(1A)**

After “a contravention of,” insert “Subdivision B of Division 1A of Part IV or”.

### **43 After section 80AC**

Insert:

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**80AD Injunctions if acquisition determinations made on the basis of false or misleading information**

If, on the application of the Commission, the Federal Court is satisfied that:

- (a) a person is proposing to put an acquisition into effect; and
- (b) the Commission made an acquisition determination under paragraph 51ABZE(1)(a) or 51ABZW(1)(a) in respect of a notification of the acquisition on the basis of information that was false or misleading in a material particular; and
- (c) the information was material to the Commission making the determination; and
- (d) that information was given by:
  - (i) the person; or
  - (ii) if the person is a body corporate—a body corporate that was related to the person; and
- (e) apart from the determination, putting the acquisition into effect would contravene Subdivision B of Division 1A of Part IV;

then the Court may grant an injunction in such terms as the Court determines to be appropriate.

**44 After section 81A**

Insert:

**81B Divestiture etc. if acquisition determinations made on false etc. information or conditions not complied with**

- (1) This section applies in relation to a notification of an acquisition if the Federal Court is satisfied that:
  - (a) as part of putting the acquisition into effect, a notifying party of the notification, or a related body corporate, acquired a thing (including a share in the capital of a body corporate, any assets of a person or a thing determined under paragraph 51ABB(2)(a)); and
  - (b) the Commission made an acquisition determination in respect of the notification; and

- (c) apart from the determination, putting the acquisition into effect would have contravened Subdivision B of Division 1A of Part IV; and
  - (d) subsection (2) or (3) applies.
- (2) This subsection applies if:
- (a) the Commission made the determination on the basis of information that was false or misleading in a material particular; and
  - (b) the information was material to the Commission making the acquisition determination; and
  - (c) the information was given by:
    - (i) the notifying party of the notification; or
    - (ii) a related body corporate; and
  - (d) the Court or another court has found that the person who gave the information contravened section 45AZB of this Act or Part 7.4 of the *Criminal Code* by giving that information.
- (3) This subsection applies if:
- (a) putting the acquisition into effect is subject to a condition; and
  - (b) the condition is not complied with.

*Divestiture*

- (4) The Federal Court may, on the application of the Commission, by order, give directions for the purpose of securing the disposal of anything acquired as mentioned in paragraph (1)(a).

*Declaration that acquisition void*

- (5) The Federal Court may, on the application of the Commission, by order, declare that the acquisition mentioned in paragraph (1)(a) is void as from the day on which it occurred.
- (6) However, the Court may make an order under subsection (5) only if, in addition to the Court being satisfied of the matters in subsection (1), the Court, or another court, has found that the person (the **vendor**) from whom the thing was acquired was involved in:

- (a) the contravention mentioned in paragraph (2)(d); or
  - (b) the non-compliance mentioned in paragraph (3)(b).
- (7) If the Court makes an order under subsection (5) in relation to the acquisition of a thing, then:
- (a) the thing is taken not to have been disposed of by the vendor;  
and
  - (b) the vendor must refund to the acquirer any amount paid to the vendor for acquiring the thing.

*Alternative to orders under subsections (4) and (5)*

- (8) If an application is made to the Court for an order under subsection (4) or (5) against a person, the Court may, instead of making an order of the kind mentioned in that subsection, accept, upon such conditions (if any) as the Court thinks fit, an undertaking by the person to dispose of any other thing owned by the person.

*When application for orders under this section must be made*

- (9) An application under subsection (4) or (5) may be made at any time within 3 years after the day on which the acquisition was put into effect.

*Court may make orders even if not satisfied of all matters*

- (10) If an application for an order under subsection (4) or (5) is made, the Court may, if the Court determines it to be appropriate, make an order by consent of all the parties to the proceedings, whether or not the Court is satisfied of:
- (a) for an order under subsection (4)—the matters in subsection (1); and
  - (b) for an order under subsection (5)—the matters in subsections (1) and (6).

## **45 Before Part VII**

Insert:

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## **Chapter 6—Other provisions**

### **46 Subsections 88(1) and (2)**

Before “Part IV”, insert “Division 1 or 2 of”.

### **47 At the end of section 90**

Add:

- (16) The Commission must not grant a merger authorisation on or after 1 January 2026.

### **48 Subsections 95AA(1) and (5)**

Before “Part IV”, insert “Division 1 or 2 of”.

### **49 Part IX (heading)**

Omit “**Determinations**”, substitute “**decisions**”.

### **50 Before Division 1 of Part IX**

Insert:

## **Division 1A—Applications for review of certain decisions of the Commission**

### **100A Applications for review**

- (1) This section applies if a provision of this Act provides that a person may apply under this Division for review of a decision of the Commission.
- (2) The person may:
  - (a) as determined under subsection (3); and
  - (b) within the time allowed by or under subsection (3);apply to the Tribunal for a review of the decision.
- (3) The Minister may, by legislative instrument, determine requirements for making applications for review under subsection (2), including requirements relating to the time by which such reviews are allowed to be made.

- (4) The Tribunal must review the decision.
- (5) For the purposes of the review, this Act applies in relation to the Tribunal in like manner as it applies in relation to the Commission.

### **100B Functions and powers of Tribunal**

- (1) On a review under section 100A, the Tribunal:
  - (a) may make a decision affirming, setting aside or varying the decision of the Commission; and
  - (b) for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.
- (2) If a person applies to the Tribunal for review of a decision of the Commission mentioned in subsection 51ABZZG(7), the Tribunal must:
  - (a) make its decision on the review within 14 days after the day the Tribunal receives the application for review; and
  - (b) give to the applicant:
    - (i) written notice of the Tribunal's decision; and
    - (ii) a written statement of the Tribunal's reasons for making the decision;within 1 business day (within the meaning of section 51ABK) after the Tribunal makes its decision.
- (3) A decision of the Tribunal affirming, setting aside or varying a decision of the Commission is, for the purposes of this Act other than this Part, to be taken to be a decision of the Commission.
- (4) For the purposes of a review by the Tribunal under this Division, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.
- (5) For the purposes of a review under this Division, the Tribunal may have regard to any information given, documents produced or evidence given to the Commission in connection with the making of the decision by the Commission to which the review relates.

## **Division 1B—Applications for review of acquisition determinations**

### **Subdivision A—Applications for review**

#### **100C Applications for review**

- (1) A person dissatisfied with an acquisition determination in respect of a notification of an acquisition may:
  - (a) as determined under subsection (2); and
  - (b) before the end of 14 days after the statement of the Commission's reasons for making the determination is included on the acquisitions register;  
apply to the Tribunal for a review of the determination if the person is:
    - (c) the notifying party of the notification; or
    - (d) is allowed to apply under subsection (3).
- (2) The Minister may, by legislative instrument, determine requirements for making an application for the purposes of paragraph (1)(a).
- (3) The Tribunal may, by written notice given to a person, allow the person to apply to the Tribunal for review of the determination.
- (4) In considering whether to allow a person to apply to the Tribunal under subsection (3), the Tribunal must have regard to:
  - (a) the person's interest in the matter; and
  - (b) the efficient administration of the acquisitions provisions;  
and
  - (c) whether the application has any reasonable prospects of success; and
  - (d) any other matter that the Tribunal considers relevant.

#### **100D Further information and documents in relation to applications**

- (1) An applicant for review under this Division must give to the Tribunal the information or documents that are determined under subsection (2) in relation to the application for the purposes of this subsection.

- (2) The Minister may, by legislative instrument, determine information or documents in relation to an application for the purposes of subsection (1).
- (3) The applicant must give the information or documents:
  - (a) when the applicant applies for the review; or
  - (b) no later than 30 days after the applicant applies for review.
- (4) If the applicant does not give the information or documents to the Tribunal by the end of those 30 days, the applicant is taken to withdraw the application under subsection 100E(1) at the end of those 30 days.

### **100E Applicants may withdraw applications**

- (1) The applicant may, at any time, by giving written notice to the Tribunal, withdraw an application for review made to the Tribunal under subsection 100C(1).
- (2) If the application is withdrawn, a participant in the proceedings for review (other than the applicant) may apply to the Tribunal for reinstatement of the application within 7 days after the person receives notice that the application is withdrawn (or such longer period as the Tribunal, in special circumstances, allows).
- (3) If:
  - (a) a participant applies under subsection (2); and
  - (b) the Tribunal believes it to be appropriate to reinstate the application for review;the Tribunal may reinstate the application and make such orders as appear to the Tribunal to be appropriate in the circumstances.

### **100F Tribunal may dismiss applications if parties consent**

The Tribunal may, at any time, dismiss an application for review made to the Tribunal under subsection 100C(1) if the Tribunal has the consent of the participants in the proceedings for review.



**100G Tribunal may dismiss applications if fees not paid**

The Tribunal may dismiss an application for review made to the Tribunal under subsection 100C(1) if a fee payable by the applicant to the Tribunal in respect of the application is not paid by the time determined under subsection 112(2).

**100H Tribunal may dismiss applications if applicants fail to comply with order etc.**

The Tribunal may dismiss an application for review made to the Tribunal under subsection 100C(1) if the applicant fails to comply with:

- (a) this Act; or
- (b) an order of the Tribunal in relation to the proceedings for review.

**100J Tribunal may dismiss application if frivolous, vexatious etc.**

The Tribunal may, at any time, dismiss an application made to the Tribunal under subsection 100C(1) if the Tribunal is satisfied that the application:

- (a) is frivolous, vexatious, misconceived or lacking in substance; or
- (b) has no reasonable prospects of success; or
- (c) is otherwise an abuse of the process of the Tribunal.

Note: See also section 111 (costs).

**100K Certain participants may seek to withdraw from being participants**

*General rule*

- (1) The Tribunal may order that a participant in a proceeding before the Tribunal under this Division ceases to be a participant in the proceeding if the participant gives written notice to the Tribunal that the participant wishes to cease being a participant in the proceeding.

*Exception*

- (2) However, subsection (1) does not apply in relation to the applicant.

Note: The applicant may withdraw the application (see section 100E).

**100L Notice of withdrawals and dismissals**

If, under this Subdivision:

- (a) an applicant withdraws an application for review; or
- (b) the Tribunal dismisses an application;

the Tribunal must give the Commission and each participant in the proceedings for review notice of the withdrawal or dismissal.

**100M Tribunal not to review determinations while Commission considering public benefit applications**

*Applications for review*

- (1) A person must not apply under subsection 100C(1) for review of an acquisition determination made under subsection 51ABZE(1) in respect of a notification of an acquisition if:

- (a) a public benefit application has been made in relation to the notification; and
- (b) the Commission has not decided under section 51ABZV to cease considering the public benefit application; and
- (c) the Commission has not made a determination under subsection 51ABZW(1) in respect of the public benefit application.

- (2) A day is not counted for the purposes of paragraph 100C(1)(b) in relation to applying for review of an acquisition determination made under subsection 51ABZE(1) in respect of a notification of an acquisition if the day occurs:

- (a) on or after the day a public benefit application is made in relation to the notification; and
- (b) on or before the day on which the Commission:
  - (i) decides under section 51ABZV to cease considering the public benefit application; or

- (ii) makes a determination under subsection 51ABZW(1) in respect of the public benefit application.

*Proceedings for review*

- (3) If:
  - (a) a person applies under subsection 100C(1) for review of an acquisition determination made under subsection 51ABZE(1) in respect of a notification of an acquisition; and
  - (b) before the proceedings for review have ended, a public benefit application is made in relation to the notification;the Tribunal must cease the proceedings for review until the Commission:
  - (c) decides under section 51ABZV to cease considering the public benefit application; or
  - (d) makes a determination under subsection 51ABZW(1) in respect of the public benefit application.
- (4) A day is not counted for the purposes of section 100P in relation to review of an acquisition determination made under subsection 51ABZE(1) in respect of a notification of an acquisition if the day occurs:
  - (a) on or after the day a public benefit application is made in relation to the notification; and
  - (b) on or before the day on which the Commission:
    - (i) decides under section 51ABZV to cease considering the public benefit application; or
    - (ii) makes a determination under subsection 51ABZW(1) in respect of the public benefit application.

## **Subdivision B—Functions and powers**

### **100N Functions and powers of Tribunal**

- (1) On a review of an acquisition determination under this Division, the Tribunal:
  - (a) may make a determination affirming, setting aside or varying the determination; and

- (b) for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.
- (2) Subject to subsection (3) of this section:
- (a) paragraph 51ABZE(2)(c); or
  - (b) subsection 51ABZF(2); or
  - (c) subsection 51ABZW(2);
- (whichever is relevant) applies in relation to the Tribunal in the same way as it applies in relation to the Commission.
- (3) The Tribunal may, if the Tribunal determines it to be appropriate, make an acquisition determination by consent of:
- (a) the applicant for the review; and
  - (b) if the applicant for the review is not the notifying party of the notification of the acquisition—the notifying party; and
  - (c) all persons (if any) who have been permitted under subsection 109(2) to intervene in the proceedings for review; even if the Tribunal does not have the satisfaction referred to in paragraph 51ABZE(2)(c) or subsection 51ABZF(2) or 51ABZW(2) (whichever is relevant).
- (4) For the purposes of this Act other than this Part, a determination of the Tribunal affirming, setting aside or varying an acquisition determination is taken to be a determination of the Commission.

**100P Time within which Tribunal must make determination on review**

- (1) The Tribunal must not make its determination on a review of an acquisition determination under this Division earlier than the 45th day after the day the Commission makes the acquisition determination.
- (2) Subject to subsections (3) and (5), the Tribunal must make its determination on a review of an acquisition determination under this Division no later than 90 days after the later of:
- (a) the last day on which an application for review of the determination could have been made under subsection 100C(1); and

- (b) the day the applicant gives to the Tribunal the additional information or documents required under subsection 100D(1).

Note: See also subsections 100M(3) and (4) if a public benefit application is made.

*Extensions*

- (3) Before the end of the period within which the Tribunal must make its determination on the review (including that period as extended under subsection (5)), the Tribunal may, in writing, extend the period by 60 days.
- (4) The Tribunal may extend the period under subsection (3) only once.
- (5) If, during the period within which the Tribunal must make its determination on the review (including that period as extended under subsection (3)), the Tribunal is satisfied that the matter cannot be dealt with properly within the period because:
  - (a) of the matter's complexity, or the volume of information, documents and evidence before the Tribunal in relation to the matter; or
  - (b) the Tribunal has allowed new information, documents or evidence under subsection 100S(2); or
  - (c) of other special circumstances;the Tribunal may, in writing, extend the period by 90 days.
- (6) The Tribunal may extend the period under subsection (5) of this section only once.
- (7) If the Tribunal extends the period under subsection (3) or (5), the Tribunal must give a copy of the extension to each participant in the proceedings for review and to the Commission.

**100Q Technical experts**

For the purposes of a review under this Division, the Tribunal:

- (a) may, in such manner as it sees fit:
  - (i) ask questions of a technical expert; or

- (ii) seek information, documents or evidence from a technical expert; and
- (b) if it does so:
  - (i) may allow a participant in the proceedings or the Commission to ask questions of the technical expert before the Tribunal; and
  - (ii) may have regard to any information furnished, documents produced or evidence given to the Tribunal by the expert.

**100R Commission information**

- (1) For the purposes of a review under this Division, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.
- (2) For the purposes of a review under this Division, the Tribunal may have regard to any information furnished, documents produced or evidence given to the Commission in connection with the making of the determination to which the review relates.
- (3) Subsection (2) does not apply to information, documents or evidence to which the Commission was not permitted to have regard in making the determination.

**100S Information gathering etc.**

- (1) For the purposes of a review under this Division, the Tribunal:
  - (a) may consult, in such a manner as it sees fit, any consumer associations or consumer interest groups; and
  - (b) may have regard to any information furnished, documents produced or evidence given to the Tribunal in connection with such consultation.
- (2) For the purposes of a review under this Division in relation to an acquisition determination in respect of a notification of an acquisition, the Tribunal may allow a person to provide new information, documents or evidence if:

- (a) the Tribunal is satisfied that the information, document or evidence was not in existence at the time the Commission made the determination; or
- (b) the person is the notifying party of the notification, and the Tribunal is satisfied that:
  - (i) the information, documents or evidence are relevant to the grounds on which the Commission made the determination; and
  - (ii) the person was not given a reasonable opportunity to make submissions to the Commission in relation to those grounds, or the evidence or other material on which those grounds were based, before the Commission made the determination (including because the person was not informed of the grounds, evidence or other material).

### **100T Information etc. to which Tribunal may have regard**

Despite section 100N, the Tribunal must not, for the purposes of a review under this Division, have regard to any information, documents or evidence other than:

- (a) information that was referred to in the Commission's reasons for making the determination to which the review relates; and
- (b) the information, documents or evidence referred to in subsection 100B(5); and
- (c) the information or documents given to the Tribunal under subsection 100D(1); and
- (d) the information, documents or evidence referred to in subparagraph 100Q(b)(ii); and
- (e) any information or report given to the Tribunal under subsection 100R(1); and
- (f) the information, documents or evidence referred to in subsection 100R(2); and
- (g) information given to the Tribunal as a result of the Tribunal seeking such relevant information, and consulting with such persons, as it believes reasonable and appropriate for the sole purpose of clarifying the information, documents or evidence referred to in subsection 100R(2); and

- (h) the information, documents or evidence referred to in paragraph 100S(1)(b); and
- (i) any information, documents or evidence referred to in subsection 100S(2).

**51 Division 1 of Part IX (at the end of the heading)**

Add “of determinations by the Commission under Part VII”.

**52 Subsection 101(2)**

Repeal the subsection.

**53 Before section 103**

Insert:

**102A Reviews are re-hearings**

A review by the Tribunal under this Part is a re-hearing of the matter, unless it is a review of:

- (a) a determination by the Commission:
  - (i) in relation to an application for a merger authorisation or a minor variation of a merger authorisation; or
  - (ii) in relation to the revocation of a merger authorisation, or the revocation of a merger authorisation and the substitution of another merger authorisation; or
- (b) an acquisition determination.

**54 Paragraph 104(a)**

After “before the Tribunal”, insert “or by the Commission”.

**55 Before subsection 109(1A)**

Insert:

- (1AA) A notifying party of a notification of an acquisition is entitled to participate in any proceedings before the Tribunal under Division 1B instituted by another person for review of an acquisition determination in respect of the notification.



## **56 At the end of Division 2 of Part IX**

Add:

### **111 Tribunal may order costs be awarded**

- (1) If the Tribunal is satisfied that it is appropriate to do so, the Tribunal may order that a participant in proceedings for review under Division 1A or 1B pay all or a specified part of the costs of another participant in the proceedings.
- (2) If the Tribunal makes an order under subsection (1), it may make further orders that it believes appropriate in relation to the assessment or taxation of the costs.
- (3) The Minister may, by legislative instrument, make provision for and in relation to fees payable for the assessment or taxation of costs ordered by the Tribunal to be paid.
- (4) If a participant (the *first participant*) is ordered to pay some or all of the costs of another participant under subsection (1), the amount of the costs may be recovered in the Federal Court as a debt due by the first participant to the other participant.

### **112 Tribunal may charge fees**

- (1) For the purposes of Division 1A or 1B, the Tribunal may, on behalf of the Commonwealth, charge fees determined under subsection (2) for the purposes of this subsection.
- (2) The Minister may, by legislative instrument, determine fees for the purposes of subsection (1).
- (3) A determination under subsection (2) may provide for fees to be payable in respect of the following:
  - (a) applications to the Tribunal under Division 1A or 1B;
  - (b) proceedings in the Tribunal under Division 1A or 1B;
  - (c) taxation of costs by the Tribunal in relation to such proceedings.
- (4) Without limiting the scope of a determination that may be made under subsection (2), such a determination may determine, or determine matters relating to, any or all of the following:

- (a) the circumstances in which a fee is to be paid;
  - (b) who must pay;
  - (c) the time when payment is required;
  - (d) remittal, refund and waiver of fees.
- (5) A determination made under subsection (2) may do any or all of the following:
- (a) determine fees in respect of a particular class or classes of applications, costs or proceedings;
  - (b) determine different fees in respect of different classes of applications, costs or proceedings;
  - (c) determine the amount of, or a method for working out the amount of, a fee;
  - (d) make provision in relation to the whole or a part of a fee;
  - (e) provide for the Tribunal to make orders relating to the payment of a fee in relation to a proceeding.
- (6) A fee must not be such as to amount to taxation.
- (7) A fee charged under subsection (1):
- (a) is a debt due to the Tribunal, on behalf of the Commonwealth; and
  - (b) is recoverable by the Tribunal, on behalf of the Commonwealth, in a court of competent jurisdiction.

### 113 Standing of Commission to seek judicial review

- (1) This section extends (and does not limit) the meaning of the term **person aggrieved** in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:
- (a) a decision made by the Tribunal under this Part (including a decision of the Tribunal that is taken to be a decision of the Commission); or
  - (b) a failure to make a decision under this Part; or
  - (c) conduct engaged in for the purpose of making a decision under this Part.
- (2) The Commission is taken to be a person aggrieved by the decision, failure or conduct.
-

(3) A term (except person aggrieved) used in this section and in the *Administrative Decisions (Judicial Review) Act 1977* has the same meaning in this section as it has in that Act.

**57 At the end of subsections 10.49A(2), 10.60(2) and 10.65(2)**

Add “(but not of Division 1A of Part IV)”.

**58 Subsection 150C(2)**

Omit “particular, references to corporations are to include references to persons who are not corporations.”, substitute:

particular:

- (a) references to corporations are to include references to persons who are not corporations; and
- (b) paragraphs 51ABB(1)(d) to (f) and 51ABC(2)(b) are to be omitted.

**59 Section 150J**

After “notification”, insert “, determination”.

**60 Before Part XIB**

Insert:

**Chapter 7—Further provisions relating to particular industries etc.**

**61 Section 151AI (heading)**

After “IV”, insert “, IVA”.

**62 Section 151AI**

After “IV”, insert “, IVA”.

**63 Section 152AK (heading)**

After “IV”, insert “, IVA”.

**64 Section 152AK**

After “IV”, insert “, IVA”.

**65 Before Part XID**

Insert:

**Chapter 8—Miscellaneous**

**66 After subparagraph 155(2)(b)(ii)**

Insert:

- (ia) the making of an acquisition determination by the Commission; or

**67 Subsection 155AAA(21) (paragraph (a) of the definition of core statutory provision)**

After “IV,”, insert “IVA,”.

**68 Paragraph 157(1)(c)**

After “80AC,”, insert “80AD,”.

**69 Paragraph 157(1)(c)**

Omit “or 81A”, substitute “, 81A or 81B”.

**70 After paragraph 171(3)(aa)**

Insert:

- (ab) the following information relating to the acquisitions provisions:
  - (i) the number of notification waiver applications made, and a general summary of the kinds of acquisitions to which the applications related;
  - (ii) the number of notifications of acquisitions made, and a general description of the kinds of acquisitions notified;
  - (iii) the number of notifications that the Commission decided were to be subject to phase 2 review, and a general summary of the circumstances in which the Commission made such decisions;
  - (iv) the number of acquisition determinations the Commission made that included conditions, and a general description of the kinds of conditions included;

- (v) a general summary of the kinds of goodwill protection provisions specified in notifications of acquisitions (see subsection 51ABY(6));
- (vi) the number of declarations the Commission included in determinations under subsection 51ABZG(1), and a general summary of the circumstances in which the Commission included such declarations; and

## **71 At the end of Part XIII**

Add:

## **Division 6—Application of amendments made by the Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024**

### **188 Notifications may be made on or after 1 July 2025**

Division 3 of Part IVA applies in relation to a notification made on or after 1 July 2025.

### **189 Requirement to notify from 1 January 2026**

- (1) Subject to subsection (4) of this section, Division 2 of Part IVA applies in relation to an acquisition that is put into effect on or after 1 January 2026, other than an acquisition to which subsection (2) applies.
- (2) This subsection applies to an acquisition if:
  - (a) between 1 July 2025 and 31 December 2025, the Commission:
    - (i) grants a merger authorisation for the acquisition; or
    - (ii) advises a party to the acquisition, in writing, that the Commission does not intend to take action under this Act in relation to a contravention, or possible contravention, of section 50 in relation to the acquisition; and
  - (b) the acquisition is put into effect during the 12 months starting on the day the Commission grants the merger authorisation or gives the advice.

- (3) To avoid doubt, subparagraph (2)(a)(ii) does not:
- (a) give the Commission any power, duty or function, including the power, duty or function of giving the advice referred to in that subparagraph or of making a decision in relation to giving such advice; or
  - (b) limit the ability of the Commission to take any action referred to in that subparagraph; or
  - (c) affect the operation of any law other than Division 2 of Part IVA.

*Notification waiver applications*

- (4) An application may be made under subsection 51ABU(1) on or after 1 January 2026.

### 190 Annual reports by Commission

Paragraph 171(3)(ab) applies in relation to an annual report for a period ending on or after 30 June 2026.

### 192 Acquisition of property

- (1) The amendments made by Schedule 1 to the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024* do not apply in relation to an acquisition if:
- (a) apart from this section, the operation of the amendments in relation to the acquisition would result in an acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition of property would be invalid because of paragraph 51(xxxi) of the Constitution.
- (2) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### 72 After section 45AM of Schedule 1

Insert:

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#### **45AMA Acquisition subject to notification**

- (1) Sections 45AF and 45AJ do not apply in relation to the making of a contract that contains a cartel provision, in so far as the cartel provision provides for an acquisition if the contract is subject to a condition that the provision will not come into force unless and until the acquisition becomes a notified acquisition.
- (2) A person who wishes to rely on subsection (1) bears an evidential burden in relation to that matter.

#### **73 At the end of section 45AT of Schedule 1**

Add:

- (3) Sections 45AF, 45AG, 45AJ and 45AK do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides for an acquisition, if the acquisition is a notified acquisition.
- (4) A person who wishes to rely on subsection (3) bears an evidential burden in relation to that matter.

#### **74 After Division 1 of Part 1 of Schedule 1**

Insert:

### **Division 1A—Acquisitions**

#### **Subdivision A—Preliminary**

#### **45AV Purportedly putting acquisitions into effect**

- (1) A reference in this Division to putting an acquisition into effect includes a reference to purportedly putting the acquisition into effect.
- (2) A person *purportedly puts into effect* an acquisition if the person engages in conduct that, apart from this Division, would constitute putting the acquisition into effect.

## Subdivision B—Obligations

### 45AW Commission must be notified of acquisitions

A person contravenes this section if:

- (a) the person is a principal party to an acquisition; and
- (b) the acquisition is required to be notified; and
- (c) the acquisition is put into effect; and
- (d) when the acquisition is put into effect:
  - (i) the acquisition is not a notified acquisition; or
  - (ii) no notification of the acquisition has an effective notification date (see section 51ABZ); or
  - (iii) the latest notification of the acquisition that has an effective notification date is stale.

Note 1: For when an acquisition is *required to be notified*, see Division 2 of Part IVA.

Note 2: For when an acquisition is *stale*, see section 51ABG.

Note 3: For enforcement, see Part VI.

### 45AX Commission must be notified of material changes of fact in relation to notified acquisitions

- (1) This section applies if:
  - (a) a person is the notifying party of a notification of an acquisition; and
  - (b) a change of fact occurs; and
  - (c) the change of fact is material to the Commission making a determination under subsection 51ABZE(1) in respect of the notification; and
  - (d) the person becomes aware of the change of fact at a time:
    - (i) occurring on or after the effective notification date of the notification; and
    - (ii) at which the Commission has not decided to cease considering the notification under section 51ABZD; and
    - (iii) at which the Commission has not made a determination in respect of the notification under subsection 51ABZE(1); and



- (iv) if the notification is subject to phase 2 review—  
occurring at least 15 business days (within the meaning  
of section 51ABK) before the end of the phase 2  
determination period for the notification.
- (2) For the purposes of this section, the person is taken to become  
aware of the change of fact at the earliest time at which the person  
is:
  - (a) aware of the change of fact; and
  - (b) aware that the change of fact is material in the way described  
in paragraph (1)(c).
- (3) This section also applies if:
  - (a) a person is the notifying party of a notification of an  
acquisition; and
  - (b) the notifying party has made a public benefit application in  
relation to the notification; and
  - (c) a change of fact occurs; and
  - (d) the change of fact is material to the Commission making a  
determination under subsection 51ABZW(1) in respect of the  
application; and
  - (e) the person becomes aware of the change of fact at a time:
    - (i) occurring on or after the effective application date of the  
application; and
    - (ii) at which the Commission has not decided to cease  
considering the application under section 51ABZV; and
    - (iii) at which the Commission has not made a determination  
under subsection 51ABZW(1) in respect of the  
application.
- (4) For the purposes of this section, the person is taken to become  
aware of the change of fact at the earliest time at which the person  
is:
  - (a) aware of the change of fact; and
  - (b) aware that the change of fact is material in the way described  
in paragraph (3)(d).
- (5) The person contravenes this subsection if the Commission is not  
notified of the change of fact, as soon as practicable after the  
person becomes aware of the change, by:

(a) if the person is the only notifying party of the notification of the acquisition—the person; or

(b) otherwise—all of the notifying parties jointly.

Note: For enforcement, see Part VI.

(6) For the purposes of this section, a person who ought reasonably to be aware of something is taken to be aware of it.

#### **45AY Stayed acquisitions must not be put into effect**

A person contravenes this section if:

(a) the person puts an acquisition into effect; and

(b) the acquisition is stayed.

Note 1: For when an acquisition is *stayed*, see section 51ABE.

Note 2: For enforcement, see Part VI.

#### **45AZ Conditions must be complied with**

(1) This section applies to a person who puts a notified acquisition into effect, if putting the acquisition into effect is subject to conditions.

Note: For when putting an acquisition into effect is *subject* to conditions, see section 51ABH.

(2) The person contravenes this subsection if any of those conditions are not complied with.

Note: For enforcement, see Part VI.

#### **Subdivision C—Acquisitions void if put into effect while stayed**

##### **45AZA Acquisitions void if put into effect while stayed**

(1) This section applies to an acquisition that is put into effect in contravention of section 45AY.

(2) The acquisition is, and is taken always to have been, void by force of this subsection.

## **Subdivision D—Miscellaneous**

### **45AZB Providing false or misleading information**

A person contravenes this section if:

- (a) the person gives information to the Commission or the Tribunal under an acquisitions provision; and
- (b) the information is false or misleading in a material particular; and
- (c) the person knows that, or is reckless as to whether, the information is false or misleading in a material particular.

Note: For enforcement, see Part VI.

### **75 At the end of subsection 45(7) of Schedule 1**

Add “or a notified acquisition”.

### **76 After subsection 45(8A) of Schedule 1**

Insert:

- (8B) The making by a person of a contract is not a contravention of subsection (1) to the extent that the contract provides for an acquisition, if the contract is subject to a condition that the provision of the contract will not come into force unless and until the acquisition becomes a notified acquisition.
- (8C) Nothing in subsection (8B) prevents the giving effect by a person to such a provision of a contract from constituting a contravention of subsection (1).

### **77 After subsection 50(5A) of Schedule 1**

Insert:

*Notified acquisitions*

- (5B) This section does not apply to a notified acquisition.

*Definitions*

**78 Paragraph 51(1C)(b) of Schedule 1**

Before “section 50 or 50A”, insert “Division 1A or”.

**79 Paragraph 51(2)(e) of Schedule 1**

After “the business”, insert “and is not declared under subsection 51ABZG(1)”.

**Division 2—Other amendments**

*Administrative Decisions (Judicial Review) Act 1977*

**80 At the end of Schedule 1**

Add:

; (zk) decisions under subsection 51ABZJ(1) of the *Competition and Consumer Act 2010*.

*Airports Act 1996*

**81 Section 241**

Omit “section 50 of that Act does”, substitute “section 50 of that Act and the acquisitions provisions of that Act do”.

**82 Subsection 248(2)**

Repeal the subsection, substitute:

(2) Subsections (2A) and (2B) apply if:

- (a) a person directly or indirectly acquires shares in either or both of the following:
  - (i) the airport-lessee company for Sydney (Kingsford-Smith) Airport;
  - (ii) the airport-lessee company for Sydney West Airport; and
- (b) the acquisition has the effect that those companies become subsidiaries of another company.

- (2A) For the purposes of section 50 of the *Competition and Consumer Act 2010* and the acquisitions provisions (within the meaning of that Act), that effect, when considered in isolation from any other effect of the acquisition, does not, and is not likely to, substantially lessen competition in any market.
- (2B) That acquisition is not required to be notified under Division 2 of Part IVA of the *Competition and Consumer Act 2010*.

### ***Corporations Act 2001***

#### **83 At the end of Subdivision A of Division 4 of Part 7.3B**

Add:

#### **837G Consultation**

- (1) Subject to subsection (2) of this section, the Reserve Bank must, before making a determination under subsection 837A(1) or (2) or 837B(1) or (2), consult with the ACCC.
- (2) The Reserve Bank does not have to consult with the ACCC in relation to the making of a determination under subsection 837A(1) or (2) or 837B(1) or (2) if the ACCC has notified the Reserve Bank, in writing, that it does not wish to be consulted about:
- (a) the transfer concerned; or
  - (b) a class of transfers that includes that transfer.

#### **84 Paragraph 839J(3)(b)**

Repeal the paragraph.

#### **85 At the end of section 839J**

Add:

*Competition and Consumer Act 2010*

- (4) Subject to paragraph (5)(b), nothing in this Division limits the operation of any of the provisions of the *Competition and Consumer Act 2010*.

- (5) For the purposes of section 50 and related provisions of the *Competition and Consumer Act 2010*, and the acquisitions provisions (within the meaning of that Act):
- (a) a transfer of shares or business that takes effect under this Division is taken to be:
    - (i) to the extent that the transfer is of shares in the capital of a body corporate—an acquisition of the shares by the receiving body; and
    - (ii) to the extent that the transfer is of other assets—an acquisition of those assets by the receiving body; and
  - (b) the acquisition is not required to be notified under Division 2 of Part IVA of the *Competition and Consumer Act 2010*.

Note: For the purposes of the acquisitions provisions, the receiving body is the *principal party* to the acquisition.

- (6) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:
- (a) a transfer of shares or business under this Division;
  - (b) anything done to enable or facilitate a transfer of shares or business under this Division (including an agreement referred to in section 837D).

### ***Financial Sector (Transfer and Restructure) Act 1999***

#### **86 After subsection 43(9)**

Insert:

- (9AA) For the purposes of the acquisitions provisions (within the meaning of the *Competition and Consumer Act 2010*):
- (a) a transfer of business (whether voluntary or compulsory), a transfer of shares, or a transfer pursuant to an internal transfer certificate, that takes effect under this Act is taken to be:
    - (i) to the extent that the transfer is of shares in the capital of a body corporate—an acquisition of the shares by the receiving body; and
    - (ii) to the extent that the transfer is of other assets—an acquisition of those assets by the receiving body; and

- (b) if the transfer is a transfer under Part 4 of this Act—the acquisition is not required to be notified under Division 2 of Part IVA of the *Competition and Consumer Act 2010*.

Note: For the purposes of the acquisitions provisions, the receiving body is the *principal party* to the acquisition.

## ***Radiocommunications Act 1992***

### **87 Paragraph 51(2)(d)**

After “section 50 and related provisions of the *Competition and Consumer Act 2010*”, insert “and the acquisitions provisions of that Act”.

### **88 At the end of subsection 68A(2)**

Add:  
; and (c) the acquisitions provisions (within the meaning of that Act).

### **89 Subdivision D of Division 1 of Part 3.2 (heading)**

After “section 50 and related provisions”, insert “and acquisitions provisions”.

### **90 At the end of subsection 71A(2)**

Add:  
; and (c) the acquisitions provisions (within the meaning of that Act).

### **91 At the end of section 71A**

Add:  
  
(4) An acquisition to which paragraph (1)(a) of this section applies is not required to be notified under Division 2 of Part IVA of the *Competition and Consumer Act 2010*.

### **92 At the end of subsection 106A(2)**

Add:  
; and (c) the acquisitions provisions (within the meaning of that Act).

### **93 At the end of section 106A**

Add:

- (5) An acquisition to which paragraph (1)(a) of this section applies is not required to be notified under Division 2 of Part IVA of the *Competition and Consumer Act 2010*.

**94 At the end of subsection 114A(2)**

Add:

- ; and (c) the acquisitions provisions (within the meaning of that Act).

**95 At the end of section 146**

Add:

- (3) The ACMA need not make such changes in order to take into account an assignment of the licence under section 85, or a variation of the licence under section 87 that relates to the assignment, if:
- (a) the assignment is a notified acquisition (within the meaning of the *Competition and Consumer Act 2010*); and
  - (b) the latest notification of the acquisition has not been finally considered (within the meaning of that Act); and
  - (c) the Commission has not decided to cease considering the latest notification of the acquisition under section 51ABZD of that Act.

**96 At the end of section 286**

Add:

*Interaction with acquisitions provisions of the Competition and Consumer Act 2010*

- (9) For the purposes of applying this section in relation to an application to transfer an apparatus licence, a day is not counted if:
- (a) the transfer is a notified acquisition (within the meaning of the *Competition and Consumer Act 2010*); and
  - (b) the day occurs on or after the effective notification date (within the meaning of that Act) of the latest notification of the acquisition; and
  - (c) on that day:
    - (i) the notification has not been finally considered (within the meaning of that Act); and



- (ii) the Commission has not decided to cease considering the latest notification of the acquisition under section 51ABZD of that Act.

## Part 3—Amendments commencing 1 January 2026

### Division 1—Main amendments

#### *Competition and Consumer Act 2010*

##### **97 Subsection 50(3)**

Repeal the subsection, substitute:

- (3) For the purposes of this section, an acquisition may have the effect or be likely to have the effect of substantially lessening competition in a market if the acquisition would, in all the circumstances, have the effect, or be likely to have the effect, of creating, strengthening or entrenching a substantial degree of power in the market.

(3A) Subsections 46(3) to (8) have effect for the purposes of this section as if:

- (a) a reference in those subsections (other than in paragraph 46(8)(b)) to section 46 included a reference to this section; and
- (b) a reference in those subsections to a market were a reference to a market (within the meaning of this section).

Note: Subsections 46(3) to (8) contain matters relevant to working out whether a corporation has a substantial degree of power in a market.

(3B) To avoid doubt, subsection (3) does not affect the meaning of *substantially lessening competition* outside this section.

##### **98 Subsection 50(3) of Schedule 1**

Repeal the subsection, substitute:

- (3) For the purposes of this section, an acquisition may have the effect or be likely to have the effect of substantially lessening competition in a market if the acquisition would, in all the circumstances, have the effect, or be likely to have the effect, of creating, strengthening or entrenching a substantial degree of power in the market.

- (3A) Subsections 46(3) to (8) have effect for the purposes of this section as if:
- (a) a reference in those subsections (other than in paragraph 46(8)(b)) to section 46 included a reference to this section; and
  - (b) a reference in those subsections to a market were a reference to a market (within the meaning of this section).

Note: Subsections 46(3) to (8) contain matters relevant to working out whether a corporation has a substantial degree of power in a market.

- (3B) To avoid doubt, subsection (3) does not affect the meaning of *substantially lessening competition* outside this section.

## **Division 2—Application of amendments**

### ***Competition and Consumer Act 2010***

#### **99 After section 190**

Insert:

#### **191 Amendments of section 50**

The amendments made by Division 1 of Part 3 of Schedule 1 to the *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024* apply in relation to an acquisition that is put into effect on or after 1 January 2026, other than an acquisition to which subsection 189(2) of this Act applies.

## Schedule 2—Other amendments

### Part 1—Penalty for false or misleading information

#### *Competition and Consumer Act 2010*

##### **1 After subparagraph 76(1)(a)(iiib)**

Insert:

(iiic) paragraph 155(5)(b);

##### **2 Subsection 76(1A) (after table item 13A)**

Insert:

13B paragraph 155(5)(b) 1,000 penalty units 200 penalty units

##### **3 At the end of subsection 155(5)**

Add:

Note: Under section 76, the Court may order a person who contravenes paragraph (b) of this subsection to pay a pecuniary penalty.

##### **4 Application of amendments**

The amendments made by this Part apply in relation to a contravention of paragraph 155(5)(b) of the *Competition and Consumer Act 2010* that occurs on or after the commencement of this item, whether the relevant notice under section 155 was given before, on or after that commencement.

## **Part 2—Duties imposed by Competition Code**

### ***Competition and Consumer Act 2010***

#### **5 After subsection 150FA(5)**

Insert:

- (5A) To avoid doubt, neither this Act (nor any other law of the Commonwealth) imposes a duty on the Commonwealth entity to the extent to which imposing such a duty would:
- (a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth entity; or
  - (b) otherwise exceed the legislative power of the Commonwealth.

#### **6 After section 150FA**

Insert:

#### **150FAA Imposing a duty under State or Territory law**

- (1) This section:
- (a) applies only for the purposes of the application of the provisions of the Competition Code or another law of the Commonwealth (with or without modification) as a law of a participating State or participating Territory by a provision of an application law; and
  - (b) does not apply for those purposes if the application law otherwise provides.
- (2) If the application law purports to impose a duty on a Commonwealth entity to do a particular thing, the duty is taken to be imposed by the application law to the extent to which imposing the duty:
- (a) is within the legislative powers of the State or Territory; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on a Commonwealth entity.

**Schedule 2** Other amendments

**Part 2** Duties imposed by Competition Code

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- (3) To avoid doubt, the application law does not impose the duty on the Commonwealth entity to the extent to which imposing the duty would:
- (a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth entity; or
  - (b) otherwise exceed the legislative powers of the State or Territory.
- (4) If imposing on the Commonwealth entity the duty to do that thing would:
- (a) contravene any constitutional doctrine restricting the duties that may be imposed on a Commonwealth entity; or
  - (b) otherwise exceed the legislative powers of both the State or Territory and the Commonwealth;
- the application law is taken instead to confer on the Commonwealth entity a power to do that thing at the discretion of the Commonwealth entity.

## **Part 3—Divisions of the Commission**

### ***Competition and Consumer Act 2010***

#### **7 Subsection 19(1)**

Omit “the Chairperson and such other”, substitute “such”.

#### **8 Subsection 19(4)**

Repeal the subsection.

#### **9 Transitional provision**

- (1) This item applies to a direction that:
  - (a) was given under subsection 19(1) of the *Competition and Consumer Act 2010*; and
  - (b) was in force immediately before the commencement of this item.
- (2) The direction has effect, on and after that commencement, as if it specified the Chairperson as one of the members of the relevant Division.
- (3) Subitem (2) of this item does not limit the Chairperson’s powers under subsection 19(2A) of the *Competition and Consumer Act 2010*.

## Part 4—Delegation

### *Competition and Consumer Act 2010*

#### 10 Subsections 155(8B) and (8C)

Repeal the subsections.

#### 11 After section 155

Insert:

#### **155AAAA Power to obtain information, documents and evidence— delegation**

- (1) This section applies in relation to a function or power of any of the following (the *delegator*) under section 155:
  - (a) the Commission;
  - (b) the Chairperson;
  - (c) a Deputy Chairperson;
  - (d) a member of the Commission.
- (2) The delegator may, in writing, delegate any or all of the delegator's functions or powers under section 155 to a member of the staff of the Commission who is an SES employee or an acting SES employee.
- (3) The delegator may delegate a function or power to a person under subsection (2) only if the delegator is satisfied that the person has appropriate qualifications, training or experience to perform the function or exercise the power.
- (4) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the delegator.

#### 12 Transitional provision

- (1) Subitem (2) applies to a delegation that:
    - (a) was given under subsection 155(8B) of the *Competition and Consumer Act 2010*; and
-



- (b) was in force immediately before the commencement of this item.
- (2) The delegation has effect, on and after that commencement, as if it had been given under subsection 155AAAA(2) of the *Competition and Consumer Act 2010*, as amended by this Part.
- (3) Subitem (4) applies to a direction that:
  - (a) was given under subsection 155(8C) of the *Competition and Consumer Act 2010*; and
  - (b) was in force immediately before the commencement of this item.
- (4) The direction has effect, on and after that commencement, as if it had been given under subsection 155AAAA(4) of the *Competition and Consumer Act 2010*, as amended by this Part.

## Part 5—Other amendments

### *Competition and Consumer Act 2010*

#### **13 Subsection 6(2A)**

Omit “(2)(b)(iii)”, substitute “(2)(b)(vi)”.

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*[Minister’s second reading speech made in—  
House of Representatives on 10 October 2024  
Senate on 25 November 2024]*

(120/24)

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