

Global Antitrust Shifts: How New U.S. and Australian Policies Will Impact Merger Review and Government Enforcement

A photograph of a modern building with a curved glass facade, showing multiple floors and windows, set against a light blue sky.

3 MIN READ

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We're excited to be visiting Sydney next week to catch up with competition law colleagues on our way to the [ABA 2025 Asia-Pacific Conference](#). This is a time of unprecedented activity and change in antitrust law and policy worldwide. With significant transformations underway in both the United States and Australia, navigating the regulatory landscape has become increasingly complex. Here's a snapshot of what's happening and how these shifts may impact merger reviews, investigations, and cartel enforcement.

Merger Review

Australia is on the cusp of a major overhaul in its merger review framework with the introduction of mandatory merger control in January 2026. This is a significant departure from the current voluntary notification system, where firms are not required to seek approval from the Australian Competition and Consumer Commission ("ACCC") before proceeding with transactions. While parties have typically engaged with the ACCC where a transaction could have an impact on competition on a highly flexible, informal basis, the mandatory filing regime may bring longer timelines and increased engagement, even for transactions that do not raise significant substantive concerns.

While mandatory merger review has been in place on this side of the Pacific for many decades, the United States has recently made significant changes to premerger notification under the

Hart-Scott-Rodino (“HSR”) Act, the first major updates to the HSR form and rules in over 40 years. The new HSR form, which came into effect on February 10, introduces several new elements, including: narrative descriptions of product overlaps and the rationale for transactions; submission of customer and supplier lists; and expanded requirements to produce transaction-related documents as well as ordinary-course business plans. The changes will extend preparation time and cost for many transactions. More fundamentally, however, the new HSR requirements move away from the short, objective notification of the past to a more detailed and subjective submission, potentially introducing more uncertainty into review timing.

The developments unfolding in both Australia and the U.S. raise new considerations when coordinating international deals touching on both jurisdictions. Historically, for transactions that did not raise significant competition concerns, parties would account for the HSR waiting period in their closing conditions but did not typically include any reference to the Australian process, nor did they typically engage with Australian regulators in advance of closing. This may need to change beginning in 2026. In setting outside dates for closing, parties will need to consider both the new Australian review timelines, as well as the new longer timelines for HSR preparation.

Investigations and Cartel Enforcement

Cartel enforcement has been another major priority for the ACCC. Just before the new year, the ACCC published updates to its immunity and cooperation policy, with ACCC Commissioner Liza Carver noting that the updates ensure that the policy “remains an effective tool for detecting harmful cartels that cheat consumers and other businesses.” In particular, the ACCC has its eye on procurement. For example, in December, the ACCC commenced civil cartel proceedings against two companies and its executives for alleged price fixing relating to estate maintenance and operation services for the Department of Defence.

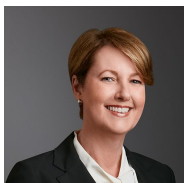
The United States antitrust enforcement is also no stranger to procurement. In fact, the Procurement Collusion Strike Force (“PCSF”) was launched under Trump’s first administration. The PCSF is a multi-agency effort to fight collusion and anti-competitive conduct in government procurement, grant, and program funding at all levels of government (federal, state, and local). Given the Trump administration’s focus on government expenditure, public procurement projects will likely not fall off the antitrust enforcement radar under the current administration. In light of the focus in both the U.S. and Australia on cartel enforcement and individual accountability, and notwithstanding the Trump Administration’s skepticism of traditional U.S. allies, we expect to see continued international cooperation between the U.S. and Australia, in particular to hold international fugitives accountable.

A recognition of these global trends is integral to building and maintaining a robust and current compliance policy. A strong compliance program is not static and needs to evolve with the latest thinking from global antitrust enforcers, be it the use of personal devices and ephemeral messaging or the dawn of AI in the workplace.

We look forward to collaborating with our international law colleagues to be ready to assist clients for whatever comes next and to keep a pulse on the latest developments in the competition law realm.



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