

3 November 2025

Ms Ashna Taneja  
Director (a/g)  
Merger Reform Unit, Competition Law Reform and Evaluation Branch  
Competition and Consumer Policy Division  
The Treasury

Via web portal

Dear Ms Taneja

**Merger notification waiver and control instrument – exposure draft**

The Customer Owned Banking Association (COBA) welcomes the opportunity to provide comment on the Treasury's Exposure Draft of the Merger notification waiver and control instrument.

COBA is the industry association for Australia's customer owned banks (mutual banks, credit unions and building societies). Collectively, our sector has over \$185 billion in assets and is the fifth largest holder of household deposits. Customer-owned banks (i.e. mutual banks) account for around two thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

**Key points**

The merger control regime should be equitable, transparent, timely and not impose significant costs and burdens on customer-owned banks looking to undertake mergers.

COBA considers the 25-business day timeframe for the ACCC to make a determination on a waiver application is relatively long, and could be challenging for applicants seeking to merge.

Section 6-6(3) of the Exposure Draft substantially increases the risk of applications which have substantial merit and should be granted being rejected simply because the ACCC has been unable to deal with them within the relevant period. This section should be reversed to require the ACCC to grant an application after the relevant period elapses.

COBA believes that the merger control regime should be equitable, transparent, cost-effective and timely. Given existing regulatory processes in place for Government to assess the suitability of ADI mergers, particularly the powers conferred on APRA to approve mergers under the *Financial Sector (Transfer and Restructure) Act 1999*, it is important that the new merger control regime does not impose additional and unnecessary costs and regulatory constraints on mergers undertaken by customer-owned banks.

Suite 403, Level 4, 151 Castlereagh Street,  
Sydney NSW 2000

Suite 4C, 16 National Circuit,  
Barton ACT 2600

[Customerownedbanking.asn.au](http://Customerownedbanking.asn.au)

## Comments on Schedule 2 of the Exposure Draft

The proposed sections 6-4 and 6.6(3), which may be relevant to transfers of business between customer-owned banks under the *Financial Sector (Transfer and Restructure) Act 1999*, both provide to the effect that if the ACCC has not made a determination in relation to a waiver application within 25 business days of receiving it then the ACCC must make a determination rejecting the application.

We believe that the 25-business day timeframe (that is, five weeks) for the ACCC to make a determination on a waiver application is inappropriately long and risks imposing a significant and inconvenient delay on applicants seeking to merge. If no earlier determination is made prior to the 25<sup>th</sup> business day and, therefore, the application is rejected at the end of 5 weeks, the applicants will have been delayed by 5 weeks in preparing and lodging a notification, which would significantly impact the transfers of business process between customer-owned banks. We submit that the period should be reduced to 15 business days. This would be better aligned with the intent of the ACCC's Merger Process Guidelines which state that the waiver process 'is intended to be an efficient, streamlined process'.<sup>1</sup>

We are also concerned with the inclusion on section 6-6(3) of the Exposure Draft which states that if the ACCC does not make a determination within the relevant period, then the ACCC must make a determination to refuse to grant the notification waiver after the 25-business day period.

We believe that this clause substantially increases the risk of applications which have substantial merit and should be granted being rejected simply because the ACCC has been unable to deal with them within the relevant period. This would result in an inequitable outcome as the consequences of ACCC inaction would be borne by the entities seeking to undertake a merger – that is, it would require the entities to make a formal merger application, pay the relevant fees and be subjected to the formal assessment process.

In order to mitigate this risk, we believe that the ACCC's decision requirements under section 6-6(3) should be reversed – that is that if the ACCC does not make a determination within the relevant period, then the ACCC must make a determination to grant the notification waiver.

Thank you for the opportunity to provide comment on this consultation. If you wish to discuss any aspect of this submission, please contact Alexander Woloszyn, Policy Manager ([awoloszyn@coba.asn.au](mailto:awoloszyn@coba.asn.au)).

Yours sincerely



**STEPHANIE ELLIOTT**  
Chief Impact Officer

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<sup>1</sup> see paragraph 3.17 of the ACCC's Merger Process Guidelines, interim version, 30 June 2025