

---

JOHNSON  
WINTER  
SLATTERY

---

# **Recent trends in complex ACCC informal merger clearance decisions**

Seventh edition, March 2023

# Contents

THIS REPORT	4
KEY TRENDS	6
KEY OBSERVATIONS	8
WHAT ARE THE LATEST DEVELOPMENTS?	10
RED LIGHT STATISTICS	12
ORANGE LIGHT STATISTICS	13
TIMING STATISTICS	14
YEAR BY YEAR STATISTICS	17
INDUSTRY STATISTICS	18
ABOUT US	24

## AUTHOR



### SAR KATDARE

Partner

T +61 2 8274 9554

M +61 412 636 215

sar.katdare@jws.com.au

Sar has over 20 years' experience advising multinational and ASX-listed clients on all aspects of competition and consumer law. He has been involved in landmark cases relating to mergers, cartels, misuse of market power and access to infrastructure. He is consistently ranked in international directories including Who's Who Legal, Chambers (Asia Pacific), Legal 500, Best Lawyers, GCR100 and Client Choice.

A special thanks to Morgan Blaschke-Broad and Liz Tang who provided invaluable assistance in preparing this report.

# This report

We are pleased to share with you the 7th edition of our report on recent trends in complex informal merger clearance decisions made by the Australian Competition & Consumer Commission (**ACCC**).

The report provides a complete statistical analysis of ACCC informal merger clearance decisions where a Statement of Issues (**SOI**) has been published.

It examines the likelihood of transactions being opposed or not opposed (with or without remedies) depending on the seriousness of the preliminary competition concerns identified in a SOI. It also analyses the time taken by the ACCC to make those decisions.

A SOI provides a strong indication of the ACCC's views as to whether a transaction is likely to be granted informal clearance.

Those views are classified as:

- **issues of concern (or likely to be of concern)** (red light);
- **issues that may be of concern** (orange light); and
- **issues unlikely to be of concern** (green light).

The ACCC will only publish a SOI in relation to transactions that raise serious competition concerns. SOI transactions accordingly represent a small proportion of the total number of transactions considered by the ACCC in any given year.

The findings in this report should not be relied upon as an accurate predictor of future ACCC informal merger clearance decisions. They should be considered alongside the substantive competition issues involved in any particular case.

“

*I can confirm that the ACCC's view remains that the current regime is not fit for purpose and presents real challenges. We will continue to advocate for merger reform, particularly to replace the current informal regime.*

*This comes from seeing first-hand how the absence of a mandatory-suspensory notification regime places us at a significant disadvantage when dealing with merger parties who are willing to push the boundaries of the informal system.*

*As a result, the ACCC is not always well-placed to effectively assess proposed acquisitions and take steps to prevent those that are anti-competitive. We are concerned that our current informal merger regime does not adequately protect competition.*

*Other merger reform areas that we are working through include the approach to deal with the challenges with digital platforms acquisitions and incremental acquisitions by large firms that increase already high market concentration in the economy.*

*Ms Gina Cass-Gottlieb, ACCC Chair, Law Council Annual Competition and Consumer Law Workshop, 9 September 2022*

”

# Key trends

## Transactions that involve a SOI are becoming a smaller proportion of all deals reviewed by the ACCC. At the same time, these transactions are raising more serious competition concerns.

While red light SOIs have traditionally not been fatal to a deal, they are now a clear signal to merger parties that the ACCC will block the deal unless new information can be provided or suitable remedies can be agreed. Faced with a red light SOI, merger parties continue to withdraw their deals rather than wait for a final decision from the ACCC or proceeding to court. The ACCC is also taking significantly longer to consider SOI transactions than was ever the case.

### Fewer SOIs, greater ACCC concerns, more withdrawals

While the ACCC published a lower number of SOIs in 2022 than the annual average, 85% of those SOIs (6 out of 7) contained red lights.

Interestingly however, the ACCC did not oppose any of the seven transactions that involved a SOI. All of those transactions were either cleared on the basis of structural undertakings or were withdrawn by the merger parties prior to a final decision by the ACCC.

The fact that the ACCC did not oppose any transaction with a SOI does not mean that the ACCC is taking a more lenient approach to merger review.

To the contrary, we believe that red light SOIs are now clearly signalling to merger parties that their deal will be blocked unless new information can be advanced to persuade the ACCC that their concerns are overstated or suitable remedies are agreed. In cases where neither of these options is viable, merger parties are more likely not to proceed with a deal in the face of a red light SOI (rather than waiting for a final ACCC decision or proceeding to court).

### In relation to SOI transactions, what are the latest developments?

#### There are more red lights in SOIs than ever before

The number of red light transactions compared to orange light transactions continues to trend upwards. In 2022 there were six red light SOIs and only one orange light SOI.

Of the six red light SOIs, four involved more than one red light. This suggests that deals that proceed to SOI are likely to raise very serious competition concerns from the ACCC.

#### Recent red light statistics tell a different story than the current reality

Since 2006, 47% of all transactions with one or more red light have been cleared while 23% have been blocked. In the last 5 years however, 58% of red light transactions have been cleared, 36% have been withdrawn, and 6% have been blocked.

In 2022, no red light transactions were blocked.

While these statistics suggest that red light SOIs are not fatal, the reality is that in recent years, it is becoming much more difficult to have a transaction with a red light cleared without new analysis, new information or the offer of remedies. The continued increase in the withdrawal rate reflects this.

To this end, many withdrawals may be characterised as effective “blocks” by the ACCC when the merger parties decide that they cannot alleviate the ACCC’s competition concerns and are not prepared to take the matter to court.

### Remedies may be vital to overcoming red light SOIs

Since 2006, 56% of all cleared transactions with one or more red lights have required a remedy. Over 60% of these deals involved structural remedies rather than behavioural remedies.

In 2022 100% of cleared red light transactions (4 of 4) required remedies. While this may be a consequence of the nature of the deals reviewed in 2022, we also think it signals the ACCC’s concerns with increased concentration across all sectors of the economy and the desire to maintain the competitive state of the market without the deal (especially in respect of the number of competitors in the market).

### The trend to withdraw deals in the face of a red light SOI has not changed

In the last 5 years, almost half of all red light transactions have been withdrawn prior to a final decision by the ACCC.

This can be compared to the annual average (since 2006) of 30% of all red light transactions being withdrawn.

### The ACCC’s preference for structural remedies continues

Over the last 5 years (2018-2022), the percentage of SOI transactions not opposed as a result of divestiture remedies almost doubled compared to the previous five year period (2013-2017).

Similarly, over the last 5 years, 9 out of every 10 remedies agreed by the ACCC for SOI transactions were structural in whole or part. There has also been a 10% increase in the number of structural remedies accepted by the ACCC over the last 5 years compared to the previous five year period.

### The majority of orange light SOIs are cleared

70% of all transactions with an orange light have been cleared. In the last 5 years, this has increased to 77%.

While 11% of all transactions with an orange light have been blocked, in the last 5 years no transactions with an orange light were blocked.

### The ACCC is taking significantly longer to consider SOI transactions

In 2022 the ACCC took over 8 months (on average) to assess SOI transactions.

This is much longer than the average time for the ACCC to make a decision for all SOI transactions (5.3 months) and for red light SOIs (5.8 months).

There are likely to be a few reasons for this:

- While the ACCC has seen annual increases in its staff numbers and budget, it is still resource-constrained as it deals with more transactions.
- The ACCC has taken a more rigorous approach to gathering and testing information and submissions from all parties as part of its merger review processes, which has resulted in extended timelines.
- Parties are more willing to “stop the clock” to provide the most comprehensive and persuasive material to alleviate ACCC concerns.
- Red light SOIs raise the most serious and complex concerns so additional time is required to consider all of the material and issues.
- Deals requiring regulatory approvals in other jurisdictions often result in timelines for ACCC informal clearance being extended or delayed on account of those approval processes.

# Key observations

## RED LIGHT TRANSACTIONS

- **58%** of all SOIs contain red lights.
- **47%** of all transactions with a red light have been cleared.
- In the last 5 years, **48%** of all transactions with a red light have been cleared.
- **23%** of all transactions with a red light have been blocked.
- In the last 5 years, **9%** of all transactions with a red light have been blocked.
- **30%** of all transactions with a red light have been withdrawn.
- In the last 5 years, **43%** of transactions with a red light have been withdrawn.

## ORANGE LIGHT TRANSACTIONS

- **42%** of SOIs contain orange lights.
- **70%** of all transactions with an orange light have been cleared.
- In the last 5 years, **77%** of all transactions with an orange light have been cleared.
- **11%** of all transactions with an orange light have been blocked.
- In the last 5 years, no transactions with an orange light have been blocked.
- **20%** of all transactions with an orange light have been withdrawn.
- In the last 5 years, **23%** of all transactions with an orange light have been withdrawn.

## REMEDIES

- **56%** of cleared red light transactions required a remedy.
- **44%** of cleared red light transactions did not require a remedy.
- **35%** of cleared red light transactions required a divestiture remedy.
- **21%** of cleared red light transactions involved a behavioural remedy or combined divestiture/behavioural remedy.
- **89%** of all cleared orange light transactions did not require a remedy.
- **11%** of all cleared orange light transactions required a remedy.
- **4%** of all cleared orange light transactions required a divestiture remedy.
- **7%** of cleared orange light transactions involved a behavioural remedy or combined divestiture/behavioural remedy.

## TIMING

- **5.4 months** for all SOI transactions.
- **5.8 months** for red light transactions.
- **5.9 months** for red light transactions that are not opposed.
- **5.9 months** for red light transactions where remedies are required.
- **4.9 months** for red light transactions where no remedies are required.
- **4.6 months** for orange light transactions.

## INDUSTRY ANALYSIS

- The six industries that have the **most SOI transactions** are: **industrial** (11%), **retail** (11%), **agriculture** (10%), **health** (8%), **media and technology** (8%), and **transport and tourism** (8%). These sectors make up 56% of all SOI transactions.
- The five industries with SOI transactions that are **most opposed** by the ACCC are: **grocery** (40%), **petrol** (40%), **food and beverage** (38%), **energy** (33%), and **finance** (27%).
- The eight industries with SOI transactions that have the **highest ACCC clearance rate** are: **media and technology** (85%), **entertainment** (75%), **food and beverage** (63%), **industrial** (61%), **agriculture** (60%), **grocery** (60%), **infrastructure** (60%), and **petrol** (60%).



Red lights are not fatal but they are becoming much **harder to resolve**.



More merger parties are **withdrawing deals** in the face of a red light SOI.



**Remedies** may be the only way to overcome a red light.



The ACCC continues to prefer **structural** rather than behavioural remedies.



Orange lights continue to be cleared by the ACCC at a **high rate**.



The ACCC takes **5-6 months** to make a final decision for transactions in respect of which a SOI is issued.



The time taken to consider red light transactions in 2022 was **much longer** (8 months).

# What are the latest developments?

## More rigorous investigation of all transactions

In February 2022, the ACCC stated that it would vigorously test submissions put forward by merger parties to ensure there was adequate evidentiary support behind those submissions. This was particularly the case in relation to post-COVID failing firm arguments and new entry arguments.

Since then, the ACCC has continued to use its compulsory evidence gathering powers to test the veracity of merger submissions. For the ACCC, this also provides it with an indication of the prospects of successfully commencing or defending any legal action if it blocks a deal.

Responding to compulsory requests for documents and information, as well as attendance at ACCC compulsory examinations, significantly increases the time and cost associated with the ACCC's merger review process. It also highlights the benefits of providing strong evidence in support of merger submissions as early as possible to avoid or minimise the concerns in a SOI.

## Closer scrutiny of minority interests

A number of recent cases continue to demonstrate that the ACCC is prepared to undertake a full merger review assessment of transactions involving the acquisition of minority interests.

While traditionally these cases have not been considered overly problematic from a competition law perspective, they are now being viewed no differently than full acquisitions on the basis that a minority acquisition can:

- give a party control over decision making of a competitor;
- result in the provision or sharing of confidential information between competitors; and
- reduce incentives to compete as between competitors.

For example from 2019-2022, the ACCC investigated Qantas' 19.9% acquisition of Alliance for 3 years before closing the matter.

“

*We continue to carefully consider and refine our thinking around mergers and conduct that involves commonly held and/or managed minority interests and the extent to which concerns are raised about control and influence across rival firms and the risk of concerted practices.*

*For example, do such holdings across competing companies have a chilling effect on company decision-making and their incentives to compete? Do they create financial incentives that distort and dampen competition? How is information from different companies quarantined when a party owns a minority interest in two or more?*

*These are not issues that are unique to the ACCC. Around the world, the minority interests of private equity and funds in competing firms are attracting close interest. This is an area about which we will continue to engage closely with fellow regulators here and overseas.*

Ms Gina Cass-Gottlieb, ACCC Chair,  
Law Council Annual Competition and Consumer Law  
Workshop, 9 September 2022

”

## Deals involving data

In light of its continued scrutiny of digital platforms, the ACCC is taking a more cautious approach to transactions that involve the acquisition of data or access to data sources.

Transactions between companies that obtain competitive advantages via data or data sources are more heavily scrutinised by the ACCC, as the ACCC seeks to understand the usefulness and uniqueness of the merged entity's combined data and whether this provides it with an unbeatable competitive advantage. This can extend the timeframe for ACCC merger assessment.

## Are the ACCC's calls for merger reform necessary?

In 2021, the ACCC opened the debate for revolutionary changes to the current voluntary informal merger clearance regime.

It proposed a mandatory notification regime that meant deals could not be completed without ACCC clearance. The ACCC has advocated for this change because:

- it cannot legally prevent transactions from completing without court orders;
- its ability to prevent transactions via court orders is impaired by rules of evidence and the need to demonstrate likely future “counterfactuals”; and
- most other merger review regimes in the world are mandatory based on thresholds relating to the value of the transaction and/or turnover of the parties.

The ACCC has also called for bespoke rules for digital platforms and provisions that would deem certain transactions (by firms with substantial market power) unlawful unless the parties provided evidence to the contrary.

## But are these changes necessary?

It is clear that when the ACCC has competition concerns reflected in a red light SOI, many parties do not proceed with the deal at all (which should be characterised as an effective block). Other cases may see merger parties offer remedies or new information to alleviate the ACCC's concerns, but if these strategies are not effective, most parties faced with red light SOI do not proceed to court. In late 2021, the ACCC was successful in seeking an injunction preventing the merger of two fertility providers.

Accordingly, while there are many benefits to the proposed changes to the merger review process, it should be noted that it is only 1-2 transactions every few years that proceed to court where the ACCC has experienced evidentiary challenges.

## Are merger authorisations the next big thing?

Given that many Australian sectors have become highly concentrated and the ACCC has previously advocated that more competitors means more competition, it is becoming increasingly difficult to complete transactions in these mature markets.

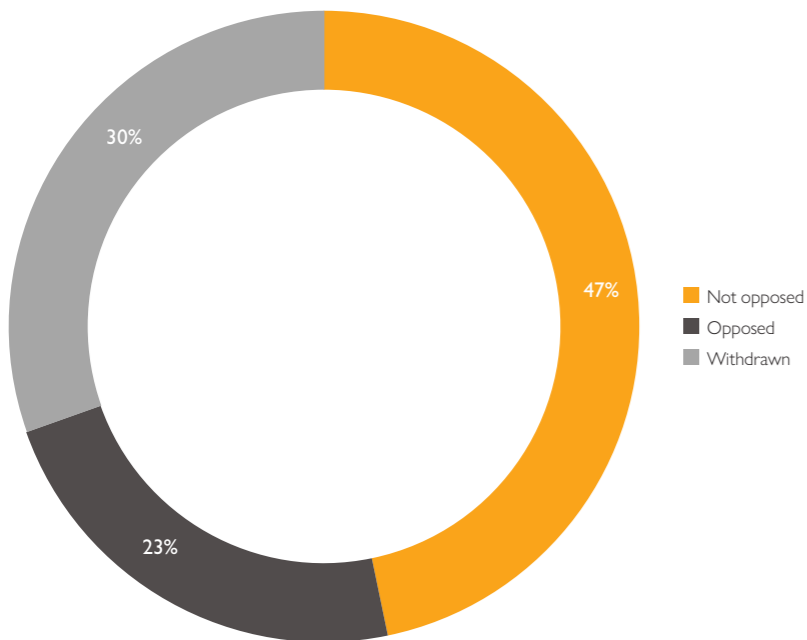
In some cases, particularly ones where:

- there are significant public benefits arising for a deal;
- merger parties desire full transparency on market feedback;
- the timeline is fixed at 90 days; and/or
- there is a right of appeal to the Australian Competition Tribunal,

authorisation might be a suitable alternative if the ACCC would otherwise be likely not to grant informal clearance for a deal.

Parties have recently adopted this approach with 3 of 4 merger authorisations receiving ACCC approval (*BPAY/eftpos/NPPA*; *Gumtree/Cox and AP Eagers/AHG*) and two being considered at the time of publication of this report.

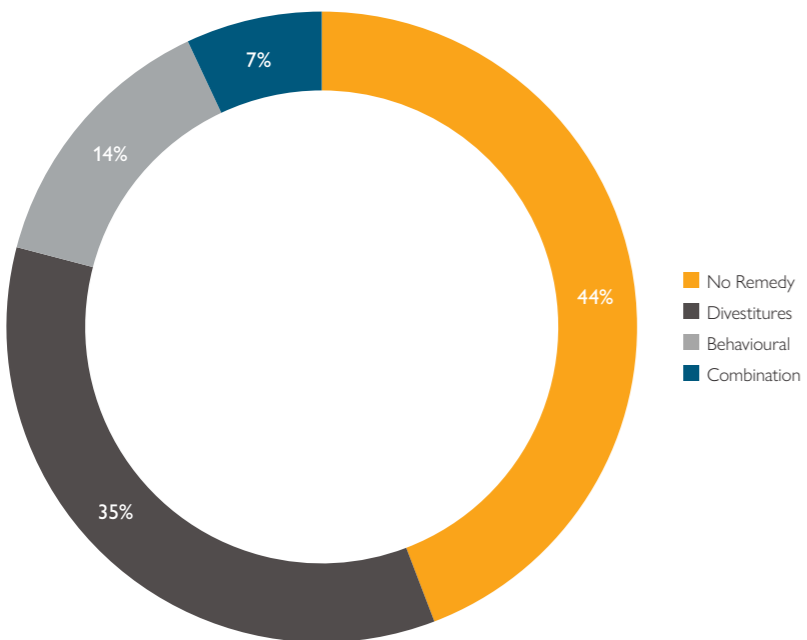
# Red light statistics



### CLEARANCE ANALYSIS

There have been **158** SOIs published by the ACCC since 2006.  
 Of those 158 SOIs, **92** had one or more red lights.  
 Of those **92** red light SOIs:

- **43** were not opposed
- **21** were opposed
- **28** were withdrawn

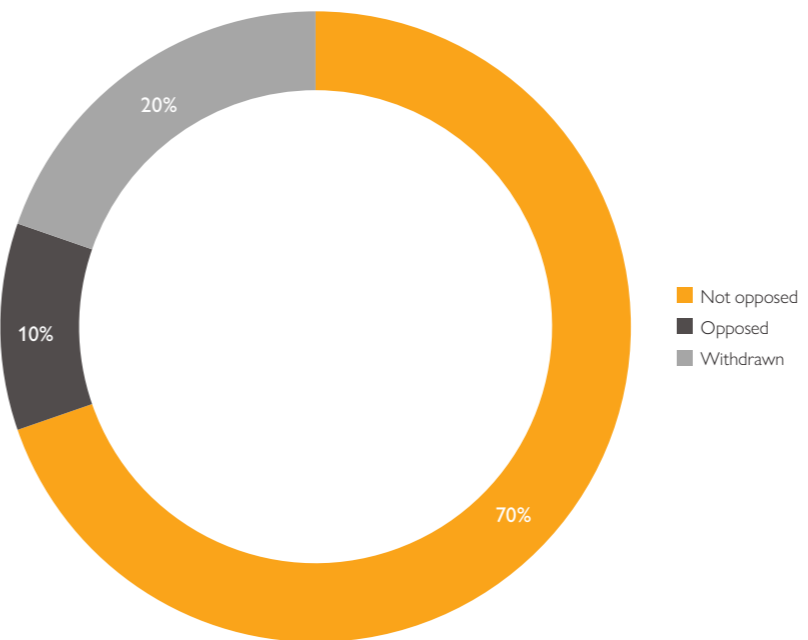


### REMEDY ANALYSIS

There have been **158** SOIs published by the ACCC since 2006.  
 Of those **158** SOIs, **92** had one or more red lights.  
 Of those **92** red light SOIs, **43** were not opposed.  
 Of the **43** red light SOIs that were not opposed:

- **19** required no remedy
- **15** required divestitures
- **6** required behavioural undertakings
- **3** involved a combination of remedies

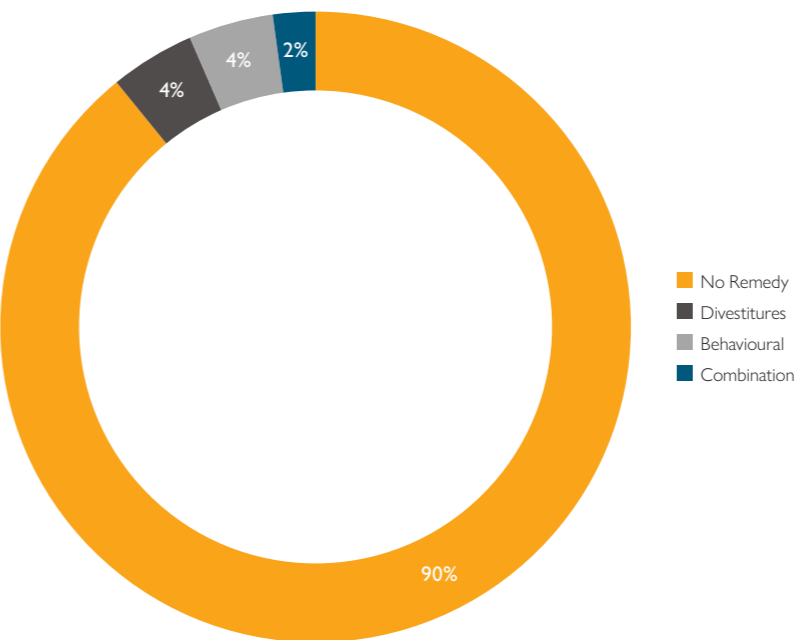
# Orange light statistics



### CLEARANCE ANALYSIS

There have been **158** SOIs published by the ACCC since 2006.  
 Of those **158** SOIs, **66** had one or more orange lights (but no red lights).  
 Of those **66** orange light SOIs:

- **46** were not opposed
- **7** were opposed
- **13** were withdrawn



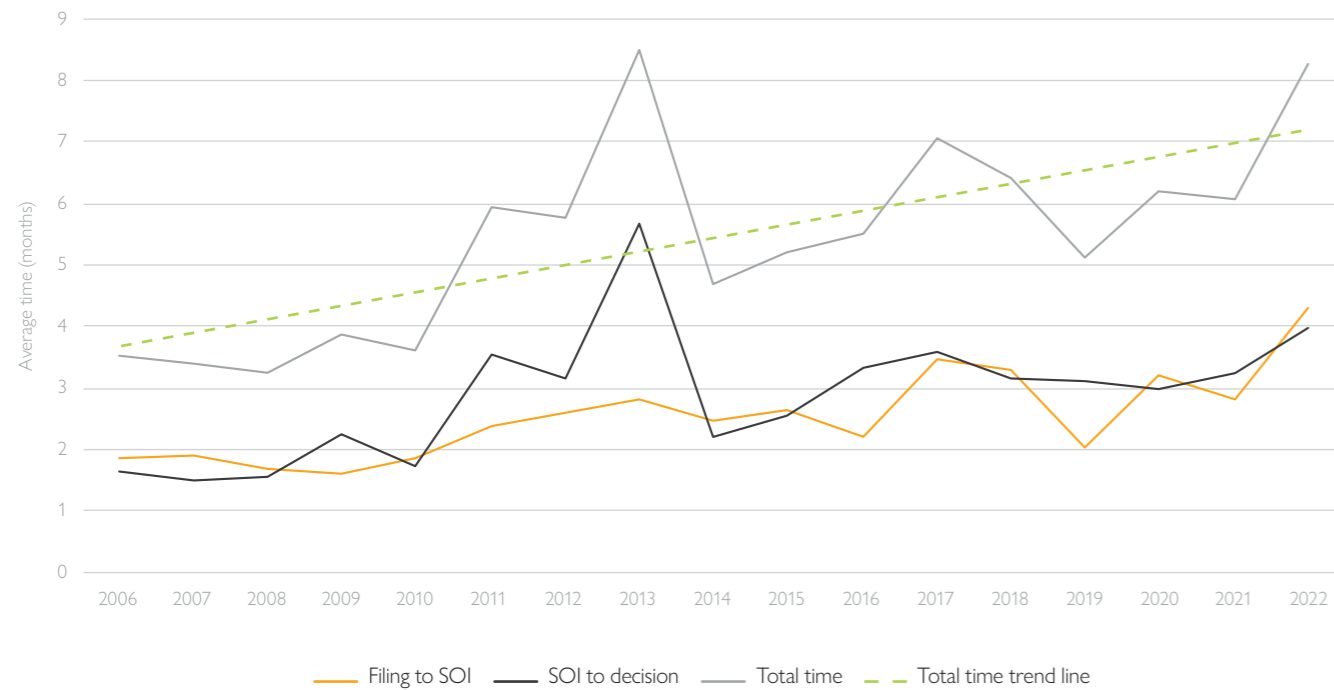
### REMEDY ANALYSIS

There have been **158** SOIs published by the ACCC since 2006.  
 Of those **158** SOIs, **66** had one or more orange lights (but no red lights).  
 Of those **66** orange light SOIs, **46** were not opposed.  
 Of the **46** orange light SOIs that were not opposed:

- **41** required no remedy
- **2** required divestitures
- **2** required behavioural undertakings
- **1** required a combination of remedies

# Timing statistics

## AVERAGE TIME - ALL SOI DECISIONS



“

Similarly, the approach taken by merger parties on remedies can sometimes also contribute to the length and complexity of a review. I expect you are aware of the ACCC's often stated preference for structural over behavioural remedies. But all remedies, including divestiture remedies, come with risk and uncertainty. That is why we so carefully assess these risks before deciding whether to accept an undertaking.

If merger parties offer a divestiture remedy to us late in the process and then say there is limited time to consider the remedy or no time to find an upfront purchaser due to commercial timing, our response may simply be that the undertaking is not acceptable. It should not be assumed that the ACCC will decide to bear the risks associated with a proposed remedy and just accept the undertaking.

We encourage advisers to assist clients to engage early with remedy proposals and consider options for upfront purchasers. We know the clients will want to hold out and only offer a remedy if they really feel they have to - however holding out and waiting until the last minute creates risks and delay. I believe that our processes are sufficiently transparent that there are strong signals quite early when competition concerns are likely.

Ms Gina Cass-Gottlieb, ACCC Chair, Law Council Annual Competition and Consumer Law Workshop, 9 September 2022

”

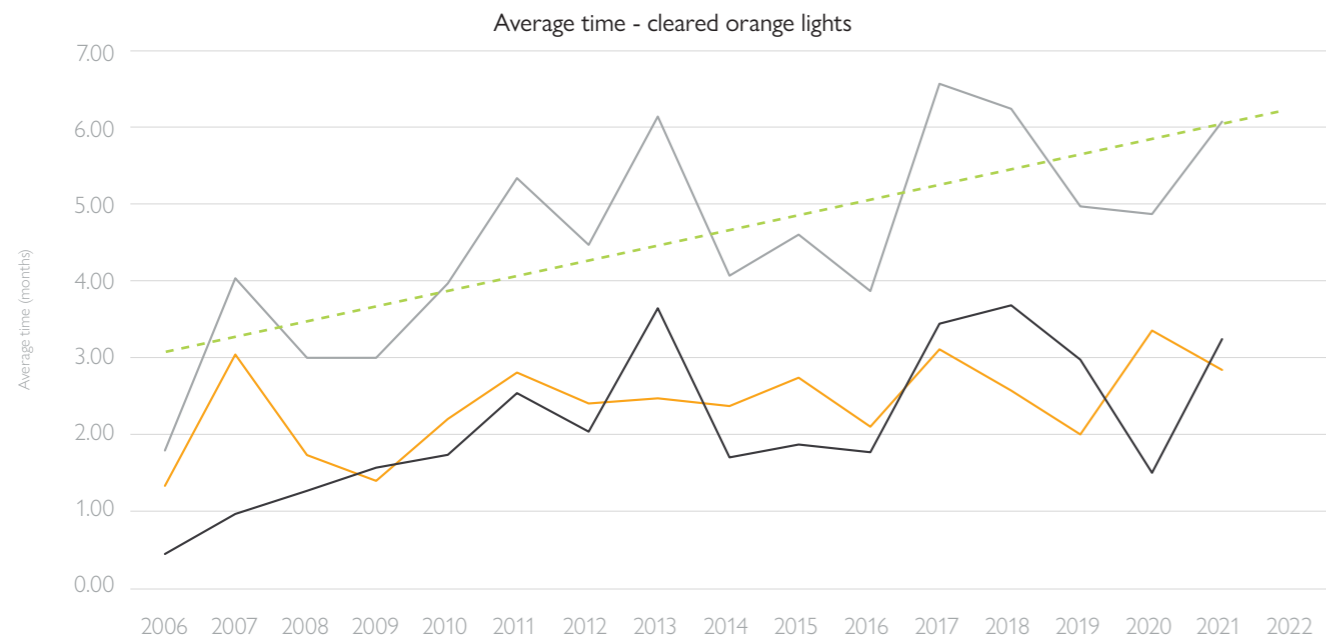
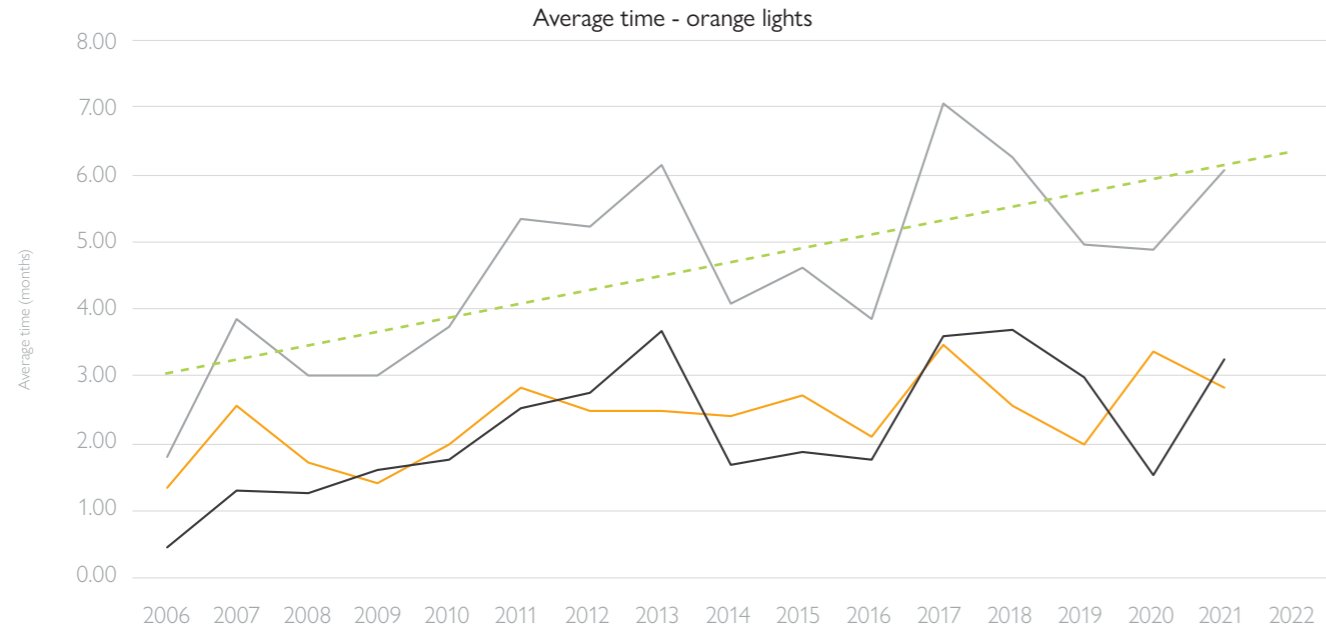
## RED LIGHTS





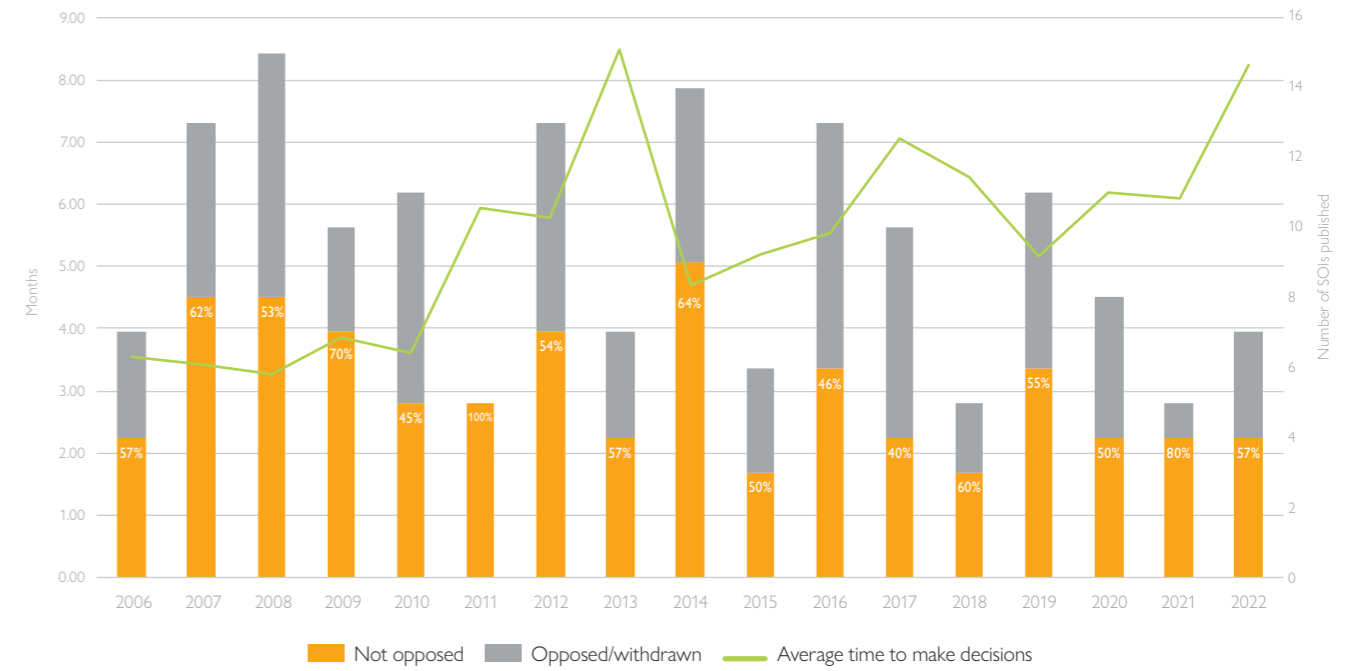
# Year by year statistics

## ORANGE LIGHTS

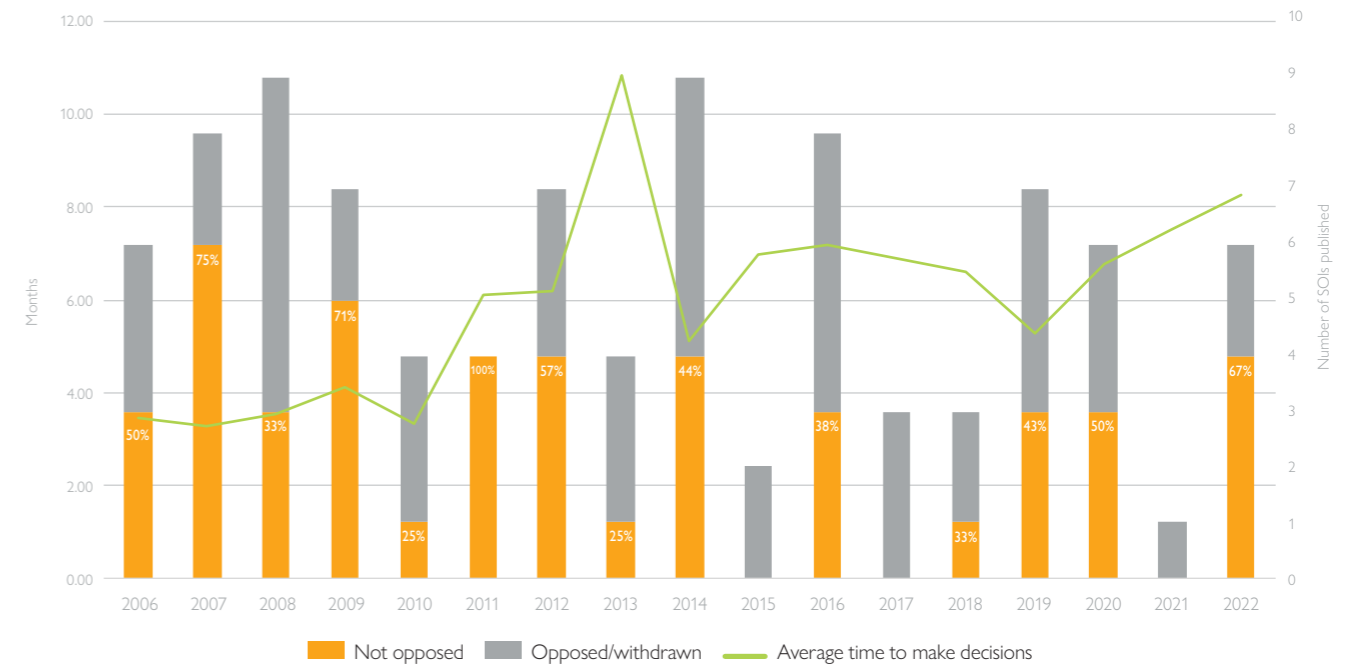


- Filing to SOI
- SOI to decision
- Total time
- Total time trend line

## ALL SOIs



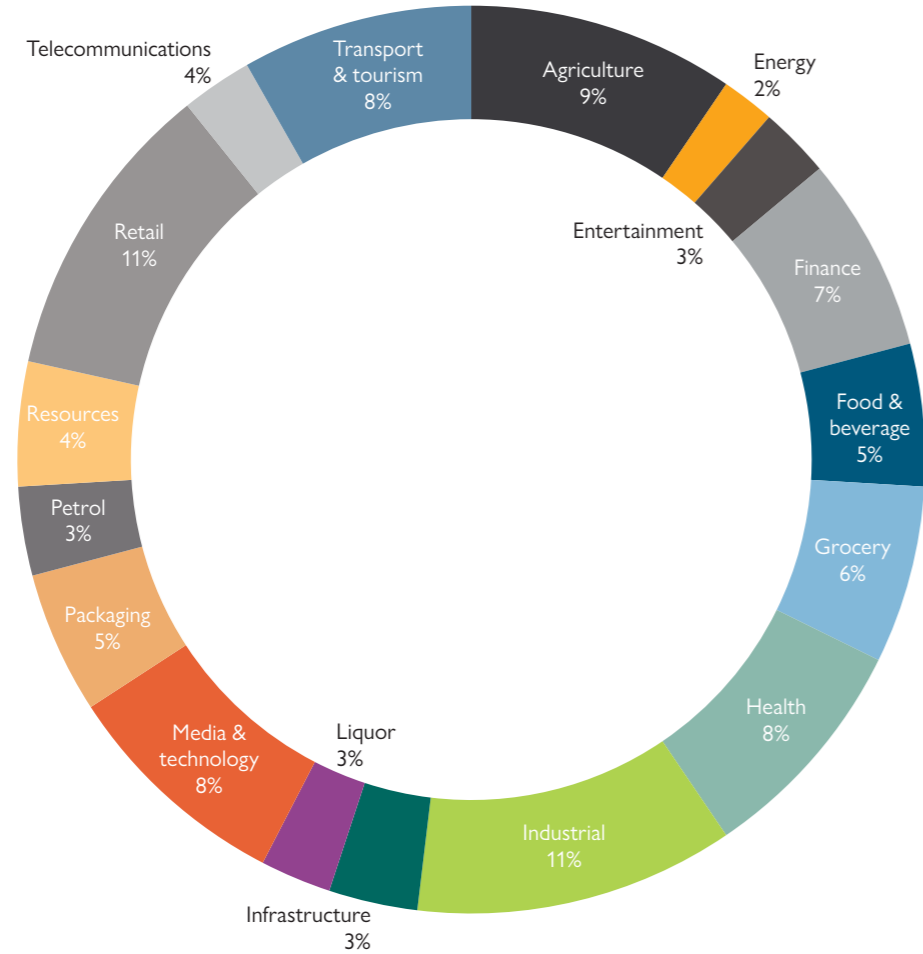
## RED LIGHT SOIs



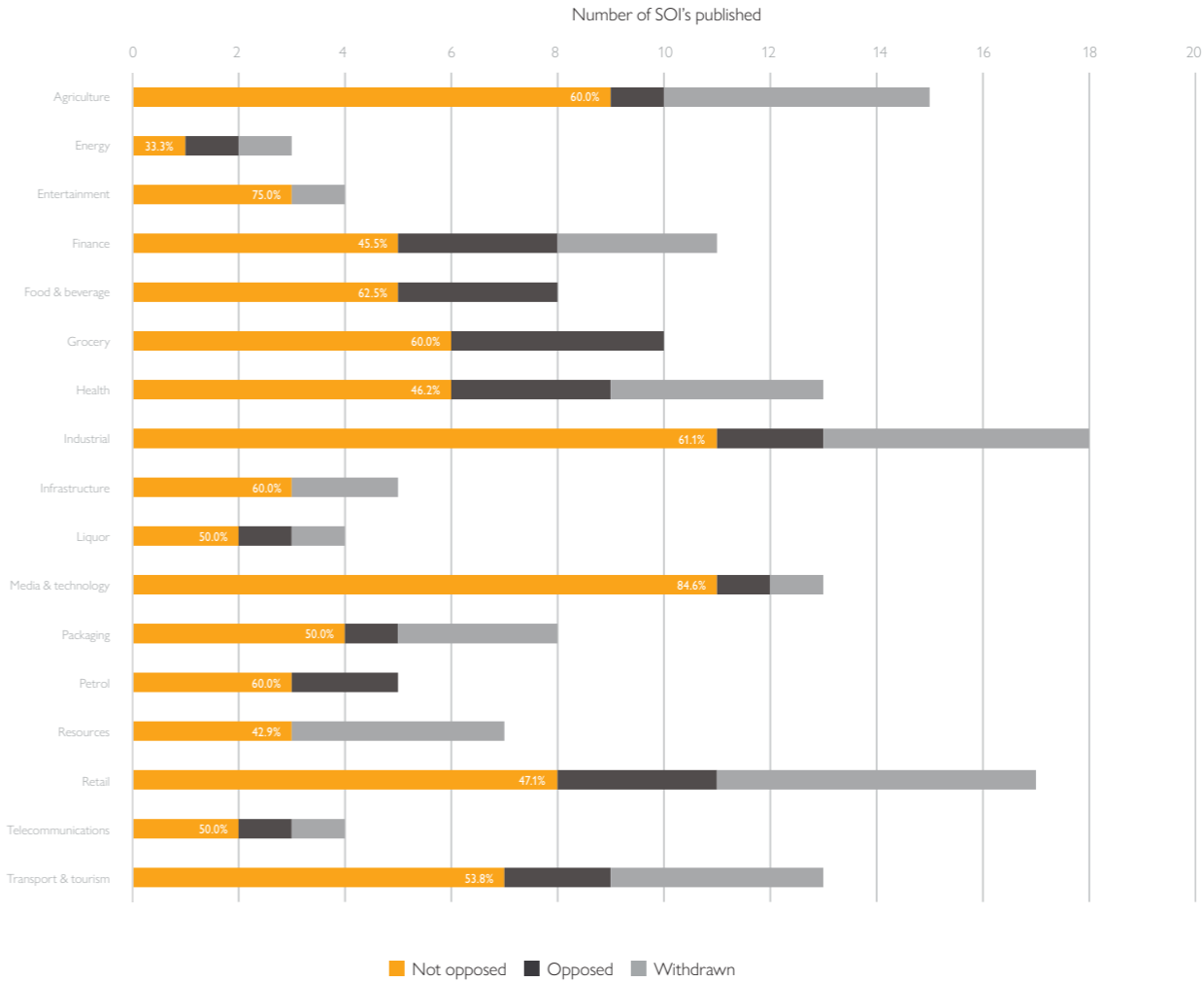
Note, only completed decisions are included in timing statistics. Withdrawn applications are not included. Average time is determined across cleared and opposed decisions.

# Industry statistics

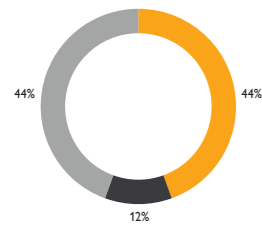
PERCENTAGE OF SOIs BY INDUSTRY (2006-2022)



PERCENTAGE OF SOIs BY INDUSTRY (2006-2022)



### RED LIGHTS



Of the **15** decisions in the agriculture industry, **9** were red light SOIs. Of those **9** red light SOIs:

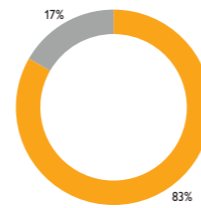
- 4 were not opposed
- 1 was opposed
- 4 were withdrawn

### AGRICULTURE

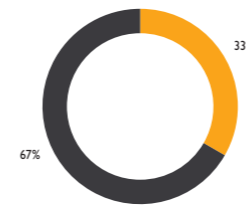
Of the **15** decisions in the agriculture industry, **6** were orange light SOIs. Of those **6** orange light SOIs:

- 5 were not opposed
- 1 was withdrawn

### ORANGE LIGHTS



### RED LIGHTS



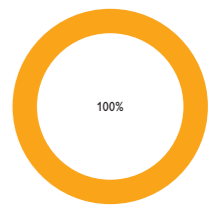
Of the **10** decisions in the grocery industry, **6** were red light SOIs. Of those **6** red light SOIs:

- 2 were not opposed
- 4 were opposed

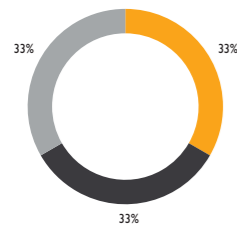
### GROCERY

Of the **10** decisions in the grocery industry, **4** were orange light SOIs. Of those **4** orange light SOIs all were not opposed.

### ORANGE LIGHTS



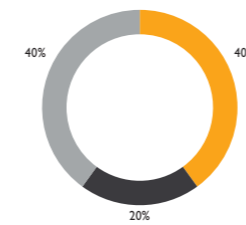
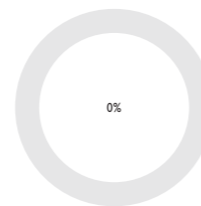
### ENERGY



Of the **3** decisions in the energy industry, all **3** were red light SOIs. Of those **3** red light SOIs:

- 1 was not opposed
- 1 was opposed
- 1 was withdrawn

Of the **3** decisions in the energy industry none were orange light SOIs.



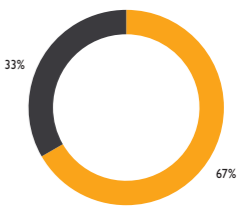
Of the **13** decisions in the health industry, **10** were red light SOIs. Of those **10** red light SOIs:

- 4 were not opposed
- 2 were opposed
- 4 were withdrawn

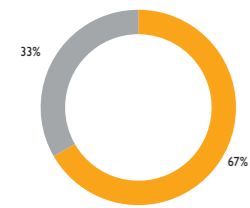
### HEALTH

Of the **12** decisions in the health industry, **3** were orange light SOIs. Of those **3** orange light SOIs:

- 2 were not opposed
- 1 was opposed



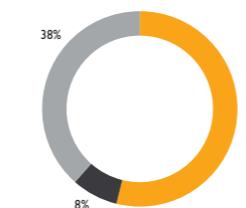
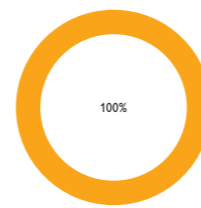
### ENTERTAINMENT



Of the **4** decisions in the entertainment industry, **3** were red light SOIs. Of those **3** red light SOIs:

- 2 were not opposed
- 1 was withdrawn

Of the **4** decisions in the entertainment industry, **1** was an orange light SOI. That orange light SOI was not opposed.



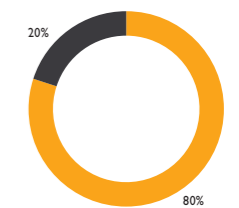
Of the **18** decisions in the industrial industry, **13** were red light SOIs. Of those **13** red light SOIs:

- 7 were not opposed
- 1 was opposed
- 5 were withdrawn

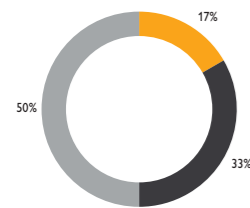
### INDUSTRIAL

Of the **18** decisions in the industrial industry, **5** were orange light SOIs. Of those **5** orange light SOIs:

- 4 were not opposed
- 1 was opposed



### FINANCE

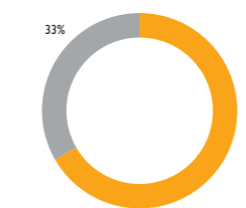
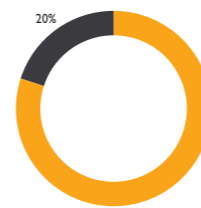


Of the **11** decisions in the finance industry, **6** were red light SOIs. Of those **6** red light SOIs:

- 1 was not opposed
- 2 were opposed
- 3 were withdrawn

Of the **10** decisions in the finance industry, **5** were orange light SOIs. Of those **5** orange light SOIs:

- 4 were not opposed
- 1 was opposed



Of the **5** decisions in the infrastructure industry, **3** were red light SOIs. Of those **3** red light SOIs:

- 2 were not opposed
- 1 was withdrawn

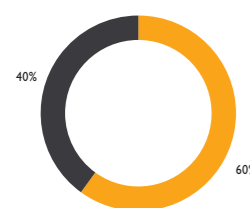
### INFRASTRUCTURE

Of the **5** decisions in the infrastructure industry, **2** were orange light SOIs. Of those **2** orange light SOIs:

- 1 was not opposed
- 1 was withdrawn



### FOOD AND BEVERAGE

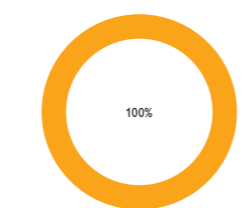
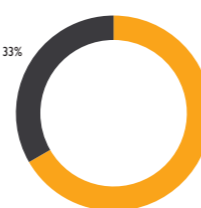


Of the **8** decisions in the food and beverage industry, **5** were red light SOIs. Of those **5** red light SOIs:

- 3 were not opposed
- 2 were opposed

Of the **8** decisions in the food and beverage industry, **3** were orange light SOIs. Of those **3** orange light SOIs:

- 2 were not opposed
- 1 was opposed



Of the **4** decisions in the liquor industry, **2** were red light SOIs. Of those **2** red light SOIs, both were not opposed.

### LIQUOR

Of the **4** decisions in the liquor industry, **2** were orange light SOIs. Of those **2** orange light SOIs:

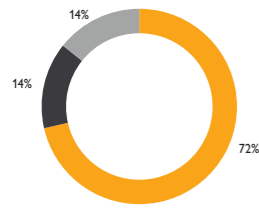
- 1 was opposed
- 1 was withdrawn



■ Not opposed ■ Opposed ■ Withdrawn

■ Not opposed ■ Opposed ■ Withdrawn

### RED LIGHTS



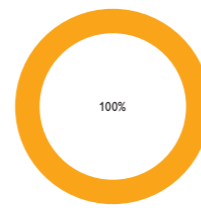
Of the **13** decisions in the media and technology industry, **7** were red light SOIs. Of those **7** red light SOIs:

- **5** were not opposed
- **1** was opposed
- **1** was withdrawn

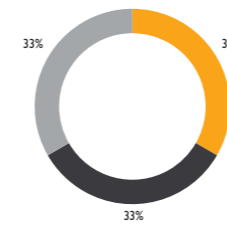
### MEDIA AND TECHNOLOGY

Of the **13** decisions in the media and technology industry, **6** were orange light SOIs. Of those **6** orange light SOIs, all were not opposed.

### ORANGE LIGHTS



### RED LIGHTS



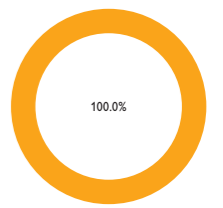
Of the **4** decisions in the telecommunications industry, **3** were red light SOIs. Of those **3** red light SOIs:

- **1** was not opposed
- **1** was opposed
- **1** was withdrawn

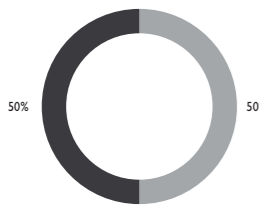
### TELECOMMUNICATIONS

Of the **4** decisions in the telecommunications industry, **1** was an orange light SOI. That orange light SOI was not opposed.

### ORANGE LIGHTS



### PACKAGING

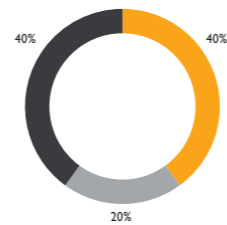
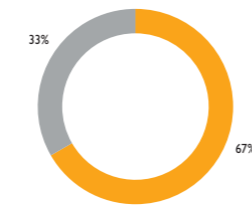


Of the **8** decisions in the packaging industry, **2** were red light SOIs. Of those **2** red light SOIs:

- **1** was opposed
- **1** was withdrawn

Of the **8** decisions in the packaging industry, **6** were orange light SOIs. Of those **6** orange light SOIs:

- **4** were not opposed
- **2** were withdrawn



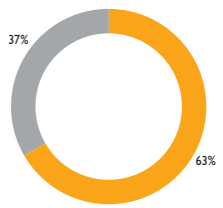
Of the **13** decisions in the transport and tourism industry, **5** were red light SOIs. Of those **5** red light SOIs:

- **2** were not opposed
- **2** were opposed
- **1** was withdrawn

### TRANSPORT AND TOURISM

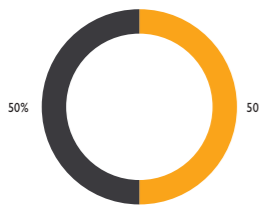
Of the **13** decisions in the transport and tourism industry, **8** were orange light SOIs. Of those **8** orange light SOIs:

- **5** were not opposed
- **3** were withdrawn



■ Not opposed ■ Opposed ■ Withdrawn

### PETROL

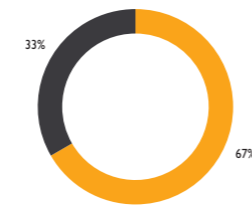


Of the **5** decisions in the petrol industry, **2** were red light SOIs. Of those **2** red light SOIs:

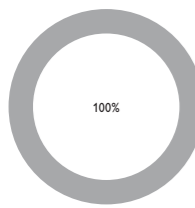
- **1** was not opposed
- **1** was opposed

Of the **5** decisions in the petrol industry, **3** were orange light SOIs. Of those **3** orange light SOIs:

- **2** were not opposed
- **1** was opposed



### RESOURCES



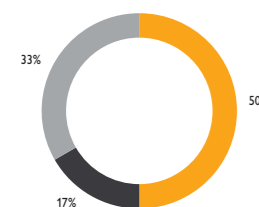
Of the **7** SOI decisions in the resources industry, **1** was a red light SOI. That red light SOI was withdrawn.

Of the **7** decisions in the resources industry, **6** were orange light SOIs. Of those **6** orange light SOIs:

- **3** were not opposed
- **3** were withdrawn



### RETAIL

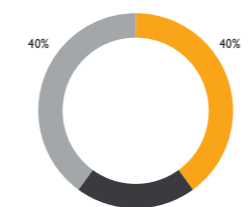


Of the **17** SOI decisions in the retail industry, **12** were red light SOIs. Of those **12** red light SOIs:

- **6** were not opposed
- **2** were opposed
- **4** were withdrawn

Of the **17** decisions in the retail industry, **5** were orange light SOIs. Of those **5** orange light SOIs:

- **2** were not opposed
- **1** was opposed
- **2** were withdrawn



■ Not opposed ■ Opposed ■ Withdrawn

### QUALIFICATIONS

In terms of the data included in this report, we note the following qualifications:

- **Data:** Data presented in this report is for the calendar year January 2022 to December 2022. For example, if a transaction commenced in 2021 but was finalised in 2022, it is deemed to be a 2022 transaction for this report. All data has been sourced from SOIs available on the ACCC's mergers register since 2006 as at February 2023.
- **SOI data:** Data only relates to transactions where a SOI has been issued and the "traffic light" system has been adopted. Transactions that have been cleared by the ACCC without a SOI have not been considered. While these may include global mergers or transactions where remedies have been offered upfront, our findings and the trends are unlikely to change materially if we considered these transactions.
- **Timing:** For timing statistics, withdrawn merger applications have not been considered. Statistics have been calculated from data based on the number of days between events, which have been recorded to the nearest integer unless otherwise specified.
- **Rounding:** Some figures have been rounded to whole numbers.

# About us

Johnson Winter Slattery is a leading independent law firm representing Australian and international clients on their most strategic, complex and demanding transactions and disputes throughout Australia and surrounding regions.

Our unique business model distinguishes us from other firms, providing clients with greater access and involvement of senior practitioners resulting in efficiency and higher quality commercial outcomes.

Our competition team (which is one of the biggest in Australia spanning four offices, eight partners, six special counsel and 13 associates) is often briefed to “get the deal through” even if the corporate work is being undertaken by another firm or in-house. We also act for the ACCC.

## OUR DEALS

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

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

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

**Illion:** ACCC clearance for sale of Milton Graham to Recoveries Corp

**InvoCare:** ACCC clearance for acquisition of Bledisloe Group

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

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

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

**Qantas:** Advising on on-going ACCC clearance for the proposed acquisition of Alliance

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

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

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

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

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

# Our team



## SAR KATDARE

Practice Group Head - Competition

T +61 2 8274 9554  
M +61 412 636 215  
[sar.katdare@jws.com.au](mailto:sar.katdare@jws.com.au)



## ALDO NICOTRA

Chairman

T +61 2 8274 9536  
M +61 417 465 627  
[aldo.nicotra@jws.com.au](mailto:aldo.nicotra@jws.com.au)



## MICHELE LAIDLAW

Partner

T +61 2 9392 7444  
M +61 436 312 919  
[michele.laidlaw@jws.com.au](mailto:michele.laidlaw@jws.com.au)



## JENNIFER DEAN

Partner

T +61 2 9392 7476  
M +61 434 563 693  
[jennifer.dean@jws.com.au](mailto:jennifer.dean@jws.com.au)



## TOM JARVIS

Partner

T +61 3 8611 1336  
M +61 414 811 601  
[tom.jarvis@jws.com.au](mailto:tom.jarvis@jws.com.au)



## JAMES LOVE

Partner

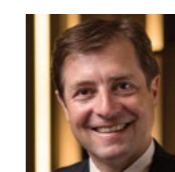
T +61 3 8611 1339  
M +61 409 288 531  
[james.love@jws.com.au](mailto:james.love@jws.com.au)



## NICHOLAS BRIGGS

Special Counsel

T +61 2 8247 9671  
M +61 466 507 295  
[nicholas.briggs@jws.com.au](mailto:nicholas.briggs@jws.com.au)



## WOLFGANG HELLMANN

Special Counsel

T +61 3 8611 1332  
M +61 437 684 903  
[wolfgang.hellmann@jws.com.au](mailto:wolfgang.hellmann@jws.com.au)



## CHRISTOPHER SONES

Special Counsel

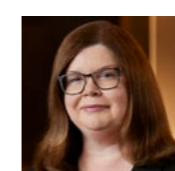
T +61 3 8611 1369  
M +61 401 020 062  
[christopher.sones@jws.com.au](mailto:christopher.sones@jws.com.au)



## DOUGAL ROSS

Special Counsel

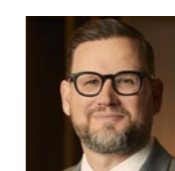
T +61 2 8274 9517  
M +61 419 821 802  
[dougal.ross@jws.com.au](mailto:dougal.ross@jws.com.au)



## KIRSTEN SCOTT

Special Counsel

T +61 8 6216 7260  
M +61 487 444 013  
[kirsten.scott@jws.com.au](mailto:kirsten.scott@jws.com.au)



## DARREN GRONDAL

Consultant

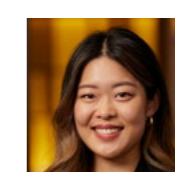
T +61 8 6216 7231  
M +61 438 399 470  
[darren.grondal@jws.com.au](mailto:darren.grondal@jws.com.au)



## MORGAN BLASCHKE-BROAD

Senior Associate

T +61 2 8247 9647  
M +61 477 474 076  
[morgan.blaschke-broad@jws.com.au](mailto:morgan.blaschke-broad@jws.com.au)



## LIZ TANG

Associate

T +61 2 9392 7408  
M +61 457 926 552  
[liz.tang@jws.com.au](mailto:liz.tang@jws.com.au)





**MARCH 2023**

ADELAIDE  
BRISBANE  
CANBERRA  
MELBOURNE  
PERTH  
SYDNEY

**[jws.com.au](http://jws.com.au)**

JWS 23030001