CONSULTATION VERSION

COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

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Confidentiality/OIA guide for applications

Guidance on confidentiality and Official Information Act processes for our assessment of applications for clearance and authorisation under the Commerce Act 1986

Consultation version

9 July 2026

Associated documents

Publication date	Title
April 2026	Merger application forms
May 2022	Mergers and Acquisitions Guidelines
June 2023	Authorisation Guidelines
January 2018	Competitor Collaboration Guidelines

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Introduction and purpose

The text and guidance in this document proposes to replace the existing text set out in our Mergers and Acquisitions Guidelines (May 2022) at [6.74]-[6.96] and [6.118]-[6.121], our Authorisation Guidelines (June 2023) at [198]-[220] and [226]-[228], and our Competitor Collaboration Guidelines (January 2018) at [168]-[177].

Subject to submissions and feedback received on this consultation draft, we intend to publish a final version of this document with the processes contained therein taking effect in respect of all applications registered 1 month after the final version is published.

1. This guidance describes how we treat confidential information that we receive during our assessment of applications for clearance and/or authorisation under Part 5 of the Commerce Act 1986 (the Act).

2. We seek to make our determinations on the basis of the fullest set of information available. We often gather highly relevant information (and documents) which may be confidential or commercially sensitive, or which is provided to us in confidence (which in this document we refer to collectively as confidential information). We take a cautious approach in accepting assertions of confidentiality. We test all claims to ensure that the information provided is truly confidential. We have processes in place to preserve the confidentiality of information, while also enabling us to test that information with stakeholders with an interest in our determinations.

3. Applications for clearance and authorisation – in particular, for mergers and acquisitions – are often time-sensitive, so we have designed our process to ensure we can complete our assessments as quickly and efficiently as possible, while adhering to the principles of natural justice.

4. We also seek to be as transparent as possible in our assessments of applications for clearance and authorisation. This includes publishing public versions of applications and submissions received, consultation documents, and determinations on our website. In addition, we seek to fully test information and meet our natural justice obligations by proactively disclosing information – which may include certain confidential information – to external legal counsel and expert advisors for parties. This ensures parties have a fair opportunity to represent their positions and also helps ensure we make robust determinations.

5. This guidance explains:

    5.1 how and why we gather confidential information;

    5.2 when we will disclose confidential information;

    5.3 how we protect information that must be disclosed;

    5.4 confidentiality orders under s 100 of the Act;

    5.5 what happens to information after a determination is made; and

    5.6 what parties providing submissions or information need to know.

We anticipate applying this guidance (with any necessary modifications) in the future to a statutory notification regime relating to Part 2 of the Act that the Commerce (Promoting Competition and Other Matters) Amendment Bill proposes to introduce.

How to make a submission

6. We invite submissions on the proposed guidance on confidentiality and OIA processes for applications. All submissions on this document should be sent to mergers@comcom.govt.nz with the reference "confidentiality/OIA processes for applications" in the subject line of the email. We request that parties who wish to make a submission do so by **30 July 2026**.

7. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with and get in touch with us at mergers@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

8. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on our website. If you make a submission and we do not acknowledge receipt of that submission within two working days, you should contact us or resubmit your submission.

9. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.

Subscribe to updates

10. This document is part of a series of consultation documents that we have published and intend to publish in respect of our mergers and acquisitions work. If you wish to receive updates on any such consultation documents that we publish in the future, you can register to receive merger reform updates via our website.

How and why we gather confidential information

General principles

11. To effectively assess applications for clearance and authorisation, we need to gather information from a range of sources.

12. To confirm that information provided to us is accurate and reliable, we need to be able to test that information. If we cannot test the reliability of information, we may need to place less weight on that information in reaching our decision.

13. At least some of the information that we receive during our assessments may be confidential to the party that provided it.

14. Given our need to test information to assess its reliability, parties providing us with information should consider whether information can be considered in a form (ie, summarised, aggregated, etc) that reduces its confidentiality and increases our ability to test it.

15. Where information must be provided in a confidential form, parties should take care to identify the confidentiality status of that information (using the guidance set out starting at [18] below).

16. Where a party claims confidentiality over certain information, we will consider that claim carefully, with reference to the factors identified below at [23].

17. We are committed to being a responsible steward of the confidential information provided to us, and have processes in place to preserve the confidentiality of this information, which we set out further starting at [24].

How to identify information as confidential

18. In the case of applications and submissions confidential information should be identified by providing a schedule which describes the information over which confidentiality or commercial sensitivity is claimed, the reasons why confidentiality is sought (with reference to the withholding grounds in the OIA, along with any supporting information or evidence. A template confidentiality schedule is in **Attachment B.**

19. We also expect parties to provide both confidential and public versions of any applications or submissions, that clearly mark up (using [ ] and shading) the information over which they claim confidentiality or commercial sensitivity and set out proposed redactions from the public versions (so that these versions can be made public). This is to ensure we are clear on any potential sensitivities and to ensure there is no delay in getting out public documents.

20. We will consider requests for submissions to be published anonymously, but ask that submitters discuss this with us before lodging a submission, and provide reasons to justify any claims of anonymity.

21. If you are providing us with verbal information (as in an interview), or other written information (as in an email or other document responding to a request for information), please clearly indicate the information over which confidentiality or commercial sensitivity is claimed (ie, by highlighting that material, in the case of written information, or pausing to clarify the confidentiality status of the information, in the case of verbal information).

Confidentiality claims will be carefully considered

22. In seeking to be as transparent as possible we take a cautious approach in accepting assertions of confidentiality. We test all claims to ensure that the information provided is truly confidential.

23. It is ultimately for us to decide whether information provided to us should be treated as confidential. We will evaluate each assertion of confidentiality or commercial sensitivity and may need to test claims with the provider or subject of the information, including in terms of the extent of proposed redactions from the public version of an application or submission. However, in general terms it should be noted that:

    23.1 we consider requests for confidentiality on a case-by-case basis, but rarely accept ‘blanket’ claims of confidentiality over entire documents. While some specific information within a document may be confidential, other information and general statements may not be confidential;

23.2 we are unlikely to accept a claim of confidentiality or commercial sensitivity for information that is already in the public domain or readily available or information that is unlikely to cause harm if released; and

23.3 we are only likely to grant fact confidentiality over the fact and entire contents of an application or submission in exceptional circumstances (and potentially only for a limited period of time). This is because fact confidentiality hampers our ability to test information provided with other parties.

When we will disclose confidential information

24. We aim to be a responsible steward of confidential information. Where information is provided to us that is confidential or is provided on a confidential basis, we will generally seek to maintain that confidentiality.

25. However, there may be some situations in which we consider it necessary, or are required by law, to disclose some confidential information.

26. Where a person has a natural justice interest in receiving information that we hold, we will proactively disclose that information (including confidential information) to that person's external legal counsel and expert advisers, subject to robust protections to prevent them from disclosing that information further.

27. We are also subject to the OIA, which allows any person to request information that we hold. We must release the requested information unless we consider there are administrative, conclusive or good reasons for withholding it. For information requested by any party which that party does not require for natural justice, we will apply the principles of the OIA in determining whether to release that information.

28. Further detail is set out below on:

28.1 natural justice, and our approach to proactively disclosing the information required to satisfy that principle; and

28.2 the OIA as it applies to our clearance and authorisation functions.

Natural justice disclosure

29. We recognise that applicants, a target/vendor (in the case of a merger or acquisition) and other interested parties have an interest in understanding our process, and the evidence and submissions that we rely on when deciding whether to give clearance or grant authorisation.

30. We are required to observe the principles of natural justice when assessing applications for clearance or authorisation. Natural justice requires that we give those whose interests are likely to be affected by a determination an opportunity to understand the gist of our proposed conclusions (including the key evidence on which those are based) and to respond to our proposed conclusions (and comment on issues being assessed). The greater the potential impact of a determination on a person or group, the greater the requirements on us under natural justice principles.

31. What constitutes the gist of our proposed conclusions is context-specific. To meet parties' natural justice rights, we will proactively publish or disclose – in some format

and to a certain degree – relevant material (eg, submissions or other evidence) so that parties can understand the substance of any content.

32. Where possible, we hypothetically or anonymously test information relating to confidential information redacted from a public version of a document. This enables us to test information, whilst also protecting confidential information.

Proactive disclosure of information during our assessment of an application

33. During our assessment of an application, we will keep all parties informed through the publication of information/documents on the case register on our website, media releases and also direct communication with parties (where relevant). During our assessment of applications, we publish on our website public versions of material documents (third party documents, and our Issues Statements and determinations) that communicate the views, issues and evidence we are considering, including:

    33.1 applications received;

    33.2 Issues Statements setting out the issues we consider important in deciding whether to give clearance or grant authorisation – the different types of Issues Statements we may issue being Statement of Preliminary Issues, Statement of Issues and Statement of Unresolved Issues;

    33.3 in the case of an application for authorisation, draft determinations;

    33.4 submissions received; and

    33.5 ultimately, final determinations.

34. Publication of this material on our website enables us to test information and issues with parties, and enables parties to understand the basis on which we have reached any preliminary or proposed conclusions. It also gives parties the opportunity to make submissions and provide any information that they consider may be relevant to our assessment of applications for clearance and authorisation.

35. We seek to ensure that that the documents we publish on our website have as few redactions as reasonably possible (in order to maximise readability of public versions). At times, we find that general statements or information in a summary form can be included in the public version of a document, whilst keeping party-specific information confidential by redacting that information. We encourage parties to propose such adjustments in the public versions of their submissions.

36. We will proactively disclose to external legal counsel and expert advisors for applicants and a target/vendor (in the case of a merger or acquisition) – without the need for them to make an OIA request – the material needed to understand the gist of our proposed conclusions. This disclosure will at least be the confidential versions of Issues Statements, draft determinations and final determinations. Ordinarily this will be sufficient for parties to understand the gist of our proposed conclusions and to meet parties' natural justice rights. However, in some cases, we may also proactively disclose other relevant confidential information.

37. Where we disclose confidential information, we will endeavour to notify the parties that provided us with that information prior to disclosure.

38. For any other information that that is not proactively disclosed to meet natural justice, we are subject to the OIA, and we will apply the principles of that Act when considering any requests.

Issues Statements and determinations

39. We will proactively disclose to external legal counsel and expert advisors for applicants and a target/vendor confidential versions of Issues Statements, draft determinations and final determinations.

40. Wherever possible these Issues Statements and determinations will be prepared in a way that fully describes the gist of our proposed conclusions or issues. In some cases, this may not require us to include or reference confidential material at all. In other cases, adequately conveying the gist may require the inclusion of some confidential information.

41. Where it is necessary to include confidential information in an Issues Statement or determination in order to satisfy natural justice, we will consider the extent to which that confidential information can be referenced or described in a way that reduces or removes its sensitivity, while still adequately satisfying natural justice; for example by, where possible:

    41.1 aggregating data or other information in a way that does not convey specific confidential information, and could not be 'reverse engineered' to identify underlying confidential information;

    41.2 summarising or generalising information in a way that reduces its confidentiality; and/or

    41.3 withholding the identity of the person that provided us with that information, and describing their evidence in a way that does not reveal their identity.

Other potentially relevant confidential information

42. In many cases, the information contained within our Issues Statements or a draft determination will be sufficient in order for applicants, a target/vendor and other interested parties (with a valid or proper interest) to understand views, issues and evidence being considered, and to give parties the opportunity to make submissions and provide any information that they consider may be relevant to our assessment of an application.

43. However, in some cases, we may also consider it necessary to provide applicants, a target/vendor and other interested parties with further, or more detailed, confidential information not contained in the Issues Statement or determination.

44. This other relevant confidential information may include evidence from interviews, responses to information requests, or internal documents. It may also include confidential versions of formal submissions and economic expert reports (as and when these are received/published).

45. In the case of interested third parties, we may also regard it as necessary for the satisfaction of natural justice interests to disclose confidential information provided by the applicant(s) or a target/vendor (in the case of a merger or acquisition).

46. As with the provision of all other confidential information, in disclosing this information we will consider whether the information can be aggregated, summarised, or anonymised, so that it is less, or no longer, confidential (see above at [41]).

Disclosure will be to external counsel where possible

47. We generally refrain from disclosing or releasing confidential information provided by one party to other parties (eg, by one supplier to its rival, or by a customer to its supplier). Disclosing such information in this way could cause harm to the provider of the information or a third party, and therefore affect parties' willingness to share information with us in future. This would reduce the quality of information available to us and our ability to assess an application and make a fully formed determinations (ie, impede our ability to undertake our functions).

48. As a result, our starting position is that confidential material that is proactively disclosed will be provided, wherever possible, to the external legal counsel and expert advisers of parties. This ensures that parties (through external advisors) have a fair opportunity to represent their positions to us and also helps ensure we make robust determinations.

49. In some circumstances it may be necessary to disclose confidential information directly to a party in order to meet that party's natural justice rights. We expect that the party, or its external counsel/advisers, to provide an explanation as to why disclosure of the relevant information to the party – rather than to its external counsel/advisers – is necessary for the satisfaction of its natural justice interests. We also expect that the party receiving the confidential information will take all reasonable steps to protect and to limit access to the information (eg, through the use of a clean team or other protocols).

The Official Information Act

The text and guidance below are based on the current operation of the OIA as it applies to our assessment of applications for clearance and authorisation under the Act, and explains how we propose to amend our processes in the application of the OIA. The Commerce (Promoting Competition and Other Matters) Amendment Bill currently before Parliament proposes amendments to the Act that may change how the OIA applies to information provided to us. We will further update this guidance as needed in light of any new legislative amendments.

50. As noted above, we are subject to the OIA, which provides a legal basis for anyone[1] to request information that we hold and it operates with an overriding principle of availability,[2] which means that we should release information unless there are administrative,[3] conclusive[4] or good[5] reasons not to. We adhere to these principles throughout an assessment of an application, including when deciding which

1 As defined in the OIA, s 12.
2 As defined in the OIA, s 5.
3 As defined in the OIA, s 18.
4 As defined in the OIA, s 6.
5 As defined in the OIA, s 9.

information to publish/disclose and whether there are reasons not to publish or disclose information.

51. However, the OIA does not require us to release (publish or disclose) information in certain circumstances, including if there are administrative, conclusive or good reasons for withholding it. This may include withholding all or part of the information if disclosure would "prejudice the maintenance of the law" under s 6(c) of the OIA,[6] or where the public interest in making the information available is outweighed by the fact that, in our view:

    51.1 release of the information or evidence would disclose a trade secret[7] or unreasonably prejudice the commercial position of the supplier or subject of the information;[8] or

    51.2 we received the information under an obligation of confidence, and if we were to make that information available, it would:[9]

        51.2.1 prejudice the supply of similar information to us (by any person) where it is in the public interest that such information continues to be supplied to us; or

        51.2.2 be likely otherwise to damage the public interest.

52. In undertaking the balancing exercise required by s 9 of the OIA (ie, balancing the public interest in disclosure against any grounds for withholding that information), the extent to which we have already met a requester's natural justice rights through proactive disclosure (in the manner described above) may be a relevant consideration.

53. The OIA enables us to release information subject to conditions that balance the public interest in the information being released against the confidentiality and/or commercial sensitivity of the information. As noted below, these are also factors that we consider when assessing claims of confidentiality and commercial sensitivity made in the course of an assessment of an application. We might use conditions to limit how information is released. For example, we might disclose information by way of a physical or digital data room, or only disclose information to specified persons (external legal counsel or other experts) who have signed confidentiality undertakings.[10]

54. The OIA also enables us to provide information in a manner which balances the public interest in the information being released against the confidentiality and/or commercial sensitivity of the information. Rather than providing a copy of the information, we might instead provide an excerpt or summary of the information.[11]

55. In some instances, we may consider there is sufficient reason to redact confidential information from any disclosure to external legal advisers or other experts, even if other information has been disclosed subject to confidentiality undertakings. For example, if the confidential information is material to contemporaneous commercial negotiations and the lawyers to which disclosure would be made are involved in those negotiations.[12]

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6 The OIA, s 6(c).
7 The OIA, s 9(2)(b)(i).
8 The OIA, s 9(2)(b)(ii).
9 The OIA, s 9(2)(ba).
10 See the OIA, s 28.
11 See the OIA, s 16(1).
12 See for example *Carter Holt Harvey v Sunnex Logging Ltd* [2001] 3 NZLR 343 (CA) at [24].

56. When we receive an OIA request which covers confidential material that has been provided during our assessment of an application, we generally consult with the parties that provided, or are the subject of, the information. We do this to confirm that relevant confidential information has been identified and to obtain parties' views before making our decision on an OIA request.[13] We similarly will, at times, consult with parties on what information we can include within the public version of the Issues Statements and determinations that we proactively publish.

57. Section 28(3) of the OIA provides parties with the right to ask an Ombudsman to investigate and review decisions made by us to refuse to make information available or impose conditions on the release of information.

58. We also note that requests under the OIA can contribute to the need to extend the timeframe for our assessment of an application, impacting on the timeliness of our clearance and authorisation determinations, particularly with respect to mergers.

How we protect information that must be disclosed

59. Where we consider it necessary to disclose confidential information to another party, we take all reasonable steps to protect that information, and to ensure that disclosure is as confined as reasonably practicable in the circumstances.

60. When we disclose confidential information, that disclosure (which may be in summary or anonymised form, as noted above) will be:

    60.1 preferentially, to external legal counsel/expert advisors only;

    60.2 subject to signed confidentiality undertakings, a template of which is provided as **Attachment A**; and

    60.3 via a digital data room, where depending on the sensitivity of the information and circumstances of a particular application, material may only be able to be viewed but not downloaded or printed.

61. To assist with the efficiency and timeliness of our processes, we may require that external counsel/advisors acting for applicants and a target/vendor (in the case of a merger or acquisition) sign confidentiality undertakings upfront when an application is registered and after we provide a template undertaking.

62. The effect of the confidentiality undertakings is to prevent external counsel/advisors from sharing this information with their clients or anyone else, but enable external counsel/advisors to advise, and advocate on behalf of, their clients.

63. We note that this disclosure may at times include some highly sensitive information, which could impact the ability of external counsel and expert advisors receiving such information to advise on other potential matters involving the party to whom the highly sensitive information relates. External counsel and expert advisors should bear this in mind when receiving such information.

[13] Detailed guidance on the application of the Official Information Act can be found on the Ombudsman's website: www.ombudsman.parliament.nz.

Section 100 orders

The text and guidance below are based on the current provisions of s 100 of the Act, and our current processes around s 100 orders. The Commerce (Promoting Competition and Other Matters) Amendment Bill currently proposes amendments to s 100 of the Act that may change our processes, and result in further changes to this guidance.

64. We also have the power to issue confidentiality orders under s 100 of the Act where we consider it necessary to do so for the purposes of our assessment of an application, for example, where an application occurs in circumstances of high commercial sensitivity.[14]

65. Section 100 orders may protect specific information or documents provided to or obtained by us from being published, communicated, or given in evidence, subject to natural justice requirements and our need to test information.

66. Section 100 orders can be made over any information, document or evidence that is provided to or obtained by us. This includes the questions that we ask or information that we convey, as well as the answers, information, and documents with which we are supplied.[15]

67. Any s 100 confidentiality order made in connection with an application for clearance and/or authorisation under Part 5 of the Act expires 20 working days from the date that we make a final determination on an application, or the date that an application is withdrawn (or earlier, where an order specifies that it only applies for a shorter period of time).[16] Where a confidentiality order is made, we assess throughout our assessment of an application whether the order remains necessary and rescind any order that is no longer needed.[17] On the expiry of an order under s 100, the provisions of the OIA re-apply to the relevant information.

68. Under s 100(4) of the Act, it is a criminal offence to breach a confidentiality order, punishable by a fine of currently up to $4,000 for an individual and $12,000 for a company. Although, these penalties could increase to up to $100,000 for an individual and up to $300,000 in any other case in the future (if the Act is amended as proposed).

What happens to information after a determination is made

69. After we have made a final determination in respect of an application for clearance or authorisation (and published the written reasons for a determination), all the information held on file as part of our assessment of an application remains subject to the OIA. Where we receive a request for information that is held after a determination is made, we will generally consult with parties about a request before considering release of their information. Ultimately, however, it is up to us to decide whether or not to release the information.

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14 For example, an application may relate to a merger by way of competitive bid or where there are contemporaneous commercial negotiations between parties to the merger and other interested third parties.

15 *Commerce Commission v Air New Zealand Ltd* [2011] 2 NZLR 194 (CA) at [89]-[92].

16 The Act, s 100(2).

17 Orders under s 100 are in effect for the period specified in the order but expire at the end of our assessment of an application. Section 100(2)(b) and *Commerce Commission v Air New Zealand Ltd* above n15.

70. If a determination on whether to give clearance or grant authorisation is appealed or judicially reviewed, matters of confidentiality are determined by a court irrespective of the position taken by us during our assessment of an application. In the event of an appeal, it is likely that a court will require us to provide all the information we have relied on in making our determination, including any submissions, file note or transcript of interviews and responses to any information requests. However there is the potential for confidential information to be protected during any court process via confidentiality orders issued by a court, meaning it is not made publicly available and/or is only available to limited people. Information could, for example, be made available to the external counsel/advisors to parties involved and a court, but not to parties themselves, except where it is their own information, or is public or non-confidential information.

What parties providing submissions or information need to know

71. We are committed to being a responsible steward of the information provided to us.

72. In undertaking our assessments, we need to be able to test the information provided to us, in order to ascertain its reliability. If we cannot test that information, we may need to place less weight on it.

73. When providing information to us, parties should consider whether information can be considered in a form (ie summarised, aggregated, etc) that reduces its confidentiality and increases our ability to test it. Where confidential information is provided, parties should:

    73.1 identify the specific information they consider to be confidential and explain the reasons, ideally before or at the time it is provided to us – including during interviews and in response to requests for information;

    73.2 understand that we may still need to test confidential information, and, to the extent that the information forms part of the gist of our decision or preliminary decision, may consider it appropriate to disclose that information to external legal counsel and expert advisors of parties. If we take this step we will notify parties first, and any disclosure will be made subject to robust protections to ensure that confidential information is not shared any more widely than strictly necessary in order to give effect to parties' natural justice rights;

    73.3 where a party considers that information cannot be described in a manner that reduces its confidentiality, and where that information is so sensitive that a party would be unhappy for it to be disclosed in any circumstances in an Issues Statement or determination, or otherwise disclosed to external legal counsel and expert advisors, note that:

        73.3.1 it is a party's obligation/duty to make us aware of this before the information is provided to us (which may impact on the weight that we place on that information); and

        73.3.2 a party may wish to consider if it even provides us with information.[18]

[18] We note that we have the power under s 98 of the Act to compulsorily acquire information/documents where we consider it necessary or desirable.

Attached templates

74. The pages that follow set out two attachments referenced earlier in this document.

75. The attachments are two templates:

    75.1 a template confidentiality undertaking (**Attachment A**); and

    75.2 a template confidentiality schedule (**Attachment B**).

Attachment A: Template confidentiality undertaking

CONFIDENTIALITY UNDERTAKING FOR COUNSEL / ADVISORS

I, _____ (name in full)

_____ (occupation)

representative counsel for / advisor to_____(**Client**)

will receive Specified Confidential Information in relation to the Application and I hereby personally undertake to the Commission and each of the Parties as follows:

1. I will preserve the confidentiality of, and keep strictly secure, any Specified Confidential Information provided to me.

2. I will not use or refer to the Specified Confidential Information in any way except as is reasonably required for the purposes of the Application, including the Commission's assessment and determination, and any subsequent appeals of the Commission's determinations to the High Court, Court of Appeal or Supreme Court of New Zealand. For the avoidance of doubt this includes that I will not use or refer to the Specified Confidential Information in the course of (directly or indirectly) advising on any other matter, commercial or otherwise, involving any of the Parties.

3. Given that the Specified Confidential Information may include price sensitive or inside information, for the duration of this undertaking, I will not (directly or indirectly):

   (a) trade or enter into any commitment to trade (whether conditional or not);

   (b) instruct or encourage any other person to trade or enter into any commitment to trade (whether conditional or not);

   in the securities or financial products of any of the Parties, or the interconnected bodies corporate of the Parties (as defined by s 2(7) of the Commerce Act 1986), until such information has been made generally available to the market or has otherwise ceased to be price sensitive or inside information (other than through a breach of my undertaking). This clause does not extend to managed funds or Kiwisaver investments.

4. I will not disclose the Specified Confidential Information to the Client or any Party, person, firm, company or partnership (including, without limitation, any other partners, consultants or employees of the firm or business I work for), or to any AI tool (whether public or internal to the firm or business I work for), other than the Commission or a person who has signed and provided to the Commission a Confidential Undertaking, that has been accepted by the Commission, except:

   (a) as required by the Commission;

   (b) agreed in writing by any Parties who are the subject of (or provided) the relevant Specified Confidential Information; or

   (c) ordered by a Court, or required by law.

5. I will not make copies, notes, records or summaries, or recordings in any other form, of the Specified Confidential Information except as is reasonably necessary in relation to the Application, including the Commission's assessment and determination, and any subsequent appeals of the Commission's determinations to the High Court, Court of Appeal or Supreme Court of New Zealand. Any such copies, notes, records, summaries or recordings in any other form made by me are subject to this undertaking in the same way, and to the same extent, as the Specified Confidential Information.

6. If I become aware of any breach of the obligations in this undertaking I will:

   (a) immediately inform the Commission; and

   (b) immediately, for each relevant Party,

      (i) if I have the Party's contact details, inform the Party; or

      (ii) if I don't have the Party's contact details, request the Party's contact details from the Commission, and then immediately inform the Party once the contact details have been received.

7. I will destroy in a secure and confidential manner all Specified Confidential Information and any copies, notes, records, summaries or recordings in any other form which I may have made of any Specified Confidential Information within 25 working days of the following, whichever is later:

   (a) the withdrawal of the Application; or

(b) the release of the Commission's written reasons in relation to its final determination of the Application; or

(c) where one or more appeal or judicial review proceedings are filed in any New Zealand court in relation to the Commission's decision on the Application, the final determination of those proceedings (including any subsequent appeals, or the withdrawal of all proceedings);

unless otherwise advised by the Commission.

8. Within 10 working days of the satisfaction of clause 7, I will provide the Commission with a declaration made before any officer or person authorised by law to take or receive declarations confirming that:

(a) I have notified the Commission of any breaches of this Confidential Undertaking which I am aware of; and

(b) all Specified Confidential Information I have received, and any copies, notes, records, summaries or recordings in any other form which I may have made of any Specified Confidential Information, have been destroyed in accordance with this Confidential Undertaking.

9. I acknowledge:

(a) that I have read the terms of this undertaking in full and that I understand the obligations it imposes on me from the point that I execute and deliver the undertaking to the Commission;

(b) that this undertaking is given for the benefit of the Commission and the Parties and for the protection of Specified Confidential Information submitted to the Commission in the course of the process to consider the Application;

(c) that a false statement provided pursuant to clause 8 may amount to a breach of section 111 of the Crimes Act 1961; and

(d) to the extent that I am a Barrister and Solicitor of the High Court of New Zealand:

(iii) that a breach of this undertaking may amount to a breach of rule 10.5 of the Conduct Rules; and

(iv) that I have received informed consent from my client to not disclose the Specified Confidential Information to them, in accordance with rule 7.3 and 7.4 of the Conduct Rules.

10. For the purposes of this undertaking:

Application means the application by [APPLICANT NAME], dated [DATE], to the Commission seeking [CLEARANCE/AUTHORISATION] to [DESCRIPTION OF WHAT APPLICATION IS FOR].

Commission means the Commerce Commission of New Zealand;

Conduct Rules means the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008;

Confidential Undertaking means an undertaking on the exact same terms as specified in this document;

Parties means the parties that provide documents or information to the Commission, or are the subject of information or documents provided to the Commission, which are provided as Specified Confidential Information to counsel and advisors subject to these undertakings, in the course of the Commission's process to consider the Application (and **Party** means any of them individually); and

Specified Confidential Information means any document, information, data, material or other evidence, or any part thereof, provided to me by the Commission, and any view of a Party derived from such information, subject to this undertaking, excluding any previously specified confidential information that has become public (other than through a breach of any Confidential Undertaking).

_____ _____

Signature Date

Signed and dated in the presence of:

_____ _____

Signature Date

Attachment B: Template confidentiality schedule

Reference(s)	Specific information, document or text considered to be confidential or commercially sensitive	Reasons why confidentiality is sought (preferably with reference to withholding grounds of the OIA)