COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

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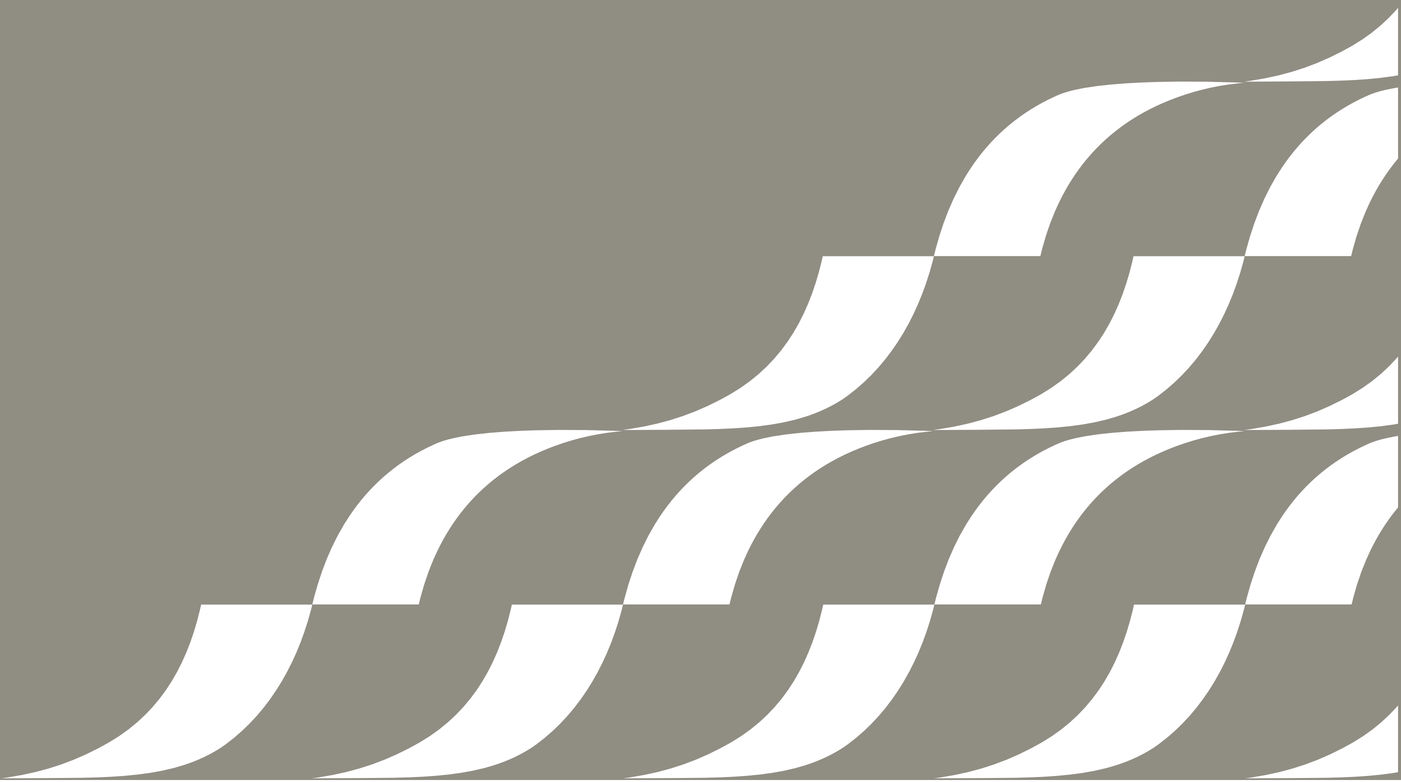
Merger application forms

Application forms for parties seeking section 66 clearance and section 67 authorisation of mergers or acquisitions under the Commerce Act 1986 (and guidance on filing an application)

22 April 2026



Associated documents

Publication date	Title
May 2022	Mergers and Acquisitions Guidelines
June 2023	Authorisation Guidelines
December 2018	Guideline on using quantitative analysis in merger analysis
October 2013	Guidelines for overseas requests for compulsorily acquired information and investigative assistance

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Introduction and purpose

1. Where we receive applications seeking s 66 clearance and/or s 67 authorisation of mergers or acquisitions under the Commerce Act 1986 (the Act), the applicant(s) are required:

   1.1 by s 60(1), via ss 66(2) and 67(2), to make a clearance or authorisation application in the form prescribed by us under s 109, containing such particulars as may be specified in that form, with it being (under s 60(4)) at our discretion as to whether or not an application complies with that form;

   1.2 by s 68(1) to produce or furnish to us documents and information as may be required to enable the exercise of our functions under ss 66 and 67; and

   1.3 by s 103, in providing documents and information (whether within the body of an application or separately), to not deceive or knowingly mislead us.

2. This document sets out the requirements for our application forms for clearance and authorisation of mergers or acquisitions, along with guidance on filing an application.

3. The application form requirements contained in this document apply to ss 66 and 67 applications registered with us on or after **1 July 2026**.

4. The application form requirements and guidance on filing an application contained in this document seek to:

   4.1 incorporate information that we are likely to require from the parties to a merger or acquisition (both the applicant(s) and target(s), collectively the merger parties) prior to the registration of an application (provided either in or with an application);

   4.2 provide certainty and transparency for the merger parties on the information that we will likely need to assess a s 66 clearance or s 67 authorisation application;

   4.3 allow a degree of flexibility in the level of detailed information and documents required in (and with) an application, depending on the circumstances, nature and complexity of a specific merger or acquisition;

   4.4 highlight the benefits of engaging with us in pre-notification discussions, so that we can provide feedback on the information and evidence (and supporting documents) we are likely to need in (and with) an application; and

   4.5 assist in improving the efficiency and timeliness of our processes around s 66 clearance and s 67 authorisation applications by giving us upfront (at the time of registration of an application) the minimum relevant information of the merger parties, thereby ensuring that we can complete our assessments as quickly, efficiently and transparently as possible (noting that mergers and acquisitions are often time-sensitive, and that we have statutory timeframes for assessing applications).

5. The remainder of this document sets out the requirements for our application forms for clearance and authorisation of mergers or acquisitions, and is structured as follows:

   5.1 general guidance on, and administrative details relating to, filing an application;

   5.2 required information;

   5.3 required documents; and

   5.4 attachments.

6. For simplicity from here on, we generally use the term merger to refer to any merger or acquisition for which clearance or authorisation may be sought, which may include full mergers of parties, asset acquisitions, full and partial share acquisitions and other relevant transaction types, and we distinguish between these different kinds of acquisitions only where specifically relevant to the information or documents required in each case.

If, in the future, amendments are made to the Act which necessitate us requiring further, or different information/documents, we may make further updates to this document. This document will also be updated in the future as other guidance referred to in this document is also updated or superseded by new guidance.

General guidance and administrative details

This section contains general guidance on, and administrative details relating to, filing a ss 66 or 67 application. This section expands on the existing guidance relating to the filing and registration of an application in our current application forms and contained in parts of our Mergers and Acquisitions Guidelines and Authorisation Guidelines.

7. Applications for s 66 clearance or s 67 authorisation must be made in the prescribed form. The required information and documents sections of this application forms document prescribe the specific material we need to commence an assessment, which includes information on the key competition issues and the rationale for a merger, as well as required documents (and supporting evidence). In addition to requiring information and documents, our application forms also require submissions from the applicant(s) on key issues.

8. After receiving an application and payment, we check that an application is in the correct form and provides us with the required information and documents (and any supporting evidence) to enable us to proceed with our assessment. If we are satisfied that an application meets our requirements, we then register an application.

9. Applications not meeting our requirements, including the provision of required documents, confidential and public versions of an application, and a confidentiality schedule, will not be registered. If an application does not meet our requirements, we will inform the applicant(s) as soon as we can, to provide them with an opportunity to remedy the deficiencies. If the applicant(s) engage with us in pre-notification discussions (see [18]), and provide us with a draft application, we can provide early feedback on whether an application is likely to meet requirements for registration, or what would be needed for it to do so.

How to lodge or file an application

10. To apply for s 66 clearance or s 67 authorisation, a notice seeking clearance or authorisation (application) must be sent to either registrar@comcom.govt.nz, or The Registrar, Mergers Team, Commerce Commission, PO Box 2351, Wellington, New Zealand.

11. An application must be provided in both Microsoft Word format and searchable PDF format and include a signed (hard-copy or electronic) declaration.

Filing fee

12. A filing fee of NZ$3,680 (including GST) for a s 66 clearance application or NZ$36,800 (including GST) for a s 67 authorisation application must be paid.

13. Our preference is for an invoice for the applicable filing fee to be generated by us prior to payment of the fee. Where we receive a draft application, we will generate and send the applicant(s) an invoice during the pre-notification discussion period. Absent a draft application we can still generate an invoice where basic details of a pending application are sent to registrar@comcom.govt.nz. These details being:

    13.1 the name and address of the party who will pay the filing fee;

    13.2 the type of application to be filed (ie, s S66 or 67); and

13.3 a description of what clearance or authorisation will be sought for.

14. This fee can be paid by proof of electronic payment to:

→ Commerce Commission

→ BNZ North End

→ Account number: 02-0536-0329867-000

→ Reference: Name of party applying for clearance/invoice number

Help in completing an application

15. Our Mergers and Acquisitions Guidelines and Authorisation Guidelines should be consulted (where applicable) when completing an application. These provide guidance on how we assess whether a merger would be likely to substantially lessen competition in a market, and on how we assess whether a merger would be likely to result in such a benefit to the public that it should be permitted (even where it is likely to substantially lessen competition).

16. An application for clearance or authorisation will be assessed more efficiently and effectively if the information and evidence provided within an application is comprehensive. The level of detail and the type of information required in (and with) an application will differ depending on the nature and complexity of a merger. The requirements of our application forms allow a degree of flexibility in the level of detailed information and documents required in (and with) an application, depending on the circumstances, nature and complexity of a specific merger. Explanatory notes set out beneath the questions in this application forms document indicate possible further information and documentation that we might require as part of our application forms depending on the case. We provide feedback in pre-notification discussions on what we are likely to need in (and with) an application, and encourage the merger parties to engage with us early for this purpose.

17. We do not have a template application document that is required to be used or followed. However, we note we are able to assess an application in an efficient and timely way where it is structured in a clear and logical way that provides sufficient background (to set scene) and also steps through the different sections/parts of our application form requirements (and different sections/parts of our Mergers and Acquisitions Guidelines and Authorisation Guidelines), or includes a schedule that directs us to where different requirements of our application forms and any feedback on a draft application are dealt with. The inclusion of an executive summary that clearly sets out the applicant(s)' submissions on key issues is generally very helpful.

Pre-notification discussions

18. While pre-notification discussions are not compulsory, they enable us to focus and commence our assessment in a timely manner once we have registered an application. Pre-notification discussions help clarify, and enable us to provide feedback on, what information and evidence (and supporting documents) we are likely to need in (and with) an application – as this is likely to vary depending on the circumstances, nature and complexity of a specific merger. Engaging in pre-notification discussions ultimately may be beneficial to the merger parties in terms of the timeframes within which any clearance or authorisation is assessed and decided.

19. We strongly encourage the merger parties to inform us (by contacting the Head of Mergers)[1] about potential s 66 clearance or s 67 authorisation applications as early as possible, and to initiate pre-notification discussions with us before filing an application.

20. To get the most out of pre-notification discussions, we expect the applicant(s) to provide us with a substantially developed draft clearance or authorisation application (including required documents where possible) at least a week before meeting with us.

Evidence, analysis and format for provision of documents

21. Our application forms set out that information and documentation which must be provided with an application before we will register an application.

22. More generally, we encourage the merger parties to consider what other supporting documentation or other evidence they hold, which may not strictly be required by our application forms, which supports or corroborates the submissions made in an application. All else equal, we are likely to attach more weight to a statement or submission that can be supported with corroborating evidence. Any evidence in support of an application should be submitted with an application.

23. Any revenue/sales data, prices and other financial figures or values included within an application should ideally be expressed in NZ$. If not in NZ$, the relevant currency should be specified.

24. If an application includes data, statistics, calculations or analysis, please explain the methodologies and information sources used, and provide us with the underlying data or source material (preferably in Excel). Where possible and relevant, the merger parties should also provide detailed workings of any data, statistics, calculations or analysis and any code development in statistical software such as R or Stata. In preparing any quantitative analysis, the merger parties should refer to the principles and guidance in our Guideline on using quantitative analysis in merger analysis. This guidance similarly applies to any expert evidence or reports that the merger parties provide in support of an application.

25. Where possible, please provide documents that exist in electronic form in their native or original electronic format (eg, Outlook (.pst or .msg), Microsoft Word (.doc or .docx), Microsoft PowerPoint (.ppt), Microsoft Excel (.xls), etc). Documents that exist only in hard copy should be provided as scanned images. This assists us in quickly and accurately identifying the information relevant to our assessment.

Reasonable availability of information

26. These filing forms set out the information that we consider we will require in order to reach a timely view of the competitive effects of a merger proposal.

27. We are aware that there may be situations where, due to the nature of the industry or the particular circumstances of the merger parties, certain information or documents required by our application forms may not be available, or may require undue cost, time, or effort to compile. In such cases, we encourage the merger parties to discuss this information or documents with us during pre-notification discussions.

[1] The Head of Mergers can be contacted at registrar@comcom.govt.nz.

28. If the merger parties indicate to us that certain information or documents are not reasonably available, or that their collation/provision would impose an undue burden on the merger parties, we will consider whether:

    28.1 it is appropriate and desirable to amend the required information or documents in a manner that may result in us receiving higher quality information and/or the merger parties experiencing a lesser burden; and

    28.2 any information or documents absent from an application could be sought directly from the merger parties by way of a request for information subsequent to registration, and the extent to which that approach would have any adverse impacts on the overall timeliness of our decision on an application relative to the upfront provision of that information or documents.

29. If not already facilitated as part of pre-notification discussions, we may request a meeting with the merger parties to discuss their specific situation, and the extent to which alternative information or documents may be available.

30. Ultimately, in determining whether an application is sufficiently complete and able to be registered notwithstanding the absence of certain required information or documents, we will balance our desire to be as minimally burdensome on the merger parties as possible (factoring in the size and commercial sophistication of the merger parties) with the need to obtain all of the information we expect to require in order to undertake our assessment of an application (and to ultimately reach a view on the competitive effects of a merger in a timely manner consistent with our statutory obligations).

Provision of target(s)' information and documents

31. Our application forms require the provision of certain information and documents relating to the target(s) of a merger, to the extent that it is reasonably available. This requirement may, to some extent or in certain circumstances, be satisfied by the applicant(s) providing information (within an application) on behalf of the target(s) or, in many circumstances, by the target(s) providing information and documents directly to us prior to registration.

32. If the applicant(s) provide information on behalf of target(s), the merger parties and their advisors that are involved in the preparation of an application must have adequate processes in place to ensure that competitively sensitive information is not exchanged between the merger parties prior to a merger being approved by us. Confidential information set out in an application should be identified.

33. Our general expectation is that the applicant(s) (or the applicant(s)' external legal advisors) should be able to access all of the target(s)' responsive material, subject to the confidentiality processes discussed above. If, in the circumstances of a specific merger, the applicant(s) consider they are not able to access and provide the target(s)' responsive material or that material of the target(s) is not reasonably or fully available to the applicant(s) – such as may be the case in a hostile takeover situation or where multiple parties are competitively bidding for a target – the applicant(s) should advise us of this. We may require the applicant(s) to provide an explanation of the steps that have been undertaken to seek the relevant responsive material of the target(s).

All relevant information and documents should be provided

34. While our ss 66 and 67 application forms set out the minimum amount of data, information and documents that are typically necessary to assess a merger (so as to provide a degree of certainty for the merger parties), the required information and documents are not necessarily exhaustive. The specific nature and extent of information and documents required may vary from case to case depending on the activities of the merger parties or the extent of overlap in their activities. In some cases, additional information and/or documents may be required. For some mergers, we may require disaggregated data beyond that prescribed in our application forms.

35. The merger parties must provide all relevant information and documents in or with an application to ensure a timely decision. This should include identifying in an application any aspects of a merger that may raise concerns with third parties (such as customers or competitors) which are known to the merger parties. This may include any products or services for which the merger parties are close competitors or any inputs that one of the merger parties supplies. Failure to alert us to any such issues upfront in an application may delay our assessment of an application.

36. We strongly encourage the merger parties to engage with us in pre-notification discussions about the specific data, information and documents that we will need in order to assess a merger in an efficient and timely way. Where we do not receive necessary data, information and documents in a timely manner this can significantly impact on the timeliness within which we can assess and decide an application.

Difference in requirements for clearance and authorisation applications

37. The information and documents required in our ss 66 and 67 application forms are the same, except for there being differences in application fees (as noted at [12]) and two additional questions being required information in our s 67 authorisation application form. The additional questions for a s 67 application are Q16 and Q17 (relating to the public benefit test). We do not need responses to Q16 and Q17 in a s 66 application.

38. In the case of a specific merger, it is up to the merger parties whether they choose to apply for s 66 clearance or s 67 authorisation.

Additional information likely needed where upfront remedies are offered

39. We note that our ss 66 and 67 application forms do not prescribe any requirements in terms of the information and documents we would need to assess a remedy proposal that is offered upfront with an application. Where a remedy is offered upfront, we consider that additional information and documents will be required in (and with) an application. This is likely to include details of the proposed remedy and information on how the remedy would impact on our assessment of the competitive effects of the proposed merger, along with potentially draft documents relating to the remedy (such as draft undertaking). In the case of upfront remedies, the merger parties should engage with us in pre-notification discussions around what we will require to assess a specific upfront remedy, so that we can assess and test that remedy in a timely manner.

We anticipate consulting in the future on new merger remedies guidance which is likely to include information on the sort of information that we will need to assess a remedy, and we may amend this document in the future to refer to that guidance.

Signed declaration(s)

40. We require signed declarations from the applicant(s) in order to register an application. A declaration template is included in **Attachment A**, along with some guidance on completing a declaration. The wording in this declaration may not be varied by the applicant(s) without our prior approval.

Confidentiality

41. We generally treat the fact and content of all pre-notification discussions (including the drafts of an application and any supporting documents provided) as confidential until an application is registered. This is because, in many cases, these pre-notification discussions occur prior to a merger being publicly announced by the merger parties (ie, at a point when the fact of a merger is confidential).

42. In some cases, the merger parties may publicly announce a merger before commencing pre-notification discussions, or publicly announce it during pre-notification discussions, and even publicly announce that an application will be filed (or that a merger is subject to our approval). In these instances (or where the merger parties waive confidentiality around an application being made), the fact that an application is expected is unlikely to be treated as confidential, although we will still treat the content of all pre-notification discussions (including drafts of an application and any supporting documents provided) as confidential until an application is registered.

43. Once we have registered an application, we publish a public version of an application on the case register on our website and issue a media release. We do this to inform the public of a merger and to enable us to test the submissions of the merger parties included within an application.

44. If the merger parties wish to request confidentiality for specific information contained in or attached to an application, they should provide a schedule stating why the merger parties consider this specific information to be confidential and state the reasons for this request in terms of the criteria set out in the Official Information Act 1982 (the OIA). A schedule must have a tabular list of each piece of confidential information, detailing for each:

    44.1 reference(s) to where that information is in an application;

    44.2 describing that information; and

    44.3 detailing the reasons why confidentiality is sought.

45. We require both a confidential version and a public version of an application, and will not register an application without an agreed public version. In the confidential version of an application any information for which confidentiality is sought must be highlighted and contained in [square brackets]. In the public version the confidential information should be removed from within the square brackets, with the brackets remaining as [ ].

46. In rare instances the merger parties may ask that we do not publicly disclose the fact an application has been made (ie, seek fact confidentiality).[2] We consider requests for fact confidentiality in terms of an application on a case-by-case basis, but we are only likely to grant fact confidentiality for a limited period and only in exceptional circumstances. This is because fact confidentiality hampers our ability to assess a merger, as we cannot gather information from interested parties and test information provided in an application.

Further information on how we currently deal with confidential information is set out in our Mergers and Acquisitions Guidelines and Authorisation Guidelines. In the near future, we intend to release for consultation draft guidance on how we propose to treat and deal with confidential information that we receive during our assessment of applications for s 66 clearance and s 67 authorisation in the future, and this may include a template confidentiality schedule.

Waivers for international mergers

47. Where a merger forms part of an international merger, it assists us if we are able to liaise with other agencies that are also assessing (or may in the future assess) the merger. As such, we expect the merger parties provide waivers to enable us to liaise openly with the notified agencies. Our confidentiality waiver template is included in **Attachment B**. Waivers can be provided either during the pre-notification period or with a finalised clearance or authorisation application.

Warning

48. It is an offence to attempt to deceive or knowingly mislead us in respect of any matter before us. Any person who does so is liable upon summary conviction to a fine of up to $100,000 (for an individual) or $300,000 (for a body corporate). Refer to ss 103(2) and (4) of the Act.

Checklist for filing an application

49. Make sure the following has been provided:

- [ ] a confidential version of the notice seeking clearance or authorisation
- [ ] a public version of the notice seeking clearance or authorisation
- [ ] a schedule explaining why information is confidential
- [ ] if requested, waivers for international mergers
- [ ] all required documentation
- [ ] signed declaration(s)
- [ ] payment of applicable filing fee

[2] This may be because merger parties have not informed their employees about a merger, or there is competition from other parties to acquire the business in question.

Required information

50. We require information from both the applicant(s) and any target(s) (ie, from all the merger parties), prior to registration of an application. The information that we require to be provided in our ss 66 and 67 application forms includes:

    50.1 details of the merger parties, and on the merger for which clearance or authorisation is sought, as well as on the alternatives to that merger;

    50.2 the products or services relevant to the merger, the relevant market(s),[3] and the competitors and customers of the merger parties;

    50.3 information relevant to assessing whether the merger is unlikely to result in a substantial lessening of competition; and

    50.4 in the case of a s 67 authorisation application, why the merger is likely to result in such a public benefit that it should be permitted.

The merger and counterfactual

The parties involved

Q1. Provide the name(s) of the applicant(s) for clearance or authorisation, and the name of the individual(s) responsible for an application. In addition, please include:

Q1.1 in describing the applicant(s), wording such as “Company A Limited or any interconnected body corporate” to describe who may want the benefit of any clearance or authorisation, where applicable;[4]

Q1.2 a description or diagram that explains how the proposed acquirer relates to the applicant(s), where they are not the same legal entity;

Q1.3 the postal address, physical address, telephone number and web address of the applicant(s);

Q1.4 the email address, telephone number and position of the contact person(s); and

Q1.5 the names of any relevant related entities (showing shareholdings).

Explanatory note to Q1.1: The benefit of any clearance given or authorisation granted by us attaches to the specific legal entity/ies identified in an application as the applicant(s). If, at the time of making an application, it is unclear which specific legal entity would be the ultimate acquirer of the relevant assets or shares (and therefore the entity to which the clearance or authorisation is intended to attach) an application should describe the applicant(s) in terms expansive enough to capture any potential acquirer. For example: Clearance is sought for Company A, or any of its interconnected bodies corporate, to acquire 100% of the shares of Company B’. In pre-registration checks of an application we consider whether the applicant(s) have been adequately described, but ultimately it is the applicant(s)’ responsibility to identify the correct

[3] Relevant market(s) here and elsewhere refers to those identified in response to Q11 or which involve the supply of products or services that may be substitutable to that of one of the merger parties.

[4] See explanatory note at the end of Q1.

legal entity to which clearance or authorisation is intended to attach, and the applicant(s) bear the risk if the benefit of any clearance or authorisation ultimately attaches to the wrong legal entity as a result of the applicant(s) being misidentified in an application.

Q2. Provide the name(s) of the other merger parties (eg, the target(s)) and provide the:

Q2.1 postal address, physical address, telephone number and web address of each party; and

Q2.2 email address, telephone number and position of the contact person(s) for each party.

Q3. Describe any existing commercial relationships between the merger parties that relate to the products or services relevant to the merger.

The merger

Q4. Set out the details of the merger for which clearance or authorisation is sought including, where relevant:

Q4.1 how the merger came about, including whether it arose through bilateral negotiations between the merger parties or a competitive sales process;

Q4.2 the type of transaction (such as a merger or joint venture), what is to be acquired, how the merger is structured (such as whether assets or shares are to be purchased), the purchase price (and value of the assets involved) and anticipated timing of the merger (including target timeframes for completion, any dates specified in transaction documents or the timing of any sales process or offers to be made);

Q4.3 the rationale for the merger;

Q4.4 the plans post-merger and what would materially change with the merger (eg, in terms of rationalisation of brands, factories);

Q4.5 how the merger changes the control of the target(s) business/company (or both companies in the case of a joint venture), including whether the applicant(s) would have full or partial control, supported by diagram(s) of how the structure of ownership of the company and affiliated companies are to change; and

Q4.6 a description of relevant ancillary agreements associated with the merger, such as long-term supply agreements between a target and an acquirer.

Q5. If the acquisition for which clearance or authorisation is being sought is a partial acquisition,[5] please also provide the information prescribed in **Attachment C**.

[5] A partial acquisition is an acquisition of only part of a business, typically through the acquisition of a portion of the shares in a company that gives an acquirer partial ownership and/or control.

Q6. If the merger forms part of an international merger, list the other competition agencies that are being notified and the date on which those agencies were or will be notified. Where relevant, indicate the status of reviews by other agencies.

The counterfactual

Q7. Set out details on the alternatives to the merger for which clearance or authorisation is sought, including all relevant likely scenario(s) for each merger party if the merger does not go ahead (against which the merger may have materially different competitive effects), including the extent to which and the likelihood that the merger parties would (as relevant):[6]

Q7.1 continue to operate as they do now;

Q7.2 make material changes to their business strategies or operations in the relevant market(s) identified in response to Q11 (eg, by expanding in the relevant market(s), seeking to enter the relevant market(s) via an acquisition or de novo entry, or reducing the scope and extent of their business in the relevant market(s));

Q7.3 be sold to alternative purchaser(s); or

Q7.4 exit the relevant market(s) identified in response to Q11, either through closure of part or all of a business.

Q8. Where it is submitted that at least one of the merger parties (or a specific business unit thereof) would exit the relevant market(s) identified in response to Q11 absent the merger (eg, due to being a failing firm or division), provide the specific information prescribed in **Attachment D**.

Explanatory note to Q7 to Q8: We require information from all the merger parties in response to Q7 to Q8, including the target(s) to the extent that it is reasonably available. As noted earlier in the guidance at [31]-[33], our general expectation is that the applicant(s) (or the applicant(s)' external legal advisors) should be able to access all material of the target(s) relevant to Q7 to Q8, subject to confidentiality processes, but the requirements of Q7 to Q8 may also be satisfied by the target(s) providing their information directly to us prior to registration in a supporting submission.

In some circumstances (such as in the case in a hostile takeover situation or where multiple parties are competitively bidding for the same target), we acknowledge that full responses of the target(s) to Q7 to Q8 may not be reasonably available, and encourage the applicant(s) to engage with us in pre-notification discussions on the information that can be provided with respect to the target(s), so we can determine whether an application would be sufficient to be registered notwithstanding the absence of full responses to Q7 to Q8 from the target(s).

For the avoidance of doubt where the merger relates to an agreement reached after, or an offer that the applicant(s) propose to make as part of, a competitive sales process run by the target(s) (or advisors acting for the target(s)), we would expect any response to Q7 to include information from the target(s) on that sales process, to the extent that it is reasonably available at the time an application is lodged, including:

- any offers or expressions of interest received from third parties; and
- the reasons for not proceeding with any alternative offers.

[6] See our Mergers and Acquisitions Guidelines for more details on how we assess the without-the-merger scenario.

Relevant products or services, relevant market(s), competitors and customers

Relevant products or services

Q9. Describe the relevant products or services[7] of the merger parties and provide the following for each:

Q9.1 the geographic areas in New Zealand where the products or services are supplied;

Q9.2 each of the merger parties' total sales revenues, volumes, and, where relevant, capacity and excess capacity figures for the past three financial years;

Q9.3 the names and contact details of, and revenue earned in the last financial year from, each of the merger parties' top ten customers by overall value (or where either of the merger parties does not have ten customers, this information for the applicable number of customers that they have below ten customers);[8]

Q9.4 if the merger is between competing buyers, the names and contact details of each of the merger parties' key suppliers, including at least the top ten by value (or where either of the merger parties does not have ten suppliers, this information for the applicable number of suppliers that they have below ten suppliers), and the amount paid to each supplier in the last financial year;[9] and

Q9.5 the names and contact details[10] for each merger party's main competitors, where known, and any trade or industry associations in which one or both of the merger parties participate.

Explanatory note to Q9.3 and Q9.4: In order to facilitate our timely assessment, please ensure that customer and supplier contact details are accurate and specific (ie, provide contact details for a specific named person, rather than generic or role-based contact details).

In some circumstances we may require contact details for other relevant participants in the relevant market(s), including those identified in response to Q12. The merger parties are encouraged to discuss this with us during pre-notification discussions.

More generally, the merger parties are invited to consider whether there are other parties that may have information relevant to our assessment of the competitive effects of the merger not already captured by our application forms, and to provide those parties' contact details to us in order to expedite our assessment of an application.

[7] 'Relevant' products or services can be overlapping products or services supplied by each of the merger parties in the same geographic area and which could be considered substitutes for one another, products or services that form part of the same supply chain (for example, with one product being an input for another product), or different products or services that are complementary or sold to the same customers.

[8] See explanatory note at the end of Q9.

[9] See explanatory note at the end of Q9.

[10] Contact details should include a named contact person, an email address, telephone number and the position of the contact person(s), to the extent that these are available or known to the merger parties.

Q10. Set out, with a particular focus on the relevant products or services:

Q10.1 any specific characteristics of the industry (such as sector regulations, any seasonal nature of supply or sales);

Q10.2 how different participants operate in the industry (such as different types of machinery or technology used, different methods of making sales and the different areas in which participants operate or supply the relevant products or services);

Q10.3 who the merger parties compete with at different levels of the supply chain in the relevant market(s) identified in response to Q11; and

Q10.4 significant trends or developments (eg, around imports, emerging technology, product development, mergers undertaken or changes in supply/demand).

Relevant market(s)

Q11. Describe the merger parties' view on the appropriate market definition[11] for assessing the competitive effects of the merger (citing any relevant precedent on market definition from New Zealand or overseas), including (to the extent applicable and relevant):

Q11.1 by reference to a description or diagram of the relevant supply chain and different functional levels of the market, which shows where the merger parties fit in that supply chain;

Q11.2 by consideration of the products or services that might reasonably be considered close substitutes on the demand-side (from the perspective of customers) and the supply-side (from the perspective of suppliers), and the extent to which there is product or service differentiation in the relevant market(s); and

Q11.3 information on how far customers are willing to travel to purchase the products or services, and how far suppliers are willing to travel to supply the products or services.

Explanatory note to Q11: The specific level of detail that will be required in an application on the relevant market(s) may depend on the circumstances, nature and complexity of a specific merger. We encourage the applicant(s) to engage with us in pre-notification discussions on the information that is required in response to Q11, so that we can give feedback on the detail that would be sufficient for an application to be registered.

In some circumstances, we will require additional information, including:

- details of the time, costs and resources required for a supplier to move to a different part of the supply chain (eg, a manufacturer moving into retail), switch to supplying a different product or service, or move to supplying the same product or service in a different area; and/or

[11] See our Mergers and Acquisitions Guidelines for more details on why and how we define a market.

- any differences in supply to different types of customers, including due to different customers being charged different prices for the same product or service, or differences in supply options, explaining the reasons for any differences.

Substantial lessening of competition test

Type of merger

Q12. In terms of the type of merger:

Q12.1 if the merger is a horizontal merger, provide the specific information prescribed in **Attachment E**;

Q12.2 if the merger is a vertical merger, provide the information prescribed in **Attachment F**; and

Q12.3 if the merger is a conglomerate merger, provide the information prescribed in **Attachment G**.

Explanatory note to Q12.1 to Q12.3: A horizontal merger is a merger between parties that compete (or potentially compete) to supply or to acquire products or services at the same level of the supply chain.

A vertical merger is a merger between parties that operate (or potentially operate) at different levels of the same supply chain. For example, one party may manufacture and supply an input (such as raw steel) which is processed by the second party into a product (such as long run steel roofing).

A conglomerate merger is a merger between parties that supply or acquire (or potentially supply or acquire) products or services in two or more closely related markets. For example, the merger parties may supply products which are complementary, or part of the same 'range' of products.

See our Mergers and Acquisitions Guidelines for more details on the different types of mergers.

Entry and expansion

Q13. Describe the merger parties' view on the conditions of, and factors influencing, entry and expansion in the relevant market(s) identified in response to Q11, including – to the extent that information is reasonably available or known to the applicant(s) – further information on:

Q13.1 which existing competitors, if any, the applicant(s) consider may be in a position to expand their market share using current capacity, and what would be required for competitors to expand capacity;

Q13.2 whether the applicant(s) consider that new entry into the relevant market(s) identified in response to Q11 is likely, and, if so, where the applicant(s) consider the most likely new threat of competition is likely to emerge from, identifying:

Q13.2.1 the other markets from which new entrants to the relevant market(s) identified in response to Q11 are likely to enter and, if relevant, the specific entities the applicant(s) think are potential entrants in the next two to three years; and

Q13.2.2 the steps the applicant(s) consider would be necessary for such entry to occur including the estimated total costs that would be involved and the time that it would take for entry to occur;

Q13.3 any advantages or disadvantages for larger competitors compared to smaller competitors (eg, due to any economies of scale and scope, or network effects, of production or distribution);

Q13.4 any barriers that may impact the costs or timeliness of expansion or new entry, including access to inputs or legal/regulatory requirements; and

Q13.5 any barriers that may impact the expected revenues from any expansion or new entry, including customer switching costs or supply that is characterised by long term supply contracts.

Q14. To the extent the merger parties are aware, provide details of:

Q14.1 recent or expected material new entry into, or expansion in, the relevant market(s) identified in response to Q11 in the last three years; and

Q14.2 competitors that have exited the relevant market(s) identified in response to Q11 in the last three years.

Explanatory note to Q13 and Q14: As set out in further detail at [3.91]-[3.112] of our Mergers and Acquisitions Guidelines, in assessing whether a merger is likely to substantially lessen competition we will assess whether, if prices increased post-merger, existing competitors would expand their sales, or new competitors would enter and effectively compete with a merged entity.

In undertaking this assessment, we apply a 'LET test', which assesses whether such entry or expansion is likely, and whether it would be of sufficient extent and occur in a sufficiently timely fashion to constrain a merged entity and prevent a substantial lessening of competition.

In responding to Q13 and Q14, it is therefore helpful for the applicant(s) to consider and reference this analytical framework.

Q13 and Q14 also ask for specific examples of past entry or expansion, and for as much specificity as the applicant(s) are able to provide about the entities that are best-placed and/or most likely to enter or expand, or the other markets or sectors from which such entry is likely to come. We encourage the applicant(s) to provide as much specificity as they can.

The specific level of detail that will be required in an application in response to Q13 and Q14 may depend on the circumstances, nature and complexity of a specific merger. We encourage the applicant(s) to engage with us in pre-notification discussions on the information that is required in response to Q13 and Q14, so that we can give feedback on the detail that would be sufficient for an application to be registered.

Coordination

Q15. Explain why the applicant(s) consider the merger is unlikely to result in a substantial lessening of competition due to coordinated effects in any market having regard to our Mergers and Acquisitions Guidelines. Please address:

Q15.1 the extent to which the relevant market(s) identified in response to Q11 are vulnerable to coordination, including by identifying:

Q15.1.1 whether the merger parties set prices based on the prices of competitors, follow the prices of competitors (providing information on the competitors that are monitored and how frequently monitoring is done), or competitors follow the prices of the merger parties;

Q15.1.2 how similar the merger parties are to competitors (eg, in terms of size, product offering, cost structures) and how this would change with the merger; and

Q15.1.3 how frequently competitors interact and the degree of transparency there is in the relevant market(s) identified in response to Q11 on the pricing, volumes or capacity of different suppliers; and

Q15.2 whether the merger would change conditions in the relevant market(s) identified in response to Q11 so that coordination is more likely, complete or sustainable.

Public benefit test

Q16. In the case of a s 67 authorisation application, explain why the applicant(s) consider the merger would be likely to result in such a benefit to the public that it should be permitted, having regard to our Authorisation Guidelines. Please provide quantitative and qualitative evidence of the public benefits and detriments that may result from the merger. An application should address:

Q16.1 the proposed benefits that would arise from the merger, including the likelihood and magnitude of the benefits (net of any costs that would be incurred to realise them);

Q16.2 how and when these benefits would arise (including whether the benefits are one-off or recurring);

Q16.3 any factors that might limit the size of the benefits that are actually realised from the merger;

Q16.4 whether these benefits can be achieved absent the merger; and

Q16.5 any detriments that may result from the merger.

Q17. If the applicant(s) consider the distribution of benefits and/or detriments is relevant to an application for authorisation, an application should explain why and provide evidence in support.[12]

[12] See our Authorisation Guidelines at 17.

Required documents

51. This section sets out the documents that we require to be provided with an application.

52. We require documents from both the applicant(s) and any target(s) (ie, from all the merger parties), to the extent that relevant documents exist[13] and are reasonably available. As noted earlier in the guidance part of this document at [31]-[33], our general expectation is that the applicant(s) (or the applicant(s)' external legal advisors) should be able to provide us with the relevant documents of the target(s), subject to confidentiality processes, but documents of the target(s) could be provided directly to us by target(s) prior to the registration of an application. In some circumstances (such as in a hostile takeover situation or where multiple parties are competitively bidding for the same target), we acknowledge that full documents of a target required in Q20 to Q24 may not be reasonably available, and encourage the applicant(s) to engage with us in pre-notification discussions on the documents that can be provided with respect to the target(s), so that we can determine whether an application would be sufficient to be registered notwithstanding the absence of full documents from the target(s).

53. For the purposes of Q19 to Q24 below, by "documents" we mean those materials in the possession of the applicant(s) in the case of Q19 and each of the merger parties in the case of Q20 to Q24, including any relevant interconnected bodies corporate (where applicable):[14]

    53.1 which include planning documents, due diligence reports, valuation reports, strategy documents, minutes of meetings, customer research, pricing studies, reports, presentations, surveys, analyses, industry/market reports, regular internal reporting on business performance (eg, monthly sales reports) and recommendations; and

    53.2 have been prepared for, seen, or considered by senior New Zealand management, senior management outside New Zealand (where applicable) and/or any member of the board of directors (or equivalent body), whether prepared internally or by external consultants.

54. In most cases, we would not expect at this stage to receive documents such as emails, handwritten notes, or instant messages. Although, in some cases and depending on how decisions are made within a business, emails may be a relevant document type (eg, where emails to senior management or a board evidence a point made in an application).

55. For all documents provided with an application, please indicate any documents for which redactions have been made on the basis of legal privilege (including whether solicitor-client privilege or litigation privilege is claimed).

56. If the merger parties are unsure what documents are responsive to our application forms or consider that the number of responsive documents is particularly large, we encourage the merger parties to engage with us to discuss how to most efficiently gather and provide those documents.

[13] We acknowledge that the extent and degree of documents held can be less for smaller businesses, and that all the documents pertaining to the merger may not always exist at the time an application is provided.

[14] Relevant interconnected bodies corporate comprises any subsidiaries of the merger parties and/or any companies which the merger parties are subsidiaries of, per s 5 of the Companies Act 1993.

The merger and counterfactual

The merger

Q18. Provide copies of the final or most recent versions of any documents bringing about the merger such as a sale and purchase agreement, contracts, ancillary agreements or offer documents.

Q19. Provide all documents of the applicant(s) that:

Q19.1 set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for the merger); or

Q19.2 set out any post-merger business plans or strategy (including any integration plans); or

Q19.3 assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), any SWOT analysis (or similar),[15] potential for sales growth or expansion into new products or new geographic areas, market conditions, market shares and/or the price to be paid (and value of the assets involved).

Q20. If the acquisition for which clearance or authorisation is being sought is a partial acquisition, please also provide the documents prescribed in **Attachment C**.

Explanatory note to Q19 and Q20: We note that Q19 requires documents of the applicant(s) only, although the merger parties are invited to consider whether the target(s) hold documents of the nature required in response to Q19 and provide these to us if they consider it would assist our assessment of the merger.

Q20, where applicable, requires relevant documents from all the merger parties, including the target(s) to the extent that they are reasonably available. See text above at [52] relating to the provision of documents of the target(s).

The counterfactual

Q21. Provide all documents prepared within the last two years discussing or assessing the alternatives to the merger for each of the merger parties, including any documents that:

Q21.1 discuss what would likely happen absent the merger; or

Q21.2 discuss alternative offers or expressions of interest received for the business of either of the merger parties (including internal assessments of such offers); or

Q21.3 record any actual decisions that have been made with respect to the issues in Q21.1 and Q21.2 above.

Q22. Where relevant, provide any information memorandum(a) or similar offer document(s) that were prepared in connection with the sale of the target(s).

[15] SWOT analysis is an analysis of strengths, weaknesses, opportunities and/or threats.

Q23. Where the applicant(s) submit that at least one of the merger parties (or a specific business unit) would exit the relevant market(s) identified in response to Q11 absent the merger (eg, due to being a failing firm), please also provide the documents prescribed in **Attachment D**.

Explanatory note to Q21 to Q23: We require documents from all the merger parties in response to Q21 to Q23, including the target(s) to the extent that they are reasonably available. See text above at [52] relating to the provision of documents of the target(s).

With respect to Q21, in some cases, we may also require documents that discuss any material changes that would likely be made to the merger parties' strategies or operations in the relevant market(s) identified in response to Q11 in the absence of the merger (eg, by expanding in the relevant market(s), any plans to enter the relevant market(s) via acquisition or de novo entry, or plans to reduce the scope and extent of business in the relevant market(s), or documents recording any actual decisions made to that effect.

We encourage the applicant(s) and merger parties, as applicable, to engage with us in pre-notification discussions on the documents that are required in response to Q21 to Q23, so that we can give feedback on the documents that would be sufficient for an application to be registered.

Business documents

Q24. Provide all documents within the last two years that set out or discuss, in relation to the relevant products or services and markets identified in response to Q9 and Q11:

Q24.1 the business plans/strategies of each of the merger parties;[16] or

Q24.2 competitive conditions, market conditions, any SWOT analysis (or similar), market shares, market trends or competitors;[17] or

Q24.3 how each of the merger parties determines its pricing, including discussions of pricing strategies.[18]

Explanatory note to Q24.3: The specific level of detail that will be required in an application on pricing may depend on the circumstances, nature and complexity of a specific merger. We encourage the applicant(s) to engage with us in pre-notification discussions on the documents that are required in response to Q24.3, so that we can give feedback on the detail that would be sufficient for an application to be registered.

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16 Such documents will include research and development plans, investment proposals (including planned investments in addition capacity/expansion, or in new product development or innovation), and marketing and advertising strategies.

17 Such documents will include market reports/studies prepared by the merger parties or an independent third party, and market forecasts; documents that assess or describe competitors, such as SWOT or competitor analysis; and regular reporting on business performance and information about recent tenders (such as who bid and who won), or about customers switching between suppliers (such as reports on customer churn, and customer surveys and forecasts).

18 Such documents may in some cases include price marker information and discount/rebate policies, but in other cases only include strategic or analytical documents on how pricing decisions have been made in the past and what factors influence those decisions.

For the avoidance of doubt, unless we advise otherwise during pre-notification discussions, Q24.3 only seeks those documents that discuss or analyse pricing strategies and decision making, and not all documents evidencing actual prices (such as price lists), though the merger parties are invited to consider whether a representative sample of price lists may be useful in demonstrating their pricing strategies generally.

Financial statements or management accounts

Q25. Provide copies of, or links to, annual reports or audited financial statements for each of the merger parties for the last three financial years.

Q26. Where the merger only relates to some business unit(s) of the merger parties, provide copies of existing internal management accounts for the relevant business unit(s) of each of the merger parties for the last three financial years.

Attachments with templates and other requirements

57. The pages that follow set out the various attachments referenced earlier in this document and include a mix of templates and other requirements of our application forms that may also apply depending on the type of merger.

58. There are two templates:

    58.1 a declaration template (**Attachment A**), which is required to be completed and signed by the applicant(s) in order to register an application; and

    58.2 a waiver template (**Attachment B**), which we expect the merger parties provide waivers to enable us to liaise openly with the notified agencies on international mergers.

59. The remaining attachments set out other requirements of our application forms that may also apply depending on the type of merger. These attachments relate specifically to:

    59.1 partial acquisitions (**Attachment C**), with this attachment setting out specific additional required information and documents where the acquisition for which clearance or authorisation is being sought is a partial acquisition;[19]

    59.2 exit counterfactuals (**Attachment D**), with this attachment setting out specific additional required information and documents where it is submitted that at least one of the merger parties (or a specific business unit thereof) would exit the relevant market(s) identified in response to Q11 absent the merger (eg, due to being a failing firm or division);

    59.3 horizontal mergers (**Attachment E**), with this attachment setting out specific additional required information for a horizontal merger between merger parties that compete (or potentially compete) to supply or to acquire products or services at the same level of the supply chain;

    59.4 vertical mergers (**Attachment F**), with this attachment setting out specific additional required information for a vertical merger between merger parties that operate (or potentially operate) at different levels of the same supply chain; and

    59.5 conglomerate mergers (**Attachment G**), with this attachment setting out specific additional required information for a conglomerate merger between merger parties that supply or acquire (or potentially supply or acquire) products or services in two or more closely related markets.

60. Each of Attachment C to Attachment G are referenced (where relevant) in the required information and required documents sections of this document, and form part of our ss 66 and 67 application forms.

[19] A partial acquisition is an acquisition of only part of a business, typically through the acquisition of a portion of the shares in a company that gives an acquirer partial ownership and/or control.

Attachment A: Declaration template

This declaration is to be made only by the applicant(s). It may not be made by a solicitor or other advisor acting on the behalf of the applicant(s).

If there are multiple applicants, each applicant must make this declaration.

The wording in this declaration may not be varied by the applicant(s), without our approval.

If this declaration is not completed, we may decline to register a notice seeking clearance or authorisation.

Note that a declaration is only accepted if the person making the declaration has signed the document directly (or has authorised signing on their behalf, providing us with proof of such authorisation). This can be done by the person signing a physical copy of the declaration and then sending us the signed original and/or a scanned copy, or by the person signing an electronic copy. It is not acceptable for an image of an electronic signature to be pasted or inserted onto a declaration.

I, ____,
have prepared, or supervised the preparation, of this notice seeking [clearance or authorisation].

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act 1986 to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of [the applicant] and am duly authorised to submit this notice.

Name and title of person authorised to sign:

____

Sign: _________________________________ **Date:** ______________________________

Attachment B: Confidentiality waiver template

Background

1. [Details of the merger or acquisition]

2. [Details of the international competition authority. For example, "An application for merger clearance or authorisation in respect of the Proposed Australian Acquisition has recently been lodged with the Australian Competition and Consumer Commission (ACCC)"].

3. The New Zealand Commerce Commission (NZCC) will be assessing the application pursuant to its powers and obligations under section 66 or 67 of the Commerce Act 1986 (NZCC Purpose).

4. As part of the proposed application for merger clearance or authorisation, [applicant, target or acquirer] has provided, and will continue to provide, the NZCC with information confidential of [applicant, target or acquirer] for the NZCC Purpose (Confidential Information).

5. The Confidential Information that is to be provided to the NZCC is subject to confidentiality obligations arising from all relevant statutes, regulations and other laws (including the provisions of the Official Information Act 1982) (Confidentiality Obligations).

Waiver

6. [Applicant, target or acquirer] consents to the NZCC sharing the Confidential Information with the [overseas competition authority, for example "the ACCC"], subject to the conditions set out below (Confidentiality Waiver).

7. A corresponding waiver has been provided to the [overseas competition authority].

Conditions

8. Pursuant to the Confidentiality Obligations, the NZCC will protect Confidential Information that is obtained by the [overseas competition authority] and provided to the NZCC. The NZCC will treat such information as if the NZCC requested it directly from [applicant, target or acquirer] and obtained it under the Confidentiality Obligations for all purposes, including confidentiality protections, and shall only use it for NZCC Purposes.

9. Prior to disclosing any Confidential Information to the [overseas competition authority] the NZCC must receive written confirmation[20] from the [overseas competition authority] that the [overseas competition authority] will apply the confidentiality protections under all relevant statutes, regulations and other laws that would be applicable if [applicant, target or acquirer] had provided the documents and information directly to the [overseas competition authority].

10. The Confidentiality Waiver granted is limited to Confidential Information given to the NZCC in the course of performing its duties for the NZCC Purpose and does not apply to

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[20] If the [overseas competition authority] has a written statement or policy confirming that the [overseas competition authority] will apply the confidentiality protections in the manner described above, written confirmation from that authority is required.

information obtained in the course of any other review of any case either now or in the future.

11. Where the NZCC has provided Confidential Information to the [overseas competition authority] in accordance with the terms of this document, a failure by the [overseas competition authority] to treat that information in the manner described in paragraph 8 above will not give rise to any liability on the part of the NZCC.

12. The Confidentiality Waiver does not constitute a waiver by [applicant, target or acquirer] of their rights under the Confidentiality Obligations with respect to the protection afforded to [applicant, target or acquirer] against the direct or indirect disclosure of information to any third party other than the [overseas competition authority].

13. The Confidentiality Waiver does not extend to any materials asserted by [applicant, target or acquirer] to be privileged.

14. The Confidentiality Waiver does not limit the ability of the NZCC to disclose information that it would otherwise be able to disclose in accordance with relevant laws, including the NZCC's ability to provide compulsorily acquired information and investigative assistance to recognised overseas regulators under sections 99B to 99P of the Commerce Act 1986.[21]

15. If the NZCC is notified of inadvertently produced privileged information, the NZCC will not provide the [overseas competition authority] with copies of such information or will request the return of such information, as appropriate.

16. If the NZCC receives information from the [overseas competition authority] that the [applicant, target or acquirer] reasonably claim as privileged in New Zealand, the NZCC will treat such information as inadvertently produced privileged information.

Name and title of person authorised to sign:

____

____

Sign: ________________________________

Date: ________________________________

[21] See our Guidelines for overseas requests for compulsorily acquired information and investigative assistance.

Attachment C: Material relevant to assessment of partial acquisitions

Where the acquisition for which clearance or authorisation is sought is a partial acquisition, an application must include the information and documents prescribed in this Attachment.[22]

Required information

QC1. Describe the nature and extent of any existing ownership, management and/or directorship links between the merger parties currently, and what would change with the acquisition, (including the level of shareholding the applicant(s) would have in the target(s) and whether the applicant(s) would be entitled to a seat on the target(s)' board of directors, or involved in the management of the target(s)).

QC2. For the target(s), provide information (as applicable) on:[23]

QC2.1 whether it is a publicly listed entity or privately held company;

QC2.2 its ownership or shareholding structure, including:

QC2.2.1 its existing shareholders, including a list of the top 20 shareholders (and their percentage shareholding) and information on how widely or closely held the shares are;

QC2.2.2 how active shareholders are in voting at shareholder meetings, and whether voting at past shareholder meetings has tended to be unanimous;

QC2.2.3 whether any existing shareholders hold enough shares to have negative control[24] of, or the ability to veto or influence, voting at shareholder meetings (particularly in terms of key or strategic decisions);

QC2.2.4 the rights that any existing shareholders have to appoint directors; and

QC2.2.5 any shareholder agreements, contractual arrangements, financial arrangements or informal agreements that exist with existing shareholders that are relevant to the target(s)' governance or decision making, financing or business (eg, in terms of a specific customer contract or general business strategy); and

QC2.3 how its board functions, and the way decisions are made, including:

QC2.3.1 the composition of its board of directors, both in terms of the number of board members and their identities;

[22] A partial acquisition is an acquisition of only part of a business, typically through the acquisition of a portion of the shares in a company that gives an acquirer partial ownership and/or control.

[23] Where the target(s) are publicly listed entities, some of this information may be able to be provided by alerting us to where this information is publicly available, but only where it is current and up to date.

[24] By negative control we mean the ability to block a decision or vote at a shareholder meeting. Information provided should highlight the extent to which any such ability or negative control is different for ordinary resolutions compared to special resolutions (which require a greater proportion of shareholder support).

QC2.3.2 any relevant protocols of its board of directors, in terms of managing conflicts of directors and in terms of voting (either casting votes or veto powers);

QC2.3.3 the nature and extent of decisions that are made by its board of directors as opposed to the target(s)' management team;

QC2.3.4 the influence that any members of its board of directors have over the target(s)' management (particularly in terms of key or strategic decisions);

QC2.3.5 whether decision making at its board of director level tends to be unanimous and there is a history of any veto rights being exercised; and

QC2.3.6 whether any blocks or groups of directors currently control or influence decisions made by its board of directors or have any negative control or veto power.

QC3. Explain the applicant(s)' intentions regarding director positions on the board of the target(s) or being involved in the management of the target(s).

QC4. Where there is an intention for the applicant(s) to have a seat on the target(s)' board of directors, or be involved in the management of the target(s) (including decisions on the appointment key management), provide information on:

QC4.1 the involvement that the applicant(s) would have in the target(s);

QC4.2 how any conflicts of interest would be managed; and

QC4.3 details of any protocols that would be proposed to be put in place (around for example, attending meetings, voting at meetings or in terms of access to information about the target(s)).

QC5. Explain why the applicant(s) consider the partial acquisition is unlikely to result in a substantial lessening of competition in any market having regard to our Mergers and Acquisitions Guidelines. An application should address (as applicable):

QC5.1 the degree of influence that the applicant(s) would have over the target(s), including the extent to which this would be substantial;

QC5.2 how the partial acquisition might change the merger parties' incentives to compete with each other;

QC5.3 the extent to which the applicant(s) would have a unilateral incentive to compete less aggressively with the target(s) because it shares in the financial success of the target(s);

QC5.4 the extent to which the partial acquisition would change conditions in the relevant market(s) identified in response to Q11 and make coordination between the merger parties easier in some way; and

QC5.5 how the partial acquisition might change the merger parties' ability and incentive to foreclose competitors.

Required documents

QC6. In support of the above information, provide all documents of the applicant(s) that:

QC6.1 set out its intentions in terms of a partial acquisition of the target(s); or

QC6.2 detail any draft protocols that are proposed to be put in place.

QC7. Provide the constitution of the target(s).

QC8. Provide all documents of the target(s) (as necessary) that support and evidence the information required at QC2.

Explanatory note to QC1 to QC8: As set out in further detail at Attachment C of our Mergers and Acquisitions Guidelines, there are three ways that an acquisition of partial ownership or control over an entity may substantially lessen competition.

First, an acquisition of partial control can substantially lessen competition by giving the acquiring entity a substantial degree of influence over the target(s)' business decisions and use this influence in a way that substantially lessens competition.

Second, where an entity acquires partial ownership over another entity and thereby secures a share of that entity's future profits, the acquiring entity's incentives may change in a way that substantially lessens competition.

Third, partial ownership may increase the potential for competitors to coordinate their behaviour and collectively exercise market power, thereby substantially lessening competition in a market.

The information and documents required in QC1 to QC8 are intended to enable us to assess whether a partial acquisition would substantially lessen competition through any of these mechanisms. The applicant(s) are encouraged to consult Attachment C of our Mergers and Acquisitions Guidelines for further details about our analytical framework when responding to QC1 to QC8.

We anticipate consulting in the future on updated guidance in terms of the above, including on when a person has a "substantial degree of influence" over another, which may factor in proposed amendments to the Act relating to this point.

Attachment D: Material relevant to assessment of exit counterfactuals

Where the applicant(s) submit that at least one of the merger parties (or a business unit thereof) would exit the relevant market(s) absent the merger (eg, due to being a failing firm), an application must include the information and documents prescribed in this Attachment. Note that where one of the merger parties is already in receivership, administration or liquidation when an application is prepared, the required documents may include a combination of documents of the relevant merger party and prepared by that party's receivers, liquidators or administrators.

We take a rigorous approach to the types of evidence we expect to see in support of an exit counterfactual argument. We recognise that in some cases, events can have evolved rapidly and that the merger parties might not have had the opportunity to prepare particular documents. Nevertheless, we need to examine the facts.

Required information

QD1. Set out details on whether one of the merger parties (or a business unit thereof) has ceased operations or would cease operations imminently or probably absent the proposed merger, including information on whether:

QD1.1 the relevant party or business unit has been in financial difficulty for a sustained period of time, as evidenced by measures such as a trend of negative cash flows, a history of losses, liquidity issues and/or high levels of debt;

QD1.2 there is any prospect of restructuring or refinancing the relevant party or business unit; and

QD1.3 reasonable efforts have been made to rescue the relevant party or business unit, setting out a timeline of such efforts.

QD2. Set out details on what would likely happen to the business or assets of the relevant party or business unit absent the proposed merger, including information on whether:

QD2.1 reasonable efforts have been made to find a third party purchaser for the relevant party or business unit, or its assets;

QD2.2 it is likely that a credible third party would acquire the relevant party or business unit as a going concern; and

QD2.3 the assets of the relevant party or business unit are likely to exit the relevant market(s) identified in response to Q11 absent the merger, either by becoming scrap or being put to an alternative use.

Required documents

QD3. To evidence and support information required in response to (and enable us to assess the matters set out at) QD1, provide any of the following documents held by the relevant merger party and prepared within the last three years:

QD3.1 documents showing it being liquidated or placed into administration;

QD3.2 financial statements and/or management accounts for the last three years, with details of any corporate common costs/transfers or intra-corporate loans;

QD3.3 budgets and forecasts for the current year and future years (in terms of sales, cash flows, profitability and balance sheet), including details of any underlying assumptions;

QD3.4 analyses showing the trends of volumes and demand;

QD3.5 board minutes and papers discussing the viability of the relevant merger party or business unit;

QD3.6 internal strategic plans;

QD3.7 capital expenditure proposal documents;

QD3.8 initiatives/plans to restructure or improve the relevant party or business unit (or to reduce costs), or to more effectively utilise working capital; and

QD3.9 documents on the current financing arrangements, and efforts to obtain additional capital or finance, including copies of material communications with shareholders or lenders.

QD4. To evidence and support information required in response to (and enable us to assess the matters set out at) QD2, provide any of the following documents held by the relevant merger party and prepared within the last three years:

QD4.1 board minutes and papers discussing what would happen absent the merger, any alternative offers and/or recording any actual decisions that have been made;

QD4.2 asset valuation reports or other independent appraisals;

QD4.3 documents evidencing genuine efforts to sell either the business as a going concern or the assets on closure;

QD4.4 documents assessing or evidencing offers received for the business as a going concern, or for some or all of the assets of the business;

QD4.5 documents identifying likely purchasers and the timeframe under which an alternative transaction would be likely;

QD4.6 documents assessing the timeframe within which any exit or closure could occur, having regard to any provisions of customer, employee or lease agreements;

QD4.7 documents assessing or evidencing the costs of exit or closure; and

QD4.8 documents assessing or evidencing the relative values or returns (after costs) that would be realised from different alternative options, and what would generate the greatest value or proceeds.

Attachment E: Information relevant to horizontal mergers

Where the merger for which clearance or authorisation is sought is a horizontal merger between merger parties that are competitors (or potential competitors), an application must include the information prescribed in this Attachment.

Nature of competition

QE1. Describe how competition occurs for each of the relevant products or services identified in response to Q9 in respect of which the merger parties overlap, including:

QE1.1 identifying for each of the merger parties the main strategy used to acquire and then retain customers, along with any advantages or points of difference in doing so compared to competitors;

QE1.2 where the merger is between competing buyers, describe the typical procurement strategies for each of the merger parties;

QE1.3 how sales are made (eg, via tender processes, via quotes, by negotiation etc);

QE1.4 the key dimensions of competition (eg, do market participants compete on price, quality, service, innovation or any other element of competition);

QE1.5 how the relevant products or services identified in response to Q9 are priced by each of the merger parties, including:

QE1.5.1 the factors considered when setting prices;

QE1.5.2 whether uniform pricing is offered or there is discretionary or differential pricing for particular customers or types of customers;

QE1.5.3 information on any standard price lists and standard mark ups applied to products; and

QE1.5.4 how often prices are reviewed and the extent to which prices have changed in the last three years; and

QE1.6 the cost and time involved for customers to switch suppliers, including any features that may prevent or hinder switching, such as exclusive long term contracts or termination fees.

Closeness of competition

QE2. Describe how closely the merger parties compete with each other, and with their key competitors, including:

QE2.1 whether the merger parties compete more closely in any specific market(s), including for any specific products or services, for any specific types of customers or in any specific geographic areas;

QE2.2 the extent to which other existing competitors supply products or services that are substitutable, taking into account factors such as geographic location and the needs or preferences of customers; and

QE2.3 if the relevant products or services identified in response to Q9 are differentiated, an explanation of the nature and extent of that differentiation (such as differences in product features and functions, degrees of customer loyalty, geographic presences, and any other aspects of quality or product characteristics).

Countervailing power

QE3. Provide details of the ability of customers to self-supply (including through directly importing), and information on the extent to which any customers (or businesses that had previously been customers) have in the last three years:

QE3.1 switched to self-supply; or

QE3.2 threatened to switch to self-supply.

QE4. Describe the extent to which customers could sponsor the entry of new suppliers, noting any examples of where this has occurred in the past in the relevant market(s) identified in response to Q11.

QE5. Describe the extent to which customers could credibly threaten to switch to suppliers of the same products in other geographic markets.

Data to support analysis

QE6. For each relevant market identified in response to Q11, provide estimated market shares for each merger party and each competitor identified in Q9.5 for each of the last three full financial years, by:

QE6.1 revenue;

QE6.2 volume (to the extent available); and

QE6.3 capacity and excess capacity (to the extent available and relevant to the market(s) in question).

QE7. Where competition in the relevant market(s) identified in response to Q11 occurs by competitive tender/bid, provide information on the way that such tender/bid processes tend to run in the relevant market(s) and who generally competes with the merger parties in these tenders/bids.

QE8. Where customers in the relevant market(s) identified in response to Q11 tend to be signed up to term contracts with suppliers, please provide such information as we indicate we require in relation to the merger parties' existing term contracts, referring to the explanatory note at the end of this section.

Explanatory note to QE7 and QE8: The degree of detail that we will require in response to QE7 and QE8 is likely to depend on the circumstances, nature and complexity of a specific merger. The degree of detailed information that is necessary and desirable for the merger parties to provide may also vary depending on the volume of tenders/bids or contracts involved and how readily available the information is (eg, whether it is already centrally stored or needs to be collated). We encourage the merger parties to engage with us in pre-notification discussions to discuss the appropriate level of detail that we will require in response to QE7 and QE8.

With respect to QE7, depending on the circumstances of the case we may find it necessary and desirable to receive (ideally in a spreadsheet format) all tenders participated in by the merger parties over the last three years (or such longer period as relevant), identifying for each tender some or all of the following details:

- the name of the customer;
- the location(s) of the customer (and, if different, the location(s) that the products or services are to be delivered to or provided);
- the type of customer (to the extent that the merger parties distinguish internally between different types of customers);
- the products or services covered by the tender;
- the volumes and/or revenues represented by that tender;
- the date of the tender;
- the term of the tender;
- details of the offer or bid made (eg, bid prices, and any other key non-price aspects of the bid);
- the outcome of the tender, including the successful bidder (if known);
- the reason for the outcome (if known); and
- customer contact details.

With respect to QE8, depending on the circumstances of the case we may find it necessary and desirable to receive (ideally in a spreadsheet format) some or all the following details for each term contract of the merger parties:

- the name of the customer;
- contract term and expiry/renewal date(s);
- products or services purchased;
- volume or revenue involved;
- pricing under the contract, including any mechanisms for price reviews or increases;
- whether contract is an exclusive or preferred supplier contract; and
- customer contact details.

Attachment F: Information relevant to vertical mergers

Where the merger for which clearance or authorisation is sought is a vertical merger, an application must include the information prescribed in this Attachment.

QF1. Describe the extent of vertical integration of each of the merger parties currently, the extent to which one of the merger parties currently supplies any input to another party to the merger, and the vertical integration that would arise with the merger.

QF2. Set out whether the merged entity would have the ability and incentive to engage in input foreclosure post-merger. In particular, provide:

QF2.1 a description of each input, including:

QF2.1.1 the downstream product that the input is used to produce; and

QF2.1.2 the role the input plays in producing the downstream product;

QF2.2 any other competing suppliers of that input that would remain post-merger; and

QF2.3 any current or proposed exclusivity agreements relating to the inputs or downstream products, to which either of the merger parties is, or proposes to be, a party.

QF3. Set out whether the merged entity would have the ability and incentive to engage in customer foreclosure post-merger. In particular, provide:

QF3.1 a description of each product that the merged entity would purchase from competing upstream input suppliers, along with:

QF3.1.1 the downstream product that the purchased input product from competing upstream input suppliers is used to produce; and

QF3.1.2 the role the purchased input product plays in producing the downstream product;

QF3.2 the alternative routes to market that competing upstream input suppliers could sell their products to; and

QF3.3 any current or proposed exclusivity agreements relating to the inputs or downstream products, to which either of the merger parties is, or proposes to be, a party.

QF4. With reference to responses to QF2 and QF3, set out the effect that any foreclosure would have on the relevant market(s) identified in response to Q11.

QF5. For each of the inputs and downstream products described in response to QF2 and QF3, provide such further information as we indicate we require, as set out in the explanatory note at the end of this section.

Explanatory note to QF5: The degree of detail that we will require in response to QF5 is likely to depend on the degree of concentration in the upstream or downstream markets, and on the circumstances, nature and complexity of a specific merger. The degree of detailed information that it may be possible for the merger parties to provide may also depend on how such data is already collected and reported internally. We encourage the merger parties to engage with us in pre-notification discussions to discuss the appropriate level of detail that we will require in response to QF5.

Depending on the circumstances of the case, we may find it necessary and desirable to receive from the merger parties information on the:

- components of gross profit margins, including related details on revenues and each of the components of costs (along with an indication of whether the costs identified are fixed or variable); and
- average upstream and downstream prices for a relevant fiscal period.

Attachment G: Information relevant to conglomerate mergers

Where the merger for which clearance or authorisation is sought is a conglomerate merger, an application must include the information prescribed in this Attachment.

QG1. Set out whether the merged entity would have the ability and incentive to foreclose its competitors in any market post-merger. In particular:

QG1.1 describe the commercial or technical links between the relevant products or services of the merger parties identified in response to Q9, including the extent to which any products or services of the merger parties' are currently supplied together as a bundle;

QG1.2 explain the role of each of the adjacent products or services, including whether they are important for competitors or customers (eg, whether any are "must have" products);

QG1.3 provide information on customers that purchase (or prefer to purchase) the products or services together as a bundle or from the same supplier;

QG1.4 provide information on other suppliers that currently provide the products or services together, using or without inputs from the merger parties; and

QG1.5 explain the extent to which competitors would be able to provide the products or services together in an alternative bundle to compete effectively with the merged entity.

QG2. With reference to responses to QG1, set out the effect that any foreclosure would have on the relevant market(s) identified in response to Q11.