Russell McVeagh

12 February 2026

Email: mergers@comcom.govt.nz

Dear all,

SUBMISSION ON PROPOSED AMENDMENTS TO MERGER APPLICATION FORMS

1. Russell McVeagh appreciates the opportunity to submit to the Commerce Commission ("**Commission**") on *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)* Consultation Document ("**Consultation Document**")

2. The Consultation Document proposes significant amendments to the clearance and authorisation application forms ("**Application Forms**"). These amendments are intended to be efficiency-enhancing, including by incorporating information which the Commission typically requests from merging parties in information requests ("**RFIs**"), providing greater certainty and transparency as to the information the Commission considers, and assisting the efficiency and timeliness of the Commission's processes.

3. We agree there are opportunities for improvements and efficiencies in the Commission's process, and we are therefore supportive of this exercise. However, we are concerned that the scope of the proposed amendments to the Application Forms go well beyond the Commission's stated intention of requesting the "*minimum relevant information*" that it needs to complete its reviews "*as quickly, efficiently and transparently as possible*."[1]

4. In the context of a voluntary and public clearance and authorisation regime, we request that the Commission takes into account the following potential implications of requiring the proposed additional information as part of a completed application form:

   (a) New Zealand's regime is relatively unique in that merger applications are made publicly available as a matter of course. Based on our experience, concerns do arise about the extent of information that needs to be made public at the outset of the process, even utilising the current application form. In many cases, it will be more appropriate to reserve the provision of more

[1] Commission, *Consultation Document: 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)* ("**Consultation Document**") at [3.3].

detailed information for outside (i.e. after) the application process, particularly as this information can be targeted at the specific issues of the transaction.

(b) There is a tension between the Commission receiving adequate information from parties to commence the substantive review process, and not requiring mandatory information that is disproportionately burdensome to gather compared to the benefit that information derives. For example, we can see there being a risk of providing certain information for the purposes of meeting the minimum requirements of the application form, but as the Commission's review progresses, having to potentially provide that information again but in different form(s), tailored to the sector, markets and issues under consideration. This in turn risks substantially increasing the legal costs associated with data gathering, as well as the burden on organisations tasked with gathering relevant information. For this reason, we are not necessarily convinced this will actually reduce the need for RFIs post-registration of the application.

(c) The result of the proposed amendment to the Application Forms will be both that applications take longer to prepare, and that the Commission will need a substantially longer pre-notification period to review the additional information it has requested and become satisfied (or not) that an application may be registered. As such, these proposed amendments are unlikely to improve the "*efficiency and timeliness*" of the Commission's processes from a business perspective. We recognise that the Commission places material importance on the ability to conduct market testing, and there are practical challenges in doing this efficiently and effectively when an application is not yet registered. We therefore consider that parties would typically prefer to "get on the clock" to allow that market testing to occur sooner rather than later.

5. In summary, we consider that certain additional information should not be a mandatory requirement for the application to be registered, as certain information is more appropriately reserved for bespoke RFI process post-registration of the application.

6. Our submissions on specific proposed amendments to the Application Forms, including examples of information which should be removed from the application form, are set out below, in consecutive order, by reference to the sub-headings set out in the Consultation Document. We also **attach** a marked up copy of the Consultation Document including our comments and suggested amendments in case this format is useful for the Commission's internal review.

GENERAL GUIDANCE AND ADMINISTRATIVE DETAILS

Evidence, analysis and format for provision of documents

7. Paragraph 32 states that applicants must "*provide detailed workings of any data, statistics, calculations or analysis and any code development in statistical software such as R or Stata*."

8. We appreciate that an application must explain any methodologies and information sources used in preparing data, statistics, calculations or analysis. However, it is unclear what additional "*detailed workings*" could be necessary to submit in all applications before the Commission. We expect that this information is likely only necessary for certain applications, and that therefore such information is better requested in RFIs in appropriate cases once the application has been formally registered.

Provision of target(s)' information and documents

9. Paragraph 34 states a general intention that applications should include more target information. Paragraph 36 goes on to state that the Commission expects an applicant to be able to access all of the target information in an application, subject to confidentiality processes (set out at paragraph 35) to ensure that "*commercially sensitive information*" is not exchanged between the merger parties.

10. As a general comment, target documents and information requested can be commercially sensitive information, and in certain instances, competitively sensitive information. With respect to specific proposals set out in the Consultation Document:

    (a) Paragraph 36 states that where applicants are unable to gather the necessary target information, the Commission maintains discretion to determine whether an application can be registered. It is frequently difficult for applicants to seek detailed information from a target (e.g. in hostile takeover situations). Where this is the case, the Commission's discretion to in effect decline to accept an application due to a failure no fault of the applicant's is concerning. While this risk already exists under the current process, it would substantially increase under the new application forms given the increased information requirements relating to the target. To avoid introducing significant uncertainty, the Commission should clearly state how this discretion will be objectively applied when assessing the actions of the applicant to obtain the information, in light of the commercial realities which the applicant is operating in (e.g. where the Commission receives multiple applications with respect of the same target).

    (b) The Commission will appreciate that commercially sensitive information must be exchanged between merging parties to facilitate a transaction, and the mere exchanging of commercially sensitive information does not necessarily give rise to competition concerns. We consider it would be more precise, and would avoid confusion, if paragraph 35's statement that commercially sensitive information must not be exchanged without adequate process was amended to state that "competitively sensitive information" must not be exchanged between merging parties.

Confidentiality

11. Paragraphs 41 to 46 set out the Commission's approach to confidentiality in the clearance and/or authorisation process. We understand there is a desire on the part of the Commission to facilitate its ability to test submissions with third parties,

but this needs to be weighed up against the protection of confidential information provided to the Commission in the context of a voluntary merger regime.

12. As noted above, there are few overseas jurisdictions which require the level of detail set out in the Application Forms where applications are made publicly available. Based on our experience, there could be a greater reluctance to engage with the New Zealand voluntary regime as confidentiality considerations can be a relevant factor in that decision-making process.

13. With respect to specific proposals set out in the Consultation Document:

    (a) The Commission should reconsider its proposal at paragraph 44 to require market share ranges to be included in the public versions of all applications. Market share calculations are frequently prepared by the parties using competitively sensitive information, including revenue data. In addition, market shares are often a subjective view on the market, informed by the parties' own market intelligence or views on their competitors' relative strengths (particularly where granular data on market size or their competitors is not available). As such, providing market shares, even in ranges of 10% increments (as suggested in footnote 2) still risks betraying the parties' competitively sensitive information (including their subjective views on the market). Unlike in overseas jurisdictions where market share ranges are publicised in the competition authority's decision, those ranges have been determined objectively by the competition authority (sometimes taking into account a range of sources), the proposals risk disclosing the parties subjective and competitively sensitive views on the market.

    (b) We disagree with the Commission's statement at paragraph 44 that an application should be drafted to minimise redactions, and to maximise readability of the public version. It is not for the applicant to ensure that its information is able to be disclosed to the public. Instead, the priority of any applicant should be to ensure the Commission has the information it needs to consider the application in a timely and efficient manner. Placing an obligation to minimise redactions risks that applications are more ambiguous than they would otherwise be, to the detriment of the efficiency of the Commission's review.

    (c) The Commission should reconsider its proposal at paragraph 46 that information may be provided to external legal advisors, subject to confidentiality undertakings, during the review process. The practical challenge with this approach is that external legal advisors have no ability to meaningfully engage with their clients on issues when subject to confidentiality orders. While we appreciate there are some legitimate instances where it is appropriate to protect the identity and views of third-party stakeholders, we consider the use of confidentiality undertakings should ordinarily be very limited and should be approached on a case-by-case basis, not simply required upfront at the beginning of the review process.

(d) We disagree with the Commission's requirement at paragraph 43 that confidential information should be bolded. Marking confidential information with highlighting and square brackets is market-standard and has practical utility where confidentiality is claimed as between the applicant and target. Such an approach would almost certainly add time and legal costs to the process for little to no clear benefit.

REQUIRED INFORMATION

The merger and counterfactual

14. Question 8 requests target information about expressions of interest from third parties and the reasons for not accepting such offers in the context of a competitive process. Given the highly confidential nature of any such information, and the fact that it will only be required in certain transactions (i.e. where a competitive process was run), this would be better dealt with in an RFI to the target where appropriate. To the extent that legitimate alternative purchasers exist, these would already be detailed in response to question 7 (in relation to the counterfactual).

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

15. Question 10.3 requests names and contact details for the merging parties' top ten customers by overall value. The explanatory note further states that the Commission will also require names and contact details of *"the ten customers closest to the median spend*". This additional request is not necessary given question 10.3 requests information for ten customers (double the amount in the current Application Form). In our experience, a list of top ten customers would generally capture customers of varying sizes as it would be uncommon for a business to have ten customers all of a similar size.

16. Question 10.6 requests names and contact details for "*other relevant participants… or interested parties".* Given this broad and vague scope, this request has potential to be burdensome and practically challenging to fulfil. The Commission is likely best placed to request specific information relating to any such relevant participants or interested parties as part of an RFI process, rather than a mandatory requirement of the application.

REQUIRED DOCUMENTS

17. Paragraph 55 requires the applicant to provide an index of documents it is giving the Commission, indicating the date each document was prepared, the identity and role of the author(s) and privilege redactions. The Commission should reconsider if this is necessary. Applications frequently involve the submission of a vast number of documents, meaning preparing this index can (depending on the type of technology available to or adopted by the applicant) be time and resource intensive.

18. Paragraph 55 further states, "*we do not expect to receive document that have redactions on the basis of relevance*." We oppose this position; such an approach

is at odds with the Commission's stated intention of improving the efficiency and timeliness of its processes, while offering no clear benefit. To expand:

(a) Given the broad scope of the Commission's document requests, it is likely that responsive documents include information that is not relevant to the Commission's assessment. Redactions for relevance, in many instances, greatly reduce the amount of material that needs to be reviewed and thus are beneficial to the efficiency and timeliness of the Commission's process.

(b) In the context of a section 98 notice, the Commission's scope to request documents is limited to those which it considers "necessary or desirable" for carrying out its functions. It is very possible that much of the content in documents which fall under the scope of the Application Forms would be irrelevant to the Commission's review, and thus not "necessary or desirable".

(c) Any risk of redactions for relevance concealing potentially material information is low. It is an offence to attempt to deceive or knowingly mislead the Commission; this is a strong deterrent and should ensure redactions for relevance are only made in appropriate circumstances.

Financial statements or management accounts

19. Question 27 requests that where a merger application applies only to specific business unit(s), three years' worth of management accounts for that specific business are provided. The scope of this request should be clarified such that only pre-existing documents are included (i.e. the applicant would not be required to produce management accounts simply for the purpose of the application).

ATTACHMENTS

B: Confidentiality waiver template

20. The confidentiality waiver template does not provide sufficient assurances regarding protection of confidential information received by the Commission. We suggest inserting the following:

> *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 the Parties and obtained it under the Confidentiality Obligations for all purposes, including confidentiality protections, and shall only use it for NZCC Purposes.*

21. Additionally, the confidentiality waiver template does not provide sufficient protections for privileged information. We suggest inserting the following:

> *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.*

If the NZCC receives information from the [overseas competition authority] that the Parties claim as privileged in New Zealand, the NZCC will treat such information as inadvertently produced privileged information.

22. These changes are consistent with what the Commission has previously accepted.

C: Material relevant to assessment of partial acquisitions

23. Question C2.2.3 requests details with respect of any "*negative control*" held by existing shareholders. Further clarification should be provided on the meaning of negative control (e.g. whether this relates to the ability to block ordinary or special resolutions). Additionally, given the level of detail requested in new question C2, the Commission should update its guidance on the circumstances where it considers a person has a "substantial degree of influence" over another (currently set out in paragraphs 2.4 – 2.9 of the Mergers and Acquisitions Guidelines). Merging parties should have a thorough understanding of how the information requested in new question C2 will be interpreted by the Commission.

E: Information relevant to horizontal mergers

24. Question E8 requires that, in the case of a horizontal merger involving markets where customers enter supply contracts, an application must include data on "*the currently contracted customers of each of the merger parties*" including details such as contract term and expiry/renewal dates, products/services purchased, volume or revenue involved, pricing, exclusivity provisions and customer contact details.

25. In many instances, this question could involve collating information from hundreds – if not thousands – of documents. We are concerned that the burden (in both resources and time) of responding to this question (let alone the time the Commission will need to review this information) is disproportionate to the value of this information to the Commission's review in most circumstances. Where this amount of detail is legitimately required by the Commission, this would be better dealt with in an RFI. In practice, if this information is relevant to the competition assessment, the parties may already be in a position to provide it (or some of it) to the Commission prior to registration, but it should not be a mandatory requirement. Moreover, the Commission can (and does) request information that will be useful for its review prior to registration so the parties can start the information gathering process (it does not have to wait until after registration).

Concluding remarks

26. We welcome any opportunity for further consultation and are available to discuss this submission as needed.

Yours sincerely

Bradley Aburn | Petra Carey | Troy Pilkington | Craig Shrive
Partners

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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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)

Consultation document

11 December 2025

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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Please refer to submission for comprehensive feedback.

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 s 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. We last revised our s 66 clearance application form in October 2019 and our s 67 authorisation application form in December 2020.

3. This document sets out proposed new wording and requirements for our application forms for clearance and authorisation of mergers or acquisitions. We are proposing amendments to both application forms to:

   3.1 incorporate information that we typically request from the parties to a merger or acquisition (both the applicant(s) and target(s), collectively the merger parties) via information requests, either prior to or after registration of an application;

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

   3.3 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 investigations as quickly, efficiently and transparently as possible (noting that mergers and acquisitions are often time-sensitive, and that we have statutory timeframes for considering applications).

4. Subject to submissions and feedback received on this consultation document, we intend to finalise and publish new application forms for clearance and authorisation of mergers or acquisitions in the future.

5. Our existing application forms continue to apply until any new application forms are finalised, although the merger parties are welcome to voluntarily provide the applicable additional information detailed out in this document prior to any new application forms being finalised.

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

6. 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.

7. We set out below how parties can make submissions on this consultation document. The remainder of this document from page 5 sets out the proposed new wording and requirements for our application forms for clearance and authorisation of mergers or acquisitions, and is structured as follows:

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

   7.2 required information; and

   7.3 required documents.

8. For simplicity from page 5, 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.

How to make a submission

9. We invite submissions on the proposed new wording and requirements for our application forms for clearance and authorisation of mergers or acquisitions. All submissions on this document should be sent to mergers@comcom.govt.nz with the reference "merger application forms" in the subject line of the email. We request that parties who wish to make a submission do so by **5 February 2026**.

10. 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.

11. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will publish 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.

12. 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

13. This document is the first in a series of consultation documents that we intend to publish in respect of our mergers and acquisitions work, which will provide guidance relating to proposed amendments to the Act. If you wish to receive updates on consultation documents and final new application forms that we publish in the future, you can register to receive merger reform updates via our website.

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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.

14. Applications for s 66 clearance or s 67 authorisation must be made in the prescribed form.

15. Our application forms set out in detail the specific material we need to commence an investigation, 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.

16. 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 investigation. If we are satisfied that an application meets our requirements, we then register an application.

17. 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 [26]), and provides 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

18. 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.

19. 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

20. 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.

21. 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:

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

21.2 the type of application to be filed (ie, s 66 or s 67); and

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

22. 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

23. 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).

24. 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 an application will differ depending on the nature and complexity of a merger.

25. 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). The inclusion of an executive summary that clearly sets out the applicant(s)' submissions on key issues is generally very helpful.

Pre-notification discussions

26. While pre-notification discussions are not compulsory, they enable us to focus and commence our investigation in a timely manner once we have registered an application. Pre-notification discussions help clarify what information and evidence we are likely to need in an application. 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 investigated and decided.

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

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

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

28. 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) at least a week before meeting with us.

Evidence, analysis and format for provision of documents

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

30. 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.

31. 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.

32. 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). We require the merger parties 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.

33. 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 investigation.

Provision of target(s)' information and documents

We propose to require more information and documents of target(s) with an application.

34. Our application forms require the provision of certain information and documents relating to the target(s) of the merger. 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.

35. 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 ~~commercially~~ 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.

Commented [R1]: RFI More Appropriate Option
We appreciate that an application must explain any methodologies and information sources used in preparing data, statistics, calculations or analysis. However, it is unclear what additional "*detailed workings*" could be necessary to submit in all applications before the Commission. We expect that this information is likely only necessary for certain applications, and that therefore such information is better requested in RFIs in appropriate cases once the application has been formally registered.

See Paragraph 8 of *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

Commented [R2]: Exchange of Commercially Sensitive Information
We consider it would be more precise, and would avoid confusion, if paragraph 35's statement that commercially sensitive information must not be exchanged without adequate process was amended to state that ***"competitively** sensitive information"* must not be exchanged between merging parties.

See Paragraph 10 (b) of *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

36. Our general expectation is that the applicant(s) should be able to access all of the target(s)' responsive material, subject to the confidentiality processes discussed above. If, in the circumstances of any particular merger, the applicant(s) consider they are not able to access and provide a target(s)' responsive material (such as may be the case in a hostile takeover situation), the applicant(s) should advise us of this. We may require the applicant(s) to provide an explanation of the steps undertaken to seek the relevant responsive material, and will, in our discretion, determine whether an application is sufficient to be registered notwithstanding the absence of that material.

All relevant information and documents should be provided

37. While our ss 66 and 67 application forms set out the minimum amount of data, information and documents that are typically necessary to consider 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.

38. 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). 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 consideration of an application.

39. We strongly encourage the merger parties to engage in pre-notification discussions with us 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 decide an application.

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

In order to enhance the transparency and efficiency of our process, and improve our own ability to test the applicant(s)' submissions, we propose to require market share ranges to be included in the public versions of all applications in the future and for confidentiality undertakings to be signed upfront by the external legal advisors and other experts acting for the merger parties.

41. 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.

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

42. If the merger parties wish to request confidentiality for specific information contained in or attached to an application, please provide a schedule stating why the merger parties consider the 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:

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

    42.2 describing that information; and

    42.3 detailing the reasons why confidentiality is sought.

43. We require both a confidential version and a public version of an application. In the confidential version of an application any information for which confidentiality is sought must be highlighted ~~in bold~~ 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 [ ].

44. ~~An application should be drafted to minimise redactions from, and maximise readability of, the public version. Where precise market shares are derived from confidential information and therefore redacted, our expectation is that the applicant(s) will include, in place of those redacted market shares, include in the public version of an application ranges of market shares.~~[2]

45. 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).[3] We consider requests for fact confidentiality 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 investigate, as we cannot gather information from interested parties and test information provided in an application.

46. In some circumstances during our investigation of an application, we may make certain information available to external legal advisors and other experts acting for the merger parties to assist them in making submissions on the issues relating to a merger. ~~To assist with the efficiency and timeliness of our processes, we may require that external legal advisors and any other experts acting for the merger parties sign confidentiality undertakings upfront when an application is registered and after we provide a template undertaking.~~

Further information on how we currently deal with confidential information is set out in out Mergers and Acquisitions Guidelines and Authorisation Guidelines. In early 2026, we intend to release for consultation draft guidance on how we propose to treat and deal with confidential information that we receive during our investigation of applications for s 66 clearance and s 67 authorisation in the future.

2 These ranges should be 0-4.99%, 5-9.99%, 10-19.99%, 20-29.99% and so forth in 10% increments up to and ending with 90-100%.

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

Commented [R3]: Marking Confidential Information
We disagree with the Commission's requirement at paragraph 43 that confidential information should be ***bolded***. Marking confidential information with highlighting and square brackets is market-standard and has practical utility where confidentiality is claimed as between the applicant and target.

See Paragraph 13 (d) in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

Commented [R4]: Redactions and Readability
It is not for the applicant to ensure that its information is able to be disclosed to the public. Instead, the priority of any applicant should be to ensure the Commission has the information it needs to consider the application in a timely and efficient manner. Placing an obligation to minimise redactions risks that applications are more ambiguous than they would otherwise be, to the detriment of the efficiency of the Commission's review.

See Paragraph 13 (b) in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

Commented [R5]: Market Share Ranges
This proposals risks disclosing the parties subjective and competitively sensitive views on the market.

See Paragraph 13 (a) in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

Commented [R6]: Confidential Undertakings for External Parties
While we appreciate there are some legitimate instances where it is appropriate to protect the identity and views of third-party stakeholders, we consider the use of confidentiality undertakings should ordinarily be very limited and should be approached on a case-by-case basis, not simply required upfront at the beginning of the review process

See Paragraph 13 (c) in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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 considering (or may in the future consider) the merger. As such, we request 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

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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),[4] 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 s67 authorisation application, why the merger is likely to result in such a public benefit that it should be permitted.

The merger and counterfactual

In some instances, we have received draft applications that are insufficiently clear on which specific entity would receive the benefit of the clearance/authorisation sought. We include guidance here for the merger parties to emphasise the importance of correctly identifying the applicant(s) and the entity to which clearance/authorisation should attach, and on how to deal with situations where the specific legal entity of the acquirer is not clear at the time of an application. We also frequently have to ask for more information on what would happen both with and without a merger – so we propose to include further requested information on these points.

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;[5]

    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).

4 Relevant market(s) here and elsewhere refers to those identified in response to Q12 or which involve the supply of products or services that may be substitutable to that of one of the merger parties.

5 See explanatory note at the end of Q1.

Russell McVeagh comments on Consultation document
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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.

Explanatory note to Q1.1: The benefit of any clearance given or authorisation granted by us attached 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 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 a misidentified applicant(s) in an application.

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,[6] please also provide the information prescribed in **Attachment C**.

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 possible relevant scenario(s) for each merger party if the merger does not go ahead, including the extent to which and the likelihood that the merger parties would (as relevant):[7]

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 Q12 (eg, by expanding in the relevant market(s), seeking to enter the relevant market(s) via 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 Q12, either through closure of part or all of a business.

~~Q8. 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)), provide information from the target(s) on that sales process, including:~~

~~Q8.1 any offers or expressions of interest received from third parties; and~~

~~Q8.2 the reasons for not proceeding with any alternative offers.~~

Commented [R7]: Question 8
Given the highly confidential nature of any such information, and the fact that it will only be required in certain transactions (i.e. where a competitive process was run), this would be better dealt with in an RFI to the target where appropriate. To the extent that legitimate alternative purchasers exist, these would already be detailed in response to question 7 (in relation to the counterfactual).

See Paragraph 14 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

~~Q9.~~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 Q12 absent the merger (eg, due to being a failing firm or division), provide the specific information prescribed in **Attachment D**.

6 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.

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

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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

We propose to add to our application forms more specific questions about the industry, the products or services relevant to the merger, the relevant market(s), and the competitors and customers of the merger parties. For many legal counsel familiar with our process, in practice these amendments will require no change in approach, as this information is provided as a matter of course.

~~We also propose to seek names, contact details, and revenue figures, of the ten customers closest to the median spend with each of the merger parties in the last financial year. This is to ensure that we are equipped to gather evidence from a broader cross-section of each of the merger parties' customers, rather than just those customers representing the highest spend.~~

Relevant products or services

~~Q10.~~Q9. Describe the relevant products or services[8] of the merger parties and provide the following for each:

Q10.1 the geographic areas in New Zealand where the products or services are supplied;

Q10.2 each of the merger parties' total sales revenues, volumes, and, where relevant, capacity and excess capacity figures for the past three financial years;

Q10.3 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;[9]

Q10.4 if the merger is between competing buyers, the names and contact details of each of merger parties' key suppliers, including at least the top ten by value, and the amount paid to each supplier in the last financial year;[10]

Q10.5 the names and contact details[11] for each merger party's main competitors, and any trade or industry associations in which one or both of the merger parties participate; and

~~Q10.6 the names and contact details for other relevant participants in the relevant market(s) identified in response to Q12 or interested parties.~~

~~Q11.~~Q10. Set out, with a particular focus on the relevant products or services:

Q11.1 any specific characteristics of the industry (such as sector regulations, any seasonal nature of supply or sales);

Commented [R8]: Ten Customers Closest to Median Spend
Request is ***not necessary*** given question 10.3 requests information for ten customers (double the amount in the current Application Form).

See Paragraph 15 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

Commented [R9]: Contact Details for Relevant Participants or Interested Parties
The question has a broad and vague scope, which has potential to be burdensome and practically challenging to fulfil. The Commission is likely best placed to request specific information relating to any such relevant participants or interested parties as part of an RFI process, rather than a mandatory requirement of the application.

See Paragraph 16 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

8 '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.
9 See explanatory note at the end of Q11.
10 See explanatory note at the end of Q11.
11 Contact details should include a named contact person, an email address, telephone number and the position of the contact person(s).

Q11.2 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);

Q11.3 who the merger parties compete with at different levels of the supply chain in the relevant market(s) identified in response to Q12; and

Q11.4 significant trends or developments (eg, around imports, emerging technology, product development, mergers undertaken or changes in supply/demand).

Explanatory note to Q10.3 and Q10.4: In order to facilitate our timely investigation, please ensure 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 find it helpful to receive contact details for a broader set of customers/suppliers, or for customers/suppliers representing different relative levels of annual spend. The merger parties are encouraged to discuss this with us during pre-notification.

Relevant market(s)

Q12. Describe the merger parties' view on the appropriate market definition[12] for assessing the competitive effects of the merger (citing any relevant precedent on market definition from New Zealand or overseas), including:

Q12.1 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;

Q12.2 by consideration of the products or services that might reasonably be considered close substitutes on 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);

Q12.3 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;

Q12.4 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

Q12.5 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.

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

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

Substantial lessening of competition test

We consider that our current application forms under-capture the kind and degree of information that we typically require in the early stages of our investigation to advance our substantive analysis of whether a merger is likely to substantially lessen competition. We propose to include more granular questions on this area, including questions specific to different types of competitive effects (horizontal unilateral effects, vertical effects, coordinated effects and conglomerate effects).

Type of merger

Q13. In terms of the type of merger:

Q13.1 if the merger is a horizontal merger, provide the specific information prescribed in **Attachment E**;

Q13.2 if the merger is a vertical merger, provide the information prescribed in **Attachment F**; and

Q13.3 if the merger is a conglomerate merger, provide the information prescribed in **Attachment G**.

Explanatory note to Q13.1 to Q13.3: 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 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

Q14. Describe the conditions of, and factors influencing, entry and expansion in the relevant market(s) identified in response to Q12, including:

Q14.1 which existing competitors, if any, the applicant(s) consider are in a position to expand their market share using current capacity, and what would be required for competitors to expand capacity;

Q14.2 whether the applicant(s) consider that new entry into the relevant market(s) identified in response to Q12 is likely, and, if so, where the applicant(s) consider the most likely new threat of competition is likely to emerge from, identifying:

Q14.2.1 the other markets from which new entrants to the relevant market(s) identified in response to Q12 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

Q14.2.2 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;

Q14.3 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);

Q14.4 any barriers that may impact the costs or timeliness of expansion or new entry, including access to inputs or legal/regulatory requirements; and

Q14.5 any barriers that may impact expected revenues from any expansion or new entry, including customer switching costs, or supply that is characterised by long term supply contracts.

Q15. To the extent the merger parties are aware, provide details of:

Q15.1 recent or expected material new entry into, or expansion in, the relevant market(s) identified in response to Q12 in the last three years; and

Q15.2 competitors that have exited the relevant market(s) identified in response to Q12 in the last three years.

Explanatory note to Q14 and Q15: 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 Q14 and Q15, it is therefore helpful for the applicant(s) to consider and reference this analytical framework.

Q14 and Q15 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.

Coordination

Q16. 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:

Q16.1 the extent to which the relevant market(s) identified in response to Q12 are vulnerable to coordination, including by identifying:

Q16.1.1 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;

Q16.1.2 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

Q16.1.3 how frequently competitors interact and the degree of transparency there is in the relevant market(s) identified in response to Q12 on the pricing, volumes or capacity of different suppliers; and

Q16.2 whether the merger would change conditions in the relevant market(s) identified in response to Q12 so that coordination is more likely, complete or sustainable.

Public benefit test

Q17. In the case of a s67 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:

Q17.1 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);

Q17.2 how and when these benefits would arise (including whether the benefits are one-off or recurring);

Q17.3 any factors that might limit the size of the benefits that are actually realised from the merger;

Q17.4 whether these benefits can be achieved absent the merger; and

Q17.5 any detriments that may result from the merger.

Q18. 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.[13]

[13] See our Authorisation Guidelines at 17.

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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).[14]

53. For the purposes of Q20 to Q25 below, by "documents" we mean those materials in the possession of each of the merger parties and any relevant interconnected bodies corporate (where applicable):[15]

    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 New Zealand management, senior management 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 provide an index indicating the date each document was prepared and the identity and role of the author(s) within the merger parties or external consultants. In this index, 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). We do not expect to receive documents that have redactions on the basis of relevance.~~

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.

The merger and counterfactual

The merger

Q19. 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.

Commented [R10]: Document Index
The Commission should reconsider if this is necessary. Applications frequently involve the submission of a vast number of documents, meaning preparing this index can (depending on the type of technology available to or adopted by the applicant) be time and resource intensive.

See Paragraph 17 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

Commented [R11]: Redactions for Relevance
We oppose this position; such an approach is at odds with the Commission's stated intention of improving the efficiency and timeliness of its processes, while offering no clear benefit.

See Paragraph 18 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

[14] See [36] in relation to our expectations regarding the availability of documents of the target(s).
[15] 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.

Q20. Provide all documents that:

Q20.1 set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for the merger); or

Q20.2 set out any post-merger business plans or strategy (including any integration plans); or

Q20.3 assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), any SWOT analysis (or similar),[16] 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).

Q21. If the acquisition for which clearance or authorisation is being sought is a partial acquisition, please also provide the documents prescribed in **Attachment C**.

The counterfactual

Q22. Provide all documents discussing or assessing the alternatives to the merger for each of the merger parties, including any documents that:

Q22.1 discuss what might or would likely happen absent the merger; or

Q22.2 discuss alternative offers or expressions of interest received for the business of either of the merger parties (including internal assessments of such offers); or

Q22.3 discuss any material changes that might be made to their strategies or operations in the relevant market(s) identified in response to Q12 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

Q22.4 record any actual decisions that have been made with respect to the issues in Q22.1 to Q22.3 above.

Q23. Where relevant, provide any information memorandum(a) or similar offer document(s) that were prepared in connection with the sale of the target(s).

Q24. 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 Q12 absent the merger (eg, due to being a failing firm), please also provide the documents prescribed in **Attachment D**.

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

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

Business documents

Q25. 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 Q10 and Q12:

Q25.1 the business plans/strategies of each of the merger parties;[17] or

Q25.2 competitive conditions, market conditions, any SWOT analysis (or similar), market shares, market trends or competitors;[18] or

Q25.3 how each of the merger parties determines its pricing, including discussions of pricing strategies.[19]

Financial statements or management accounts

Q26. Provide copies of, or links to, annual reports or audited financial statements for each of the merger parties for the last three financial years.

Q27. Where the merger only relates to some business unit(s) of the merger parties, provide copies of pre-existing internal management accounts for the relevant business unit(s) of each of the merger parties for the last three financial years.

Commented [R12]: Pre-Existing Documents
The scope of this request should be clarified such that only pre-existing documents are included (i.e. the applicant would not be required to produce management accounts simply for the purpose of the application).

See Paragraph 19 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

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

[18] 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).

[19] Such documents can include price lists, forecasts, analysis and strategies, discount/rebate policies, and on how pricing decisions have been made in the past and what factors influence those decisions.

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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 adviser 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:**

Russell McVeagh comments on Consultation document
Please refer to submission for comprehensive feedback.

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)"].

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

58. 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).

59. 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

3. [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).

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

Conditions

61. 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 the Parties and obtained it under the Confidentiality Obligations for all purposes, including confidentiality protections, and shall only use it for NZCC Purposes.

~~61.~~62. 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].

~~62.~~63. 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 information obtained in the course of any other review of any case either now or in the future.

Commented [R13]: Protecting Information Received by the Commission
The confidentiality waiver template does not provide sufficient assurances regarding protection of confidential information received by the Commission. We suggest inserting the following.

See Paragraph 20 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

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~~63.~~64. 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.

~~64.~~65. 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].

~~65.~~66. The Confidentiality Waiver does not extend to any materials asserted by [applicant, target or acquirer] to be privileged.

67. 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]

68. 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.

~~66.~~69. If the NZCC receives information from the [overseas competition authority] that the Parties claim as privileged in New Zealand, the NZCC will treat such information as inadvertently produced privileged information.

Commented [R14]: Protecting Privileged Information
The confidentiality waiver template does not provide sufficient protections for privileged information. We suggest inserting the following

See Paragraph 21 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

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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 tends 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;

Commented [R15]: Negative Control
Further clarification should be provided on the meaning of negative control (e.g. whether this relates to the ability to block ordinary or special resolutions).

See Paragraph 23 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

[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 altering 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 block a decision or vote.

QC2.3.2 any relevant protocols of its board of directors, in terms of manging 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) 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 Q12 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 document required in QC1 to QC8 are intended to enable us to evaluate 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.

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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 Q12 absent the merger, either by becoming scrap or being put to an alternative use.

Required documents

QD3. To evidence and support and information required in response to (and enable us to consider 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 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 and information required in response to (and enable us to consider 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 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.

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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, an application must include the information prescribed in this Attachment.

Nature of competition

QE1. Describe how competition occurs for each relevant products or services identified in response to Q10 in respect of which the 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 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 Q10 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 the 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 Q10 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 Q12.

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 Q12, provide estimated market shares for each merger party and each competitor identified in Q10.5 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 Q12 occurs by competitive tender/bid, provide data on the customers won, lost and retained by each of the merger parties over the last three years (or a longer time period, if tenders occur less frequently), identifying customers that have switched between the merger parties, or between the merger parties and other existing competitors. To the extent possible, provide this information in a spreadsheet listing all tenders participated in over the last three years (or such longer period as relevant), identifying for each tender:

QE7.1 the name of the customer;

QE7.2 the location(s) of the customer (and, if different, the location(s) that the products or services are to be delivered to or provided);

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QE7.3 the type of customer (to the extent that the merger parties distinguish internally between different types of customers);

QE7.4 the products or services covered by the tender;

QE7.5 the volumes and/or revenues represented by that tender;

QE7.6 the date of the tender;

QE7.7 the term of the tender;

QE7.8 details of the offer or bid made (eg, bid prices, and any other key non-price aspects of the bid);

QE7.9 the outcome of the tender, including the successful bidder (if known);

QE7.10 the reason for the outcome (if known); and

QE7.11 customer contact details.

QE8. ~~Where customers in the relevant market(s) identified in response to Q12 tend to be signed up to term contracts with suppliers, provide data on the currently contracted customers of each of the merger parties, ideally in the form of a spreadsheet identifying for each contract:~~

~~QE8.1 the name of the customer;~~

~~QE8.2 contract term and expiry/renewal date(s);~~

~~QE8.3 products or services purchased;~~

~~QE8.4 volume or revenue involved;~~

~~QE8.5 pricing under the contract, including any mechanisms for price reviews or increases;~~

~~QE8.6 whether contract is an exclusive or preferred supplier contract; and~~

~~QE8.7 customer contact details.~~

Commented [R16]: Burdensome Information Requirement
This question could involve collating information from hundreds – if not thousands – of documents. We are concerned that the burden (in both resources and time) of responding to this question (let alone the time the Commission will need to review this information) is disproportionate to the value of this information to the Commission's review in most circumstances. Where this amount of detail is legitimately required by the Commission, this would be better dealt with in an RFI.

See Paragraph 24 - 25 in *Russel McVeagh Submission on Consultation Document Regarding Merger Application Forms.*

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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 Q12.

QF5. For each of the inputs and downstream products described in response to QF2 and QF3, provide details of:

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QF5.1 components of gross profit margins, including related details on revenues and each of the components of costs;

QF5.2 whether the costs identified in QF5.1 are fixed or variable; and

QF5.3 average upstream and downstream prices for a relevant fiscal period.

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. 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.

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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 Q10, 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 Q12.