

To Commerce Commission (Sam Holmes)

4 February 2026

From Simpson Grierson (James Craig)

Subject Submission of Simpson Grierson on Consultation Document for Merger Application Forms

1. We refer to the Consultation Document issued by the Commission on 11 December 2025 entitled “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)” (the **Consultation Document**). This memorandum constitutes the submission of Simpson Grierson on the Consultation Document. The views in this memorandum are our own. The information in this submission is not confidential.
2. As a general point, we are supportive of the bulk of the proposed changes in the Consultation Document. In particular, we support the rationale for the changes set out in para. 3 of the Consultation Document, and agree that much of the information / documents referenced in the Consultation Document reflect what is currently required to be provided to the Commission in any event during the course of a clearance or authorisation application and subsequent investigation.
3. Our requested amendments are limited to the following matters (with reference to particular paragraphs in the Consultation Document, and with proposed amendments in bold underlining):

Para. Ref	Current Wording	Requested Amendments
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.”	We request that the wording “including required documents” be replaced with “including required documents <u>where possible</u> ”. This reflects the fact that there may not be time in all cases to provide all required documents and/or not all the required documents may in fact be complete at the time of engaging in pre notification discussions. These documents can then be provided after pre notification.
32	“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”.	We request that this wording be replaced with “ <u>Where possible</u> , the merger parties <u>should</u> also provide detailed workings of any data, statistics, calculations or analysis and any code development in statistical software such as R or Stata.”

		The detailed workings may not be available in all cases, and the wider paragraph already requires the parties to provide the underlying data or source material.
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.”	<p>We request that this wording be replaced with “Our general expectation is that the applicant(s) <u>(or their external legal representatives)</u> should be able to access all of the target(s)’ responsive material, subject to the confidentiality processes discussed above.”</p> <p>In many cases, the applicant will not be able to access all of the targets’ responsive material, but the applicants’ external lawyers should be able to do so on an external counsel only basis.</p>
38	“This should include identifying in an application any aspects of a merger that may raise concerns with third parties (such as customers or competitors).”	We request that this wording be replaced with “This should include identifying in an application any aspects of a merger that may raise concerns with third parties (such as customers or competitors) <u>which are known to the merger parties.</u> ” Not all concerns by third parties will necessarily be known to the merger parties at the time of filing the application.
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).”	<p>New section 100AA of the Commerce (Promoting Competition and Other Matters) Amendment Bill introduces new protections for confidential information supplied to the Commission. In particular, the Commission would not be able to disclose the information, including under the Official Information Act 1982, unless 1 or more of the grounds specified in new section 100AA(2) apply.</p> <p>It would be helpful if this paragraph could make reference to that – and clarify whether this confidentiality schedule will still be required to be provided if new section 100AA applies? It would seem to be redundant in that case.</p>
44	“Where precise market shares are derived from confidential	We query the need for the applicant to provide public ranges of market shares.

	<p>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.”</p>	<p>Even a range may still disclose confidential revenue or volume information of the merger parties. The Commission will still be able to obtain from third parties their own estimates of market shares.</p> <p>If this wording is to be retained, then the following typo should be corrected: “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.”</p>
Q10.3	<p>“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”</p>	<p>We request that this wording be replaced with “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 <u>(or, where either of the merger parties does not have 10 customers, this information for the applicable number of customers that they have below ten customers).</u>”</p>
Q10.4	<p>“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”</p>	<p>Similarly, we request that this wording be replaced with “if the merger is between competing buyers, the names and contact details of each of <u>the</u> merger parties’ key suppliers, including at least the top ten by value <u>(or, where either of the merger parties does not have 10 suppliers, this information for the applicable number of suppliers that they have below ten suppliers)</u>, and the amount paid to each supplier in the last financial year”.</p>
53.2	<p>“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”</p>	<p>We request that this wording be replaced with “have been prepared for, seen, or considered by <u>senior</u> New Zealand management, senior management <u>outside New Zealand (where applicable)</u> and/or any member of the board of directors (or equivalent body), whether prepared internally or by external consultants”.</p>

55	“We do not expect to receive documents that have redactions on the basis of relevance”	<p>We request that this wording be replaced with “We do not expect to receive documents that have redactions on the basis of relevance <u>unless the redacted material does not deal with the proposed acquisition at all</u>”.</p> <p>The reason for this request is that we have previously seen Board papers for instance that cover multiple other matters apart from a proposed acquisition. Those unrelated matters should not need to be disclosed to the Commission in circumstances where they will often be extremely commercially sensitive.</p>
QD3, QD4	“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”	This should read “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”
QD3.2	“financial statements and/or management accounts for the last years, with details of any corporate common costs/transfers or intra-corporate loans”	This should read “financial statements and/or management accounts for the last three years, with details of any corporate common costs/transfers or intra-corporate loans”