
From: Sarah Keene <Sarah.Keene@webbhenderson.com>
Sent: Friday, 13 February 2026 5:46 pm
To: Sam Holmes
Cc: Kyle Daniels; Antonia Horrocks
Subject: Webb Henderson submission on revised Merger Form

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Dear Sam,

Thank you for the opportunity to comment on the Commission's proposed new merger application form. As you know, Webb Henderson deals with a significant number of merger control inquiries every year, from local, Australasian and international clients, many of which we engage with the Commission on, formally or informally. We greatly appreciate expertise and pragmatism in the Commission's approach to its reviews, and particularly support its recent efforts to introduce more clarity and pace into its merger reviews, of which this consultation process is an important component.

At a high level, our key point on the form is that we would not want to see it detracting from the existing framework, built on constructive pre-notification engagement and targeted information requests, rather than a rigid document-heavy one size fits all approach to the merger filing form (Form). Our experience of the current process is that it has generally enabled the Commission to obtain material efficiently without imposing unnecessary burdens on applicants. Our comments on the proposed changes to the Form should be read in that context.

Changes to the prescribed Merger Notice Form

We encourage the aim of better reflecting in the Form information that is typically requested from parties. This can assist advisers in explaining to clients why certain information is required, as well as better supporting those clients who are approaching the process without experienced advisers.

We encourage the Commission to consider whether a rider could be inserted to reflect that merger notification in New Zealand is a voluntary process, and the Commission will always tailor the information requirement to the nature and scope of the merger at hand. In some situations, businesses are too small/ informal to hold the information specified, in the requisite format or at all, and, in others, the New Zealand portion of a global business may report at a regional level that makes NZ-specific information difficult to obtain. Ideally in the context of the size of New Zealand markets and transactions, and the relatively lengthy timeframes for merger reviews, we recommend including a statement to reflect that the Commission does apply the information burden proportionately. For example: *'We will consider whether it would be necessary and proportionate to request additional information in view of the complexity of the merger and the potential competition concerns on which the Commission is likely to focus its investigation.'* This could be expanded, as some agencies do, to reflect that the Commission does not expect parties to provide information that is not relevant to the key competition issues of the merger assessment, is not available to them, or does not exist. This is particularly relevant in relation to the increased information requirements from a target business.

Q11 - The form requires more contact details than previously. Where these are not contacts the party currently has (for example competitors), and given the form requests contacts that are for specific named persons, we recommend that this should not be a requirement for holding up the registration of a filing. If the party is unable to find the data from publicly available sources (which is increasingly difficult given privacy/ health and safety requirements around contact details), then contacting the entity itself to ask for contact details could tip-off the entity to a confidential merger process. In this instance, we recommend the Commission should outline categories of information that would not hold up accepting the form and this information should fall in that category.

Q14 - Similarly, the new entry and expansion section asks which existing competitors are in a position to expand their market share using current capacity and what would be required for them to do so. Whilst this may be industry knowledge in some sectors, in others it may be competitively sensitive information that the parties do not

know (and therefore cannot provide). In this instance, we recommend the Commission should accept the form without this information.

Para 55 - Providing a detailed index of documents provided setting out dates, identity and role of authors is highly administrative and for small mergers potentially adding disproportionate cost. We do not see a rationale for all merger applicants having to do this.

Paras 51 - 56 The document request is drafted in a broad manner, more akin to court disclosure processes than merger filing forms, and it may be useful to consider whether a more proportionate regulatory burden should be set out here. We suggest that the document requests relating to counterfactual, rationale and competitive conditions information could be streamlined.

Many of the proposed additions may increase administrative demands and costs for both the Commission and merging parties, particularly small and medium-sized businesses. A 2022 MBIE report ([here](#)) highlighted that 97% of New Zealand businesses have fewer than 20 employees, illustrating that many businesses may not have access to the breadth and depth of information 'required' for a form. As such, we suggest the Commission consider how its form can remain focussed and proportionate to the economy before it, reflecting practices which have stood it in good stead in the past.

More generally in relation to the greater onus to provide documents with the merger form, including target documents, in our view this needs to only be introduced once the reforms have been passed to the Commerce Act that allow the Commission to protect this information from disclosure under the OIA. Otherwise, there is a risk that the additional risk of disclosure of highly sensitive internal documents will act as a real disincentive to engaging with the Commission at all in a voluntary regime.

We appreciate the opportunity to comment on the proposed revisions to the form and are available to discuss.

Nāku noa, nā Sarah and Antonia

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