



Terms of Reference

Merger Committee

October 2025



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Constitution

1. This document sets out the Terms of Reference for a duly constituted committee of the Commerce Commission Board (the Board), established under Schedule 5, clause 14 of the Crown Entities Act 2004.
2. It will be known as the Merger Committee (the Committee).

Purpose

3. To advise the Board on merger process strategy and to drive changes relevant to the merger process.

Committee Accountabilities

4. The Committee is appointed to advise the Board on merger strategy and to drive changes relevant to the merger process.
5. The Committee discharges its role at a governance oversight level and does not hold the authority or power to make decisions on the Board's behalf.
6. The Board has agreed that the Committee will have the following accountabilities:
 - 6.1. providing input into government policy initiatives in the merger policy area, including any changes to the Commerce Act
 - 6.2. holding the Merger function to account for continuing to improve the efficiency of the merger regime (including operating consistently with the expectations of the Review meeting any new statutory performance requirements);
 - 6.3. improving efficiency metrics; strategic and proactive media/comms; working with the mergers advisory group;
 - 6.4. approving periodic ex-post merger reviews;
 - 6.5. maintaining oversight of the Commerce Act authorisation regime;
 - 6.6. maintaining oversight of the Commerce Act authorisation process, including considering opportunities for improvements to the process to ensure efficiency of the regime;
 - 6.7. oversight of ex-post merger reviews;
 - 6.8. reporting to the Board on Committee work programme

6.9. ensure Commissioners and Associate Commissioners are kept informed of relevant developments in mergers

6.10. any other merger related issues that do not relate to a specific merger clearance or authorisation application that is being considered by a separate committee, excluding merger appeals, non-notified mergers and divestment undertakings which are matters for the Enforcement Committee.

Separate merger clearance or authorisation committees

7. Separate decision-making committees will be established by the Chair to determine each merger clearance or authorisation application received by the Commission. The Board has delegated to the Chair of the Commission the authority to establish merger clearance and authorisation committees on an as required basis noting that, under section 105 of the Commerce Act, the Board cannot delegate decisions in respect of authorisations. Accordingly, any committee established to consider authorisations would be established as advisory to the Board.
8. Members of the Merger Committee may also be appointed by the Chair as members of a specific merger clearance or authorisation committee.

Membership

Appointment

9. Members of the Committee shall comprise members appointed by the Board by resolution.
10. It shall be comprise at least two Committee members, of which at least two will be a Commissioners.
11. Committee members may be Commissioners, Associate Commissioners, Commission staff or external persons that the Board may wish to appoint.
12. Committee membership details are outlined in Annex A which refer to both Core Members and Other Members. Core Members and Other Members are members of this Committee.

13. Regarding the appointment of Associate Commissioners, it is good practice that the Committee's functions and powers are within the member's notice of appointment. If they are not, then Associate Commissioners may still be appointed, however it will be in the capacity of an external member and not as part of their Associate Commissioner role.
14. Should a Committee member resign or retire during the period in which the Committee is operating, the Board may choose to appoint a replacement member.

Role of Convenor

15. The Board will also appoint a Convenor of the Committee. The Convenor's primary role is to:
 - 15.1. Lead each meeting of the Committee, ensuring the agenda is efficiently progressed and conversations in the meeting are focused and balanced and guide the Committee towards decision making;
 - 15.2. Ensure the Board is kept informed in a timely manner of material risks which may affect the Commission, or of matters which might impact (adversely or positively) on the reputation of the Commission;
 - 15.3. Liaise with the relevant General Manager to ensure an effective and efficient agenda is set that meets the needs of the Committee and who needs to be in attendance, including whether other Commissioners/Chair need to be in attendance;
 - 15.4. Lead and facilitate (with support from the General Manager (or nominated delegate), and input from other members) the process of reporting to the Board on the Committee's work programme, progress, and results;
 - 15.5. To invite the Chair to attend as needed, with an expectation that the Chair will be invited to attend when a matter involving significant risk to the Commission is to be considered;
 - 15.6. To invite "other" members of the committee when their specialisation may be required for committee matters.
 - 15.7. Provide feedback on the performance of the relevant General Manager(s) to the Chief Executive, via mechanisms agreed with the Chief Executive and

- 15.8. Be responsible for leading stakeholder engagement for the regulatory system and act as primary spokesperson for the Commission in relation to the subject area of the committee.
16. In the Convenor's absence, members present at a meeting of the Committee will appoint one Commissioner or Associate Commissioner as Convenor for the meeting.

Responsibilities of members

17. In discharging their role as a member of the Committee, all members (including staff members and external members) should act in accordance with the expectations set out in the Commission's Governance Manual – particularly Chapter Four (General Board and Member Duties) and Chapter Nine (Board Committees and Divisions).
18. Committee members who are not Board members will also act in accordance with Schedule 5, clause 15 of the Crown Entities Act 2004 (these sections cover matters such as remuneration, expenses, employment requirements, liabilities and insurance), and any contract or letter of appointment agreed with the Commission in terms of their membership.

Procedure

Meetings

19. The Committee will meet as determined by the Convenor, ensuring sufficient notice is provided to other Committee members.
20. The Committee may undertake any of its roles or functions via email, outside of formal meetings.
21. The Committee may seek independent advice and obtain information if the Convenor of the Committee considers it is necessary. This will generally be arranged through the accountable General Manager.

Quorum

22. The quorum for all meetings of the Committee is two Committee members, of which at least one must be a Commissioner.

Attendance

23. Any Committee member who cannot attend a regularly scheduled meeting of the Committee must provide their apologies to the Chair ahead of the meeting.
24. Any Commissioner who is not a member of the Committee may attend any meeting of the Committee as an observer, so long as they provide sufficient notice to the Chair and are not otherwise excluded (i.e. in order to manage interests or potential conflicts of interest).
25. The Committee may have in attendance members of staff such as the Chief Executive and other persons as it considers necessary to provide appropriate information and explanations to the Committee. Attendance should be kept at a reasonable level and staff members may be asked to withdraw at the discretion of the Committee.

Reporting

26. To ensure the Board is kept sufficiently informed of the Committee's work programme, priorities and any significant risks the Committee will provide a report to the Board on a quarterly basis outlining the Committee's work programme highlights, upcoming matters of significance and any risks.
27. Outside of this report, the Convenor should ensure they escalate any matters on an as-required basis to the Board if they have broader implications for the Commission.

Administration

28. Secretariat services, planning, delivery and decision-making support will be provided by the Competition, Fair Trading and Credit (CFTC) Branch, via the General Manager as the accountable General Manager.¹
29. The accountable General Manager is responsible for ensuring papers are circulated to Committee members in a timely manner and in line with the process and deadlines issued by the Office of the Board and Chief Executive. Any distribution of papers after the stated deadline must be approved by the Convenor.

¹ Note that, for the avoidance of doubt, while the accountable General Manager remains the key point of accountability for the Committee, the accountable General Manager may delegate administration and delivery responsibility within their Branch.

30. The secretariat will be responsible for preparing the minutes of each meeting, circulating minutes for review, and maintaining the minutes of each meeting as a complete record in accordance with records management requirements. Draft minutes will be circulated to all the Committee members as soon as practicable after each meeting.
31. Aside from the matters outlined in this Terms of Reference and in the Commission’s Governance Manual, the Committee may set its own procedure as it sees fit.

Term of office

32. The Committee will continue to meet under these Terms of Reference until the Board chooses to vary them or dissolve the Committee. The Terms of Reference may be amended, varied or modified at the agreement of the Board.

Version control

Date	Version	Author	Comments
30/08/2025	1.0	Gemma Allcock, Senior Governance Adviser	Initial drafting

Annex A – Committee Membership

Core Members

“Core” members will be in attendance at all / most committee meetings and are actively involved in, and accountable for, committee matters.

The “core” members of the Merger Committee are:

- Derek Johnston (Convenor)
- John Small
- Anne Callinan

Other Members

Other members will have involvement in committee matters on an as needed basis as per their specialist areas outlined below.

It is the responsibility of the Convenor, when setting the agenda with staff, to identify which matters should involve “other” members and ensure they are invited for those items.

If an “other” member (or members) attend for a particular item, that should be clearly noted in the minutes. When attending a meeting “other” members have the same voting rights as “core” members and count towards the meeting quorum.

There are no “other” members of the Merger Committee.