



# Mergers and Acquisitions – Applying for a Clearance

This fact sheet explains when and why a business might want to apply to the Commerce Commission for clearance of a proposed merger. It is designed to give businesses an understanding of the process we follow when we consider a clearance application.

Mergers can bring many benefits to the New Zealand economy by making it possible for businesses to be more efficient and innovative. But some mergers can harm competition by giving the merged businesses market power which could result in higher prices and reduced choice or quality for consumers. Under the Commerce Act, the Commission can prevent anti-competitive mergers from going ahead.

## **Why should a business apply for a clearance?**

If a business thinks that its proposed merger with a competitor might be viewed as anti-competitive, it can seek the Commission's approval for the merger to proceed. This is known as a clearance.

If the Commission grants a clearance, the merger is protected from legal action under New Zealand's competition laws. The applicant has one year from when the clearance is granted (or confirmed by a court) to carry out the merger without the risk of the merger being stopped on competition grounds.

## **When will the Commission give clearance to a proposed merger?**

The Commission will give clearance to a proposed merger if we are satisfied that the merger is unlikely to have the effect of substantially lessening competition in a market.

## **Does every merger have to be approved by the Commission?**

No. New Zealand's merger regime is voluntary, meaning there is no legal requirement for businesses to tell the Commission about a proposed merger. Businesses can proceed with a merger without applying for clearance from the Commission. However, if a merger does raise competition issues, proceeding without a clearance may put a business at risk of legal action from the Commission or others.

Businesses should seek independent legal advice about whether their proposed merger raises competition issues and whether they should seek clearance from the Commission.

If a business thinks that its proposed merger with a competitor might be viewed as anti-competitive, it can seek the Commission's approval.

## Applying for a clearance – first steps

Businesses should contact the Commission as early as possible to inform us about a potential application for clearance.

Businesses are also welcome to come and talk to us about their proposed merger. While these discussions are not compulsory, they can speed up the process if a business does decide to apply for clearance.

We appreciate that mergers can be time-sensitive and so we try to complete all applications as soon as practical. Businesses should advise us of any commercial deadlines to help ensure these are met where possible.

## Submitting an application

Applications for clearance must be made on the application form available on the Commission’s website [www.comcom.govt.nz](http://www.comcom.govt.nz) under Business Competition.

The application form allows us to gather relevant information to assess the proposed merger and lets businesses present their arguments.

The application must be accompanied by payment of the fee - \$2,300.

Once we have registered an application, and removed confidential and commercially sensitive information, we will publish the public version of the application on our website. We also issue a media release confirming that we have received the application.

## The process for assessing an application

Once we receive an application for clearance, we form an investigation team, made up of investigators and specialist economic and legal staff. The team gathers information from competitors, suppliers and customers in the industry. The Commissioners then decide whether to approve, or not approve, the proposed merger.

For more information on how we assess a merger application, read our fact sheet *Mergers and Acquisitions – Merger Assessment* at [www.comcom.govt.nz/mergers-and-acquisitions](http://www.comcom.govt.nz/mergers-and-acquisitions)

Below is an indicative timetable of our assessment of an application for clearance. Timeframes may vary depending on how complex the case is.

|           |  |
|-----------|--|
| Day 1     | Application for clearance registered.  |
| By day 10 | We provide a draft timeline for assessing the application based on how complex we think it is and staff resources available. |
| By day 15 | We publish a “Statement of Preliminary Issues” on our website.   |
| Day 25    | We give clearance (for straightforward applications) or send a “Letter of Issues” to the applicant.                          |
| Day 30    | We meet with the applicant and provide an updated tentative timeline.  |
| Day 40    | We give, or decline to give, clearance.  |

### What is a Statement of Preliminary Issues?

A Statement of Preliminary Issues outlines the Commission’s initial view of the competition issues that could arise if the proposed merger took place. We will usually publish a public version of the statement on our website and also issue a media release. Responses to the Statement of Preliminary Issues should be made to the Registrar and must clearly identify any confidential information.

### What is a Letter of Issues?

Where we have concerns about potential competition issues, we may send a Letter of Issues to the applicant inviting them to respond and/or provide further information. We will not send a Letter of Issues in every case.

### Publishing our decisions

Once we have finished our assessment of an application for clearance, the Commission will make a decision on whether to give, or decline to give, clearance.

We will give the applicant a “Notice of Clearance” or a “Decline of Clearance”. We will then announce our decision publicly through a media release.

We provide written reasons for our decisions and publish these on our website. This is done to help businesses and the wider community better understand how the Commission works and how we make our decisions.

### Authorisations under the Commerce Act

Under the Commerce Act, the Commission can authorise an anti-competitive merger if it is satisfied that the benefits to the public outweigh the harm resulting from the lessening of competition. More information on authorisations can be found on the Commission’s website at [www.comcom.govt.nz/streamlined-authorisation-process-guidelines/](http://www.comcom.govt.nz/streamlined-authorisation-process-guidelines/)

#### For more information

- Visit our website for guidelines, previous clearance applications and Commission decisions  
[www.comcom.govt.nz/mergers-and-acquisitions](http://www.comcom.govt.nz/mergers-and-acquisitions)
- To discuss a possible merger, email the Mergers and Authorisations Manager at [msgmanager@comcom.govt.nz](mailto:msgmanager@comcom.govt.nz) or call 04 924 3600
- To apply for a merger clearance, or respond to a Statement of Preliminary Issues contact the Registrar at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz)

This fact sheet is a guide only and reflects the Commission’s view. The publication is not intended to be definitive and should not be used instead of legal advice. It is businesses’ responsibility to remain up to date with legislation. Only the courts can make a ruling on breaches of the Commerce Act.

To check for updates to this fact sheet visit: [www.comcom.govt.nz/mergers-and-acquisitions](http://www.comcom.govt.nz/mergers-and-acquisitions)  
This fact sheet is part of a series looking at the Commerce Act and anti-competitive practices. Other fact sheets can be downloaded from [www.comcom.govt.nz/business-competition](http://www.comcom.govt.nz/business-competition)

#### Contact Us

Contact the Commerce Commission with information about possible breaches of the Commerce Act.

**Phone:** 0800 943 600

**Write :** Contact Centre, PO Box 2351, Wellington 6140

**Email :** [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)