

The Commerce Act

# 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 (or increasing those businesses' existing 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 1 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 practicable. 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 our website at [www.comcom.govt.nz](http://www.comcom.govt.nz).

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 – \$3,680 (incl GST).

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.

It is an offence for any person to attempt to deceive or knowingly mislead us through communications with us. The penalty for this offence is a fine not exceeding **\$100,000** for an individual, or **\$300,000** for a business.



## 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. The Commission has 40 working days to make its decision, unless the Commission and the applicant agree to an extension to this statutory deadline.

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

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

Day 0	Clearance application registered.
By day 5	We publish a Statement of Preliminary Issues on our website. We provide a draft investigation timeline.
By day 30	Initial interviews and information gathering are completed.
By day 40	We give clearance to the proposed merger or decide to send a Statement of Issues.

### 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 Statement of Issues

Where we have concerns about potential competition issues, we may send a Statement of Issues to the applicant inviting them to respond and/or provide further information. We will usually publish a public version of the Statement of Issues on our website. We will not send a Statement of Issues in every case. In more difficult cases, or where we still have competition concerns after the applicant has responded to our Statement of Issues, we may send a Statement of Unresolved Issues to the applicant.

## Publishing our decisions

Once we have finished our assessment of an application for clearance, we 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. Read more about authorisations at [www.comcom.govt.nz](http://www.comcom.govt.nz).

## For more information

- Visit our website for guidelines, previous clearance applications and Commission decisions [www.comcom.govt.nz](http://www.comcom.govt.nz)
- To discuss a possible merger, email the Mergers Manager at [mergers@comcom.govt.nz](mailto:mergers@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 provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

You can subscribe for information updates at [www.comcom.govt.nz/subscribe](http://www.comcom.govt.nz/subscribe)

Contact us with information about possible breaches of the laws we enforce:

**Phone:** 0800 943 600 **Write:** Enquiries Team, PO Box 2351, Wellington 6140 **Email:** [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

