

ICN MERGER NOTIFICATION AND PROCEDURES TEMPLATE

Merger Working Group

Australian Competition and Consumer Commission

15 March 2021

IMPORTANT NOTE: This template is intended to provide background on ICN jurisdiction’s merger notification and review procedures.

Reading the template is not a substitute for consulting the referenced statutes and regulations.

[Please include, where applicable, any references to relevant statutory provisions, regulations, or policies as well as references to publicly accessible sources, if any.]¹

1. Merger notification and review materials [references to publicly accessible sources (homepage address) and indication of the languages in which these materials are available]
--

Statutory Laws

A. Notification provisions	<p>Pre-merger notification is not mandatory in Australia. However, for any merger that has the potential to raise competition concerns, parties are encouraged to approach the Australian Competition and Consumer Commission (ACCC) as soon as there is any real likelihood that a proposed acquisition may proceed and certainly well before the completion of the acquisition.</p> <p>There are a range of non-compulsory options for parties to have their merger considered by the ACCC. These include:</p> <ul style="list-style-type: none">• Informal merger clearance: parties may seek the ACCC’s view on whether it considers that the merger will have the effect or would be likely to have the effect of substantially lessening competition in a market in Australia in contravention of section 50 of the <i>Competition and Consumer Act 2010</i>, such that it will seek an
-----------------------------------	--

¹ Editor’s note: all the comments in [square brackets] are intended to assist the agency when answering this template but will be removed once the completed template is made public.

injunction to stop the merger from proceeding. The ACCC will decide to either conduct a public informal merger review or to 'pre-assess' the matter where there is a low risk of competition concerns and therefore a public informal merger review is not considered necessary. Acquisitions that are in the public domain and that the ACCC has determined cannot be pre-assessed undergo a public informal merger review.

- **Merger authorisation:** parties may seek legal protection from court action under section 50 by applying to the ACCC for merger authorisation. Pursuant to section 90(7), the ACCC can grant merger authorization if it is satisfied that either:
 - (i) the proposed acquisition would not be likely to substantially lessen competition, or
 - (ii) the likely public benefit from the proposed acquisition outweighs the likely public detriment.

To assist merger parties and their advisers to determine whether they should notify the ACCC, the ACCC has provided indicative guidance in its merger guidelines that are designed to reflect the ACCC's experience in conducting merger reviews that potentially raise competition concerns.

Merger parties are also encouraged to notify the ACCC if there is any other reason to consider a transaction may raise competition concerns, or if the ACCC has indicated to a firm or industry that notification of mergers by that firm or in that industry would be advisable.

Merger parties are encouraged to notify the ACCC where both of the following apply:

- the products of the merger parties are either substitutes or complements
- the merged firm will have a post-merger market share of greater than 20 per cent in the relevant market/s.

See page 7 of the [ACCC Merger Guidelines](#) and pages 7-8 of the [ACCC Informal Merger Process Guidelines](#).

B. Substantive merger review Provisions	<p>The relevant sections of the <i>Competition and Consumer Act 2010</i> are:</p> <ul style="list-style-type: none"> • Section 50 – Prohibits mergers that would have the effect, or be likely to have the effect, of substantially lessening competition in a market • Section 88 to 90 – Merger authorisation provisions
C. Implementing regulations	<p>The relevant statutory provision in relation to mergers are found in the <i>Competition and Consumer Act 2010</i>: https://www.legislation.gov.au/Details/C2021C00055/Download</p>
D. Notification forms or information requirements	<p>There is no prescribed form that parties must use when requesting informal merger clearance, nor is there any fee. The ACCC’s Informal Merger Review Process Guidelines provide guidance as to the type of information that parties should provide in an informal clearance application.</p> <p>See Appendix A of the ACCC Informal Merger Process Guidelines.</p> <p>An application for merger authorisation should be consistent with the form approved by the ACCC (see links below) and be accompanied by electronic versions of any relevant information, documents and evidence.</p> <p>An applicant must include:</p> <ul style="list-style-type: none"> • a public version of their application, which will be placed on the ACCC’s public register • a signed declaration that the information in their application is true, correct and complete, and • a section 87B undertaking not to complete the proposed acquisition while the ACCC is considering the application. <p>Application forms for merger authorisation are available here: https://www.accc.gov.au/business/mergers/forms-fees.</p>

Interpretative Guidelines and Notices

E. Guidance on Merger Notification Process [e.g., information on calculation of thresholds, etc.]	<p>The ACCC Informal Merger Process Guidelines set out the administrative informal process by which the ACCC undertakes assessments of mergers and acquisitions.</p> <p>The ACCC Merger Authorisation Guidelines provide guidance on the process and approach of the ACCC to assessing applications for merger authorisation.</p>
F. Guidance on Substantive Assessment in Merger Review [Please include reference separately, if applicable]	<p>The ACCC Merger Guidelines set out the analytical approach to merger analysis under section 50 of the <i>Competition and Consumer Act 2010</i>.</p> <p>The ACCC Merger Authorisation Guidelines set out how the ACCC assesses applications for merger authorisation.</p>
G. Has your agency published guidelines or directives on notification of mergers involving specific sectors (e.g., digital economy)? [If affirmative, please provide references and languages available]	<p>The ACCC Media Merger Guidelines provide guidance on the ACCC's approach to media mergers and outline potential areas of focus for the ACCC when assessing mergers in the media sector. These guidelines should be read in conjunction with the ACCC Merger Guidelines.</p>
H. Other relevant notices, policy statements, interpretations, rules, or guidance on aspects of merger review or the agency's decision-making process	<p>Fact sheet: The ACCC's approach to merger reviews</p> <p>Fact sheet: Gun jumping risks for merger transactions</p>

2. Agency (or Agencies) responsible for merger enforcement.	
A. Name of the Agency which reviews mergers. If there is more than one agency, please describe the allocation of responsibilities.	<p>Australian Competition and Consumer Competition</p>
B. Contact details of the agency [address and telephone including the country code, email, website address and languages available on the website]	<p>Australian Competition and Consumer Commission 23 Marcus Clarke Street Canberra ACT 2601 GPO Box 3131 Canberra ACT 2601</p>

	Email: mergers@acc.gov.au https://www.acc.gov.au/
C. Is agency staff available for jurisdiction/filing guidance? [If yes, please provide contact points for questions on merger filing requirements and/or consultations]	Executive General Manager Mergers, Exemptions and Digital Australian Competition and Consumer Commission GPO Box 3131 Canberra ACT 2601 Email: mergers@acc.gov.au Tel: (02) 6243 1368 Fax: (02) 6243 1212

3. Covered transactions	
A. Thorough definition of potentially covered transactions [i.e., share acquisitions, asset acquisitions, mergers, de-mergers, consolidations, consortia, amalgamations, joint ventures or other forms of contractual relationships, such as partnerships and alliance agreements]	<p>Section 50 of the <i>Competition and Consumer Act 2010</i> prohibits a corporation from directly or indirectly acquiring shares in the capital of a body corporate or any assets of a person where the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.</p> <p>Section 50 of the <i>Competition and Consumer Act 2010</i> also prohibits a person from directly or indirectly acquiring shares in the capital of a corporation or any assets of a corporation if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.</p> <p>The reference to the acquisition of shares is defined as being a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such shares. The reference to the acquisition of assets of a person is defined as being a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such assets but does not include a reference to an acquisition by way of charge only or an acquisition in the ordinary course of business (section 4(4) of the <i>Competition and Consumer Act 2010</i>).</p>

	See paragraph 1.12 of the ACCC Merger Guidelines .
B. What is the geographic scope of transactions covered?	Section 50 of the <i>Competition and Consumer Act 2010</i> relates to transactions that will have the effect or are likely to have the effect of substantially lessening competition in any market in Australia.
C. If change of control is a determining factor, how is control defined and interpreted in practice?	<p>The ACCC takes into account a number of factors when considering whether a shareholding and/or other interest is sufficient to deliver control over a company, including:</p> <ul style="list-style-type: none"> • the ownership distribution of the remaining shares and securities, including ordinary and preference shares and any special shares • the distribution of voting rights, including any special voting rights • whether other shareholders are active or passive participants at company meetings • any restrictive covenants or special benefits attaching to shares • any pre-emption rights in relation to the sale of shares or assets • any other contracts or arrangements between the parties • the rights and influence of any significant debt holders • the composition of the board of directors • the company's constitution. <p>See paragraph 10 of Appendix 2 of the ACCC Merger Guidelines.</p>
D. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels? Are acquisitions of assets ever covered? If so, do the assets have to form a free-standing business or can the combination of the assets with the business of the acquirer be considered in order to have jurisdiction? Does the authority have jurisdiction over "bare"	Partial acquisitions and minority acquisitions are covered. There is no threshold shareholding at which transactions are covered by section 50 of the <i>Competition and Consumer Act 2010</i> . Section 50 applies to any acquisition of shares or assets which would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

asset purchases, e.g. where the assets purchased do not relate to the acquirer's existing business?

While questions of control or influence will be important, anticompetitive effects may arise from shareholdings which do not necessarily confer such control or influence. The following are examples of potential anti-competitive effects which may arise in circumstances where the proposed merger involves the acquisition of shareholdings below a level which would confer control of the target firm:

- some horizontal acquisitions may reduce competitive tension between rivals and/or increase the incentive and ability to coordinate conduct
- acquisitions in one market by parties that are rivals in another market may facilitate coordinated conduct in the other market
- some vertical acquisitions may result in anti-competitive foreclosure of rival suppliers.

See paragraph 9 of Appendix 2 of the [ACCC Merger Guidelines](#).

Where share acquisitions do not deliver control, the ACCC will take into consideration inter-company relationships, director's duties, and a range of other factors including:

- the actual ownership share of the minority interest
- the existence of any contractual or other arrangements that may enhance the influence of the minority interest
- the size, concentration, dispersion and rights of the remaining ownership shares
- the board representation and voting rights of the minority interests.

See paragraph 19 of Appendix 2 of the [ACCC Merger Guidelines](#).

Acquisitions of assets are covered, whether free-standing or the combination of an asset and a business. Bare asset purchases are also covered.

The *Competition and Consumer Act 2010* applies to both direct and indirect acquisitions. Section 4(1) makes it clear that 'acquire' is not limited to acquisition by way of purchase but also includes exchange, lease, hire or hire purchase.

4. Thresholds for notification	
A. What are the general thresholds for notification? [If the thresholds are subject to adjustment, state on what basis and how frequently (e.g., for inflation, annually)]	<p>While there is no compulsory notification requirement for mergers in Australia, it is recommended that certain mergers be voluntarily notified to the ACCC for review.</p> <p>To assist merger parties and their advisers to determine whether they should notify the ACCC, the ACCC has provided indicative guidance in its merger guidelines that are designed to reflect the ACCC’s experience in conducting merger reviews that potentially raise competition concerns.</p> <p>Merger parties are encouraged to notify the ACCC well in advance of completing a merger where both of the following apply:</p> <ul style="list-style-type: none"> • the products of the merger parties are either substitutes or complements • the merged firm will have a post-merger market share of greater than 20 per cent in the relevant market/s. <p>The notification threshold is indicative only. A merger that does not meet the notification threshold may still raise competition issues – the ACCC may investigate such mergers, even if they have not been notified to it.</p> <p>Merger parties are also encouraged to notify the ACCC if there is any other reason to consider a transaction may raise competition concerns, or if the ACCC has indicated to a firm or industry that notification of mergers by that firm or in that industry would be advisable.</p> <p>See page 7 of the ACCC Merger Guidelines.</p>
B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?	<p>There is no statutory pre-merger notification requirement in Australia. Generally the acquiring person(s) will approach the ACCC to discuss, or request an informal clearance of, a proposed acquisition.</p>

<p>C. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an “effects doctrine”, please describe how this is applied in practice. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?”</p>	<p>A merger will contravene Australian merger law if the merger would have the effect or would be likely to have the effect of substantially lessening competition in a market in Australia (section 50; section 50A; section 4E of the <i>Competition and Consumer Act 2010</i>.</p> <p>Section 50 of the <i>Competition and Consumer Act 2010</i> applies to:</p> <ul style="list-style-type: none"> • acquisitions of shares or assets within Australia; and • acquisitions of shares or assets wherever situated if the acquirer is incorporated in Australia, carries on business in Australia, is an Australian citizen or ordinarily resides in Australia (s. 5(1) of the <i>Competition and Consumer Act 2010</i>). <p>Section 5(1) is available at: https://www.legislation.gov.au/Details/C2021C00055/Download</p> <p>Section 50A contemplates circumstances in which s 50 does not apply but the merger substantially lessens competition in Australia.</p>
<p>D. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</p>	<p>N/A</p>
<p>E. Are any sectors excluded from notification requirements? If so, which sectors? To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>Section 51(1) of the <i>Competition and Consumer Act 2010</i> provides for exceptions from section 50 for conduct that is specified in and specifically authorised by Commonwealth legislation.</p> <p>As with all exceptions under section 51, the relevant Commonwealth law must specify the excepted acquisition and specifically authorize it (section 51(1)(a)(i)). Acquisitions cannot be exempted from section 50 by state or territory laws (section 51(1C)(b)).</p>
<p>F. Are there special threshold calculations for specific sectors (e.g., banking, airlines, media, digital markets) or specific types of transactions (e.g., joint ventures, partnerships, financial</p>	<p>N/A</p>

investments)? If yes, for which sectors and types of transactions?	
<p>G. Are there special rules or exceptions/exemptions regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign (foreign-to-foreign transactions)? [Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets]</p>	<p>Where global mergers impact on a market in Australia they will generally be subject to the <i>Competition and Consumer Act 2010</i>.</p> <p>To the extent that the acquirer is incorporated or carrying on business within Australia and the merger involves the acquisition of shares or assets situated in Australia, the <i>Competition and Consumer Act 2010</i> applies without any extraterritorial scope.</p> <p>In the specific context of section 50, section 5(1) extends the operation of Part IV of the <i>Competition and Consumer Act 2010</i>, by providing section 50 with some limited extraterritorial operation.</p> <p>Under section 5(1), if the acquisition of shares or assets occurs outside Australia, the acquiring corporation must be either:</p> <ul style="list-style-type: none"> • incorporated within Australia, or • carrying on business within Australia.
<p>H. Does the agency have the authority to review transactions that fall below the thresholds or otherwise do not meet notification requirements? If so, what is the procedure to initiate a review? [Describe methodology for calculating exchange rates]</p>	N/A
<p>I. Are current notification criteria catching relevant transactions related to digital markets?</p>	<p>There is no statutory pre-merger notification requirement in Australia, however transactions related to digital markets are considered by the ACCC under section 50 of the <i>Competition and Consumer Act 2010</i>.</p>

Calculation Guidance and related issues

<p>J. If thresholds are based on any of the following values, please describe how they are identified and calculated to determine if notification is required:</p> <ul style="list-style-type: none"> i) the value of the transaction; ii) the relevant sales or turnover; iii) the relevant assets; iv) market shares; v) other (please describe). 	<p>There is no statutory pre-merger notification requirement in Australia. Merger parties are not legally required to notify the ACCC in accordance with any threshold values.</p> <p>However, as noted above, merger parties are encouraged to notify the ACCC well in advance of completing a merger where both of the following apply:</p> <ul style="list-style-type: none"> • the products of the merger parties are either substitutes or complements • the merged firm will have a post-merger market share of greater than 20 per cent in the relevant market/s. <p>See page 7 of the ACCC Merger Guidelines.</p>
<p>K. Which entities are included in determining relevant investment funds for threshold purposes? If based on control, is the definition of control in these cases any different from the definition of control in general (question 3C)? If yes, how?</p>	<p>N/A</p>
<p>L. In case an investment fund is part of a transaction, are its controllers required to present turnover information related to other funds under same manager (general partner) control? Are those other funds considered as part of the transaction for turnover purposes?</p>	<p>Information the ACCC may request in relation to a transaction is decided on a case by case basis. If the acquirer is an investment fund, the ACCC may ask for information relevant to any business interests held or managed by the fund and its related entities.</p>
<p>M. Describe the methodology applied for currency conversion [e.g. which exchange rates are used].</p>	<p>N/A</p>
5. Pre-notification	
<p>A. If applicable, please describe the pre-notification procedure and whether it can be mandatory or not [e.g., time limits, type of guidance given, etc.].</p>	<p>There is no statutory pre-merger notification requirement in Australia.</p> <p>Merger parties may make an application for informal merger clearance at any time. While there is no restriction on the earliest time that clearance can be sought, the ACCC may decline to provide informal clearance to a proposal which is considered purely speculative.</p>

	<p>The ACCC encourages merger parties to approach the ACCC as early as possible when a merger is contemplated and well before a merger is completed, to ensure the ACCC has sufficient time to consider whether a review is necessary and, if so, to conduct such a review.</p>
<p>B. If applicable, what information or documents are the parties required to submit to the agency during pre-notification?</p>	<p>There is no statutory pre-merger notification requirement in Australia.</p> <p>In the case of informal merger clearances, providing a basic level of information to the ACCC in non-controversial cases will usually be sufficient to satisfy the ACCC of whether or not a substantial lessening of competition is likely. Whether a wider range of information is required by the ACCC is assessed on a case-by-case basis and depends on the complexity of the matter and the potential competition issues raised.</p> <p>The following are examples of the types of information the ACCC may require in the initial notification:</p> <ul style="list-style-type: none"> • background information about the parties; • the structure of the market, including any relevant information about other major market participants; • the commercial rationale for the merger; and • an analysis of the proposed acquisition in terms of the factors referred to in section 50(3). <p>In the case of merger authorisations, a valid application requires:</p> <ul style="list-style-type: none"> • a public version of the application for publication on the public register containing sufficient information to enable public consultation on the application • payment of the lodgement fee of \$25 000 • a signed declaration by the applicant that the application is true, correct and complete

	<ul style="list-style-type: none"> • a signed undertaking under section 87B of the <i>Competition and Consumer Act 2010</i> not to proceed with the proposed acquisition while the ACCC is considering the application. <p>See: Application for merger authorisation</p>
--	---

6. Notification requirements and timing of notification	
A. Is notification mandatory? [Please describe if notification is mandatory in pre-notification phase, post-merger or voluntary]	No.
B. If parties can make a voluntary merger filing when may they do so?	<p>Merger parties may make an application for informal merger clearance at any time prior to the merger being completed. While there is no restriction on the earliest time that clearance can be sought, the ACCC may decline to provide informal clearance to a proposal which is considered purely speculative. The ACCC encourages merger parties to approach the ACCC as early as possible when a merger is contemplated and well before a merger is completed, to ensure the ACCC has sufficient time to consider whether a review is necessary and, if so, to conduct such a review.</p>
C. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)	<p>The ACCC will not consider a speculative agreement. The ACCC encourages merger parties to approach the ACCC as early as possible when a merger is contemplated and well before a merger is completed, to ensure the ACCC has sufficient time to consider whether a review is necessary and, if so, to conduct such a review.</p>
D. When must notification be made? If there is a triggering event, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for public takeover bids?	<p>The ACCC encourages merger parties to approach the ACCC as early as possible when a merger is contemplated and well before a merger is completed, to ensure the ACCC has sufficient time to consider whether a review is necessary and, if so, to conduct such a review.</p>

E. If there is a notification deadline, can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	No.
---	-----

7. Simplified Procedures	
A. Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain information requirements, etc.).	<p>The ACCC will expedite informal clearance decisions for mergers that it considers clearly do not raise competition concerns. For each merger, the ACCC will make an initial assessment based on the information available to determine whether a public review will be required. Where the ACCC is satisfied, based on the information provided, that there is a low risk of a merger substantially lessening competition, the ACCC may decide that it is not necessary to conduct a public review of that merger. These mergers are described as being ‘pre-assessed’.</p> <p>Failure to provide the ACCC with a base level of information at the outset may delay the ACCC’s review and final decision.</p> <p>Appendix A of the ACCC Informal Merger Process Guidelines includes a list of the initial level of information that the ACCC will generally require in order to undertake an informal review.</p>
B. Describe the criteria adopted to consider a transaction under the simplified procedure.	N/A

8. Information and documents to be submitted with a notification	
A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents, internal documents).	<p>In the case of informal merger clearances, the ACCC does not require particular documents or information to be submitted at the outset. The ACCC takes a scaled approach to information requirements which does not require merger parties to provide a complete information package at the outset and instead advises merger</p>

parties of the information that will be required throughout the review depending on the issues raised. The trade off in this approach is that merger parties are required to respond to these information requests promptly. Failure to provide the ACCC with a base level of information at the outset may delay the ACCC's review and final decision.

Guidance regarding what information to provide the ACCC in an initial submission is set out in Appendix A of the [ACCC Informal Merger Process Guidelines](#).

In the case of merger authorisations, the following documents are to be provided with a valid application:

- executed or most recent versions of the transaction documents, such as the sale and purchase agreement, heads of agreement, offer documents, and any related agreements
- final or most recent versions of documents governing or particularising the sale process for the proposed acquisition, such as information memoranda or documents required for schemes of arrangement, takeover bids or trust schemes
- documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed acquisition, and any minutes or record of the decision made. Provide the same documents from other parties to the proposed acquisition, to the extent available.

Applicants should consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the particular proposed acquisition for which merger authorisation is sought.

The [ACCC Merger Authorisation Guidelines](#) provide guidance on the process and approach of the ACCC to assessing applications for merger authorisation.

A valid merger authorisation application also requires:

	<ul style="list-style-type: none"> • a public version of the application for publication on the public register containing sufficient information to enable public consultation on the application • payment of the lodgement fee of \$25 000 • a signed declaration by the applicant that the application is true, correct and complete • a signed section 87B undertaking not to proceed with the proposed acquisition while the ACCC is considering the application. <p>See: Application for merger authorisation</p>
<p>B. Is there a distinction between tangible and intangible (e.g., customer portfolio, data on consumers, etc.) assets in the description of the transaction? [In respect to digital markets, state if the agency considers the amount of user data the companies have, and which will be passed on in the transaction]</p>	<p>The ACCC’s consideration of a transaction may involve consideration of tangible and intangible assets. What the ACCC considers relevant to consider as part of its competition assessment depends on the facts of each transaction. If a transaction involves both tangible and intangible assets, the ACCC is likely to consider both.</p>
<p>C. Are documents proving the efficiencies of the transaction required? [If applicable, please provide the type of documents normally required]</p>	<p>The ACCC generally only takes into consideration merger related efficiencies where the resulting efficiencies directly affect the level of competition. Accordingly it does not require particular documents or information to be submitted at the outset in relation to the efficiencies of the transaction. Information and documents that may be requested will be assessed on a case-by-case basis.</p> <p>In the case of merger authorisations, the ACCC expects applicants to provide robust evidence of benefits and detriments when submitting a merger authorisation application. Where an applicant considers its efficiency will improve, it should provide evidence to substantiate public benefit claims wherever possible. Such evidence could include accounting statements, internal studies, strategic plans, integration plans, management consulting studies, consumer surveys or research, and other available data.</p>

<p>D. What information is required in case the target company is experiencing financial insolvency?</p>	<p>In general, to demonstrate that an acquisition will not substantially lessen competition due to the prospective failure of the business being sold, it is necessary to satisfy the ACCC that:</p> <ul style="list-style-type: none"> • the relevant firm is in imminent danger of failure and is unlikely to be successfully restructured or refinanced without the acquisition; • in the absence of the acquisition, the assets associated with the relevant firm, including its brands, will leave the industry; and • the likely state of competition with the acquisition would not be substantially less than the likely state of competition after the firm has exited and the firm’s customers have moved their business to alternative sources of supply. <p>To assist the ACCC in making a timely assessment of a failing firm claim, parties and insolvency practitioners are encouraged to submit detailed information and documents in support of a claim that a party to the transaction is failing. This includes but is not limited to:</p> <ul style="list-style-type: none"> • evidence of financial deterioration • evidence that there is no prospect of saving the business (for example by restructure or refinance), and • evidence of good faith efforts to sell either the business as a going concern or its assets on closure, including the identity of potential purchasers. <p>Examples of the types of documents that may be requested include copies of financial statements including profit and loss statements, balance sheets, cash flow statements, Board Documents discussing financial modelling including financial forecasting and assumptions that underpin the modelling.</p>
<p>E. Is there a specific procedure for obtaining information from target companies in the case of hostile/ unsolicited bids?</p>	<p>No. However, the ACCC can use its mandatory information gathering powers under section 155 of the <i>Competition and Consumer Act 2010</i>, if the merger or acquisition relates to matters that constitute or may constitute contraventions under the <i>Competition and Consumer Act 2010</i> (i.e. section 50).</p>

<p>F. Are there any document legalization requirements (e.g., notarization or apostille)? What documents must be legalized?</p>	<p>In the case of informal merger clearances, there are no document legalisation requirements.</p> <p>In the case of merger authorisations, a valid application must include a signed declaration by the applicant acquirer(s) and, if applicable, the target, that the information in the application is true, correct and complete.</p> <p>See: Application for merger authorisation</p>
<p>G. What are the agency’s rules and practice regarding exemptions from information requirements (e.g., information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign (foreign-to-foreign transaction)?</p>	<p>Where global mergers impact on a market in Australia they will generally be subject to the <i>Competition and Consumer Act 2010</i>.</p> <p>In the case of informal merger clearances, the ACCC does not require particular documents or information to be submitted at the outset. The ACCC takes a scaled approach to information requirements which does not require merger parties to provide a complete information package at the outset and instead advises merger parties of the information that will be required throughout the review depending on the issues raised.</p>
<p>H. Can the agency require third parties to submit information during the review process? Can third parties voluntarily submit information or otherwise contact the agency to intervene?</p>	<p>Third parties can voluntarily provide information at any time in relation to the ACCC’s consideration of a transaction.</p> <p>Section 155 of the <i>Competition and Consumer Act 2010</i> grants coercive powers on the ACCC to require the provision of information, documents and evidence when investigating possible contraventions. Information may be required under section 155 from third parties where the ACCC has a reason to believe that the person or corporation is cable of furnishing information, producing documents or giving evidence to a matter that constitutes or may constitute a contravention of the <i>Competition and Consumer Act 2010</i>.</p>

I. Are parties allowed to submit information beyond what is required in the initial filing voluntarily (e.g., to help narrow or resolve potential competitive concerns)?	Parties may submit information voluntarily that they consider relevant to the ACCC's consideration of their transaction.
J. Are there different forms for different types of transactions or sectors?	No.
K. With respect to investment funds: i) Is it requested that an investment fund taking part in a transaction provide a statement that its controllers do not manage any other investment funds in the same relevant market? ii) Should an investment fund be controlled by an entity that is also responsible for other funds in the same relevant market, are such funds considered part of the transaction? Is it requested that the controlling entity provide market information (e.g., market share) related to the other funds it manages and which are in the same relevant market? iii) Should there be no classic concentration, is there any sort of exemption regarding presenting certain information requested in the form?	i) No ii) If an investment fund has related entities that have interests in the same market or related markets, the ACCC will request information in relation to the interests held by any related entity. iii) N/A
9. Translation	
A. In what language(s) can the notification forms be submitted?	Submissions to the ACCC should be written in English.

<p>B. Describe any requirements to submit translations of documents:</p> <ul style="list-style-type: none"> i) with the initial notification; and ii) later in response to requests for information. <p>In addition:</p> <ul style="list-style-type: none"> iii) what are the categories or types of documents for which translation is required; iv) what are the requirements for certification of the translation; v) which language(s) is/are accepted; and vi) are summaries or excerpts accepted in lieu of complete translations and in which languages are summaries accepted? 	<p>If documents are not written in English, English translations should be provided if they are to be considered by the ACCC in its review.</p>
--	---

10. Review Periods	
<p>A. Describe any applicable review periods following notification.</p>	<p>In the case of informal merger clearances, a summary of the typical review timeframes is provided on page 5 of the ACCC Informal Merger Process Guidelines.</p> <ul style="list-style-type: none"> • A confidential pre-assessment typically takes 3 weeks. • A public review typically takes 12 weeks after the pre-assessment stage concludes, at the end of that period the ACCC will announce a finding, being either a final decision or a Statement of Issues (SOI) • A public review that includes an SOI being published and consulted on, typically takes around 6 – 12 weeks after the SOI is published. <p>See pages 12 to 14 (Tables 2 to 4) of the Informal Merger Review Guidelines for further detail on the steps the ACCC takes during each stage of the review process.</p> <p>In the case of merger authorisations, review periods are subject to strict timeframes. The ACCC must make a determination either granting or denying merger authorisation within 90 days of receiving a valid application.</p>

	<p>If the ACCC does not make a determination within 90 days (or within the extended time period as agreed), the application is taken to be refused. The 90 day statutory time period also applies to applications for revocation, revocation and substitution, or minor variation of a merger authorisation.</p> <p>The 90 day time limit can be extended by any additional period provided the applicant agrees, in writing, before the expiration of the time period.</p>
<p>B. Are there different rules for public tenders (e.g., open market stock purchases or hostile bids)?</p>	<p>No.</p>
<p>C. What are the procedures for an extension of the review periods, if any? Do requests for additional information suspend or re-start the review period?</p>	<p>In the case of informal merger clearances, the ACCC aims to conduct reviews as expeditiously as possible. However, there is no time limit to the review period.</p> <p>In the case of merger authorisations, the 90 day time limit can be extended by any additional period provided the applicant agrees, in writing, before the expiration of the time period.</p> <p>There may be circumstances where an extension to the merger authorisation review timeframe will be more likely to be requested by the ACCC, for example:</p> <ul style="list-style-type: none"> • the issues are complex and require extensive engagement with the applicant or third parties • the ACCC needs to obtain or review extensive material • there is a delay in the parties providing information to the ACCC in response to an information request.
<p>D. Is there a statutory or other maximum duration for extensions?</p>	<p>In the case of informal merger clearances, the ACCC aims to conduct reviews as expeditiously as possible. However, there is no time limit to the review period.</p>

	In the case of merger authorisations, the 90 day time limit can be extended by any additional period provided the applicant agrees, in writing, before the expiration of the time period.
E. Does the agency have the authority to suspend review periods? Does suspending a review period require the parties' consent?	<p>In the case of informal merger clearances, indicative timelines are published by the ACCC to give the merger parties and the public the best possible guide to the likely timing of an informal merger review. However, these timelines are subject to review and amendment by the ACCC where circumstances require. Amendments to the timeline in an informal merger review do not require the consent of the parties.</p> <p>In the case of merger authorisations, extending the 90 day time limit requires the agreement of the applicant. If the ACCC does not make a determination within 90 days (or within the extended time period as agreed), the application is taken to be refused.</p>
F. What are the time periods for accelerated review of non-problematic transactions, if any?	The ACCC operates an informal merger clearance regime that is well-suited to timely consideration of non-problematic transactions. The ACCC will expedite informal clearance decisions for mergers that it considers clearly do not raise competition concerns. For each merger, the ACCC will make an initial assessment based on the information available to determine whether a public review will be required. Where the ACCC is satisfied, based on the information provided, that there is a low risk of a merger substantially lessening competition, the ACCC may decide that it is not necessary to conduct a public review of that merger. These mergers are described as being 'pre-assessed'. If the ACCC considers a merger is non-problematic, it may reach a decision within 3 weeks. There is no provision in the <i>Competition and Consumer Act 2010</i> for accelerated reviews of merger clearance applications.
G. If remedies are offered, do they impact the timing of the review?	It is the ACCC's practice to consult publicly on proposed remedies and the timeframes for a final assessment may need to be extended to allow for the necessary consultation process.

	<p>In the case of informal merger clearances, consultation on proposed remedies may occur at any stage throughout a review. The duration of consultation on proposed remedies will depend on the complexity of the issues and remedies proposed.</p> <p>In the case of merger authorisations, an extension to the 90 day review period is likely to be requested by the ACCC where the applicant proposes a remedy to address possible concerns with the application.</p>
--	---

11. Waiting periods / suspension obligations	
<p>A. Describe any waiting periods/suspension obligations following notification (e.g., full suspension from implementation, restrictions on adopting specific measures) during any initial review period and/or further review period.</p>	<p>There is no statutory pre-merger notification requirement in Australia and no suspension of notified transaction pending ACCC clearance. However, it is recommended that certain mergers be voluntarily notified to the ACCC for review. Merger parties may make an application for informal merger clearance at any time prior to the merger being completed.</p> <p>In the case of informal merger clearances, there is no requirement that merger parties wait until the ACCC has completed its assessment of the acquisition before completing the merger. However, the risk in not waiting for the ACCC's assessment to conclude is the possibility of injunction, divestiture orders and/or significant pecuniary penalties if the merger is found to contravene section 50 of the <i>Competition and Consumer Act 2010</i> by the Federal Court of Australia. Although there is no requirement for merger parties to do so, for some more complex or contentious matters, the ACCC may request an undertaking from the merger parties stating that they will not proceed with the acquisition until the ACCC has reached its decision, or at least without providing sufficient advance notice to the ACCC.</p> <p>In the case of merger authorisations, at the time of applying for merger authorisation, the applicant must provide an undertaking under section 87B of the <i>Competition and Consumer Act 2010</i> not to complete the proposed acquisition while the ACCC is considering the application.</p>

<p>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</p>	<p>N/A</p>
<p>C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the agency's jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent can the parties implement the transaction outside the agency's jurisdiction prior to clearance (e.g., through derogation from suspension, hold separate arrangements)?</p>	<p>N/A</p>
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>In the case of informal merger clearances, there is no requirement that merger parties wait until the ACCC has completed its assessment of the acquisition before completing the merger. However, the risk in not waiting for the ACCC's assessment to conclude is the possibility of injunction, divestiture orders and/or significant pecuniary penalties if the Federal Court of Australia finds that the merger contravenes section 50 of the <i>Competition and Consumer Act 2010</i>.</p> <p>In the case of merger authorisations, if the ACCC does not determine an application for a merger authorisation within the 90 day period, the ACCC is taken to have refused to grant authorisation.</p>
<p>E. Describe any provisions or procedures available to the enforcement agency, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>In the case of merger authorisations, consistent with section 89(1AA) of the <i>Competition and Consumer Act 2010</i>, the ACCC requires the application to contain an undertaking that the applicant acquirer(s) will not complete the proposed acquisition to which authorisation relates while the ACCC is considering the application. Extending the 90 day review period requires the agreement of the applicant. If the ACCC does not make a determination within 90 days (or within the extended time period as agreed), the application is taken to be refused. Section 90 of the <i>Competition and Consumer Act 2010</i></p>

	is the relevant provision relating to time extensions to the statutory time limit for merger authorisations.
F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.	N/A
G. Describe any provisions or procedures allowing the parties to close the transaction at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).	<p>In the case of informal merger clearances, in the event that merger parties notify the ACCC of a proposal or apply for informal merger clearance, there is no requirement that merger parties wait until the ACCC has completed its assessment of the acquisition before completing the merger. However, the risk in not waiting for the ACCC's assessment to conclude is the possibility of injunction, divestiture orders and/or significant pecuniary penalties if Federal Court of Australia finds that the merger contravenes section 50 of the <i>Competition and Consumer Act 2010</i>.</p> <p>In the case of merger authorisations, at the time of applying for merger authorisation, the applicant must provide an undertaking under section 87B of the <i>Competition and Consumer Act 2010</i> not to complete the proposed acquisition while the ACCC is considering the application.</p>

12. Responsibility for notification / representation	
A. Who is responsible for notifying – the acquiring company(ies), acquired company(ies), or both? Does each party have to make its own filing?	There is no statutory pre-merger notification requirement in Australia. Generally the acquiring person(s) will approach the ACCC to discuss, or request an informal clearance of, a proposed acquisition.
B. Do different rules apply to public tenders (e.g., open market stock purchases or hostile bids)?	No.

<p>C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</p>	<p>No.</p>
<p>D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized, or apostilled?</p>	<p>In the case of informal merger clearances, there are no document legalisation requirements.</p> <p>In the case of merger authorisations, a valid application must include a signed declaration by the applicant acquirer(s) and, if applicable, the target, that the information in the application is true, correct and complete.</p> <p>See: Application for merger authorisation</p>

<p>13. Filing fees</p>	
<p>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)? [Please provide the amount in local currency and in USD as of December 31st, 2020]</p>	<p>In the case of informal merger clearances, there is no fee associated with obtaining informal merger clearance from the ACCC.</p> <p>In the case of merger authorisations, a \$25,000 lodgement fee applies for merger authorisation applications.</p>
<p>B. Who is responsible for payment?</p>	<p>The applicant (the acquirer).</p>
<p>C. When is payment required?</p>	<p>The fee is due at the time of lodging the application.</p>
<p>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</p>	<p>A valid merger authorisation application must be accompanied by the relevant lodgement fee of \$25,000 or evidence that the fee has been paid (for example, evidence that an electronic transfer has been made). The lodgement fee can be paid by electronic funds transfer, credit card, cheque or in cash.</p> <p>See https://www.accc.gov.au/business/mergers/forms-fees for details.</p>

14. Process for substantive analysis and decisions [Please give a brief summary and provide information on relevant Guidance papers]	
<p>A. What are the key procedural stages in the substantive assessment (e.g., screening mergers, consulting third parties)?</p>	<p>In the case of informal merger clearances, a summary of the typical review timeframes is provided on page 5 of the ACCC Informal Merger Process Guidelines.</p> <ul style="list-style-type: none"> • A confidential pre-assessment typically takes 3 weeks • A public review typically takes 12 weeks after the pre-assessment stage concludes, at the end of that period the ACCC will announce a finding, being either a final decision or a Statement of Issues (SOI) • A public review that includes an SOI being published and consulted on, typically takes around 6 – 12 weeks after the SOI is published. <p>The ACCC will consult third parties when conducting market inquiries and invite submissions from interested parties. Targeted market inquiries may occur during a pre-assessment when the merger is in the public domain, or otherwise with the consent of the applicant. Market consultation with interested parties will occur during a public informal merger clearance review.</p> <p>See pages 12 to 14 (Tables 2 to 4) of the Informal Merger Review Guidelines for further detail on the steps the ACCC takes during each stage of the review process.</p> <p>In the case of merger authorisations, a summary of the steps in the merger authorisation process is provided in Chart 1 and on page 15 of the ACCC Merger Authorisation Guidelines.</p> <p>The ACCC will conduct market inquiries and invite submissions from interested parties when considering a merger authorisation application.</p>
<p>B. What merger test does the agency apply (e.g., dominance test or substantial lessening of competition test)?</p>	<p>In the case of informal merger clearances, the statutory test applied by the ACCC (pursuant to section 50 of the <i>Competition and Consumer Act 2010</i>) is whether the</p>

	<p>acquisition would have the effect, or would be likely to have the effect, of substantially lessening competition in a market.</p> <p>In the case of merger authorisations, the ACCC may not grant authorisation unless it is satisfied that one of the tests as set out in section 90(7) of the <i>Competition and Consumer Act 2010</i>) is met:</p> <ul style="list-style-type: none"> • the proposed acquisition would not have the effect, or would not be likely to have the effect, of substantially lessening competition, or • the proposed acquisition would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the proposed acquisition. <p>The relevant statutory provision in relation to mergers are found in the <i>Competition and Consumer Act 2010</i>: https://www.legislation.gov.au/Details/C2021C00055/Download</p>
<p>C. What theories of harm does the agency consider in practice?</p>	<p>Section 50 applies to a wide variety of mergers and acquisitions. The ACCC Merger Guidelines provide an outline of the broad analytical framework applied by the ACCC when assessing whether a merger is likely to substantially lessen competition under section 50 of the <i>Competition and Consumer Act 2010</i>. These guidelines discuss three types of mergers:</p> <ul style="list-style-type: none"> • horizontal mergers – involving actual or potential suppliers of substitutable goods or services • vertical mergers – involving firms operating or potentially operating at different functional levels of the same vertical supply chain • conglomerate mergers – involving firms that interact or potentially interact across several separate markets and supply goods or services that are in some way related to each other, for example, products that are complementary in either demand or supply. <p>In practice the ACCC will consider the following theories of harm with respect to the above types of mergers:</p>

	<ul style="list-style-type: none"> • Unilateral effects – mergers have unilateral effects when they remove or weaken competitive constraints in such a way that the merged firm’s unilateral market power is increased. That is, as a result of the merger the merged firm finds it profitable to raise prices, reduce output or otherwise exercise market power it has gained, and can do so, even given the expected response of other market participants to the resulting change in market conditions. In determining whether unilateral effects arise and whether they are likely to result in a substantial lessening of competition, the ACCC considers all of the merger factors contained in section 50(3) of the <i>Competition and Consumer Act 2010</i> and any other relevant factors. In particular, it considers whether the broader actual and potential competitive constraints — such as new entrants, imports or countervailing power — will limit any increase in the unilateral market power of each remaining market participant. • Coordinated effects – mergers have coordinated effects when they assist firms in the market in implicitly or explicitly coordinating their pricing, output or related commercial decisions. A merger may do so simply by reducing the number of firms among which to coordinate, by removing or weakening competitive constraints or by altering certain market conditions that make coordination more likely. Coordinated effects may occur in addition to unilateral effects so that the merged firm is able to achieve even higher prices than it would on its own. In some cases, coordinated effects, either alone or in conjunction with unilateral effects, may amount to a substantial lessening of competition. <p>The ACCC Merger Guidelines discuss unilateral effects from pages 21 to 29 and coordinated effects from pages 30 to 32.</p>
<p>D. What are the key stages in the substantive analysis? Does this differ depending on the type of transaction (e.g., joint venture)?</p>	<p>The ACCC assesses mergers according to the specific nature of the transaction, the industry and the particular competitive impact likely to result in each case. Each type of merger has the potential to affect competition in a different way and will therefore be analysed differently according to the particular nature of the merger.</p>

Broadly speaking, the ACCC's assessment of competitive effects is based on the theories of competitive harm – namely, unilateral and coordinated effects.

The ACCC will consider the merger factors set out in section 50(3) of the *Competition and Consumer Act 2010* (as well as any other relevant factors) relating to actual and potential competitive constraints faced by the merged firm, including:

- the level of concentration in the market
- the height of any barriers to entry and expansion
- actual and potential import competition
- the availability of substitutes
- the extent of any countervailing power
- the dynamic characteristics of the market
- the ability to increase prices or profit margins
- the presence of a vigorous and effective competitor, and
- the degree of vertical integration.

The merger factors cover a broad range of possible competitive constraints faced by the merged firm. The significance of the merger factors and the weight placed on them will depend on the actual matter under investigation.

The general principles set out in the [ACCC Merger Guidelines](#) provide a framework within which mergers will be reviewed.

In the case of merger authorisations, when considering the anticipated benefits put forward by an applicant, the ACCC will assess (among other things):

- whether the anticipated benefit is transaction specific
- who the benefit accrues to and how widely it is shared in the community
- whether the benefit is ongoing or a one-off
- how the benefit will arise
- when the benefit is likely to arise

	<ul style="list-style-type: none"> • the likelihood that the benefit will be realised • the magnitude of the benefit. <p>The general principles set out in the ACCC Merger Authorisation Guidelines provide a framework within which merger authorisations will be reviewed.</p>
<p>E. Are non-competition issues ever considered (in practice or by law) by the agency? If so, can they override or displace a finding based on competition issues?</p>	<p>In the case of merger authorisations, non-competition issues are considered to determine whether any public benefits are likely to result from the proposed merger or acquisition. The ACCC may grant merger authorisation if the public benefits outweigh the public detriments. The ACCC will balance the benefits to the public that would result, or be likely to result, from the proposed acquisition against the detriments to the public that would result, or be likely to result, from the proposed acquisition and determine which is the greater.</p> <p>Public benefit has a broad meaning and the <i>Competition and Consumer Act 2010</i> does not expressly limit the range of public benefits which may be taken into account by the ACCC. While economic efficiency is not the only focus of the ACCC’s assessment of the benefits that are likely to result from a proposed acquisition, many benefits can be expressed as an increase in allocative, productive and/or dynamic efficiency.</p> <p>In most cases the likely identifiable detriments to the public will be those constituted by a lessening of competition, however a lessening of competition does not have to be substantial to comprise a detriment to the public.</p> <p>See the ACCC Merger Authorisation Guidelines</p>
<p>F. What are the possible outcomes of the review (e.g., unconditional/conditional clearance, prohibition, etc.)?</p>	<p>In the case of informal merger clearances, the outcomes may be clearance, clearance subject to conditions (or undertakings under section 87B of the <i>Competition and Consumer Act 2010</i>), or to oppose the merger or acquisition.</p>

	<p>In the case of merger authorisations, the outcomes may be to grant authorisation, grant authorisation subject to conditions (undertakings under section 87B of the <i>Competition and Consumer Act 2010</i>), or deny authorisation. If the ACCC does not make a determination for a merger authorisation within 90 days (or within the extended time period as agreed), the merger authorisation application is taken to be refused.</p>
<p>G. What types of remedies does the agency accept? Is there a preference on any particular type of remedies? How is the process initiated and conducted?</p>	<p>The ACCC may accept remedies and allow a merger to proceed if it is satisfied that the remedies will address the competition concerns identified. The structure and content of remedies (usually a court enforceable undertaking under section 87B of the <i>Competition and Consumer Act 2010</i>) is at the discretion of the party proposing the remedy.</p> <p>Undertaking remedies are typically classified as either structural or behavioural:</p> <ul style="list-style-type: none"> • Structural remedies generally change the structure of the merged firm and/or the market, typically through divestiture of part or all of a business, and, in satisfying the ACCC’s competition concerns, are generally aimed at restoring or maintaining the level of competition prevailing before the acquisition. • Behavioural remedies are normally ongoing remedies designed to modify or constrain the behaviour of the merged firms, by mandating the price, quality or output of the merged firm’s goods or services, or otherwise modifying their dealings with other firms. <p>The ACCC has a strong preference for structural undertakings — that is, undertakings to divest part of the merged firm to address competition concerns. Structural undertakings provide an enduring remedy with relatively low monitoring and compliance costs.</p> <p>On occasion, behavioural undertakings — that is, undertakings by the merged firm to do, or not do, certain acts (for example, meet specified service levels) — may be appropriate as an adjunct to a structural remedy. Behavioural remedies are rarely appropriate on their own to address competition concerns.</p>

	<p>If a remedy is offered by a party, the ACCC will typically consult publicly on the undertaking.</p> <p>The ACCC Merger Guidelines discuss the ACCC’s approach to merger remedies at Appendix 3.</p>
--	--

15. Confidentiality	
<p>A. To what extent, if any, does the agency make public the fact that a premerger notification filing was made or the contents of the notification? If applicable, when is this disclosure made?</p>	<p>In the case of informal merger clearances, parties may approach the ACCC on either a confidential or public basis. If the parties require that the proposed acquisition remain confidential, the ACCC will undertake a confidential assessment.</p> <p>Where the ACCC is satisfied, based on the information provided, that there is a low risk of a merger substantially lessening competition, the ACCC may decide that it is not necessary to conduct a public review of that merger. These mergers are described as being ‘pre-assessed’. Where the ACCC considers that public market inquiries are necessary to form a view, the ACCC will seek the consent of the parties to commence these market inquiries once the acquisition becomes public. The ACCC may seek to conduct targeted inquiries in the course of a pre-assessment to determine if a public merger review of the transaction is necessary or otherwise proceed directly to a public merger review where more fulsome market inquiries are considered appropriate.</p> <p>Once the acquisition moves to public review, the ACCC will place details of the merger on the ACCC mergers public register, including the names of the acquirer and target, the relevant industry involved, the commencement date of the ACCC’s review, the ACCC staff contact details, and, once the ACCC has reached its decision, reasons for the ACCC’s decision. The ACCC does not make public any submissions it receives from interested parties under the informal merger clearance regime unless required by law.</p> <p>In the case of merger authorisations, this process is public and the application for merger authorisation, all related submissions by the applicant and interested parties, and the</p>

	<p>ACCC's determination, are placed on the merger authorisations public register. Applicants and interested parties providing information to the ACCC regarding an authorisation may make a claim for confidentiality and ask that the information, or parts of it, be excluded from the public register. All confidentiality claims must be substantiated.</p> <p>For more information, see Guidelines for excluding information from the public register</p>
<p>B. Do notifying parties have access to the agency's file? If so, under what circumstances can the right of access be exercised?</p>	<p>In the case of informal merger clearances, information gathered during the course of an informal merger review is held in the strictest confidence by the ACCC and will generally not be accessible to the merger parties.</p> <p>In the case of merger authorisations, the process is public and the application for merger authorisation, all related submissions by the applicant and interested parties, and the ACCC's determination, are placed on the merger authorisations public register.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials and any other information provided by the parties (including confidential and non-confidential information)? If so, under what circumstances?</p>	<p>Access by third parties is consistent with the approach taken to access by the merger parties – refer to response to 13B.</p> <p>Section 155AAA of the <i>Competition and Consumer Act 2010</i> provides that the ACCC may disclose certain information provided by merger parties and third parties to certain Australian government agencies, ministers, departments, Royal Commissions and foreign government bodies where the information will enable or assist the agencies, body or person to perform or exercise any of its functions or powers.</p> <p>Section 155AAA is available at: https://www.legislation.gov.au/Details/C2021C00055/Download</p>

<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>In the case of informal merger clearances, parties may approach the ACCC on either a confidential or public basis. If the parties require that the proposed acquisition remain confidential, the ACCC will undertake a confidential assessment.</p> <p>Where the ACCC is satisfied, based on the information provided, that there is a low risk of a merger substantially lessening competition, the ACCC may decide that it is not necessary to conduct a public review of that merger. These mergers are described as being ‘pre-assessed’. Where the ACCC considers that public market inquiries are necessary to form a view, the ACCC will seek the consent of the parties to commence these market inquiries once the acquisition becomes public. The ACCC may seek to conduct targeted inquiries in the course of a pre-assessment to determine if a public merger review of the transaction is necessary or otherwise proceed directly to a public merger review where more fulsome market inquiries are considered appropriate.</p> <p>Based on a confidential assessment, the ACCC will, if possible, identify to the merger parties the issues that the ACCC proposes to focus on in its market inquiries, and, if possible, any concerns that have been identified on a preliminary basis.</p> <p>In the case of merger authorisations, the process is public and applications for merger authorisation cannot be received or considered on a confidential basis.</p>
<p>E. Can the agency deny a party’s claim that certain information contained in notification materials is confidential? Are there procedures to challenge a decision that information is not confidential? If so, please describe.</p>	<p>In the case of merger authorisations, applicants and interested parties providing information to the ACCC regarding an authorisation may make a claim for confidentiality and ask that the information, or parts of it, be excluded from the public register. All confidentiality claims must be substantiated.</p> <p>If the ACCC decides not to exclude information from the public register, either because the claim is not accompanied by sufficient justification or because it considers that the information is not confidential in nature, the ACCC will inform the relevant party of its decision. If the party provided the document or submission on a voluntary basis and the ACCC refuses to exclude the material from the public register, the party may ask the</p>

	<p>ACCC to return the document or part of the document. Alternatively, the party may advise the ACCC that it wishes to withdraw or amend the request for exclusion from the public register.</p> <p>For more information, see Guidelines for excluding information from the public register</p>
<p>F. Does the agency have procedures to provide public and non-public versions of agency orders, decisions, and court filings? If so, what steps are taken to prevent or limit public disclosure of information designated as confidential that is contained in these documents?</p>	<p>The ACCC is committed to treating confidential information responsibly and in accordance with the law.</p> <p>In the case of merger authorisations, an applicant can provide confidential and non-confidential versions of an application, together with a request that the confidential information in the confidential version be excluded from the register and detailed reasons for that request. Where appropriate, and provided that an authorisation application or notification contains sufficient information to enable public consultation, the ACCC will include only the non-confidential version on the public register.</p> <p>When publishing decisions on transactions, the ACCC takes great care to protect confidential information provided to it throughout its review, including, in some cases, the identity of particular parties that have provided information to the ACCC.</p> <p>The ACCC endeavours to provide details of its decisions in a way that provides an appropriate level of detail while maintaining confidentiality and protecting sources of confidential information.</p> <p>For more information, see ACCC/AER information policy: collection and disclosure of information</p>

16. Transparency

<p>A. Does the agency publish an annual report with information about mergers? Please provide the web address if available.</p>	<p>Yes.</p> <p>For more information, see ACCC & AER annual reports</p>
<p>B. Does the agency publish press releases related to merger policy or investigations/reviews? If so, how can these be accessed (if available online, please provide a link)? How often are they published (e.g., for each decision)?</p>	<p>In the case of informal merger clearances, the ACCC will typically issue a press release where a Statement of Issues is released in the course of a merger review and in due course, a press release announcing its final decision for the investigation.</p> <p>In the case of merger authorisations, the ACCC will typically issue a press release announcing its final decision on the application.</p> <p>The ACCC may also issue a press release when consulting on proposed remedies on a transaction.</p> <p>In some instances where matters are considered complex or of public interest, the ACCC will publish a press release relating to investigations or merger policy.</p> <p>For more information, see ACCC media releases</p>
<p>C. Does the agency publish decisions on why it challenged, blocked, or cleared a transaction? If available online, provide a link. If not available online, describe how one can obtain a copy of decisions.</p>	<p>In the case of informal merger clearances, the ACCC publishes a summary of its reasons in all decisions relating to public merger reviews, including a brief competition analysis and the market definition considered by the ACCC.</p> <p>The ACCC's assessments can be viewed on the ACCC mergers public register</p> <p>In more complex informal merger clearance reviews, the ACCC publishes a more comprehensive Public Competition Assessment (PCA) detailing the reasons for the ACCC's decision and the issues considered. A PCA is generally published where:</p> <ul style="list-style-type: none"> • a merger is opposed • a merger is subject to enforceable undertakings under s 87B of the <i>Competition and Consumer Act 2010</i>

	<ul style="list-style-type: none"> • the merger parties seek such disclosure or • a merger is approved but raises important issues that the ACCC considers should be made public. <p>For more information, see ACCC public competition assessments</p> <p>In the case of merger authorisations, the ACCC will publish, subject to confidentiality, a determination on the application and an accompany statement of reasons on the merger authorisations public register</p>
<p>E. Does the agency publish statistics or the number of annual notifications received, clearances, prohibitions, etc.? [if applicable, please provide a link for these figures]</p>	<p>Statistics on merger matters are published in the ACCC annual report.</p> <p>For more information, see merger and authorisation review section of ACCC & AER annual reports</p>

<p>17. Cooperation</p>	
<p>A. Is the agency able to exchange information or documents with international counterparts?</p>	<p>Yes.</p> <p>The ACCC and other regulators may share information of a confidential and non-confidential nature concerning particular mergers.</p> <p>The ACCC and other overseas regulators can seek a confidentiality waiver from the merger parties to enable them to exchange confidential information on a particular merger where it is considered appropriate. Refusal by merger parties to grant confidentiality waivers may cause delays in the ACCC's and overseas regulators' assessment processes.</p> <p>Section 155AAA of the <i>Competition and Consumer Act 2010</i> allows the ACCC to disclose certain information to a foreign government body where it will enable or assist the foreign government body to perform or exercise any of its functions or powers. Such disclosure may be subject to conditions.</p>

	<p>Section 155AAA is available at: https://www.legislation.gov.au/Details/C2021C00055/Download</p>
<p>B. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>The ACCC is party to a number of cooperation agreements with international competition and consumer agencies and governments.</p> <p>Australia is a party to a formal treaty with the United States of America to cooperate in Antitrust Enforcement Assistance.</p> <p>The ACCC has agency cooperation agreements with:</p> <ul style="list-style-type: none"> • the New Zealand Commerce Commission • the United Kingdom Competition and Markets Authority • the European Commission • the Canadian Competition Bureau • the United States Department of Justice • the United States Federal Trade Commission • the Taiwan Fair Trade Commission • the Fair Trade Commission of Japan • the Fair Trade Commission of the Republic of Korea • the Competition Commission of India • the Commerce Commission of the Fiji Islands; and <p>These agreements provide for one country to share information with the other, subject to any constraints imposed by domestic law, where the agencies agree it is in their mutual interest. The ACCC is also party to two tripartite agreements – one with the New Zealand Commerce Commission and the Canadian Competition Bureau, and another with the Taiwan Fair Trade Commission and the New Zealand Commerce Commission.</p>

	These agreements are publicly available on the ACCC website: https://www.accc.gov.au/about-us/international-relations/treaties-agreements
C. Does the agency need consent from the parties who submitted confidential information to share such information with foreign competition authorities? If the agency has a model waiver, please provide a link to it here, or state whether the agency accepts the ICN's model waiver of confidentiality in merger investigations form.	The ACCC and other overseas regulators can seek a confidentiality waiver from the merger parties to enable them to exchange confidential information on a particular merger where it is considered appropriate. The ACCC provides a standard form waiver to merger parties when seeking waivers.
D. Is the agency able to exchange information or documents with other domestic regulators?	The ACCC may exchange information or documents with domestic regulators where permitted by section 155AAA of the CCA, or where an appropriate waiver has been given.

18.Sanctions/penalties	
A. What are the sanctions/penalties for: i) failure to file a notification; ii) incorrect/misleading information in a notification; iii) failure to comply with information requests; iv) failure to observe a waiting period/suspension obligation; v) breach of interim measures; vi) failure to observe or delay in implementation of remedies; vii) implementation of transaction despite the prohibition from the agency?	Pre-merger notification is not mandatory in Australia and therefore sanctions do not apply for failure to notify.
B. Which party/ies (including natural persons) are potentially liable for each of A(i)-(vii)?	N/A

C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.	N/A
D. Are there any recent or significant fining decisions?	N/A

19. Independence	
A. Is there possibility for any ministry or a cabinet of ministries to abrogate, challenge or change merger decisions issued by the agency or by a court? If yes, to which merger decisions does this apply (e.g., any decision, prohibitions, clearances, remedies)?	No.
B. What are the grounds for such ministerial intervention?	N/A
C. Please provide any description or guidance regarding the ministerial intervention process and procedures [If applicable]	N/A

20. Administrative and judicial processes/review	
A. Describe the timetable for judicial and administrative review related to merger transactions.	In the case of informal merger clearances, a decision by the ACCC during an informal merger review is not binding on the applicant. In the event the applicant does not agree with the outcome of an informal merger review, the applicant is entitled to proceed with the merger or can elect to seek a declaration from the Federal Court of Australia that the merger will not contravene section 50 of the <i>Competition and Consumer Act 2010</i> .

	<p>In the case of merger authorisations, applicants and interested parties have two avenues for the review of ACCC merger authorisation decisions – review by the Tribunal which will make its own findings of fact and reach its own conclusions, or judicial review of the decision by the Federal Court on a question of law.</p> <p>For more information, see the ACCC Merger Authorisation Guidelines</p>
<p>B. Describe the procedures for protecting confidential information used in judicial proceedings or in an appeal/review of an agency decision.</p>	<p>The ACCC is committed to treating confidential information responsibly and in accordance with the law.</p> <p>In some circumstances, the ACCC may be legally required to produce confidential information. In most cases, the ACCC will endeavour to notify and consult the person who provided confidential information about the proposed release of that information.</p> <p>Where the ACCC obtains information as the result of litigation, it is subject to the obligations regarding use of such information that apply to any litigant, including any specific confidentiality regimes imposed by the Court.</p> <p>For more information, see ACCC/AER information policy: collection and disclosure of information</p>
<p>C. Are there any limitations on the time during which an appeal may be filed?</p>	<p>In the case of informal merger clearances, a decision by the ACCC during an informal merger review is not binding on the applicant, and there are no statutory rights of appeal. In the event the applicant does not agree with the outcome of an informal merger review, the applicant is entitled to proceed with the merger or seek a declaration from the Federal Court of Australia that the merger will not contravene section 50 of the <i>Competition and Consumer Act 2010</i>.</p> <p>In the case of merger authorisations, a person may apply for a review by the Tribunal of an ACCC determination by completing and lodging the relevant form within 21 days from the date of the ACCC’s determination.</p>

	<p>Review of ACCC determinations on a merger authorisation application can be sought in the Federal Court under the <i>Administrative Decisions (Judicial Review) Act 1977</i> or in the original jurisdiction of the Federal Court under section 39B of the <i>Judiciary Act 1903</i> on a question of law (judicial review). An application under the <i>Administrative Decisions (Judicial Review) Act 1977</i> must be made within the prescribed period, which is the period commencing on the day on which the decision is made and ending on the 28th day after the day on which the document setting out the terms of the decision is furnished to the applicant (or such further time as the Court allows). The <i>Judiciary Act 1903</i> does not specify time limits.</p>
--	--

21. Additional filings	
<p>A. Are any additional filings/clearances required for some types of transactions (e.g., sectoral or securities regulators or national security or foreign investment review)?</p>	<p>The Foreign Investment Review Board (FIRB) considers acquisitions by foreign entities in Australia under the <i>Foreign Acquisitions and Takeovers Act 1975</i>. It uses a ‘national interest test’ as the basis for its assessment and notification of foreign investment proposals to FIRB is compulsory above certain thresholds.</p> <p>FIRB approval is separate to any ACCC clearance on competition grounds.</p> <p>Further information on FIRB is available at: http://www.firb.gov.au</p>

22. Closing Deadlines	
<p>A. When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized? If yes, can the parties obtain an extension of the deadline to close?</p>	<p>In the case of informal merger clearances, there are no deadlines for merger parties that have sought informal merger clearance. If a transaction is cleared and then completion is significantly delayed and changes have occurred to the relevant market(s) since the ACCC provided its view, the parties should discuss the need for a subsequent review of the merger with the ACCC.</p>

	In the case of merger authorisations, completion within a certain period may be specified in the merger authorisation determination.
--	--

22. Post Merger review of transactions	
A. Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?	<p>In the case of informal merger clearances, the ACCC reserves the right to reconsider mergers if it becomes aware that any information upon which it has based its view is in any way incorrect or incomplete.</p> <p>In the case of merger authorisations, the ACCC may take steps to revoke a merger authorisation granted on the basis of information that was false or misleading. The ACCC may seek orders from the Federal Court of Australia including an injunction to stop the proposed acquisition from proceeding, or divestiture if the acquisition has already completed.</p> <p>For those mergers which contravene section 50 <i>Competition and Consumer Act 2010</i>, the ACCC may seek divestiture within three years after the date on which the acquisition was completed.</p>
B. Does the agency publish studies regarding ex-post analysis of reportable transactions which have been cleared by the agency? Are these studies publicly available? How does the agency obtain data for carrying out these studies?	In 2021 the ACCC commenced ex post reviews of certain past merger decisions.