



# Application for authorisation of a proposed merger or acquisition

## Guidance in completing your application to the ACCC

To lodge an application, you should include the information, data, documents and evidence outlined in this form (the **application**). Where possible, each question should be answered fully and be substantiated with evidence. If a question is not relevant or where information is not available and cannot be reasonably estimated, you should provide a brief explanation.

The ACCC must not grant authorisation unless it is satisfied that the statutory test is met.<sup>1</sup>

It is an offence to knowingly provide misleading information to the ACCC. Refer to section 137.1 of the *Criminal Code* (Cth) and section 92 of the *Competition and Consumer Act 2010* (Cth) (the Act).

### Key points for lodging your application

- We encourage you to consult the ACCC's Merger Authorisation Guidelines<sup>2</sup> and contact the ACCC at [mergers@acc.gov.au](mailto:mergers@acc.gov.au) before you lodge your application for a pre-lodgement discussion to clarify what information and evidence may be needed to assess your application.
- Failure to provide sufficient information may render the application invalid or otherwise impact the ACCC's ability to assess your application.
- You should provide all relevant information and evidence, including any expert reports you intend to rely on.
- Less weight will likely be given to a statement or submission that is not supported with corroborating evidence.
- A valid application **must** contain the following:
  - A public version of your application for publication on the public register. You may provide a clearly marked confidential version if you wish to claim confidentiality for parts of your application. All confidentiality claims must be substantiated. The public version must contain sufficient information to enable public consultation on your application.
  - A signed declaration by the applicant acquirer(s) and, if applicable, the target.
  - A signed section 87B undertaking not to complete the proposed acquisition until the ACCC's assessment is complete.
  - Payment of the \$25,000 lodgement fee.

<sup>1</sup> Section 90(7). See also the ACCC's *Merger Authorisation Guidelines*, available at <https://www.accc.gov.au/publications/>

<sup>2</sup> Available at <https://www.accc.gov.au/publications/>

## Information

### Details of the applicant acquirer(s) and other parties to the proposed acquisition

1. Provide details for the applicant acquirer(s) and separately any other parties to the proposed acquisition such as the target company (together, the parties), including:
  - 1.1. name, address (registered office), telephone number, ACN or international equivalent
  - 1.2. contact person's name, position, telephone number, and email address
  - 1.3. a description of business activities
  - 1.4. email address for service in Australia<sup>3</sup>
  - 1.5. for each party to the proposed acquisition, a company structure chart identifying each party, its respective subsidiaries, and all related bodies corporate and companies in which it holds minority shareholdings that are involved in a relevant business for purposes of assessing this application
  - 1.6. a current organisation chart for each party and for each of the party's relevant businesses, identifying the key personnel with their full name, title, and contact details.

### The proposed acquisition

2. Provide details of the proposed acquisition, including:
  - 2.1. the assets and/or shares to be acquired, and the structure of the proposed acquisition, including any proposed ancillary arrangements
  - 2.2. diagrams to show the change in ownership structure post acquisition
  - 2.3. the rationale for the proposed acquisition
  - 2.4. the expected completion date.
3. Provide the following documents:<sup>4</sup>
  - 3.1. 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
  - 3.2. 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
  - 3.3. 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.

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<sup>3</sup> In accordance with Regulation 12 of the *Competition and Consumer Regulations 2010* (Cth).

<sup>4</sup> 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.

## **Market information and concentration**

4. Describe the products and/or services and the geographic areas supplied by the parties.
5. Describe the industry or industries affected by the proposed acquisition. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.
6. Describe any upstream or downstream activities currently undertaken by the parties (including their related bodies corporate).
7. Identify all products and services in the relevant areas in which they overlap or have a vertical relationship.
8. For each relevant product or service in respect of which the parties overlap or have a vertical relationship, provide (for each party):
  - 8.1. the geographic locations in which the product or service is manufactured, distributed, or supplied
  - 8.2. the sales revenues and volumes and, where relevant, current capacity and capacity utilisation
  - 8.3. gross revenue earned from each of its top ten customers
  - 8.4. an estimate of the total market size (by sales in dollars and units and, where relevant, capacity or an alternative measure if more appropriate) and the current market shares for each of the parties and each competitor (including via imports). Identify the source of the data used to prepare this information, and any assumptions used.
9. Provide each party's most recent annual report, audited financial statements, business and strategic plans, and management accounts for the company as a whole and for each relevant division or business unit.<sup>5</sup>

## **Competition effects**

10. Describe the constraints on the parties to the proposed acquisition in the relevant industry or industries, including any likely change to those constraints should authorisation be granted and the proposed acquisition proceed. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the competition effects. You should address:
  - 10.1. existing or potential competitors, including via imports, to the parties
  - 10.2. the likelihood, sufficiency and timeliness of entry and expansion by existing and potential competitors (including costs)
  - 10.3. the countervailing power of customers
  - 10.4. any other relevant factors.

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<sup>5</sup> 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.

## **Public benefits and detriments**

11. Describe all benefits and detriments to the public likely to result from the proposed acquisition, including those likely to result from any lessening of competition. In addressing the likely benefits of the proposed acquisition, include details of any significant increase in the real value of exports, any significant substitution of domestic products for imported goods, and any other relevant matters that relate to the international competitiveness of any Australian industry. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits and detriments.

## **Contact details of relevant market participants**

12. For each area of overlap, provide contact details (email addresses and phone numbers) for:
  - actual or potential competitors
  - each party's top 10 to 30 customers (depending on the total number of customers)
  - each party's top five to ten suppliers (depending on the total number of suppliers)
  - trade or industry associations in which one or more of the parties are members.

## **Additional information**

13. Provide any other information or documents you consider relevant to the ACCC's assessment of the proposed acquisition. This may include proposed conditions to the authorisation.

## **Undertaking not to proceed**

14. Consistent with s 89(1AA) of the Act, the ACCC requires this 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. See **Annexure A** to this application form.

## **Identify filings in other jurisdiction (where applicable)**

15. Provide a list of overseas competition agencies that have or will be notified of the proposed acquisition and the date on which those agencies were or will be notified.

## Declaration by applicant acquirer(s)

Authorised persons of the applicant acquirer(s) must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of section 92 of the *Competition and Consumer Act 2010* (Cth) and sections 137.1 and 149.1 of the *Criminal Code* (Cth).

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Signature of authorised person

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Office held

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(Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.*

## Declaration by Target/Vendor

Where the Target/Vendor has supplied information to the Applicant for purposes of preparing this application for authorisation, authorised representatives of the Target/Vendor must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information provided to the Applicant for purposes of preparing this application is true and correct.

The undersigned are aware of the provisions of section 92 of the *Competition and Consumer Act 2010* (Cth) and sections 137.1 and 149.1 of the *Criminal Code* (Cth).

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Signature of authorised person

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Office held

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(Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.*

## Annexure A

*Competition and Consumer Act 2010 (Cth)*

### **Undertaking to the Australian Competition and Consumer Commission given by the applicant acquirer(s) for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the ACCC) by [company name, company ACN] of [company address] under section 87B of the *Competition and Consumer Act 2010 (Cth)* (the **Act**).
2. [Company name] has made an application for a merger authorisation pursuant to section 88 of the Act in respect of its proposed acquisition of [describe proposed acquisition].
3. [Company name] hereby undertakes that it will not complete the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the ACCC.
4. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by [company name], and
  - (b) the ACCC accepts the Undertaking so executed.
5. [Company name] acknowledges that the ACCC will make this Undertaking available for public inspection.

#### **EXECUTED AS AN UNDERTAKING**

**EXECUTED BY** [Company name and ACN]  
pursuant to section 127 (1) of the *Corporations Act 2001 (Cth)*.

Signature of director

Signature of company secretary

Name of director (print)

Name of company secretary  
(print)

Date:

Date:

**Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Act:**

**And signed on behalf of the ACCC:**

**Chairman**

**Date**

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Name:

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Name:

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Position:

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Position:

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Date:

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Date:

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