

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

AUSTRALIA

December 2005

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions

Pre-merger notification is not mandatory in Australia. However, the Australian Competition and Consumer Commission (ACCC) encourages parties to approach it, on an informal basis to seek "clearance" for any merger that has the potential to raise competition concerns, as soon as there is any real likelihood that a proposed acquisition may proceed, and certainly well before the completion of the acquisition. Informal clearance may be sought for confidential proposed mergers as well as merger proposals in the public domain.

Parties may choose not to seek informal clearance from the ACCC. However they run the risk that the ACCC will seek injunctive relief, penalties, divestiture or other orders in the Federal Court of Australia if the ACCC considers the merger proposal is in contravention of Australia's merger law.

- The test applied by the ACCC in assessing whether to informally "clear" acquisitions is whether they substantially lessen competition (section 50 of the Trade Practices Act 1974). In providing an informal clearance the ACCC makes the decision on the information provided by the merger parties and other material it has before it, and the ACCC reserves its right to reconsider the proposed acquisition if it becomes aware that any information upon which it has based its view is in any way incorrect or incomplete.

	<p>Alternatively, if a proposed merger is likely to fail the substantial lessening of competition test but the parties consider there are public interest arguments that outweigh detriments to competition, parties may apply for “authorization”, which provides immunity from legal action. In deciding whether to grant the authorisation the ACCC will consider any lessening of competition together with potential public benefits from the proposed merger.</p> <p>The Trade Practices Act can be found at: http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/</p>
<p>B. Notification forms or information requirements</p>	<p>There is no specific form of merger notification required for informal clearances, nor is there any fee.</p> <p>The ACCC’s <i>Guidelines for Informal Merger Review</i> set out the information that parties should provide for an informal clearance application. http://www.accc.gov.au/content/index.phtml?itemId=589109</p> <p>Applications for authorisation of mergers must conform to Form F of the Trade Practices Regulations 1974 (subsection 88(9) of the Trade Practices Act) and a fee of \$15, 000 AUD is payable. Parties applying for authorization will also lodge a detailed submission setting out the public benefits likely to result from the merger proposal and any impact on competition. http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s88.html</p>
<p>C. Substantive merger review provisions</p>	<p>Trade Practices Act sections: 50 http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s50.html 50A http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s50a.html and Part VII http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/</p>
<p>D. Implementing regulations</p>	<p>Trade Practices Regulations 1974 http://www.austlii.edu.au/au/legis/cth/consol_reg/tpr1974258/</p>
<p>E. Interpretive guidelines and notices</p>	<p>ACCC <i>Merger Guidelines</i> 1999 http://www.accc.gov.au/content/index.phtml?itemId=304397, and <i>Guideline for Informal Merger Reviews</i> 2004 (supplementing the Merger Guidelines) http://www.accc.gov.au/content/index.phtml?itemId=589109</p> <p>The Guidelines provide a summary designed to give parties basic information and outline the ACCC administration and enforcement policy for dealing with mergers under the Trade Practices Act. The Merger Guidelines include the factors the ACCC considers relevant, including authorisation and court enforceable undertakings.</p>

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	The ACCC is responsible for enforcement of competition law in respect of mergers.
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	Australian Competition and Consumer Commission 470 Northbourne Avenue DICKSON ACT 2602 Postal address PO Box 1199 DICKSON ACT 2602 Tel: +61 2 6243 1111 Fax: +61 2 6243 1199 Email: mergers@acc.gov.au Website: www.accc.gov.au Language: English
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	ACCC staff are available for consultation regarding proposed mergers prior to requesting an informal merger clearance. Please contact: Tim Grimwade General Manager Mergers and Asset Sales Australian Competition and Consumer Commission PO Box 1199 DICKSON ACT 2602 Tel: +61 2 6243 1226 Fax: +61 2 6243 1212 Email: mergers@acc.gov.au

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	Section 50 of the Trade Practices Act 1974 states that: (1) A corporation must not directly or indirectly: (a) acquire shares in the capital of a body corporate; or (b) acquire any assets of a person; if the acquisition would be likely to have the effect, of substantially lessening competition in a market.
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	<p>(2) A person must not directly or indirectly:</p> <p>(a) acquire shares in the capital of a corporation; or</p> <p>(b) acquire any assets of a corporation;</p> <p>if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.</p> <p>http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s50.html</p> <p>The Merger Guidelines provide direction on acquisitions likely to be subject to the Trade Practices Act.</p> <p>http://www.accc.gov.au/content/index.phtml?itemId=304397</p>
B. If change of control is a determining factor, how is control defined?	<p>There is no minimum legislated shareholding (or “control”) necessary to invoke section 50 of the Trade Practices Act. (See answer to “C” below)</p>
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	<p>There is no threshold shareholding for the purposes of section 50 of the Trade Practices Act. Section 50 applies to any acquisition of shares which would have the effect, or be likely to have the effect, of substantially lessening competition in a substantial market. While questions of control or influence will be important, anti-competitive effects may arise from shareholdings which do not necessarily confer such control or even influence. Examples of potential anti-competitive effects of shareholdings below a level delivering control include:</p> <p>a) horizontal acquisitions which may reduce competitive tension between rivals and increase motivation and capacity to coordinate conduct;</p> <p>b) acquisitions in one market by parties that are rivals in another market may facilitate coordinated conduct in the other market; and</p> <p>c) vertical acquisitions may result in foreclosure of rival suppliers.</p>
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	<p>There are no mandatory notification requirements in Australian merger law from a competition perspective. However, section 50 applies to all joint ventures where the format of the joint venture involves the acquisition of shares or assets (see section 4(4) of the Trade Practices Act.)</p> <p>http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s4.html</p> <p>See answer to question 17 also.</p>

4. Thresholds for notification

A. What are the general thresholds for notification?	<p>Merger notification is not mandatory in Australia from a competition perspective and there are no thresholds enshrined in legislation. There are, however, ACCC guidelines setting out the type of circumstances which it considers may amount to a substantial lessening of competition.</p> <p>In analyzing the likely effect of a merger or acquisition, the ACCC has a five stage evaluation process.</p>
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	<p>The first step is to define the relevant market in its product, functional, geographic and time dimensions. If the market is not considered to be substantial, the ACCC will take no further action.</p> <p>If the market is considered to be substantial, the ACCC will next consider market concentration and market structure, having regard to section 50 (3) of the Trade Practices Act which outline a non-exhaustive list of “merger factors” that the ACCC must have regard to in assessing the potential impact of a proposed acquisition. These merger factors include where the merger is likely to result in a high level of concentration post-acquisition, whether imports offer an effective constraint, and whether there are significant barriers to entry of new competitors.</p> <p>The ACCC’s Merger Guidelines indicate it would generally examine a transaction in detail where:</p> <p>a) the merged firm has more than 40% of the relevant market; or b) the four largest firms have more than 75% of the relevant market and the merged firm more than 15%.</p> <p>Although it does not follow that the ACCC will not be interested in scrutinising acquisitions that fall below these thresholds where elements of the transaction may give rise to competition concerns regardless of a post-acquisition concentration below these thresholds (for instance due to portfolio effects, or in respect of a vertical merger).</p> <p>In a concentrated market, unconstrained by imports and characterized by significant entry barriers, the ACCC will examine whether any other factor such as countervailing bargaining power, the availability of substitute products from spare, expandable or convertible capacity; dynamic factors including growth, innovation or product differentiation in the market; and the extent to which the merger or acquisition results in the elimination of a vigorous and effective competitor, suggests that a substantial lessening of competition is, or is not, likely.</p>
<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>	<p>The ACCC looks to the particular facts of the matter under consideration. It looks to directorships; common management; independence demonstrated in the market and likely information flows in determining the competition effects.</p> <p>The ACCC looks to determine the substance of the relationships and arrangements.</p>
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>N/A</p>
<p>D. To what period(s) of time</p>	<p>N/A</p>

<p>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>E. 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>N/A</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>N/A</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>N/A</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>N/A</p>
<p>I. 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. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an "effects" test?</p>	<p>Foreign to foreign acquisitions may be subject to section 50A of the Trade Practices Act http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s50a.html</p> <p>Acquisitions that occur outside Australia fall within section 50A of the Trade Practices Act if a person acquires a controlling interest in a firm outside Australia, and as a consequence acquires a controlling interest in a firm carrying on a business in a market in Australia. This section therefore may apply if a foreign target has Australian subsidiaries. Section 50 of the Trade Practices Act will apply if the acquirer is incorporated in Australia or carrying on business in Australia.</p>
<p>J. If national sales are relevant, how are they</p>	<p>National sales are determined on the basis of Australian sales. If the seller is offshore, the share of sales is brought to account in</p>

allocated geographically (e.g., location of customer, location of seller)?	determining imports into the Australian market. Exported goods and services are assessed in terms of the ability of domestic producers to move supply into the Australian market in response to price signals.
K. If market share tests are used, are there guidelines for calculating market shares?	The Merger Guidelines refer to market shares being calculated with reference to capacity, sales volume or sales values. The ACCC places greatest weight on data which best reflects firms' future competitive significance. The ACCC takes account of the nature of the product market in regard to undifferentiated and differentiated products in determining the most appropriate measure.
L. Are there special threshold calculations for particular sectors (e.g., banking, airlines) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?	No
M. Are any sectors excluded from notification requirements? If so, which sectors?	There are no mandatory notification requirements for mergers in Australia. However, no sectors are excluded from the operation of section 50 of the Trade Practices Act, which is of general application across all industry sectors.
N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?	Where global mergers impact on a market in Australia they will generally be subject to the Trade Practices Act. To the extent that an acquisition occurs in Australia, the Trade Practices Act applies without any extraterritorial scope. To the extent that an acquisition occurs outside Australia, the Trade Practices Act may apply depending on its extraterritorial scope. The ACCC has taken the view that the acquisition occurs (as opposed to the agreement or transaction) where the property is situated. Section 50A also acts to capture acquisitions that may occur outside Australia if there is a likely effect in an Australian market. http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s50a.html
O. Does the agency have the authority to review transactions that fall below the thresholds?	Yes

5. Notification requirements and timing of notification

A. Is notification mandatory pre-merger?	No
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B. Is notification mandatory post-merger?	No
C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?	<p>Yes, this is the usual practice in Australia. The ACCC encourages parties to approach it, on an informal basis, as soon as there is any real likelihood that a proposed acquisition may proceed, and certainly well before the completion of an acquisition. Parties may also seek informal clearance on a confidential basis, although decisions by the ACCC to “clear” may be subject to confirmation through market inquiries once the proposal has been made public.</p> <p>If the parties wish to make an application for authorisation of a merger, this must be done before the acquisition has occurred.</p>
D. 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?)?	See 5C above. However, the ACCC may decline to provide informal clearance to a proposal which is considered purely speculative.
E. Must notification be made within a specified period following a triggering event? If so, 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?	No

6. Simplified procedures

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 responses,	There is no mandatory merger notification requirement in Australia and transactions that are not likely to raise competition concerns are not ordinarily notified. However, the ACCC adopts a process to expedite decisions on mergers notified to it that it considers unlikely to raise concerns. These decisions usually involve only a limited public consultation process and are made within 2 or 3 weeks of notification.
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etc.).	
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7. Documents to be submitted

<p>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</p>	<p>The ACCC encourages parties to lodge written submissions regarding a proposed acquisition setting out:</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) of the Trade Practices Act. <p>http://www.austlii.edu.au/au/legis/cth/consol_act/tpa1974149/s50.html</p> <p>In many cases, the submissions also include an economic analysis of the proposed merger and legal argument. In addition, the ACCC encourages parties to provide any supporting documentation such as business plans, Board minutes, internal reports, third party reports, and third party lists for consultation.</p> <p>Please refer to the Guideline for Informal Merger Review for a more comprehensive list of initial information requirements. http://www.accc.gov.au/content/index.phtml/itemId/589109/fromItemId/6204</p>
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>No</p>
<p>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</p>	<p>There are no special rules or exemptions with respect to information where the merger parties are foreign.</p>

8. Translation

<p>A. In what language(s) can the notification forms be</p>	<p>Voluntary submissions lodged with the ACCC should be provided in English.</p>
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submitted?	
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	If documents are not written in English, English translations should be provided for any information required by the ACCC for its investigation.

9. Review periods

A. Describe any applicable review periods following notification.	<p>Public mergers for which the ACCC decides it is unnecessary to seek formal submissions from market participants to assess and decide on the merger (as the ACCC is satisfied that the proposal would not substantially lessen competition) are classified as non-complex mergers. Non-complex merger reviews can be generally conducted within a few weeks following voluntary notification.</p> <p>All other public merger reviews are subject to market inquiries. These merger reviews are generally completed within six to eight weeks. For a few complex and contentious matters that require a second phase investigation (which would follow the public issue of the ACCC's remaining unresolved competition concerns in a "Statement of Issues") the ACCC's investigation may take longer than six to eight weeks. This may be the case, for instance, if merger parties offer undertakings to resolve the ACCC's competition concerns, and those undertakings require further consultation and assessment. The ACCC publishes an indicative timeline for these merger reviews in the public register on the ACCC website. http://www.accc.gov.au/content/index.phtml?itemId=268271</p>
B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?	No
C. What are the procedures	Merger review periods may be extended due to the complexity of

<p>for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>the issues, the nature of the concerns, the need to further consult the market or merger parties, and the likely resolutions required. In cases where review periods may be extended the ACCC will consider submissions from the merger parties on the length of the extension. The merger parties will be advised of extensions to indicative timelines before they are posted on the ACCC website (for instance if the merger parties propose remedies to resolve the ACCC's expressed competition concerns, it is the ACCC's practice to consult publicly on those proposed remedies, and the timeframes for a final assessment may need to be extended to allow for consultation and assessment of those proposed remedies).</p>
<p>D. What are the procedures for accelerated review of non-problematic transactions, if any?</p>	<p>If the ACCC considers a matter is non-problematic, it may truncate its consultation process and expedite a decision within 2-3 weeks.</p>

10. Waiting periods / suspension obligations

<p>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended during any initial review period and/or further review period.</p>	<p>As notification is not mandatory in Australia there is no requirement that merger parties wait until the ACCC has completed its assessment of the acquisition before consummating the merger. However, the risk in not waiting for the ACCC's assessment is the possibility of a divestiture order and /or penalties of up to A\$10 million if the merger is found to breach section 50 of the Trade Practices Act by the Federal Court of Australia. Although there is no requirement for merger parties to do so, for some more complex matters the ACCC may request, and accept, an undertaking under section 87B of the Trade Practices Act (commitments that are enforceable in the Federal Court of Australia) 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 advance notice to the ACCC.</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 jurisdiction (e.g., acquisition or merger of local undertakings/business</p>	<p>As there are no formal notification requirements in Australia, parties may choose to proceed with the transaction outside Australia and deal with competition concerns in Australia with the ACCC separately. Undertakings under section 87B of the Trade Practices Act may be offered by the parties that deal with the resolution of concerns in Australia through, for example, hold separate arrangements.</p>

<p>units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>As there are no statutory requirements in Australia parties may close a transaction at any time (unless the parties have offered and the ACCC has accepted an undertaking, under section 87B of the Trade Practices Act, not to proceed without providing advance notice to the ACCC). However, once a transaction has been closed without ACCC clearance they may risk action by the ACCC requesting an injunction, divestiture or penalties through the Federal Court of Australia</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>N/A</p>
<p>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.</p>	<p>N/A</p>
<p>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction</p>	<p>As there are no statutory requirements in Australia parties may close a transaction at their own risk at any time (unless they have provided and the ACCC has accepted an undertaking, under section 87B of the Trade Practices Act, not to proceed without providing advance notice to the ACCC).</p>

to close if no "irreversible measures" are taken).	
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11. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), 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)?	There is no statutory pre-merger notification requirement in Australia, and no separate procedures apply for informal clearance of public bids.
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)?	No.
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?	N/A

12. Filing fees

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	<p>There is no fee associated with filing a merger matter with the ACCC for consideration under section 50 of the Trade Practices Act.</p> <p>For merger authorisation applications (for determinations based on public benefit), the flat fee is \$15 000.</p>
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fees based on complexity, tiered fees based on size of transaction)?	
B. Who is responsible for payment?	In relation to merger authorisation applications the party making the application for authorisation is responsible for payment
C. When is payment required?	In respect of the fee payable for an authorisation application, at the time of lodging an application. An application for authorisation is not considered to be valid unless accompanied by the correct filing fee.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	The preferred method of payment is by cheque.

13. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	<p>Parties may approach the ACCC on either a confidential or public basis. If the requirements of the parties are that the proposed acquisition is confidential, the ACCC is unlikely to be in a position to provide the parties with an unqualified final view about the acquisition until the matter becomes public and market inquiries can be conducted.</p> <p>The ACCC has established a public register of all public mergers under its consideration (which include those where the parties have requested informal clearance, and also those that the ACCC is reviewing where no clearance request was made). The public register does not include the actual form of voluntary notification or confidential or sensitive information, but namely brief details of a proposed merger including the names of the acquirer and target, the relevant industry involved, the commencement date, the ACCC staff contact details, and, once the ACCC has reached its decision, reasons for the ACCC's determination.</p> <p>In relation to merger authorisations, this is a public process in which any interested party may make a submission. The application for authorisation, along with supporting submissions (and subsequent third party submissions), are available for inspection on a public register and on the ACCC's website. There is, however, provision for maintaining confidentiality of commercially sensitive information or otherwise where it appears desirable to the ACCC to grant confidentiality, in which case the information will be withheld from the public register.</p>
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<p>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</p>	<p>In Australia, information gathered from industry participants through the course of market inquiries is crucial to the consideration of merger proposals and is held in the strictest confidence by the ACCC. The ACCC relies extensively on this information and recognises that there is a need to protect the confidentiality of information provided by organisations and individuals.</p> <p>Under the provisions of the Freedom of Information Act 1982 (FOI Act), members of the public have right of access to official documents of Australian Commonwealth Government Ministers and agencies. The object of the FOI Act is to extend as far as possible the rights of the Australian community to access information in the possession of the government of the Commonwealth. The basic principle underlying the FOI Act is that everything should be available but that there are exemptions, which enable certain categories of documents not to be released. Commonly used exemptions included where the release would prejudice an ongoing investigation, reveal a confidential source, prejudice an adjudication examination, breach legal professional privilege, disclose a trade secret, breach confidence, or diminish the commercial value of information or the commercial affairs of a corporation.</p> <p>In relation to merger authorisations, as specified in 14A, a public register of non-confidential information used in the ACCC's investigation is available on the ACCC's website.</p>
<p>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</p>	<p>Please see answer to 13B.</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>Parties may approach the ACCC on either a confidential or public basis. If the requirements of the parties are that the proposed acquisition is confidential, the ACCC is unlikely to be in a position to provide the parties with an unqualified final view about the acquisition until the matter becomes public and market inquiries can be conducted.</p>
<p>E. 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</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 Canadian Competition Bureau; ▪ the Chinese Taipei Fair Trade Commission; ▪ the Commerce Commission of the Fiji Islands; and ▪ the Papua New Guinea Consumer Affairs Council (now the

available?	<p>Independent Consumer and Competition Commission).</p> <p>These agreements provide for one country to share information with the other country, where the agencies agree it is in their mutual interests and subject to domestic law constraints</p> <p>The ACCC is also party to two tripartite agreements – with the New Zealand Commerce Commission and the Canadian Competition Bureau, and another with the Chinese Taipei Fair Trade Commission and the New Zealand Commerce Commission.</p> <p>These agreements are publicly available on the ACCC website: http://www.accc.gov.au/content/index.phtml/itemId/255435/fromItemId/255432</p>
F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?	<p>Yes, merger parties should be aware that the ACCC and other regulators may share information of a non-confidential nature concerning particular mergers. The ACCC and other overseas regulators may also seek a confidentiality waiver from the merger parties to enable them to exchange confidential information on a particular merger where it is considered appropriate.</p>

14. Transparency

A. Does the agency publish an annual report? Please provide the web address if available.	<p>Yes. The ACCC's Annual Reports can be found at: http://www.accc.gov.au/content/index.phtml/itemId/668577</p>
H. Does the agency publish press releases related to merger policy or investigations?	<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. The ACCC's press releases relating to Mergers can be found at: http://www.accc.gov.au/content/index.phtml/itemId/621419/fromItemId/613495</p>
B. Does the agency publish decisions on why it cleared / blocked a transaction?	<p>To provide greater transparency the ACCC publishes a summary of its reasons in all merger decisions. This includes a competition analysis and the market definition considered by the ACCC. The ACCC's assessments can be viewed at: http://www.accc.gov.au/content/index.phtml/tag/AcccRecentDecisions</p> <p>In more complex matters the ACCC publishes a more comprehensive Public Competition Assessment (detailed reasons for the ACCC's decision), examples of which can be viewed from the link above or as listed separately at:</p>

	<p>http://www.accc.gov.au/content/index.phtml/itemId/501191/fromItemId/6204</p> <p>A Public Competition Assessment will be provided when:</p> <ul style="list-style-type: none"> ▪ a merger is rejected; ▪ a merger is subject to court enforceable undertakings under section 87B of the Trade Practices Act; ▪ the merger parties seek such disclosure; or ▪ a merger is cleared but raises important issues that the ACCC considers should be made public
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15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods?</p>	<p>Pre-merger notification is not mandatory in Australia and therefore sanctions do not apply for failure to notify. The ACCC does have the power to seek an injunction from the Federal Court of Australia preventing the merger from proceeding until the facts of the matter are heard. However, the risk in not approaching the ACCC is clear. In addition to the disruption to the merger, if the merger is found to be in breach of section 50 of the Trade Practices Act by the Federal Court of Australia, there is the possibility of a divestiture order and/or penalties up to A\$10 million.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>In cases where the Federal Court of Australia upholds the ACCC's view that the merger breaches section 50 of the Trade Practices Act the acquirer would be potentially liable.</p>

16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</p>	<p>Any decision by the ACCC is capable of judicial review under the Administrative Decisions Judicial Review Act, including decisions to "clear" and decisions to accept undertakings under section 87B of the Trade Practices Act.</p> <p>Administrative review of formal authorisation determinations by the ACCC is available from the Australian Competition Tribunal (ACT), a body constituted by a Presidential Member, who is a Federal Court judge, and other members with substantial experience in or knowledge of industry, commerce, economics, law or public administration (section 31 of the Trade Practices Act). This process is a review on the merits of the ACCC decision (de novo) and not a judicial review (Part IX of the Trade Practices Act – review by Tribunal of Determination of the ACCC).</p>
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17. Additional filings

<p>Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?</p>	<p>The Foreign Investment Review Board (FIRB) considers acquisitions by foreign entities in Australia under the Foreign Acquisitions and Takeovers Act. 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. FIRB approval is separate to any ACCC clearance on competition grounds.</p>
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18. Closing deadlines

<p>When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?</p>	<p>There are no deadlines for merger parties that have sought informal merger review.</p> <p>In the case of applications for authorisations, once the authorisation is granted in relation to an acquisition neither the ACCC or any other parties can take action under the Trade Practices Act to overturn the acquisition. Once authorisation is granted immunity is only in place for the period the authorisation is granted, which might vary from matter to matter depending on the ACCC or ACT's decision.</p>
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19. Post merger review of transactions

<p>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>	<p>The ACCC reserves its right to reconsider proposed acquisitions that have been informally cleared if it becomes aware that any information upon which it has based its view is in any way incorrect or incomplete.</p> <p>The ACCC may only seek divestiture within three years after the date on which the acquisition was consummated.</p> <p>The ACCC might bring an action seeking pecuniary penalties within six years of the merger.</p>
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