

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## New Zealand

May 2011

**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

Section 47 of the Commerce Act 1986 (Commerce Act) prohibits business acquisitions that would have, or would be likely to have, the effect of substantially lessening competition in a market.

Under section 66 of the Commerce Act, an acquirer may seek clearance from the Commerce Commission (Commission). The Commission may give clearances for mergers if it is satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market. The Commission does not give informal clearances or letters of comfort for mergers.

Under section 67 of the Commerce Act, the Commission may also grant an authorisation for an acquisition of assets or shares if it is satisfied that the proposed acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted.

#### B. Notification forms or information requirements

The Commission has a prescribed form for notice for clearance under section 66 or authorisation under section 67 of the Commerce Act that is available on its website <http://www.comcom.govt.nz/competition-downloads/>

	<p>The Commission may decline to register an application if:</p> <ul style="list-style-type: none"> <li>▪ it is not in the prescribed form; or</li> <li>▪ it is not accompanied by the prescribed fee; or</li> <li>▪ question(s) have not been answered and there is no accompanying explanation as to why the question(s) have not been answered; or</li> <li>▪ it is not completed to a sufficient standard to enable the Commission to proceed with its assessment of an application for clearance; or</li> <li>▪ it does not contain such particulars as may be specified in the form.</li> </ul>
<p><b>C. Substantive merger review provisions</b></p>	<p>In granting clearance under section 66 of the Commerce Act, the Commission must be satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition in a market.</p> <p>In granting an authorisation under section 67 of the Commerce Act, the Commission must be satisfied that the proposed acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted.</p>
<p><b>D. Implementing regulations</b></p>	<p>The Commerce Act 1986.</p>
<p><b>E. Interpretive guidelines and notices</b></p>	<p>In relation to mergers, the Commission has published the following policy guidelines:</p> <ul style="list-style-type: none"> <li>▪ Mergers and Acquisitions Guidelines 2003 (Guidelines);</li> <li>▪ Mergers and Acquisitions Clearance Process Guidelines November 2008 (Process Guidelines);</li> <li>▪ Mergers and Acquisitions Divestment Remedies Guideline June 2010; and</li> <li>▪ Mergers and Acquisitions Supplementary Guidelines on Failing Firms October 2009.</li> </ul>

## 2. Authority or authorities responsible for merger enforcement.

<b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b>	The New Zealand Commerce Commission.
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	<p><b>Wellington (Head Office)</b> 44 The Terrace PO Box 2351 Wellington 6140 New Zealand Tel: (04) 924 3600 Fax: (04) 924 3700</p> <p><b>Auckland</b> ASB Centre Level 19 135 Albert Street PO Box 105-222 Auckland 1143 New Zealand Tel: (09) 920 3480 Fax: (09) 920 3481</p> <p><b>Christchurch</b> Riverlands House 31 Victoria Street PO Box 25-193 Christchurch 8144 New Zealand Tel: (03) 964 3450 Fax: (03) 964 3451</p>
<b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b>	<p>Applicants can choose to engage in pre-notification discussions with Commission staff.</p> <p>Pre-notification discussions are not a compulsory element of the application for clearance process. However, the Commission encourages applicants to participate in pre-notification discussions before submitting an application. Applicants may request pre-notification discussions by contacting the manager of the Mergers &amp; Authorisations Team (<a href="mailto:msgmanager@comcom.govt.nz">msgmanager@comcom.govt.nz</a>).</p>

### 3. Covered transactions

<p><b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b></p>	<p>A transaction is covered if it would result in the acquisition of assets of a business or shares, including:</p> <ul style="list-style-type: none"> <li>▪ the creation of joint ventures (incorporated or otherwise); or</li> <li>▪ the acquisition of a minority interest; or</li> <li>▪ a change of control.</li> </ul>
<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>In coming to a view on whether parties are associated or whether one party has control of another, the Commission considers each case on its particular facts. Section 47(3) of the Commerce Act states that one party must be able to exert a “substantial degree of influence” over the activities of the other.</p> <p>Among the factors the Commission usually takes into account in determining association or control are the:</p> <ul style="list-style-type: none"> <li>▪ nature and extent of ownership links between the companies;</li> <li>▪ presence of overlapping directorships;</li> <li>▪ rights of one company to appoint directors of another; and</li> <li>▪ nature of other shareholder agreements and links between the companies concerned.</li> </ul>
<p><b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b></p>	<p>Yes, so long as control/association is established. The Commission usually assumes that control or association does not exist below a 20% shareholding.</p>
<p><b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b></p>	<p>A transaction is covered if it would result in the acquisition of assets of a business or shares, including the creation of joint ventures (incorporated or otherwise).</p>

## 4. Thresholds for notification

<p><b>A. What are the general thresholds for notification?</b></p>	<p>The Commerce Act does not impose a mandatory notification requirement on merging parties; nor does the Commerce Act set mandatory thresholds for notification. However, the Commission actively monitors transactions that affect markets in New Zealand. Where the Commission becomes aware of a transaction that has not been notified, it may investigate the transaction.</p> <p>The Commission’s Guidelines set out “safe harbours” which are intended to give guidance as to which mergers are unlikely to substantially lessen competition and contravene the Commerce Act. The Guidelines state that the Commission is unlikely to consider that an acquisition substantially lessens competition where either of the following situations exist:</p> <ul style="list-style-type: none"> <li>▪ the three firm concentration ratio in the relevant market is below 70% and the market share of the combined entity is less than 40%; or</li> <li>▪ the three-firm concentration ratio in the relevant market is above 70% and the market share of the combined entity is less than 20%.</li> </ul>
<p><b>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?</b></p>	<p>The Commerce Act does not impose a mandatory notification requirement on merging parties; nor does the Commerce Act set mandatory thresholds for notification.</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b></p>	<p>Not applicable.</p>
<p><b>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests,</b></p>	<p>Not applicable.</p>

<p>calendar year-end, fiscal year-end, other)?</p>	
<p><b>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?</b></p>	<p>Not applicable.</p>
<p><b>F. Describe methodology for calculating exchange rates.</b></p>	<p>Not applicable.</p>
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>Not applicable.</p>
<p><b>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</b></p>	<p>Not applicable.</p>
<p><b>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?</b></p>	<p>Section 47 of the Commerce Act extends to mergers that occur outside New Zealand by a person (whether or not the person is resident or carries on business in New Zealand) to the extent that the acquisition affects a market in New Zealand (see section 4(3) of the Commerce Act).</p>
<p><b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of</b></p>	<p>Not applicable.</p>

seller)?	
<b>K. If market share tests are used, are there guidelines for calculating market shares?</b>	Not applicable.
<b>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</b>	Not applicable.
<b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b>	No sectors are excluded from notification requirements.  However, the Commerce Act does not apply to the Crown (Government) so long as it is not engaged in trade (see section 5 of the Commerce Act).
<b>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</b>	Not applicable.
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	The Commission actively monitors transactions that affect markets in New Zealand. Where the Commission becomes aware of a transaction that has not been notified, it may investigate the transaction even if it might be within the safe harbours.

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory pre-merger?</b>	There is no legislative requirement that businesses notify the Commission of a proposed merger. Acquirers have the option of proceeding with a merger without applying for an application for clearance.
<b>B. Is notification mandatory post-merger?</b>	See above.

<p><b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b></p>	<p>An applicant can make a voluntary merger filing, but must do so before entering into the proposed merger.</p>
<p><b>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?)?</b></p>	<p>Section 66(1) of the Commerce Act states that a person who proposes to acquire assets of a business or shares may give the Commission a notice seeking clearance for the merger.</p> <p>However, section 68(2) of the Commerce Act states that where the Commission is of the opinion that a proposed merger is, for reasons other than arising from the application of any provision of the Commerce Act, unlikely to be proceeded with, the Commission may, in its discretion, decline to give a clearance for that merger.</p> <p>In general, merger parties are encouraged to contact the Commission via the manager of the Mergers &amp; Acquisition Team as early as possible to inform the Commission about potential applications for clearance.</p> <p>Parties can enter into pre-notification discussions, but these are not intended for transactions that are hypothetical. The Commission will generally expect to be satisfied that there is a good faith intention to proceed as evidenced by, for example, adequate financing, heads of agreements, or evidence of board-level consideration. However, the Commission will take into account other evidence of good faith intention. For example, when an acquirer is genuinely considering making a bid in the context of an auction situation.</p>
<p><b>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?</b></p>	<p>Applications for clearance can be accepted at anytime before the parties enter into the merger.</p>
<p><b>F. Can parties request an extension for the</b></p>	<p>There is no notification deadline, but applications for clearance must be made before entering into a merger.</p>

<b>notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.</b>	
--	--

## 6. Simplified procedures

<b>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, etc.).</b>	<p>The Commission does not have any simplified procedures for mergers that do not raise competition concerns.</p> <p>Where competition concerns clearly do not arise because there is no overlap between the merger parties' activities, the merger parties may well decide that an application for clearance to the Commission would be unnecessary. Many merger parties will still notify the Commission of such mergers, and the Commission encourages this practice.</p> <p>The Commission does not give informal clearances or letters of comfort for mergers.</p>
--	---

## 7. Documents to be submitted

<b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b>	<p>Applications for clearance must be made on the prescribed form. Section 68(1) of the Commerce Act states that an applicant must provide the Commission with documents and information in relation to the merger, within a specified timeframe, in order to enable the Commission to assess an application for clearance.</p> <p>The Commission may request documents that it considers are relevant to the Commission's assessment of the application for clearance. The Commission routinely asks for documents such as annual reports, market studies, internal reports and the merger transaction documents.</p>
<b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b>	<p>There are no legalisation requirements for documents submitted to the Commission. However, it is an offence under section 103 of the Commerce Act for any person to attempt to deceive or knowingly mislead the Commission in relation to any matter before it.</p>

<p><b>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?</b></p>	<p>No.</p>
---	------------

## 8. Translation

<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>English only.</p>
<p><b>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.</b></p>	<p>Not applicable.</p>

## 9. Review periods

<p><b>A. Describe any applicable review periods following notification.</b></p>	<p>The Commission's merger review process under Section 66 of the Commerce Act begins when it receives an application for clearance that is complete and registered.</p> <p>The statutory timeframe for a clearance is 10 working days unless agreed between the applicant and the Commission. The Commission's Process Guidelines state that on average applications for clearance will be determined within 40</p>
---	--

	<p>working days.</p> <p>The Ministry of Economic Development (MED) is undertaking a review of the authorisation and clearance processes in the Commerce Act. MED is considering whether the statutory timeframe for the Commission to make merger clearance determinations should be increased from 10 to 40 working days. MED anticipates that this legislative change may occur sometime in 2011.</p> <p>The statutory timeframe for a business acquisition authorisation (Section 67) is 60 working days or such longer period as the Commission and the applicant agree.</p>
<p><b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>No.</p>
<p><b>C. What are the procedures 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?</b></p>	<p>Having made an initial assessment of the issues and complexity surrounding an application for clearance, the Commission may seek an extension. The Commission endeavours to do this as early as possible in the process. The Commission will use the information provided in the application form and any pre-notification discussions to estimate the likely time it needs to complete its assessment of an application for clearance. The applicant will be informed of requests for an extension and the likely timeframes as soon as practicable.</p> <p>After any initial request for an extension, if the Commission's assessment of an application for clearance is that the matter is fairly straightforward, the Commission is unlikely to request any further extensions. Reasons that a further extension may be requested include:</p> <ul style="list-style-type: none"> <li>▪ to consider divestments that have been offered;</li> <li>▪ to test new information provided by the applicant or market participants;</li> <li>▪ where appropriate, to allow for the Commission to undertake economic modelling and the applicant to respond to such modelling; and</li> <li>▪ where there are still unresolved issues.</li> </ul> <p>Extension requests will initially be made verbally, and they will always be followed up with a written request via email or letter. Extension requests may sometimes be</p>

	accompanied by requests for further information. A deadline by which the applicant should respond will be given.
<b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b>	The Commission does not have any procedures for an accelerated review of non-problematic transactions.

## 10. Waiting periods / suspension obligations

<b>A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.</b>	Applications for clearance must be made before entering into the merger. However, the Commission recognises that mergers are often time sensitive and so endeavours to complete all applications for clearance as soon as practicable. Applicants are encouraged to advise the Commission of any commercial deadlines as early as possible. For example, at the pre-notification discussion stage.
<b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b>	Not applicable.
<b>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 units)? If not, to what extent do they apply to the parties' ability to proceed with the</b>	Not applicable.

<p><b>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, escrow agents.)</b></p>	
<p><b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b></p>	<p>An applicant that applies for clearance may at any time withdraw an application for clearance by notice in writing to the Commission. However, the Commission may still continue to investigate such a merger under section 47 of the Commerce Act.</p>
<p><b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b></p>	<p>Not applicable.</p>
<p><b>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.</b></p>	<p>Not applicable.</p>
<p><b>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 to close if no "irreversible measures" are taken).</b></p>	<p>An applicant that applies for clearance may at any time withdraw an application for clearance by notice in writing to the Commission. However, the Commission may still continue to investigate such a merger under section 47 of the Commerce Act.</p>

## 11. Responsibility for notification / representation

<b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?</b>	The acquirer is responsible for submitting the application for clearance.
<b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b>	No.
<b>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)?</b>	No.
<b>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?</b>	Not applicable.

## 12. Filing fees

<b>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)?</b>	<p>Applications for clearances should be accompanied by payment of the prescribed fee. The fee is currently NZD\$2,300 (GST inclusive).</p> <p>Notification for authorisation should be accompanied by the payment of the prescribed fee. The fee is currently NZD\$23,000 (GST inclusive).</p>
---	---

<b>B. Who is responsible for payment?</b>	The acquirer (i.e., the applicant).
<b>C. When is payment required?</b>	The application should be accompanied by payment of the prescribed fee for each merger for which clearance is sought.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	<p>Payment can be made by cheque or electronic payment into the Commission's bank account. The applicant's company name must be used as the reference when depositing funds electronically. The Commission's bank account details are:</p> <p>Commerce Commission  BNZ North End  020536032986700</p>
<b>E.</b>	

### 13. Confidentiality

<b>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?</b>	The Commission treats all pre-notification discussions as fact confidential until an application is registered.
<b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b>	<p>All information received by the Commission from the merger parties or third parties is subject to the principle of availability under the Official Information Act 1982 (OIA). Anyone, including the applicant may request information relating to the merger under the OIA.</p> <p>However, the OIA does not require disclosure of information that would prejudice investigations. The OIA also offers protection to confidential information through the exceptions to the disclosure obligations contained in it. These include when the public interest desirability in making the information available is outweighed by good reasons to withhold information from disclosure such as:</p> <ul style="list-style-type: none"> <li>▪ it would unreasonably prejudice the commercial position of the supplier or subject; or</li> <li>▪ the information is subject to an obligation of</li> </ul>

	<p>confidence and making it available would either prejudice the supply of similar information, or information from the same source where it is in the public interest that such information continue to be supplied, or be likely otherwise to damage the public interest.</p>
<p><b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b></p>	<p>See above.</p>
<p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	<p>Applicants sometimes request fact confidentiality when they file an application for clearance with the Commission, asking that the application itself, and the fact that it has been filed, is kept confidential (i.e. not disclosed publicly).</p> <p>The Commission will consider requests for fact confidentiality on a case-by-case basis, but is only likely to grant it for a limited period of time and in exceptional circumstances. Fact confidentiality is likely to severely hamper crucial parts of the Commission’s assessment of an application for clearance, as investigators cannot gather information from market participants and test information provided in an application for clearance.</p> <p>With regard to confidential information given to the Commission as part of the application for clearance, once an application for clearance has been registered and confidential information has been identified and confirmed, the public version (i.e. a version that omits the merger parties’ commercially sensitive and confidential information) will be published on the Commission’s website, and a media release will be issued. These actions aim to inform the public of the proposed merger, and enable third parties to make submissions to the Commission.</p> <p>In the confidential version of the application, applicants are asked to cite any information for which confidentiality is sought. This must be highlighted in bold and contained in [square brackets].</p>
<p><b>E. Is the agency or government a party to</b></p>	<p>For Trans-Tasman mergers, the Commission has agreed a specific cooperation protocol for merger review</p>

<p><b>any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b></p>	<p>(cooperation protocol) with the Australian Competition and Consumer Commission (ACCC). Cooperation is desirable to:</p> <ul style="list-style-type: none"> <li>▪ reduce compliance costs of Trans-Tasman business activity;</li> <li>▪ reduce the transaction costs of the ACCC and Commission in applying their competition laws; and</li> <li>▪ increase the effectiveness of competition laws in both New Zealand and Australia.</li> </ul> <p>This protocol formalises a number of practices already routinely employed by the Commission and the ACCC. It builds on current good practice by setting out further opportunities and mechanisms for cooperation between the agencies. Cooperation may include:</p> <ul style="list-style-type: none"> <li>▪ coordinating agency processes;</li> <li>▪ sharing information held by each agency that was provided by the applicant and third parties;</li> <li>▪ sharing agency analysis; and</li> <li>▪ from time to time, gathering information on behalf of the other agency.</li> </ul>
<p><b>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?</b></p>	<p>For international mergers, the Commission may liaise with an overseas competition authority. However, the Commission cannot discuss or exchange confidential information unless it has the consent of the parties via waivers.</p>

<h2 style="margin: 0;">14. Transparency</h2>	
<p><b>A. Does the agency publish an annual report? Please provide the web address if available.</b></p>	<p>The Commission publishes an annual report which is available at: <a href="http://www.comcom.govt.nz/accountability/">http://www.comcom.govt.nz/accountability/</a></p>
<p><b>B. Does the agency publish</b></p>	<p>The Commission usually issues a media release upon</p>

<p><b>press releases related to merger policy or investigations?</b></p>	<p>registering the application. This is to promote awareness of an application for clearance and give interested parties the opportunity to comment or provide the Commission with relevant information.</p> <p>The Commission will issue an accompanying media release when it publishes its statement of preliminary issues on its website.</p> <p>The Commission’s final decision will be announced publicly through a media release. Where companies are listed on the New Zealand and/or Australian stock exchanges, the media release will be issued outside of trading hours.</p>
<p><b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b></p>	<p>The Commission provides written reasons for decisions under the Commerce Act. The Commission’s policy is to publish its decisions. This is done to:</p> <ul style="list-style-type: none"> <li>▪ help the business community understand how the Commission assesses the competitive effects of proposed transactions;</li> <li>▪ provide useful precedents; and</li> <li>▪ ensure transparency.</li> </ul>

## 15. Sanctions/penalties

<p><b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</b></p>	<p>There is no legislative requirement that businesses notify the Commission of a proposed merger. Applicants have the option of proceeding with a merger without applying for an application for clearance. There are no sanctions for not applying.</p> <p>However, the Commission or other interested parties may take legal action under section 47 of the Commerce Act on the basis that the merger would have, or would be likely to have, the effect of substantially lessening competition in a market.</p> <p>If the Commission becomes aware of a completed merger and an investigation identifies a likely breach of the Commerce Act, it can apply to the High Court to seek a declaration of a breach and various remedies including</p>
--	---

	<p>injunctive relief, penalties and divestment. The full list of remedies available to the Commission can be found in sections 83-85 of the Commerce Act.</p> <p><a href="http://www.legislation.govt.nz/act/public/1986/0005/latest/DLM87623.html">http://www.legislation.govt.nz/act/public/1986/0005/latest/DLM87623.html</a></p>
<b>B. Which party/ies are potentially liable?</b>	<p>If the Commission or an individual takes action under section 47 of the Commerce Act, both merging parties are potentially liable.</p>
<b>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.</b>	<p>If the Commission considers that section 47 of the Commerce Act has been breached, it must apply to the High Court. Only the High Court can impose penalties or other remedies on the merging parties.</p>

## 16. Judicial review

<p><b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b></p>	<p>Merger parties, and persons who participated in a Commission conference (if one is held), have the right to appeal a clearance determination to the High Court. Such appeals proceed by way of rehearing.</p> <p>An appeal must be made within 20 working days after the date of the Commission's decision or within a timeframe that the court allows. The Commerce Act does not give the Commission authority to give an extension beyond the 20 working day timeframe. Applicants must apply to the court for such an extension. However, the Commission will not oppose an application made to the court, if it is made within 20 working days of the release of the Commission's written reasons.</p> <p>Judicial review proceedings may also be brought in relation to the Commission's exercise of its statutory power to make a clearance determination. All judicial reviews are heard in the High Court.</p>
---	---

## 17. Additional filings

**Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?**

No.

## 18. Closing deadlines

**When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?**

A merger clearance provides applicants with protection from proceedings initiated under sections 27 and 47 of the Commerce Act by the Commission and/or from another party. If the merger has not been completed, a clearance expires:

- 12 months after the date on which it was given; or,
- in the event of an appeal being made against the Commission's determination, 12 months after the date on which the determination is confirmed by the court.

## 19. Post merger review of transactions

**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?**

Generally, the Commission cannot re-open an investigation of a transaction that it previously cleared.

However, the Commission may accept a written undertaking by the applicant to dispose of assets or shares (under the Act the Commission is only able to consider structural divestments). If a divestment is accepted, it is deemed to form part of an application for clearance. If the assets or shares are not divested according to the terms of the undertaking, the clearance granted becomes void and the Commission may choose to prosecute the applicant under section 47 of the Act.