



Australian
Competition &
Consumer
Commission

Merger review process guidelines

Addendum

May 2011

Foreword

In 2006, the ACCC released the Merger Review Process Guidelines (the process guidelines). The process guidelines are designed to be a reliable, comprehensive and detailed guide to merger parties, the business community, their advisers and the public that can be drawn on to predict the processes that will be applied by the ACCC to merger reviews.

Since its initial publication, the process guidelines have been updated in order to reflect the renaming of the *Trade Practices Act 1974* as the *Competition and Consumer Act 2010* (the **Act**) on 1 January 2011 and to reflect updated contact information for the Mergers and Acquisitions Group.

Recent reforms to the *Freedom of Information Act 1982* (the FOI Act) have also necessitated amendments to the process guidelines. The *Freedom of Information Amendment (Reform) Act 2010* has introduced a new information publication scheme for Australian Government Agencies. Under this scheme, which commences on 1 May 2011, Government Agencies are required to publish specific categories of information, including the agency's operational information. That is, information that assists the agency to exercise its functions or powers in making decisions or recommendations that affect members of the public.

In order to meet its FOI obligations, the ACCC has made some changes to the process guidelines, as contained in the following Addendum.

The ACCC is also currently considering further refinements to the process guidelines. Once this is completed, a revised version of the process guidelines will be published. The ACCC anticipates releasing the revised process guidelines later this year.

Addendum to the Merger review process guidelines—May 2011

Information requirements

< After paragraph 4.99, the terms on which the ACCC accepts confidential information will be clarified with the following addition:

The ACCC will accept confidential information on the following terms:

- that there is no restriction on the internal use, including future use, that the ACCC may make of the information consistent with its statutory functions
- the confidential information may be disclosed to the ACCC's external advisors and consultants on the condition that each advisor or consultant will be informed of the obligation to treat the information as confidential
- the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or otherwise in accordance with section 155AAA of the Act.

Public Competition Assessments

< In paragraph 4.87 replace the words “within two weeks of a decision by the ACCC”; and in paragraph 4.125 replace the words: “within two weeks of it making the decision” with:

as soon as possible after making the decision.

1999 Merger Guidelines

< References to the 1999 Merger Guidelines in the Glossary and at paragraphs 1.6; 1.7; 3.7; 3.9; 4.95, 4.96 and in the first paragraph of Appendix A will be deleted and replaced with a reference to:

- the 2008 merger guidelines.

< In paragraph 3.7, the words: “see, in particular chapter 5” will be deleted.

< FN 2 will be deleted and replaced with:

The 2008 merger guidelines are available on the ACCC's website at www.accc.gov.au

< In paragraph 4.77, the following sentence (and FN11) will be deleted:

The 1999 merger guidelines discuss in detail the nature and purpose of s. 87B undertakings and the ACCC's approach to accepting them for mergers.

< and replaced with:

The 2008 merger guidelines, at Appendix 3, provide further discussion on the nature and purpose of section 87B undertakings; the general principles behind the ACCC's approach; the types of undertakings and enforcement of undertakings.

Financial Sector Act

< In paragraph 4.11, the *Financial Sector (Transfers of Business Act) 1999* (Cwlth) will be replaced with:

Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth)