

Form P

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 95AR (1)

APPLICATION FOR MINOR VARIATION OF A MERGER CLEARANCE

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 95AR (1) of the *Competition and Consumer Act 2010* for the minor variation of a clearance.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. The Applicant (the Acquirer)

- (a) Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and place of incorporation (where applicable)

.....
(See Direction 3 of this Form)

- (b) Describe the business or businesses carried on by the Applicant including the products and/or services the Applicant supplies

.....

- (c) Address in Australia for service of documents on the Applicant

.....

PART A – Original clearance

2. Clearance particulars

Description of acquisition for which clearance was granted, including, but not limited to, the registration number assigned to that clearance

.....

PART B – Minor variation of the original clearance

3. Minor variation sought

- (a) Provide details of the minor variation for which clearance is sought, including but not limited to identification of differences between the contract, arrangement, understanding or proposal for the acquisition that was originally granted clearance and the contract, arrangement, understanding or proposal for the acquisition for which a minor variation of clearance is sought

.....
(See Direction 4 of this Form)

- (b) Explain why the variation described above is, in fact, a minor variation which does not materially change the effect of the clearance

.....

4. Substantial lessening of competition

- (a) Describe the lessening of competition which would result, or would be likely to result, from the acquisition for which the minor variation of the clearance is sought in all of the relevant market(s)

.....

(See Direction 5 of this Form)

- (b) Provide submissions regarding the effect of the minor variation on the Commission's assessment of the lessening of competition in the relevant market(s) in the original clearance determination

.....

(See Direction 6 of this Form)

5. Updating information

Provide details of any material change to the information provided by the Applicant in support of the original clearance application and the effect of any such changes on the claims made by the Applicant in relation to the original clearance and the effect on competition of the proposed acquisition

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6. Undertaking

Consistent with subsection 95AR (2A) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for minor variation of a clearance is being considered by the Commission. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

7. Further information

Name, postal address, telephone, facsimile and email contact details of the person authorised by the Applicant to provide additional information in relation to this application

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8. Information provided in relation to the Target

Where the Target has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target, an authorised representative of the Target must indicate here that the information relating to the Target is complete and accurate.

Dated.....

Signed by/on behalf of the target

.....
(Signature)

.....
(Full Name)

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

9. 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, and 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 are aware of the provisions of section 95AZN of the *Competition and Consumer Act 2010*.

.....
Signature of authorised person

.....
Signature of authorised person

.....
Office held

.....
Office held

.....
(Print) Name of authorised person

.....
(Print) Name of authorised person

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

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

Competition and Consumer Act 2010

**Undertaking to the Australian Competition and Consumer
Commission given 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 Commission) by [company name, company ACN] of [company address] under section 87B of the *Competition and Consumer Act 2010* (the *Act*).
2. [Company name] has made an application for minor variation of a clearance pursuant to section 95AR of the Act.
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Commission.
4. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by [company name]; and
 - (b) the Commission accepts the Undertaking so executed.
5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

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

..... Signature of Authorised Person Signature of Authorised Person
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..... Office Held Office Held
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..... (Print) Name of Authorised Person (Print) Name of Authorised Person
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This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION 87B OF THE
ACT**

.....
Commission Chairperson

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. In all cases, facts and evidence must be provided to support the contentions made in response to the questions on this Form.
3. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so. The Applicant for a minor variation of a clearance must be the same person as the person to whom the original clearance was granted.
4. Address any changes to the contract, arrangement, understanding or proposal for the acquisition including but not limited to: the number and type of shares being acquired; the date on which the contract, arrangement, understanding or proposal was or is intended to be concluded; the date on which the public bid was or is intended to be made; the intended date on which the acquisition will be consummated; and the consideration exchanged in relation to the acquisition. Where possible, and where it has not already been provided to the Commission, a copy of the contract, arrangement, understanding or proposal and the public offer document must be provided.
5. The response must include details of the market(s) likely to be affected by the contract, arrangement, understanding or proposal for the acquisition, including both the markets for the supply and acquisition of goods or services, in particular having regard to goods or services that may be regarded as substitutes. The response must also address existing alternative suppliers, market concentration information, whether there would be any constraint on the exercise of market power including those imposed by suppliers, competitors, customers and the existence of import or export possibilities, barriers to entry and expansion, vertical integration in the market and any related markets.
6. Details must be provided in relation to the likely effect of the minor variation on the extent to which the acquisition will lessen competition in the relevant market(s) as compared to the lessening of competition found by the Commission in relation to the original clearance.