



**Speech Excerpt
American Chamber of Commerce
Luncheon, Sydney**

**Announcement of guidelines for
informal merger review process**

**Thursday 23 September 2004
Graeme Samuel, Chairman**

I recently foreshadowed that the Commission was proposing to make some changes to its informal merger review process.

Parties to a proposal are free to approach the Commission on an informal basis to have their matter considered. Should the Commission agree there is no substantial lessening of competition then the parties are free to consummate their deal without the Commission intervening. This informal process has worked well and it has allowed for a flexible and pragmatic approach to be taken to merger analysis.

But, as I acknowledged a few weeks ago, there is a need to continually review our procedures, particularly in the light of overseas experience.

The Commission is an active participant in the International Competition Network, a forum in which antitrust officials from over 80 regulatory and enforcement agencies work together to make antitrust enforcement more efficient and effective.

The ICN's work includes a Best Practice project for merger review. This project has developed a number of Guiding Principles for merger review along with a set of Recommended Practices.

The ICN's Guiding Principles and Recommended Practices aim to achieve greater harmonisation in global merger policy rules as well as ensuring that the merger clearance process is transparent and accountable.

Against the background of the ICN's Guiding Principles and Recommended Practices the Commission has given some thought to changes that might be made to engender greater transparency and accountability in our own merger clearance process while ensuring it remains efficient and timely.

The Commission has now developed guidelines that will help ensure our processes continue to deliver the degree of transparency and accountability that a world class merger assessment regime should be able to provide. The guidelines are meant to supplement the existing Merger Guidelines.

Broadly speaking the changes cover the following major issues:

- The establishment of a new register on the ACCC's internet site where information (eg timelines, Statement of Issues, Competition Assessment) concerning merger proposals will be posted – subject to appropriate protection of confidentiality requirements.
- The provision of indicative timelines for the more complex merger assessments. These timelines will be provided by ACCC staff prior to the commencement of the assessment. We have also included a proposal for clock stoppers where that is deemed appropriate. The timelines will be posted on the public register.
- Earlier this year the ACCC commenced a process of providing a public Competition Assessment outlining its reasons where:
 - a merger is rejected;
 - a merger is subject to enforceable undertakings;
 - the merger parties request it.
- Given the high level of response to this initiative the ACCC now intends to expand the public Competition Assessment to include those matters where a merger is approved but where the ACCC considers there are important competition issues that should be made public.
- The ACCC will now be providing a Statement of Issues for certain proposals. A Statement of Issues will only be published in those matters where competition issues have been identified and those issues require further information and consideration. This Statement will also be placed on the public register on our internet site.

I see this as an important element in bringing greater clarity to the assessment process and providing for a much more informed market. I would like to make it clear that a Statement of Issues should not be seen as a rejection of a merger proposal but rather a statement of the issues raised by the proposal which the Commission believes need to be addressed.

- The Commission has also sought to provide additional guidance as to communication between the merger parties, their advisers and the ACCC staff and Commissioners. This will aid the process in assuring business that their concerns are able to be addressed at the appropriate level and that they will be able to access appropriate decision makers should that be necessary.
- The guidelines go to some depth in identifying the types of information that should be submitted by the merging parties in order to ensure a proper assessment by the ACCC. I believe this will be welcomed by many as it appears to us that there is often a degree of confusion as to what should be submitted. It also provides a substantial degree of guidance as to the format of submissions to allow staff to quickly identify any competition issues associated with a particular proposal.

Since I first foreshadowed these changes in May, the Commission has been in discussions with those most often involved in merger processes and their legal

advisors. These discussions have been useful and have helped further refine the Commission's proposed changes.

The Commission has today posted the proposed new Guidelines for Informal Merger Review on our website so that others may have the opportunity to provide any comments they may have on the proposed new merger clearance processes.

The Commission is seeking any comments that interested parties may have within the next two weeks as we are proposing, subject to any comments received, to commence the new procedures in mid-October.

The changes we are proposing to our merger clearance processes are important in enhancing the accountability, transparency, efficiency and timeliness of the Commission's informal merger clearance system.