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Practice Group(s):

Competition, Antitrust and Trade Regulation

Competition Law: Merger Clearance in Australia

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Australia has a voluntary premerger notification regime, administered by a well-resourced and proactive antitrust authority, the Australian Competition and Consumer Commission (the **ACCC**).

The ACCC's *Merger Guidelines* recommend that business should seek clearance from the ACCC in the event that the post merger market share of the merged entity is greater than 20%.

After appropriate investigation and market inquiries, the ACCC can clear a transaction relatively promptly. If it has concerns with a proposal, it has extensive investigatory powers which can result in a lengthy second phase process that has no statutory time limit.

Ultimately, if the ACCC has concerns with a merger, it will commence proceedings in court to restrain its completion or seek divestiture of the acquired shares or assets.

I. Introduction

As in the merger control regimes in many jurisdictions, Australia prohibits acquisitions that are likely to have the effect of substantially lessening competition in an Australian market.

There is, however, no mandatory merger notification in Australia. Parties desiring to have their proposed mergers reviewed must elect one of three separate review processes:

- informal merger clearance (discussed in section III below);
- formal merger clearance (discussed in section IV); and
- authorisation (discussed in section V).

The ACCC reviews mergers under the informal clearance process and under the formal clearance process. Since its introduction in 2007, there has been no applications for formal merger clearance. Parties may seek authorisation of their transaction from the Australian Competition Tribunal (**Tribunal**), a process in which, at present, the ACCC has no role. There are likely to be legislative changes later in 2016 or 2017 to combine the formal clearance and authorisation processes to be administered by the ACCC with scope for a review by the Tribunal (discussed in section VI below).

Under the informal clearance process, there is no appeal or review process as such. Rather, the parties can make a formal application to the Federal Court of Australia (**Court**) for a declaration that the proposed transaction does not violate the law. Alternatively, the parties can press ahead to complete the transaction, forcing the ACCC to seek orders from the Court if it has concerns about the transaction. The parties also can offer to the ACCC Court-enforceable remedies.

In the formal clearance process, the parties have a right of appeal to the Tribunal for errors of law.

Finally, under the authorisation process, the Tribunal's decision can be reviewed on appeal to the courts for errors of law.

II. Merger Review in Australia

A. Substantive standard

Any acquisition of shares or assets that is likely to substantially lessen competition in a market is prohibited under section 50 of the Competition and Consumer Act 2010 (**Act**). The test applies only to acquisitions that affect markets in Australia, although there is extraterritorial reach.

Section 50 sets out a list of matters to be taken into account in determining whether an acquisition would have the likely effect of substantially lessening competition. Matters include the level and potential of imports, the level of barriers to entry and expansion, the availability of substitutes to the goods or services supplied by the merger parties, and whether the target is a vigorous and effective competitor (or a "maverick").

Section 50 applies to actions carried out in Australia, including for example, a transfer of IP or assets as part of a "foreign-to-foreign" acquisition.

Section 50A applies to acquisitions of controlling interests that occur outside Australia that result in a controlling interest being acquired in a second corporation in Australia, which then have the effect of a substantial lessening of competition in a market in Australia. In these circumstances the Tribunal can, on application by any person, consider whether the acquisition of the controlling interest would:

- be likely to substantially lessen competition in a market in Australia; and
- if so, result in such a benefit to the public that it should be allowed.

An unfavorable decision means that the corporation must cease to carry on business in Australia within six months of the decision. In essence this means that the relevant business must be divested within that period. Substantial pecuniary penalties may be imposed on breach, although to date this has not occurred.

B. Notification

Although there is no mandatory notification regime, when there is a material likelihood that the ACCC may investigate the proposed acquisition, the convention in Australia is for the parties, and in particular the acquirer, to notify the ACCC and to seek, generally, informal clearance. The Merger Guidelines advise of a notification "threshold," to assist merging parties to determine whether they should notify a particular transaction.

The ACCC encourages merging parties to notify it when both of the following criteria apply:

- the products of the merging parties are either substitutes or complements; and
- the merged firm will have a post-merger market share of greater than 20% in any relevant market.

Through its publicly available merger registers, the ACCC generally indicates market definitions that have been used to assess notified transactions. However, ultimately this is a question of judgment for the parties.

The ACCC may informally advise that all acquisitions in a particular industry or by a particular entity will be scrutinised. In addition to encouraging notification in the circumstances identified above, the ACCC encourages notification for proposals that affect various industries that it monitors or regulates – such as ports, rail, gas, wheat exporting, aviation and airports, and water.

The ACCC also may initiate an "own motion" review based on public information such as stock market announcements, rumors reported in the press, or information provided by other regulators in Australia and internationally. For example:

- If a transaction by a foreign controlled entity requires an application to be made to, or approval by, the Foreign Investment Review Board (**FIRB** - which has oversight of various acquisitions of Australian land and business assets) and by the Federal Treasurer, FIRB will provide the ACCC with a copy of that application. Accordingly, all transactions notified to FIRB generally are simultaneously notified to the ACCC. There are a number of monetary thresholds for notification to FIRB, but broadly for non-land acquisitions, for non-Free Trade Agreement country partners, the threshold is AUD252 million. For FTA country investors, it is AUD1.94 million.
- If a proposed transaction involves a regulated financial institution or its assets, the application generally will be made to the Australian Prudential Regulation Authority, which also consults with the ACCC.
- As stated above, the ACCC considers a number of markets to be sensitive or quite concentrated, and any proposed acquisitions or divestments in those markets are likely to result in the ACCC monitoring or investigating proposals even when no application is made for clearance.

It is for this reason, as stated above, that the convention in Australia is for the parties to seek clearance for a proposed merger that may be the subject of scrutiny by the ACCC- particularly given the remedies (including divestiture) available to the Court on the application of the ACCC or third parties.

C. Remedies

Although there is no mandatory notification process, the Act contains significant remedies, which may be imposed by the Court upon a finding that section 50 or 50A of the Act has been breached. The three key remedies are injunctive relief, divestiture, and civil penalty orders.

- INJUNCTIVE RELIEF - Section 80 of the Act provides that the ACCC may apply to the Court for an injunction restraining a corporation from completing an acquisition. Injunctions may be granted on an interim or interlocutory basis, pending proceedings to determine whether section 50 has been contravened.

  The risk of the ACCC applying to the Court for an interlocutory injunction encourages many parties not only to notify the transaction but also to agree to undertakings with the ACCC to alleviate its concerns, either on a permanent basis or while the issues are being resolved.

- DIVESTITURE - Section 81 of the Act empowers the Court, on the application of the ACCC or any other person (including, for example, an aggrieved competitor), to order the disposal of shares or assets acquired in contravention of section 50. An acquisition may also be declared void by the Court. Such proceedings must be brought within three years of the completion of the acquisition. Critically, the Court is not required to direct that the relevant shares or assets be disposed of at fair value.

Divestiture orders and applications have been comparatively rare in the last decade, with contested matters more commonly proceeding to court for declarations in advance of a transaction being completed (either at the instigation of the ACCC or the merging parties), or being resolved through the provision of divestiture or behavioral undertakings.

- PECUNIARY PENALTIES - The maximum civil penalty order for a breach by a corporation of the relevant sections of the Act is AUD10 million (or up to ten percent of the annual turnover of the relevant corporate group in Australia), and for a breach by an individual is AUD500,000. Such actions are extremely rare.

III. Informal Clearance

By far, the most common process adopted by merging parties in Australia is to approach the ACCC seeking informal merger clearance. Under this process, the parties to an acquisition (or at least the purchaser) will approach the ACCC to inform it of a proposed transaction and provide submissions describing the transaction, the parties, the affected markets in Australia and the likely effect of the transaction on those markets.

It is not uncommon for parties to notify a proposed transaction to the ACCC confidentially at a preliminary stage. If the parties ask that a proposed acquisition be kept confidential, the ACCC will not make market enquiries until the proposals are made public. In these circumstances, the ACCC generally will provide only a heavily qualified clearance in the form of a preliminary view, until the acquisition has been announced and it is able to make market enquiries.

The low notification thresholds in the *Merger Guidelines* result in notification of proposed acquisitions that are unlikely to have the effect of substantially lessening competition in a market in Australia. The ACCC therefore has streamlined the operations of the mergers branch by having a pre-assessment process, an initial assessment of proposed mergers, by a subgroup within the mergers branch.

If the ACCC does not consider it to be appropriate to conclude the review of the proposed transaction during the pre-assessment phase, it seeks the consent of the parties to undertake public market inquiries about the proposed acquisition.

During this process, the ACCC seeks views of the transaction from customers, suppliers, and competitors of the parties (and the public at large, through the posting on its website of the “market inquiries” letter) before forming a view as to whether the proposed transaction is likely to raise competition concerns. If the applicant does not consent, the ACCC may not undertake the inquiries and hence is not able to conduct a full review. As stated above, if the matter is already in the public domain, the ACCC can undertake inquiries at its own behest without the consent of the parties.

If the ACCC concludes that the acquisition is unlikely to substantially lessen competition in any market, it will provide the parties with a letter stating that it does not intend to oppose the transaction, commonly referred to as an informal clearance.

If the ACCC identifies significant competition concerns after making market inquiries, it will issue the parties with a "transparency" letter identifying its competition concerns, following which it will publish a public Statement of Issues identifying and describing those concerns. Following receipt of a Statement of Issues, the parties may then be able to address the ACCC’s concerns by making further submissions, by amending aspects of the transaction, or by offering enforceable undertakings (for example, divesting a particular asset or business).

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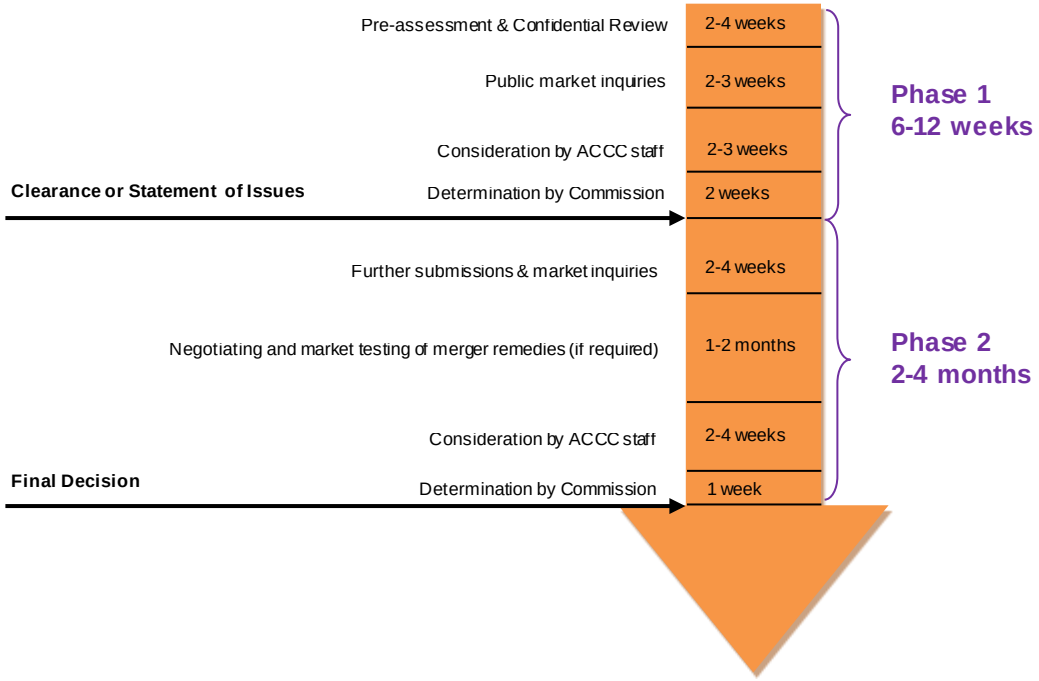
A. *Timeframe for review*

The ACCC aims to provide parties with either informal clearance or a Statement of Issues within six to twelve weeks from receiving complete submissions from the parties (phase 1 in figure 1).

This estimated timeframe is likely to be exceeded if the ACCC believes the parties have not provided sufficient information in their initial submissions. The ACCC will, at this time,"stop the clock" or if the parties ask the ACCC to treat the transaction as confidential, preventing the ACCC from making market inquiries. In complex matters, the informal clearance process, including negotiations with the ACCC following a Statement of Issues, may take several months (a combination of phases 1 and 2 in figure 1).

Figure 1

Timeframe for ACCC Review



Several high profile and contentious merger applications over the last three to four years have highlighted the length of time the informal merger review process can take, particularly once any application to the Court for review is taken into account. We refer below to proposed changes to processes.

B. *Provision of information*

As the process is "informal," there is no prescribed form and nature of the information to be provided by the parties to the ACCC. The parties can, however, expedite the process by submitting to the ACCC detailed information about the transaction, the relevant market or markets, market dynamics, and all of the factors relevant to the parties' argument that the acquisition does not substantially lessen competition. The level of detail provided by the parties will, to a large extent, be informed by their assessment of the likelihood that the ACCC will have significant concerns about the transaction and the extent to which the ACCC is already familiar with the sector.

Should the parties provide insufficient information to the ACCC, the ACCC may "stop the clock" on the review process while it requests additional information from the parties. Such requests may be made informally or pursuant to the ACCC's statutory powers to compel the production of evidence from witnesses or documents when it has "reason to believe" that the Act may be contravened.

In the last few years, the ACCC has significantly increased its use of its powers to compel the production of information and documents from the parties and relevant third parties in contentious matters. In particular, the strategic documents likely to identify the rationale and likely effect of the acquisition include relevant board papers, marketing and strategic plans, and analyst and investment bank advice. In addition, it has compelled executives of the parties to appear before it, under oath, to be examined about the transaction and relevant markets and market dynamics.

C. Confidentiality

As stated above, parties may notify the ACCC seeking an initial assessment on a confidential basis. In addition, the parties may request that the ACCC treat particular information as confidential. If the ACCC refuses, the parties have a choice to withdraw the information or allow it to be published. In practice, this rarely occurs, and the confidentiality of commercially sensitive information, particularly that provided by third parties, generally is respected (although it may be tested in informal discussions). The ACCC requests confidentiality waivers to allow information exchange with overseas jurisdictions where relevant.

D. Role of third parties

Third party participants in relevant markets will be invited by the ACCC to provide information as part of its market inquiries process. A letter requesting information and submissions concerning the proposed transaction will be sent to market participants and published on the ACCC's website. Any person may provide submissions to the ACCC during the market inquiry period. Although the ACCC does not have any obligation to take such information into account, information gathered from market participants is likely to heavily influence the ACCC's ultimate decision.

The ACCC often will meet individually with market participants seeking information on a voluntary basis concerning the transaction and market conditions. Should the ACCC be unable to gather sufficient information through the market inquiries process, it may compel both the attendance of witnesses and the production of documents by exercise of its legislative powers. Third parties also will be invited to comment on any Statement of Issues published by the ACCC.

The informal clearance process has no legislative backing and cannot prevent third parties from seeking to challenge a transaction in Court. However, it is extremely unusual for private litigants to seek to challenge an acquisition once the ACCC has publicly stated it does not believe the acquisition will substantially lessen competition.

E. Strategic considerations

An overwhelming majority of mergers submitted for review utilise the informal clearance process due to its significant advantages, not least because it is the best-developed route for obtaining clearance given the huge number of informal clearance applications considered by the ACCC to date. Other advantages are:

- greater flexibility;
- less onerous information requirements (although information requests will be onerous in particularly contentious reviews);
- the likelihood of a faster outcome than other review mechanisms, although timing is subject to the ACCC's discretion;
- ability to prepare submissions without the cooperation of the target;
- no formal requirement to undertake not to complete the transaction while it is under consideration (although this would be unusual and likely to lead to the ACCC making an urgent interlocutory application to restrain the parties from completing the transaction. In contentious acquisitions, the ACCC seeks undertakings from parties that they not complete the transaction without giving the ACCC, say, five clear business days' notice); and
- no application fee.

However, there are two key disadvantages. First, the time frames are largely at the discretion of the ACCC, which can be problematic for listed company takeovers (particularly those undertaken via a scheme of arrangement). Second, the ACCC is not required to disclose the identity of parties opposing the transaction, and submissions made to the ACCC are never provided to the applicants, often limiting the applicant's ability to respond properly. Parties are very reliant on the information conveyed to them by ACCC staff, who are mindful that, as submissions are provided on a confidential basis, they must be somewhat circumspect in the information disclosed.

In practice, the informal clearance process provides parties with significant comfort that an acquisition can proceed without challenge. Although the ACCC will always reserve the right to change its position in the light of information that may subsequently become available, in practice it has not done so.

F. Contentious reviews

1. REVIEW BY THE COURT - As the informal clearance process has no statutory basis, formal options for review are limited. Generally, the parties must elect:
   - to make a formal application to the Court for a declaration that the transaction does not contravene section 50 of the Act (with the ACCC as the natural contradictor); or the more likely position,
   - to seek to complete the transaction (if there are no other impediments to doing so such as foreign investment clearance) and effectively force the ACCC to apply to the Court for a declaration that the transaction contravenes section 50, generally accompanied by an application for an injunction to prevent the transaction's closing in the interim.
2. THE COUNTERFACTUAL - The identification of the correct counterfactual for the purposes of the competition analysis is imperative, as it is a basic building block in comparing the likely state of market competition without and with a proposed acquisition.

The approach to be taken regarding the counterfactual has been addressed by the Court as follows: in order to find a substantial lessening of competition (that is, in order to succeed), the ACCC must establish that:

- it *is more probable than not* that the ACCC's counterfactual would come to pass if the acquisition did not proceed; and
- there is a *real chance* that if the acquisition did not proceed, there would be a substantial lessening of competition as compared with the counterfactual.

3. EXPERT EVIDENCE - There is a consistent theme within the decisions of the Court that plays down the degree to which the judges will accept expert evidence as determinative of the issues in a matter. The approach of the Court is for the judges to form the conclusion as to whether a substantial lessening of competition in a market is likely to occur. A view by an expert as to that question may be rejected as trespassing on the judge's province, particularly when factual matters are still in issue. Nevertheless, the work undertaken by the experts is not wasted-rather, it is accepted in the nature of submissions.
4. UNDERTAKINGS - If the ACCC has significant concerns about a particular aspect of the transaction, it is common for the parties to offer a Court-enforceable undertaking to the ACCC to address these concerns. In reality, most "problematic" mergers are resolved in this manner, without the need for determination by the Court. The ACCC has a strong, stated preference for structural undertakings (providing for the sale or disposal of assets or facilities). However,t in the past, it has also accepted behavioral undertakings in acquisitions in the transport, hospital, banking, funeral, and airline industries.

   The ACCC also typically requires that undertakings contain the following provisions:

   - preapproval of prospective purchasers by the ACCC (which will be granted only to purchasers considered to be viable, effective, and long-term competitors);
   - forced sale provisions should assets not be divested within a designated time frame; and
   - provisions enabling the ACCC to monitor compliance with the undertaking.

   Before accepting an undertaking, the ACCC will generally undertake a public consultation process. A court can make orders and impose other remedies if the undertaking is breached.

IV. Formal Clearance

The formal merger clearance process was introduced in January 2007. To date, there have been *no* applications for formal merger clearance. An application must be made prior to the completion of a transaction. An application must be accompanied by a fee of AUD25,000 and by a signed undertaking under section 87B of the Act that the applicant will not complete the acquisition while the application is under consideration.

The ACCC may grant clearance, grant clearance subject to conditions, or refuse clearance for the notified transaction. Formal merger clearances provide the applicant with absolute immunity from actions under the Act in respect of the merger.

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A. *Timeframe for review*

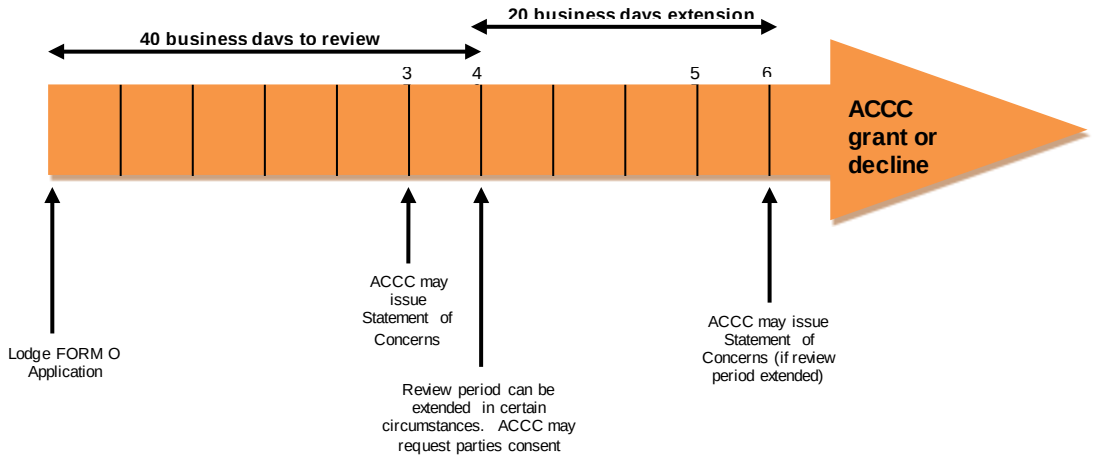
The ACCC has forty business days in which to undertake its review of a merger. This period can be extended by a further twenty business days if the ACCC cannot make a determination within the initial review period due to the complexity of the application or due to other special circumstances. The ACCC may also request that the parties consent to an extension of the initial review period.

If the ACCC has concerns in relation to a merger that is the subject of a formal clearance application, it may issue a Statement of Concerns within thirty-five business days of receiving the application (or within fifty-five business days when the review period has been extended).

These timeframes are illustrated in figure 2.

Figure 2

Timeframe for ACCC Formal Clearance



B. *Provision of information*

An application for formal merger clearance must be made on the FORM O Application for Merger Clearance. Form O requests more detailed information than is typically required in an application for informal clearance. The ACCC has the power to declare an application "invalid," for example, if it does not include all of the required information, and the ACCC has indicated that it will strictly enforce these information requirements.

C. *Confidentiality*

The formal review process is public and cannot take place on a confidential basis. The ACCC must publish applications for formal clearance on its website and invite submissions. Confidential commercial information of either the applicant or third parties can be protected in the same way as under existing (and well-tested) authorisation and notification processes. Submissions made by third parties are publicly available (subject to specific requests for confidentiality).

D. Review

If the ACCC declines to grant formal clearance or clearance subject to conditions, the applicant and only the applicant may apply to the Tribunal for review of that decision. On review, the ACCC must give the Tribunal all the information that the ACCC took into account when making the decision, which forms the factual information considered by the Tribunal on review (with certain limited exceptions). A decision by the Tribunal must take place within thirty days of an application being made (subject to some carve outs). The Tribunal does not apply the laws of evidence as strictly as a formal court, and the procedure is intended to be more practical and flexible. In practice, all parties will be represented by counsel, and the procedure is very similar to a court hearing. There is scope for the parties to offer the ACCC a court-enforceable undertaking during the process, although this may "stop the clock," extending the timeframe for review (most likely by approximately twenty business days). Only the applicant may apply to the ACCC for revocation of a clearance (a party other than the applicant does not have standing under the Act to seek revocation), although the ACCC also may revoke a clearance on its own motion.

E. Strategic considerations

The formal process offers two key advantages. First, for contentious transactions, it provides a direct right of appeal to the Tribunal within fourteen days of an unfavourable decision, with a further thirty-day limit for the Tribunal's review. Second, it is highly transparent—all submissions (including those of third parties) are publicly available, enabling the applicant to better respond to concerns raised by opponents of the transaction.

However, there are significant disadvantages, namely:

- a reversal of the burden of proof (compared to the informal process), as the applicant must positively satisfy the ACCC that the proposed acquisition will not result in a substantial lessening of competition;
- it is an untested process, as no applications have yet been made for formal clearance;
- a substantial volume of information must be disclosed with the application, including internal company documents prepared for the purpose of evaluating the acquisition. , It is likely to be impossible to compile properly without cooperation between the merging parties and requires a significant investment of resources (including time);
- almost no flexibility;
- only five business days are allowed to respond to any issues raised, but the response is critical, as any review by the Tribunal cannot take account of any additional information;
- the applicant must give an undertaking not to complete the acquisition while it is under consideration, reducing its tactical options;
- opportunity for dialogue with the ACCC is limited; and
- a filing fee of AUD25,000 is required.

F. Role of third parties

Third parties have only one opportunity to participate in the review process-during public consultation prior to the ACCC issuing its Statement of Concerns. They have no right to apply for merits review to the Tribunal or revocation of a formal clearance. Should an error of law be apparent from either the decision of the ACCC or the Tribunal, a third party may have standing to apply to the Court for judicial review.

V. Authorisation Process

Finally, parties may seek authorisation of their transaction from the Tribunal (as opposed to the ACCC), on the basis that the proposed conduct results in such a benefit to the public that it should be allowed to take place notwithstanding any substantial lessening of competition. Authorisations must be accompanied by a signed undertaking by the parties not to complete the transaction until the Tribunal makes its decision. The application fee is AUD25,000. Authorisation must be obtained prior to the transaction closing and provides the applicants with immunity from challenge under section 50 of the Act.

A. Timeframe for review

The Tribunal has a three-month period in which to make its decision, which may be extended in limited circumstances. If it does not make a decision in this time, the application is deemed refused.

B. Provision of information

In its role assisting the Tribunal, the ACCC must provide a report on all relevant matters and may:

- call a witness to appear and give evidence;
- report on statements of fact put before the Tribunal;
- examine or cross-examine any witness appearing before the Tribunal; and
- make submissions on any relevant issue.

The ACCC has no decision-making role in the authorisation process; it is bypassed as a decision maker. It is unlikely that its limited role would give the ACCC sufficient standing to appeal the Tribunal's decision (which appeal would, in any case, be limited to matters of law).

C. Confidentiality

Confidentiality may be claimed over information provided to the Tribunal. Such information will be excluded from the public register if it falls within one of the following categories:

- secret formula or process;
- cash consideration offered for shares or assets; or
- costs (current only) of manufacture, production, or marketing of goods or services.

D. Review

There is no merits review for authorisation decisions made by the Tribunal. Errors of law may be the subject of a court appeal by parties with sufficient standing (generally speaking, the merging parties as of right and any other party establishing that its legal rights could be affected by the proceedings).

E. Strategic considerations

The Tribunal applies a different test to authorisation applications from that applied to assess mergers under the informal or formal clearance processes under section 50 of the Act. As a result, certain mergers that create high industry concentrations but have significant public benefits may be allowed to proceed although they would likely be blocked by the ACCC. This avenue is of use only when the parties can demonstrate significant public benefits arising from the proposed transaction (not simply value or economies that will accrue to the acquirer and acquirer's shareholders).

Such public benefits historically have included: significant increases in the real value of exports; significant substitution of domestic products for imported goods; increase in international competitiveness of Australian industry; cost savings that lead to an increase in economic efficiency; strengthening of a competitor leading to an increase in competition; and promotion of small business. However, developments in economic theory mean that these public benefits may not automatically be accepted by the Tribunal in future reviews, particularly given the decline in popularity of the "national champion" concept which reached its zenith in the 1980s.

F. Role of third parties

Third parties may be asked to assist the Tribunal and may be allowed to intervene on a limited basis. However, they have no right to be heard and such applications will be determined on a case-by-case basis.

VI. Proposed Process and Legislative Changes

Over the course of 2014 and early 2015, a panel led by Professor Ian Harper undertook a review of competition policy in Australia. On 31 March 2015, the final report of the panel (the Harper Report) was published. The Harper Report is the most significant review of competition policy in Australia in 20 years and is a broad review of the competition provisions of the *Competition and Consumer Act 2010* (**CCA**) and the regulatory institutions that administer and enforce Australia's competition and consumer laws.

In relation to merger control, the Harper Report recommended that the formal merger exemption processes (i.e., the formal merger clearance process and the merger authorisation process) be combined and reformed to remove unnecessary restrictions and requirements that deter their use. The Harper Report recommended that the features of a new review process should be the product of consultation between business, competition lawyers and the ACCC.

The recommended process would have:

- the ACCC as the first instance decision-maker;
- the ACCC authorise a merger if it is satisfied that it does not substantially lessen competition, or that the merger would result in a benefit to the public that would outweigh any detriment;

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- no prescriptive forms but appropriate information requirements and the ACCC being able to require production of certain information;
- statutory immunity from third-party actions;
- strict timelines imposed that cannot be extended without the consent of the parties; and
- decisions of the ACCC being subject to review by the Tribunal and based upon the material that was before the ACCC.

The Harper Report made no substantive recommendations about the informal clearance process save that the ACCC consult with business representatives with the objective of further streamlining the process with the aim of achieving more timely decisions.

In November 2015, the government responded to the Harper Report, agreeing with the recommendations about merger control. The legislative amendments are expected within the next year.

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