

ACCC ISSUES EXPANDED MERGER PROCESS GUIDELINES FOR CONSULTATION

THE ACCC RELEASED DRAFT MERGER REVIEW PROCESS GUIDELINES (THE MERGER PROCESS GUIDELINES) FOR PUBLIC CONSULTATION ON 19 DECEMBER 2005.

The draft merger review process guidelines are a revised version of the *Guideline for informal merger review* originally issued in October 2004 (the informal review guideline). The revised guidelines refine and further develop the processes the ACCC will follow in its consideration of mergers and acquisitions.

The first year of the informal review guideline has shown the value of the revised merger processes for the business and advisory community. The guideline has proved to be a great step forward in achieving greater certainty, timeliness, efficiency, predictability and transparency in the ACCC's merger review process.

The expanded guidelines on merger review processes are not intended to be static. They will continue to evolve as we—business and its advisers, and the community at large—learn from experience and international best practice.

Based on experience during the initial 12 months, it was identified that some finetuning was needed to the guideline to remove remaining ambiguities about the application of the guidelines and to provide more detailed guidance on the ACCC's informal processes. The ACCC has also sought to make changes to improve the timeliness and efficiency of its merger review process. It is in this context that the revised set of guidelines is issued.

The key amendments in the merger process guidelines include:

- > expansion of the types of mergers (including confidential proposals) for which processes are detailed in the guideline, and clarification as to what process applies to the different types of mergers that the ACCC will review
- > new classifications for the various merger reviews undertaken by the ACCC
- > clearer and shorter indicative timelines for informal reviews
- > an opportunity for merger and interested parties to provide a right of reply to an ACCC statement of issues and publication (subject to limitations) of these responses on the ACCC website.

The ACCC will revise the merger process guidelines if and when new formal merger processes proposed by the government are enacted so that all the ACCC's merger review processes are in a single guideline on merger processes.

Like the informal review guideline before it, the revised merger process guidelines continue to draw on the International Competition Network's (ICN) guiding principles for merger review:

- > sovereignty
- > transparency
- > non-discrimination
- > procedural fairness
- > efficient, timely and effective review
- > coordination
- > convergence
- > protection of confidential information.

The ACCC remains committed to the ICN's guiding principles and associated recommended best practices and considers that these principles and practices provide the underpinnings of strong and effective merger laws.

A copy of the draft Merger Review Process Guidelines is available by following the Mergers and authorising anti-competitive conduct link on the ACCC's website: www.accc.gov.au. A two-month period was provided for submissions from interested parties.

The draft guidelines focuses exclusively on processes and should be read in conjunction with the ACCC's *Merger guidelines* (1999) which deal with the analytical and evaluative framework applied to mergers by the ACCC.

A review of the 1999 *Mergers guidelines* should begin in 2006.