Inside the ACCC

As part of its role to promote competition and fair trade in the marketplace, the ACCC considers the potential outcomes when one company seeks to merge with or acquire another. In particular, the ACCC is concerned with whether a merger would result in a substantial lessening of competition in a market.

Mergers

Thousands of mergers and acquisitions take place every year in Australia. Two or more businesses may decide to join forces or one company may wish to take over another. Some of these activities make front page news but the majority of them don't receive attention outside of the industry the companies operate in.

Mergers that attract a lot of interest often involve companies with household names that are listed on the stock exchange. From a consumer point of view, some people are loyal to the company they bank with or the grocery chain they shop at and are concerned about a change in ownership.

There are also people who are apprehensive about multinational corporations or 'big business'—that is, large companies who appear to pervade many markets. This anxiety is often shared by small businesses, who fear being unable to compete against bigger players. In sectors with a small number of companies or where large number of consumers participate, such as banking and media organisations, the prospect of a merger attracts even greater public interest.

From an investor point of view, a merger may affect the share value of the companies involved. A merger can result in significant benefits, allowing companies to achieve greater efficiencies together than they could apart.

The ACCC becomes involved if a merger or acquisition is likely to lessen competition in the marketplace by altering the structure of the industry and reducing the ability of, or incentives for, firms to behave competitively.

In assessing the likely effects of a merger, the ACCC is bound by provisions in the *Trade Practices Act 1974* (the Act). In addition, a set of guidelines have been developed that outline the analysis and processes the ACCC follows. These frameworks are designed to provide the business community, its advisers and the public with an enhanced level of predictability and certainty. The ACCC's guidelines are available at www.accc.gov.au/mergers.

How the merger process works: Frequently asked questions

What is the law the ACCC applies in relation to mergers?

Under section 50 of the Act, a company cannot acquire the shares or assets of another company if doing so would, or would be likely to, substantially lessen competition in a market. For example, a merger will be considered to substantially lessen competition if it results in the merged firm being able to significantly and sustainably increase prices.

In assessing whether a merger would be likely to result in a breach of section 50, the ACCC must consider a wide range of issues, including factors set out in legislation, which include: competition from imports, barriers of entry to the market, the level of concentration in the market and the likelihood of the merged entity being able to charge higher prices.

How does the ACCC become aware of a merger or acquisition?

There is no legal requirement for a company to inform the ACCC that it plans to merge with or acquire another company. However, many merger parties voluntarily consult with the ACCC to gauge whether their proposed merger would be considered likely to result in a substantial lessening of competition in a market and hence breach section 50 of the Act. The ACCC also receives references from other regulators such as the Foreign Investment Review Board and Australian Prudential Regulation Authority and initiates reviews based on its own intelligence surveillance of merger activity.

What is the ACCC's approach to merger reviews?

The ACCC encourages merger parties to talk with or write to its mergers staff when they are considering joining forces or acquiring another business—it's an interactive approach.

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Staff set out a timeframe for public merger reviews and allow interested parties to raise concerns throughout an assessment. The ACCC's approach is consistent with the International Competition Network guiding principles and recommended practices of providing timely, consistent and transparent assessments of mergers.

What types of reviews are conducted?

ACCC merger assessments can be conducted on either a confidential or a public basis. Confidential reviews may be attractive to some companies who don't want to reveal their merger proposal to the market and, in some cases, the target. They do mean, however, that any view provided by the ACCC will be qualified and, in some cases, no view can be provided until a public review is conducted. Alternatively, the ACCC's views can be sought on a public merger proposal, which may involve a public market inquiry process. Additionally, applications may be made by acquirers under a specific formal merger clearance process prescribed under the legislation—to date, the ACCC has not received any applications under this process.

What is the process for public reviews?

A review will begin once sufficient information has been provided to the ACCC. Details of public reviews are posted on the ACCC website and include an indicative timeline, relevant staff contacts and market inquiry details.

Following market inquiries, a merger may be cleared. Alternatively, the ACCC may decide to release a Statement of Issues if it has come to a preliminary view that a proposed merger raises competition concerns that require further investigation. At this point, a secondary timeline will be established to enable the ACCC to obtain further information that may either alleviate or reinforce these competition concerns. In some cases, this will result in the merger parties submitting undertakings to resolve the concerns.

The ACCC lists all public merger decisions in the Mergers Register on its website, along with a summary of the reasons. In addition, a Public Competition Assessment is published on key merger decisions to provide the market with a better understanding of the ACCC's analysis of competition issues.