



Application for a minor variation of an authorisation of a proposed merger or acquisition

Guidance in completing your application to the ACCC

To lodge an application, you should include the information, data, documents and evidence outlined in this form (the **application**). Where possible, each question should be answered fully and be substantiated with evidence. If a question is not relevant or where information is not available and cannot be reasonably estimated, you should provide a brief explanation.

The ACCC must not grant the minor variation sought unless it is satisfied that the statutory test is met.¹

It is an offence to knowingly provide misleading information to the ACCC. Refer to section 137.1 of the *Criminal Code* (Cth) and section 92 of the *Competition and Consumer Act 2010* (Cth) (the Act).

Key points for lodging your application

- We encourage you to consult the ACCC's Merger Authorisation Guidelines² and contact the ACCC at mergers@acc.gov.au before you lodge your application for a pre-lodgement discussion to clarify what information and evidence may be needed to assess your application.
- Failure to provide sufficient information may render the application invalid or otherwise impact the ACCC's ability to assess your application.
- You should provide all relevant information and evidence, including any expert reports you intend to rely on.
- Less weight will likely be given to a statement or submission that is not supported with corroborating evidence.
- A valid application **must** contain the following:
 - A public version of your application for publication on the public register. You may provide a clearly marked confidential version if you wish to claim confidentiality for parts of your application. All confidentiality claims must be substantiated. The public version must contain sufficient information to enable public consultation on your application.
 - A signed declaration by the applicant acquirer(s), and, if applicable, the target.
 - A signed section 87B undertaking not to complete the proposed acquisition until the ACCC's assessment is complete.

¹ Section 91A(4). See also the ACCC's *Merger Authorisation Guidelines*, available at <https://www.acc.gov.au/publications/>

² Available at <https://www.acc.gov.au/publications/>

Information

Applicant acquirer(s)

1. Provide details of the applicant acquirer(s) for a variation of authorisation, including:
 - 1.1. name, address (registered office), telephone number, and ACN
 - 1.2. contact person's name, position, telephone number, and email address
 - 1.3. a description of business activities
 - 1.4. email address for service of documents in Australia.

Authorisation to be varied

2. Provide details of the authorisation to be varied, including:
 - 2.1. registration number and date of the authorisation which is to be varied
 - 2.2. other persons who are a party to the authorisation which is to be varied.

Proposed variation

3. Provide details of the proposed variation, including:
 - 3.1. a description of the proposed variation
 - 3.2. the reasons for the proposed variation
 - 3.3. reasons why the proposed variation is minor.

Competition effects or net public benefit

4. The ACCC will assess whether to grant a minor variation to an authorisation depending upon the basis on which the ACCC originally decided to grant the authorisation. As applicable, describe the effect of the proposed variation on:
 - 4.1. competition in the relevant markets or
 - 4.2. the extent to which the benefit to the public outweighs any detriment to the public.

Provide information, data, documents or other evidence relevant to the ACCC's assessment of the competition effects or net public benefit.

Contact details of relevant market participants

5. Identify and/or provide contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Additional information

6. Provide any other information or documents you consider relevant to the ACCC's assessment of the application.³

Undertaking not to proceed

7. Consistent with s 89(1AA) of the Act, the ACCC requires this application to contain an undertaking that the applicant acquirer(s) will not complete the proposed acquisition to which authorisation relates while the ACCC is considering the application. See **Annexure A** to this application form.

³ Applicants should consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the particular matter for which a minor variation is sought.

Declaration by applicant acquirer(s)

Authorised persons of the applicant acquirer(s) must complete the following 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, 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 undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of section 92 of the *Competition and Consumer Act 2010* (Cth) and sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person

Office held

(Print) Name of authorised person

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

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

Declaration by Target/Vendor

Where the Target/Vendor has supplied information to the Applicant for purposes of preparing this application, authorised representatives of the Target/Vendor must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information provided to the Applicant for purposes of preparing this application is true and correct.

The undersigned are aware of the provisions of section 92 of the *Competition and Consumer Act 2010* (Cth) and sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person

Office held

(Print) Name of authorised person

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

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

Annexure A

Competition and Consumer Act 2010 (Cth)

Undertaking to the Australian Competition and Consumer Commission given by the applicant acquirer(s) 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 ACCC) by [company name, company ACN] of [company address] under section 87B of the *Competition and Consumer Act 2010 (Cth)* (the **Act**).
2. [Company name] has made an application for a merger authorisation pursuant to section 88 of the Act in respect of its proposed acquisition of [describe proposed acquisition].
3. [Company name] hereby undertakes that it will not complete the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the ACCC.
4. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by [company name], and
 - (b) the ACCC accepts the Undertaking so executed.
5. [Company name] acknowledges that the ACCC will make this Undertaking available for public inspection.

EXECUTED AS AN UNDERTAKING

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

Signature of director

Signature of company secretary

Name of director (print)

Name of company secretary
(print)

Date:

Date:

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Act:

And signed on behalf of the ACCC:

Chairman

Date

Name:

Name:

Position:

Position:

Date:

Date:
