The International Comparative Legal Guide to:

Merger Control 2016

12th Edition

A practical cross-border insight into merger control issues

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EDITORIAL

Welcome to the twelfth edition of *The International Comparative Legal Guide to: Merger Control*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of merger control.

It is divided into two main sections:

Three general chapters. These chapters are designed to provide readers with a comprehensive overview of key issues affecting merger control, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in merger control laws and regulations in 50 jurisdictions.

All chapters are written by leading merger control lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Nigel Parr and Catherine Hammon of Ashurst LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Relevant Authorities and Legislation

1.1 Who is/are the relevant merger authority(ies)?

The New Zealand Commerce Commission (**NZCC**) is the relevant authority. The NZCC is an independent statutory corporation established under the Commerce Act 1986 (**Act**).

The NZCC's role under the Act includes:

- making decisions in respect of applications for clearance or authorisation for business acquisitions; and
- investigating and bringing Court proceedings for alleged breaches of the Act.

1.2 What is the merger legislation?

The merger legislation is the Commerce Act. The Act's merger control provision, section 47, prohibits business acquisitions having the effect of substantially lessening competition in a New Zealand market. The Act also provides the process for obtaining clearance or authorisation of business acquisitions from the NZCC (sections 66 to 69B).

The NZCC's Mergers and Acquisitions Guidelines 2013 and Authorisation Guidelines 2013 set out in detail the NZCC's views on how the prohibition and clearance and authorisation processes apply.

The NZCC does not have the power to determine, in its own right, whether or not the Act has been breached and it does not itself have the power to impose penalties. Where the NZCC considers that there has been a breach of section 47, and that the case is suitable for prosecution, it must bring civil proceedings before the courts seeking pecuniary penalties and other appropriate remedies.

The Commerce (Cartels and Other Matters) Amendment Bill (Cartels Bill) currently before Parliament would, principally, introduce criminal sanctions for hard-core cartel conduct but would also make a number of changes to the merger control regime including:

- providing new remedies to deal with acquisitions by overseas persons of a controlling interest in a New Zealand body corporate which risk breaching section 47 of the Act;
- extending the NZCC's statutory default timeframe for determining merger clearances; and
- introducing a new clearance regime under which the NZCC would be able to consider, and grant or decline clearance for, "collaborative activities" that are not full structural mergers.

These amendments are noted in the relevant questions below.

1.3 Is there any other relevant legislation for foreign mergers?

Yes, the Overseas Investment Act 2005 (**OIA**) requires that consent is obtained for the acquisition of particular New Zealand assets by "overseas persons".

The OIA defines an overseas person to include:

- an individual who is not a New Zealand citizen and who is not ordinarily a resident in New Zealand;
- a partnership, body corporate or trust where an overseas person or persons have 25% or more ownership or control by reference to certain factors (such as composition of a governing body or beneficial ownership); and
- a company incorporated outside New Zealand, or in which an overseas person or persons hold 25% or more of any class of share, or the power to control 25% or more of the company's governing body, or 25% of voting rights, or the right to exercise control over 25% or more of voting rights.

The OIA applies to acquisitions by overseas persons (or associated persons) of a 25% or more direct or indirect ownership and/or controlling of interests in:

- significant business assets;
- "sensitive" and "special" land;
- farm land; and
- fishing quota.

An acquisition of "significant business assets" is where the total expenditure involved, or price paid, or gross value of the assets (including shares) of the company or property being acquired, exceeds NZ$100 million. New Zealand has recently concluded the Trans-Pacific Partnership (**TPP**), its largest free trade agreement with Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. The threshold for "significant business assets" that apply to investors from TPP countries will increase from NZ$100 million to NZ$200 million (except for Australian overseas persons, who are already subject to a higher threshold). The exact details and timing are yet to be finalised.

Also see sections 56–58B of the Fisheries Act 1996 in respect of overseas investment in fishing quota.

Fees for OIO applications vary depending on what is being acquired and who is making the decision. An overseas person who fails to apply for consent (or attempts to avoid the OIO) where consent is required is liable on conviction, (i) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding NZ$300,000, and (ii) in the case of a body corporate, to a

fine not exceeding NZ$300,000. The High Court also has the power, on application from the OIO, to order disposal of any property.

1.4 Is there any other relevant legislation for mergers in particular sectors?

Sector-specific legislation may impose some statutory requirements on merging parties in an industry, but there are few industry specific prohibitions on aggregation. One example of other legislation is the Fisheries Act 1996 (sections 59 & 60).

2 Transactions Caught by Merger Control Legislation

2.1 Which types of transaction are caught – in particular, what constitutes a "merger" and how is the concept of "control" defined?

Section 47 of the Act prohibits any person acquiring assets of a business or shares that would have the effect of substantially lessening competition in a New Zealand market.

The terms "person", "acquire", "assets", "business" and "share" have broad definitions. For example:

- "person" is defined as "any association of persons, whether incorporated or not";
- "assets" is defined to include intangible assets which may include goodwill, patent rights and other IP, contractual rights such as options, franchises or some management contracts, operational know-how, and customer lists contracts and options;
- "share" includes a beneficial interest in, or option to acquire a share, whether or not that share carries voting rights; and
- "acquire" includes obtaining by gift, lease, hire or licence.

No level of shareholding, or proportion of assets, is prescribed. Accordingly partial acquisitions may be caught. In the case of a public company, the NZCC previously stated in its 2003 version of the Mergers and Acquisitions Guidelines that it may look at shareholdings of 15% or more and, in some circumstances, lower.

Sections 47(2) and 47(3) of the Act provide that a reference to a "person" includes corporate entities that are "interconnected" as parent and/or subsidiary companies, or "associated" (i.e. able to exert a substantial degree of influence over the other). Therefore, the NZCC will view all interconnected bodies corporate and associated parties of the acquirer as if they were one head in the market.

No guidance is given in the Act on when a person has a substantial degree of influence over the other. However, the Mergers and Acquisitions Guidelines note, that in respect to associated parties, "a shareholder may have a substantial degree of influence on a firm if it has a shareholding of 10% in the firm and the balance of the shareholding in the firm is a mix of smaller shareholders".

As currently drafted, a "controlling interest" (in the proposed new remedies provisions in the Cartels Bill for proposed acquisitions by overseas persons of a controlling interest in a New Zealand body corporate) means:

- 20% of votes, issued shares or dividend entitlements;
- controlling the composition of the board of the body corporate; or
- the overseas person being the holding company of the body corporate (as defined in the Companies Act 1993).

2.2 Can the acquisition of a minority shareholding amount to a "merger"?

Yes; refer to question 2.1.

2.3 Are joint ventures subject to merger control?

Yes, structural joint ventures that involve the acquisition or transfer of assets of a business or shares are subject to the section 47 prohibition. Refer to question 2.1 in respect of "associated persons".

Unincorporated contractual joint ventures are subject to section 27 of the Act, which prohibits arrangements that have the purpose or (likely) effect of substantially lessening competition in any market.

The Cartels Bill would replace the Act's existing joint venture exemption from the price-fixing prohibition with a new exemption for "collaborative activities". To come within the proposed collaborative activity exemption, a party would need to show that:

- it and one or more parties to the arrangement are carrying on an enterprise, venture, or other activity, in trade;
- the activity is carried on in co-operation by two or more persons;
- the activity is not carried on for the dominant purpose of lessening competition between any two or more of the parties; and
- the cartel provision is reasonably necessary for the purpose of the collaborative activity.

The Cartels Bill would also introduce a clearance regime for such "collaborative activities". Thus, when the Cartels Bill becomes law, it will become an option to seek clearance for a collaborative activity that is short of a full structural merger or acquisition.

2.4 What are the jurisdictional thresholds for application of merger control?

There are no turnover or market share thresholds for application of merger control.

The Act provides a voluntary pre-notification regime under which parties may seek clearance or authorisation for a proposed acquisition. (Refer to question 4.1 in respect of how such applications are assessed by the NZCC in accordance with the Act.)

The Mergers and Acquisitions Guidelines specify "concentration indicators". An acquisition is unlikely to raise competition concerns if, post-merger:

- the merged entity would have less than a 40% market share and the three largest firms, being the merged entity and the two nearest players, together would have less than 70% of the relevant market; or
- the merged entity would have less than a 20% share in a market where the three largest firms, being the merged entity and the nearest two players, together would have more than 70% of the relevant market.

The NZCC recommends that parties seek clearance or authorisation for an acquisition if the post-acquisition market shares would fall outside the concentration indicators. An acquisition falling outside the concentration indicators is not necessarily prohibited but is likely to receive closer scrutiny by the NZCC. Further, the Mergers and Acquisitions Guidelines note that the concentration indicators only provide an "initial guide to merging firms" and an acquisition that does not exceed one of these indicators may still be likely to substantially lessen competition.

The Mergers and Acquisitions Guidelines also clearly state that market share figures in themselves are not determinative as to whether the merger-control provision is likely to be breached.

2.5 Does merger control apply in the absence of a substantive overlap?

Yes, merger control may apply in the absence of substantive overlap. Merger control can apply to vertical and conglomerate acquisitions. The test is whether or not the merger is likely to result in a "substantial lessening of competition" in a relevant market. In this context the Act defines "substantial" to mean "real or of substance".

2.6 In what circumstances is it likely that transactions between parties outside New Zealand ("foreign-to-foreign" transactions) would be caught by your merger control legislation?

Section 4(3) of the Act provides that section 47 "extends to the acquisition outside New Zealand by a person (whether or not the person is resident or carries on business in New Zealand) of the assets of a business or shares to the extent that the acquisition affects a market in New Zealand".

However, there would likely be practical difficulties in attempting enforcement action against, and imposing effective remedies on, overseas merging parties.

For this reason, the Cartels Bill would introduce new provisions enabling the NZCC to apply to the High Court for a declaration that a wholly overseas merger has the effect of substantially lessening competition in a market in New Zealand where:

- the overseas person acquires shares in a New Zealand company; and
- the acquisition results in the overseas person acquiring a controlling interest.

The Court would be given the discretion, in granting a declaration, to make further orders in respect to the New Zealand business. The New Zealand business could be required to cease carrying on business in New Zealand, or to dispose of shares or other assets specified by the Court. These remedies would be available when the Cartels Bill is passed and becomes law.

In respect of trans-Tasman mergers, or international mergers with effects in both New Zealand and Australia, the NZCC and the Australian Competition and Consumer Commission (**ACCC**) have a Co-Operation Protocol for Merger Review.

2.7 Please describe any mechanisms whereby the operation of the jurisdictional thresholds may be overridden by other provisions.

As noted under question 2.4, there are no jurisdictional thresholds to override. Specific legislation is required to override the application of section 47 of the Act.

2.8 Where a merger takes place in stages, what principles are applied in order to identify whether the various stages constitute a single transaction or a series of transactions?

There is no specific provision in the Act in respect of aggregating a series of transactions. Accordingly, each stage of a merger is subject to merger control and the substantive competition analysis may be affected by the level of control obtained by the acquirer at any particular stage. Also, refer to the broad definitions of "assets", "shares" and "person" (including interconnected or associated persons) in question 2.1.

3 Notification and its Impact on the Transaction Timetable

3.1 Where the jurisdictional thresholds are met, is notification compulsory and is there a deadline for notification?

As noted under question 2.4, there are no jurisdictional thresholds and notification is not compulsory.

The Act provides a voluntary pre-notification regime under which parties can, but do not have to, seek clearance or authorisation from the NZCC for a proposed acquisition. Clearance or authorisation cannot be granted retrospectively, i.e. post-completion. Approval for an acquisition provides statutory immunity from any challenge if the acquisition is completed within 12 months of approval being granted.

3.2 Please describe any exceptions where, even though the jurisdictional thresholds are met, clearance is not required.

Refer to question 3.1.

3.3 Where a merger technically requires notification and clearance, what are the risks of not filing? Are there any formal sanctions?

Refer to question 3.1.

The key risk of not filing is that the NZCC may investigate the transaction. If it considers that an acquisition (post-completion) has breached the Act or (pre-completion) would be likely to breach the Act, it has a wide range of remedies available to it which the NZCC can pursue through the courts.

Remedies include injunctive relief, substantial pecuniary penalties and/or an order for divestment. The NZCC also has the power to seek "cease and desist" orders from an independent Cease and Desist Commissioner appointed under the Act. Third parties may also seek injunctive relief and damages through the courts. The effect of a clearance or authorisation being granted is to prevent such challenges from being brought.

3.4 Is it possible to carve out local completion of a merger to avoid delaying global completion?

Yes, in theory. However, there can be practical difficulties in carving out local completion to avoid delaying completion of a global merger.

3.5 At what stage in the transaction timetable can the notification be filed?

The NZCC can only grant clearance or authorisation for proposed transactions. Therefore, notification can be filed at any time before a transaction becomes unconditional. Approval may be sought prior to any formal agreement being prepared. Agreements or understandings in relation to relevant proposed transactions are generally conditional on NZCC approvals being obtained.

3.6 What is the timeframe for scrutiny of the merger by the merger authority? What are the main stages in the regulatory process? Can the timeframe be suspended by the authority?

The statutory timeframe under the Act for a clearance decision is currently 10 working days (60 working days for authorisation). However, as a matter of practice the NZCC often seeks extensions from applicants, which are invariably granted, since clearance or authorisation is deemed to be declined if a decision is not made within the statutory time periods.

The NZCC's target timeframe for consideration of clearance applications is 40 working days, although the actual timeframe in a given case could be more or less depending on the level of complexity. The Cartels Bill would amend the statutory default timeframe for clearances to 40 working days, in line with the NZCC's target timeframe.

A new streamlined authorisation process aims to make decisions within 40 working days for proposed acquisitions which meet certain criteria.

As to the process, the NZCC conducts a detailed investigation and seeks information from competitors, suppliers, customers and any other relevant parties. It will also conduct interviews with the applicant(s) and vendor(s) to test the NZCC's competition concerns. The NZCC often releases a Statement of Preliminary Issues at an early stage of its investigation.

Following the interview process, the NZCC may make additional inquiries and possibly issue a Letter of Issues to highlight initial concerns. If a Letter of Issues is released to the applicant(s), they will have the opportunity to address these issues. In complex cases where issues remain unresolved, a subsequent Letter of Unresolved Issues will be provided giving the applicant(s) a final opportunity to provide further information or evidence to allay the NZCC's concerns.

The NZCC has no power to suspend the timeframe, but as noted above, may seek extensions from applicants.

3.7 Is there any prohibition on completing the transaction before clearance is received or any compulsory waiting period has ended? What are the risks in completing before clearance is received?

There are no specific prohibitions for completing the transaction before clearance or authorisation is granted but the NZCC can only grant clearance or authorisation for a proposed transaction. Therefore, if the transaction is completed, such approval cannot be obtained. The key risk is that the NZCC and/or third parties may seek enforcement remedies if the acquisition is viewed as breaching section 47.

3.8 Where notification is required, is there a prescribed format?

Pre-notification is voluntary. If an applicant notifies the NZCC, the Act requires that notice shall be "in the prescribed form". Prescribed forms are available on the NZCC's website.

3.9 Is there a short form or accelerated procedure for any types of mergers? Are there any informal ways in which the clearance timetable can be speeded up?

No, there is no short form or accelerated procedure for clearance of mergers. Refer to question 3.6 in respect of the streamlined process for authorisation of mergers.

3.10 Who is responsible for making the notification and are there any filing fees?

If approval is sought, then the party(ies) proposing to acquire the relevant assets or shares is responsible for making the notification. Often both the acquirer and the target will be actively involved in preparing and making the application, unless the situation is not conducive to this – such as in a 'hostile' takeover.

The prescribed fees for clearance or authorisation are currently NZ$2,000 and NZ$20,000 respectively (plus GST of 15%). Payment of those fees must be made for an application to be registered.

3.11 What impact, if any, do rules governing a public offer for a listed business have on the merger control clearance process in such cases?

The rules governing a public offer for the shares (or takeover) of a listed business operate independently of the merger control clearance process and do not impact on it. In practice, a public offer may be expressed to be conditional upon clearance or authorisation having been granted by the NZCC on terms satisfactory to the offeror.

3.12 Will the notification be published?

A public version of the application (where commercially sensitive and other confidential information has been redacted), will be published on the NZCC's website. Submissions on the application may also be published on the NZCC's website.

The Act requires the NZCC to give written reasons for its determination, and all clearance and authorisation decisions (where commercially sensitive and other confidential information has been redacted), are published on the NZCC's website.

4 Substantive Assessment of the Merger and Outcome of the Process

4.1 What is the substantive test against which a merger will be assessed?

Mergers are assessed against the substantial lessening of competition in a market test set out in section 47 of the Act.

Where the relevant approval is sought from the NZCC it may only:

- grant clearance if it is satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market; or
- grant authorisation if it is satisfied that the acquisition will result, or is likely to result, in such benefit to the public that it should be permitted.

The NZCC equates a substantial lessening of competition with an ability to either materially increase prices or lower quality when compared with valid counterfactuals. Counterfactuals are "likely" alternative outcomes in the absence of the proposal, i.e. estimates of how the market would evolve without the proposed transaction. There can be more than one counterfactual, as to be "likely" a counterfactual is not required to be more likely that not (i.e. have a 50% chance or greater of occurring) and the likely counterfactual will not necessarily be the status quo.

4.2 To what extent are efficiency considerations taken into account?

The NZCC (or court) must take efficiency considerations into account when authorisation is sought. The NZCC's approach is to compare the benefits of the acquisition against likely counterfactuals. Section 3A of the Act provides that when assessing public benefits, the NZCC is required to have regard for any efficiencies that will result or will be likely to result.

The NZCC has in the past stated that public benefits can be derived from economies of scale or scope, better utilisation of existing capacity and cost reductions.

The "public" is the public of New Zealand. Benefits to foreigners are counted but only to the extent that they also involve benefits to New Zealanders.

Overall, public benefits are net gains in economic terms. The NZCC applies a total welfare test and transfers of wealth between groups of New Zealanders are generally ignored.

In respect of clearances, the Mergers and Acquisitions Guidelines state that "it remains a rare case in which efficiencies would be sufficient to prevent a substantial lessening of competition". Accordingly, the NZCC encourages applicants to use the authorisation process where efficiencies are relied on.

4.3 Are non-competition issues taken into account in assessing the merger?

Non-competition issues may be taken into account where authorisation is sought on the public benefits test. However, the applicant is required to demonstrate net public benefits (primarily economic efficiencies). The Authorisation Guidelines set out in detail the NZCC's approach to analysis of public benefits and detriments and describe the types of factors it can take into account.

4.4 What is the scope for the involvement of third parties (or complainants) in the regulatory scrutiny process?

Seeking clearance or authorisation is a public process. There is significant scope for the involvement of third parties. Once an application is filed, the NZCC publishes a media release and a Public Version (refer to question 3.12) of the application is published on the NZCC's website. (Refer to question 3.6 for further details on the timeframe and process.)

Parties involved in the broader industry may approach the NZCC to express views in respect of the application. The NZCC also seeks the views of parties potentially affected by the relevant acquisition including customers, competitors and suppliers. This may include face-to-face interviews.

When considering an application for authorisation (other than under the streamlined process), the NZCC investigates the application, publishes a draft determination, allows interested parties to make submissions, circulates submissions to all interested parties, holds a 'conference', and then draws together the information from its investigation, the submissions and the conference to make a final determination decision.

4.5 What information gathering powers does the regulator enjoy in relation to the scrutiny of a merger?

The NZCC has statutory powers to require any person to supply information or documents, or be interviewed (section 98 of the Act). It is an offence to fail to comply with such a request or otherwise deceive or knowingly mislead the NZCC. The prescribed forms for clearance or authorisation are themselves relatively detailed, and require details of the transaction, the parties, the applicant's view of market(s) and market shares, competitor information, and comments on barriers/conditions of entry, etc. In practice, the NZCC will usually require the applicant to provide additional specific information in respect of the application.

4.6 During the regulatory process, what provision is there for the protection of commercially sensitive information?

The NZCC can make a confidentiality order under section 100 of the Act in respect of the fact of, and specified information relating to, an application for clearance or authorisation. The order expires 20 working days after the NZCC's decision. However, the NZCC has rarely issued such orders in recent times in relation to clearance applications.

In practice, applicants request that certain information provided to the NZCC be protected under the Official Information Act 1982. The Official Information Act provides substantial scope for the NZCC to refuse access to information it holds that is commercially sensitive or is subject to an obligation of confidence and disclosure of which would prejudice the supply of similar information in the future.

5 The End of the Process: Remedies, Appeals and Enforcement

5.1 How does the regulatory process end?

Where approval from the NZCC has been sought, the regulatory process ends when the NZCC provides the applicant with the written notice required by the Act:

- granting or declining clearance – where clearance has been sought; or
- granting authorisation or clearance or declining to grant authorisation or clearance – where authorisation has been sought.

Refer to questions 3.6 and 3.12 for further information in relation to the process.

NZCC determinations may be appealed to the High Court. Appeals are by way of re-hearing. There is limited scope to admit further evidence on appeal.

The High Court may confirm, vary or overturn the NZCC's determination and exercise itself any of the powers that the NZCC has under the Act in relation to the matter. Alternatively, the High Court may refer the matter back to the NZCC for reconsideration. Decisions of the High Court may, with the leave of the High Court or Court of Appeal, be appealed to the Court of Appeal. Appeals from decisions of the Court of Appeal may, with the leave of the Supreme Court, be taken to the Supreme Court.

5.2 Where competition problems are identified, is it possible to negotiate "remedies" which are acceptable to the parties?

The NZCC may only accept structural undertakings. It does not have the power to accept behavioural undertakings.

To address potential structural competition concerns, applicants may include divestment undertakings of specified assets or shares as part of an application (for example, if the merged entity's potential market power posed concerns in a particular geographical region).

Such undertakings are deemed to form part of the clearance or authorisation, and approval is void if the undertaking is contravened.

5.3 To what extent have remedies been imposed in foreign-to-foreign mergers?

Refer to questions 2.6, and 5.2 to 5.7.

Structural undertakings have been accepted where merger clearance has been sought in New Zealand for wholly-overseas mergers, including Baxter International Inc's clearance to acquire Gambro AB. Such undertakings are often on a global scale.

5.4 At what stage in the process can the negotiation of remedies be commenced? Please describe any relevant procedural steps and deadlines.

The Act does not prescribe the stage of the process at which the negotiation of a divestment undertaking may be commenced. The NZCC's Mergers and Acquisitions Guidelines emphasise that "it is up to an applicant to decide whether to offer a divestment undertaking" and "*encourage[s] applicants to offer divestment undertakings as early as possible...*". As the NZCC will test thoroughly the likely effects of any undertaking, a divestment offered late in the process may delay the NZCC's final determination.

5.5 If a divestment remedy is required, does the merger authority have a standard approach to the terms and conditions to be applied to the divestment?

If a divestment undertaking is accepted by the NZCC, the form and terms of the divestment will need to be negotiated and documented with the NZCC. The Mergers and Acquisitions Guidelines make it clear that the NZCC "*do[es] not seek to design the divestment undertaking*" and emphasise the importance of submitting evidence to address the three key risk areas associated with divestments: composition risk, asset risk and purchaser risk. In practice, the NZCC will require that such a divestment be made to an unrelated purchaser possessing the necessary skills to be a long-term competitor. The NZCC generally allows six months for an applicant to fulfil the terms of the divestment undertaking, but the timeframe will vary in each case.

5.6 Can the parties complete the merger before the remedies have been complied with?

Yes, generally and subject to the specific terms of any divestment undertaking that has been accepted by the NZCC, the merger can be completed prior to the divestment occurring. The NZCC also has the power to accept a variation of any undertaking including extending the time to complete the divestment.

5.7 How are any negotiated remedies enforced?

Section 69AB of the Act provides that the relevant clearance or authorisation is void if the undertaking is contravened. Accordingly if the terms of the undertaking are breached, the NZCC may take enforcement action through the courts.

5.8 Will a clearance decision cover ancillary restrictions?

This question is not applicable. The NZCC does not have the power to accept behavioural undertakings.

5.9 Can a decision on merger clearance be appealed?

Yes; refer to question 5.1.

5.10 What is the time limit for any appeal?

Generally appeals must be made within 20 working days after an NZCC determination.

5.11 Is there a time limit for enforcement of merger control legislation?

Proceedings for penalties and damages in relation to section 47 can be commenced within three years after the matter giving rise to the contravention arose. Proceedings seeking a divestiture can be commenced within two years from the date on which the contravention occurred.

6 Miscellaneous

6.1 To what extent does the merger authority in New Zealand liaise with those in other jurisdictions?

In respect of trans-Tasman mergers, or international mergers with effects in both New Zealand and Australia, the NZCC and ACCC have a specific Co-operation Protocol for Merger Review (August 2006). This includes co-ordinating processes, sharing information and analysis, and from time to time gathering information on behalf of one another. The NZCC also liaises with its counterparts in other jurisdictions including Canada, the UK and the US. The NZCC has formal co-operation agreements with Canada, the UK, Taiwan and Australia.

6.2 Are there any proposals for reform of the merger control regime in New Zealand?

Refer to questions 1.2, 2.1, 2.3, 2.6, 3.6 and 5.3 above.

6.3 Please identify the date as at which your answers are up to date.

These answers are up to date as of 5 October 2015.

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Gus is an Associate at Matthews Law, specialising in all aspects of competition and regulatory law including mergers, cartels & investigations, economic regulation, consumer protection, and other advisory work. Gus has experience dealing with the NZCC and has been involved in a wide range of industries (including telecommunications & technology, dairy, health, and building materials). He also has experience as an in-house legal counsel.

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Matthews Law is a specialist competition law firm, offering a direct, conflict-free, service to both domestic and international clients. Matthews Law was founded by Andrew Matthews, a top-tier competition & commercial lawyer with over 20 years' experience dealing with competition authorities in New Zealand, the UK and EU. Andrew was previously a partner and head of the Competition & Regulatory team at Minter Ellison Rudd Watts.

We analyse likely competitive impacts of proposed mergers, acquisitions and joint ventures, and advise on the appropriate strategy to successfully complete (or challenge) proposals. We act for purchasers, sellers and other interested parties (e.g. law firms, accounting firms and investment banks). We often work on the NZ aspects of global mergers in conjunction with international counsel. Where necessary, we brief the Commerce Commission, or prepare applications for clearance or authorisation. We also work with local and international economists who are respected leaders in their fields.

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