



## COVID-19 pandemic - what it means for ACCC merger clearances, authorisations, notifications and CTMs

With the recent and increasing impact of the COVID-19 pandemic, the ACCC's Merger & Authorisation Review Division will provide ongoing guidance regarding any changes in our operations arising from the pandemic, for the benefit of law firms who regularly engage with the ACCC in the following areas:

- mergers considered under the informal merger regime
- applications for merger authorisation
- applications for authorisation of non-merger conduct
- notifications
- certification trade marks (CTM).

While we are currently continuing to assess the matters before us and accept new requests for clearance, authorisation applications and notifications, like many other organisations we are adopting a number of measures which focus on: (i) the well-being of our staff and external parties we engage with; and (ii) allocating resources to ensure that the ACCC meets its objectives of protecting competition. These measures include:

- cancellation of all non-essential meetings with external parties and travel
- transitioning to a larger proportion of staff working remotely, meaning that internal and external communication will largely be conducted via phone and Skype.

While these measures are aimed to ensure that we are able to make decisions within our usual guidance, it is expected that timelines for some reviews/applications (including those with statutory timeframes) may need to be extended where there are challenges in conducting and completing the necessary inquiries with merger parties and market participants. The ACCC will consider this on a case-by-case basis and discuss any proposed extensions to timelines with the relevant parties.

We are not currently asking parties to delay applications for authorisation or requests for clearance but would encourage consideration to be given to whether some could more appropriately be postponed — for example those which are not urgent or mergers that are more speculative or at a very early stage with no sale agreement in place.

Merger parties are asked to update the ACCC on a regular basis regarding any changes in the commercial timing of mergers under consideration and/or changes in the likelihood that these mergers will proceed under current market conditions. For example, where a merger is dependent on obtaining funding and this funding is unlikely in the current market environment or the merger parties have decided to go-slow on a transaction.

If the situation worsens, we may need to prioritise matters further. Therefore we will be seeking the assistance of merger parties and their advisers in meeting this challenge.

We expect that the current market environment is also likely to result in additional merger proposals related to business restructurings and uncertainty regarding the ongoing financial health of some firms. Where such mergers are proposed, we will assess each on a case-by-case basis. Importantly, this will take into account not only the present situation but also the longer term impact on competition of any change in the structure of markets. This assessment goes beyond the current impact of the crisis on the profits and share value of the merger parties.

Similarly we are expecting to see an increase in urgent interim authorisation applications to allow firms to coordinate some conduct during the crisis. These applications will be an important priority for us under the current circumstances. We have preparations in place to act on these extremely expeditiously as necessary but we would urge you to engage with us as early as possible if you anticipate submitting such an application.

We will continue to review these measures and advise you of any changes.

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