

(c) Options for merger clearance, at a glance

Options	Test	Time frame	Outcome	Appeal
1. Informal merger clearance	Does the acquisition have the effect or likely effect of substantially lessening competition in any market?	<p>Pre-assessment: 2-4 weeks</p> <p>Phase 1 (if no Statement of Issues): 6-12 weeks</p> <p>Phase 2 (if Statement of Issues): further 6-12 weeks</p> <p>Allow additional time for s 155 notices and other 'clock stops' for additional information requests or negotiation of undertakings up to 9 months for complex mergers</p>	<p>Letter of comfort from ACCC saying that it intends to take no action in relation to the proposed merger or acquisition.</p> <p>Residual possibility of actions brought by third parties, but largely theoretical.</p>	<p>No appeal rights.</p> <p>However, could decide to seek ACCC authorisation if informal clearance is unsuccessful or it appears likely to be part way through the process. Would need evidence of strong public benefit to counter the ACCC's views on lessening of competition.</p>
2. Merger authorisation	<p>Does the acquisition have the effect or the likely effect of substantially lessening competition in any market?</p> <p>or</p> <p>Is the acquisition likely to result in a net public benefit (i.e. that outweighs any lessening of competition).</p>	<p>90 days statutory time frame.</p> <p>Parties can agree in writing to extensions of time prior to expiration of 90 days</p> <p>If parties do not agree to an extension of time and the ACCC has not made a decision, it is deemed to have refused the Application.</p> <p>There is the theoretical risk that the ACCC can repeatedly extend its review time and Applicants will be left with no choice but to agree to those extensions or else risk a negative decision. However, in other authorisation contexts the ACCC has generally been diligent in complying with statutory time frames. In practice, this means that merger authorisation may give the parties more certainty as to timing and, a shorter time frame, compared with current average time frames for informal merger clearance.</p> <p>90 days subject to extension</p>	<p>Immunity from action by the ACCC and third parties in relation to the merger or acquisition, subject to any conditions.</p>	<p>Limited merits review by the Tribunal:</p> <p>Tribunal can agree to, or request, the admission of additional information that was not available at the time of the ACCC's decision or to address new circumstances.</p> <p>90 day time limit.</p> <p>Time limit extended to 120 days where new information is admitted.</p>