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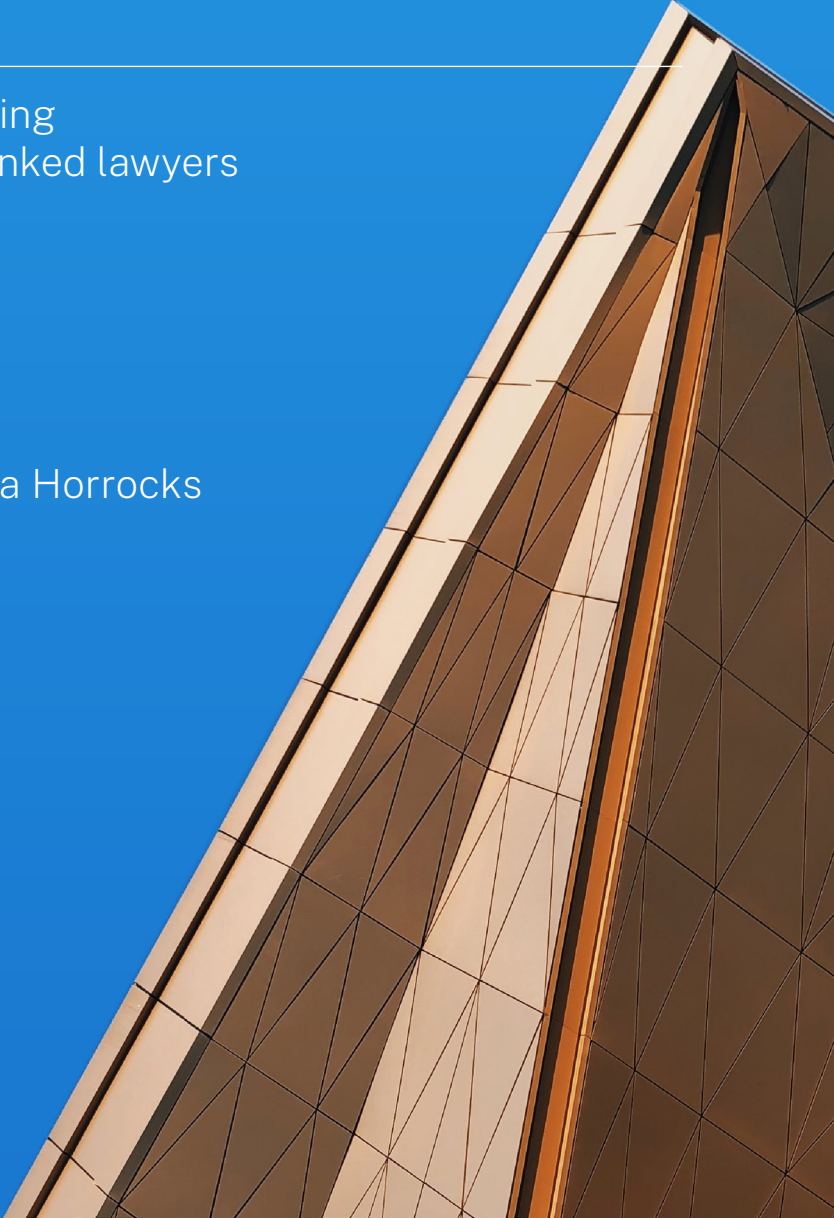
Merger Control 2026

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New Zealand: Law and Practice

Sarah Keene, Jordan Cox, Antonia Horrocks
and Victoria Fowler

Webb Henderson

An abstract graphic in the bottom right corner featuring a series of overlapping, translucent geometric shapes in shades of brown and tan, creating a dynamic, architectural feel.



Law and Practice

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Webb Henderson has a New Zealand Competition team that delivers sophisticated, integrated advice to major corporate clients, combining deep competition and regulatory expertise with a collaborative, cross-market approach. This model provides the breadth of a large firm with the precision and responsiveness of a boutique. Since Sarah Keene joined in January 2023, the practice has strengthened its position as a trans-Tasman powerhouse, advising on complex competition matters with significant public policy and international dimensions. The team is particu-

larly recognised for its merger control capability, delivering strategic, cross-border advice on clearance processes and transactional risk through a cohesive Australia–New Zealand model. The Auckland practice is supported by strong corporate M&A and TMT expertise, alongside the Australian team’s experience acting for regulators including the ACCC and ASIC. Led by Andrew Christopher and complemented by Angus Henderson’s TMT practice, the team offers exceptional depth and reach.

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LEGAL AND REGULATORY ADVISORS

1. Legislation and Enforcing Authorities

1.1 Merger Control Legislation

The merger control legislation in New Zealand is the Commerce Act 1986 (“Commerce Act”). The New Zealand Commerce Commission (NZCC) is the regulator in New Zealand, and has published process and analytical guidance documents, including Merger and Acquisitions Guidelines and the Merger Application Form. Decisions can be appealed to the courts, whose judgments also provide guidance on application of the legislation.

There are proposals before Parliament to reform the Commerce Act to provide the NZCC with powers to accept behavioural undertakings, consider creeping acquisitions over a three-year period, call-in non-notified mergers and require parties to hold separate pending the outcome of the NZCC merger review, as well as introducing new statutory 140–160 working day review periods for notified mergers. These reforms are proposed to come into effect six months after the changes receive Royal Assent, but no date is yet set and the proposals may change as the Bill proceeds. Assuming an earliest implementation date of 1 March 2027, this guide describes proposed changes in relation to specific questions and recommends checking the status of the amendments if relying on these parts of the guide after March 2027.

1.2 Legislation Relating to Particular Sectors

The foreign direct investment screening regime in New Zealand is governed by the Overseas Investment Act 2005 (OIA). The Overseas Investment Office (OIO) is the regulator responsible for the administration of the OIA. A transaction may require consent from the OIO if an overseas person or associate directly or indirectly acquires an ownership or control interest in:

- significant business assets in New Zealand with a value over NZD100 million (higher thresholds are available in some circumstances);
- “sensitive land”; or
- a fishing quota.

The OIA also provides for the review of transactions that could pose significant national security and public order risks.

There is no other relevant legislation for foreign transactions or investments.

1.3 Enforcement Authorities

The NZCC enforces the Commerce Act. It is responsible for enforcing the merger control provisions in the Commerce Act, which includes determining applications for clearance or authorisation of mergers. If parties choose not to notify when their transaction could result in a substantial lessening of competition in any relevant market (no matter how small), the NZCC can bring proceedings in the High Court of New Zealand. Only the High Court has the authority to make an order prohibiting a merger from proceeding or any other order necessary to maintain or restore competition. The High Court can also award penalties on application by the NZCC to deter anti-competitive mergers and award damages to compensate affected parties.

Third parties affected by an anti-competitive merger can also bring a private action for damages in the High Court.

2. Jurisdiction

2.1 Notification

There is no statutory requirement to seek clearance or authorisation for a proposed merger – filing is voluntary. However, mergers that substantially lessen competition are illegal under the Commerce Act unless the merger has been granted clearance or authorised by the NZCC. The NZCC will seek an interim injunction, through the High Court, if it is of the view that a merger is likely to breach the Commerce Act.

The NZCC has published concentration indicators to provide some guidance as to when it will be important for merging parties to consider whether notification is appropriate. These are:

- in a concentrated market (where the top three firms post-merger have more than 70% market share) the merged entity cannot have more than 20% share post-merger; or
- in a non-concentrated market, the merged entity cannot have more than 40% market share post-merger.

These indicators are not determinative and do not create any presumptions as to the legality of any arrangements. As the appropriate market definition can be uncertain, the NZCC recommends the market definition that results in the highest market share should be adopted for applying the indicators. It will consider the competitive importance of the merging firms when deciding whether it needs to review a transaction and has actively considered a number of purely vertical mergers in the past decade, including prohibitions in two cases.

In most situations, parties will apply to the NZCC for clearance if these concentration indicators are met. Parties are also likely to consider whether the transaction is taking place within an industry or market that is regarded by the NZCC as sensitive or is politically high-profile, such that it would be more likely to investigate the transaction even where the concentration indicators are not likely to be met.

In other circumstances, parties may engage on a courtesy letter basis with the NZCC, which can lead to the NZCC either indicating that a formal process is appropriate, or that it has no further questions so the parties can proceed on the basis the NZCC is unlikely to open an investigation or seek to intervene in completion, in the absence of further information or complaints. Only a formal process can provide statutory immunity for a transaction.

Proposed changes to the Commerce Act would give the NZCC call-in and hold separate powers. See **2.11 Power of Authorities to Investigate a Transaction**, and check the status of these amendments if using this guide after 1 March 2027.

2.2 Failure to Notify

As the regime is voluntary, there are no penalties under the Commerce Act for failing to file.

However, if the NZCC becomes aware of a transaction that it considers may substantially lessen competition, it can apply to the High Court for an interim injunction to prevent completion, and/or require the companies to be held separate while it investigates.

Mergers that substantially lessen competition, which have not been approved by the NZCC, are illegal and may attract enforcement action by the NZCC or third parties, including declarations of illegality, injunctions, court orders to divest, and damages awards. The NZCC can also obtain pecuniary penalty orders. (See below in relation to maximum penalties.)

2.3 Types of Transactions

The merger control provisions of the Commerce Act apply to any acquisition of business assets or shares that confers a substantial degree of influence over an entity, where that level of control is likely to substantially lessen competition in any relevant market.

The provisions will apply irrespective of whether a minority or majority interest in a business is being acquired. The same test applies – whether the acquisition has the effect or likely effect of substantially lessening competition in a market.

Interdependent transactions can be the subject of a single clearance application, provided each transaction in the series is properly described in the application.

Sequential transactions are assessed separately, although creeping acquisitions can be captured by the NZCC's enforcement activity due to the low market share increment thresholds in New Zealand. If, in all circumstances, including considering previous acquisitions by the same entity, the most recent acquisition in a series would substantially lessen competition in a relevant market, then it can be caught by New Zealand's merger control prohibition. There is no specific creeping acquisitions test currently in New Zealand, but proposed law reform will allow the NZCC to consider patterns of small acquisitions over a three-year period, which may not individually substantially lessen competition concerns but do so cumulatively.

2.4 Definition of "Control"

There is no statutory definition of control. Acquisitions of minority interests can be caught by merger control provisions. The test is whether the interest would provide the acquirer with a substantial degree of influence over the target following the transaction. This assessment is contextual, based on a mixture

of factors including shareholding levels, shareholder voting practices, board appointment powers and vetoes, industry knowledge and expertise, and contractual connections. There have been occasions where a substantial degree of influence was found in the acquisition of an 8% shareholding.

2.5 Jurisdictional Thresholds

There are no jurisdictional thresholds in New Zealand. Mergers and acquisitions may be caught if they affect competition in any market in New Zealand, no matter how small or narrow that market might be. The NZCC has a track record of taking action in relation to small, narrow, local markets, as well as on significant, large and international mergers.

2.6 Calculations of Jurisdictional Thresholds

No jurisdictional thresholds apply.

2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

No jurisdictional thresholds apply.

2.8 Foreign-to-Foreign Transactions

The Commerce Act extends to mergers or acquisitions outside of New Zealand by any person or resident carrying on business in New Zealand to the extent that such conduct affects a market in New Zealand. There are merger-control-specific jurisdictional provisions that allow the High Court to make orders in respect of foreign-to-foreign transactions affecting a market in New Zealand, which do not depend on the target having assets in the jurisdiction. However, a connection with New Zealand is required for the Court to have jurisdiction; typically, this is in the form of sales within the jurisdiction.

2.9 Market Share Jurisdictional Threshold

A market in New Zealand can be affected so as to trigger a filing if only one of the target or acquirer has market presence in the jurisdiction, for example, where there are vertical or conglomerate issues or where potential competition may be excluded by the transaction.

2.10 Joint Ventures

Joint ventures that involve any acquisition of assets or shares will be subject to the merger control provisions of the Commerce Act if they may have the effect of substantially lessening competition in any relevant market.

New Zealand does not have jurisdictional thresholds.

2.11 Power of Authorities to Investigate a Transaction

The NZCC does not have a specific “call-in” power. However, under the Commerce Act, the NZCC or an affected party may apply to the High Court for an injunction in respect of an acquisition of assets or shares that has, or is likely to have, the effect of substantially lessening competition in a market. The NZCC has taken such action in respect of contemplated and completed transactions.

If a transaction has already completed, the NZCC may apply to the High Court for a divestment order within two years of completion.

In addition, any person who suffers loss or damage as a result of a breach of Section 47 of the Commerce Act (namely, an acquisition of assets or shares that has, or is likely to have, the effect of substantially lessening competition in a market) may bring a claim for damages within three years.

Current law reform proposals will give the NZCC call-in powers and allow it to require a party to seek clearance or authorisation for a merger that has not been voluntarily notified. Check the status of these amendments if using this guide after 1 March 2027.

2.12 Requirement for Clearance Before Implementation

New Zealand operates a voluntary merger control regime. Accordingly, parties are not required to seek clearance or authorisation before completing a transaction. If the parties choose not to apply, in the absence of any court intervention, they may implement the transaction at any time.

The NZCC may only consider clearance or authorisation applications in respect of “proposed” acquisi-

tions. Once a transaction has been completed, the only option for the NZCC is to sue.

If parties complete a transaction while a clearance or authorisation application is still under consideration but before approval has been granted, the NZCC will treat the application as withdrawn. However, the NZCC would typically continue its investigation and, if not satisfied that the transaction would not substantially lessen competition, may seek pecuniary penalties and potentially pursue orders to unwind the transaction.

2.13 Penalties for the Implementation of a Transaction Before Clearance

There are no penalties for implementation prior to clearance. However, if the NZCC investigates a merger and determines it was likely to substantially lessen competition in any market it will seek penalties in the High Court, and this has occurred recently. For example, in 2022 a NZD1.54 million penalty was imposed on Objective Corporation Limited for proceeding with an anti-competitive merger in the building consent software industry.

2.14 Exceptions to Suspensive Effect

The Commerce Act does not include a suspensory regime.

2.15 Circumstances Where Implementation Before Clearance Is Permitted

There are no circumstances in which the NZCC will permit closing before clearance. The NZCC loses jurisdiction to grant clearance if the transaction closes.

3. Procedure: Notification to Clearance

3.1 Deadlines for Notification

New Zealand operates a voluntary regime. As such, there are no deadlines for notification. However, the NZCC may only consider clearance or authorisation applications in respect of proposed acquisitions. Once a transaction has completed, the parties can no longer apply for clearance or authorisation.

For parties considering notification, the length of the NZCC process should be taken into account when

deciding when to file. The first phase is 40 working days and there is currently no statutory timeframe for the second phase of review. There are proposals before Parliament to introduce statutory timeframes for this.

3.2 Type of Agreement Required Prior to Notification

The NZCC will engage in pre-notification discussions if it is satisfied that a potential applicant has a good-faith intention to proceed with a merger. No formal agreement is needed at this stage. It will review a draft merger notification form and indicate what further material it requires, in order to deem the filing complete and register it.

For filing, the NZCC will require transaction documentation. Formal filings cannot be made based on a good-faith intention to reach an agreement, given the uncertainty as to whether this intention will proceed to a transaction.

3.3 Filing Fees

The fee for filing a clearance application is NZD3,686 (inclusive of taxes) and the fee for filing a merger authorisation application is NZD36,800 (inclusive of taxes).

3.4 Parties Responsible for Filing

The acquirer of the assets or shares is responsible for filing the application for clearance or authorisation in respect of the proposed merger.

3.5 Information Included in a Filing

Filings with the NZCC must include both substantive information about the merger and supporting documentary evidence. The level of detail required will depend on the complexity of the transaction and the competitive issues it raises, and the NZCC encourages pre-notification engagement to calibrate what is sufficient for a given filing to be registered.

Transaction Documents

Applicants must provide copies of the final or most recent versions of all documents bringing about the merger, including sale and purchase agreements, contracts, ancillary agreements and offer documents.

Internal Business Documents

The NZCC requires a broad range of internal documents from both the applicant(s) and, to the extent reasonably available, the target(s) covering the past two years.

To be within scope, documents must have been prepared for, seen by or considered by senior management, and/or any member of the board of directors or equivalent body – whether prepared internally or by external consultants. These include:

- documents setting out the rationale for the merger;
- documents from the merger parties prepared within the last two years discussing alternatives to the merger (counterfactual); and
- documents from the merger parties from the last two years relating to the relevant products, services, competitive dynamics and markets.

Financial Information

Applicants must provide copies of annual reports or audited financial statements for each merger party for the last three financial years.

An officer of the acquiring company will need to make a declaration as to the accuracy of the contents of the filing form. No specific certification of documents is required.

Applications for clearances or authorisations can be made in English or Te Reo Māori. If documents are relevant to the competition assessment, the NZCC may request English translations be provided.

3.6 Penalties/Consequences of Incomplete or Inaccurate Notification

As the regime is voluntary, there are no penalties in the Commerce Act for failing to file. Mergers that substantially lessen competition that have not been authorised by the NZCC are illegal and may attract pecuniary penalties.

It is an offence to attempt to deceive or knowingly mislead the NZCC in respect of any matter before the NZCC. Any person who does so is liable upon summary conviction to a fine of up to NZD100,000 (for an individual) or NZD300,000 (for a body corporate).

The applicant must submit a declaration when filing, which confirms that the applicant views the information provided as accurate and knows it is an offence under the Act to deceive or knowingly mislead the NZCC.

3.7 Review Process

The NZCC has a 40-working-day statutory time-frame to make a decision on the outcome of a clearance application. However, if an extension is sought and parties refuse, then the application is deemed declined. Parties can technically close the transaction in the face of a declined clearance, but the NZCC would most likely seek, and be granted, an injunction by the High Court to prevent the transaction from being completed before the NZCC has a chance to complete its investigation. In practice, all requests for extensions are granted by parties.

The NZCC has provided the following indicative timetable for its assessment of a clearance application:

- 5 working days – NZCC releases a Statement of Preliminary Issues (SOPI);
- 15 working days – third-party submissions on the SOPI;
- 30 working days – initial interviews and information gathering completed;
- 40 working days – NZCC will decide to give clearance, or decide to publish a Statement of Issues (SOI).

For more complex applications:

- 50 working days – SOI published;
- 60 working days – submissions due on the SOI;
- 65 working days – cross-submissions due on the SOI;
- 70 working days – meeting with the applicant to discuss SOI response;
- 90 working days – NZCC will decide to grant clearance or to publish a Statement of Unresolved Issues (SOUI);
- working day 100 – SOUI published;
- working day 110 – submissions due on the SOUI;
- working day 115 – cross submissions due on the SOUI;

- working day 120 – NZCC meets the applicant to discuss SOUI response;
- working day 130+ – NZCC will make its final decision, potentially after considering any divestment undertaking offered by the parties and “market testing” the proposed divestment with third parties.

The NZCC typically does not stop the clock on its processes, although it has started to do so on some matters where there have been material delays outside its control – for example, if the parties ask the NZCC to wait for process steps in other international regulatory processes to be completed before it progresses.

For an authorisation application, the NZCC has a 60-working-day statutory timeframe to make a decision, and a similar ability to seek extensions.

The proposed law reform would amend these timeframes to require a final decision within 140 working days (or 160 working days if agreed by the parties) for merger clearance applications, and 160–180 (for the same reasons) for authorisation applications. Check the status of these amendments if using this guide after 1 March 2027.

3.8 Pre-Notification Discussions With Authorities

Parties can and are recommended to engage in pre-notification discussion. These generally take between two and four weeks, during which a draft application is provided to the NZCC, often along with a confidential fact briefing. The NZCC may ask the parties questions or recommend that they add certain things to their filing. Afterwards, the parties update the application and lodge the filing.

3.9 Requests for Information During the Review Process

Requests for Information (RFIs) are common during a review process. How burdensome they are will depend on the application and the level of information the NZCC has access to. Any information or documents absent from an application could be sought by way of an RFI.

Whilst not common, an RFI could stop the clock where the applicant, target or an interested party requests further time to respond to an information request.

3.10 Accelerated Procedure

While there is no formal “fast-track” or expedited statutory process for clearances or authorisations, applicants can speed up their timeline by engaging in pre-notification discussions, submitting high-quality draft applications and responding rapidly to NZCC RFIs.

4. Substance of the Review

4.1 Substantive Test

A transaction is prohibited by the statute if it would have the effect, or likely effect, of substantially lessening competition in a market.

A substantial lessening of competition is “likely” if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur (ie, it does not need to have a greater than 50% probability of occurring). Whether the substantial lessening of competition is likely is a matter of judgement based on the evidence.

The application of this test can differ depending on whether it applies in a clearance process or in an investigation under the Commerce Act. The NZCC will decline a merger clearance application if it is not satisfied or “in doubt” that the merger would not be likely to substantially lessen competition in a market. However, if the merger is investigated under the Act, then the NZCC or third party challenging the merger will need to provide evidence in court that a substantial lessening of competition is likely.

In addition to unilateral effects theories of harm in mergers between direct competitors, the NZCC will consider vertical, conglomerate and co-ordinated effects theories of harm. It will consider the effects of the merger on potential competition and innovation where relevant.

Authorisation Assessment

The NZCC can authorise mergers that would be likely to have the effect of substantially lessening competition in a market when it is satisfied that the merger will be likely to result in sufficient benefit to the public to outweigh the competitive harm arising from the merger, so that it should be permitted. Its process is to consider:

- whether the merger would be likely to result in a substantial lessening of competition (if it would not, clearance will be granted and there is no need for authorisation); and
- which benefits and detriments are merger-specific, and the value of each.

If the benefits are likely greater than the detriments, it will authorise the merger.

Benefits can include anything of value to the community generally or any contribution to the aims pursued by society, including the achievement of the economic goals of efficiency and progress. Examples include environmental, media plurality and employment benefits. Both qualitative and quantitative benefits may be taken into account by the NZCC in this evaluation.

4.2 Markets Affected by a Transaction

The NZCC defines relevant markets by assessing whether goods or services are substitutable as a matter of fact and commercial common sense. This involves examining substitutability across up to five dimensions (product, geographic, supply chain, customer and time). When looking at demand-side substitution, the NZCC will often use the hypothetical monopolist test (SSNIP test) to identify the smallest set of products or locations where a price increase of around 5% would be profitable. Supply-side substitutability will also be taken into account by assessing whether firms could easily enter the relevant market to provide a competitive constraint.

There is no de minimis level below which competitive concerns are deemed unlikely. In practice, the NZCC has defined narrow markets in a number of cases and intervened in relation to small mergers affecting low volumes of commerce in New Zealand.

4.3 Reliance on Case Law

The NZCC engages frequently with other authorities in relation to international mergers and may seek a waiver from parties to do so as part of the merger notification form. More generally, both the NZCC and the New Zealand courts will rely on Australian case law, given the similarities of the substantive tests and low frequency of court challenges in New Zealand.

4.4 Competition Concerns

The NZCC examines:

- horizontal unilateral effects (including price increases, reduced quality, service or innovation);
- co-ordinated effects, where the merger increases the likelihood of tacit or explicit co-ordination between remaining competitors;
- vertical foreclosure, assessing the merged firm's ability or incentive to restrict rivals' access to inputs, customers or distribution channels;
- conglomerate effects, including merger effects that may hinder rivals' ability to compete effectively across related or complementary products; and
- broader impacts on market power, including barriers to entry and expansion, countervailing buyer power and effects on innovation competition.

4.5 Economic Efficiencies

In considering whether a proposed merger would be likely to substantially lessen competition in a market, the NZCC can take economic efficiency gains in the relevant markets into account in considering whether a substantial lessening of competition would be likely to occur in a market. To be relevant, economic efficiencies must occur within the relevant markets, be sufficiently realised and passed on to consumers within the timeframe for competition analysis, and be unlikely to be realised without the merger proceeding. Given this test, economic efficiencies have only occasionally been relevant to the merger clearance outcome.

In an authorisation application, economic efficiencies are highly relevant to the public benefit and detriment balancing exercise.

4.6 Non-Competition Issues

The NZCC cannot take non-competition issues into account in a merger clearance review unless they can be categorised as economic efficiencies in relevant markets.

However, the NZCC may authorise a merger that is likely to substantially lessen competition where it is satisfied that the transaction would result in such a benefit to the public that it should nevertheless be permitted. Public benefits may include broader economic or public interest considerations, such as efficiencies, employment effects or other societal benefits. The Courts in *NZME Ltd v Commerce Commission* [2018] NZCA 389 examined this point and concluded that non-economic considerations, such as media plurality, could be weighed against any economic benefits of the merger.

New Zealand also maintains a separate foreign investment screening regime under the OIA, administered by the OIO (see **1.2 Legislation Relating to Particular Sectors**). This regime operates independently from the NZCC merger control framework and focuses on national interest, national security and other public interest considerations relating to investments by overseas persons in sensitive New Zealand assets. These issues are therefore considered separately from competition law analysis.

4.7 Special Consideration for Joint Ventures

There are no special criteria for the assessment of mergers that are joint ventures.

5. Decision: Prohibitions and Remedies

5.1 Authorities' Ability to Prohibit or Interfere With Transactions

If parties proceed without clearance and the NZCC considers that the merger is likely to substantially lessen competition, it may commence proceedings in the High Court. The Court may grant interim injunctions preventing completion of the transaction, order divestiture of assets or shares, impose pecuniary penalties and grant other relief.

5.2 Parties' Ability to Negotiate Remedies

Under the Commerce Act, there is the ability for an applicant to offer a divestment undertaking to reduce the competitive effects of the proposed merger. A divestment undertaking can be made by an applicant at any time in the NZCC's merger assessment process. The NZCC can currently only accept undertakings to divest assets or shares. They cannot accept behavioural undertakings. Divestment undertakings offered later in the NZCC's process may result in the NZCC requesting further time for its assessment.

When an applicant has offered a divestment undertaking, the NZCC will consider whether the proposed divestment undertaking will remedy the likely substantial lessening of competition arising from the proposed merger. The NZCC will assess the potential risks associated with divestment undertakings on a case-by-case basis measured against the standard criteria of asset, composition and purchaser risks.

Since FY 21/22, the NZCC has issued decisions in respect of 52 clearance applications. Of these 52 applications, 35 were granted unconditional clearance, and an additional five were granted clearance with a divestment undertaking.

There are reforms proposed to the Commerce Act which would give the NZCC the power to accept behavioural undertakings. Check the status of these amendments if using this guide after 1 March 2027.

5.3 Legal Standard

When an applicant has offered a divestment undertaking, the NZCC will consider whether the proposed divestment undertaking will remedy the likely substantial lessening of competition arising from the proposed merger. The NZCC will assess the potential risks associated with divestment undertakings on a case-by-case basis measured against the standard criteria of asset, composition and purchaser risks.

5.4 Negotiating Remedies With Authorities

The NZCC encourages applicants to offer divestment undertakings at an early stage where they consider that such undertakings may prevent the proposed merger from substantially lessening competition in the relevant market(s).

During pre-notification discussions, the NZCC may, in certain circumstances, provide an initial indication of its preliminary view on a divestment. If the NZCC identifies competition concerns that are not addressed by any undertakings offered, it will set these out in a statement of issues and, where necessary, a subsequent statement of unresolved issues. These statements may also:

- identify any concerns arising from proposed divestment undertakings; and
- suggest that the applicant consider offering additional divestment undertakings as a means of resolving the identified competition concerns.

The NZCC cannot propose remedies or impose a remedy not agreed by the parties.

5.5 Conditions and Timing for Divestitures

A divestment undertaking is a detailed document setting out how the divestment will be effected, including the timeframe within which the divestment must be completed.

While the appropriate timeframe will depend on the circumstances of each case, the NZCC will generally allow a period of up to six months for the applicant to satisfy the terms of the divestment undertaking, which can occur post-completion

If an undertaking is breached, the NZCC may seek penalties of up to NZD500,000 for each act or omission that occurred.

5.6 Issuance of Decisions

The public version of the decision will be published in the NZCC's case register on its website.

5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

The NZCC has required divestments and prohibited transactions recently.

It will review foreign-to-foreign transactions as it does local transactions.

In 2024, it prohibited a global merger in the DJ software market, where the target was a New Zealand

firm; in 2023, it approved the acquisition by Sika AG of MBCC Group subject to divestment of the entire MBCC business in New Zealand.

6. Ancillary Restraints and Related Transactions

6.1 Clearance Decisions and Separate Notifications

Ancillary restraints that are included in the sale and purchase agreement and protect the goodwill of the business being sold are subject to the merger control process. No separate notification is required, and the clearance decision will cover notified ancillary restraints.

7. Third-Party Rights, Confidentiality and Cross-Border Co-Operation

7.1 Third-Party Rights

Third parties, including customers, competitors and other market participants, are routinely involved in the NZCC's merger review process. The NZCC issues a Statement of Preliminary Issues after registration of a clearance seeking third-party views, and for non-notified mergers actively engages third parties. In both cases, it will seek information via submissions, information requests and interviews, and may also involve them following the publication of issues statements.

The NZCC process is highly transparent. It publishes a public version of the clearance application and seeks third-party views on this, and also publishes third-party submissions on its website.

While third parties cannot appeal the NZCC's substantive decision, they can make submissions, provide evidence, request confidentiality for commercially sensitive information, and gain access to certain non-confidential materials published by the NZCC. They retain independent rights outside the administrative process, including the ability to seek injunctive relief or bring proceedings in the High Court in relation to an anti-competitive merger.

7.2 Contacting Third Parties

The NZCC will typically contact third parties via written questionnaires. Any third party retains the ability to write to the NZCC and respond to the Statement of Preliminary Issues that is published on the NZCC's website once an application has been submitted. Further, if required, the third parties can respond to the Statement of Issues and Statement of Unresolved Issues. For non-notified mergers, third parties can contact the NZCC to provide information on a merger.

The NZCC will consider whether it needs to test the divestment proposal with any third parties prior to accepting. It does not publicly "market test" divestment undertakings.

7.3 Confidentiality

The fact of a merger notification and a public version of the application will be published on the NZCC website. The NZCC will issue a media release, seeking comments on the proposed transaction.

The NZCC will not engage publicly on a draft notification or transaction prior to registration without the parties' consent.

Commercial information can be kept confidential, but only to a defined extent. Applicants and third parties are required to provide both confidential and public versions of submissions and application materials, with sensitive information redacted from the public version. The NZCC will assess confidentiality claims and may withhold or limit disclosure of information where release would prejudice commercial positions or breach obligations of confidence, consistent with the Official Information Act 1982. In addition, the NZCC may use mechanisms such as confidentiality undertakings and restricted disclosure to external advisers only.

The proposed amendments to the Commerce Act will increase the confidentiality protections for information provided during a merger process.

7.4 Co-Operation With Other Jurisdictions

If approval for a proposed merger is also being sought in another jurisdiction, the NZCC may contact the relevant overseas competition authority to notify the

authority that it has received a clearance or authorisation application, and to discuss the progress of the application.

The NZCC cannot disclose confidential information to another agency without consent from the parties providing the information and therefore will likely request reciprocal confidentiality waivers from the merging parties so that the NZCC and the overseas competition authority can disclose relevant information to each other as required.

The NZCC works particularly closely with the Australian Competition and Consumer Commission, including each having the ability to appoint Commissioners from the other agency to sit on its merger decision-making body, when both are reviewing the same transaction.

8. Appeals and Judicial Review

8.1 Access to Appeal and Judicial Review

Decisions of the NZCC can be appealed to the High Court of New Zealand, with further appeals available to the Court of Appeal and, with leave, the Supreme Court. NZCC decisions can also be subject to judicial review.

8.2 Typical Timeline for Appeals

A notice of appeal must be filed within 20 working days of the date of the NZCC's decision.

The overall timeline for an appeal will depend on court availability and workload in New Zealand. The most recent merger appeal is in relation to the merger of the Foodstuffs North Island and Foodstuffs South Island grocery co-operatives, which was declined in September 2024. The High Court heard this case in March 2026, with the judgment pending.

Few merger cases are appealed in New Zealand, and none successfully in the last decade.

8.3 Ability of Third Parties to Appeal Clearance Decisions

There are no third-party rights to appeal a clearance decision. However, third parties may:

- judicially review steps in an NZCC clearance process;
- appeal a merger authorisation process; and
- challenge a merger that has not been notified to the NZCC for clearance directly under the Commerce Act in the High Court.

The Commerce Act only gives a statutory right of appeal to the applicant for clearance and any person whose assets or shares are proposed to be acquired pursuant to the clearance. Other parties can only seek relief by way of judicial review.

In *Spark New Zealand Ltd v Commerce Commission* (2017), Spark, a competitor, did not have a right of appeal in relation to the proposed merger between Sky TV and Vodafone. It commenced judicial review proceedings, seeking interim relief to prevent completion of the transaction. The High Court granted interim relief, restraining Sky TV and Vodafone from completing the merger for a short period following the NZCC's decision. Ultimately, the NZCC declined to grant clearance, and Spark did not pursue the judicial review further.

In relation to merger authorisations, the appeal right is broader. Any person with a direct and significant interest in the application who participated in the NZCC's process leading up to the determination may appeal.

Third parties can also directly challenge mergers which have not been cleared by the NZCC in the High Court.

9. Foreign Direct Investment/Subsidies Review

9.1 Legislation and Filing Requirements

The foreign direct investment screening regime in New Zealand is governed by the OIA. The OIO is the regulator responsible for the administration of the OIA. Please see **1.2 Legislation Relating to Particular Sectors** to understand more about foreign direct investment into New Zealand.