



Form EACCA 1

**MERGER AND ACQUISITION NOTIFICATION FORM
(Application for Merger/Acquisition Clearance)**

1. The Applicant (the person intending to merge or acquire)

(a) Name and registered office of the Applicant including the place of incorporation

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(b) Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies

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(See Direction 3 of this Form)

(c) Provide details of all related undertakings of the Applicant.

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(See Direction 4 of this Form)

(d) Address for service of documents on the Applicant

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(e) Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held

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2. The Target firm (the person to be acquired or merged)

(a) In the case of a legal person:

(i) Name of the legal person

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(ii) Place of incorporation of the legal person

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(iii) Registered office of the legal person

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(iv) Describe the business or businesses carried on by the legal person including the products and services of the person to be acquired

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(See Direction 5 of this Form)

(v) Number and type of shares or description of assets to be acquired

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(vi) The issued capital of the legal person;

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(viii) the holders of such issued capital.

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(c) Provide details of all related bodies corporate of the legal person whose shares or assets are to be acquired by the Applicant

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(See Direction 4 of this Form)

(d) In the case of a person (other than a legal person) whose assets are to be acquired provide:

(i) Name and address of the person

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(ii) Describe the business or businesses carried on by the person including the products and services the person supplies

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(iii) Describe the assets to be acquired

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3. The acquisition

(a) Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document

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(See Direction 6 of this Form)

(b) Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those effects

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(c) Indicate whether the acquisition involves proposed ancillary arrangements and describe the proposed arrangements

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4. Background information

(a) Describe the industry sector(s) to which the acquisition relates

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(See Direction 7 of this Form)

(b) Describe the area(s) of overlap in the operations of the Applicant and Target firm

and any related bodies corporate (the merger parties)

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(See Direction 8 of this Form)

(c) Provide details of any acquisitions made by the merger parties and any other acquisitions made in the industry sector(s) during the past five years

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(d) Provide details of any existing vertical or horizontal relationships between

the merger parties

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(e) Describe any other cooperative agreements to which any of the merger parties is a party

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(See Direction 9 of this Form)

5. Relevant Market

Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition – this includes markets for the supply of goods or services and markets for the acquisition of goods or services (the relevant market(s))

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(See Direction 10 of this Form)

6. Suppliers

(a) Describe the inputs into the production of goods or services by each of the merger parties in the relevant market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes

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(b) Provide the names and contact details of a representative selection of suppliers of inputs to each of the merger parties in the relevant market(s)

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(See Direction 11 of this Form)

(c) Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way.

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7. Competitors

- (a) Provide details of
 - i) current and potential competitors; and
 - ii) list of goods and services produced by each competitor

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(See Direction 12 of this Form)

(b) If the suppliers identified above do not produce goods or services which are substantially the same as those goods or services produced by

the merger parties in the relevant market(s), explain why it is considered that these goods or services are not viable alternatives

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8. Customers

(a) Provide the names and contact details of a representative selection of the customers of each of the merger parties in the relevant market(s)

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(See Direction 13 of this Form)

(b) Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above

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(c) Describe the existing supply arrangements that the merger parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

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(See Direction 14 of this Form)

9. Market concentration

Provide estimates of current and post-acquisition market shares for the merger parties and existing alternative suppliers in the relevant market(s) identified above

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(See Direction 15 of this Form)

10. Constraints on the exercise of market power

(a) Provide details of the extent to which the merger parties are likely to be constrained post-acquisition from raising prices and profit margins and/or reducing the quality of goods and/or services by:

(i) suppliers in the relevant market(s)

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(ii) competitors in the relevant market(s)

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(iii) customers in the relevant market(s)

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(iv) others

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(See Direction 16 of this Form)

11. Imports

(a) Provide details of the actual and potential level of imports in the relevant market(s) and details of the importers and their suppliers

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(See Direction 17 of this Form)

(b) Describe any barriers to importation in the relevant market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation

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(c) Describe facilities and distribution arrangements necessary for importation

in the relevant market(s), their capacity and who has ownership or control

of these facilities and arrangements

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(d) Provide details of the price of imports as opposed to domestic prices in

the relevant market(s) and explain any divergence in these prices

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(e) Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the merger parties in the relevant market(s) post-acquisition

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(See Direction 18 of this Form)

12. Exports

Provide details of the actual and potential level of exports in the relevant market(s)

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(See Direction 19 of this Form)

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13. Barriers to entry and expansion

(a) Provide details of any barriers to entry and expansion in the relevant market(s)

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(See Direction 21 of this Form)

(b) Provide details of any firms not currently producing goods or services in the relevant market(s) but which could enter the relevant market(s) quickly and provide an effective competitive constraint

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(c) Provide details of any firms which have recently tried and failed to enter the relevant market(s), including the reasons (if known) for their failure

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14. Dynamic characteristics

Provide details of the dynamic characteristics of the relevant market(s)

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(See Direction 22 of this Form)

15. Vigorous and effective competitor

Indicate whether the Target or any other participant in the relevant market(s) could be described as a vigorous and effective competitor to the Applicant or other market participants to any and to what extent, and why

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(See Direction 23 of this Form)

16. Vertical integration

(a) Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the relevant market(s)

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(See Direction 24 of this Form)

(b) Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels

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17. Prices and profit margins

(a) Provide details of levels of pricing in the relevant market(s) including the use of rebates and discounts in the last 24 months

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(b) Provide details of cost of supply of goods and services by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s)

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(c) Describe the likely impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market(s) post-acquisition

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(See Direction 25 of this Form)

(d) Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change

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18. Related markets

(a) Describe the extent of complementarity between products supplied by the merger parties

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(See Direction 26 of this Form)

(b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying

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(See Direction 27 of this Form)

(c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors

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19. Other grounds for grant of clearance

Outline any other grounds for the granting by the Authority of a clearance not already addressed above

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20. The counterfactual

Describe the likely state of the relevant market(s) in the future if the proposed acquisition does not take place, giving reasons

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21. Attachments:

Attach copies of the following for both acquiring and target firm:

- (a) Memorandum and Articles of Association;
- (b) Copies of audited annual financial statements for the last three years;
- (c) Strategic business plans;
- (d) Certificates of incorporation/registration;
- (e) Merger agreement; and
- (f)** Any other relevant documents.

22. Further information

Name, postal address, telephone, facsimile and email contact details of person authorized by the Applicant to provide additional information in relation to this application

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23. Information provided in relation to the Target firm

Where the Target firm has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target firm, an authorised representative of the Target firm must indicate here that information relating to the Target firm is complete and accurate.

Dated.....

Signed by/on behalf of the Target firm

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(Signature)

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(Full Name)

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

24. Declaration of the Applicant

The undersigned declares, to the best of their knowledge and belief, that 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, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

Signature of authorized person

Designation
.....

(Print) Name of authorized person (Print) Name of authorized person

This(insert day) day of(insert month)
.....[insert year]

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

DIRECTIONS

1. Where there is insufficient space on this Form to furnish the required information, the information must be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. In all cases, evidence must be provided to support the contentions made in responding to the questions on this Form.
3. The response must include details of the ownership structure (including a list of shareholders with greater than five per cent

shareholding) and interests of the Applicant. The response must also include a copy of the Applicant's most recent annual report.

4. The following definitions apply in relation to questions 1 (c) and 2 (c):

“holding company”, in relation to a legal person, means a legal person of which the first legal person is a subsidiary;

“related legal person” means-

(a) a holding company of another legal person;

(b) a subsidiary of another legal person;

(c) subsidiary of a holding company of another legal person;

“subsidiary”, in relation to a legal person (*first body*) means a first body that is controlled by another body (*other body*), because:

(a) the other body

(i) controls the composition of the first body's board; or

(ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first legal person; or

(iii) holds more than one half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first body is a subsidiary of a subsidiary of the other body.

5. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Target. The response must also include a copy of the Target's most recent annual report.

6. The response must include the date on which the contract, arrangement, understanding or proposal was, or is intended to be, concluded, the intended date on which the acquisition will be consummated and the consideration exchanged in relation to the acquisition. Where available, a copy of the contract, arrangement, understanding or proposal between the Applicant and the Target must be provided with this Form.

7. The response must include background information in relation to the industry sector(s), a description of the role of the Applicant and the Target in the industry sector(s) including a description of the goods or services supplied

8. Product and geographic areas of overlap must be specified and the response must include the whereabouts of all major production, supply or distribution facilities of the Applicant and the Target.

9. Such agreements may include but are not limited to arrangements or alliances relating to distribution, supply, purchasing, joint development, or research and development. The response must include the type of agreement(s), the subject matter, the parties to the agreement(s) and the duration of the agreement(s), and whether the agreement(s) will continue following consummation of the acquisition.

10. In order to determine whether a particular acquisition breaches section 13 of the Act, the applicant is required to provide an assessment of the relevant market.

11. The response must provide details of major suppliers including large, medium and small suppliers. The response must include a description of the goods and services supplied by each of these suppliers and an estimation of the value of the goods or services supplied.

12. The response must include the location of each of the suppliers identified and the areas to which each of the identified entities supplies.

13. The response must provide details of large, medium and small customers. The response must include a description of the goods or

services and the value of the goods or services purchased by these customers.

14. The response must describe the duration of contracts, the nature and extent of exclusivity, rebates and discounts and identify any customers with contracts which are due to expire within the next two years and indicate the supply volumes associated with such contracts.

15. The market shares of each of the suppliers identified, the Applicant and the Target firm in the relevant market(s) must be provided. In the case of supply markets, market shares must be given on the basis of productive capacity, sales and revenue and must be provided for each of the past five years. The source(s) of the data relied upon in estimating market shares and total market sizes must be provided.

16. The response must address the ability of suppliers to switch from supplying inputs to the merger parties to other avenues, the ability of competitors in the relevant market(s) to increase supply, the ease with which customers could change suppliers including any switching costs that they would incur, whether goods and services produced in the relevant market(s) should be considered homogeneous or whether there are variations in price or quality and whether the relevant market(s) are characterized by brand loyalty. The response must also discuss whether the relevant market(s) are characterized by countervailing power, the market participants who are said to have such power and the extent that such power would be likely to constrain the merger parties post-acquisition.

17. The response must cover whether it is viable for customers to import substitutes and the origin of imports, and address issues including but not limited to: options for the transportation of imports (for example, air, sea or rail); transport costs; whether the product is a high or low value product; whether the product is high or low density; and whether the product is durable enough to be transported without damage or deterioration in quality. The response must also give details of historical import levels for the past five years and the source of the information provided. The response must include the outcomes of any anti-dumping investigations concluded in the past five years.

18. The response must provide details of the price of actual or potential imports (including, additional costs such as freight and customs duties), whether existing import suppliers can accommodate a significant expansion in capacity without the need for significant investment and whether import competition would provide a constraint on the merged firm via a downstream market. The response must also include contact details of existing importers and their customers.

19. The response must cover whether it is viable for suppliers to export to alternative purchasers and the likely export markets, and address issues including but not limited to the following:

- (a) options for the transportation of exports (for example, air, sea or rail);
- (b) transport costs;
- (c) whether the product is a high or low value product;
- (d) whether the product is high or low density;
- (e) whether the product is durable enough to be transported without damage or deterioration in quality.

The response must also give details of historical export levels for the past five years and the source of the information provided.

20. The response must include reference to the following:

- (a) both the nature and height of barriers to entry and expansion;
- (b) details of exit;
- (c) entry and expansion in the relevant market(s) in the previous five years;
- (d) any incentives or disincentives for new entry;
- (e) how long it would take for a new entrant to establish itself as a vigorous and effective competitor.

21. Barriers which must be addressed include, but are not limited to, the following:

- (a) sunk costs in production capacity;
- (b) accessing shelf space;

- (c) advertising and promotion;
- (d) regulatory restrictions;
- (e) requirements for scarce inputs;
- (f) brand loyalty;
- (g) minimum efficient scales of operation;
- (h) goodwill;
- (i) access to intellectual property;
- (j) the potential response of incumbents to new entry.

22. The response must include references including, but not limited to, the following:

- (a) growth;
- (b) levels of innovation;
- (c) technological change;
- (d) product and service differentiation in the relevant market(s).

23. The response must refer to current and historical pricing and purchasing behavior, its record of innovation, its growth relative to the growth of the relevant market(s), and its history of independent behaviour.

24. The response must indicate the extent to which the Applicant buys from or sells to the Target raw materials, supplies, services, capital or finished products for resale.

25. The response must discuss factors conducive to coordination in a market including, but not limited to, the following:

- (a) the number of participants in the relevant market(s);
- (b) transparency;
- (c) homogeneity of product;
- (d) homogeneity of firms;
- (e) the size and frequency of purchases;
- (f) the presence of the same firms in more than one market.

26. The response must address the complementarities that occurs where there is significant commonality of customers' products and whether the strength of demand for one product is positively correlated with the strength of demand for another, either because the products form part of a range that distributors need to carry or because they must be consumed together for technical reasons.

27. The response must address the circumstances where two or more products are, or could be, supplied only as a bundle (pure bundling) or, if supplied individually, are also offered as a bundle at a price that is lower than the price charged if sold individually (mixed bundling). The response must also address circumstances where customers seeking to acquire one product are required also to purchase a second product, or carry amounts of the second product (tying).