

Merger Clearance ACCC continues close scrutiny of M&A activity in Australia

February 2017

In 2016, the Australian Competition and Consumer Commission (ACCC) publicly reviewed 29 proposed M&A transactions. Confidential reviews or pre-assessments were undertaken on many more transactions.

Of the publicly reviewed transactions, the ACCC:

Opposed just two

Sea Swift's proposed acquisition of Toll's marine freight business in the Northern Territory and Far North Queensland and GPC's proposed acquisition of Cova Parts from Automotive Holdings Group Ltd.

Cleared 4 transactions

Subject to s87B undertakings including Iron Mountain/Recall, and Primary Healthcare/ Healthscope.



COMPLETED TRANSACTIONS SUBJECT TO ACCC REVIEW

The ACCC's retrospective review of Primary Healthcare / Healthscope resulted in Primary divesting the pathology assets it acquired from Healthscope, largely reversing the deal. Not only did this indicate the ACCC's willingness to review completed transactions, it also highlighted the risk to companies of completing contentious acquisitions without securing advance ACCC clearance.



FOREIGN INVESTMENT REVIEW BOARD (FIRB) IS PUSHING THE ACCC TO LOOK HARDER AT MORE TRANSACTIONS

We have been involved in several transactions in which the ACCC was asked by FIRB to conduct more extensive enquiries than the ACCC would previously have considered necessary.



IS MERGER AUTHORISATION NOW COMMERCIALY VIABLE?

After the ACCC opposed the Sea Swift / Toll marine freight acquisition, the parties sought authorisation by the Competition Tribunal. It was granted in July 2016 – making it the first successful authorisation application since AGL / Macquarie Generation in 2014. In the right circumstances, authorisation by the Tribunal is potentially a commercially viable option for clearing a transaction, either as a form of appeal from an ACCC decision or bypassing the ACCC altogether.



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Recent representative matters involving complex ACCC issues

Suntory acquisition of Beam Inc

US\$16bn

Hitachi's recommended takeover of Bradken

A\$976.1m

Dell's acquisition of EMC

US\$67bn

TPG's acquisition of iiNet

A\$1.4bn

SingTel Optus transfer of Hybrid Fibre Coaxial network to NBN

A\$1bn+

Iron Mountain's merger with Recall Holding

A\$2.6bn

Toll Marine / Sea Swift merger

World Fuel Services acquisition of Exxon Aviation Fuels business

Long term lease of Port of Melbourne Webb Dock West automotive terminal

US\$1.6bn

Vocus merger with M2

A\$3.8bn

MinterEllison's dedicated mergers unit is recognised by Global Competition Review as an 'elite' Australia competition practice (in 2017, 7th year running). We have an unparalleled track record on buy and sell transactions, successfully steering complex and sensitive deals through ACCC clearance. Our approach has achieved great outcomes and saved our clients time and money.

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