

# MERGERS

Competition Policy Review (Harper Review) Draft Report

## Current position

### Substantive law

- Mergers (acquisitions) are prohibited by s 50 of the CCA if they would have the effect, or be likely to have the effect, of substantially lessening competition in a market
- Market defined in 50(6) as a market for goods or services in Australia or a State, Territory or region of Australia

### Procedure

- No mandatory pre-merger notification
- Voluntary informal notification to ACCC available (most common option)
- Voluntary formal notification to ACCC available with merits appeal to Tribunal (never been used; onerous up front information requirements)
- Authorisation available on public benefit grounds – application directly to Tribunal with no possibility for merits review. ACCC provides support role to Tribunal

## Harper Panel draft proposal (rec 30, chapter 15)

### Substantive law

- No change

### Procedure

- No introduction of mandatory pre-merger notification
- Retain voluntary informal notification to ACCC; ACCC to consult with stakeholders with object of delivering more timely decisions
- Combine current formal notification and authorisation processes
- Unnecessary restrictions and requirements to be removed from the new formal process - details to be settled in consultation with business, practitioners and ACCC but with following elements:
  - ACCC to be decision maker at first instance
  - ACCC to have power to approve merger if satisfied that:
    - It does not SLC **or**
    - Merger would result in public benefits outweighing anti-comp detriment
  - No prescriptive information requirements (ACCC should have power to require production of business and market information)
  - Strict timelines that cannot be extended except with consent of parties
  - ACCC decisions subject to Tribunal review with strict timelines

[summary prepared 11 October 2014]