



28 July 2009

Commerce Commission
PO Box 2351
Wellington 6140

By email: failingfirms@comcom.govt.nz

Dear Sir/Madam

Mergers & Acquisitions: Supplementary Guidelines on Failing Firms

The Society's Commercial and Business Law Committee (the Committee) welcomes the opportunity to comment on the draft Supplementary Guidelines on Failing Firms (the guidelines).

The Committee supports the introduction of the guidelines as a helpful indication of how the Commission is likely to deal with clearance applications premised on the "failing firm argument". The guidelines are clear and concise. The minor suggestions the Committee makes are as follows:

1. Paragraph 2.04 appears to be missing some words. Inserting the words "the merger" immediately before the words "would be likely to result" would remedy this.
2. Paragraph 3.03 under the heading "Is there an alternative third party purchaser?" The Committee suggests reference to "within a practicable timeframe" in the first bullet point (inserting those words at the end of the sentence) and "where practicable," at the second bullet point (inserting those words at the beginning of the sentence). Any prospect of an alternative third party acquiring the business should be considered in the relevant timeframe applicable to the target business and the same consideration with regards to efforts made to find an alternative third party purchaser.
3. The guidelines do not indicate how the Commission will deal with evidence offered to prove a firm is failing. The list of evidence is useful but the Commission should indicate the tests that will be applied to the evidence and what use will be made of it.

If you have any queries regarding this submission please contact Diana Brown, Committee Secretary, telephone 04 463 2967 or email diana.brown@lawsociety.org.nz.

Yours sincerely

John Horner
Convener, Commercial & Business Law Committee