



Australian
Competition &
Consumer
Commission

Authorising and notifying disclosure of pricing and other information

The *Competition and Consumer Act 2010* (the Act) contains civil prohibitions against anti-competitive price signalling and information disclosures. These provisions came into effect on 6 June 2012 and initially only apply to the banking sector.

The authorisation and notification provisions in the Act enable businesses to seek legal protection to engage in conduct that may otherwise breach these provisions where such conduct is in the public interest.

The purpose of this publication is to provide general guidance to businesses in preparing an application for authorisation or notification, and which regime may apply to their circumstances.

The ACCC strongly encourages you to discuss a proposed application with the ACCC prior to lodgement, particularly where you have questions about how confidentiality of information can be dealt with under the authorisation or notification processes.

Who do the prohibitions apply to?

The prohibitions only apply to goods and services prescribed by regulation. Currently, the prohibitions only apply to the banking sector, and only in relation to the taking of money on deposit and making advances of money or loans.

What information disclosure is prohibited?

Broadly, it is illegal to:

- disclose prices to competitors in private where doing so is not in the ordinary course of business (**per se prohibition**)
- disclose information (in public or private) for the purpose of substantially lessening competition in a market (**general prohibition**).

The **per se prohibition** is confined to a narrow range of private disclosures, relating to price, whereas the **general prohibition** encompasses disclosures relating to price, capacity and commercial strategy.

There are a number of exceptions to the prohibitions, including an exception for disclosures authorised by law, disclosures to related bodies corporate, and disclosures made in compliance with continuous disclosure requirements of the *Corporations Act 2001*. There are a number of additional exceptions to the **per se prohibition**.

Further details about the anti-competitive price signalling and information disclosure provisions are provided in the ACCC's publication *Anti-competitive price signalling and information disclosures*.

What is authorisation?

Authorisation provides the applicant with protection from legal action for certain conduct that may otherwise breach the competition provisions of the Act.

A person may apply for authorisation to make a disclosure of information which may breach the **per se prohibition** or the **general prohibition**.

The ACCC may grant authorisation in relation to a disclosure of information that may breach the **per se prohibition** if the ACCC is satisfied that the proposed disclosure would be likely to result in such a benefit to the public that it should be allowed.

The ACCC may grant authorisation in relation to a disclosure of information that may breach the **general prohibition** if it is satisfied that the proposed disclosure would be likely to result in a public benefit and that benefit would outweigh the detriment to the public from any lessening of competition likely to result from such disclosure.

The ACCC conducts a public consultation process before deciding whether to grant or deny authorisation.

The ACCC must issue a final determination within six months of receiving a valid application for authorisation, although this can be extended by up to a further six months in certain circumstances.

If authorisation is granted, protection commences at the time specified by the ACCC in its final determination and extends for the period set out in the determination.

What is notification?

Notification provides an alternate means to seek protection from legal action for certain conduct that may otherwise breach the competition provisions of the Act; however, the notification regime differs from the authorisation regime in a number of ways.

A notification can only be lodged in relation to a disclosure of information which may breach the **per se prohibition**.

Legal protection for the notified conduct commences automatically 14 days after the notification is validly lodged, unless the ACCC formally objects within that period.

The ACCC may revoke, or prevent (if within 14 days), the legal protection provided by a notification if the ACCC is satisfied that the likely public benefit will not outweigh the likely public detriment from the proposed disclosure.

Frequently asked questions

How do I know if I need to lodge an application for authorisation or notification?

Before lodging an authorisation application or notification, parties are encouraged to contact the ACCC. The ACCC can discuss whether an authorisation or notification may be appropriate and can provide guidance on the formal process and the type of information the ACCC is likely to consider relevant.

However, the ACCC is unable to provide legal advice. The assessment of risk, whether a particular exception applies and whether it is necessary to seek authorisation or lodge a notification ultimately lies with the party considering whether to engage in the conduct.

What if I already have an authorisation or notification for conduct other than information disclosure in place?

The prohibitions against anti-competitive price signalling and information disclosures do not apply to the disclosure of information if there is an authorisation or notification in place and the disclosure of information is made in the course of engaging in conduct that is covered by that authorisation or described in that notification.

How do I lodge a valid application for authorisation?

An application for authorisation for price signalling conduct should be lodged on a Form BA, contain the information required by the form and be accompanied by any other information or documents prescribed by the regulations. The application must be accompanied by a lodgement fee of \$7500, unless a concessional fee or a fee waiver applies.

The completed form will be placed on the ACCC's public register and website.

Form BA is available on the ACCC's website at www.accc.gov.au/authorisationforms.

How do I lodge a valid notification?

A notification of a private disclosure of pricing information to competitors should be lodged on a Form GAA, contain the information required by the form and be accompanied by any other information or documents prescribed by the regulations. The lodgement fee is \$100.

The completed form will be placed on the ACCC's public register and website.

Form GAA is available on the ACCC's website at www.accc.gov.au/privatedisclosureofprices.

What if some information is confidential?

Under the Act the ACCC must maintain public registers of information provided in the authorisation and notification processes.

The Act allows for applicants and interested parties providing confidential information in relation to an application for authorisation or notification to request that the information, or parts of it, be excluded from the public register. Reasons must be provided in support of the request.

However, all questions on the form itself must be answered and the form in its entirety will be placed on the public register.

If an applicant wishes to provide additional information relating to an application that is confidential, this information should be placed in a separate document.

Applicants are encouraged to contact the ACCC in advance of lodging an application for authorisation or notification to discuss questions regarding confidential information.

Where can I get further information?

More detailed information about the authorisation and notification processes is available from the following publications on the ACCC's website www.accc.gov.au:

The ACCC's Guide to authorisation

The ACCC's Guide to exclusive dealing notifications

Guidelines for excluding information from the public register for authorisation, merger clearance and notification processes

ACCC contacts

Infocentre: 1300 302 502

Website: www.accc.gov.au

Important notice

Information in this publication is for general guidance only. It reflects the ACCC's views on what is required to comply with the *Competition and Consumer Act 2010*. It does not constitute legal advice and should not be relied on as a statement of the law relating to the Act. You should obtain legal advice if there is doubt about whether any conduct may breach the Act, or whether laws in your state or territory impose other requirements or responsibilities on you.

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