

## Refusal to deal Small business



Australian  
Competition &  
Consumer  
Commission

### How do I find out more?

To find out more, contact the ACCC infocentre by:

**Phone:** 1300 302 502

**Email:** [infocentre@acc.gov.au](mailto:infocentre@acc.gov.au)  
or visit the ACCC website at [www.accc.gov.au](http://www.accc.gov.au).

Businesses of all sizes often complain to the ACCC that businesses have refused to supply them with goods or services, believing the *Trade Practices Act 1974* (the Act) gives them an absolute right to be supplied.

Generally, no one has an absolute right to be supplied, and businesses may decide with whom they deal.

However, there are a few situations where a refusal to deal is illegal under the Act.

### When refusing to supply is legal

There may be sound commercial reasons — legal ones — why a customer is refused supply of goods or services.

For example, a business may find it too costly or inconvenient to sell to retail customers, or may dislike supplying outlets located too close to each other.

Or perhaps the supplier believes a reseller is a bad credit risk, does not promote the goods properly or lacks particular skills relevant to the business.

Or the supplier may simply not wish to deal with someone due to personal reasons.

These are all legitimate reasons for refusing to supply someone, and will generally not be in breach of the Act.

However, suppliers should not attempt to use one of these 'excuses' as a front for anticompetitive conduct.

Businesses who have been refused supply should look at all the circumstances leading up to the refusal.

### When can refusal to deal break the law?

Generally, refusal to deal will only be illegal in situations where the refusal has been made for anticompetitive reasons — thereby breaching some section of the Act.

Broadly, refusal to deal may breach the Act in the following situations:

**Illegal Agreements** - Agreements involving competitors that involve restricting the supply of goods are prohibited if they have the purpose or effect of substantially lessening competition in a market in which the businesses operate.

**Boycotts** - Agreements between competitors to refuse to deal, or limit dealings with other parties are illegal under the Act.

**Misuse of market power** - A firm with a substantial degree of power in a particular market cannot take advantage of that

power for the purpose of damaging other businesses, including by refusing to deal or by offering to do business on such unrealistic terms that it is tantamount to refusal to deal.

However, it is not enough that a business have significant power in a market—rather, they must use that power for one of the proscribed reasons (such as attempting to prevent entry to the market)

**Exclusive dealing** - Broadly, exclusive dealing involves one person imposing restrictions on the other's freedom to choose with whom, or in what, it deals.

If it would result in a substantial lessening of competition, a supplier cannot refuse to supply goods or services because the purchaser will not agree to conditions placed on the sale.

This includes situations of *third line forcing*, where a condition is placed that the purchaser buys goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition.

**Resale price maintenance** - Suppliers may not specify to resellers a minimum price below which goods or services are not to be resold or advertised for resale, unless the retailer has been discounting below cost to

attract custom (loss leading).

### What can you do if a business refuses to supply you?

If you think any of these fits your circumstances, the first step should be to approach the supplier to discuss the reason for the refusal. Perhaps changes can be made which would satisfy the supplier's requirements.

Often, it may be more practical to seek another source of supply.

However, if these approaches are unsuccessful, and the refusal to deal falls into one of the illegal categories, you may be able to take private legal action, should you wish to.

If you believe you have been refused supply for an anticompetitive purpose, contact the ACCC Infocentre on 1300 302

### Did you know?

The ACCC publication, *Refusal to Deal*, is available free of charge from the ACCC website at [www.accc.gov.au](http://www.accc.gov.au) or by calling the ACCC Infocentre on 1300 302 502.