



Australian
Competition &
Consumer
Commission

ACCC immunity policy for cartel conduct

July 2009

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

First published by the ACCC 2009

This edition published by the ACCC 2011

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ISBN 978 1 921581 30 4

ACCC 03/11_44859_273

www.accc.gov.au

Summary

This document sets out the policy of the Australian Competition and Consumer Commission in relation to applications for immunity from ACCC-initiated civil proceedings by those involved in cartel conduct.

Policy

1. This policy is to be read and interpreted in conjunction with the Australian Competition and Consumer Commission publication, *ACCC immunity policy interpretation guidelines*.¹
2. This policy applies to conduct in relation to civil contraventions of Division 1 of Part IV of the *Competition and Consumer Act 2010* as amended by the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*.
3. The ACCC will grant civil immunity in accordance with this policy.
4. The Director of Public Prosecutions will grant immunity from criminal prosecution on the basis set out in the annexure to the prosecution policy of the Commonwealth.
5. Applications for immunity from criminal proceedings for conduct outlined in paragraph 2 above shall be made to the ACCC in accordance with the procedures set out in this policy and the *ACCC immunity policy interpretation guidelines* relating to applications for immunity from civil proceedings.
6. This policy commenced on 26 June 2009 and applies to applications for immunity received by the ACCC after this time. Applications for immunity made under former policies will be subject to those policies under which they were made.

Corporate immunity from proceedings

7. A corporation may apply for immunity under this part of the ACCC's immunity policy.
8. A corporation will be eligible for conditional immunity from ACCC-initiated civil proceedings where:
 - (a) it applies for immunity under this policy and satisfies the following conditions:
 - (i) the corporation is or was a party to a cartel
 - (ii) the corporation admits that its conduct in respect of the cartel may constitute a contravention or contraventions of the Competition and Consumer Act
 - (iii) the corporation is the first person to apply for immunity in respect of the cartel under this policy

¹ See www.accc.gov.au.

- (iv) the corporation has not coerced others to participate in the cartel and was not the clear leader in the cartel
 - (v) the corporation has either ceased its involvement in the cartel or indicates to the ACCC that it will cease its involvement in the cartel
 - (vi) the corporation's admissions are a truly corporate act (as opposed to isolated confessions of individual representatives)
 - (vii) the corporation undertakes to provide full disclosure and cooperation to the ACCC, and
 - (b) at the time the ACCC receives the application, the ACCC has not received written legal advice that it has sufficient evidence to commence proceedings in relation to at least one contravention of the Competition and Consumer Act arising from the conduct in respect of the cartel.
9. A corporation proposing to apply for immunity under this part of the ACCC's immunity policy may request the placement of a marker. If a marker is placed, it will have the effect of preserving for a limited period the marker recipient's status as the first person to apply to the ACCC for immunity in respect of the cartel.
10. An applicant, in addition to satisfying the conditions in paragraph 8, must provide ongoing full disclosure and cooperation to the ACCC for conditional immunity to remain in place and to be eligible for final immunity.
11. Subject to the applicant meeting the requirements of the policy, the ACCC will grant to the applicant final immunity after the resolution of any proceedings against cartel participants for conduct in relation to the cartel. In certain circumstances and at its discretion, the ACCC may grant final immunity at an earlier stage.
12. If, after the grant of conditional immunity or final immunity, the ACCC forms the view on reasonable grounds that the applicant does not or did not satisfy the conditions for immunity or conditional immunity referred to in paragraphs 8 and 10, it may revoke the grant of conditional immunity or final immunity. In this event the ACCC will provide the applicant with an opportunity to respond.

Derivative corporate immunity for corporate directors, officers and employees

13. Subject to this policy, including paragraph 15, if a corporation qualifies for conditional immunity (see paragraph 8), all current and former directors, officers and employees of the corporation who admit their involvement in conduct of the corporation in respect of the cartel and provide full disclosure and cooperation to the ACCC will be eligible for conditional immunity in the same form as the corporation.

14. At the time of making an application for immunity under this policy, the corporation must list all current and former directors, officers and employees of the corporation seeking derivative immunity.
15. Subject to the current and former directors, officers and employees covered by derivative corporate immunity continuing to provide full disclosure and cooperation to the ACCC, the ACCC will grant them final immunity at the same time as it grants final immunity to the corporation.

Individual immunity from proceedings

16. An individual may apply for immunity under this part of the ACCC's immunity policy.
17. An individual will be eligible for conditional immunity from ACCC-initiated civil proceedings where:
 - (a) he or she applies for immunity under this policy and satisfies the following conditions:
 - (i) the individual is or was a director, officer or employee of a corporation that is or was party to a cartel
 - (ii) the individual admits that he or she has participated, or is participating, in conduct in respect of the cartel that may constitute a contravention or contraventions of the Competition and Consumer Act
 - (iii) the individual is the first person to apply for immunity in respect of the cartel under this policy
 - (iv) the individual has not coerced persons in other corporations to participate in the cartel and was not the clear individual leader in the cartel
 - (v) the individual has either ceased his or her involvement in the cartel or indicates to the ACCC that he or she will cease their involvement in the cartel
 - (vi) the individual undertakes to provide full disclosure and cooperation to the ACCC, and
 - (b) at the time the ACCC receives the application, the ACCC has not received written legal advice that it has sufficient evidence to commence proceedings in relation to at least one contravention of the Competition and Consumer Act arising from the conduct in respect of the cartel.
18. An individual proposing to apply for immunity under this part of the ACCC's immunity policy may request the placement of a marker. If a marker is placed, it will have the effect of preserving for a limited period the marker recipient's status as the first person to apply to the ACCC for immunity in respect of the cartel.

19. An individual, in addition to satisfying the conditions in paragraph 17, must provide ongoing full disclosure and cooperation to the ACCC for conditional immunity to remain in place and to be eligible for final immunity.
20. Subject to the individual meeting the requirements of the policy, the ACCC will grant to the applicant final immunity after the resolution of any proceedings against cartel participants for conduct in relation to the cartel. In certain circumstances and at its discretion, the ACCC may grant final immunity at an earlier stage.
21. If, after the conditional immunity or final immunity, the ACCC forms the view on reasonable grounds that the applicant does not or did not satisfy the conditions for immunity or conditional immunity referred to in paragraphs 17 and 19, it may revoke the granting of conditional immunity or final immunity. In this event the ACCC will provide the applicant with an opportunity to respond.