



Australian  
Competition &  
Consumer  
Commission

# Authorising and notifying cartel conduct

The *Competition and Consumer Act 2010* (the Act) contains provisions prohibiting cartel conduct, with both civil and criminal penalties.

The authorisation and collective bargaining notification provisions provide that, where such arrangements are in the public interest, businesses may seek immunity from the Australian Competition and Consumer Commission (ACCC).

This publication describes the cartel provisions and how parties may seek immunity from them through the authorisation and collective bargaining notification provisions of the Act.

## What are the cartel provisions?

The Act provides that a corporation must not make, or give effect to, a contract, arrangement or understanding that contains a cartel provision.

A cartel provision relates to:

- price fixing
- restricting outputs in the production and supply chain
- allocating customers, suppliers or territories or
- bid rigging

by parties that are, or would otherwise be, in competition with each other.

## What is an authorisation?

A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business so that consumers can have greater choice in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an authorisation.

The ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct (other than misuse of market power) if it is satisfied that the public

benefit from the arrangements or conduct outweighs any public detriment.

The ACCC conducts a comprehensive consultation process before making a decision to grant or deny authorisation.

## What is notification of collective bargaining?

Collective bargaining is an arrangement under which two or more competitors in an industry come together to negotiate terms and conditions (which can include price) with a supplier or a customer. Small businesses proposing to engage in collective bargaining arrangements may lodge a notification of the arrangements with the ACCC and gain immunity for conduct that may otherwise have breached certain anti-competitive conduct provisions of the Act.

As with authorisation, the ACCC conducts a comprehensive consultation process before making a decision regarding a collective bargaining notification.

## What can be notified?

Small businesses can notify proposed price fixing arrangements, arrangements which may restrict outputs in the production and supply chain, or arrangements which provide for the allocation of customers, suppliers or territories.

## Frequently asked questions

### *How do I know if I need immunity?*

Before lodging an authorisation application or a collective bargaining notification, parties may wish to contact the ACCC. The ACCC can discuss whether an authorisation or notification may be appropriate and can provide guidance on the formal application processes involved.

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

## *Lodging applications for the authorisation/ notification of cartel conduct*

An application for authorisation or notification of collective bargaining involving cartel conduct must be lodged on a correctly completed lodgment form. Applicants should ensure that they provide all information asked for on a lodgment form.

The lodgment fees for applications for authorisation are prescribed in the Competition and Consumer Regulations 2010.

A lodgment fee of \$7500 applies to an application for authorisation.

A lodgment fee of \$1500 is applicable for additional related authorisation applications.

Related applications:

- must concern conduct in the same market or a closely related market as the conduct for which the first authorisation application has been lodged
- must be lodged within 14 days of lodging the first application
- cannot concern a merger.

A lodgment fee of \$1000 applies to a notification of collective bargaining.

There is no lodgment fee for additional related notifications.

An application for authorisation and/or notification of collective bargaining will not be valid unless it is lodged on the correct form and accompanied by the correct fee (or, in the case of an application for authorisation, accompanied by evidence that the fee has been waived in whole or in part).

## **ACCC contacts**

Infocentre  
1300 302 502

Website  
[www.accc.gov.au](http://www.accc.gov.au)

For other business information, go to  
**[www.business.gov.au](http://www.business.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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