



Australian
Competition &
Consumer
Commission

Authorisation process— the basics

What is authorisation?

The ACCC is the independent Australian Government agency responsible for administering the *Competition and Consumer Act 2010* (the Act). A key objective of the Act is to prevent anti-competitive conduct, to encourage competition and efficiency in business and enhance the welfare of Australians.

The Act, however, allows businesses to obtain protection from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way businesses may obtain protection is to apply for what is known as an ‘authorisation’ from the ACCC. Broadly, the ACCC may authorise businesses to engage in such conduct where it is satisfied that the public benefit outweighs any public detriment.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process, placing submissions on a public register. After considering submissions, the ACCC will issue a draft decision and provide an opportunity for a conference. The ACCC will then reconsider the application in light of any further submissions and release its final decision.

A six-month time limit applies to the ACCC’s consideration of applications for authorisations. The six-month time limit may be extended in certain circumstances if a draft determination has been issued and the applicant agrees to the extension.

Varying authorisations

The Act also provides two mechanisms for varying authorisations. Depending on the nature of the proposed variation, an applicant may apply to the ACCC for a minor variation or a revocation and substitution.

While the six-month time limit only applies to new applications for authorisation, the ACCC will endeavour to also consider applications for minor variation and revocation and substitution within six months.

Minor variation

The minor variation process is only available for changes that are not substantial or significant.

When the ACCC receives a request for a minor variation, it first assesses whether the variation sought is minor, and then invites submissions from interested parties.

To allow the minor variation, the ACCC must be satisfied that the variation would not reduce the extent to which the public benefit outweighs any public detriment. The ACCC must then issue a determination either varying the original authorisation or dismissing the application.

Revocation and substitution

For more substantive changes, applicants may seek revocation and substitution of an authorisation. As for the authorisation process, the ACCC undertakes a public consultation process, issues a draft decision and provides an opportunity for a conference before issuing a final decision. The ACCC must assess whether the benefit from the conduct proposed to be authorised under the substitute authorisation outweighs the likely detriment.

Parties may seek to have an existing authorisation revoked if they no longer consider it necessary.

In some cases the ACCC may instigate a review of an authorisation with a view to possible revocation or substitution.

Public register

The authorisation process should be as open and transparent as possible, particularly so that claims made by those supporting an application can be tested and interested parties have the opportunity to put their views.

The Act requires the ACCC to keep a public register containing all documents relevant to an authorisation application. These documents include the applications, submissions, ACCC determinations and correspondence, records of conferences and in some cases records of meetings.

The ACCC endeavours to make all documents placed on the public register, including submissions, available on its website (www.accc.gov.au). These documents can be obtained from the website free of charge.

Making submissions

Upon receipt of an authorisation application, the ACCC writes to parties it considers may be interested in the matter, inviting submissions. It also encourages those parties to forward its letter to others who may be interested and places the application on its public register for all to see.

Broadly, the ACCC will seek the views of interested parties on the applicants’ claimed public benefits and detriments.

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When preparing your submission, please remember to provide details of the reasons for your particular views and any supporting materials you may have.

The ACCC encourages submissions in writing; however, oral submissions can also be made. Both written submissions and records of oral submissions are placed on a public register.

However, you may request that information included in the submission or the entire submission itself be excluded from the public register due to its confidential nature. Parties seeking to have submissions excluded should provide reasons in support of their request. Submissions that are excluded from the public register may still be taken into account by the ACCC when conducting its assessment of an authorisation application. The ACCC has prepared guidelines for seeking exclusion from the public register, which are available on its website. (www.accc.gov.au)

Written submissions can be lodged by email to adjudication@accc.gov.au, by facsimile on 02 6243 1211 or mailed to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Further information

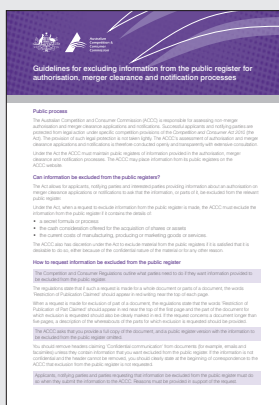
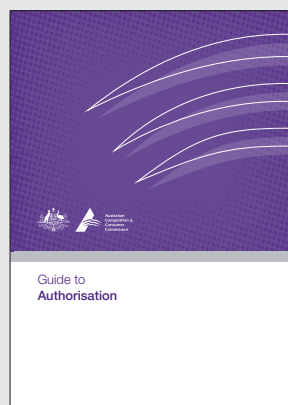
The ACCC has a number of publications that may assist in answering further queries in relation to authorisation processes. The ACCC publications listed below are available on its website free of charge.

Guide to Authorisation

Authorisations and notifications: a summary

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

Authorising and notifying cartel conduct



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Important notice

This publication has been updated to refer to the *Competition and Consumer Act 2010* which replaces the *Trade Practices Act 1974* on 1 January 2011. For more information on the Australian Consumer Law changes see www.consumerlaw.gov.au

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.