



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Notification of proposed collective bargaining with or without a boycott or exclusive dealing or resale price maintenance

Guidance in completing your notification to the ACCC

To lodge a notification of proposed:

- collective bargaining with or without a boycott or
- exclusive dealing or
- resale price maintenance

(the **notification**), you should include the information, data and documents outlined in this form. Where possible, each question should be answered fully and be substantiated with evidence. If a question is not relevant or where information is not available and cannot be reasonably estimated, please provide a brief explanation.

If the ACCC is not satisfied that the statutory test is met, it cannot allow the notification.

It is an offence to knowingly provide false or misleading information to the ACCC. Refer to section 137.1 of the *Criminal Code* (Cth).

Key points for lodging your notification

- We encourage you to consult the relevant guidelines and contact the ACCC at exemptions@acc.gov.au for a pre-lodgement discussion to clarify what information and evidence may be needed to assess your notification.
- Failure to provide sufficient information may render the notification invalid or otherwise impact the ACCC's ability to assess your notification.
- You should provide all relevant information and evidence you intend to rely on.
- Less weight will likely be given to a statement or submission that is not supported with corroborating evidence.
- A valid notification **must** contain:
 - a public version of your notification for publication on the public register. You should provide a clearly marked confidential version if you wish to claim confidentiality for parts of your notification. All confidentiality claims must be substantiated. The public version must contain sufficient information to enable public consultation on your notification
 - a signed declaration by the notifying party
 - payment of the relevant fee (\$1,000 collective bargaining; \$2,500 exclusive dealing; \$1,000 resale price maintenance).

Information

Notifying party

1. Provide details of the notifying party, including:
 - 1.1 name, address (registered office), telephone number, and ACN
 - 1.2 contact person's name, telephone number, and email address
 - 1.3 a description of business activities
 - 1.4 email address for service of documents in Australia.

Details of the notified conduct

2. Indicate whether the notified conduct is for:
 - 2.1 exclusive dealing (s. 47 of the *Competition and Consumer Act 2010* (Cth) (the **Act**);
 - 2.2 resale price maintenance (s. 48)
 - 2.3 collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, whether the notified conduct includes a collective boycott.
3. Provide details of the notified conduct including:
 - 3.1 a description of the notified conduct
 - 3.2 any relevant documents detailing the terms of the notified conduct
 - 3.3 the rationale for the notified conduct
 - 3.4 any time period relevant to the notified conduct.
4. Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to the notified conduct and any minutes or record of the decision made.¹
5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.

Market information and concentration

6. Describe the products and/or services, and the geographic areas, supplied by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).
7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.
8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

¹ Notifying parties are encouraged to consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct the subject of the notification.

9. In assessing a notification, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:
- 9.1 existing competitors
 - 9.2 likely entry by new competitors
 - 9.3 any countervailing power of customers and/or suppliers
 - 9.4 any other relevant factors.

Public benefit

10. Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

Public detriment (including likely competitive effects)

11. Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

Contact details of relevant market participants

12. Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties, such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Any other information

13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.

Additional information for collective bargaining (with or without a collective boycott) conduct only

14. Confirm that the notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.
15. Provide details (name, phone number, email address) of the persons who are current members of the group (contracting parties) on whose behalf the notification is lodged. If relevant, identify the classes of persons who may become contracting parties in the future and on whose behalf the notification is lodged.
16. Confirm each contracting party:
- 16.1 reasonably expects to make one or more contracts with the targets for the supply or acquisition of the relevant goods or services and
 - 16.2 the value of each contract will not exceed A\$3 million (or any other amount prescribed by regulation) in any 12 month period.
 - 16.3 Provide details of the basis for that expectation.

17. If the contracting parties propose to engage in a collective boycott with respect to the targets, provide details of:

- 17.1 the event/s that would trigger a collective boycott
- 17.2 the process that would be followed
- 17.3 any proposed notice period to be given to the target/s prior to commencing a collective boycott and
- 17.4 any proposed dispute resolution procedure between the contracting parties and the targets.

Declaration by notifying party

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person

Office held

(Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.