

Commerce Act 1986

Clearance relating to cartel provisions

Notice seeking clearance

To apply for clearance you must send both a confidential and a public version of your notice seeking clearance (“application”) to either registrar@comcom.govt.nz, or The Registrar, Competition Branch, Commerce Commission, PO Box 2351, Wellington, New Zealand.

Your application must include:

- the particulars set out in this form
- a signed (hard copy or electronic) declaration in the form attached

You must also pay the specified filing fee. You can pay either by cheque, or by proof of electronic payment to:

- Commerce Commission
- BNZ North End
- Account number: 02-0536-0329867-00
- Reference: Name of firm applying for clearance

Help in completing your application

You should consult the Competitor Collaboration Guidelines

www.comcom.govt.nz/business-competition/guidelines-2/competitor-collaboration-guidelines/ when completing your application.

The more comprehensive the information and evidence you provide in your application, the more efficiently and effectively we can carry out our assessment. The level of detail and the type of information required in an application will differ depending on the nature and complexity of the collaborative activity and the arrangement.

Before submitting a clearance application, we recommend contacting the Competition Manager to schedule a pre-notification discussion. As discussed in the Competitor Collaboration Guidelines, pre-notification discussions can help clarify what information and evidence we are likely to need in your application. To get the most out of these pre-notification discussions, we expect an applicant to provide us with a substantially developed draft clearance application at least two working days before meeting with us.

We can grant clearance for one or more arrangements that form part of a collaborative activity. Similarly, an arrangement may contain more than one cartel provision. For convenience, we refer to “arrangement” and “cartel provision” in the singular.

Warning

It is an offence to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission. Any person who does so is liable upon summary conviction to a fine of up to \$10,000 (for an individual) or \$30,000 (for a body corporate). Refer to sections 103(2) and (4) of the Act.

Definitions in this form

In this form:

- applicant:** means the person or persons seeking clearance
- arrangement:** means a contract, arrangement, and understanding within the meaning of section 30 of the Commerce Act (see paragraphs [2.7] – [2.10] of the Competitor Collaboration Guidelines)

Required information

We give less weight to a statement or submission that cannot be supported with corroborating evidence. As such, any evidence in support of your application should be submitted with your application. Please consider submitting documents that might assist our understanding of the market, such as industry or marketing reports, and any reports prepared in contemplation of the collaborative activity.

Where possible, please provide documents that exist in electronic form in their native or original electronic format (eg, Outlook (.pst or .msg), Microsoft Word (.doc or .docx), Microsoft PowerPoint (.ppt), Microsoft Excel (.xls), etc). Documents that exist only in hard copy can be provided in hard copy or as scanned images. This assists us in quickly and accurately identifying the information relevant to our investigation.

For more information on satisfying the Commission that the arrangement is not likely to substantially lessen competition, refer to [6.10] – [6.17] of the Guidelines.

Clearance sought

- 1 Provide the applicant's name and contact details, and the name, position, and contact details of the individual responsible for the notice, and the person the Commission should contact in relation to the application.
- 2 Provide:
 - 2.1 the names and contact details of the relevant firms or person(s) directly or indirectly controlling the applicant; and
 - 2.2 the names of all bodies corporate that are interconnected with the applicant.
- 3 Identify all cartel provisions for which you are seeking clearance, and the arrangement of which they form part. Provide copies of the final or the most recent versions of documents detailing those arrangements.
- 4 Name and provide contact details for the parties to the arrangement containing the cartel provision. Provide names of the relevant firms or person(s) directly or indirectly controlling those parties.
- 5 For each cartel provision, outline the nature of the cartel provision and explain how the cartel provision applies, including:
 - 5.1 the type of cartel provision (ie, price fixing, market allocation, output restriction);
 - 5.2 the scope (time and geography) of the cartel provision; and
 - 5.3 what goods and/or services the cartel provision applies to.

The collaborative activity

The applicant and any other party to the arrangement containing the cartel provision must be a party to the collaborative activity. However, there may be additional parties to the collaborative activity that do not need to be parties to the arrangement.

For more information on collaborative activities, refer to [6.1] – [6.5] of the Guidelines

- 6 Describe the enterprise, venture, or other activity in trade carried on in cooperation by parties to the collaboration (this could include a diagram showing each party's role in the collaboration).
- 7 Describe who the parties to the collaboration are, including parties other than those listed in response to question 4. Provide the name and contact details for those additional parties. Provide names of the relevant firms or person(s) directly or indirectly controlling those parties.
- 8 Identify and explain any other links (formal or informal) between the parties to the collaborative activity, including interconnected bodies corporate.
- 9 Describe the purpose for which the parties are carrying on the enterprise, venture, or other activity in trade in cooperation with each other.

Cartel provision reasonably necessary

- 10 For each cartel provision, explain why the cartel provision is reasonably necessary for the purpose of the collaborative activity.

For more information on cartel provisions, refer to [2.1] – [2.10] of the Guidelines.

For more information on whether a cartel provision is reasonably necessary for the purpose of the collaborative activity, refer to [5.27] – [5.34] of the Guidelines.

Assessment of whether the arrangement is likely to substantially lessen competition

- 11 Describe why you consider that the arrangement does not result in a substantial lessening of competition in any market having regard to the factors set out in the Competitor Collaboration Guidelines. These include:
 - 11.1 the nature of the cartel provision and any other restrictions contained in the arrangement;
 - 11.2 the nature of the products involved;
 - 11.3 the number and size distribution of independent suppliers, and the degree of market concentration;
 - 11.4 conditions of entry and expansion; and
 - 11.5 other restraints, such as countervailing buyer power.

Further information and supporting documentation

- 12 Please provide the contact details of relevant competitors, buyers and suppliers and any other relevant market participants. The contact details should include the name of the company (and any trading name), its address, the name and position of a relevant person, including their telephone number and email address.

Confidentiality

Parties may request 'fact confidentiality' when they apply for clearance. 'Fact confidentiality' means that the fact of an application (including the names of the parties and the subject matter) is kept confidential. We are open to granting fact confidentiality for Stage 1 of investigation, ie, while the Commission reaches a provisional view on whether the arrangement falls within the collaborative activity exemption. While we will consider requests for fact confidentiality for Stage 2 on a case by case basis, we are highly unlikely to grant requests for fact confidentiality for Stage 2. For more information refer to [7.5] - [7.19] of the Guidelines.

- 13 Do you wish to request fact confidentiality for Stage 1, or Stage 1 and Stage 2? If so, why?
- 14 If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.
- 15 Provide two copies of the application. One copy must be a confidential version and the other a public version both in Microsoft Word format and in searchable PDF format.
- 15.1 In the confidential version of the application any information for which confidentiality is sought must be highlighted in bold and contained in [square brackets].
- 15.2 In the public version the confidential information should be removed from within the square brackets, with the brackets remaining as [].

Checklist

Make sure you have provided the following:

- a confidential version of the notice seeking clearance;
- a public version of the notice seeking clearance;
- all supporting documentation;
- a signed declaration; and
- payment of NZ\$TBC.

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Declaration

Notice seeking clearance

This declaration is to be made only by the applicant. It may not be made by a solicitor or other adviser acting on the applicant's behalf.

The wording in this declaration may not be varied by the applicant.

If this declaration is not completed, the Commission may decline to register the notice seeking clearance.

I, _____, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me which is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

Name and title of Person authorised to sign:

Sign: _____

Date: _____