

# Application for Provisional Authorisation under Section 65AD

## Provisional authorisation

To apply for provisional authorisation you must send both a confidential and a public version of your application seeking provisional authorisation to [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz), or The Registrar, Competition Branch, Commerce Commission, PO Box 2351, Wellington 6140, New Zealand.

Your application must be provided in both Microsoft Word format and searchable PDF format and include a signed (hard-copy or electronic) declaration.

**A provisional authorisation can only be granted if an application for authorisation has been filed for the same conduct.**



## Help in completing your application

You should consult the Guidelines at [www.comcom.govt.nz](http://www.comcom.govt.nz) when completing your application.

Your application for provisional authorisation will be assessed more efficiently and effectively if the information and evidence you provide in your application is complete. The level of detail and the type of information required in an application will differ depending on the nature and complexity of the proposed agreement.<sup>1</sup>

Before submitting an application for provisional authorisation, we strongly encourage you to contact the Trade Practices Manager to discuss the application.<sup>2</sup>

If you consider that the urgency of your application means you cannot include all of the required information in your application for provisional authorisation or your application for authorisation, please contact the Trade Practices Manager.

## 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 **\$100,000** (for an individual) or **\$300,000** (for a body corporate). Refer to sections 103(2) and (4) of the Commerce Act.

1. We use the term “agreement” to refer to any contracts, arrangements or understandings in terms of s 27 and s 30 of the Commerce Act 1986 (the Commerce Act).
2. The Trade Practices Manager can be contacted at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz).

# 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.

Where possible, please provide any supporting 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 should be provided as scanned images. This assists us in quickly and accurately identifying the information relevant to our investigation.

- 1 Provide the name(s) of the applicant(s) for provisional authorisation, and the name(s) of the individual(s) responsible for the application. In addition, please include the contact details for each party.
- 2 Confirm whether the applicant for provisional authorisation is a party to the agreement in respect of which authorisation under section 58 or section 65AA(2) of (3) is sought.
- 3 Provide a copy of, or the case details if an application for authorisation has already been registered with the Commission,<sup>3</sup> the application for authorisation to which the application for provisional authorisation relates.
- 4 Describe the scope and duration of the provisional authorisation sought. You should address whether provisional authorisation is sought in respect of all or some of the of the conduct for which authorisation has been sought.
- 5 Explain the reason(s) for the application for provisional authorisation. You should address:<sup>4</sup>
  - 5.1 Whether there is any urgent need to carry out the conduct for which authorisation is sought
  - 5.2 The proposed benefits that will arise if provisional authorisation is granted, including:
    - 5.2.1 the likelihood and magnitude of the benefits
    - 5.2.2 how and when these benefits will arise (including whether the benefits are one-off or recurring), and
    - 5.2.3 whether these benefits can be achieved absent provisional authorisation
  - 5.3 The possible detriments that may arise from the agreement if provisional authorisation is granted, including the likelihood, magnitude and likely duration of the detriments
  - 5.4 The possible harm, if any, to the applicant if the application for provisional authorisation is not granted
  - 5.5 The possible harm, if any, to third parties (such as consumers) or the public if the application for provisional authorisation is not granted, and
  - 5.6 Any other public interest factors relevant to the application for provisional authorisation.



3. The case register can be found at [www.comcom.govt.nz](http://www.comcom.govt.nz).

4. To the extent it is applicable, you may refer to the evidence of benefits and detriments provided with your application for authorisation.

## Confidentiality

- 6 If you wish to request confidentiality for specific information contained in or attached to the application, a schedule must be provided which sets out the reasons for each request, preferably with reference to the Official Information Act 1982.<sup>5</sup>
- 7 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.
  - 7.1 In the confidential version of the application any information for which confidentiality is sought must be highlighted in bold and contained in [square brackets].
  - 7.2 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 application
- a public version of the application
- a schedule explaining why information is confidential
- all supporting documentation
- a signed declaration by each applicant

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5. For further information on the Commission's confidentiality policy and procedures, please refer to the *Authorisation Guidelines*.

Commerce Act 1986

# Declaration

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.

If there are multiple applicants, each applicant must make this declaration.

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

If this declaration is not completed, the Commission may decline to grant provisional authorisation for the application.

I, \_\_\_\_\_,  
have prepared, or supervised the preparation of, this notice seeking provisional authorisation.

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 [the applicant] 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 applicant] and am duly authorised to submit this notice.

**Name and title of person authorised to sign:**

\_\_\_\_\_

**Sign:** \_\_\_\_\_ **Date:** \_\_\_\_\_