

The Commerce Act

School uniforms and supplies

Procurement guidance for schools



This fact sheet provides guidance to schools on how the Commerce Act applies to exclusive arrangements for school uniforms, stationery or other school supplies. They are intended to help schools maximise the benefits of competition when entering such arrangements.

Many schools in New Zealand require their students to wear uniforms. Boards of trustees typically choose their school's uniform and how it is to be supplied. Supply might, for example, be done exclusively through a school shop, or through a manufacturer that supplies one or more local retailers.

Likewise, school boards often have arrangements in place for school supplies, including stationery and, increasingly, electronic items such as tablets or laptops. Schools may ask for stationery packs to be purchased through the school or a specific retailer, but cannot compel parents to do so. Schools may also ask for electronic items such as laptops or tablets to be purchased but cannot compel parents to provide them.

Schools need to be aware that when entering into arrangements for the supply of school uniforms or other school supplies, they are subject to the Commerce Act. Under the Commerce Act, it is illegal to enter an agreement that substantially lessens competition in a market.

We recommend that schools take steps to understand the competition risks that can arise from the exclusive supply of school uniforms and other school supplies. Some practical tips are set out later in these guidelines.

You can read more about how the Commerce Act applies to agreements generally in our fact sheet *Agreements that substantially lessen competition* at www.comcom.govt.nz

Different ways competition can work

Where a number of suppliers or retailers sell a school's uniform or other school supplies, parents can shop around and make their own decisions about price and quality. This is **competition in the market**. The degree of competition will often be a reflection of the number of suppliers that are competing, and how hard they are competing for customers' business.

The other kind of competition that can occur is **competition for the market**. This happens when a school tenders out the right (usually the exclusive right) to sell an item, or set of items, by inviting suppliers or retailers to bid for this business. In this situation, the school is acting on behalf of all the parents in the school community and is therefore in a position to harness the combined buying power of the parents to obtain better prices.

We recommend that schools take steps to understand the competition risks that can arise from the exclusive supply of school uniforms and other school supplies.



Exclusive arrangements

Exclusive arrangements are formed when a school grants the right to source or sell its uniform or school supplies to one supplier or retailer. A retailer may be a school shop, or a particular retailer in the community. Parents must purchase from that retailer in order to get the school uniform or supplies. While there can be benefits to schools and school communities from these types of arrangements, they can raise issues under the Commerce Act.

Benefits of exclusive arrangements

Generally, when a school enters into an exclusive arrangement for the supply or retail of school uniforms or supplies, it is doing so because of the benefits that can flow to the school from the arrangement.

In the case of school uniforms, having a single manufacturer can ensure consistent quality, fabric, colour and design. Exclusive arrangements can also be a good way to minimise the costs of making a uniform, as a manufacturer has certainty about quantities, which may result in lower costs of production. These can be passed on to parents directly through lower prices, or to the school indirectly in the form of rebates, sponsorship or gifts.

By entering into exclusive arrangements for uniforms and other school supplies, schools should be able to exercise collective bargaining power on behalf of parents. Schools can maximise the benefits of competition if they ensure that there is effective competition for suppliers to win the exclusive contract.

This means that a school should be in a position to either:

- negotiate lower prices with the supplier, which benefit parents and students directly

or

- negotiate with the supplier to provide rebates, sponsorship or gifts which benefit parents and students indirectly.

For example, a supplier may provide sports equipment to support school activities. This could be an important source of funding for a school that would otherwise have to fundraise to offer these goods or activities.



Competition risks from exclusive arrangements

In theory, an exclusive arrangement could breach the Commerce Act if it substantially reduced competition in the market concerned. For example, a substantial lessening of competition may occur if the agreement prevents or makes it substantially more difficult for:

- a potential competitor to start competing in the market to win such contracts

and/or

- an existing competitor to compete for such contracts.

A substantial lessening of competition is more likely to happen when, for example, existing exclusive contracts are simply rolled over without conducting competitive tenders.

Typically, a substantial lessening of competition would be reflected in higher prices or lower quality or service as a result of the exclusive arrangement.

How to maximise the benefits of competition when entering exclusive arrangements

Any school entering an exclusive arrangement should take steps to make sure the process it follows for selecting a supplier is both competitive and transparent.

Use bargaining power to make the most of competition

Schools should use their bargaining power with suppliers to negotiate competitive deals.

This should include:

- approaching a number of potential suppliers to get the most competitive prices
- conducting competitive tenders on a regular basis – in the case of exclusive arrangements, at least every 3 years
- considering whether appointing two or more suppliers would provide greater benefits than a single supplier
- choosing a supplier (or suppliers) on the basis of clear and objective criteria such as the lowest price for the appropriate quality.

To ensure that the benefits of competition flow through to parents, a school could also agree with the supplier what maximum price levels will ultimately be charged.

Weigh up the benefits of the arrangement

Schools should ensure that the school and the school community benefit overall, taking into account the prices parents must ultimately pay. In assessing the potential benefits of an exclusive arrangement, schools should think about:

- what financial benefits the school gets, such as rebates, sponsorship or gifts, and the school's plans for using these benefits
- the extent to which such financial benefits may be funded by higher prices to parents
- how long the arrangement should last to bring the greatest net benefit to the school – the agreement should last no longer than is necessary to deliver the benefits identified, and schools should think very carefully about any agreement lasting longer than 3 years
- whether there will be alternative providers available to supply it with products at the end of the exclusive arrangement.

Practical tips for schools in supply arrangements

- Conduct competitive tenders on a regular basis – at least every 3 years.
- Consider whether appointing two or more suppliers would provide greater benefits than a single supplier.
- Choose suppliers based on objective criteria.
- Fully inform parents of the reasons for any exclusive arrangement.
- Be clear about the process for choosing a supplier and any financial benefit that the school is receiving from the supplier.

Keep parents fully informed

When selecting suppliers for an exclusive arrangement, schools should make sure that the selection process is transparent, and that parents are fully informed of:

- the reasons for entering into an exclusive arrangement
- the process followed for selecting the manufacturer and/or the retailer(s)
- the reasons for choosing the successful supplier and the terms and conditions of the arrangements (including how long it lasts)
- the steps taken by the school to ensure that the chosen supplier charges prices that result in a net benefit to the school
- the financial benefits to the school from choosing this supplier, and why this is good for the school.

When explaining any exclusive deal to parents, schools also need to make sure that they describe the arrangement accurately. For example, if a school claims it has “negotiated the best deal for prices”, it needs to ensure that this is indeed the case.

Paying too much for your child's school uniform or other school supplies?

If you are a parent concerned about the price you have to pay for your child's school uniform or other school supplies, or if you are concerned about the lack of choice, you need to talk to your board of trustees.

The board is responsible for choosing the uniform and any supply agreements. Remember, school boards are also largely made up of parent representatives, who will also be purchasing the uniform or school supplies.

Communication with the board is an important and effective way for parents to convey their views on how the agreements negotiated by the school affect the availability, quality and price of school uniforms and school supplies. School boards have collective bargaining power and should use this to promote competition to the benefit of parents as well as the school.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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