

Notice seeking authorisation under Section 58

Restrictive trade practices

To apply for authorisation you must send both a confidential and a public version of your notice seeking authorisation (“application”) to registrar@comcom.govt.nz, or The Registrar, Competition Branch, Commerce Commission, PO Box 2351, Wellington 6014, 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.

You must also pay the filing fee of NZ\$36,800 (including GST) for each application for authorisation. You can pay by proof of electronic payment to:

- Commerce Commission
- BNZ North End
- Account number: 02-0536-0329867-000
- Reference: Name(s) of firm(s) applying for authorisation

Help in completing your application

You should consult the *Authorisation Guidelines* at www.comcom.govt.nz when completing your application.

Your application for authorisation will be assessed more efficiently and effectively if the information and evidence you provide in your application is comprehensive. 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.¹

Before submitting an authorisation application, we strongly encourage you to contact the Trade Practices Manager to schedule a pre-notification discussion.² As discussed in the *Authorisation Guidelines*, pre-notification discussions 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 authorisation application (including required documents) at least a week before meeting with us.

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, covenants in terms of s 28, and resale price maintenance under ss 37 and 38 of the Commerce Act 1986 (the Act).

2. The Trade Practices Manager can be contacted at 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. If your application includes calculations or analysis, please explain the methodologies and information sources used, and provide us with copies of the underlying data (preferably in Excel).

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 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 authorisation, and the name(s) of the individual(s) responsible for the application. In addition, please include the:
 - 1.1 postal address, physical address, telephone number and web address of the applicant(s)
 - 1.2 email address, telephone number and position of the contact person(s)
 - 1.3 names of any relevant related entities (showing shareholdings).
- 2 Provide the names of all other parties to the agreement and provide the:
 - 2.1 postal address, physical address, telephone number and web address of each party
 - 2.2 name, email address, telephone number and position of the contact person(s) for each party.
- 3 For each party to the agreement, please provide an organisational chart or diagram that shows the structure of ownership and control of the business or organisation. If relevant, identify and explain any other links, formal or informal, between the parties.
- 4 Please provide a copy of the proposed agreement for which the parties seek authorisation. If the agreement has not been finalised or is unable to be provided, please provide a clear and detailed description of the agreement.³ Please also set out:
 - 4.1 when the parties intend to enter into, or give effect to, the agreement
 - 4.2 whether authorisation is only being sought for a specific time period and, if so, what time period
 - 4.3 the key terms of the agreement and how these will affect the behaviour of the parties
 - 4.4 the rationale for the agreement, and
 - 4.5 the likely relevant scenario(s) for each party if the agreement does not go ahead.
- 5 If the agreement is being considered by other competition agencies, list the other agencies that are being notified and the date on which those agencies were or will be notified. Where relevant, indicate the status of reviews by other agencies.
- 6 If the applicant requests that the Commission varies, revokes or replaces an existing authorisation, set out the grounds on which the applicant considers the Commission has jurisdiction to do so.⁴

3. It is often helpful for applicants to provide a diagram setting out an overview of the agreement, the parties involved, the relevant parts of the supply chain and the effect of the agreement.

4. See s 65(1) of the Act.

- 7 Describe the products and/or services supplied and/or acquired (as applicable) by the parties that are relevant to the agreement. For each product/service, please provide:
- 7.1 the parties' view on the appropriate market definition⁵
 - 7.2 the names and contact details⁶ for each party's key customers and/or suppliers (as applicable)⁷ relevant to the agreement, including at least the top five by value in terms of revenue or spend (please include these figures)
 - 7.3 the names and contact details of each party's main competitors in each market identified above that are not party to the agreement, and
 - 7.4 the names and contact details for any other relevant market participants or interested parties.
- 8 Explain the extent to which the agreement is likely to result in a lessening of competition in the relevant market(s), such that the Commission has jurisdiction to authorise the agreement.⁸ You should address:
- 8.1 the level of existing competition in the relevant markets identified in response to question 7.1
 - 8.2 the likelihood, extent and timeliness of entry and expansion by potential competitors, and the extent to which such entry or expansion would mitigate a lessening of competition
 - 8.3 the countervailing power of suppliers and/or customers in the relevant markets and the extent to which that countervailing power would mitigate a lessening of competition,⁹ and
 - 8.4 any other relevant factors.



- 9 Explain why you consider the agreement will be likely to result in such a benefit to the public that it should be permitted, having regard to the *Authorisation Guidelines*. Please provide quantitative and qualitative evidence of the benefits and detriments that may result from the agreement. You should address:
- 9.1 the proposed benefits that will arise from the agreement, including the likelihood and magnitude of the benefits
 - 9.2 how and when these benefits will arise (including whether the benefits are one-off or recurring)
 - 9.3 whether these benefits can be achieved absent the agreement, and
 - 9.4 any detriments that may result from the agreement.

Documents¹⁰

- 10 Provide copies of any documents (including planning documents, due diligence reports, strategy documents, minutes of meetings, customer research, pricing studies, reports, presentations, surveys, analyses, industry/market reports and recommendations) in the applicant's possession which:
- 10.1 have been prepared for, seen or considered by senior management and/or any member of the board of directors (or equivalent body) (whether prepared internally or by external consultants), and
 - 10.2 either:
 - 10.2.1 set out the rationale for the agreement
 - 10.2.2 assess or analyse the agreement with respect to competitive conditions, competitors (actual and potential), market conditions, market shares, or
 - 10.2.3 within the last two years, set out the competitive conditions, market conditions, market shares, competitors, or the applicant's business plans in relation to the relevant product(s) or service(s) as identified in response to question 7 above.

5. For further information on market definition, please refer to Chapter 3 of the *Mergers and Acquisitions Guidelines*.

6. Contact details should include a named contact person, an email address, telephone number and the position of the contact person(s) within the firm.

7. For agreements that could restrict competition between competing sellers, please provide customer details. If the proposed agreement is between competing buyers, please provide supplier details.

8. If the Commission does not consider that a lessening of competition is likely, we do not have jurisdiction to grant or decline to grant authorisation.

9. For further information on countervailing power, please refer to Chapter 3 of the *Mergers and Acquisitions Guidelines*.

10. For the documents provided with the application, please provide an index indicating the date each document was prepared and the identity and role of the author(s). Responses to question 10 will typically include minutes of meetings, studies, reports, presentations, surveys, analyses or recommendations. In most cases, we would not expect to receive in the first instance documents such as emails, handwritten notes, or instant messages.

Confidentiality

- 11 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 1982.¹¹
- 12 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.
 - 12.1 In the confidential version of the application any information for which confidentiality is sought must be highlighted in bold and contained in [square brackets].
 - 12.2 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
- payment of NZ\$36,800 (GST inclusive).

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

Commerce Act 1986

Declaration

Restrictive trade practices

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 register the notice seeking authorisation.

I, _____,
have prepared, or supervised the preparation of, this notice seeking 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 that 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:** _____