

Competition Law Reform: Exposure Draft Consultation

Specific questions

Schedule 2, Cartels:

The Exposure Draft includes amendments that would widen the current exceptions in the cartels provisions to better account for legitimate commercial activity, while retaining the prohibition on collusive behaviour between actual or likely competitors involving bid rigging, price fixing, market allocation and/or agreements to restrict supply or acquisition.

1. Joint ventures are exempt from per se liability for cartel conduct through sections 44ZZRO and 44ZZRP. In this context, is the definition of joint venture activity (in section 4J) appropriate or should such activity be more narrowly defined?
2. Does the proposed drafting of section 44ZZRS appropriately limit the exception to the cartels provisions to supply arrangements which are genuinely vertical, and exclude arrangements which are between actual or likely competitors?
 - a. If not, how could the exception be changed to ensure only vertical arrangements are captured?
3. With the proposed repeal of the definition of 'likely' from section 44ZZRB, is the court's interpretation of 'likely' in relation to other parts of the Act sufficiently clear to inform expectations in relation to the cartels provisions?

Schedule 5, Covenants affecting competition:

4. With the proposed repeal of sections 45B and 45C, and the repeal and replacement of subsection 45(1), are there contracts still in effect which rely on the operation of paragraph 87(3)(a) for variation, or could the subsection be repealed in its entirety?

Schedule 10, Authorisations, notifications and class exemptions:

5. Is there a need for the ACCC's decision to issue a stop notice to be reviewable by the Tribunal (separate from any review relating to a draft objection or conditions notice), or is it sufficient that the stop notice is in place for a limited period of time?
6. With the proposed repeal of Division 3 of Part VII of the Act (merger clearances and authorisations) and the consolidation of the various clearance and authorisations processes, have all the appropriate considerations for authorisations been included or is there a need for some of the repealed provisions to be reintroduced elsewhere?

Schedule 13, Access to services

7. Are further consequential amendments required to give effect to the proposed changes?
8. Are additional transitional arrangements necessary for existing certifications?
9. Are additional amendments necessary to address matters that have come to light since the release of the Productivity Commission's 2013 Inquiry into the National Access Regime?