

Summary of changes to the Competition and Consumer Act 2010 (CCA)

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by Litmos

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Definition of 'competition'

Section 4 of the CCA has been amended to clarify that 'competition' includes competition for goods and services that are capable of importation (as well as those actually imported).

Cartel conduct provisions

The cartel conduct provisions under the CCA have been confined to cartel conduct which affects competition in Australian markets. The joint venture exception in relation to cartels has also been amended to provide more certainty. It has been amended so that it:

- applies to arrangements or understandings (in addition to contracts), and to joint ventures for the acquisition of goods or services (in addition to the production or supply of goods or services);
- only applies to cartel provisions for the purposes of a joint venture and reasonably necessary for undertaking a joint venture, not apply where the joint venture has the purpose of substantially lessening competition;
- increases the standard of proof that a defendant must discharge to establish the relevant exceptions, on the balance of probabilities; and
- broadens the 'output restriction' purpose condition to refer to acquisition (in addition to production, capacity and supply), to address any gap due to repeal of exclusionary provisions.

Price signalling and concerted practices

The price signalling provisions in the CCA have been repealed and section 45 of the CCA has been extended to prohibit a corporation from engaging in a concerted practice that has the *purpose, effect or likely effect of substantially lessening competition*

Secondary boycotts

The maximum penalty for breaching secondary boycott provisions have been increased (this brings them into line with penalties for other breaches of competition law)

Third line forcing

Following the changes to the CCA, third line forcing will only be unlawful where it has the purpose, effect or likely effect of substantially lessening competition.

Resale price maintenance

Corporations can now notify the ACCC about resale price maintenance conduct, rather than having to seek authority from the ACCC for such conduct. There is also an exemption from the resale price maintenance prohibition for conduct between related bodies corporate.

ACCC power to obtain information, documents and evidence

The ACCC's power to obtain information, documents and evidence under section 155 of the CCA is extended to cover investigations of alleged contraventions of court enforceable undertakings and merger authorisation.