

New anti-cartel laws for New Zealand part of a global trend towards greater enforcement

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18 August 2017

This week marks the beginning of a new era for anti-cartel laws in New Zealand, with new laws coming into effect that clarify the scope of prohibited cartel behaviour under the Commerce Act 1986.

Businesses need to be aware of these changes - they form part of a global trend towards more stringent cartel prohibitions, more investigations into potential cartels by competition regulators, and increased enforcement activity, including ever-higher penalties.

Previously, the Commerce Act's cartel prohibition extended to direct or indirect price fixing agreements only. The new laws prohibit any agreement between actual or likely competitors that contains a 'cartel provision', which not only includes price fixing provisions, but also:

- Output restrictions (restrictions on actual or likely production, capacity, supply or acquisition of goods or services)
- Market allocation (allocating customers, suppliers or geographic areas between the parties to the agreement).

The Commerce Commission has long held the view that output restrictions and market allocation agreements were prohibited by the Commerce Act as 'indirect' price fixing, but these amendments put the matter beyond doubt.

Other changes made to the Commerce Act this week include:

- Clarifying the scope of the exceptions to the cartel prohibitions. There are new exceptions for 'collaborative activity' (such as joint ventures, strategic alliances, consortium bidding, and the like), and vertical supply contracts (for example, an agreement that sets the maximum price at which a customer can re-sell goods)
- A new clearance regime, which allows businesses to apply to the Commerce Commission to test whether a proposed collaboration would raise competition issues before proceeding
- New provisions that make it easier for the Commission to tackle competition issues that may arise when an overseas person acquires a controlling interest in a New Zealand business
- New exceptions for certain international liner shipping services from the cartel prohibitions as well as the general prohibition on arrangements that substantially lessen competition.

The Commission is due to publish a new set of Competitor Collaboration Guidelines in the near future, which (although not legally binding) will give an indication of the Commission's interpretation of, and approach to, the new cartel prohibitions, exceptions, and the associated clearance regime.

Now is a good time to review your competition law compliance programme in light of these changes, and seek advice about updating it. Our team offers tailored training, which we believe provides the best way of avoiding the risk of breaching the Act.

If you have any questions about the issues raised in this update, please contact a member of our competition law team.

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