



Application for authorisation for proposed conduct

Guidance in completing your application to the ACCC

To lodge an application for authorisation for proposed conduct (other than mergers or acquisitions¹) (the **application**) you should include the information, data and documents outlined in this form. Where possible each question should be answered fully and be substantiated with evidence. If a question is not relevant or where information is not available and cannot be reasonably estimated, please provide a brief explanation.

The ACCC must not grant authorisation unless it is satisfied that the statutory test is met.²

It is an offence to knowingly provide false or misleading information to the ACCC. Refer to section 137.1 of the *Criminal Code* (Cth).

Key points for lodging your application

- We encourage you to consult the ACCC's Guidelines for Authorisation of Conduct (non-merger)³ and contact the ACCC at adjudication@acc.gov.au before you lodge your application for a pre-lodgement discussion to clarify what information and evidence may be needed to assess your application.
- Failure to provide sufficient information may render the application invalid or otherwise impact the ACCC's ability to assess your application.
- You should provide all relevant information and evidence you intend to rely on.
- Less weight will likely be given to a statement or submission that is not supported with corroborating evidence.
- A valid application **must** contain the following:
 - a public version of your application for publication on the public register. You may provide a clearly marked confidential version if you wish to claim confidentiality for parts of your application. All confidentiality claims must be substantiated. The public version must contain sufficient information to enable public consultation on your application
 - a signed declaration by the applicant
 - payment of the \$7500 lodgement fee, unless a full or partial fee waiver has been granted.

¹ See: Application for authorisation of a proposed merger or acquisition.

² Section 90(7) and 90(8) of the *Competition and Consumer Act 2010* (Cth) and the ACCC's Guidelines for Authorisation of Conduct (non-merger)

³ <https://www.accc.gov.au/publications/>

Information

Parties to the proposed conduct

1. Provide details of the applicants for authorisation, including:
 - 1.1. name, address (registered office), telephone number and ACN
 - 1.2. contact person's name, position, telephone number and email address
 - 1.3. a description of business activities
 - 1.4. email address for service of documents in Australia.
2. If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:
 - 2.1. name, address (registered office), telephone number and ACN
 - 2.2. contact person's name, telephone number and email address
 - 2.3. a description of business activities.

The proposed conduct

3. Provide details of the proposed conduct, including:
 - 3.1. a description of the proposed conduct and any documents that detail the terms of the proposed conduct
 - 3.2. the relevant provisions of the *Competition and Consumer Act 2010* (Cth) (the Act) to which the proposed conduct would or might apply, ie:
 - concerted practices (s. 45)
 - secondary boycotts (sections 45D, 45DA, 45DB, 45E, 45EA)
 - misuse of market power (s. 46)
 - exclusive dealing (s.47)
 - resale price maintenance (s. 48) and/or
 - a dual listed company arrangement (s. 49)
 - 3.3. the rationale for the proposed conduct
 - 3.4. the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.
4. Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.⁴

⁴ Applicants should consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct for which authorisation is sought.

5. Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

Market information and concentration

6. Describe the products and/or services, and the geographic areas, supplied by the applicants and identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).
7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.
8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.
9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:
 - 9.1. existing or potential competitors
 - 9.2. the likelihood of entry by new competitors
 - 9.3. any countervailing power of customers and/or suppliers
 - 9.4. any other relevant factors.

Public benefit

10. Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

Public detriment (including likely competitive effects)

11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

Contact details of relevant market participants

12. Identify and/or provide contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

Additional information

13. Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person

Office held

(Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.