

Cartel Trading in New Zealand Policy

Purpose of this policy

Cartel trading involves agreements between two or more businesses not to compete with each other, which can lead to higher prices and reduced choices for consumers.

It is unlawful for competitors to agree to:

- Fix, control or maintain prices;
- Restrict output or capacity; or
- Allocate markets or customers

The Commerce Commission actively monitors and penalises cartel conduct under the Commerce Act to ensure fair competition in the market.

Policy

Our company is committed to upholding fair competition practices and complying with the regulations set forth by the Commerce Commission to prevent cartel trading.

We recognise that engaging in cartel conduct not only violates the law but also undermines trust in the market and harms consumers.

Our company is committed to fair competition practices and will take proactive measures to avoid engaging in cartel conduct. By adhering to the guidelines provided by the Commerce Commission and maintaining transparency in our business operations, we aim to contribute to a competitive and thriving market environment in New Zealand.

Key Points:

- **Definition of Cartel Conduct:** Cartel conduct includes price fixing, bid rigging, market sharing, and restricting output of goods and services.
- **Consequences of Cartel Conduct:** Businesses and individuals involved in cartel conduct may face significant fines and penalties, including bans on running companies and imprisonment for up to 7 years.
- **Reporting Cartel Conduct:** Individuals who become aware of cartel conduct are encouraged to report it to the Commerce Commission immediately.

- **Avoiding Cartel Conduct:** Our company is committed to ensuring compliance with the Commerce Act by implementing the following measures:
 - **Training and Awareness:** Ensure all staff members are familiar with the requirements of the Commerce Act through regular training sessions and record-keeping.
 - **Avoiding Agreements with Competitors:** Do not engage in agreements with competitors regarding prices, output restrictions, market sharing, or customer allocation.
 - **Reviewing Internal Policies:** Regularly review internal documents, policies, and procedures to ensure compliance with the Commerce Act, and seek independent legal advice when necessary.
 - **Immediate Objection:** If approached by another business to discuss cartel conduct, raise objections immediately, disengage from the discussion, and report the incident to the Commerce Commission.

- **Exceptions from the cartel prohibition**
 - While cartels are unlawful, the Commerce Act recognises that in some circumstances cartel provisions are much less likely to harm competition.
 - Cartel provisions can form part of agreements that have pro-competitive or benign competitive effects. Such agreements may increase innovation, reduce production costs, enhance product quality, and/or result in lower prices.
 - Therefore, the Commerce Act provides three different exceptions to the cartel prohibition for cartel provisions in certain types of agreements. If an exception applies, then the cartel provision is lawful provided the provision does not have the purpose, effect, or likely effect of substantially lessening competition. The three exceptions cover:
 - Vertical supply contracts
 - Joint buying and promotion agreements
 - Collaborative activities
 - A business can apply to ComCom for clearance to enter into an agreement that contains one or more cartel provisions.
 - If a business does not apply for a clearance, a Memo of Understanding (MOU) between all parties should be considered.
 - The Commerce Act also allows for business collaboration in response to an emergency guideline.

- **Ongoing recognition of cartel trading provisions**
 - It is important that The Company keep cartel trading provisions front of mind. To that end it may consider the use of an Anti-competitive Behaviour Statement in meeting minutes, memorandum of understanding, contract for services or other such documents.

- An example of a statement may be as in Appendix One

Other information supporting this policy

- [Commerce Act 1986](#)
- Commerce Commission. (2024). What is a cartel? [Commerce Commission website](#).
- Commerce Commission. (2024). How can I avoid cartel conduct? [Commerce Commission website](#).
- [ComCom Competitor Collaboration Guidelines](#)
- [Business collaboration in response to an emergency guidelines](#)

Document control

Approved by	C.Darwen
Date approved	21/02/2024
Next review date	21/02/2025

Appendix One

Anti-competitive Behaviour Statement

It is recognised that it is unlawful for competitors to agree to:

- Fix, control or maintain prices;
- Restrict output or capacity; or
- Allocate markets or customers

Our company is committed to upholding fair competition practices and complying with the regulations set forth by the Commerce Commission to prevent cartel trading.