

Action Point Checklist: Co-operation between competitors during COVID-19

This checklist has been authored for LexisNexis by the *Lexis Nexis Legal Writer Team*.

Introductory note:

This checklist should be used if businesses are considering co-operating with their competitors during COVID-19.

How to use this checklist:

This checklist lists do's and don'ts for businesses who may be considering co-operating with their competitors during COVID-19. Such co-operation may involve ensuring the supply and distribution of essential goods and services to consumers.

The general prohibition against cartel conduct applies to conduct between competitors including price fixing, market sharing and bid rigging - which all attract large fines. However, the Australian Competition and Consumer Commission (ACCC) has the power to grant authorisation to competitors seeking to co-ordinate their conduct if it considers the public benefit(s) of the proposed conduct outweighs the public detriment(s).

Links to related content:

See: [COVID-19 Toolkit for competition law](#).

See: [Cartel conduct](#).

See: [Authorisation](#).

See: [Penalties](#).





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The following table lists do's and don'ts for businesses wishing to co-operate with competitors during COVID-19. Legal advice should be sought before entering into any arrangement with competitors.

Do ✓	Don't ✗
✓ Consider whether the proposed conduct with competitors is likely to generate benefits for consumers	✗ Exchange commercially sensitive information with competitors (such as price, margins, rebates, future business plans or product development)
✓ Determine whether it can be demonstrated that the proposed co-operation with competitors is likely to produce benefits for consumers that outweigh any likely detriments	✗ Agree with competitors on price (unless this is specifically authorised in advance by the ACCC)
✓ Co-operation with competitors should only involve conduct that is reasonably necessary to ensure the continued availability of essential goods and services (eg medical equipment, groceries, financial services)	✗ Co-operate in relation to activities that are not specifically authorised by the ACCC in advance, including activities that are broader than strictly necessary to achieve the public benefit from the conduct
✓ Ensure that any co-operation with competitors is necessary to achieve the aim, and does not reach beyond the minimum necessary to ensure the supply of essential goods/services	✗ Exclude other businesses from the proposed co-operative arrangement as this may raise competition law concerns
✓ Any co-operation with a competitor should last only for so long as required during COVID-19 and should not be permanent	✗ Do not make the conduct permanent – it should cease at the end of COVID-19 or for as long as the ACCC grants authorisation
✓ Businesses should compete on the merits in relation to all other conduct	✗ Engage in other anti-competitive conduct (eg resale price maintenance or predatory pricing)
✓ Before entering into any arrangement with competitors seek competition law advice, particularly given the high penalties involved if there is a breach of the prohibition on cartel conduct. See: Cartel conduct and Penalties .	✗ Do not agree to anything with a competitor until you have obtained legal advice. Remember that casual conversations can amount to an arrangement or understanding
✓ Seek authorisation from ACCC before entering into any arrangement. See Authorisation .	✗ Do not use COVID-19 as an excuse to engage in otherwise anti-competitive conduct. Penalties for breach of cartel prohibitions are hefty including financial penalties as well as the potential for consumers to bring damages claims
✓ Consider whether the ACCC has granted authorisation to similar conduct or sectors. See: https://www.accc.gov.au/ . For a list of authorisations granted during COVID-19, see: COVID-19 Toolkit for competition law	