

23 October 2013

Competitor Collaboration Guidelines Consultation  
Commerce Commission  
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Dear Sir/Madam

**Re: Competitor Collaboration Guidelines: Consultation**

BusinessNZ wishes to provide comments on the draft guideline document (referred to as 'the Guide') entitled '*Competitor Collaboration Guidelines*'.

First, we wish to commend the Commerce Commission ('the Commission') for producing a draft Guide for comment. We view the guideline as a critical way to provide businesses with a clear understanding of how issues such as cartel prohibitions, vertical supply contracts and clearance for cartel provisions are treated to ensure certainty for the private sector.

***Overall view***

The draft Guide itself, does we believe a good job in covering off most of the main questions/issues that would arise regarding competitor collaboration, and therefore we do not believe that any significant additional material is needed.

***Specific comments & considerations***

Notwithstanding our overall view outlined above, the following are a number of considerations and changes we believe the Commission should take into account in a revised Guide.

***1. Guidance material should not be locked in***

Overall, we believe the Commission should ensure the Guide does not become a 'locked-in' definitive publication but instead provides for modification or additions over the short-medium term. While we would want the first publicly released guidance material to be as accurate as possible as time goes by, there will most likely be further issues relating to competitor collaboration that are perhaps unique to New Zealand. As guidance material will almost always be downloaded from the Commission's website, the Commission needs to ensure that the webpage where the Guide is provided notes any significant amendments etc. This may require applicants to download or print modified copies.

***2. Chapters 6 & 7***

While chapters 6 and 7 are useful in setting out the main elements that relate to clearances for cartel provisions associated with collaborative activities and the processes involved, we believe some additions could be made to those chapters to ensure businesses have a clearer understanding of the processes they have to go through.

Primarily, we believe both these chapters could include a summary box at the end, taking up around one page each and outlining what is involved from start to finish. This could be done by way of a theoretical example within a day-to-day format. For instance, paragraphs 7.21 and 7.22 of the Guide provide an indicative timeline for clearance applications that last both fewer than or more than 30 days, and this may be a useful starting point for developing a summary box in greater detail.

### 3. *Linking back to the website*

As we have indicated above, the Guide and the Commission's website should not be treated as separate resources. Instead, the Commission needs to ensure these are sufficiently linked so that additional information from the Guide can be easily found on the website, and vice versa.

An example of this involves paragraph 7.9, which states that '*clearance applications must be made in the prescribed form*'. It would be useful if some type of direction or link were included in the Guide to show applicants where the form can be found on the website.

### 4. *Identifying potential compliance costs*

It would be helpful if the Commission could look to provide a summary of potential compliance costs for certain types of business that are going through the application process. Obviously, given the broad nature of the guidance material, setting out specifics could be difficult, but some form of checklist would be helpful for determining what would potentially lie ahead in terms of cost.

### 5. *Leading through example*

We believe that providing examples throughout the Guide that explain the practical outcomes of the guidelines in relation to the various sections is very useful, and we are pleased to see that this is something the Commission has done.

However, there are four aspects to these examples that we believe the Commission needs to consider.

#### *a) Increased number of examples*

The Guide currently includes over 20 examples across a number of the chapters. While the Guide is already 50 pages long, we would not be averse to having a larger Guide if a decision is made to add more examples throughout. In particular, chapters 6-8 should include some examples, while it would also be worthwhile to include more examples for chapter 9 where franchises are discussed.

#### *b) Various levels of examples*

BusinessNZ believes there is scope for more than one level of example; in other words, both simple examples and others that involve more complicated arrangements. We would envision sections of guidance material where examples of greater or lesser complexity would help explain procedures.

#### *c) Examples that take into account existing and forward looking industries*

While the examples included in the Guide are certainly useful, we wonder whether they should cover a combination of both the traditional industries that New Zealand is involved in (i.e. manufacturing/retailing) and others that are likely to provide an increasing proportion of New Zealand's GDP growth, such as those relating to high-end tourism or IT.

Also, given many sectors in New Zealand have a much smaller number of competitors than do other countries, it would be useful if the Commission could look to provide actual or theoretical examples for a range of sectors so that they get a better understanding of how collaborative structures might play out.

*d) An additional depository for examples*

Although we support an increased number of examples in the Guide, we accept that there would be a limit to the number that could be incorporated. Therefore, we believe it would be worthwhile for the Commission's website to provide a separate page where both actual and theoretical examples could be added to over time, with its place on the Commission's website outlined in the Guide. Obviously, all prior decisions arising as a consequence of actual Commission investigations would be included as well.

*6. Delivery options for the guide*

Last, given the wide cross section of businesses that would be interested in the Guide, we encourage the Commission to ensure the various regional and industry associations are made aware of its existence once it has been completed. Given the issue of competition collaboration would affect a wide range of businesses, the Commission could look at opportunities to provide guest articles for member magazines that briefly outline the Guide, or could send through links to the Guide to be included in member e-newsletters.

Thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. O'Reilly', with a stylized flourish at the end.

Phil O'Reilly  
Chief Executive