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COVID-19 (Australia): Updated Guide to ACCC Authorisations

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UPDATED GUIDE TO ACCC APPROVALS ON INDUSTRY COLLABORATION: OCTOBER 2020

Welcome to our updated guide to industry collaborations approved by the Australian Competition and Consumer Commission (**ACCC**) in response to the COVID-19 pandemic. You can find additional information in our previous [Insight](#) or previous guides ([August](#) and [May](#)), or you can contact us directly with your query.



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- Industry collaborations that involve restrictions on the supply of goods or services may breach the *Competition and Consumer Act 2010* (Cth), either automatically (if they amount to cartel conduct) or if they result in a substantial lessening of competition.
- Where businesses need to collaborate in response to the COVID-19 pandemic, they can self-assess whether the proposed arrangement would be covered by the joint venture exception to cartel conduct, or they can apply to the ACCC for authorisation of the proposed collaborative conduct. In urgent cases, businesses can apply for an interim authorisation to commence the collaborative activity while awaiting a final determination.
- As at 1 October 2020, the ACCC has issued over 25 final determinations authorising competitor collaboration across a broad range of sectors, including banking and insurance; shopping and retail; private and public healthcare; medicines and pharmaceuticals; energy and resources; telecommunications; aviation; and food processing.
- The authorisations cover an equally broad range of collaborative conduct, including competitors cooperating to mitigate disruptions to supply chains; providing financial relief and support for affected businesses and individuals; and sharing information to support implementation of government initiatives.
- All authorisations are conditional and generally include reporting and disclosure requirements. However, the ACCC has largely refused to authorise coordination in relation to price. Where such coordination is allowed, it cannot be used in a way to disadvantage consumers.
- The ACCC is monitoring authorisations to ensure that they are operating as intended and will revoke or modify them in response to a material change in circumstances. Therefore, even successful applicants need to continue to demonstrate the importance of industry collaboration.
- We have prepared a comprehensive overview of the authorisations granted to date. We hope this information will assist you to identify whether any operational challenges your business may face could be partly addressed by collaborative activity under an authorisation.
- It is important to remember that any activity or discussions cannot be authorised retrospectively.
- K&L Gates has represented several businesses that have successfully applied for authorisation and joined interim authorisations and are available to assist at short notice.

BANKING & INSURANCE



Authorisation	Key Participants	Conduct	Conditions	Duration
Suncorp Group Limited on behalf of itself and other providers of insurance	Suncorp, Allianz and QBE	To discuss and collectively agree on minimum relief measures for policyholders, mainly SMEs	Can only implement relief measures offered prior to 1 July 2020 and may only honour such measures until 31 December 2020	31 July 2020 – 31 December 2020
Financial Services Council (FSC) on behalf of its Member Life Insurance Companies	FSC and its members, including AIA, Allianz and HCF	To cooperate so that healthcare workers are not denied life insurance, will not be charged higher premiums, and will not have benefits excluded, purely due to exposure to COVID-19	<ul style="list-style-type: none"> • Providing information requested by ACCC • Notifying ACCC of parties opting into or out of conduct 	7 August 2020 – 31 July 2021
Australian Banking Association (ABA) (financial relief programs)	ABA and its members, including ANZ, CBA, Westpac, NAB and Macquarie	To coordinate financial relief and assistance to customer, including supporting government initiatives and ensuring high levels of customer service and access to banking	<ul style="list-style-type: none"> • Notifying ACCC if conduct involves third party suppliers and/or agents • Notifying ACCC of any arrangement prior to its implementation 	5 September 2020 – 14 August 2021

SHOPPING & RETAIL



Authorisation	Key Participants	Conduct	Conditions	Duration
7-Eleven Stores Pty Limited	Stores operated by 7-Eleven and its franchisees and related entities	To approach certain franchisees and enter into arrangements to provide for temporary closure or reduced trading hours	<ul style="list-style-type: none"> • Notifying ACCC of franchisees 7-Eleven proposes to approach • Notifying ACCC of any arrangements with franchisees 	20 August 2020 – 31 March 2021
Australian Retailers Association (ARA)	ARA and its members (mostly tenants in leased stores within retail precincts)	To collectively bargain and share information in relation to rent relief measures	<ul style="list-style-type: none"> • Keeping records of all material meetings or communications • Providing ACCC with any records kept and other information requested 	28 August 2020 – 1 September 2021

SHOPPING & RETAIL



Authorisation	Key Participants	Conduct	Conditions	Duration
National Retail Association Limited on behalf of itself and participating industry organisations	Numerous associations, including the Australian Hotels Association, Franchise Council of Australia and Pharmacy Guild of Australia	<ul style="list-style-type: none"> To enable their tenant members to discuss, share and information and collectively negotiate with landlords regarding the support to be provided by tenants to landlords To enable their landlord members to discuss and share information and agree on the nature of the relief to be offered to certain tenants 	<ul style="list-style-type: none"> Keeping records of all material meetings or communications Providing ACCC with any records kept and other information requested Landlords notifying ACCC of relief measures 	28 August 2020 – 1 September 2021
Coles Group on behalf of itself and participating supermarkets	Coles, Woolworths, ALDI and Metcash	To cooperate to ensure the supply and fair and equitable distribution of retail products to consumers	<ul style="list-style-type: none"> Cooperation must be in conjunction with an Authorised Meeting ACCC must approve future participants 	25 September 2020 – 31 March 2021

PUBLIC & PRIVATE HEALTHCARE



Authorisation	Key Participants	Conduct	Conditions	Duration
New South Wales private healthcare COVID-19 arrangements	Ministry of Health and public and private healthcare operators	To share information and coordinate activities (including procurement) to maximise healthcare capacity and ensure State-wide coordination of healthcare services	<ul style="list-style-type: none"> • Providing regular updates to ACCC • Notifying ACCC of future participants 	4 September 2020 – 30 September 2021
Victorian private healthcare COVID-19 arrangements	Department of Health and Human Services and public and private healthcare operators	Substantially the same as above	Substantially the same as above.	4 September 2020 – 30 September 2021
Queensland private healthcare COVID-19 arrangements	Queensland Health and public and private healthcare operators	Substantially the same as above	Substantially the same as above	4 September 2020 – 30 September 2021
Western Australia private healthcare COVID-19 arrangements	Department for Health and public and private healthcare operators	Substantially the same as above	Substantially the same as above	4 September 2020 – 30 September 2021

PUBLIC & PRIVATE HEALTHCARE



Authorisation	Key Participants	Conduct	Conditions	Duration
South Australia private healthcare COVID-19 arrangements	Department for Health and Wellbeing and public and private healthcare operators	Substantially the same as above	Substantially the same as above	4 September 2020 – 30 September 2021
Tasmania private healthcare COVID-19 arrangements	Department of Health and public and private healthcare operators	Substantially the same as above	Substantially the same as above	4 September 2020 – 30 September 2021
Australian Capital Territory private healthcare COVID-19 arrangements	Health Directorate and public and private healthcare operators	Substantially the same as above	Substantially the same as above	4 September 2020 – 30 September 2021
Northern Territory private healthcare COVID-19 arrangements	Department of Health and public and private healthcare operators	Substantially the same as above	Substantially the same as above	4 September 2020 – 30 September 2021

PUBLIC & PRIVATE HEALTHCARE



Authorisation	Key Participants	Conduct	Conditions	Duration
Australian Medical Association (NSW) Limited (AMA) – Visiting Medical Officer (VMO) collective bargaining in response to COVID-19	AMA and participating VMOs	To collectively negotiate with private hospital operators regarding the terms and conditions for VMOs engaged to provide medical services to public patients in the NSW private hospital system	<ul style="list-style-type: none"> • Notifying ACCC of additional private hospitals or healthcare operators with which AMA intends to negotiate • Providing regular updates to ACCC 	17 September 2020 – 30 September 2021
Private Healthcare Australia Limited (PHA)	PHA and its members and the Members Health Fund Alliance and its members	To make arrangements and discuss and share information with each other in relation to private health insurance coverage	<ul style="list-style-type: none"> • Notifying ACCC of proposed measures • Providing fortnightly reports to ACCC • Providing information requested by ACCC • No coordination to increase health insurance premiums • Arrangements must provide for termination if conduct no longer authorised 	9 October 2020 – 31 March 2021

MEDICINES & PHARMACEUTICALS



Authorisation	Key Participants	Conduct	Conditions	Duration
Medical Technology Association of Australia Limited (MTAA)	MTAA and its members	To coordinate the supply of medical equipment and related supplies in response to the COVID-19 pandemic	<ul style="list-style-type: none"> • Providing fortnightly updates to ACCC • Providing information requested by ACCC 	2 October 2020 – 30 September 2021
National Pharmaceutical Services Association (NPSA)	NPSA and its members and Community Service Obligation Distributors	To coordinate activities for the purpose of promoting continual, fair and equitable access to medicines and pharmacy products during the COVID-19 pandemic	<ul style="list-style-type: none"> • Providing fortnightly updates to ACCC • Providing information requested by ACCC 	9 October 2020 – 30 September 2021
Medicines Australia (MA)	MA and its members and the Generic and Biosimilar Medicines Association and its members	To implement a coordinated strategy for the supply of essential medicines and related supplies during the COVID-19 pandemic	<ul style="list-style-type: none"> • Providing fortnightly updates to ACCC • Advising government health agencies if participants intend to coordinate in relation to public tenders 	16 October 2020 – 24 September 2021

MEDICINES & PHARMACEUTICALS



Authorisation	Key Participants	Conduct	Conditions	Duration
Australia New Zealand Industrial Gas Association (ANZIGA)	ANZIGA and its members, including Air Liquide, BOC Limited and Coregas	To exchange information and make arrangements required to ensure security of supply of medical oxygen to hospitals and similar medical facilities in the event of significant demand increases or supply constraints during the COVID-19 pandemic	<ul style="list-style-type: none"> • Notifying ACCC prior to engaging in conduct • Providing regular updates to ACCC • Providing information requested by ACCC 	23 October 2020 – 30 September 2021

ENERGY & RESOURCES



Authorisation	Key Participants	Conduct	Conditions	Duration
Minerals Council of Australia (MCA)	MCA and other State and Territory minerals and resources councils	To coordinate and collaborate in response to disruptions in the supply of certain critical services and supplies caused by the COVID-19 pandemic	<ul style="list-style-type: none"> • Notifying ACCC of any material arrangements • Providing information requested by ACCC • Providing regular updates to ACCC 	18 September 2020 – 30 June 2021
Australian Energy Council Limited (AEC)	AEC and its members, including AGL, Aurora, EnergyAustralia, Origin and Snowy Hydro	To share information, discuss and enter into arrangements to provide financial and/or other relief to retail energy customers facing financial difficulty	<ul style="list-style-type: none"> • Notifying ACCC of future participants • Notifying ACCC of any meetings • Providing monthly updates to ACCC • Arrangements must provide for termination if conduct no longer authorised 	23 September 2020 – 30 June 2021

ENERGY & RESOURCES



Authorisation	Key Participants	Conduct	Conditions	Duration
Australian Institute of Petroleum (AIP)	AIP and its members, including BP, Caltex, Mobil and Viva Energy	To cooperate to improve the security of supply of fuel products and facilitate the efficient use of refining and fuel storage capacity	<ul style="list-style-type: none"> • Reporting relevant meetings to ACCC • Providing information requested by ACCC • ACCC must approve future participants 	2 October 2020 – 31 March 2021
Australian Energy Market Operator (AEMO)	AEMO and gas and electricity industry participants	To ensure the ongoing safety, security, or reliability of energy systems, including by sharing information, coordinating repairs and maintenance and sharing essential inputs and personnel	<ul style="list-style-type: none"> • Complying with Reporting and Communications Protocol • QLD, WA and NT LNG producers to comply with additional protocols • Arrangements must provide for termination if conduct no longer authorised • ACCC must approve future participants 	9 October 2020 – 31 May 2021

OTHER INDUSTRIES



Authorisation	Key Participants	Conduct	Conditions	Duration
NBN Co Limited (NBN) and others	NBN, Telstra, Optus, TPG, Vocus and Aussie Broadband	To discuss, agree, and implement capacity optimization strategies for the National Broadband Network, solely for the purpose for responding to changes in demand on the Network resulting from the COVID-19 pandemic	<ul style="list-style-type: none"> Complying with Reporting and Communications Protocol NBN providing retail services providers who are not participating with any pertinent information about measures which might affect their business activities 	2 October 2020 – 31 March 2021
Regional Express Pty Ltd (REX)	Rex, Qantas and Virgin	To coordinate flight schedules to efficiently manage capacity and share revenue on ten regional air routes	<ul style="list-style-type: none"> Must not set fares for coordinated flights that are higher than equivalent fares as at 1 February 2020 Providing monthly updates to ACCC and other reporting requirements 	3 October 2020 – 30 June 2021

OTHER INDUSTRIES



Authorisation	Key Participants	Conduct*	Conditions*	Duration*
Ingham's Group Ltd, other chicken processors and the Australian Chicken Meat Federation <i>Draft Determination – Interim Authorisation currently in place</i>	Ingham's, Turosi, Hazeldene's and the Australian Chicken Meat Federation	To coordinate to minimize the disruption that would otherwise be caused to chicken meat processing and supply by the restrictions imposed by the Victorian Government in response to the COVID-19 pandemic	<ul style="list-style-type: none"> • Providing weekly reports to ACCC • Providing information requested by ACCC 	Until 31 December 2020

*proposed

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