

ANTI-COMPETITIVE AGREEMENTS

Competition Policy Review (Harper Review) Draft Report

Current position

Prohibition of anti-competitive agreements

- Section 45(2)(b)(ii) prohibits making or giving effect to a contract, arrangement or understandings which contains a provision having the purpose, effect or likely effect of substantially lessening competition
- 'Understanding' has been interpreted as requiring a meeting of the minds of the parties and some form of commitment to act in a certain way.

Harper Panel draft proposal (rec 24, chapter 17.2)

Prohibition of anti-competitive agreements

- Retain existing 45(2)(b)(ii)
- Extend s 45 to cover concerted practices having the purpose, effect, or likely effect of substantially lessening competition.
 - concerted practice involves 'a regular and deliberate activity undertaken by two or more firms'.

[summary prepared 11 October 2014]