

# EXEMPTIONS

Competition Policy Review (Harper Review) Draft Report

## Current position

### Authorisation

- ACCC may grant advance authorisation of conduct available for all forms of Part IV conduct other than misuse of market power (s 88)  
*(merger authorisation process dealt with separately – see mergers page)*
- Different tests for different conduct (s 90)
  - ACCC satisfied that the provision would result, or be likely to result, in a **benefit to the public that would outweigh likely anti-competitive detriment**
    - Cartels, public price signalling (s 44ZZX), anti-competitive conduct
  - ACCC satisfied conduct would result, or be likely to result, in such a **benefit to the public that it should be allowed**
    - Private price disclosures (s 44ZZW), exclusionary provisions, third line forcing, secondary boycotts, resale price maintenance, dual listed company arrangements, acquisitions outside Australia (s 50A)
- Six month time limit on ACCC decision
- Separate authorisation applications needed for different provisions of Act

### Notification

- Simpler approval process available for some forms of conduct
- Different tests for different conduct – notification must stand unless:
  - Public benefit does not outweigh anti-comp detriment
    - Third line forcing, private price disclosures, small business collective bargaining (cartels, boycotts)
  - Conduct would substantially lessen competition and public benefit would not outweigh detriment
    - Exclusive dealing (not TLF), small business collective bargaining (other than cartels, boycotts)
- Conduct permitted immediate or after 14 days depending on conduct
  - Immediate (exclusive dealing (not TLF))
  - After 14 days (all other forms of notifiable conduct)
- Cost of notification varies depending on conduct
  - \$100 (third line forcing, private price disclosures)
  - \$1,000 (small business collective bargaining)
  - \$2,500 (exclusive dealing (not TLF))

## Harper Panel draft proposal (recs 34 and 35, chapter 19)

### Authorisation (rec 34)

- Simplify to allow single authorisation application for a single business transaction or arrangement, without regard to particular provisions that may be contravened
- ACCC should be able to grant exemption for all forms of conduct if satisfied **either** that:
  - proposed conduct unlikely to SLC; **or**
  - proposed conduct is likely to result in a net public benefit

### Block exemption (rec 35)

- ACCC should have power to grant block exemptions

### Notification (rec 34)

- Notification procedures should be simplified  
(as with authorisation should allow ACCC to grant exemption if conduct either unlikely to substantially lessen competition or likely to result in net public benefit – precise formulation for notification not set out in report)
- Extend notification option to RPM conduct
- Improve flexibility of notification process for collective bargaining by small business (rec 50)

[summary prepared 11 October 2014]