Commerce Commission

Draft Competitor Collaboration Guidelines, October 2013

From: Aviation New Zealand

Company's aims: Aviation New Zealand's mission is to grow the presence and positioning of 'Aviation' in the New Zealand economy and to create opportunities for growth and wealth creation for its members.

Our Strategic Directions 2016 is based on five themes:

- Building the brand and telling the story
- Growing the market (domestically and internationally)
- Accelerating growth through supportive regulatory structures
- Building tomorrow's industry through a focus on R&D and investment
- Providing value to members

Through our growth work, we encourage collaboration between companies to achieve the breadth and/or volume of solution sought by customers, especially international customers.

Submission:

1.0 Understandings

In our view, the guidelines and examples are a good first step.

We appreciate that the Act and the draft guidelines refer to anti-competitive behaviour on the part of the commercial sector in New Zealand, have a domestic focus and recognize that 'the long term benefits to New Zealand may be achieved through collaboration'.

We also appreciate that most crown entities and state owned enterprises, are in monopolistic positions and can fix prices and change them at their discretion. While in theory in conflict with the cartel prohibition guidelines for fixing prices, the agencies can do this because most are monopolies.

2.0 General Overview

The guidelines and examples given in chapters 2 through 5, in terms of what is not permissible and where exemptions are likely to be given, are useful. However, they are very manufacturing oriented. The services sector is increasingly important to the New Zealand economy and is growing strongly. In our view, the examples do not reflect this sector or its future importance.

We see value in including some service examples in the guidelines when they are issued.

Over time, the Commerce Commission will prohibit, and, more importantly, approve more exemptions. This will be dynamic and companies should learn from this dynamism.

We see merit in the Commission running a section on its website that is updated regularly and generalizes in particular the examples of arrangements that are being approved.

Turning to particular aspects of the guidelines.

3.0 Chapter 2 The Cartel Prohibition

Market Allocation.

Developing and sustaining markets, especially international markets, can be very expensive. We champion the concept, 'compete onshore but cooperate offshore'. This international collaboration is increasingly seeing companies exchanging intelligence on specific markets (cost effectively improving company knowledge of markets), agreeing to work together to achieve the scale sought by potential international customers (providing access to opportunities beyond the capabilities of individual companies) and some companies agreeing to take the lead on specific geographic markets (more effective expenditure of scarce promotional $). The benefits of this collaboration are then shared between the collaborative participants.

A consequence of this is that the collaborative entities secure higher returns (benefiting the New Zealand economy) and the damaging price competition that can occur between New Zealand companies internationally is reduced (providing a better New Zealand value proposition).

We are seeing these collaborative arrangements developing in the training and component manufacturing sectors in particular.

This collaborative activity is not permissible domestically and there is some concern about the legality of New Zealand companies meeting to discuss such concepts in case they infringe the Commerce Act.

We propose that an additional clause be added along the lines of: 'Where New Zealand companies compete onshore but collaborate to improve the prospects of international success, gatherings to progress international opportunities are permissible'.

We are also conscious that Government, through its actions, can encourage the development of cartels. There are examples in the ACC/Health area and in TEC with allocations of EFTs.

4.0 Chapter 4 Exemption for joint buying and promotion agreements

The comments made about Chapter 2 above are relevant here too as we seek to 'operationalise' the collaborative ventures outlined.

However, there is another type of arrangement developing domestically to capture more of the tourist $ for New Zealand.

We are thinking of a collaboration between a number of geographically distinct flight tourism operators. This will allow us to offer a 'New Zealand wide flight tourism experience' to be delivered by a number of promotional partners. Tourists may buy from the promotional entity (which may package deals and discount to encourage tourists to use several operators).

Our reading of Chapter 4 suggests this sort of arrangement will be permissible i.e. an exemption granted.

We propose that an example worked up on the above explanation be included in the guidelines.

5.0 Conclusion

In our view, the guidelines are a good first step but need to be updated to reflect the increasingly important nature of the service economy.

They also need to reflect that some of the behaviours they aim to discourage are used by a large number of companies, not just in the aviation sector, to cost effectively develop international markets and achieve higher returns than might otherwise be the case. We suspect that exemptions would be given in such cases which illustrates the importance of building and publicising a good and dynamic case history of exemptions.

Further information can be provided if required.

Aviation New Zealand
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