

Quick Guide – Competition and Consumer Act changes effective 6 November 2017



Misuse of Market Power	Concerted Practices	Third line forcing	RPM	Mergers	Cartels & JVs	Enforcement
<p>Elements:</p> <ul style="list-style-type: none"> ❑ Firm with substantial market power ❑ Engages in conduct that has purpose, effect or likely effect of ❑ Substantially lessening competition ❑ In a market that the firm directly or indirectly supplies or acquires goods or services 	<p>Elements:</p> <ul style="list-style-type: none"> ❑ Corporation must not engage in concerted practice with another ❑ With the purpose or effect, or likely effect, of substantially lessening competition ❑ In any market that the party to the concerted practice (or related company) supplies or acquires goods and services (or is likely to) 	<p>Elements:</p> <ul style="list-style-type: none"> ❑ Supply of goods or services or giving of particular price or discount; or a refusal to supply unless ❑ A purchaser also acquires goods or services from another unrelated person, and ❑ The conduct has the purpose, effect or likely effect of substantially lessening competition 	<p>Elements:</p> <ul style="list-style-type: none"> ❑ Supplier attempts to place restrictions on ❑ The price charged for resupply of the goods or services by a second person, and ❑ If the supplier and the second person are not bodies corporate that are related to each other 	<ul style="list-style-type: none"> ❑ Informal merger clearance process unchanged ❑ ACCC can authorise a merger or acquisition if it is satisfied that the merger would not substantially lessen competition, or the merger would have a net public benefit ❑ Right to apply directly to Australian Competition Tribunal for authorisation removed 	<ul style="list-style-type: none"> ❑ Cartel provisions only apply to conduct which occurs in trade or commerce within Australia or between Australia and overseas ❑ “Output restrictions” now include acquisitions ❑ JV exemption can apply to informal arrangements (no need for formal contract) ❑ JVs for acquisition of goods and services included 	<ul style="list-style-type: none"> ❑ ACCC can use investigatory powers for breach of court enforceable undertaking and merger authorisation applications ❑ “Reasonable search” defence available for non-compliance with a section 155 notice to produce documents ❑ Maximum penalties for non-compliance with a section 155 notice have been increased to 2 years imprisonment and a fine of up to 300 penalty units ❑ Private litigants can rely on admissions of fact made in ACCC proceedings in subsequent proceedings ❑ ACCC can authorise “safe harbour” class exemptions for categories of conduct
<p>Activities which might require review include: bundling products, acquiring essential inputs, loyalty programs, refusals to supply.</p>	<p>Activities which might require review include: communications with competitors, trade association activity or release of commercially sensitive information.</p>	<p>Activities which might require review include: promotions and loyalty discounts with third parties.</p>	<p>Activities which might require review include: brand management programs and promotions. Arrangements between related bodies corporate exempt.</p>	<p>As amendments leave the informal merger clearance process unchanged, there will be no substantive change for majority of mergers.</p>	<p>For JV exemption to apply, the cartel provision must be necessary for the JV and JV not carried on for the purposes of substantially lessening competition.</p>	
<p>Can apply for authorisation from ACCC</p>	<p>Can apply for authorisation from ACCC</p>	<p>No need to lodge notification with ACCC unless substantial lessening of competition</p>	<p>Can notify ACCC of RPM instead of lodging authorisation. ACCC has 60 days for object.</p>	<p>Can apply for authorisation from ACCC</p>	<p>Defendant seeking to rely on JV exemption must establish on balance of probabilities.</p>	