

Competition law protocol for industry association discussions

Introduction and purpose of the Protocol

A number of companies in the waste management and resource recovery industry wish to engage in discussions regarding the establishment of a new national industry association.

The companies take seriously their obligations under the Competition and Consumer Act 2010 and intend to ensure that the discussions and any related communications fully comply with competition law requirements at all times.

The purpose of this competition law protocol (Protocol) is to provide guidance to the companies and their officers and employees involved in the discussions in order to ensure compliance with competition law requirements. This protocol is a summary of the key competition law issues and is not a substitute for each company forming its own view based on advice.

Competition laws

It is prohibited under competition laws for competitors to agree or have an understanding about certain conduct, including:

- Agreeing pricing or a pricing structure, or agreeing on other terms of supply,
- Dividing or allocating markets or customers, or agreeing not to compete or expand in a competitor's market,
- Controlling the output or limiting the capacity of goods or services,
- Agreeing that bids for a tender will be submitted in a particular way,
- Boycotting certain customers, suppliers or other competitors.

Engaging in this conduct can expose the companies and individuals involved to criminal and civil prosecution, including the risk of significant fines and, for individuals, jail terms.

Industry association discussions - Topics which can be discussed

The companies may discuss the following topics in the context of the proposed development of a new industry association:

- The structure and constitution of the industry association, at national and state levels, including funding, administration and the governance framework for the industry association,
- Membership of the association - noting that membership should be open with any criteria to be objective, non-discriminatory and uniformly applied so as not to exclude any particular operators,
- The purpose of the association and the industry topics that the association may focus on, such as regulatory issues, health and safety issues, environmental issues, industry standards and guidelines, promoting investment, general industry trends, and lobbying and public relations on these issues.

Topics which must not be discussed

The companies must not discuss or disclose any of the following:

- Company or industry prices, including discounts, rebates, price changes, price differentials, profit margins, credit or other terms of sale,
- Company costs, including any cost components, cost formulae or methods,
- Company sales and related information, including sales Volumes, sales revenues, capacity and capacity utilisation,
- Individual customers or suppliers,
- Future plans, such as marketing plans, plans about any proposed changes to services or other
- Strategic plans relating to a company's businesses, and
- Any other confidential business information that could be used to reduce competition between any of the companies.

Procedure for discussions

1. **Scheduled meetings** - All substantive discussions should occur in scheduled meetings that,
2. **Agenda** - A pre-approved agenda should be circulated prior to each meeting and each agenda must note that discussions are subject to this Protocol,
3. **Agenda items** - The agenda items must be limited to topics relevant to the proposed new industry association. Discussions must be limited to the agenda items and any information circulated should be limited to what is relevant and necessary to consider the proposed new industry association,
4. **Meeting preliminaries** - At the start of each meeting, a reminder should be given about the importance of complying with competition law requirements and requesting all participants to confirm that they agree to comply with this Protocol,
5. **Minutes** - Minutes should be taken as an accurate record of the matters discussed at the meetings, and
6. **Legal consultation** - If there is any doubt about whether a particular topic can be discussed, or an action taken, the participants agree not to discuss it, or to take the action, without first consulting with legal counsel.