

## Undertakings & Conditions

### Undertakings

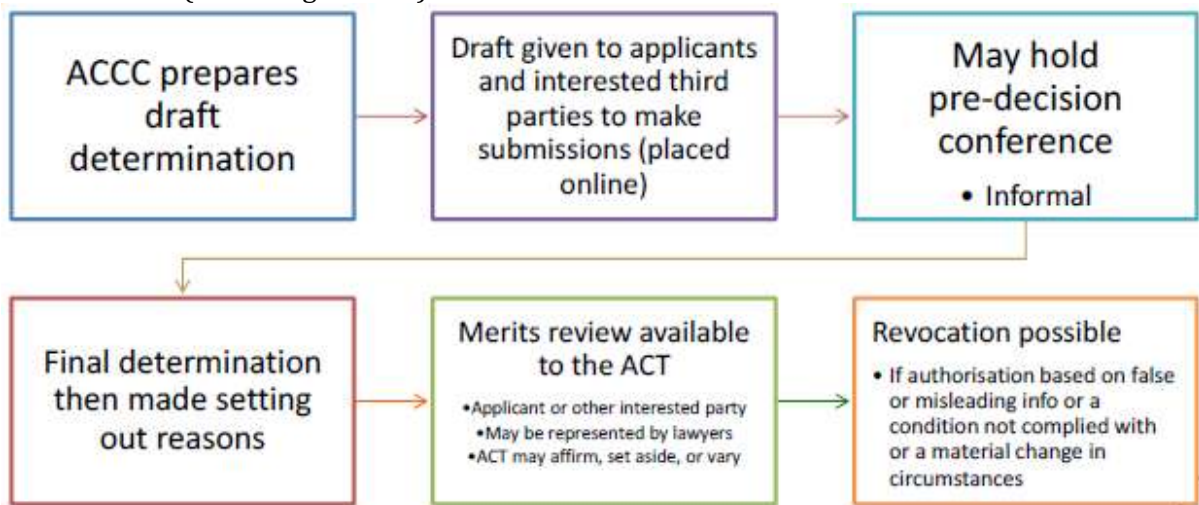
- Under s 87B of the CCA the ACCC may accept written undertakings in relation to matters where it has power under the Act – consequently they can accept undertakings related to authorisation applications which may then be enforced in the Federal Court.
- These may be structural or behavioural.
  - The former, especially in relation to mergers, seeks to address structural issues in the market and often involves divestiture of certain assets.
  - Behavioural undertakings involve the conduct of the applicant – might relate to price structures or quality of products.

### Conditions

- Authorisation may be made for only a specified period of time (s 91(1)) rather than indefinitely.
- Interim authorisations may also be granted (s 91(2)) if the proposed contract will be given effect to before the ACCC has been able to adequately consider the matter and authorisations may be granted subject to any such conditions the ACCC specifies (s 91(3)).

### Procedure for granting authorisation

- The casebook sets out (pp 607-621) the ACCC's current 'Guide to Authorisation' with details about when to apply and the process as well as the relevant tests – it provides a very useful overview of the process.
- Procedure (non-merger cases):



### Time limit

- The Trade Practices Legislation Amendment Act (No 1) 2006, effective 1 January 2007, amended the CCA to include a new ss 90(10) and 90(10A), providing time limits for nonmerger applications; it provides that **applications not decided within the relevant time periods will be deemed to have been granted.**
- For ACCC
  - Six months
  - Possible 6-month extension
- For ACT
  - Must lodge application within 21 days of ACCC determination

- 60 days to decide (may be extended in some cases)

#### Review by the Tribunal (see CB 606 and from 619)

- A person dissatisfied with a decision of the ACCC may appeal to the Tribunal (ss 101 and 101A).
- This constitutes a rehearing of the matter; new facts and arguments may be raised.
- Applications must be lodged within 21 days of the date of the ACCC's determination.

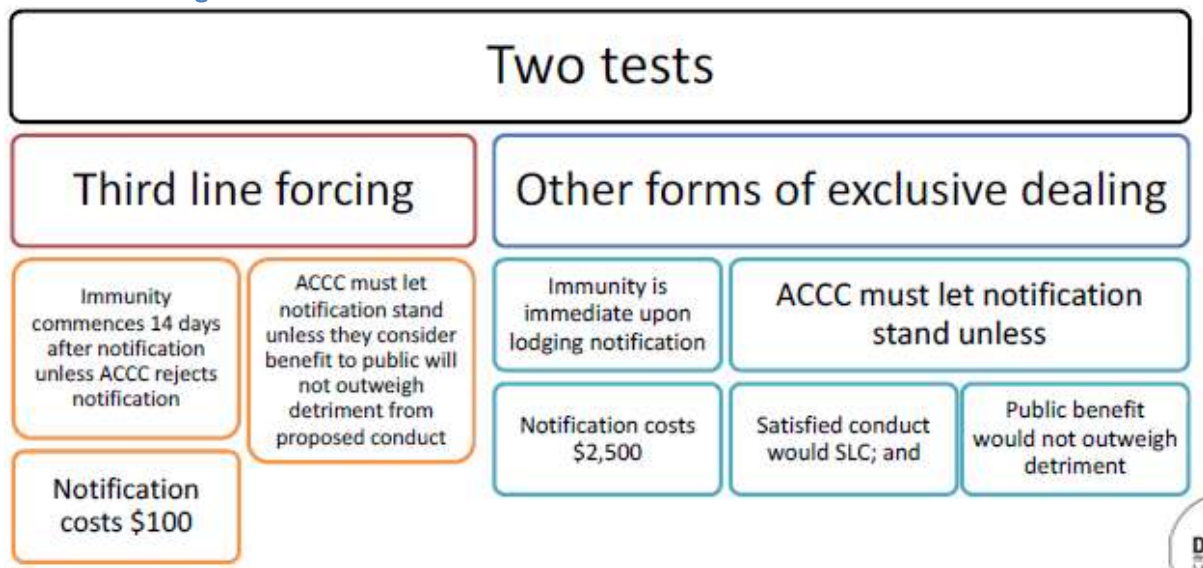
#### Revocation of authorisations

- The ACCC may revoke an authorisation if any of the following matters are established:
  - 'the authorisation was granted on the basis of evidence or information that was materially false or misleading;
  - a condition of the authorisation has not been complied with; or
  - there has been a material change of circumstances since the authorisation was granted'

#### Notification

- Available for:
  - Exclusive dealing
  - Collective bargaining
  - Price signalling conduct

#### Exclusive Dealing



- A corporation that engages, or proposes to engage, in the practice of exclusive dealing may notify the ACCC in accordance with s 93.
  - Once a proper notification is given, the very notification will confer immunity from legal proceedings unless the ACCC, or, on review, the Tribunal decides to revoke it.
  - 1. For **third line forcing** applications (which comprise the bulk of notification applications – not surprisingly, as it is otherwise a per se offence) immunity commences 14 days after notification (unless the ACCC formally objects).
    - For example, a number of petrol retailers have lodged notifications in relation to shopper-docket schemes.
  - 2. For **other exclusive dealing notifications**, immunity commences immediately upon valid notification and continues unless revoked by the ACCC.