

# Summary of the cartel prohibition and exceptions

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## Prohibition

PRICE FIXING	RESTRICTING OUTPUT	MARKET ALLOCATING
<p><i>Fixing / controlling / maintaining:</i></p> <ul style="list-style-type: none"> <li>price, discount, allowance, rebate, or credit</li> <li>for/in relation to goods or services</li> <li>supplied or acquired by 2 or more parties in competition.</li> </ul>	<p><i>Preventing / restricting / limiting:</i></p> <ul style="list-style-type: none"> <li>the (likely) <i>production</i> of goods</li> <li>the (likely) <i>capacity</i> to supply services</li> <li>the (likely) <i>supply</i> of goods/services</li> <li>the (likely) <i>acquisition</i> of goods/services</li> <li>supplied or acquired (as applicable) by 2 or more parties to the CAU <i>in competition with each other</i>.</li> </ul>	<p><i>Allocating between any 2 or more parties:</i></p> <ul style="list-style-type: none"> <li>the persons or classes of persons to/from whom the parties supply/acquire goods/services; or</li> <li>the geographic areas in which the parties supply/acquire goods/services</li> <li>in competition with each other.</li> </ul>

Provisions are caught where they “provide for” the above

## Exceptions

COLLABORATIVE ACTIVITY	VERTICAL SUPPLY CONTRACTS	JOINT BUYING & PROMOTION
<p>The cartel prohibition does not apply if, at the time of entering into / arriving at or giving effect to the cartel provision:</p> <ul style="list-style-type: none"> <li>the person and 1 or more other parties are involved in a collaborative activity, ie:                             <ul style="list-style-type: none"> <li>enterprise, venture or other activity in trade</li> <li>carried on in cooperation by 2 or more persons</li> <li>not for the <i>dominant purpose of lessening competition</i> between 2 or more of the parties; and</li> </ul> </li> <li>the cartel provision is <i>reasonably necessary</i> for the purpose of the collaborative activity.</li> </ul>	<p>Where a contract (<b>but not</b> an arrangement or understanding):</p> <ul style="list-style-type: none"> <li>is between a (likely) supplier of goods or services and a (likely) customer of the supplier; and</li> <li>the cartel provision:                             <ul style="list-style-type: none"> <li>relates to the (likely) supply of goods or services to the customer (including to the maximum price of resupply); and</li> </ul> </li> </ul> <p>does not have the dominant purpose of lessening competition between 2 or more parties to the contract.</p>	<p>A provision in a CAU does not have the purpose, effect or likely effect of <b>price fixing</b> if the provision:</p> <ul style="list-style-type: none"> <li>relates to collective acquisitions (direct or indirect); or</li> <li>provides for joint advertising of the collectively acquired goods/services; or</li> <li>provides for a collective negotiation of the price followed by individual purchasing at the collectively negotiated price; or</li> </ul> <p>provides for an intermediary to take title to goods and resell or resupply them to another party to the arrangement.</p>