**COMPETITION AND CONSUMER ACT 2010 - SECT 45**

**Contracts, arrangements or understandings that restrict dealings or affect competition**

             (1)  If a provision of a contract made before the commencement of the [*Trade Practices Amendment Act 1977*](http://www.austlii.edu.au/au/legis/cth/num_act/tpaa1977229/):

                     (a)  is an exclusionary provision; or

                     (b)  has the purpose, or has or is likely to have the effect, of substantially lessening competition;

that provision is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a corporation.

             (2)  A corporation shall not:

                     (a)  make a contract or arrangement, or arrive at an understanding, if:

                              (i)  the proposed contract, arrangement or understanding contains an exclusionary provision; or

                             (ii)  a provision of the proposed contract, arrangement or understanding has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or

                     (b)  give effect to a provision of a contract, arrangement or understanding, whether the contract or arrangement was made, or the understanding was arrived at, before or after the commencement of this section, if that provision:

                              (i)  is an exclusionary provision; or

                             (ii)  has the purpose, or has or is likely to have the effect, of substantially lessening competition.

             (3)  For the purposes of this section, ***competition***, in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, means competition in any market in which a corporation that is a party to the contract, arrangement or understanding or would be a party to the proposed contract, arrangement or understanding, or any body corporate related to such a corporation, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the provision, supply or acquire, or be likely to supply or acquire, goods or services.

             (4)  For the purposes of the application of this section in relation to a particular corporation, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding shall be deemed to have or to be likely to have the effect of substantially lessening competition if that provision and any one or more of the following provisions, namely:

                     (a)  the other provisions of that contract, arrangement or understanding or proposed contract, arrangement or understanding; and

                     (b)  the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the corporation or a body corporate related to the corporation is or would be a party;

together have or are likely to have that effect.

             (5)  This section does not apply to or in relation to:

                     (a)  a provision of a contract where the provision constitutes a covenant to which [section 45B](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45b.html) applies or, but for [subsection 45B(9)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45b.html), would apply;

                     (b)  a provision of a proposed contract where the provision would constitute a covenant to which [section 45B](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45b.html) would apply or, but for [subsection 45B(9)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45b.html), would apply; or

                     (c)  a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding in so far as the provision relates to:

                              (i)  conduct that contravenes [section 48](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s48.html); or

                             (ii)  conduct that would contravene [section 48](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s48.html) but for the operation of [subsection 88(8A)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s88.html); or

                            (iii)  conduct that would contravene [section 48](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s48.html) if this Act defined the acts constituting the practice of resale price maintenance by reference to the maximum price at which goods or services are to be sold or supplied or are to be advertised, displayed or offered for sale or supply.

             (6)  The making of a contract, arrangement or understanding does not constitute a contravention of this section by reason that the contract, arrangement or understanding contains a provision the giving effect to which would, or would but for the operation of [subsection 47(10)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s47.html) or [88](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s88.html)(8) or [section 93](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s93.html), constitute a contravention of [section 47](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s47.html) and this section does not apply to or in relation to the giving effect to a provision of a contract, arrangement or understanding by way of:

                     (a)  engaging in conduct that contravenes, or would but for the operation of [subsection 47(10)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s47.html) or [88](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s88.html)(8) or [section 93](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s93.html) contravene, [section 47](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s47.html); or

                     (b)  doing an act by reason of a breach or threatened breach of a condition referred to in [subsection 47(2)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s47.html), (4), (6) or (8), being an act done by a [person](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45dd.html#person) at a time when:

                              (i)  an authorization under [subsection 88(8)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s88.html) is in force in relation to conduct engaged in by that [person](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45dd.html#person) on that condition; or

                             (ii)  by reason of [subsection 93(7)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s93.html) conduct engaged in by that [person](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45dd.html#person) on that condition is not to be taken to have the effect of substantially lessening competition within the meaning of[section 47](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s47.html); or

                            (iii)  a notice under [subsection 93(1)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s93.html) is in force in relation to conduct engaged in by that [person](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45dd.html#person) on that condition.

          (6A)  The following conduct:

                     (a)  the making of a dual listed company arrangement;

                     (b)  the giving effect to a provision of a dual listed company arrangement;

does not contravene this section if the conduct would, or would apart from [subsection 88(8B)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s88.html), contravene [section 49.](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s49.html)

             (7)  This section does not apply to or in relation to a contract, arrangement or understanding in so far as the contract, arrangement or understanding provides, or to or in relation to a proposed contract, arrangement or understanding in so far as the proposed contract, arrangement or understanding would provide, directly or indirectly for the acquisition of any shares in the capital of a body corporate or any assets of a [person](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s45dd.html#person).

             (8)  This section does not apply to or in relation to a contract, arrangement or understanding, or a proposed contract, arrangement or understanding, the only parties to which are or would be bodies corporate that are related to each other.

          (8A)  Subsection (2) does not apply to a corporation engaging in conduct described in that subsection if:

                     (a)  the corporation has given the Commission a collective bargaining notice under [subsection 93AB(1)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s93ab.html) describing the conduct; and

                     (b)  the notice is in force under [section 93AD.](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s93ad.html)

             (9)  The making by a corporation of a contract that contains a provision in relation to which [subsection 88(1)](http://www.austlii.edu.au/au/legis/cth/consol_act/caca2010265/s88.html) applies is not a contravention of subsection (2) of this section if:

                     (a)  the contract is subject to a condition that the provision will not come into force unless and until the corporation is granted an authorization to give effect to the provision; and

                     (b)  the corporation applies for the grant of such an authorization within 14 days after the contract is made;

but nothing in this subsection prevents the giving effect by a corporation to such a provision from constituting a contravention of subsection (2).