



GUIDELINES FOR BUSINESS COLLABORATION DURING THE COVID-19 PANDEMIC

The Fair Trading Commission (the Commission) wishes to remind persons/businesses that, under Section 13 of the Fair Competition Act, CAP. 326C, collaboration among competitors is prohibited. However, due to the COVID-19 pandemic, the Commission wishes to advise that collaboration among competitors may be permitted ONLY within the boundaries of this guideline.

1. INTRODUCTION

- 1.1 The Commission is aware that the enforcement of Competition Law could impede necessary cooperation between businesses desirous of providing relief via goods and services where needed. Competition law and policy usually prohibits agreements between competitors because these agreements can cause the disruption or distortion of competition in a market.
- 1.2 The Commission is also mindful of the fact that as businesses assist in relief efforts to tackle the pandemic, coordination between competitors may be necessary. However, this coordination should ONLY occur to address concerns caused by the pandemic.
- 1.3 Through this document, the Commission seeks to provide some guidance to businesses that are working together to assist persons affected by restrictions put in place due to the pandemic.
- 1.4 The Commission also wishes to discourage agreements which seek to exploit customers. The Commission will take the necessary action should such activity be found/reported.
- 1.5 The Commission advises that these guidelines are related to COVID-19 matters ONLY.

2. PRIORITISATION OF CASES

2.1 Current circumstances might require competing companies to work together to supply customers in need. These arrangements will not remain in place once dangers have passed/restrictions have been lifted.

2.2 The conditions under which such collaborations could be allowed include arrangements that:

- Prevent the shortage of goods and services;
- Ensure security of supply;
- Are in the interest of the public;
- Benefit consumers; and
- Deal with critical issues which have arisen as a result of the pandemic.

2.3 The relaxation of restrictions does NOT give businesses the authority to engage in conduct that may be anti-competitive (particularly collusion) or disadvantageous to consumers.

2.4 Instances where anticompetitive conduct may occur include:

- The exchange of commercially sensitive information on strategies not related to the pandemic;
- The exclusion of smaller rivals from assisting in the process;
- The abuse of a dominant position by significantly raising prices;
- Agreements among businesses to share customers or territories among themselves; and
- Agreements among businesses to work together in areas not affected by the pandemic.

2.5 Note that a dominant position may not only be restricted to the general affairs of the business. In this instance, a company may hold a dominant position in the relief services provided.

2.6 An example of conduct that might appear anti-competitive but which might not trigger a review – or at the very least enforcement – would be businesses reducing the scope of or rationing products offered so as to avoid a shortage of said product.

2.7 Manufacturers/distributors who unnecessarily increase the price of products or services that are essential to the health of consumers (hand sanitisers, soaps, etc.) will not be tolerated. Manufacturers/distributors can also aid in the discouragement of price gouging by setting a maximum price at which retailers can sell such items.

3. ASSESSMENT CRITERIA FOR COOPERATION

3.1 In order to determine if collaboration will be permitted, the Commission will assess whether:

- The cooperation is necessary to ensure that essential goods and services are made available to the public, vulnerable persons and/or frontline workers;
- The services being offered are essential; and
- Competition can still be effected.

The Commission reserves the right to review any transaction to ensure that competition is maintained; to verify that any collaboration executed is to the benefit of the consumer; and to confirm that any collaboration relieves pressures caused by the pandemic.