

Subject: Emailing: Australian Competition Law

Trade Practices Act 1974 (Consolidated to Act 59 of 2009)

Part VB - Price exploitation in relation to A New Tax System

75AT Definitions

In this Part, unless the contrary intention appears:

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

Note: The operation of the GST Act is affected by the GST Transition Act.

GST implementation date means the day on which the GST Act commences.

GST Transition Act means the *A New Tax System (Goods and Services Tax Transition) Act 1999*.

New Tax System changes means the following:

- (a) the amendment of the former *Sales Tax (Exemptions and Classifications) Act 1992* made by the GST Transition Act;
- (b) the ending of sales tax, as provided for in the former *A New Tax System (End of Sales Tax) Act 1999*;
- (c) the imposition of GST;
- (d) any other changes (including changes to Commonwealth, State or Territory laws) prescribed by the regulations for the purposes of this definition.

New Tax System transition period means the period:

- (a) starting on the later of 1 July 1999 and the commencement of the *A New Tax System (Trade Practices Amendment) Act 1999*; and
- (b) ending on the day that is 2 years after the GST implementation date.

price, in relation to a supply, includes:

- (a) a charge of any description for the supply; and
- (b) any pecuniary or other benefit, whether direct or indirect, received or to be received by a person for or in connection with the supply.

regulated supply means:

- (a) a supply that:
 - (i) occurs during the New Tax System transition period and before the GST implementation date; and
 - (ii) is by a person who would be required to be registered under the GST Act had the supply occurred on or after 1 July 2000 ; and
 - (iii) had the supply occurred on or after 1 July 2000, it would have been a taxable supply for the purposes of the GST Act or would have been a taxable supply had it not been GST-free or input taxed for the purposes of that Act; or
- (b) a supply that:
 - (i) occurs during the New Tax System transition period and on or after the GST implementation date; and
 - (ii) is by a person who is registered or required to be registered under the GST Act; and

- (iii) is a taxable supply for the purposes of the GST Act, or would have been a taxable supply for the purposes of the GST Act had it not been GST-free or input taxed for the purposes of that Act.

supply means:

- (a) a supply of goods, including by way of sale, exchange, lease, hire or hire-purchase; or
- (b) any other transaction or dealing that is a supply for the purposes of the GST Act.

75AU Price exploitation in relation to New Tax System changes

- (1) A corporation contravenes this section if it engages in price exploitation in relation to the New Tax System changes.
- (2) For the purposes of this section, a corporation engages in price exploitation in relation to the New Tax System changes if:
 - (a) it makes a regulated supply; and
 - (b) the price for the supply is unreasonably high, having regard alone to the New Tax System changes (whether the supply took place before or after those changes); and
 - (c) the price for the supply is unreasonably high even if the following other matters are also taken into account:
 - (i) the supplier's costs;
 - (ii) supply and demand conditions;
 - (iii) any other relevant matter.

75AV Price exploitation—guidelines about when prices contravene section 75AU

- (1) The Commission must, by written instrument, formulate guidelines about when prices for regulated supplies may be regarded as being in contravention of section 75AU.
- (2) The Commission may, by written instrument, vary the guidelines.
- (3) The Commission must have regard to the guidelines in making decisions under section 75AW or 75AX in relation to the issue, variation and revocation of notices under that section.
- (4) The Court may have regard to the guidelines in any proceedings:
 - (a) under section 76 relating to section 75AU; or
 - (b) under section 80 for an injunction relating to section 75AU.
- (5) As soon as practicable after making or varying the guidelines, the Commission must cause a copy of the guidelines, or of the variation, to be published in the *Gazette*. However, failure to do so does not affect the validity of the guidelines or of the variation.

75AW Commission may issue notice to corporation it considers has contravened section 75AU

- (1) If the Commission considers that a corporation has made a supply in contravention of section 75AU, the Commission may give the corporation a notice in writing under this section.
- (2) The notice must:
 - (a) be expressed to be given under this section; and
 - (b) identify:
 - (i) the corporation that made the supply; and
 - (ii) the kind of supply made; and
 - (iii) the circumstances in which the supply was made; and
 - (c) state that, in the Commission's opinion:
 - (i) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and
 - (ii) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).

- (3) In any proceedings:
 - (a) under section 76 relating to section 75AU; or
 - (b) under section 80 for an injunction relating to section 75AU;the notice is taken to be prima facie evidence that:
 - (c) the price for the supply was unreasonably high as mentioned in paragraph 75AU(2)(b); and
 - (d) that unreasonably high price was not attributable to matters referred to in paragraph 75AU(2)(c).
- (4) The Commission may vary or revoke the notice on its own initiative or on application made by the corporation. The Commission must give the corporation notice in writing of the variation or revocation.

75AX Commission may issue notice to aid prevention of price exploitation

- (1) The Commission may give a corporation a notice in writing under this section if the Commission considers that doing so will aid the prevention of price exploitation (within the meaning of section 75AU).
- (2) The notice must:
 - (a) be expressed to be given under this section; and
 - (b) be expressed to relate to any supply that the corporation makes that is:
 - (i) of a kind specified in the notice; and
 - (ii) made in circumstances specified in the notice; and
 - (iii) made during the period specified in the notice (which must not be a period ending after the end of the New Tax System Transition period); and
 - (c) specify the maximum price that, in the Commission's opinion, may be charged for a supply to which the notice is expressed to relate.
- (3) The Commission may, on its own initiative or on application made by the corporation:
 - (a) vary the notice to:
 - (i) change the period specified as required by subparagraph (2)(b)(iii); or
 - (ii) change the price specified in the notice as required by paragraph (2)(c); or
 - (b) revoke the notice.The Commission must give the corporation notice in writing of the variation or revocation.
- (4) The Commission may publish the notice, or particulars of any variation or revocation of the notice, in such manner as the Commission considers appropriate, including, for example, in a national newspaper.

75AY Commission may monitor prices

- (1) The Commission may monitor prices for either or both of the following purposes:
 - (a) to assess the general effect of the New Tax System changes on prices charged by corporations for supplies during the New Tax System transition period;
 - (b) to assist its consideration of whether section 75AU has been, is being, or may in the future be, contravened.
- (2) A member of the Commission may, by notice in writing served on a person, require the person:
 - (a) to give the Commission specified information in writing signed by:
 - (i) the person; or
 - (ii) if the person is a body corporate—a competent officer of the body corporate; or
 - (b) to produce to the Commission specified documents;being information, or documents containing information, relating to prices or the setting of prices that the member considers will or may be useful to the Commission in monitoring prices as mentioned in subsection (1).

Note: The powers under this section are in addition to the powers under section 155. Under section 155, the Commission may obtain information about particular matters that constitute or may constitute a contravention of section 75AU.

- (3) Without limiting subsection (2), information or documents that may be required under that subsection may relate to prices, or the setting of prices:
 - (a) before or after all or any of the New Tax System changes have taken effect; and
 - (b) before or after the start of the New Tax System transition period; and
 - (c) in a situation, or during a period, specified in the notice.
- (4) A person must not:
 - (a) refuse or fail to comply with a notice under subsection (2) to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with such a notice, provide information or a document that is false or misleading.

Penalty: 20 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Part IA of the *Crimes Act 1914* contains provisions dealing with penalties.

75AYA Prohibition on misrepresenting the effect of the New Tax System changes

A corporation must not, in trade or commerce, for the purpose of price exploitation, in connection with:

- (a) the supply or possible supply of goods or services; or
 - (b) the promotion by any means of the supply or use of goods or services;
- engage in conduct, at any time during the period starting when this section commences and ending at the end of the New Tax System transition period, that:
- (c) falsely represents (whether expressly or impliedly) the effect, or likely effect, of all or any of the New Tax System changes; or
 - (d) misleads or deceives, or is likely to mislead or deceive, a person about the effect, or likely effect, of all or any of the New Tax System changes.

75AZ Reporting

- (1) The Commission must, within 28 days after the end of each quarter, give the Minister a written report about the operations of the Commission under this Part during the quarter.
- (2) Without otherwise limiting subsection (1), a report under that subsection must include particulars of:
 - (a) all notices given under section 75AX during the quarter; and
 - (b) all variations or revocations during the quarter of notices given under section 75AX.
- (3) For this purpose, a **quarter** is a period of 3 months:
 - (a) that occurs wholly or partly during the New Tax System transition period; and
 - (b) that starts on any of the following days in a year:
 - (i) 1 January;
 - (ii) 1 April;
 - (iii) 1 July;
 - (iv) 1 October.
- (4) As soon as practicable after the Minister receives a report under subsection (1), the Minister must make the report public by such means as the Minister considers appropriate.
- (5) If this section commences during a quarter (but not on the first day of a quarter):
 - (a) no report is to be made at the end of the quarter; but
 - (b) the report made at the end of the next quarter is also to include the information required by subsection (1) in relation to the previous quarter.

