



# The benefits of working with other small businesses—collective bargaining and collective boycotts

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Small businesses, including farmers, can sometimes be better off negotiating with their suppliers or customers as a group (referred to as collective bargaining). Working together, you might be able to negotiate better terms and conditions with larger businesses, and create efficiencies, that you would not achieve on your own. But without ACCC approval you could risk breaching the *Competition and Consumer Act 2010*.

This guide highlights some issues to take into account if small businesses are considering negotiating as a group. It also outlines the ACCC approval process if you wish to proceed.

## About collective bargaining

Collective bargaining occurs when two or more competitors get together to negotiate terms, conditions and prices with a supplier or customer. A collective bargaining arrangement may rely on the voluntary participation in the negotiations by the supplier or customer. It could also involve a collective boycott where the group agrees to stop dealing with the supplier or customer unless the terms and conditions offered by the group are accepted.

Without prior ACCC approval, those involved in collective bargaining groups risk breaching the *Competition and Consumer Act 2010* which may result in significant penalties.

### Farming industry association

In March 2015 the Tasmanian Farmers and Graziers Association, representing vegetable growers in Tasmania, was granted authorisation to collectively negotiate, on behalf of current and future members, the conditions of growing contracts with McCains, Simplot and any future vegetable processor in Tasmania.

You can set up a collective bargaining group in the way that best suits your circumstances. This gives you flexibility to determine:

- who can join the group
- how it will operate
- the business/es the group proposes to negotiate with
- the terms and conditions the group proposes to negotiate on.

A collective bargaining group can be as small as two businesses or much larger, for example to include all members of an industry association. Any type of business can be involved—sole traders, home based businesses, medium sized firms, manufacturers, retailers, farmers and service providers.

The ACCC has approved many types of collective bargaining arrangements by small businesses in various industries. Some examples are included in this guide. You can find more on the ACCC's authorisation and notification public register at: [www.accc.gov.au/public-registers](http://www.accc.gov.au/public-registers).

You may wish to organise the group amongst yourselves, ask your industry association for help, or engage a lawyer or other professional advisor to assist.



### **A group of farmers**

Seven dairy farmers in the Manning Valley in NSW lodged notifications in March 2016 to collectively negotiate over the terms and conditions of raw milk supply agreements. One of the farmers in the group negotiated the terms and conditions of the supply agreements with Woolworths and its agent on behalf of the group.

## **Benefits for small businesses**

There can be many benefits for small businesses negotiating as a group:

- reducing and/or sharing the time and cost of putting supply arrangements in place
- creating more opportunities to negotiate terms of supply that better reflect the group's own needs (as compared to just signing a standard form contract)
- gaining better access to information—for example by sharing information between small businesses, or sharing the costs of engaging a professional advisor that you would not afford on your own
- creating new marketing opportunities—as a group, your combined volume may become more attractive to larger or new buyers
- streamlining and coordinating your ordering and delivery, creating supply chain efficiencies.

The business/es you are negotiating with can also benefit from:

- reduced costs from negotiating with a representative or subset of the group, rather than each member separately
- more supply certainty from bulk ordering and savings from aligning transport and distribution
- better access to information—more effective and efficient negotiations enable the transfer of information between the parties.



### **An industry association**

In August 2014 the ACCC granted authorisation to the Australian Newsagents Federation to enable collective negotiations with a range of suppliers on behalf of current and future members. The association identified over 100 businesses that it wished to negotiate with, including suppliers of stationery, greeting cards, newspapers and confectionery, and providers of banking, insurance, electricity and shop fitting services. Under a condition of authorisation, the association must get written consent from any new suppliers that are not named in the application if they agree to participate in the collective negotiations.

## **Is it for you?**

Collective bargaining is particularly suited where the group has common objectives and requirements. However, collective bargaining will not be for everyone. You might not want to share business information with competitors and you might want to make your own decisions. While some concerns may be addressed in the way the group is structured and in the contracts that are negotiated, you could find that you can get a better outcome by negotiating on your own.

You will also not be able to force the larger business to deal with the group. However, some groups may consider that an ability to threaten and/or engage in a collective boycott is a necessary negotiating tool.

## **Including a collective boycott**

In certain circumstances, a collective boycott may be seen as necessary to achieve some of the efficiency benefits from collective bargaining. However, a collective boycott can also result in significant anti-competitive detriment. It may be possible to structure a collective boycott arrangement to reduce the detriment, for example, by limiting the circumstances in which boycotts might occur. If you are thinking about including a collective boycott in your bargaining arrangement, we encourage you to discuss your proposal with us.

### **Forming a bargaining group—things to consider**

- Who are the members of the group?
- Will members change over time or remain stable?
- What is the product the group intends to sell or buy? Is it everything the group produces or just a subset (for example products of a particular characteristic or quality)?
- Who does the group propose to negotiate with? Will they change over time? Does getting together open up new market opportunities with customers or suppliers that are more prepared to deal with the group because of the increased volumes?
- How will you structure your group?
- Will you use an agent to negotiate on behalf of the group or will you appoint a member/s of the group to conduct the negotiations?

## **How to get ACCC approval**

Collective bargaining risks breaching the *Competition and Consumer Act 2010*, particularly where there is an agreement amongst the competing businesses about what price they will charge or pay (price fixing) or to restrict dealings with a buyer or seller if they don't agree (a collective boycott). Therefore you need to seek formal approval from the ACCC before you commence collective bargaining.

The ACCC can allow collective bargaining arrangements to go ahead where we consider that the public benefit will outweigh the public detriment, including from any lessening of competition.

We have found that collective bargaining by small businesses is generally in the public interest. While each proposal is assessed on its merits, we have approved almost all collective bargaining arrangements where participation is voluntary for both the small businesses in the bargaining group and the business that they are negotiating with.

There are two ways that small businesses can seek approval from the ACCC—by lodging a **notification** or by applying for **authorisation**. Both are public processes. The application and supporting submission will be placed on the public register on the ACCC's website, as will any non-confidential submissions that comment on the proposal. Approval under either process enables you to take part in collective bargaining without the risk of legal action for breaching the Competition and Consumer Act.

The **notification** process works well when all members of the bargaining group are known up front, are unlikely to change over time and where there is a single business that the group intends to deal with. **Authorisation** is a slightly longer process but it can be more flexible. It is better suited for arrangements where there are a large number of participants that may come and go from the group and where there are a number of different businesses with whom the group wishes to negotiate.

There are some other differences between an authorisation and notification around transaction thresholds, lodgement fees and timing. You can find some information on the ACCC's website [www.accc.gov.au/business/applying-for-exemptions/notifications#collective-bargaining-notifications](http://www.accc.gov.au/business/applying-for-exemptions/notifications#collective-bargaining-notifications).

You can also seek guidance from us if you want to discuss the options and processes before deciding to lodge an application or you are uncertain about aspects of the application Form, the contents of the supporting submission, or the various steps in the ACCC's assessment process. We can provide comments on a draft application before it is lodged although we cannot indicate the likely outcome of an application, as this is ultimately a decision for the ACCC's Commission.

### A group of companies

In May 2013 four furniture removal and storage companies lodged a notification to collectively negotiate with Pacific National over terms in agreements for the provision of rail linehaul freight services. The group was represented in the negotiations by one of the removal companies. The group did not propose to collectively negotiate prices other than those relating to rebates.

## Revisions to the guide

This guide will be reviewed and updated from time to time, including following any changes to the collective bargaining notification process that may be implemented in response to the recommendations of the Harper Review. The Harper Review recommended amendments to the notification process to make it more flexible for small businesses wishing to collectively bargain and to facilitate collective boycotts where they may be necessary to achieve the benefits of collective bargaining.

## More information

If you are considering starting a collective bargaining arrangement you might want to:

- Talk to a legal or other professional advisor.
- Talk to your industry association.
- Call the ACCC's small business helpline on 1300 302 021 or email [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).
- Visit the ACCC's website [www.accc.gov.au/business/applying-for-exemptions](http://www.accc.gov.au/business/applying-for-exemptions).