

COMMERCE ACT

GUIDELINES FOR THE SUPPLY OF SCHOOL UNIFORMS

BACKGROUND

1. The Commerce Commission (the Commission) has received complaints about the limited supplier choice and high prices charged for school uniforms. As some arrangements for the supply of uniforms might raise issues under the Commerce Act 1986 (the Act), the Commission has prepared these guidelines to allow all parties to be more informed.¹

INTRODUCTION

2. The aim of the Act is to promote competition in New Zealand for the long-term benefit of consumers. It prohibits business conduct that restricts competition, and applies to all individuals and businesses that engage in trade. The Commission is the independent regulator that enforces the Act. The Commission's role is to promote dynamic and responsive markets so that all New Zealanders benefit from competitive prices, better quality and greater choice.
3. The Act's scope extends to schools when they enter into arrangements for the manufacture and/or retail supply of school uniforms.
4. In New Zealand, most pupils in secondary schools, and some in primary and intermediate schools, are required to wear school uniforms. Each school's board of trustees decides whether pupils must wear uniforms and, if so, the design and the method of supply. Buying school uniforms often represents a significant cost for parents.
5. The Commission found that, while exclusive arrangements can provide benefits for schools, they also reduce parental choice and might result in higher prices. There is also commonly a lack of transparency in many supply arrangements.

1. These guidelines concern only the Commerce Act 1986 implications on arrangements for the supply of school uniforms. Boards of trustees and other readers should be aware that they may have separate obligations under Government policy, Treasury rules and the like as to schools' contracting and tendering processes.

PURPOSE OF THE GUIDELINES

6. These guidelines are designed to provide guidance to schools, both to minimise the risk that their arrangements with suppliers may breach the Act and to bring overall benefit for schools and parents.
7. The guidelines provide information and suggestions for school boards but are not intended as formal legal advice. Each school's situation is different. If schools are in doubt as to whether their conduct risks breaching the Act, independent legal advice is recommended.

THE SUPPLY OF SCHOOL UNIFORMS

8. Schools have a variety of arrangements for the supply of school uniforms. These include:
 - an exclusive manufacturer of the school's uniform who is the sole supplier to a school retail shop or an appointed retailer (often such arrangements provide that the school will obtain some benefits from the supplier in exchange for exclusivity);
 - an exclusive manufacturer who supplies retailers;
 - an exclusive or single retailer (such as a school shop) to sell the school uniform; and
 - multiple manufacturers and retailers to supply (ie. no exclusive arrangements).

WHY IS THE COMMISSION CONCERNED?

9. School uniforms are usually distinctive to each school. Consequently, any exclusive supply arrangement entered into by a school, including where the school sells uniforms exclusively through a school shop, will mean that parents have no choice but to purchase the uniform from that source, with no other option to turn to if prices were to be set at a high level. Such arrangements sometimes mean that parents are paying higher prices than they would pay in a competitive environment.

10. On the other hand, the Commission acknowledges that exclusive arrangements with uniform suppliers can bring benefits to a school. In exchange for exclusive rights, suppliers may provide rebates or gifts that can be used to support school activities. Another advantage is that having a single manufacturer ensures consistent quality, fabric, colour and design of the uniforms.
11. Exclusive arrangements can also be an efficient means of minimising the costs of making the uniform by providing certainty to a manufacturer that it will sell a sufficient number of uniforms to make production worthwhile. These efficiencies may result in lower costs of production and also have the potential to result in lower prices to consumers, provided schools maintain sufficient control over price through the contractual terms.
12. Therefore, when awarding any exclusive contracts, schools should take into account both the benefit to the school and the price of the uniform. That is, the school should ensure that the benefits from having a single supplier are passed on to both the school and the parents. Set out below are some steps that the Commission suggests schools consider when making arrangements for the supply of school uniforms.

SUGGESTIONS

13. Schools' decisions on uniform supply will affect parents as the ultimate purchasers of uniforms for their children. As boards of trustees include elected parents, the board can be an important and effective channel for parents to convey their views on how the arrangements negotiated by the school affect the availability, quality and price of school uniforms. School boards can exert a strong influence and should use this influence to promote competition to the benefit of parents as well as the school.
14. School boards should consider the needs of parents, who might prefer the opportunity to buy more affordable uniforms, and ensure that the benefits to the school from exclusive supply arrangements are not at the expense of higher prices for parents.
15. It is recommended that school boards use their bargaining power with manufacturers or suppliers to negotiate competitive deals, by considering:
- approaching a number of potential suppliers to secure the most competitive prices;
 - conducting competitive tenders on a regular basis in the case of exclusive arrangements;
 - appointing multiple suppliers if the demand is likely to be sufficient to sustain this; and
 - choosing supplier/s on the basis of objective criteria such as the lowest price for the appropriate quality.
16. The benefits to be gained through competition should be compared to and carefully balanced against any benefits that may be gained by entering into an exclusive contract. In evaluating the benefits of an exclusive contract, consider:
- the nature and value of any financial benefits such as rebates or sponsorship that the school is to receive from the chosen supplier/s and the school's plans for using these benefits;
 - the extent to which the benefits may result in higher prices of their school uniforms; and
 - the duration of the arrangement that appears most likely to be beneficial for the school, while recognising the value that competition can bring in the future.
17. When suppliers are being selected for an exclusive arrangement, school boards should ensure that the selection process is transparent, and that parents are fully informed of:
- the reasons for entering into an exclusive arrangement;
 - the process followed for selecting the manufacturer and/or the retailer/s;
 - the reasons for choosing the successful supplier and the terms and conditions of the arrangements (including the duration of the agreement);
 - the steps taken by the school board to ensure that the supplier being awarded the exclusive arrangement is not able to charge unreasonable prices; and
 - the nature and value of any financial benefits that the school is to receive from the chosen supplier/s and the school's plans for using these benefits.
18. Schools or suppliers who are in doubt about their legal risk should obtain legal advice.