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Monday, 25 July 2022

Ms Connie Wu
Assistant Director, Mergers Exemptions and Digital
Australian Competition & Consumer Commission
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Dear Ms Wu

**APPLICATION FOR AUTHORISATION FOR PROPOSED CONDUCT:
RECYCLE MY MATTRESS PRODUCT STEWARDSHIP SCHEME**

I refer to your email of 15 July 2022 seeking further information regarding the ABSC's submission in response to the interested party submissions.

Please find below the ABSC's response to your further questions.

1. Amendment of application for authorisation

The ABSC indicated that it agrees in principle to the SVDP's proposed exemption from the Product Stewardship Fee for manufacturers and charities that are involved in the refurbishment of mattresses for supply to disadvantaged persons, subject to them being approved by the ABSC as meeting industry hygiene/sanitisation requirements.

Does the ABSC intend to amend the application for authorisation to make clear that the proposed conduct for which authorisation is sought will not apply to manufacturers and charities in those circumstances?

If the ABSC intends to amend the application, could you please provide a letter to that effect, for publication on the ACCC's public register. We are open to how this might be done, for instance, provide a letter that sets out additional information about the exemption to be inserted in the application as paragraph X; or a letter that clarifies the scope of the proposed conduct and the circumstances in which the exemption would apply

- 1.1 It is not proposed that the application for authorisation be amended, on the basis that the exemption for manufacturers and charities will not be a blanket exemption, but be applied on a case by case basis as explained further in section 2 below.

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2. Proposed processes for exemptions for manufacturers and charities

We also note that the ABSC has indicated that it will:

- *develop the process for exempting manufacturers and charities (as noted above), and*
- *where the (new or refurbished) mattresses are supplied by charities to disadvantaged persons, work with charities to develop a process to ensure that there is transparency in relation to how and on what basis mattresses are being supplied and the exemption being sought.*

To assist the ACCC's consideration of the application, could you please provide some information about the proposed processes that the ABSC envisages will be developed? For instance, how these processes (or hygiene requirements for refurbishing mattresses) will be finalised and administered.

- 2.1 As foreshadowed in the ABSC submission dated 28 June 2022, it is proposed that the process for a Product Stewardship Fee exemption for manufacturers and charities be managed during the participant application process (noting the Scheme is a voluntary Scheme).
- 2.2 In circumstances where a charity is seeking an exemption on the basis that it is providing the new and refurbished mattresses to disadvantaged persons, the proposed process is as follows:
- (a) The Charity applies to be a Participant.
 - (b) In the application process, the Charity will:
 - (i) be able to elect if it is applying for an exemption from paying the Product Stewardship Fee, and on what basis.
 - (ii) in relation to refurbished mattresses, nominate a refurbishing partner, which must also be a Participant or applying to be a Participant of the Scheme.
 - (c) In assessing the application, the ABSC will review the processes and transparency of both the refurbishing operation and the process followed by the Charity in providing mattresses to disadvantaged persons – including but not limited to:
 - (i) what elements of a mattress are refurbished;
 - (ii) any sanitisation which is applied;
 - (iii) the source of the mattresses being refurbished;
 - (iv) the intended recipient of the refurbished or new mattresses, including the details of any process to select who is eligible to receive a mattress from the Charity; and
 - (v) the information provided to the recipient about the refurbishment process.

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- (d) ABSC grants (or denies) approval of the Charity to Participate, and if it deems that the Charity has met the eligible criteria, that the charity is exempt from applying the Product Stewardship Fee to mattresses being supplied to disadvantaged persons.
 - (e) The ABSC acknowledges that there may be circumstances where a Product Stewardship Fee has already been paid by a supplier in relation to a mattress which could later be exempt from the Fee due to being sold by a Charity. In these circumstances, the relevant Participants would have an avenue for applying for a rebate of the Fee if already paid from the Charity to the supplier, or the Supplier could seek an exemption from paying the Fee in relation to that particular mattress).
- 2.3 If exemption is sought on the basis that mattresses are being gifted, rather than sold at a discounted price, to disadvantaged persons, in addition to the above application process, the following would apply:
- (a) The ABSC would require the Charity to submit a (monthly or quarterly) report:
 - (i) from the refurbishing partner on the number of refurbished units, which would need to correlate with the partnering charity's records of donation; and
 - (ii) recording the number of new mattresses provided to disadvantaged persons qualifying for the exemption.
 - (b) No Product Stewardship Fee would be collected in relation to the qualifying mattresses, or if retrospective, would be refunded.
 - (c) These reports would be auditable as with any Participating party.
- 2.4 The ABSC notes that approval of a Participant with an exemption from the Product Stewardship Fee is not accreditation. The ABSC currently has a draft accreditation process which is being refined and will need to be expanded to include accreditation for the refurbishing contemplated above. Finalisation of this accreditation process will not be available until accreditation standards can be developed in consultation with industry.
- 2.5 In that regard, the ABSC is currently speaking with one of the refurbishing suppliers of SVDP in relation to becoming an approved refurbisher. That party has offered to assist the ABSC with developing a set of international guidelines for refurbishing used mattresses. It is the ABSC's intention with its global counterparts to develop a more robust set of standards over time. However, the ABSC will not have the resources (human or financial) to do this immediately and until after establishment of the Scheme in Australia.

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3. **Administration and reporting: Recycle My Mattress Product Stewardship Scheme**

We note that the success of the Recycle My Mattress product stewardship scheme (and the public benefits that may rise from the scheme over the period of authorisation) is likely dependent on the effective administration of the scheme.

The scheme is not yet operational and some aspects of the scheme will not be determined until the implementation phase. Does the ABSC intend to have any public reporting on the operation and performance of the Recycle My Mattress Product Stewardship Scheme during the period of authorisation (e.g. via the ABSC's annual report, an independent review of the Scheme, or both)?

- 3.1 I confirm the ABSC intends to have public reporting on the operation and performance of the Scheme during the period of authorisation.
- 3.2 The ABSC intends to apply for Voluntary Accreditation under the *Product Stewardship Act*, which will have a reporting requirement. It is anticipated that within the requirements of the Accreditation certain reporting and review criteria would be a mandatory requirement.
- 3.3 As a Scheme, the ABSC would be expected to keep participants and stakeholders appraised of progress through an approved review and reporting mechanism as is good corporate practice.
- 3.4 It is also intended that after an initial period of implementation and authorisation a review of the Scheme take place.

4. **Potential public detriment if the Scheme is not authorised**

We note that paragraph 10.6 of the application letter mentions potential public detriment that could arise if the proposed conduct is not authorised. To assist with our assessment (comparing the likely future with and without the proposed conduct), please could you clarify what the likely counterfactual is – as in what would be likely to occur in the absence of the proposed conduct? We note the application letter indicates that before the current scheme, there was a voluntary product stewardship scheme established in 2016. Without the proposed conduct, would the bedding industry revert to that previous scheme or develop some other scheme, and if so, would that likely be a national scheme?

- 4.1 The voluntary “scheme” established in 2016 was the precursor to the scheme now before the ACCC. It was established to bring industry to the table and offered Members a small incentive of a “members’ discount” on recycling with Soft Landing. This discount is no longer sustainable and will cease following establishment of the Scheme and additional recyclers accredited. Once the revised scheme is launched, parties which are currently active members of the voluntary scheme (manufacturers/importers/retailers) will become Participants in the Scheme.
- 4.2 In the absence of the proposed conduct, there will be no nationally coordinated entity collaborating or facilitating for the expansion of mattress recycling solutions. The view of the ABSC is that this would leave the industry, and the wider community, with no avenue to seek responsible disposal of EOL mattresses or their materials. This would continue to put pressure on local government and council landfill resources, escalating disposal costs and subsequently driving unsavoury disposal practices such as illegal dumping. An

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industry supported Product Stewardship Scheme, as proposed, is essential to highlight the issues through a targeted and co-ordinated education and awareness program, facilitating collaboratively across the diverse, national landscape of stakeholders and communities with the intention of establishing a responsible environmental network to deal with this serious and growing issue.

- 4.3 In the absence of the proposed conduct, a small number of retailers would likely continue to support recycling of their customers' old mattresses, but it is anticipated that many would not. This fragmented and self-serving practice is not in the greater interests of the environment and is ineffectual to making any measurable impact on the problem. The ABSC is aware that some retailers may consider their own recycling programs in relation to only the mattresses they sell. However, such programs do not contribute to finding solutions or create markets for the materials in their products and does not encourage recycler network growth nor does it contribute to the geographic growth of solutions and options for citizens in general.
- 4.4 As set out in section 10.6 of the Application the continuing trend of changes in materials, often to those with no recycling market (for example, growth in visco-elastic/memory foam mattresses), will likely lead to more waste going into landfill. This reduces revenue for recyclers, and therefore the incentive to expand their geographic footprint or for new entrants in un-serviced areas to enter the recycling market. A sprung mattress averages 27-30kg, while a visco-elastic (memory foam) weights around 50kg and is bulkier. This puts additional pressure on landfills and is a more difficult product for consumers to physically move out of the home.
- 4.5 The ABSC, through its knowledge of the previous limited scheme and any potential programs put in place by retailers (as referred to in 4.3 above), does not believe that either alternative would provide a national solution. An authorised product stewardship scheme on the proposed terms administered by a governing body provides the resources and funding to provide a national scheme that engages the stakeholders throughout the supply chain.

If you require nay further information, please do not hesitate to contact me.

Sincerely

EMILY SHOEMARK

