

4 April 2018

Our Ref: FCL BJH TYR280-131069

Ms Kaitlin Hanrahan
Senior Analyst
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Dear Ms Hanrahan

Authorisation AA1000409 submitted by Tyre Stewardship Australia (TSA) Application for Interim Authorisation

We refer to the application for authorisation, no. AA1000409 (**Application**) submitted by Tyre Stewardship Australia Limited (**TSA**) on 5 December 2017 and our telephone conversation with Ms Jaime Martin, Mr Tom Lyle and you on 29 March 2018.

We note that the current authorisation in respect of the Tyre Stewardship Scheme (**Scheme**), numbers A91336-A91337 (**Current Authorisation**) is due to expire on 3 May 2018. We have also been informed that the ACCC is likely to issue its draft determination in respect of the Application at the end of April 2018.

Given that the ACCC is not required to issue a final determination in respect of the Application until 5 June 2018, TSA may be at risk of exposure under the *Competition and Consumer Act 2010* (Cth) (**Act**) if the Current Authorisation lapses prior to the ACCC issuing its final. In these circumstances, TSA seeks to amend its Application to include a request for interim authorisation of the Scheme, such interim authorisation to be on the same terms as the Current Authorisation, outlined in the ACCC's determination dated 11 April 2013 (**Determination**). TSA requests that interim authorisation is granted **on or before 3 May 2018**.

We consider the following matters are relevant to the ACCC's decision in respect of whether to grant interim authorisation:

- 1 The purpose of seeking interim authorisation is primarily to ensure authorisation of the period associated with the transition of the Scheme from the Current Authorisation, to the form of the Scheme reflected in the Application (should final authorisation be granted). To this end, interim authorisation will provide TSA with the level of certainty necessary to facilitate the continued operation of the Scheme during this transition period.
- 2 Practically speaking, granting interim authorisation would merely extend the force of the Current Authorisation by a period of two months. This extension is immaterial in circumstances where the Current Authorisation was granted for a period of five years.
- 3 The Determination speaks for itself in respect of the relevant public benefits and anti-competitive detriments of the relevant conduct sanctioned by the Scheme.

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- 4 Given that interim authorisation is sought on the basis of the Current Authorisation, granting interim authorisation will merely preserve the status-quo of the relevant markets which relate to the Scheme until a final determination in respect of the Application is made. Accordingly the interim authorisation will preserve, rather than alter, the current competitive dynamics of these relevant markets.
 - 5 The ACCC highlighted in the Determination that the Scheme has the effect of restricting supply between member and non-member business. Accordingly, failure to grant interim authorisation could cause harm to TSA and the Scheme by reason of possible exposure to liability under the Act.
 - 6 Similarly, if interim authorisation is not granted TSA is required to mitigate this risk by ceasing operation of the Scheme; this could cause possible harm to the participants within the Scheme who have made financial and other commitments in order to comply with the provisions of the Scheme Guidelines. This harm may not be capable of remedy, and may therefore be an irreparable harm, even if the Application is ultimately approved.

Please contact Francesca Lai or Ben Hamilton if you have any queries.

Yours faithfully



Hall & Wilcox