



**Myer Pty Ltd (Myer) –  
Application for revocation of authorisation A91384 and the  
substitution of authorisation AA1000436  
Interim authorisation decision  
13 March 2019**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisation A91384 (which expires on 14 March 2019) and grant interim authorisation in respect of the application for authorisation AA1000436 in substitution for the authorisation suspended.
2. The application was lodged by Myer Pty Ltd (**Myer**) on 12 February 2019. Interim authorisation was sought due to the imminent expiry of the current authorisation (A91384).
3. The ACCC has decided to grant interim authorisation to enable Myer to give effect to conduct identical to that authorised under authorisation A91384, as granted on 20 February 2014. The interim authorisation is granted for Myer to continue to enable businesses operating within its stores to participate in a variety of promotions while the ACCC considers the substantive application for re-authorisation.
4. The conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
5. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**The application for authorisation**

6. Myer operates 61 stores in Australia and describes itself as a retailer, including online retailer, for a broad range of merchandise including women's, men's and children's clothing, footwear and accessories; cosmetics and fragrance; homewares; electrical; furniture and bedding; toys; books and stationery; food and confectionery; and travel goods. Myer also provides services including hair and beauty salons, restaurants and alteration services.
7. On 12 February 2019, Myer applied for re-authorisation for 15 years to enable it to invite businesses operating within Myer stores to participate in promotions including (without limitation):
  - (a) an agreed percentage or dollar amount discount on all products sold in Myer stores or online;
  - (b) an agreed percentage or dollar amount discount on a category of products or services which include some or all the products or services offered by businesses operating within Myer stores;
  - (c) gift with purchase, discounts and/or discount voucher with purchase promotions;
  - (d) promotions incentivising customers to multi-buy (ie buy two or more and receive 25%off);

- (e) bonus MYER one points upon the purchase of products or services which include some or all of the products or services offered by businesses operating within Myer stores;
- (f) Myer credit card promotions which relate to some or all of the products or services offered by businesses operating within Myer stores;
- (g) interest free purchase offers;
- (h) CBA points or promotions which relate to some or all of the products or services offered by businesses operating within Myer stores;
- (i) other agreed bonuses, benefits or offers (for example, half price on second item purchased;
- (j) a Discount Price Matching Policy, where a customer who has received from a competitor retail store or online an offer of a lower price on the same product may receive an offer to match that price; and
- (k) Returns Policy, where a customer who has changed their mind is able to seek a refund on most merchandise in the store.

### **The authorisation process**

8. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

9. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the conduct while the ACCC is considering the substantive application.
10. Myer requested interim authorisation on the basis that:
  - The ACCC is unable to make a final determination on the application for re-authorisation before the current authorisation A91384 expires on 14 March 2019.
  - The current application concerns identical conduct to that previously investigated and authorised by the ACCC in 2003, 2008 and 2014 and no significant changes have occurred that change the net public benefit of the conduct.
  - It would allow the current arrangements between Myer and businesses operating within its stores to continue.
  - The conduct offers businesses operating within Myer an opportunity to promote their products and to provide discounts to customers that they might not otherwise provide.
  - There is no anti-competitive detriment flowing from the conduct.
  - The conduct forms part of an overall program to improve sales of Myer and businesses operating within its stores and competition generally amongst retail competitors.

## **Consultation**

11. The ACCC invited submissions from a range of potentially interested parties, including the industry association, competitors, businesses operating within Myer stores and consumer groups.<sup>1</sup> No submissions were received.
12. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, is available on the ACCC's website [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

## **Reasons for decision**

13. In granting interim authorisation to Myer, the ACCC considers that:
  - The interim authorisation granted will maintain the status quo as the ACCC has authorised identical conduct under authorisation A91384 as granted on 20 February 2014.
  - Because Myer did not lodge its application for re-authorisation until 11 February 2019, the ACCC is unable to reach a final determination before Myer's current authorisation expires on 14 March 2019.
  - The conduct has been authorised three times since 2003 and on each occasion the ACCC concluded that the likely benefit to the public would outweigh any likely public detriment, including from any lessening of competition that would be likely to result.

## **Reconsideration of interim authorisation**

14. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

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<sup>1</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister)