



**Co-Operative Supermarkets Australia Limited – Application for
authorisation AA1000457
Interim authorisation decision
19 December 2019**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of application for authorisation AA1000457, lodged by Co-Operative Supermarkets Australia Limited (**CSA**), on behalf of itself and its members who operate independent supermarkets and convenience stores (the **Applicants**), on 5 November 2019.
2. Interim authorisation is granted to enable the Applicants to collectively bargain with suppliers of goods and services to the Australian grocery industry.
3. Interim authorisation does not extend to the CSA and its members entering into any contracts or understandings with suppliers for the supply of goods or services.¹ Interim authorisation also does not extend to the Applicants imposing and enforcing a proposed ‘active member test’ that would require members to actively trade in goods and services offered through CSA’s system during each rolling two month period.
4. 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

5. The Applicants are CSA, an incorporated co-operative and its members who are the managers of independent retail grocery stores. Currently the CSA has 121 members across five Australian states and territories (there are currently no members in South Australia, Western Australia or the Northern Territory).
6. The Applicants seek authorisation for 5 years to enable them to:
 - Collectively bargain with suppliers of all kinds in the Australian grocery industry supply chain in relation to the supply of goods or services that are either consumed by CSA members or offered for sale through the members business. This includes sharing of information by CSA members about price and of terms and conditions of supply under their existing arrangements with suppliers.
 - Impose and enforce the ‘active member test’ described above.(the **Proposed Conduct**).

¹ Interim authorisation was not sought for the CSA and its members to enter into any contracts with suppliers.

The authorisation process

7. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (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

8. 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 Proposed Conduct while the ACCC is considering the substantive application.
9. The Applicants requested interim authorisation on the basis that:
 - in their opinion, the independent grocery sector is in decline and the sooner the Proposed Conduct can commence the better position the Applicants will be to address this decline
 - the lead time involved in negotiating contracts with suppliers is several months, and
 - no contracts or agreements will be entered into with suppliers, unless and until final authorisation is granted.

Consultation

10. The ACCC invited submissions from a range of potentially interested parties including suppliers, industry associations and government bodies.²
11. The ACCC received one submission, from the Australian Small Business and Family Enterprise Ombudsman (the Ombudsman). The Ombudsman supports the application for authorisation but did not comment directly on the request for interim authorisation.
12. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's [Public Register](#).

Reasons for decision

13. In granting interim authorisation, the ACCC considers that it is unlikely that interim authorisation will materially alter the competitive dynamics in any market. Interim information is granted to allow information sharing between the Applicants and for the Applicants to commence collective bargaining with suppliers. However, interim authorisation does not extend to the Applicants entering into any contracts or understandings with suppliers. Therefore, if the ACCC does not ultimately grant authorisation the markets are able to return to substantially their current state.
14. The ACCC also considers that it is unlikely that any interested party would be harmed if interim authorisation is granted.
15. Further, the ACCC's preliminary view is that the Proposed Conduct is likely to result in a net public benefit.

² A list of the parties consulted and the public submissions received is available from the ACCC's public register at <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register>.

16. The ACCC also accepts that due to the time required to negotiate contracts with suppliers, along with the challenges the Applicants consider that the independent grocery sector is facing, there is some urgency regarding the request for interim authorisation.
17. The ACCC notes that the Applicants have not yet determined how the proposed active member test will operate. In this respect, the ACCC considers that the active member test could generate a public detriment if it results in some CSA members purchasing goods or services through the group that they would have otherwise had a preference for sourcing elsewhere. Members may be required to forgo the opportunity for a better deal outside the group in relation to a particular good or service in order to enjoy the benefits of participation in the group more generally (better deals that the group may be able to deliver in relation to other goods and services).
18. This could result in some members paying higher wholesale prices for some goods and services which may also be reflected in higher retail prices. It could also inhibit some member's ability to compete to supply goods and services to consumers by inhibiting their ability to offer a differentiated product or service offering. Further, it could reduce opportunities for suppliers who do not have an agreement with the group to compete to supply goods and service to group members.
19. Therefore the ACCC has not granted interim authorisation for the Applicants to impose and enforce the active member test. The ACCC will consider the public benefits and public detriments likely to result from the imposition of the active member test further before making a draft decision about the substantive application for authorisation.

Reconsideration of interim authorisation

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