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Our ref: AA1000501  
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6 May 2020

Dear Sir/Madam

### **Australian Retailers Association – AA1000501 – interested party consultation**

On 17 April 2020, the Australian Competition and Consumer Commission (the **ACCC**) received an application for authorisation from the Australian Retailers Association on behalf of itself and its current and future members in Australia (**the Applicants**).

This letter invites your views on two main issues:

1. Firstly, if you have been directly impacted by the conduct under the interim authorisation granted by the ACCC on 22 April 2020, what is your experience to date.
2. Secondly, do you have any comments on the likely public benefits and detriments from the proposed conduct, whether the ACCC should authorise the conduct for a further 12 months, and whether any conditions should be placed on the authorisation.

We are interested in hearing from you at any time during the ACCC's assessment process in relation to point 1. We request submissions in relation to point 2 by **Wednesday 3 June 2020**.

You are welcome to pass this letter on to others who may wish to make submissions.

### **The application for authorisation**

Broadly, the Applicants sought interim authorisation, and now seek final authorisation for a period of 12 months from the date of the ACCC's final determination, to discuss, exchange information and collectively negotiate with landlords regarding the support to be provided to retail tenants who are adversely impacted by COVID-19, including in relation to the appropriate information to be exchanged with landlords for that purpose (**the Proposed Conduct**).

The Proposed Conduct does not extend to individual tenants discussing or exchanging the actual amount of rent payable under their existing or proposed leasing arrangements, or the amount of any rent incentives previously granted by the relevant landlord.

Participation in the Proposed Conduct is not compulsory and individual ARA members may elect not to participate, or to opt out, of any proposed collaboration. Authorisation also does not compel landlords to negotiate with groups of retail tenants. Landlords may decide to deal with tenants on an individual basis.

A full copy of the application for authorisation and the ACCC's Statement of Reasons in granting the interim authorisation is available on the ACCC's [authorisations public register](#).

## The Federal Mandatory Code of Conduct

On 7 April, the federal government announced the “SME Commercial Leasing Principles During COVID-19” code of conduct (the **Code**). State and Territory governments have since begun implementing this code.

### Application from Scentre Group and the Shopping Centre Council of Australia

The ACCC has also granted interim authorisation for Scentre Group, the Shopping Centre Council of Australia and its members (**SCCA**) to discuss and coordinate for the purpose of providing industry-wide rental relief to support their small to medium enterprise tenants adversely financially impacted by the outbreak of COVID-19. More information on Scentre Group and the SCCA’s application and the interim authorisation is available on the ACCC’s [public register](#).

### Submissions

#### *Submissions on the cooperation permitted by the interim authorisation*

Submissions should focus on the effects of the cooperation by ARA members permitted by the authorisation. Unilateral conduct by individual retail tenants is not the subject of the authorisation.

In particular, we seek your views on the following issues:

1. If you are a member of the ARA, how has the interim authorisation assisted you in obtaining rent relief related to the COVID-19 pandemic?
2. If you are a landlord, how has the interim authorisation impacted your negotiations with tenants in offering rent relief related to the COVID-19 pandemic?
3. What are the negative effects you have experienced from the cooperation permitted by the interim authorisation?
4. How could the cooperation permitted by the interim authorisation reduce competition beyond the end of the COVID-19 pandemic?
5. Should any changes be made to the interim authorisation?

We invite you to provide copies of documentary evidence of any of the above, if available.

The ACCC invites submissions on the cooperation permitted by the interim authorisation at any stage over the coming months.

#### *Submissions for purposes of the draft determination*

The ACCC will progress its assessment of the application for authorisation in a timely manner. The ACCC will issue a draft determination setting out its preliminary views about the public benefits, effects on competition, and public detriments likely to result from the application for authorisation. Our focus will be on the potential for the authorisation to reduce competition beyond the end of the COVID-19 pandemic.

In order for your submissions to be taken into account in the draft determination please provide it at any time up until **Wednesday 3 June 2020**.

We recognise that the COVID-19 situation may be causing disruptions to your normal operations. You may wish to contact us by phone to discuss your views before this deadline.

## How to make a submission

Please email your submission to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au), with the subject 'AA1000501 – Australian Retailers Association – submission'. Please contact Will Sommers or Theo Kelly on the numbers below if you wish to provide comments by phone.

Your submission **will** be placed on the ACCC's [authorisations public register](#) unless we have approved a request (with reasons) for us to exclude part or all of the submission from the public register. (see [Guidelines for Excluding Information from the Public Register](#) for more information on how to make a request and how we assess requests).

This letter has been placed on the ACCC's public register. If you have any questions or wish to discuss any aspect of this matter, please do not hesitate to contact Will Sommers on (03) 9910 9444 or Theo Kelly on (02) 6243 1179.

Yours sincerely,

Kai Fu  
Director  
Adjudication Branch