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Our ref: AA1000489
Contact officer: Will Sommers/Theo Kelly
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20 April 2020

Dear Sir/Madam

Scentre Group and Shopping Centre Council of Australia Limited on behalf of itself and its members in Australia – AA1000489 – interested party consultation

On 2 April 2020, the Australian Competition and Consumer Commission (the **ACCC**) received an application for authorisation from Scentre Group and Shopping Centre Council of Australia Limited on behalf of itself and its 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 3 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 **Friday 15 May 2020**.

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

The application for authorisation

Broadly, the Applicants seek interim authorisation, as well as final authorisation for a period of 12 months from the date of the ACCC's final determination, to discuss and coordinate for the purpose of providing industry-wide rental relief to support their small to medium enterprise (**SME**) tenants adversely financially impacted by the outbreak of COVID-19 (**the proposed conduct**).

The ACCC granted interim authorisation on 3 April 2020 to allow the Applicants to engage in the proposed conduct. The interim authorisation requires the Applicants to notify the ACCC if they agree to implement a rent relief measure. The ACCC will maintain a list of relief measures agreed to between the Applicants on the public register.

Further details about the application for authorisation and the interim authorisation are at **Attachment A**. Members of Shopping Centre Council of Australia are listed at **Attachment B**.

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 announcing details of their implementation of this code.

The Applicants advise that as the Code addresses broadly similar issues as the conduct the subject of the application for authorisation and for interim authorisation, its announcement has changed the scope of discussions and packages that the Applicants are likely to agree (if any) under the interim authorisation. The Applicants are waiting for more details on how the code will be implemented before it can identify any gaps that may need to be filled by industry. Accordingly, it does not expect to agree any relief packages before 1 May.

Submissions

Submissions on the cooperation permitted by the interim authorisation

Submissions should focus on the effects of the cooperation permitted by the authorisation. Unilateral conduct by individual landlords is not the subject of the authorisation.

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

1. Is the interim authorisation necessary given the subsequent announcement of the federal mandatory Code?
2. Have the Applicants' dealings with you changed as a result of the interim authorisation?
3. Have you identified any negative effects from cooperation permitted by the interim authorisation?
4. Is the cooperation permitted by the interim authorisation likely to 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 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.

If you wish to make submissions before the ACCC issues a draft determination (as distinct from making a submission on the conduct authorised under the interim authorisation), we will accept submissions at any time up until **Friday 15 May 2020**.

We recognise that the COVID-19 situation may be causing disruptions to your normal operations. For this reason, we are taking a flexible approach to receiving feedback on the conduct. 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, with the subject 'AA1000489 – Scentre Group and Shopping Council of Australia – 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](#) on the internet unless you have made 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

ATTACHMENT A

The application for authorisation

The applicants are seeking authorisation under the *Competition and Consumer Act 2010* (Cth). Authorisation would give the applicants legal protection to: discuss, share information, agree, and in due course give effect to arrangements and understandings between Shopping Centre Council of Australia (**SCCA**) members that have the purpose of providing rental relief to SME tenants, including through the deferment or amelioration of the payment of rents and other payments which tenants might otherwise be obliged to pay to SCCA members.

The ACCC has granted interim authorisation to the Applicants, conditionally on the Applicants notifying the ACCC of any proposed rent relief measures not less than 24 hours before the measure is implemented.

The applicants are seeking authorisation for a period of 12 months after the ACCC's final decision. A full copy of the application for authorisation is available on the ACCC's [authorisations public register](#).

Interim authorisation

On 3 April 2020, the ACCC granted interim authorisation to the Applicants.

The Statement of Reasons is available on the [authorisations public register](#).

ATTACHMENT B – Shopping Council of Australia Members

Abacus Property

AXA Investment Managers

AMP Capital

Blackstone

Gateway

Brookfield

Challenger

Charter Hall

Dexus

GPT Group

ISPT

Jen Retail Properties

JLL

Lancini Property & Development

Lend Lease

McConaghy Properties

McConaghy Group

Mirvac

Perron Group

Precision Group

QIC

Savills

SCA Property Group

Scentre Group

Stockland

Vicinity Centres