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15/02/2022

### ***By email***

Dear Sir/Madam

### **Linfox Australia Pty Ltd and Ors – Application for authorisation AA1000603 – Interim authorisation decision and interested party consultation**

The Australian Competition and Consumer Commission (the **ACCC**) has received an application for authorisation from Linfox Australia Pty Ltd and other transport and freight logistics companies, retailers, wholesalers or suppliers (together, the **Participants**) for freight coordination and prioritisation arrangements to facilitate the recovery of the major supply disruptions on the Trans-Australian Railway caused by the floods in South Australia (SA).

The Participants are: ALDI Stores; Coles Group Limited; Metcash Limited; One Rail Pty Ltd; Pacific National Pty Ltd; Toll Global Express Holdings Pty Ltd; and Woolworths Group Limited.

The Participants also requested urgent interim authorisation of the arrangements.

This letter invites you to comment on the freight coordination and prioritisation arrangements and informs you about the ACCC's interim authorisation decision. You are welcome to pass this letter on to others who may wish to make submissions.

### **The application**

On 14 February 2021, the Participants lodged the application for authorisation. Authorisation is also sought to extend to any other parties that are notified to the ACCC in accordance with certain notification procedures (**Other Participants**).

Authorisation is sought to allow the Participants and Other Participants to collaborate to:

- optimise the use of available freight space on the Trans-Australian railway, including by the use of other freight transport methods such as road, sea and air;
- prioritise supply and transport of the Critical Products into WA and the NT to ensure sufficient supply of those products are available for consumption by the WA and NT communities; and
- prioritise supply and transport of the Critical Exports out of WA and the NT to ensure sufficient supply of those products are available for use by the relevant industries primarily in SA but also the Eastern States of Australia (especially where there are shortages of the Critical Exports),

(referred to as the **Proposed Conduct**).

**Critical Products** include essential food, groceries, and hygiene products; essential food stocks for animals; urgent medical supplies; goods to support freight services (such as spare parts for heavy vehicles); supplies for the operation of critical infrastructure; dangerous goods shipping containers; and any other goods identified as a priority by Governments.

**Critical Exports** are goods that are mined or manufactured in WA or NT and transported from WA and NT to the Eastern States. They include: water and wastewater treatment supplies (such as aluminium sulphate); empty shipping containers; food stocks for animals; goods to support freight services; supplies for the operation of critical infrastructure; and any other goods identified as a priority by Governments.

The Proposed Conduct does not involve any agreements on the price of Critical Products, Critical Exports, transport services and/or logistics services.

Further detail in relation to the Proposed Conduct and Critical Goods and Exports is contained in the full copy of the application for authorisation, which is available on the ACCC's [Authorisations Public Register](#).

Authorisation is requested for six months, until 15 August 2022.

### **Interim authorisation**

The ACCC has granted urgent interim authorisation, with conditions, to enable the Participants to commence the Proposed Conduct immediately.

Interim authorisation is also granted for any other relevant party who may wish to participate in the arrangements in the future and notifies the ACCC in writing of their intention to do so.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Competition and Consumer Act 2010* while the ACCC considers and evaluates the merits of the application.

A copy of the ACCC interim authorisation decision is **enclosed**, and is also available on the [ACCC's Authorisations Public Register](#).

As detailed at paragraphs 17 and 28 of the ACCC's interim authorisation decision, industry coordination can only occur through Approved Meetings with the oversight of the Federal Government.

Interim authorisation commences immediately and remains in place until it is revoked, the date the ACCC's final determination comes into effect or the date on which the application for authorisation is withdrawn.

### **Participating in the Proposed Conduct**

It is open to other relevant parties to participate in the Proposed Conduct under the interim authorisation.

In order to become an Other Participant and therefore receive the protection of the Interim Authorisation, parties must notify the ACCC in writing by sending an email to [exemptions@acc.gov.au](mailto:exemptions@acc.gov.au) with the subject '*Authorisation AA1000603 – notification to engage in Proposed Conduct*', identifying the new entity(ies) that intend to be covered by this interim authorisation, the reasons that the entities wish to engage in the conduct, their contact details and details of the business.

Once an entity notifies the ACCC, that entity will have the protection of the interim authorisation to engage in the Proposed Conduct.

### **Making a submission**

The ACCC invites you to make a submission on the substantive application for authorisation. In making your submission, please provide information, evidence and views about the likely public benefits, effects on competition and any other public detriment that you consider will result from the Proposed Conduct.

Due to the urgency surrounding this matter, as well as the compelling nature of the public benefits likely to result from the Proposed Conduct, the ACCC did not conduct a public consultation process prior to granting interim authorisation. If you have significant concerns in relation to the Proposed Conduct, please contact the ACCC immediately.

If you intend to provide a submission, please do so by **15 March 2022**. Submissions after the due date (or after any extension granted) may not be taken into account.

Please email your submission to [exemptions@acc.gov.au](mailto:exemptions@acc.gov.au), with the subject 'AA1000603 – Linfox and Ors – submission'. Alternatively, if you would like to provide comments orally, please contact Tom Lyle or Jaime Martin via the details at the end of this letter.

Your submission **will** be placed on the ACCC's [Authorisations Public Register](#) on our website 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).

## Timetable

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information, and an up to date version (including any changes) will be posted on the public register.

Indicative date	Stage in assessment process
<b>14 February 2022</b>	Lodgement of application.
<b>15 February 2022</b>	ACCC decision regarding interim authorisation.
<b>15 March 2022</b>	Closing date for submissions on substantive application.
<b>March 2022</b>	Applicant responds to issues raised in the public consultation process.
<b>April</b>	Draft determination.
<b>April/May 2022</b>	Public consultation on draft determination including any conference if called.
<b>June 2022</b>	Final determination.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Tom Lyle on (03) 9290 1879 or Jaime Martin on (03) 9290 1477, or via email [exemptions@acc.gov.au](mailto:exemptions@acc.gov.au).

Yours sincerely



David Hatfield  
Director  
Competition Exemptions