



Senior Associate  
Direct line  
Email  
Our ref  
Your ref

Emily Shoemark  
[REDACTED]  
[REDACTED]  
20102 ESH

Friday, 22 May 2020

Mr Robert Janisson  
Australian Competition & Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601  
adjudication@acc.gov.au

Dear Mr Janisson

**AA1000476**  
**BSC RESPONSE TO ISSUES RAISED IN ACCC CONSULTATION PROCESS**

I refer to your letter of 15 May 2020 seeking clarification on the following matters relating to aspects of the BSC Battery Stewardship Scheme.

Please find below the Council's response to your questions

**1. Business to Business Contracting**

*The ACCC is seeking clarification regarding the exceptions to the obligation for members to only contract with other members.*

**1.1 Under which circumstances will accredited members of the scheme be permitted to contract with members outside the scheme, excepting current contractual arrangements referred to in 3.2(ii)?**

The proposed stewardship scheme focuses on behavioural change for the whole of the battery supply chain to improve the rate of battery recycling, and therefore represents a challenge to the current market arrangements. The battery market is dominated by a few major manufacturers/importers and large retailers which generally use contractual arrangements for supply of good and services which could be changed over a period of a year or two.

The reference to permitting arrangements outside the scheme is intended to accommodate the time needed to identify, engage and educate the large number of small importers, retailers and collectors and the bring them into the scheme in an orderly fashion without causing unnecessary disruption to existing operations. Many of these existing arrangements are based on the principles that underpin the stewardship scheme even though they may not operate within the framework of formal contracts. BSC is not seeking to exclude such companies by being too rigid in the formative stage of the accreditation process and therefore recognises a

Friday, 22 May 2020

need to maintain flexibility. There is also no intention to require members to terminate any existing fixed term contractual arrangements or to incur any financial penalty due to changed contractual arrangements, and so exceptions may be required to facilitate that transition process.

Further clarification will be set out in the Guidelines for Accreditation which have been identified as one of the matters to be finalised during the first six months of implementation of the scheme.

With the strong sentiment expressed by industry governments and consumers for increasing battery recycling, we anticipate that within two years most supply chain organisations would be accredited.

- 1.2 *In the event that an accredited member is unable to contract with another accredited member due to practical difficulties (e.g. lack of accredited member(s) in their region), will there be any exceptions to the restrictive dealing provisions?*

Yes

- 1.3 *If BSC's answer to (2) is yes, what exceptions would there be, and how would these exceptions be determined and implemented?*

Any exceptions would most likely occur in the first two years of the scheme and would be decided by the Board of BSC. It is anticipated that approved exceptions would fall into two categories:

- (a) Exceptions to facilitate transition from existing contractual arrangements to new arrangements in circumstances where a party to an existing contract does not agree to join the scheme or become accredited.
- (b) Exceptions required because, due to the circumstances of a member of scheme, it is not possible or commercially viable for the member to contract with another member for the required transaction.

It is intended exceptions in both categories would be subject to the following conditions to ensure transparency and compliance with scheme objectives:

- (i) Approved exceptions would be published on the BSC website, along with the list of accredited parties to enable the companies in the supply chain to have clear understanding of those companies with which they can contract and remain consistent with their commitments to the scheme.
- (ii) Companies that have been granted an exception would be required to be open to an audit to ensure their claims of consistency with stewardship objectives are being met, particularly if they are in receipt of rebates for their activities.

Friday, 22 May 2020

As indicated in answer (1.1) above the BSC anticipates that for exceptions falling to the first category, any exceptions would decline significantly after the first two years. In the long term, the Council does not expect there to be ongoing exceptions relating to companies and organisations that operate on a regular basis in the market.

Temporary exceptions might continue to apply in some rural/remote areas in relation to the second category of exception where collections may be irregular or infrequent and in urban areas where campaign collections (clean-up days) might result in collected batteries coming into the recycling supply chain on a non-contractual basis.

## 2. Levy visibility to consumers

*The ACCC is seeking clarification as to how BSC intends the levy to be visible to consumers at the point of sale referred to in Section 3.3.2*

- 2.1 *Will the consumer be advised at the point of sale that the fee has been incorporated into the cost of the battery?*
- 2.2 *If so, how will this levy amount be indicated to the consumer? For example, will the fee be included as a line item on a receipt or invoice, will there be in-store messaging, or will iconography or text be included on the battery packaging to indicate that part of the purchase price included the fee?*

The preparation of detailed operational procedures including promotion and marketing is intended to be completed during the first six months of the implementation of the Scheme. Those procedures will set out agreed arrangements for making consumers aware of the levy and its purpose.

The issue of levy visibility was identified as a matter requiring further consultation with retailers and importers. The submission from CESA also highlighted the fact that these consultations are continuing at the present time with its members. The BSC recognises that consumer support is an essential element of successful stewardship, and that consumers have a right to know that the cost of recycling is now to be included in the price of the product.

It is envisaged that joint BSC and retailer promotions at point of sale, website promotion and information, product packaging and other marketing means could be used to inform and educate consumers about the levy, battery safety and the need for recycling and its outcomes. It may be that the operating procedures produced by BSC in the first 6 months of provide more than one option for how members can communicate the levy to consumers.

In both the consultation and scheme design process the BSC has considered whether inclusion of details about the levy on the individual batteries and/or the receipts would be appropriate. This process included looking at a visible fee scheme operating in Canada which has levy information on receipts. However, that scheme was underpinned by alternative legislation to the Australian *Product Stewardship Act* and placed the onus of stewardship on the retailers rather than the whole of the supply chain which underpins the BSC proposal.

Friday, 22 May 2020

It has reached the conclusion that this is a matter for the individual manufacturers and retailers, but noted the following possible issues/disadvantages:

- (a) it may not be cost effective and have limited consumer education value;
- (b) inclusion of levy information on receipts may be problematic in the longer term if other consumer products are included in stewardship schemes and seek a similar outcome.

If you require further detail or clarification about the above matters please do not hesitate to contact me.

Sincerely

EMILY SHOEMARK

