



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

In respect of a notification lodged by

Six/Left Group

in respect of

collective bargaining with financiers over
point-of-sale financing

Date: 21 September 2018

Notification number: CB10000455

Commissioners: Rickard
Keogh
Court
Cifuentes

Summary

The ACCC has decided not to object to the notification lodged by Six/Left Group to enable it to establish and negotiate with financiers on behalf of a collective bargaining group, consisting of small to medium homeware retailers, over point-of-sale finance agreements.

The notification was lodged on 16 July 2018 and the ACCC has decided to allow it to remain in force for a period of 10 years from that date. Accordingly, the notification came into force on 30 July 2018 and will remain in force until 15 July 2028, unless it is withdrawn or revoked.

The notification

1. On 16 July 2018, the Six/Left Group (the **Applicant**) lodged a collective bargaining notification¹ (CB10000455) with the ACCC.

The Notified Conduct

2. The Applicant proposes to establish a collective bargaining group of small to medium homeware (including furniture) retailers. The Applicant proposes to negotiate on behalf of this group with financing suppliers over point-of-sale finance agreements, and also provide associated services to the group (the **Notified Conduct**).
3. The Notified Conduct constitutes collective bargaining under section 93AB of the *Competition and Consumer Act 2010*. The Applicant submits that the collective bargaining group will not engage in collective boycotts (and the notification would not provide legal protection for collective boycotts in any case). Members will be able to choose whether to participate in each of the negotiated arrangements and will also be able to negotiate individually with financing suppliers.
4. The Applicant advises that the largest homeware retailers in Australia will not be eligible to join the collective bargaining group. In particular, the Applicant notes the cap of \$3 million a year² which will limit the size of the members which can participate in the Notified Conduct.
5. The collective bargaining group does not currently include any members. The Applicant has confidentially provided details of a small number of homeware retailers who have expressed an intention to join the group and will form part of the group. The Applicant submits that it expects that the collective bargaining group will grow to around 250 members over the next five years, spread evenly across Australia (leaving over 4000 store groups which are not members, including the largest five retailers).

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

² Under the CCA, a collective bargaining notification can only be lodged where each member of the group reasonably expects to have less than \$3 million a year in total transactions with any target business.

6. The Applicant has applied for a notification period of ten years.³

Background

7. Homeware retailers sell a variety of household items to consumers including furniture, blinds, awnings and mattresses. The Applicant cites a 2015 IBISWorld industry report⁴ which indicates that the furniture portion of the homeware retailing industry is worth \$7.7 billion a year. The industry is highly fragmented with 9,757 storefronts distributed between 4,538 different business groups (single stores, company owned groups, franchise groups or licensed groups).
8. The Applicant submits that homeware retailers offer their products to customers on a variety of terms which, due to the nature of some of the products, may include instances of point-of-sale finance options.
9. Suppliers of point-of-sale financing develop various consumer financing products including products with terms which may include: interest free periods, no interest ever, buy now/pay later and rent-to-buy. Financing suppliers offer these products to retailers in a variety of retail industries. The retailers may then market point-of-sale financing to their customers in a product bundle with the retailers' core products, with the aim of increasing the attractiveness of their retail offering.
10. Once a retailer completes a sale with a customer which includes point-of-sale finance, the financing supplier pays the retailer for the goods minus agreed fees paid by the retailer, and acquires the consumer's debt. Retailers negotiate with the financing suppliers over the terms offered to customers as well as the fee/s the retailers pay.
11. The Applicant submits that small to medium retailers of furniture and other homewares are disadvantaged by their small sales volumes when seeking to acquire point-of-sale consumer financing products to offer to their customers. In practice, they are either unable to gain access to these products or are charged higher prices and receive lower levels of service from financing suppliers. This limits the ability of small to medium homeware retailers to offer products on attractive terms which include financing, and in turn may hurt their overall competitiveness.

Consultation

12. The ACCC invited submissions from a range of interested parties including potential members of the collective bargaining group and potential targets. No submissions were received.

ACCC's Assessment

13. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* Cth (**CCA**).

³ The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

⁴ IBISWorld Industry Report G4211 Furniture Retailing in Australia – August 2015.

14. In doing so, the ACCC has taken into account:

- The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, each participant in the group is likely to continue to individually negotiate and contract for point-of-sale financing.
- The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary areas of competition are:
 - the wholesale supply and acquisition of point-of-sale consumer financing products and ancillary services in Australia
 - the retail supply of homewares including furniture in various local areas.

Public Benefit

15. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:

- Improved efficiency through:
 - sharing transaction costs (such as negotiation and contracting costs) between the collective bargaining group members in negotiating with financing suppliers
 - coordinating management and ancillary services of some aspects of the financing arrangements across the collective bargaining group members, thus creating economies of scale.
- Better input into contracts for small to medium sized homeware retailers relative to individual negotiations. Negotiating as a group may enable smaller retailers to have a greater ability to negotiate with financing suppliers for reduced fees and more favorable financing terms to offer to customers.

Public Detriment

16. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment.

17. It is unlikely to reduce competition between retailers to acquire point-of-sale consumer financing products and ancillary services in Australia. In particular:

- Homeware retailers are only one segment of a large number of retailers which compete to acquire point-of-sale financing products to offer to customers and the collective bargaining group is likely to be a small subset within this segment.
- Participation in the Notified Conduct is voluntary for financing suppliers and homeware retailers. Members of the collective bargaining group will be able to choose whether to participate in each of the negotiated arrangements and will also be able to negotiate individually with financing suppliers.

18. The ACCC also considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition in the retail supply of homewares in various local areas. In particular:

- The Notified Conduct relates to only one aspect of competition between homeware retailers to supply homewares to consumers (the terms on which point-of-sale financing may be available to customers). The legal protection provided by the Notified Conduct will not permit the members of the collective

bargaining group to coordinate on other aspects of their product offering such as the price of goods.

- The highly fragmented nature of the industry, with a large number of homeware retailers, means that the collective bargaining group will represent only a small proportion of the industry.
 - The largest homeware retailers will not be able to join the collective bargaining group. This is reflected in the membership agreement and will be enforced by the Applicant.
19. Further, the Notified Conduct is unlikely to result in harm to consumers via the irresponsible provision of credit, or provision of credit on inappropriate terms. Small retailers already can and do provide finance to customers. This notification is intended to allow them to do so on more competitive terms.
20. If, contrary to the ACCC's expectations, evidence emerged that this notification was leading to consumer harm arising from irresponsible lending practices, it would be open to the ACCC to review and, if appropriate, revoke the protection provided under the notification.

Period for which the Notification will be in force

21. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
22. In this case, as part of the Notified Conduct, the Applicant requested a ten year period on the grounds that a lesser period will place considerable economic strain on the Applicant in relation to application costs, legal costs and time in preparation of the submission. The Applicant also intends to employ several individuals to support the management and facilitation of the Notified Conduct and a longer period will provide greater employment certainty to these individuals.⁵
23. The ACCC considers that it is appropriate for the notification to remain in force until 15 July 2028 for the following reasons:
- the likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period
 - the extended notification period is unlikely to increase the minimal, if any, public detriment which is likely to result from the Notified Conduct
 - there are likely to be administrative cost savings for the Applicant in lengthening the period before re-notification is required.

⁵ The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

Decision

24. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
25. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93 AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
26. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 23, in accordance with s 93AD(5), the ACCC is satisfied that:
 - a three year notification period is not appropriate in all the circumstances, and
 - another period is appropriate in all the circumstances, being the period ending on 15 July 2028.⁶
27. Accordingly, the protection provided by notification CB10000455 commenced on 30 July 2018 and will continue until 15 July 2028, unless the notification is withdrawn or revoked.
28. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

⁶ As required by s 93AD(5)(b), this period will end no later than 10 years after the day that the notification was lodged.