



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Statement of Reasons

in respect of a notification lodged by

PaintRight Ltd

in respect of

proposed collective bargaining conduct

Date: 12 September 2018

Notification number: CB10000456

Commissioners: Sims  
Keogh  
Rickard  
Court

## Summary

The ACCC has decided not to object to the notification lodged by PaintRight Ltd (**PaintRight**) to enable it to continue to collectively negotiate with various suppliers on behalf of 57 independently owned and operated paint retailers across Australia, and future paint retailers that join this group.

PaintRight proposes to collectively bargain price and other terms on behalf of members in relation to the provision of wholesale and retail support services to members by 30 listed suppliers, including suppliers of paint, paint equipment and accessories, wallpaper, ladders, aluminium trestles, banking services, and marketing and web-based services.

This is the fourth notification received from PaintRight for collective bargaining since 2009; the previous three each expired after three years. The PaintRight collective bargaining group represents only around 2 per cent of paint resellers in Australia and collective bargaining is voluntary for both the members of the group and the target suppliers.

The notification was lodged on 10 August 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the notification came into force on 24 August 2018 and will remain in force until 9 August 2028, unless it is withdrawn or revoked.

The ACCC may act to revoke the protection afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the notified conduct will not outweigh the likely detriment to the public from the conduct.

## The notification

1. On 10 August 2018 PaintRight lodged a collective bargaining notification<sup>1</sup> on behalf of 57 independently owned and operated paint retailers across Australia. It also lodged the notification on behalf of future paint retailers that join the PaintRight collective bargaining group.
2. PaintRight is a marketing buying group which is owned by each of the member stores on whose behalf the notification has been lodged. This is the fourth collective bargaining notification received from PaintRight for identical conduct since 2009.<sup>2</sup> Over the years, however, the total number of target suppliers has reduced.
3. PaintRight proposes to continue to collectively bargain price and other terms on behalf of members in relation to the provision of wholesale and retail support services to members by 30 suppliers, primarily including suppliers of paints, paint equipment and accessories, wallpaper, ladders and aluminium trestles. The proposed collective bargaining arrangements also cover one provider of banking

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<sup>1</sup> 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.

<sup>2</sup> See collective bargaining notifications (CB00081-CB00137) in 2009; (CB00227 – CB00279) in 2012; and (CB00289 – CB00322) in 2015.

services and one provider of marketing and web-based services (**the Notified Conduct**). A full list of the target suppliers listed in the notification is provided at [Attachment A](#).

4. More specifically, PaintRight, on behalf of members, proposes to negotiate the maximum price at which members acquire paints and painting accessories from suppliers. PaintRight also proposes to negotiate freight costs and settlement discounts on behalf of members of the group.
5. PaintRight advises that it uses rebates obtained from the proposed collective bargaining conduct to jointly market the group to seek to highlight the benefits to consumers of shopping at paint specialist stores.
6. PaintRight advises that contract trading terms are for 12 months and renewable each year. Members of the collective bargaining group are not compelled to purchase from the suppliers listed in the notification and the target suppliers are not compelled to engage in collective negotiations. The member stores are also free to seek to negotiate further additional individual deals.
7. PaintRight has requested the ACCC to extend the period of immunity afforded by its notification to up to 10 years.<sup>3</sup>

## Consultation

8. The ACCC invited submissions from a wide range of interested parties, including the nominated suppliers. No submissions were received.
9. A copy of PaintRight's notification is available from the [ACCC's public register](#).

## ACCC's assessment

10. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010 (CCA)*.
11. 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 individually negotiate and contract with the relevant suppliers.
  - 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 and retail supply of architectural and decorative paints and related accessories and services, as well as the supply of other specific business inputs, such as banking and marketing services.

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<sup>3</sup> 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.

## **Public benefits**

12. The ACCC considers that the Notified Conduct is likely to result in the following public benefits from improved efficiencies through:
- transaction cost savings (such as negotiation and contracting costs) for the target suppliers and the participating paint stores, compared to a situation where there would be a larger number of separate negotiations
  - providing better input into contracts with target suppliers relative to a situation where there are individual negotiations and
  - coordination of marketing activities by PaintRight for the PaintRight group of specialist paint stores from additional rebates obtained under collective negotiations.
13. Further, by being members of a collective bargaining group, members will have access to deals that they might not otherwise be able to access individually, including better prices and other supply terms. This is likely to help participants to have a more competitive offer and better compete with larger hardware or paint specialist retailers.

## **Public detriment**

14. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between PaintRight retailers for the acquisition of the relevant products and services because:
- the PaintRight retailers represent a small proportion of paint resellers in Australia (around 2 per cent)<sup>4</sup>, such that there is likely to be sufficient alternative channels through which the target suppliers can supply their products/services and conversely, it is unlikely to impact the ability of paint retailers outside of the group to obtain the relevant products and services from the target suppliers, and
  - participation in the Notified Conduct is voluntary for members of the group and for target suppliers. Individual PaintRight retailers are free to negotiate individual supply arrangements, or variations of any collectively negotiated contracts, with the target suppliers or any other suppliers at any time.

## **Period for which the notification will be in force**

15. 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.
16. In this case, as part of the Notified Conduct, PaintRight sought to extend the period of immunity afforded by its notification to the maximum of up to 10 years.

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<sup>4</sup> PaintRight's collective bargaining notification CB1000456, 10 August 2018, p 7.

17. The ACCC considers that it is appropriate for the notification to remain in force until 9 August 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 public detriment which is likely to result from the Notified Conduct and
  - no concerns have been raised with the ACCC during the nine year period that PaintRight has had immunity for identical collective bargaining conduct.

### **Decision**

18. 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.
19. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93AC, 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.
20. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 0, 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 9 August 2028.<sup>5</sup>
21. Accordingly, the protection provided by notification CB10000456 commenced on 24 August 2018 and will continue until 9 August 2028, unless the notification is withdrawn or revoked.
22. 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.

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

**PaintRight Ltd collective bargaining notification (CB1000456) –  
list of target suppliers**

1. Australian Brushware Corporation
2. Bondall
3. C & A Brushware
4. CW Brands (formerly Campbells Wholesale Pty Ltd)
5. Colourtrend
6. Commonwealth Bank of Australia
7. Dulux
8. Express Rollers
9. FMG Industries
10. Haymes Paint
11. HiChem Industries
12. Hills Industries
13. Ladder Solutions
14. Oldfields
15. Orica Woodcare
16. Pace Advertising
17. PPG
18. Recochem
19. Rialtech
20. Rokset Industries P/L
21. Rustoleum
22. Selleys Chemicals P/L
23. Sequence
24. St Gobain Abrasives
25. Tenaru (Sikkens)
26. Uni-Pro P/L
27. Valspar
28. Vision W/C (Aust) P/L
29. Wagner Spraytech
30. Werner Co Australia