



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Statement of Reasons

In respect of a notification lodged by

KIS Transport Australia Pty Ltd

in respect of

collective bargaining with Flip Technologies Pty Ltd

Date: 21 November 2018

Notification number: CB10000458

Commissioners: Keogh  
Rickard  
Court  
Featherston

## Summary

The ACCC does not object to the notification lodged by KIS Transport Australia Pty Ltd to enable it and seven other freight brokers to collectively bargain terms and conditions of a Software as a Service Agreement with Flip Technologies Pty Ltd.

The notification was lodged on 26 October 2018 and it will now remain in force for a period of three years from that date. Accordingly, the notification came into force on 9 November 2018 and will remain in force until 26 October 2021, unless it is withdrawn or revoked.

## The notification

1. On 26 October 2018, KIS Transport Australia Pty Ltd, (the **notifying party**) lodged a collective bargaining notification<sup>1</sup> to enable it and seven other freight brokers (the **collective bargaining group**) to collectively bargain the terms and conditions (excluding price) of a Software as a Service (SaaS) Agreement provided by Flip Technologies Pty Ltd (the **Notified Conduct**). The software enables businesses to arrange transport of their freight by engaging with freight forwarders or freight brokers.
2. The notified conduct does not include a collective boycott.
3. The collective bargaining group is:
  - KIS Transport Australia Pty Ltd
  - Hydra Logistics Solutions Australia Pty Ltd
  - Smarter Freight T/A Freight People
  - EPM Transport & Logistics Pty Ltd
  - National Freight Management Pty Ltd
  - XNQ Logistics Pty Ltd
  - Total Freight Logistic Services Pty Ltd
  - Transfreight Solutions Australia Pty Limited

## Background

4. The domestic freight industry comprises three key sets of participants: businesses wishing to transport freight, freight providers (freight forwarders and freight carriers)<sup>2</sup> and freight brokers.
5. Freight brokers act as intermediaries between businesses wishing to transport goods and freight carriers that transport by air, sea, land and/or rail. Freight brokers

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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> Freight forwarders unload, sort and consolidate freight of one customer with that of other customers and then arrange the transportation of the goods and freight carriers pick up and deliver freight.

also manage other aspects of the customer supply chain such as insurance, freight monitoring and warehousing.

6. Flip Technologies facilitates the provision of an internet based platform to enable freight brokers to offer freight pricing to their customers.
7. The collective bargaining group wishes to negotiate the terms and conditions of the SaaS Agreement for access to the platform.

## Consultation

8. The ACCC invited submissions from a wide range of interested parties.
9. One submission was received, from the target, Flip Technologies Pty Ltd, which submitted that it does not object to negotiating with the collective bargaining group.
10. In its submission, Flip Technologies sought to correct what it considers are factual errors in the notification. In doing so, it submitted that:
  - It does not have a monopoly in the market for logistics software.
  - While it is prepared to collectively bargain with the parties, it has not previously agreed to do so.
  - It rejects the suggestion that FMH's control allows Flip Technologies to create artificial market conditions and charge higher prices to unrelated parties.
11. Copies of the notification and the Flip Technologies submission are available on the [ACCC's public register](#).

## ACCC's Assessment

12. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010 (CCA)*.
13. 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 then agree on terms and conditions (excluding price) for the SaaS Agreement with Flip Technologies.
  - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition is the supply of freight broking services to customers.

### Public Benefit

14. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
  - Improved efficiency by reducing transaction costs, in this case the costs associated with each freight broker negotiating the terms and conditions of a SaaS.
  - An improved SaaS Agreement due to greater input into the Agreement negotiation by the members of the collective bargaining group.

## **Public Detriment**

15. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between the members of the bargaining group for the supply of freight broking services because:
  - The proposed collective bargaining involves the negotiation of (non-price) terms and conditions of the SaaS Agreement. Members of the group will continue to compete for customers, and nothing in the proposed conduct appears likely to diminish that competition.
  - The Notified Conduct does not involve a collective boycott.
  - Participation in the Notified Conduct is voluntary for the members of the group and Flip Technologies.

## **Period for which the Notification is in force**

16. A collective bargaining notification (and therefore the protection it confers) remains 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.
17. In this case, the notifying party confirms that it does not wish to request an alternate period and the ACCC considers three years is an appropriate duration given the parties' requirements and the nature of the Notified Conduct.

## **Conclusion**

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. 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.
20. Accordingly, the protection provided by notification CB10000458 commenced on 9 November 2018 and will continue until 26 October 2021, unless the notification is withdrawn or revoked.