



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Statement of Reasons

In respect of a notification lodged by

Lionbend Pty Ltd & Ors

in respect of

collective negotiation with Boral Resources Ltd

Date: 3 July 2019

Notification number: CB10000466

Commissioners:

Keogh  
Rickard  
Court  
Ridgeway

## Summary

The ACCC does not object to the collective bargaining notification lodged by Lionbend Pty Ltd (Lionbend) on behalf of itself and 13 other current, and any future, quarry cartage businesses that provide services to Boral Resources Ltd Melbourne (Boral).

The Victorian *Owner Drivers and Forestry Contractors Act 2005* already provides a collective bargaining exemption for businesses with three or fewer trucks. The effect of the notification will be that businesses operating four or more trucks will join businesses operating three or fewer trucks to collectively bargain with Boral to deliver Boral quarry materials in the Melbourne Metropolitan region.

The group proposes to negotiate giving ongoing effect to the established quarry cartage agreement, including periodic reviews of existing contracts, and negotiation of any new contracts, with Boral.

The ACCC has decided to allow the notification to remain in force for a period of 10 years, instead of the default period of three years. The notification came into force on 13 May 2019 and will remain in force until 28 April 2029, unless it is withdrawn or revoked.

## The notification

1. On 29 April 2019 Lionbend Pty Ltd (**Lionbend**) on behalf of itself and 13 other current, and any future, quarry cartage businesses lodged a collective bargaining notification<sup>1</sup> to enable the independent contractors to collectively bargain with Boral Resources Ltd Melbourne (**Boral**); to give ongoing effect to existing quarry cartage agreements; and to negotiate any new agreements (the **Notified Conduct**). The notification is available on the [ACCC's public register](#).
2. Lionbend is a quarry cartage business. It operates 10 trucks and is currently contracted to deliver Boral quarry materials in the Melbourne metropolitan region.
3. Lionbend submits that participation in the Notified Conduct is voluntary and no party would be compelled to participate. The Notified Conduct does not include a collective boycott.
4. Lionbend requests that the notification continue for 10 years.

## Background

5. Quarry cartage businesses that operate three or fewer trucks have immunity from legal action under the *Competition and Consumer Act 2010 Cth* (**the Act**) to bargain with Boral through the operation of the Victorian *Owner Drivers and Forestry Contractors Act 2005* (**ODFCA**).<sup>2</sup>

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<sup>1</sup> Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (Act)* 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> The ODFCA regulates the relationship between businesses that contract to transport goods in a vehicle supplied by them and the businesses that hire them. The *Owner Drivers and Forestry Contractors Regulations 2006* excludes businesses operating four or more trucks from the provisions of the ODFCA.

6. Boral contracts with approximately 90 quarry cartage businesses in the Melbourne metropolitan region. Of these, approximately 50 per cent operate three or fewer vehicles, and therefore have immunity under the Act to collectively bargain with Boral through the operation of ODFCA. The remaining 50 per cent operate four or more vehicles and are outside the scope of the ODFCA and therefore need to negotiate individual quarry cartage agreements with Boral, or alternatively seek an exemption from the Act to collectively bargain.
7. All contracted vehicles are fitted with mobile transmission devices. This system allows Boral to monitor the fleet of vehicles on a minute-to-minute basis. Lionbend submits that the existing cartage agreements between the quarry cartage businesses and Boral are all similar in nature.
8. Lionbend submits that the purpose of the collective bargaining notification is to enable businesses operating four or more trucks to join businesses operating three or fewer trucks to collectively bargain with Boral to give effect to established agreements between the notifiers and Boral, including periodic reviews of existing contracts and any new contracts.

## **Consultation**

9. The ACCC invited submissions in respect of the notification from Boral and interested parties.
10. No submissions were received and no objections to the Notified Conduct were raised.

## **ACCC's assessment**

11. The ACCC has considered the Notified Conduct in accordance with section 93AC of the Act.
12. 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 quarry cartage business with four or more trucks would individually negotiate aspects of the existing, and any new, agreements with Boral, and businesses with three trucks or fewer could continue to collectively bargain with Boral under the ODFCA.
  - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition relates to the supply of quarry cartage services in the Melbourne metropolitan region.

### **Public benefit**

13. The ACCC considers that the Notified Conduct is likely to result in public benefits from improved efficiency through:
  - transaction costs savings (such as negotiating and contracting costs, including the time taken to negotiate) for the quarry cartage businesses and Boral, compared to the situation where the quarry cartage businesses conduct negotiations with Boral on an individual basis; and

- better input into contracts, as collective bargaining may improve the ability for the quarry cartage businesses to have better input into contracts than they would be able to achieve on their own.

### **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 the quarry cartage businesses in providing services to Boral for the following reasons:

- Participation in the Notified Conduct is voluntary for the quarry cartage businesses and for Boral.
- In the absence of the Notified Conduct, competition between quarry cartage businesses to provide services to Boral is low, as the agreements between the quarry cartage businesses and Boral are already established and are similar in nature.

### **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, Lionbend asked that the notification remain in place for 10 years.

17. The ACCC considers that it is appropriate for the notification to remain in force until 28 April 2029, 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 change the minimal public detriment which is likely to result from the Notified Conduct.

## **Decision**

18. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh any 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 17 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 28 April 2029.<sup>3</sup>
21. The protection provided by notification CB10000466 commenced on 13 May 2019 and will continue until 28 April 2029, 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 Act.

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<sup>3</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.