



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: 47224  
Contact Officer: Hannah Ransom  
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14 October 2011

Dear Sir/Madam,

**Collective Bargaining Notifications CB00157 – CB00203 lodged by BFC Stores Pty Ltd  
- request for submissions**

On 7 October 2011 the Australian Competition and Consumer Commission (the ACCC) received collective bargaining notifications from a number of retail stores that operate a chain of paint and decorator stores that provide products and services to retail customers and trade painters Australia wide. The stores proposing to collectively bargain include BFC Stores Pty Ltd owned stores, 30 BFC franchisee owned stores and one associate member<sup>1</sup> of the franchise system (collectively 'BFC Stores').

BFC Stores propose to enter into negotiations with 47 target businesses, supplying architectural and decorative paint and coating products to the group. The negotiations are proposed to relate to Supplier Trading Terms Agreements, including terms relating to price.

Copies of the collective bargaining notifications are available from the ACCC website [[www.accc.gov.au/publicregister](http://www.accc.gov.au/publicregister)], along with a full list of the proposed targets.

The purpose of this letter is to ask for your comments on the collective bargaining notifications lodged by BFC Stores.

**Collective bargaining notification process**

The ACCC is the Australian Government agency responsible for administering the *Competition and Consumer Act 2010* (the Act). The broad objective of the Act is to benefit all Australians by promoting competition and to ensure consumers are treated fairly.

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<sup>1</sup> The associate member operates its store under a similar system to the BFC franchisees, although independent of the BFC franchise system.

The competition provisions of the Act prohibit certain forms of anti-competitive agreements or conduct including agreements which typically occur during collective bargaining.

Collective bargaining refers to an arrangement where one or more competitors in an industry come together to negotiate terms and conditions (including price) with a supplier or a customer.

While the Act prohibits certain forms of anti-competitive conduct, it does recognise that conduct which may otherwise breach the Act may, in some circumstances, be of benefit to the public. The Act accordingly allows businesses that are considering engaging in anti-competitive arrangements to seek immunity from legal action. One way businesses may obtain immunity to engage in collective bargaining and collective boycott conduct that may be at risk of breaching the Act is to lodge a notification with the ACCC.

Once a notification has been validly lodged with the ACCC, immunity from legal action in respect of the notified conduct commences 14 days after the notification was lodged, unless the ACCC issues a draft objection notice proposing to prevent the immunity coming into effect.

The ACCC may proceed to remove the immunity provided by a collective bargaining notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

### **Collective bargaining notifications lodged by BFC Stores**

BFC Stores have submitted that the proposed arrangements will have a number of public benefits, including:

- providing individual stores with access to architectural and decorative paint and coatings accessory products at competitive prices, which will then result in lower retail prices for consumers, and
- encouraging other competitors to offer similar discounts.

BFC Stores submit that the arrangements will not result in any anti-competitive detriment, as it considers the market is highly competitive. BFC Stores note that participation in the arrangement is voluntary and the members of the group are free to negotiate individually directly with suppliers should they wish to do so.

The immunity from legal action provided by the notifications will commence on 21 October 2011 provided the ACCC does not issue a draft objection notice proposing to prevent the immunity coming into effect.

### **Request for submissions**

To assist the ACCC in its consideration of the notifications it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register in certain circumstances. Submissions which are excluded from the public register may still be taken into account by the ACCC in conducting its assessment of the notified arrangements. Guidelines for seeking exclusion from the public register are attached for your information.

If you wish to lodge a submission, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Submissions can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on 02 6243 1211.

Please ensure that your submission is lodged with the ACCC by **Monday, 23 October 2011**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Hannah Ransom on (02) 6243 1255.

Yours sincerely,



David Hatfield  
A/g General Manager  
Adjudication Branch

**Interested parties:**

- 3M Australia Pty Ltd
- Australian Brushware Corporation Pty Ltd
- Bondall Pty Ltd
- Bostik Australia Pty Ltd
- C&A Brushware Pty Ltd
- Campbells Wholesale Pty Ltd
- Colourtrend Paints (Aust.) Pty Ltd
- Melpaint Products Pty Ltd trading as Dispose-A-Tray
- Dominion Plastic Industries Pty Ltd
- Duralux Paints Pty Ltd
- EasyWay Painting services Pty Ltd trading as Easy Way Wholesalers
- Eurowalls
- Express Rollers Australia Pty Ltd
- Hartman Pacific Pty Ltd trading as Gorilla Ladders
- GPI Automotive Products Pty Ltd
- Hichem Pty Ltd
- Hills Industries Ltd
- The Trustee for the Hume Unit Trust trading as Hume Internationale
- Irwin Industrial Tool Company Pty Ltd
- K & H Surface Technologies Pty Ltd
- Ladder Solutions Pty Limited
- The Trustee for Richardson Family Trust trading as Metro Agencies International
- Nilfisk-Advance Pty Ltd
- Oldfields Pty Ltd
- Orica Australia Pty Ltd trading as Cabots
- PPG Industries Australia Pty Ltd
- Phillro Industries Pty Ltd
- Quantum Timber Finishes Pty Ltd
- Recochem Inc
- Red Devil (Australia) Pty Ltd
- Resene Paints (Australia) Limited
- Rokset Industries Pty Ltd
- Saint-Gobain Abrasives Pty Ltd
- Selleys Pty Ltd
- Sequence Australia Unit Partnership
- Tenaru Timber & Finishes Pty Ltd
- Tapes Pacific Pty Ltd trading as Stylus Tapes International
- Swepdri International Pty Ltd
- Brilliant Group Pty Ltd trading as The Brilliant Group
- The Flood Company Australia Pty Limited
- Timbermate Products Pty Ltd
- Uni-Pro Painting Equipment Pty Ltd
- Vipond's Paints Pty Ltd
- Vision Wallcoverings (Australia) Pty Ltd
- Wagner Spraytech (Australia) Pty Ltd
- Rust-Oleum Australia Pty Limited trading as Zinsser