



**Australian
Competition &
Consumer
Commission**

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2 October 2012

Dear Madam/ Sir

Collective Bargaining Notifications CB00227 to CB00279 lodged by PaintRight Ltd - request for submission

The Australian Competition and Consumer Commission (the ACCC) has received a collective bargaining notification from PaintRight Ltd with regard to it negotiating on behalf of its paint-retailer members for the provision of goods and services from suppliers, including your business.

A similar notification was previously lodged with the ACCC in August 2009 and allowed to stand. This notification expired on 21 August 2012.

The purpose of this letter is to seek your comments on the new notification.

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.

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 at any time 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 notification lodged by PaintRight Ltd

On 26 September 2012, PaintRight Ltd lodged a collective bargaining notification concerning it negotiating on behalf of its 55 independently owned paint-retailer members for the provision of goods and services from 53 named suppliers.

A copy of the collective bargaining notification lodged by PaintRight is enclosed for your information and is also available from the ACCC's website at www.accc.gov.au/collectivebargainingregister

The immunity from legal action provided by notifications CB00227 to CB00279 will commence on 10 October 2012 provided the ACCC does not issue a draft objection notice proposing to prevent the immunity coming into effect.

PaintRight lodged a similar notification on 21 August 2009, which was assessed by the ACCC and allowed to stand as the ACCC was satisfied that the public benefits likely to arise from the notified conduct would outweigh the public detriments. A copy of this assessment is available on the ACCC's public register at www.accc.gov.au/content/index.phtml/itemId/891238/fromItemId/815577/display/acccDecision

Request for submissions

To assist the ACCC in its consideration of the notification 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.

Submissions can also be lodged by email to adjudication@acc.gov.au or please contact John Rouw 03 9290 1402 to organise making an oral submission. Please ensure that your submission is lodged with the ACCC by **8 October 2012**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact John Rouw on (03) 9290 1402.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. Dalins', written in a cursive style.

Marie Dalins
Director
Adjudication Branch