

# Form GA

Commonwealth of Australia

Competition and Consumer Act 2010 — section 93AB

## NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notice is hereby given under section 93AB of the *Competition and Consumer Act 2010* of intention:

- to make, or to propose to make, a contract containing a provision of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to make, or to propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2) (a) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2) (b) of that Act.  
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### Section A – general information

#### 1. Applicant

(a) Name of the applicant:

(refer to Direction 1) ROBERT JOHN NUSS

CB00283

RJ NUSS REMOVALS PTY LTD (ACN 000 932 141) NUSS  
IS MAKING THIS APPLICATION ON BEHALF OF THE PARTICIPANTS LISTED  
BELOW IN 2 (A)

(b) Description of business carried on by the applicant:

(refer to Direction 2)

NUSS IS A FAMILY OWNED BUSINESS PROVIDING FURNITURE REMOVAL  
SERVICES ACROSS ALL AUSTRALIAN STATES & TERRITORIES AND ALSO  
INTERNATIONALLY

(c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?

(refer to Direction 3)

No

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?  
(refer to Direction 3)

No.

- (d) Address in Australia for service of documents on the applicant:

708 Mowbray Road West, Lane Cove NSW 2066

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:

(refer to Direction 4)

- R J Nuss Removals Pty Ltd ACN 000 932 141 – 708 Mowbray Rd West, Lane Cove NSW 2066
- Aussiemove International Movers Pty Ltd ACN 007903648 - 41 Jonal Drive, Mawson Lakes S.A. 5098
- King & Wilson Transport Pty Ltd ACN 119 323 394 – 4 Hops St West Ryde NSW 2114
- FIMPARK Pty Ltd trading as Keys Bros Removals and Storage ACN 067 834 299 – 5 Purdy Place, Canning Vale, Western Australia 6155

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:

(refer to Direction 5)

Attached is a document signed by each of the proposed participants consenting to this notification being lodged on their behalf.

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

No.

- (ii) details of the first-mentioned notification, including but not limited to:

- (A) the name of the applicant; and
- (B) the date the notification was said to be lodged; and
- (C) if known or applicable — the registration number allocated to that collective bargaining notification.

N/A.

## **Section B -- collective bargaining arrangements**

### **3. Proposed collective bargaining arrangements**

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:  
*(refer to direction 6)*

Asclano Services Pty Ltd ACN 052 134 362 (trading as Pacific National),  
Level 6, 15 Blue Street, North Sydney NSW 2060.

Pacific National provides rail linehaul and terminal services for domestic and international containerised freight.

Contact: Susan Fairbairn, General Counsel, (02) 8484 8000

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

The participants propose to acquire rail linehaul freight services from Pacific National.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?  
*(refer to direction 7)*

Yes.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

This expectation is held on that basis that the participants have entered into contracts with Pacific National in the past.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?  
*(refer to direction 8)*

The participants have a reasonable expectation that the contractual payments will not exceed \$3 million in any 12 month period on the basis of previous experience and the historical volumes participants have had on rail linehaul in the past. In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

Each participant expects to pay between \$90,000 to \$750,000 annually for rail linehaul services from Pacific National. However, as noted above, it is reasonably expected that the total amount paid will not exceed \$3 million.

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and
  - (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and
  - (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and
  - (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and
  - (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and
  - (vi) details of proposed commencement and duration of contracts to be negotiated with the target:  
(refer to direction 9)

The collective bargaining arrangements proposed are as follows:

- Nuss intends to represent the participants identified in paragraph 2(a) above in the negotiations for a Rail Services Agreement with Pacific National.
- Nuss proposes to negotiate an annual volume growth rebate that will be applicable to the participants taking into account the collective volumes of the participants. The types of other terms and conditions that are expected to be negotiated include the term of the agreement. It is not proposed that there will be any negotiations in respect of price (other than those relating to rebates) as it is expected that the pricing will be that set out in the publicly available Pacific National Intermodal InfoPak.
- It is the intention of Nuss to negotiate the terms and conditions with Pacific National and upon approval of the participants have each of the participants enter into a 12 month agreement with Pacific National incorporating the terms and conditions. It is intended that each participant would be a party to the agreement but each would have several obligations under the agreement.
- The proposed arrangement will not involve a collective boycott. The participants do not intend to use Pacific National exclusively for their rail linehaul requirements.

- Participants will be free to opt out of the negotiations at any time and negotiate individually with Pacific National or any other containerised freight transport operator.

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

As noted above, the participants do not intend to negotiate on price as the prices that will be payable for the rail linehaul services will be those set out in the Intermodal InfoPak. What will be collectively discussed are the volume growth rebates that will be applicable. It is intended that these rebates will be based on the aggregate volumes of the participants.

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and
- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
  - (A) details of the events that would trigger any such activity; and
  - (B) details of the process that would be followed in undertaking any such activity; and
  - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
  - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

*(refer to direction 10)*

As noted above, there are no exclusionary provisions included in the proposed collective arrangements.

### **Section C – public detriments**

#### **4. Market definition**

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
*(refer to direction 11)*

Transport of containerised freight.

Long distance furniture removal.

**5. Public detriments**

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

Any detrimental effect resulting from the notified conduct is considered to be minimal for the following reasons:

- The financial incentive provided by way of the volume growth rebate will allow the cost to the participants of providing removalist services to be reduced and will therefore allow the participants to be more competitive with other furniture removalists and freight forwarders generally.
- The participants have not agreed the amount of any linehaul component of prices to end customers. Each participant will independently determine how any such component will be included in the price to end customers.
- The collective bargaining arrangement proposed will provide for enhanced bargaining with Pacific National by the participants. Pacific National offers general terms and conditions to all customers which are based on the Intermodal Infopak. By bargaining collectively, the participants will have an improved position to negotiate on these terms and conditions.
- As noted above, there is voluntary participation in the collective bargaining arrangements. The participants can choose to withdraw from the collective bargaining at any time.
- The participants are generally competitively constrained by the many other furniture removalists and freight forwarders that provide removalist services.
- Competitive pressures between the participants will be maintained as each participant will try and avail itself of the benefits of the volume growth rebate by increasing their volume throughput with Pacific National.
- Pacific National will continue to compete with other containerised freight transport operators.

- (b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

N/A.

#### **Section D -- public benefits**

##### **6. Public benefit claims**

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

The collective bargaining arrangement proposed in this application will result in the following public benefits:

- The collective bargaining arrangements provide the participants with enhanced bargaining power and provide an opportunity for the participants to have more effective input in negotiations with Pacific National. Individually the participants do not have the same capacity to negotiate terms and conditions with Pacific National or obtain the benefits of volume growth rebates to the same extent as if volumes were taken into account on a collective basis. The proposed arrangements will allow the participants to provide their furniture removalists services from a lower cost base as the cost of the freight linehaul component will be reduced through the collective bargaining arrangement. These cost savings can be passed on to the participants' end customers.
- The proposed collective bargaining arrangement allows the participants to share the costs of negotiating terms and conditions with Pacific National. This represents a cost saving to each participant which can then be passed on to end customers through reduced prices.
- The proposed collective bargaining arrangement will increase competition by allowing the participants to compete more effectively with other furniture removalists and freight forwarders. In particular, the collective bargaining arrangement will allow the participants to have access to the same volume growth rebates that the larger furniture removalists and freight forwarders are able to obtain in their own right due to the size of their individual volumes.
- The proposed collective bargaining arrangement will have the benefit of encouraging modal shift by making rail transportation more economic vis-a-vis road.

**Section E - authority**

**7. Contact details**

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

Mr Robert Nuss

(02) 9425 4600

708G Mowbray Road West, Lane Cove NSW 2066  
(refer to direction 12)

Dated 3-05-2013

Signed by/on behalf of the applicant

(Signature)

ROBERT JOHN NUSS

(Full Name)

R.J. NUSS REMOVALS PTY. LTD.

(Organisation)

MANAGING DIRECTOR.

(Position in Organisation)



## DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.  
  
In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:
  - (a) withhold the supply of goods or services from the target; or
  - (b) refuse or decline to acquire the goods or services of the target;whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.
11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

Consent to participate in the Notification of Collective Bargaining Submission to the ACCC

I consent to being a participant to this Submission to the ACCC:

Dated 3-05-2013

Signed by/on behalf of R J Nuss Removals Pty Ltd

(Signature)

ROBERT JOHN NUSS

(Full Name)

MANAGING DIRECTOR

(Position in Organisation)

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Dated 3-05-2013

Signed by/on behalf of Aussiemove International Movers Pty Ltd

(Signature)

CRAIG ANDREW JONES

(Full Name)

DIRECTOR

(Position in Organisation)

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Dated 3-05-2013

Signed by/on behalf of King & Wilson Transport Pty Ltd

(Signature)

ANDREW WILSON

(Full Name)

MANAGING DIRECTOR

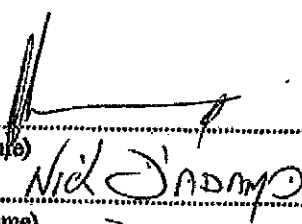
(Position in Organisation)

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Dated 3-05-2013

Signed by/on behalf of FIMPARK Pty Ltd t/a Keys Bros Removals and Storage

(Signature)



(Full Name)

MANAGING DIRECTOR

(Position in Organisation)