



Australian
Competition &
Consumer
Commission

Draft Determination and interim authorisation

Application for authorisation A91447

lodged by

Anglo American Services and Jellinbah Group

in respect of

collective negotiation of terms and conditions
for the purchase of tyres for mining vehicles

Date: 29 October 2014

Authorisation number: A91447

Commissioners: Sims
Rickard
Cifuentes
Walker

Summary

The ACCC proposes to grant authorisation for 5 years to Anglo American Services and Jellinbah Group to collectively negotiate terms and conditions for the purchase of tyres for mining vehicles.

The ACCC will seek submissions in relation to this draft determination before making its final decision.

The ACCC has granted interim authorisation to allow the Applicants to collectively negotiate terms and conditions for the purchase of tyres for mining vehicles. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC revokes interim authorisation.

The application for authorisation

1. On 7 August 2014 Anglo American Services (UK) Ltd (**Anglo Services UK**) and Jellinbah Group Pty Ltd (**Jellinbah**) (together, the **Applicants**) applied for authorisation. The Applicants are seeking authorisation for 5 years to collectively negotiate terms and conditions for the purchase of tyres for mining vehicles (the **Conduct**).
2. The Applicant also requested interim authorisation to enable it to engage in the Conduct while the ACCC is considering the substantive application.

Background

3. Anglo American Services UK is part of the Anglo American group of companies (**Anglo American**). Anglo American produces thermal and metallurgical coal for domestic consumption and export. The group currently produces approximately 30 million tonnes of coal per annum from mines in Queensland and New South Wales.
4. Anglo American Services UK performs a procurement function of obtaining goods and services on behalf of Anglo American. As part of its procurement function, Anglo Services UK has entered into a framework agreement with Transityre B.V. (the **Supplier**). The framework agreement sets out the key terms and conditions that will apply to the purchase of tyres by Anglo American from the Supplier. Tyres are then to be provided to Anglo American by the most appropriate affiliate of the Supplier in the various local areas in which Anglo American operates.
5. Jellinbah is a Queensland based coal mining company focussed primarily on metallurgical coal, and produces just under 10 million tonnes of coal per annum. Anglo American owns a minority interest in Jellinbah, such that Jellinbah is not a related body corporate of Anglo American.
6. The Applicants submit there are two suppliers of first tier quality large earthmover tyres to the mining sector in Australia: Michelin and Bridgestone. The Applicants submit they do not consider second tier earthmover tyres to be a comparable product. The Applicants submit that Anglo American and Jellinbah acquire a small proportion of the large earthmover tyres used in mining.

Conduct

7. The Applicants propose including Jellinbah as a participating buyer group company in Anglo American Services UK's framework agreement with the Supplier, and entering into an Inter-Company Agreement between themselves. This would allow Jellinbah to purchase tyres on the same terms as if it were part of the Anglo American group. Participation in the Conduct is to be voluntary for all parties, with no boycott proposed.

ACCC assessment

8. The ACCC's assessment of the Conduct is in accordance with the relevant net public benefits tests¹ contained in the *Competition and Consumer Act 2010* (the CCA).
9. In its assessment of the application the ACCC has taken into account:
 - the application and submissions lodged by the applicant²
 - other relevant information available to the ACCC
 - the likely future without the Conduct that is the subject of the authorisation.³ In particular, the ACCC considers that, absent the Conduct, it is likely that the Applicants would continue to negotiate for and purchase tyres separately;
 - the relevant areas of competition likely to be affected by the Conduct, particularly global competition for the acquisition of large earthmover tyres from manufacturers
 - the 5 year authorisation period requested.

Public benefits

10. The ACCC has previously recognised that reduced transaction costs may result from joint acquisition arrangements, by streamlining the negotiation process.
11. The ACCC is satisfied based on the information before it that the Conduct is likely to result in some public benefit by reducing transaction costs for the Applicants and the Supplier through removing duplication of negotiation time, and reducing legal, administrative and other costs associated with negotiations.
12. The Applicants also submitted that the arrangements would result in public benefits by increasing the certainty of volumes for the supplier, which may allow for more efficient investment in and operation of production and logistics facilities by the Supplier.
13. The ACCC does not have sufficient information to be satisfied that this public benefit is likely to result – where Jellinbah's demand is relatively small and it could otherwise enter into a separate contract for the acquisition of tyres.

¹ Subsections 90(5A), 90(5B), 90(6) and 90(7) of the CCA.

² Please see the ACCC's Public Register for more details.

³ For more discussion see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines.

Public detriments

14. The ACCC considers that the Conduct is likely to result in minimal, if any, detriment since:
- the Applicants comprise a small proportion of the total number of large earthmoving tyres acquired by mining operations worldwide, and in particular the incremental volume of Jellinbah's tyres to that of Anglo American's is insignificant in global terms
 - the Conduct is voluntary for all parties.

Balance of public benefit and detriment

15. For the reasons outlined in this draft determination, on balance, the ACCC considers that the Conduct is likely to result in public benefit that would outweigh any public detriment, constituted by any lessening of competition. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met.

Length of authorisation

16. The Applicants seek authorisation for a period of 5 years. The Applicants submit this period is appropriate to cover the initial agreement term (which expires at the end of 2017) and the possibility of rolling 1 year extensions, and is conservative in comparison to previous authorisations granted by the ACCC to coal producers for collective bargaining.
17. The ACCC generally grants authorisation to collective bargaining arrangements for 3 – 5 years. In the current circumstances, given the length of the agreements involved, the ACCC considers it appropriate to grant authorisation for a period of 5 years.

Draft determination

The application

18. Application A91447 was made using a Form B, under subsection 88(1) and 88(1A) of the CCA. Authorisation is sought to make and give effect to collective negotiations of the terms and conditions for the purchase of tyres for mining vehicles:
19. Authorisation is sought as the Conduct may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the CCA.

The net public benefit test

20. For the reasons outlined in this draft determination, the ACCC is satisfied, pursuant to sections 90(5A), 90(5B), 90(6) and 90(7) of the CCA, that in all the circumstances the Conduct for which authorisation is sought is likely to result in a public benefit that would outweigh any likely detriment to the public constituted by any lessening of competition arising from the Conduct.

Conduct which the ACCC proposes to authorise

21. The ACCC proposes to grant authorisation A91447 to Anglo American Services UK and Jellinbah to:

- collectively discuss and negotiate terms and conditions for the purchase of tyres from Transityre B.V. or its affiliates
- include Jellinbah as a participating buyer group company to Anglo American Services UK's framework agreement with Transityre B.V. and to enter into an agreement between themselves so that Jellinbah can participate in the purchase of tyres on the same terms as if it were an Anglo American group company
- enter into and give effect to contracts concerning the purchase of earthmover tyres with Transityre B.V. and its affiliates
- discuss related matters amongst themselves.

for a period of 5 years.

22. To ensure statutory protection from legal action for engaging in the Conduct, it is proposed that authorisation extend to related bodies corporate of Anglo Services UK and Jellinbah, and to any future joint venture participants in one of Jellinbah's mining operations.

23. This draft determination is made on 29 October 2014.

Interim authorisation

24. At the time of lodging the application, Anglo American Services UK and Jellinbah requested interim authorisation to collectively negotiate terms and conditions for the purchase of tyres for mining vehicles.

25. The ACCC may grant interim authorisation pursuant to section 91(2) of the CCA.

26. The Applicants requested interim authorisation on the basis that:

- the conduct does not involve uncompetitive arrangements
- there is very little risk of a change to the relevant market if interim authorisation is granted
- should interim authorisation result in a change to the market, that change is very unlikely to be permanent and the market will be able to return to its pre-interim state should the ACCC refuse to grant authorisation
- the negotiations provide a benefit to both the Applicants and the supplier and will not harm any party to the transaction.

27. The ACCC considers that:

- the likelihood that the conduct will result in significant anti-competitive detriment is low, given the nature of the arrangements and the relatively small percentage of the market represented by the Applicants
- the market could relatively easily return to its pre-authorisation state should substantive authorisation ultimately be denied by the ACCC (in which the Applicants each negotiate for and purchase tyres separately)
- interim authorisation will allow benefits to begin to be realised by the arrangements

28. Accordingly, the ACCC grants interim authorisation under subsection 91(2) of the CCA. Interim authorisation is granted to Anglo American Services UK and Jellinbah to collectively negotiate terms and conditions for the purchase of tyres for mining vehicles.

29. Interim authorisation commences immediately and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

Next steps

30. The ACCC now seeks further submissions on the draft. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the CCA.