



Australian  
Competition &  
Consumer  
Commission

# Draft Determination

Application for revocation of authorisation and  
substitution of a replacement

lodged by

Australian Newsagents' Federation

in respect of

representation of members in  
collective bargaining  
with a range of suppliers

Date: 1 May 2014

Authorisation number: A91407

Commissioners:  
Sims  
Rickard  
Schaper  
Cifuentes  
Court  
Walker

## Summary

The ACCC proposes to re-authorise collective bargaining arrangements involving current and future members of the Australian Newsagents' Federation (ANF). The ANF proposes to represent newsagents in collective negotiations with a range of suppliers. Newsagents have been authorised to collectively bargain with newspaper and magazine publishers since 2004. The ANF is seeking to expand the range of suppliers that it will negotiate with on behalf of its members. The ACCC is proposing to grant re-authorisation for 10 years.

The ACCC considers that the proposed conduct is likely to result in public benefit, including transaction costs savings and improving newsagents' input into contractual arrangements. Balanced against this the ACCC considers that the proposed conduct is unlikely to result in significant public detriment.

### Next steps

The ACCC will seek submissions in relation to this draft determination before making its final decision. The ANF and interested parties may also request the ACCC to hold a pre-decision conference to allow oral submissions on the draft determination

## The application for authorisation

1. On 3 February 2014 the Australian Newsagents' Federation (the ANF) lodged with the ACCC an application for the revocation of authorisation A91134 and the substitution of authorisation A91407 for the one revoked (re-authorisation).<sup>1</sup>
2. Authorisation A91134 was granted subject to conditions by the ACCC in 2009 and allowed the ANF and its members to collectively bargain with newspaper publishers and magazine publishers and distributors. This authorisation is due to expire in August 2014. The ANF is seeking re-authorisation to allow it to collectively negotiate on behalf of members with an expanded range of counterparties (see below). The ANF has proposed that negotiations be conducted on a national basis except where the counterparty is only in one State or Territory, in which case a State based ANF bargaining group will be established.
3. The ANF proposes to represent members in negotiations concerning:
  - price of product
  - terms of supply
  - settlement discounts
  - product development
  - joint advertising and marketing
  - distribution
  - termination rights
  - supply contracts generally.

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<sup>1</sup> The application was lodged under section 91C of the *Competition and Consumer Act 2010*, Form FC.

4. In its application the ANF has identified 124 potential counterparties<sup>2</sup> which it has grouped by sector and provided the following information about the matters to be negotiated:

- Insurance brokers: price, terms and conditions in relation to various insurance products, both in relation to such products to be used by ANF members or sold on an agency basis by ANF members.
- Business opportunities: the terms and conditions in relation to the products offered by the promoters or licence holders to ANF members.
- Phone cards: the fees and terms and conditions of the agency agreements for the sale of phone cards.
- Greeting cards and wrap: price, terms and conditions.
- Stationery: price, terms and conditions.
- Banks: the terms and conditions of financial services provided to newsagents, including agency arrangements.
- Newspaper publishers: agent remuneration, insert fees, settlement discounts, late paper fees, split papers, terms of supply, and rights of termination.
- Magazine distributors: variable commissions and/or supply terms for shelf life, supply allocations, carrying of non-core product, subscription delivery, returns policy, terms of supply, and rights of termination.
- Marketing groups/franchises: the terms and conditions that various products and/or services are provided to or offered to newsagents.
- Tobacco: the terms and conditions that tobacco products are supplied to newsagents, including responses to regulatory issues.
- Confectionary: the prices and terms and conditions that confectionary products are supplied to newsagents.
- Shop fitters: the terms and conditions that shop fitting and renovation services are provided to newsagents.
- POS providers: the terms and conditions that POS is provided to newsagents.
- Electricity providers: price and terms and conditions for the use of electricity by newsagents.
- Service stations: the price and terms and conditions that fuel is obtained by newsagents.
- Transport companies: the price and terms and conditions that transport services are used by newsagents.
- ATM service providers: the terms and conditions in ATM agency or distribution agreements.
- Shopping centre landlords: the price and terms and conditions of retail commercial leases obtained by newsagents. Also the different treatment that small business such as newsagents are subjected to as opposed to larger tenants.

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<sup>2</sup> Please see Attachment B for a full list of proposed counterparties.

5. The ANF is seeking re-authorisation to allow it to collectively negotiate on behalf of future members and with counterparties not named in the application but who may supply newsagents at a future date. The ANF requests that authorisation be granted for five years.
6. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the CCA).<sup>3</sup> The ACCC's evaluation of the proposed conduct is in accordance with the relevant net public benefit tests<sup>4</sup> contained in the CCA. While there is some variation in the language of the tests, in broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition and weigh the two. In broad terms, the ACCC may grant authorisation if it is satisfied that the likely benefit to the public from the conduct would outweigh the likely detriment to the public.
7. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process. As part of this consultation process the ACCC sought submissions from all of the counterparties named by the ANF as well as a number of other parties likely to have an interest in the proposed collective bargaining conduct. The ACCC received a number of submissions from interested parties responding to the ANF's application, some of which supported the proposed conduct, while some expressed concerns. The submissions made by the ANF and interested parties form part of the ACCC's considerations in assessing the application for re-authorisation.<sup>5</sup>

## Background<sup>6</sup>

### Newsagencies in Australia

8. The Australian Newsagents' Federation (ANF) is the national industry body representing Australian newsagencies. According to the ANF there are around 5000 individually owned and operated newsagencies in Australia, of which approximately 2000 are members, or affiliate members, of the ANF.
9. The ANF has branches in all states and territories other than New South Wales, the Australian Capital Territory and Victoria. In those states and territory it has alliances in place with the Newsagents Association of New South Wales and the ACT (NANA) and the Victorian Association for Newsagents (VANA) respectively. Under the terms of these alliances, the members of NANA and VANA receive affiliate membership of, and can be represented by, the ANF. The ANF's current membership, including affiliate members in Victoria, New South Wales and the Australian Capital Territory, is located as follows:
  - Northern Territory, 15 members
  - Queensland, 497 members
  - South Australia, 226 members

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<sup>3</sup> Detailed information about the authorisation process is contained in the ACCC's Guide to Authorisation available on the ACCC's website [www.accc.gov.au](http://www.accc.gov.au).

<sup>4</sup> Subsections 90(5A), 90(5B), 90(6) and 90(7). The relevant tests are set out in [Attachment A](#).

<sup>5</sup> Copies of public submissions may be obtained from the ACCC's website [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

<sup>6</sup> The information contained in this section is taken from the ANF's submission in support of its application (dated January 2014) and the ANF's website [www.anf.net.au](http://www.anf.net.au).

- Tasmania, 77 members
- Western Australia, 93 members
- New South Wales and the Australian Capital Territory, 436 members
- Victoria, 625 members.

10. According to the ANF, newsagents make up Australia's largest retail and home delivery group turning over \$6.5 billion a year and employing more than 20,000 people. The ANF notes that nearly all of its members are micro businesses, employing less than 20 staff.

## Previous authorisations

11. The ACCC has considered a number of collective bargaining authorisations involving newsagents, relevantly:

- On 16 July 2009 the ACCC granted conditional authorisation for five years to allow the ANF and its members to collectively bargain with newspaper publishers and magazine publishers and distributors (A91134).
- On 20 March 2013 the ACCC granted authorisation for five years to allow the ANF to collectively bargain on behalf of current and future members located in South Australia with SA Lotteries in relation to the terms and conditions of the lottery distribution agent agreements, including: commissions, fees, terms of supply, rights of termination, and matters contained within the Agent Guide (A91349).
- On 11 July 2013 the ACCC granted authorisation for five years to allow the Queensland Newsagents Federation and its members to collectively bargain with the Golden Casket Lotteries Corporation in relation to the distribution services for lottery and instant lottery products (A91353).

## ACCC evaluation

12. In assessing an application for authorisation the ACCC will undertake a number of preliminary steps, including:

- identifying the relevant areas of competition
- identifying the likely future with the conduct for which authorisation is sought and the likely future without the conduct the subject of the authorisation. The ACCC will compare the public benefits and detriment likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.

13. The ANF has suggested that a number of areas of competition are relevant to the ACCC's considerations, being:

- the retail market generally
- the market for the distribution and sale of newspapers and magazines
- the gambling market
- the market for the supply of goods and services to small businesses and
- the market for the acquisition of goods and services by newsagents.

14. In assessing previous applications for authorisation involving newsagents the ACCC has considered that the areas of competition most likely to be directly affected by the proposed conduct are:
- the acquisition of goods and/or services by newsagents. Newsagents compete with each other and with other businesses seeking to acquire goods and/or services.
  - the supply of distribution services by newsagents to their suppliers (for example, newspaper distribution services and lottery distribution services). Newsagents compete with each other and with other suppliers of distribution services – this group of competitors may include large supermarkets, convenience stores and specialty retailers.
  - the retail supply of goods and services by newsagents to consumers. Newsagents compete with each other and other businesses offering the same or similar products to consumers.
15. The ACCC considers that these areas of competition remain relevant to its current consideration of the ANF's collective bargaining proposal.
16. The ANF submits that in the absence of authorisation newsagents are offered standard form contracts on a 'take it or leave it' basis and that these contracts are weighted in favour of the supplier.
17. The ACCC considers that, in the absence of the collective bargaining conduct for which authorisation is sought, some contractual relationships entered into by the ANF's members may involve standard form contracts that may provide some scope for input by newsagents and/or their representative bodies. However, not all contractual relationships between newsagents and the counterparties nominated by the ANF are likely to be characterised in this way. For example, the ACCC has been advised that relationships between newsagents and Point of Sale providers are collaborative on matters such as price, hardware to be supplied, software features and requirements and service support to be provided. The ACCC considers that in the absence of the authorised collective bargaining conduct it is likely that contractual relationships will continue to be developed and determined in a way that allows input by newsagents but that this participation is likely to vary depending upon the nature of the goods and/or services being supplied.

## **Public benefit**

18. Public benefit is not defined in the CCA. However, the Australian Competition Tribunal (the Tribunal) has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.<sup>7</sup>

19. Having regard to the submissions of the applicant and interested parties the ACCC considers that the following public benefits are most relevant to its consideration of the ANF's application for re-authorisation:

- transaction cost savings

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<sup>7</sup> Re *7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

- improved input into contracts and
- improved retail competition by newsagents.

The ACCC's assessment of the likely public benefits from the proposed collective bargaining conduct follows.

### **Transaction cost savings**

20. When the ACCC has previously considered the public benefits from collective bargaining by newsagents it has accepted that there are likely to be transaction cost savings arising from conducting a single coordinated negotiation process rather than a series of individual ad hoc negotiations covering common issues. For the supplier, the reduced duplication of the negotiation, approval and monitoring process may lead to significant cost savings. ANF members may be able to consolidate and share the cost of obtaining professional services and also benefit from reduced negotiation and search costs. An overall reduction in transaction costs will enhance overall economic efficiency.
21. The Shopping Centre Council of Australia (SCCA) is concerned, however, that the lack of homogeneity amongst newsagents as tenants and the application of a 'one size fits all' collectively negotiated contract would lead to inefficient outcomes and an increase in transaction costs. The ACCC considers that contractual relationships between newsagents and their landlords, even in the presence of an authorised collective bargaining arrangement, are still likely to require a degree of individual negotiation to take account of particular factors affecting the lease. However, the ability for the ANF, on behalf of its members, to address common contractual issues in a more streamlined and effective manner will provide transaction costs savings. For example, there will be savings to the newsagents from sharing information and professional assistance and conducting negotiations on those parts of the contract that are particular to the individual. To this end the ANF submits that collective bargaining saves individual members substantial transaction costs even if the buying price is not influenced by the collective negotiations.
22. Further, the ACCC notes that as a voluntary arrangement, commercial landlords (or any of the counterparties) may elect not to participate in the collective bargaining by the ANF.
23. The ACCC considers that the proposed collective bargaining conduct is likely to continue to deliver public benefit through a reduction in transaction costs. The ANF has noted that any savings made by newsagents as a result of collective negotiation will be passed on to consumers due to the structure and dynamics of the market.

### **Improved input into contracts**

24. The ANF submits that the purpose of the proposed collective bargaining arrangement is to provide greater input for its members into the contracting process. In this regard it submits that the previously authorised collective bargaining arrangement between its members and the publishers and distributors of newspapers and distributors of magazines provided a mechanism for its members to provide meaningful input into their contracts.
25. The ANF submits that newsagents compete with the major supermarket chains and speciality retailers such as Office Works. The ANF considers that competition in these markets is fierce and that newsagents need to bargain collectively with suppliers in order to be competitive at the retail level. The ANF considers that even

with the benefit of collective bargaining, newsagents will not be able to bridge the gap to meet the power of players such as the major supermarkets.

26. The ACCC accepts that most newsagents are small businesses and that when negotiating with large suppliers they are likely to be at a disadvantage, in terms of the resources and experience of negotiating in complex commercial environments. One way in which a small business can seek to redress such disadvantage is to bargain collectively. Collective bargaining may allow small businesses to improve their input into contractual arrangements, providing greater opportunity for the negotiating parties to identify and achieve business efficiencies.
27. The ACCC notes that not all of the counterparties identified by the ANF are large businesses. The ACCC considers that in these circumstances collective bargaining may still facilitate more efficient outcomes by improving input into contracts. The voluntary nature of the ANF's proposal means that smaller counterparties can elect not to participate in collective bargaining if it is not in their commercial interests to do so.

### **Improved retail competition by newsagents**

28. The ANF submits that collective action adds to competition in the retail market, allowing small businesses to challenge the dominant market players. To this end the ANF has noted that any savings made by newsagents resulting from the collective bargaining arrangements will be passed on to consumers due to the structure and dynamics of the market.
29. To the extent that the ANF's members are able to achieve cost savings as a result of collective bargaining, the ACCC considers that competition in the retail market is likely to see these savings benefiting consumers through improved offerings, including lower prices.

### **Public detriment**

30. Public detriment is also not defined in the CCA but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>8</sup>

31. The ANF submits that there is little or no anti-competitive detriment likely to result from the proposed arrangements, noting:
- individual ANF members do not compete against each other as they are generally geographically separated from each other
  - the proposed counterparties do not have to accept collective bargaining
  - members can opt out of the negotiations or leave the collective bargaining group at any time.
32. The SCCA notes that while the vast majority of shopping centres which include newsagencies as part of their retail offer only have one newsagency, there are some which have two or more newsagencies. In these circumstances, collective bargaining may impact on the extent of competition between such newsagencies.

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<sup>8</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

The SCCA is also concerned that the standardisation of leases pursuant to a collective bargain will reduce price competition and is likely to remove terms and conditions that seek to differentiate between tenants. The SCCA is concerned that this loss of competitive tension will result in public detriment.

33. Grovedale News Lotto & Post (Grovedale) submits that newsagents already have other, efficient, arrangements for the cost effective supply of products and services. Grovedale considers that the ANF has not proven itself to be competent or qualified to act on behalf of newsagents in respect of choosing appropriate suppliers or negotiating effective pricing.
34. The ACCC considers that the public detriment resulting from the proposed collective bargaining conduct is likely to be limited. In particular the ACCC notes:
  - the current level of negotiations between individual members of the group and the proposed counterparties on the matters to be negotiated is generally low, with newsagents often being offered standard form contracts. Accordingly the difference between the level of competition with or without the collective arrangements is also likely to be low.
  - participation in the collective bargaining arrangements is voluntary for ANF members. Accordingly those businesses (including Grovedale) that may be able to negotiate a more commercially attractive arrangement on an individual basis remain free to do so.
  - collective bargaining by ANF members to supply or acquire goods or services is unlikely to reduce the incentives for newsagents to continue to compete at the retail level, particularly given the amount of competition that exists and is likely to continue to exist. For example, from convenience stores, supermarkets and specialty retailers.
  - the proposed collective bargaining conduct does not include collective boycott activity. Therefore, if the counterparty supplier does not wish to negotiate with the ANF it remains able to deal directly with individual newsagents.
  - newsagents that are part of the collective bargaining group are likely to comprise a small proportion of total purchasers in respect of the range of goods and services proposed to be acquired. The ACCC has previously authorised the ANF to form state based bargaining groups. Following the ACCC's 2009 grant of authorisation, the ANF was permitted to form national bargaining groups for discussions with magazine publishers and distributors. The ACCC considers that the presence of a wide range of participants outside the bargaining group, even where that group has been formed on a national basis, is likely to constrain the conduct of the bargaining group in dealing with counterparties. In this respect the ACCC notes that there will be a wide range of acquirers competing with the ANF's members, including newsagents that are not part of the bargaining group, specialty retailers and large supermarkets. Where proposed collective bargaining conduct involve only a small proportion of participants in relevant markets, or involve counterparties that are much larger than the bargaining group, there is likely to be little risk of anti-competitive detriment.
  - while the ANF proposal has the potential to create a single large bargaining group, the ACCC does not expect that bargaining will occur on behalf of all ANF members in all circumstances. In particular the ACCC considers that collective bargaining will be most effective when

the group shares a commonality of significant issues, such that the potential remains for a sub-set of bargaining groups to be formed to ensure that the collective discussions remain both relevant and efficient.

### **Balance of public benefit and detriment**

35. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.
36. The ACCC considers that the collective bargaining by newsagents is likely to result in transaction cost savings and more efficient contractual outcomes by improving the input of newsagents into their negotiations with suppliers. Balanced against this, the ACCC considers that the collective bargaining conduct is unlikely to result in significant public detriment, particularly as the arrangements are voluntary and a collective agreement will only be reached where it is in the interests of both sides of the negotiation.
37. For the reasons outlined in this draft determination the ACCC is satisfied that the likely benefit to the public would outweigh the detriment to the public including the detriment constituted by any lessening of competition that would be likely to result.
38. Accordingly, the ACCC proposes to grant authorisation to allow the ANF to represent its current and future members in collective negotiations with the identified counterparties listed at Attachment B.
39. From time to time, the ANF wishes to be able to negotiate with future counterparties not specifically identified in its application. The ACCC notes that the ability to add new counterparties, may in some circumstances, significantly alter the scope of the authorisation granted by the ACCC and/or could change the balance of public benefit and detriment. The ACCC has only granted authorisation on such terms where there was likely to be little risk of anti-competitive detriment. See for example St Vincent's Health Australia Ltd, A91099.
40. To enable the ACCC to monitor whether the addition of new counterparties changes the balance of benefits and detriments, the ANF suggests that the ACCC impose an informal notification mechanism whereby the ANF can notify the ACCC of a change in suppliers and the ACCC can either (i) note the change or (ii) advise that a formal variation to the authorisation is required.
41. The ACCC considers that generally newsagents are likely to comprise only a small proportion of total purchasers in respect of the range of goods and services proposed to be acquired, aside from magazine and newspapers acquisitions (which have previously been authorised by the ACCC). Further many of the proposed collective negotiations involve counterparties that are much larger than the bargaining group. In these circumstances there is likely to be little risk of anti-competitive detriment if the authorisation allowed collective bargaining to occur with future counterparties not specified in the authorisation. Further, the addition of such counterparties is likely to facilitate benefits to the public, as identified in this draft determination. The ACCC is proposing to impose a condition improving the transparency of this aspect of the authorisation, being

**C1: If the ANF seeks to collectively negotiate on behalf of members with a counterparty not named in this determination it must:**

- (a) **Write to the counterparty inviting them to participate in the collective negotiations and provide the details of this authorisation, including but not limited to its voluntary nature;**
- (b) **Obtain the written consent of the counterparty to participate in collective negotiations; and**
- (c) **Provide an annual report to the ACCC for inclusion on the public register which lists all counterparties to collective negotiations pursuant to the authorisation.**

## **Length of authorisation**

42. The CCA allows the ACCC to grant authorisation for a limited period of time.<sup>9</sup> This allows the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
43. In this instance, the ANF is seeking re-authorisation for five years.
44. The ACCC has generally granted authorisation for arrangements involving collective bargaining for five years. Where arrangements have already been in place for a period of time the ACCC may consider it appropriate to grant authorisation for a longer period.<sup>10</sup> Given the ACCC's conclusion on the balance of public benefits and public detriments, the fact that the ANF has been authorised to represent members in collective bargaining since 2004, and that the ACCC has regularly authorised similar conduct with no apparent concerns having arisen in relation to any of these arrangements, the ACCC is proposing to grant authorisation for ten years.
45. The ACCC notes that it is able to revoke an authorisation where there has been a material change of circumstances, among other things, since the authorisation was granted pursuant to s 91B of the CCA.

## **Draft determination**

### **The application**

46. On 3 February 2014 the Australian Newsagents' Federation (the ANF) lodged an application for the revocation of authorisation A91134 and the substitution of authorisation A91407 for the one revoked. The application was made using Form FC Schedule 1 of the *Competition and Consumer Regulations 2010*. The application was made under subsection 91C of the *Competition and Consumer Act (2010)* to enable the ANF to collectively negotiate on behalf of current and future members with a range of counterparties, including counterparties not specifically identified in the ANF's application. The ANF proposes forming national bargaining groups except in circumstances where a local/state based bargaining group is more appropriate.

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<sup>9</sup> Subsection 91(1).

<sup>10</sup> See for example, Australian Dairy Farmers Limited (A91263), in which authorisation to engage in collective bargaining by dairy farmers was granted for ten years. The ADF had been authorised to engage in collective bargaining since 2002. See also Lottery Agents Queensland (A91397).

47. The ANF seeks authorisation of these arrangements as they may contain a cartel provision and may have the effect of substantially lessening competition within the meaning of section 45 of the CCA.
48. Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

### **The net public benefit test**

49. For the reasons outlined in this draft determination, and subject to the proposed condition below, the ACCC considers that in all the circumstances the proposed arrangement for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition.
50. The ACCC therefore **proposes to grant** authorisation to application A91407.

### **Conduct for which the ACCC proposes to grant authorisation**

51. The ACCC proposes to grant conditional authorisation to the ANF to allow the ANF to represent current and future members in collective bargaining with a range of nominated counterparties set out at Attachment B to this draft determination.
52. The ACCC also proposes to grant conditional authorisation to allow the ANF to represent current and future members in negotiations with counterparties not identified by this draft determination, on condition that:
- C1: If the ANF seeks to collectively negotiate on behalf of members with a counterparty not named in this determination it must:
    - (a) write to the counterparty inviting them to participate in the collective negotiations and provide the details of this authorisation, including but not limited to its voluntary nature;
    - (b) obtain the written consent of the counterparty to participate in collective negotiations; and
    - (c) provide an annual report to the ACCC for inclusion on the public register which lists all counterparties to collective negotiations pursuant to the authorisation.
53. The ACCC also proposes to authorise the ANF to form national bargaining groups. Local or state based bargaining groups may also be formed where appropriate.
54. The ACCC is proposing to grant conditional authorisation for ten years.
55. This draft determination is made on 1 May 2014.

### **Further submissions**

56. The ACCC will now seek further submissions from the applicant and interested parties. In addition, the ANF or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the CCA.

## Attachment A - Summary of relevant statutory tests

**Subsections 90(5A) and 90(5B)** provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- (a) the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- (b) that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

**Subsections 90(6) and 90(7)** state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- (a) the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- (b) that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

## **Attachment B – List of proposed counterparties**

### *Insurance Brokers*

- OAMPS
- Marsh
- JLT
- BUPA (Health)
- Qsure
- AON

### *Business Opportunities*

- Connect (Hubbed)
- Western Union
- Toll Priority
- Motorpass (Wright Express)
- Hyundai
- Finance for Life
- PPCA
- APRA
- Nparcel

### *Drinks*

- Coca-Cola
- Schweppes

### *Calling Cards – Phone Cards*

- Telstra
- Optus
- Boss Phone Card (IDT)
- e-pay
- Australian Telecom
- iGET IT
- Logically

### *Greeting cards & Wrap*

- Hallmark
- John Sands
- Simson
- Artwrap Pty Ltd
- For Arts Sake

### *Stationery*

- Group Newsagency Supplies
- Ancol Stationery

#### *Banks*

- National Australia Bank
- Suncorp Bank
- ANZ Bank
- Westpac Bank
- Commonwealth Bank
- Bendigo Bank
- St. George Bank
- Bank SA

#### *Publishers*

- News Corp Australia
- Bauer Media
- Fairfax Media
- IPS (Integrated Publication Solutions)
- Gordon and Gotch Australia
- APN News & Media

#### *Marketing Groups/Franchises*

- The Lucky Charm
- SupaNews
- Newspower
- AusPOST
- Metcash
- Friendly Grocer
- SPAR

#### *Tobacco*

- Philip Morris
- BATA
- Imperial Tobacco

#### *Confectionery*

- Nestle
- Mars Confectionary
- The Distributors
- Darrell Lea
- Cadbury

### *Shopfitters*

- Interfit
- Rowe
- Thomas Brown
- Revolution
- RJR Shopfitters
- Topp Shopp & Office Fitters
- Pascoe Retail Installations
- Kro Panels
- Pro 1 Building Services
- Farrago Interiors
- Allora Joinery
- M & M Cabinets
- On-Site Projects
- Plus Projects
- Fitouts QLD
- Intone Projects
- Abcon Joinery
- R & Y Installations
- Quality Shopfitters International
- Shop Adjusters
- Thomas Joinery
- APS Shopfitters

### *P.O.S. Providers*

- Computerlink
- Access POS

### *Service Providers*

- AAPT
- Optus Broadband
- Telstra Media (Bigpond)
- Foxtel
- iiNet

### *Electricity Providers*

- Ergon energy
- AGL
- Origin

- TruEnergy (now Energy Australia)
- Momentum
- Jobson

*Service stations*

- BP
- Shell
- Caltex
- 7Eleven

*Transport Companies*

- Peter Cochrane Transport
- Followmont Transport
- Dalys Transport
- Toll Transport

*ATM Service Providers*

- DC Payments (Customers ATM)

*Shopping Centre Landlords*

- McConaghy Group
- Mirvac
- Perron Group
- QIC
- Savills
- Stockland
- Westfield
- AMP Capital
- Brookfield
- Charter Hall
- Colonial First State Global Asset Management
- Dexus Property Group
- Eureka Funds Management
- Federation Centres
- The GPT Group
- ipoh
- ISPT Super Property
- Jen Retail Properties
- Jones Lang LaSalle
- Lend Lease retail