



Australian
Competition &
Consumer
Commission

Determination

Application for revocation of A91284
and the substitution of authorisation A91570

lodged by

Homemakers South Limited

in respect of

collective bargaining on behalf of its furniture and
bedding retail members

Date: 3 May 2017

Authorisation number: A91570

Commissioners: Rickard
Court
Featherston

Summary

The ACCC grants re-authorisation to Homemakers South Limited, trading as Homemakers Furniture & Sleepzone Bedding, to collectively bargain, on behalf of its members, with suppliers of furniture, bedding and related stock, advertising and marketing services, and ancillary services.

The ACCC has decided to re-authorise the conduct for a further 10 years.

Homemakers South Limited, trading as Homemakers Furniture & Sleepzone Bedding (**Homemakers**), is a buying, advertising and marketing group that is seeking revocation of authorisation A91284 and its substitution with authorisation A91570.

Current authorisation A91284 was granted on 12 April 2012 to allow Homemakers to engage in collective bargaining with suppliers on behalf of its current and future Members (independent furniture and bedding retail outlets) in relation to acquiring furniture, bedding and related stock, advertising and marketing services, and ancillary services such as insurance and finance arrangements and transport and distribution services (the **Conduct**). Authorisation A91284 was granted for five years and is due to expire on 31 May 2017.

Homemakers has sought re-authorisation of the same Conduct for 10 years.

Since 2012, Homemakers' membership has increased from 55 to around 76 Members. It expects to have around 85-90 Members within the next 10 years. Homemakers submits that the collective bargaining arrangements in place under authorisation A91284 have made Members more price competitive, increased Members' bargaining power with suppliers, reduced transactions costs, broadened the range of products that Members can access and reduced Members' warehousing costs.

The ACCC considers that the collective bargaining arrangements are likely to result in a number of public benefits. Transaction cost savings are likely to result for both Members and suppliers from conducting one set of negotiations. The Conduct is also likely to result in public benefits from providing Members with greater input into the terms and conditions of their contracts with suppliers.

The ACCC also considers that the Conduct is likely to result in manufacturers and suppliers achieving lower costs as a result of bulk ordering and from efficiencies through aligning transport and distribution services. In addition, the Conduct is also likely to increase competition in the furniture and bedding industry by enabling Members to be more competitive on price and quality.

The ACCC considers that the level of anti-competitive detriment that is likely to result from the collective bargaining arrangements is negligible, especially because the bargaining group remains small compared to the total number of furniture retailers and its Members are geographically dispersed. Further, participation in the Conduct is voluntary for Members and suppliers as such a collective agreement will only be reached where both sides of the negotiations agree.

The ACCC is satisfied that the Conduct is likely to result in a net public benefit and has therefore decided to revoke current authorisation A91284 and grant re-authorisation until 25 May 2027.

Contents

Summary	i
Contents	ii
1. The application for authorisation	1
2. Background	1
The Applicant	1
The Conduct	2
3. Consultation	2
The Applicants	2
4. ACCC assessment	3
Relevant areas of competition	3
Future with and without	4
Public benefits	4
Transaction cost savings	5
Improved input into contracts power	5
Production efficiencies for manufacturers and suppliers	5
Increased competition among furniture and bedding retailers	6
ACCC conclusion on public benefits	6
Public detriments	6
Voluntary participation in the collective bargaining arrangements	7
Coverage and composition of the group	7
ACCC conclusion on public detriments	7
Balance of public benefit and detriment	8
Length of authorisation	8
5. Determination	8
The application	8
The net public benefit test	9
Conduct for which the ACCC grants authorisation	9
Date authorisation comes into effect	9

1. The application for authorisation

1. On 12 January 2017, Homemakers South Limited, trading as Homemakers Furniture & Sleepzone Bedding (**Homemakers**), lodged with the ACCC an application for the revocation of authorisation¹ A91284 and its substitution with authorisation A91570 (**re-authorisation**).
2. Homemakers sought authorisation to collectively bargain with suppliers on behalf of independent furniture and bedding retail outlets that are Homemakers members (**Members**) for a further 10 years.
3. On 27 March 2017, the ACCC issued a draft determination² proposing to grant authorisation for 10 years. A conference was not requested following the draft determination.

2. Background

The Applicant

4. Homemakers is a buying, advertising and marketing group comprised of independent furniture and bedding retailers. When authorisation A91284 was granted on 12 April 2012, Homemakers had 55 Members operating stores in New South Wales, South Australia, Tasmania and Western Australia. Currently, Homemakers has around 76 Members and has expanded into Queensland and the ACT. It expects its membership to increase to around 85-90 Members within the next 10 years. Homemakers also operates a warehouse in which it holds stock on behalf of Members.
5. The objectives of Homemakers are to:
 - a. assist its Members in buying stock by bringing Members together to facilitate group or quantity purchases
 - b. organise and arrange advertising campaigns and general promotions for Members
 - c. consider, originate and support improvements in the law
 - d. secure for Members all the advantages of group participation, effort and action as well as generally protect the interests of Members.
6. Homemakers charges its Members provisional membership fees, full membership fees and monthly fees. Members must also purchase shares in the company. In addition, Homemakers requires prospective Members to provide five references that demonstrate the ability of the prospective Member to pay suppliers. Homemakers

¹ 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). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the CCA but nonetheless consider there is an offsetting public benefit from the conduct. Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at www.accc.gov.au/publications/authorisation-guidelines-2013.

² Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

must also be satisfied that there is sufficient demand for furniture and bedding products in the area of the prospective Member's store.

The Conduct

7. Authorisation A91284 allows Homemakers to engage in collective bargaining with suppliers on behalf of its current and future Members in relation to acquiring furniture, bedding and related stock, advertising and marketing services, and ancillary services such as insurance and finance arrangements and transport and distribution services (the **Conduct**). Authorisation A91284 was granted for five years and is due to expire on 31 May 2017.
8. Homemakers has sought authorisation of the same Conduct for a period of 10 years. Homemakers submits that a longer period is appropriate because it does not foresee any major changes to the group's structure within 10 years and requiring Homemakers to apply within a lesser period would cause it considerable financial strain.
9. Homemakers has not sought authorisation to engage in collective boycott activity. Participation in the Conduct will continue to be voluntary, which means that Members and suppliers will be under no obligation to participate in a negotiated agreement if they believe that such an agreement will adversely affect their respective businesses.

3. Consultation

10. The ACCC tests the claims made by an applicant in support of its application for authorisation through an open and transparent public consultation process.
11. Both prior to and following the draft determination, the ACCC invited submissions from potentially interested parties including major competitors, suppliers, customers and relevant industry associations or peak bodies.³ The ACCC did not receive any submissions commenting on the application or draft determination.

The Applicants

12. Homemakers submits that authorisation A91284 has resulted in public benefits that will continue to be realised if re-authorisation is granted.
13. Specifically, Homemakers submits that its ability to collectively bargain with suppliers on behalf of Members has:
 - made Members more price competitive with larger retailers in the same market
 - enabled Members to increase their bargaining power in relation to suppliers by bargaining collectively, as well as benefit from Homemakers' negotiation skills to achieve better terms and conditions in the collective bargaining with suppliers
 - reduced the costs incurred and time spent negotiating with suppliers both in Australia and overseas. In particular, Homemakers organises Members

³ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

Meetings to allow Members to speak with suppliers about their products and purchase products directly from suppliers. Homemakers has also sent its staff overseas to source stock on behalf of Members rather than each Member doing so individually and bearing the cost themselves

- provided Members with access to products, particularly imported goods, which Members would not have had the knowledge or skill to obtain individually
- reduced warehousing costs for Members. Between 2012 and 2016, Homemakers increased its bulk purchasing and raised its own stock levels from \$1.6 million to \$2.5 million, enabling Members to reduce the stock they each hold. Members can also use Homemakers' new online ordering system to order products that are either warehoused by Homemakers or supplied by a preferred supplier
- reduced transaction costs for both Members and suppliers by:
 - enabling Members to share the costs of advertising, which include television advertising, the production of catalogues and the employment of a full-time marketing manager. This has allowed Members to participate in forms of advertising that they could not as separate enterprises. Homemakers has also engaged a full-time Business Development Manager to assist stores with cost efficiencies and with ensuring they have the right amount and types of products and are price competitive with retailers in their area
 - enabling Members to share the costs of the Homemakers website, which Homemakers has developed and maintained on behalf of Members at a cost of approximately \$100 000
 - enabling Homemakers to organise Members Meetings.

14. Homemakers submits that, as far as it is aware, no public detriments have arisen as a result of authorisation A91284. It notes that re-authorisation is unlikely to lessen competition between Homemakers' Members due to:

- Members not generally being in close geographical locations
- participation in the collective bargaining arrangements being voluntary
- there being no obligation on Members to participate if they believe an agreement will adversely affect their respective businesses.

4. ACCC assessment

15. The ACCC's assessment of the Conduct is in accordance with the relevant net public benefit tests⁴ contained in the *Competition and Consumer Act 2010* (Cth) (the **CCA**). In broad terms, the ACCC may grant authorisation if it is satisfied that the Conduct would be likely to result in a public benefit that outweighs the likely public detriment constituted by any lessening of competition.

⁴ Subsections 90(5A), 90(5B), 90(6), 90(7), 91C(4), 91C(7).

Relevant areas of competition

16. Homemakers submits that the relevant areas of competition are:

- the supply of furniture and bedding stock in Victoria, New South Wales, South Australia, Queensland, Tasmania, the ACT and Western Australia
- the supply of advertising and marketing services to furniture and bedding retailers in these same states.

17. There were approximately 3,500 furniture and bedding retailers in Australia in 2016. Between 2012 and 2016, total revenue in the furniture and bedding retail industry averaged around \$7.1 billion per annum and is projected to grow 2.2 per cent per year to reach \$8.3 billion by 2021-22.⁵

18. The ACCC considers that for the purpose of assessing the proposed collective bargaining arrangements, the precise identification of the areas of competition is not necessary. Therefore, the ACCC has assessed the Conduct in the context of the areas of competition for the wholesale and retail supply of furniture and bedding and associated advertising and marketing services.

Future with and without

19. To assist in its assessment of the Conduct against the authorisation test, the ACCC compares the benefits and detriments likely to arise in the future with the Conduct for which authorisation is sought against those in the future without the Conduct for which authorisation is sought.

20. The ACCC considers that, in the future without the Conduct, each Member will individually negotiate with suppliers for furniture and bedding stock, advertising and marketing services, and ancillary services.

21. The future with the Conduct is a continuance of the current collective arrangements. The membership of Homemakers may continue to grow but is not likely to encompass a significant proportion of furniture retailers in Australia.

Public benefits

22. Having regard to the submissions of Homemakers, the ACCC has considered the following claimed public benefits of the Conduct:

- transaction cost savings
- production efficiencies for manufacturers and suppliers
- increased competition with larger furniture and bedding retailers
- improved input into contracts.

23. The ACCC's assessment of the likely public benefits from the Conduct follows.

⁵ IBIS, 'IBISWorld Industry Report G4211: Furniture Retailing in Australia', *IBIS World*, November 2016, p. 4, 29.

Transaction cost savings

24. There are transaction costs associated with contracting. High transaction costs can reduce the incentives to enter into an agreement or increase the incentives to offer standard form contracts, resulting in sub-optimal outcomes. However, the transaction costs of contracting can be reduced by a collective bargaining arrangement.
25. The ACCC accepts that the Conduct is likely to deliver public benefits by providing opportunities for transaction cost savings for both Members and suppliers. In particular, the ACCC considers that collective bargaining with suppliers is likely to reduce:
- the search and negotiation costs that would otherwise be incurred by Members individually entering agreements for the supply of furniture and bedding stock and advertising, website, warehousing, business development and marketing services. For example, Homemakers advises that the Members Meetings organised under authorisation A91284 have resulted in cost efficiencies by enabling Members and suppliers to negotiate agreements centrally rather than in each Member store. Members have also achieved reduced search and negotiation costs by using Homemakers' online ordering system to order directly from suppliers and relying on Homemakers' staff to source new stock on their behalves
 - the costs that would otherwise be incurred by Members if advice in relation to each of the supply agreements was obtained individually
 - the search, negotiation, monitoring and enforcement costs incurred by suppliers.

Improved input into contracts

26. Homemakers submits that the collective bargaining arrangements have enabled Members to rely on Homemakers' negotiation skills to improve Members' input into contracts with suppliers.
27. Improving the input into terms and conditions of contracts through collective negotiations may assist parties to identify and achieve greater efficiencies in their businesses, for example by addressing common contractual issues in a more streamlined and effective manner.
28. To the extent that the collective bargaining arrangements enable Homemakers' Members to achieve increased input into contracts that would lead to efficiency gains, this would give rise to a public benefit.

Production efficiencies for manufacturers and suppliers

29. The ACCC considers that the ability for Homemakers to place fewer and larger orders with manufacturers and suppliers, relative to the situation where individual Members place smaller orders on an ad hoc basis, is also likely to create efficiencies for manufacturers and suppliers.
30. For example, bulk orders may provide more certainty and allow manufacturers to achieve cost advantages due to lower production costs (through economies of

scale). Moreover, suppliers may be able to align transport and distribution services, which also provide the opportunity for efficiencies and cost savings.

Increased competition among furniture and bedding retailers

31. Homemakers submits that the agreements negotiated under authorisation A91284 have made its Members more competitive with larger furniture and bedding retailers.

32. The ACCC considers that the Conduct is likely to result in increased competition in the retail of furniture and bedding products by enabling Members to be more competitive on price.

33. As noted, the ACCC considers that the Conduct has and will continue to result in savings for Members in the form of:

- Members being able to share and therefore reduce transaction costs
- production efficiencies for suppliers arising from larger and more consistent orders
- discounts received by the group because of group or quantity purchases of goods and services, including advertising, website, warehousing, business development and marketing services. For example, Homemakers advises that under existing authorisation A91284 Members have reduced their warehousing costs, shared the costs of advertising (including the recent employment of a marketing manager and Business Development Manager) and saved \$100 000 from having Homemakers develop and maintain a website presence for Members on their behalves.

34. The ACCC also notes that Homemakers has given Members access to a wider range of products at a lower cost. Providing Members with a more diverse product range is likely to increase competition between Members and other retailers and therefore also constitute a public benefit.

ACCC conclusion on public benefits

35. The ACCC accepts that the Conduct has resulted, and is likely to continue to result, in public benefits arising from transaction cost savings, production efficiencies for manufacturers and suppliers, increased competition in furniture and bedding retail, and improved input into contracts with suppliers.

Public detriments

36. Collective bargaining involves two or more competitors in an industry coming together to negotiate terms and conditions, including price, with a supplier or customer.

37. Generally, competition between individual businesses generates price signals which direct resources to their most efficient use. Collective agreements to negotiate terms and conditions, and the sharing of information in the course of the collective discussions, can interfere with these price signals and accordingly lead to (allocative) inefficiencies. However, the extent of the detriment and the impact on

competition of the collective agreement will depend upon the specific circumstances involved.

38. Having regard to the submissions of Homemakers, the ACCC considers that the potential anti-competitive effect of collective bargaining arrangements is likely to be more limited where:

- participation in the collective bargaining arrangement is voluntary
- there are restrictions on the coverage and composition of the bargaining group.

39. Each of these mitigating factors are discussed in turn below.

Voluntary participation in the collective bargaining arrangements

40. Homemakers submits that participation in the Conduct will remain voluntary for Members.

41. The ACCC notes that the proposed Conduct does not affect the ability of suppliers to negotiate individually with Members in addition to, or instead of, collective negotiation. The ACCC therefore considers that collective negotiations will only take place where it is in the commercial interests of all parties to do so.

42. The ACCC also notes that there was no opposition to the collective bargaining proposal.

Coverage and composition of the group

43. The ACCC considers that, where the size and composition of a bargaining group is restricted, any anti-competitive effect is likely to be reduced having regard to the smaller area of trade directly affected and the competition provided by those outside the group.

44. As mentioned, Homemakers is currently comprised of around 76 small business Members out of approximately 3,500 furniture and bedding retail businesses in Australia. Homemakers has 26 Member stores located in Victoria, 16 in NSW, four in South Australia, four in Queensland, five in Tasmania, two in the ACT and 15 in Western Australia.⁶ Even if Homemakers increases its membership to between 85-90 Members over the next 10 years, the bargaining group is still likely to represent a small proportion of the wholesale and retail supply of furniture and bedding in Australia.

ACCC conclusion on public detriments

45. The ACCC recognises that collective bargaining could result in a reduction in competition between Members for the acquisition of the goods and services covered by the collective bargaining arrangements. However, this detriment is likely to be mitigated by the voluntary nature of the arrangements and the limited composition and coverage of the bargaining group. Further, there is no information to suggest that the Conduct will be likely to reduce competition for the retail supply of furniture and bedding.

⁶ Homemakers Furniture, viewed 3 March 2017, www.homemakersfurniture.com.au/en/store-locations.

46. The ACCC therefore considers that the Conduct is likely to result in a negligible level of anti-competitive detriment, if any.

Balance of public benefit and detriment

47. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.

48. For the reasons outlined in this determination, the ACCC is satisfied that the Conduct is likely to result in a public benefit that would outweigh the likely public detriment, including the detriment constituted by any lessening of competition that would be likely to result.

49. Accordingly, the ACCC grants authorisation.

Length of authorisation

50. The CCA allows the ACCC to grant authorisation for a limited period of time.⁷ This enables the ACCC 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.

51. In this instance, Homemakers sought authorisation for 10 years.

52. The ACCC did not receive any submissions in relation to the length of authorisation sought.

53. Given that the ACCC has already authorised the Conduct for five years and no complaints were received, the ACCC grants authorisation of the Conduct for a further 10 years.

5. Determination

The application

54. Application A91570 was made using a Form FC, under subsection 91C(1) of the CCA for the revocation of authorisation A91284 and the substitution of authorisation A91570. Authorisation is sought to allow Homemakers South Limited, trading as Homemakers Furniture & Sleepzone Bedding (**Homemakers**) to engage in collective bargaining with suppliers on behalf of its current and future Members in relation to acquiring furniture, bedding and related stock, advertising and marketing services, and ancillary services such as insurance and finance arrangements and transport and distribution services.

55. 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.

⁷ Subsection 91(1).

The net public benefit test

56. For the reasons outlined in this 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 re-authorisation is sought is likely to result in a public benefit that would outweigh the likely detriment to the public constituted by any lessening of competition that is likely to result.

Conduct for which the ACCC grants authorisation

57. The ACCC has decided to revoke authorisation A91284 and grant authorisation A91570 in substitution. The substitute authorisation is granted to Homemakers to enable it to collectively bargain on behalf of Members in relation to the acquisition of furniture, bedding and related stock, advertising and marketing services, and ancillary services such as insurance and finance arrangements and transport and distribution services until 25 May 2027.

58. Under section 88(10) of the CCA, the ACCC extends the authorisation to future parties to the Conduct.

Date authorisation comes into effect

59. This determination is made on 3 May 2017. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 25 May 2017.