



Draft Determination and interim authorisation

Application for authorisation

lodged by

Steeline Member Pty Ltd

in respect of

collective bargaining conduct and joint advertising and selling
activities

Authorisation number: AA1000520

Date: 6 November 2020

Commissioners: Sims

Keogh

Rickard

Court

Ridgeway

Summary

The ACCC proposes to grant conditional authorisation to enable Steeline and its members to engage in joint advertising and selling activities, and collective bargaining conduct.

Steeline's 32 members are independent suppliers of steel and other metal roofing and building materials (roll formers). They operate throughout Australia, in capital cities and regional areas.

Authorisation is sought for Steeline and its current and future members to: jointly advertise and sell steel roofing and building materials, including agreeing on the prices they will sell these product for (the joint selling and advertising conduct); and collectively bargain with suppliers of inputs to their businesses, including suppliers of the steel coil they use to manufacture roofing and building materials (the collective bargaining conduct).

The ACCC considers that the joint selling and advertising conduct is likely to result in public benefits in the form of cost savings for Steeline members from advertising and marketing their products, increased price transparency for customers and increased competition by enabling Steeline members to more effectively compete with national suppliers of steel roofing and building materials.

The ACCC considers that there will be some reduction in competition between some *current* Steeline members (i.e. those whose location means that they currently compete with another Steeline member) as a result of the joint selling and advertising conduct. However, having regard to the competitive constraint imposed by other suppliers in the geographic areas where Steeline members operate, the ACCC considers that the public detriment resulting from the reduction in competition between Steeline members is likely to be limited.

However, the ACCC notes that allowing unidentified roll formers to participate in the joint selling and advertising conduct, by becoming Steeline members in the future, could potentially result in a more significant public detriment in some circumstances.

The ACCC considers that any public detriment is limited by the geographic dispersion of Steeline members and because prices and other terms and conditions will be set collectively and will apply across the group as a whole. Prices and other terms therefore will likely be set having regard to the competitive constraint imposed by competing roll formers in all areas, including those where there is strong competition to Steeline members.

The ACCC is proposing to impose a condition of authorisation requiring Steeline to advise the ACCC whenever a new member joins the group. This will provide transparency about any future members joining the group. If the ACCC has concerns about any new member joining the group, this will also provide an opportunity for these concerns to be raised with Steeline, and further action taken if warranted.

The ACCC considers that the collective bargaining conduct is likely to result in public benefits through transaction cost savings for all parties to the collective negotiations and cost savings for Steeline members due to greater access to rebates from suppliers, allowing Steeline members to offer more competitive pricing to customers.

The collective bargaining conduct is also likely to provide Steeline members with greater input into their contracts with suppliers, resulting in more efficient outcomes.

The ACCC considers that the collective bargaining conduct is likely to result in minimal public detriment due to the size of the group and participation in the collective bargaining conduct being voluntary for suppliers.

The ACCC proposes to grant conditional authorisation to Steeline and its members for five years.

The ACCC has also granted interim authorisation for Steeline and its members to discuss and plan how their joint advertising and selling arrangements will operate. Interim authorisation does not extend to Steeline members entering into any agreements for the sale of products by them or discussing prices or sharing any pricing information in relation to the advertising or selling of any product by them, collectively or individually.

Interim authorisation has also been granted for Steeline members to negotiate, but not enter into agreements, with their suppliers.

The ACCC invites submissions in relation to this draft determination by 23 November 2020 before making its final decision.

1. The application for authorisation

- 1.1. On 25 June 2020, Steeline Members Pty Ltd (**Steeline**), on behalf of itself and its current and future members, lodged application for authorisation AA1000520 with the Australian Competition and Consumer Commission (the **ACCC**). Steeline is seeking authorisation for joint advertising and selling activities and collective bargaining conduct for 5 years (the **Proposed Conduct**). This application for authorisation AA1000520 is made under subsection 88(1) of the Competition and Consumer Act 2010 (Cth) (**the Act**).
- 1.2. The ACCC may grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching competition law but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.3. At the time of lodging the application Steeline also requested that the ACCC grant interim authorisation under subsection 91(2) of the Act to engage in the Proposed Conduct while the ACCC is considering the substantive application. Steeline requested that interim authorisation be considered with the draft determination. The request for interim authorisation is discussed further in section 6.

The Applicant

- 1.4. Steeline is a national buying group operating in Australia. It currently has 32 members, which supply steel and other metal roofing products, along with associated metal building products. Steeline's members operate throughout Australia, in capital cities and regional areas.
- 1.5. Currently, Steeline's primary role is to negotiate supply agreement with relevant suppliers on behalf of its members. Steeline also provides branding, marketing and specialist engineering advice services to some of its members.
- 1.6. Most of Steeline's members supply roll-form steel building and roofing products. Steeline's members generally roll form steel building and roofing products themselves using steel sheet and coil and other inputs sourced from third party suppliers. Some

acquire roll-formed products and resell them to customers. Examples of products which may be roll-formed and/or supplied by members include roofing, walling, sheds, garages, carports and architectural cladding. Some members also, but to a lesser extent, supply installation services.

- 1.7. Steeline's members operate in over 50 Australia metropolitan and regional locations. Members are all independently-owned and have no corporate relationship with each other except for their relevant interest in Steeline, or where some members are related due to cross ownership. Steeline does not hold an ownership interest in any of its members. A full list of Steeline's members is provided in Schedule 1 of the application for authorisation [available here](#).

The Proposed Conduct

- 1.8. Steeline is seeking authorisation for two types of conduct:

- (a) joint advertising and selling activities, intended to be carried out in future by Steeline members (including the operation of an online store) (**the joint selling and advertising conduct**), and
- (b) collective bargaining conduct, which involves Steeline negotiating and entering into supply arrangements regarding the terms of supply of various products to its members (**the collective bargaining conduct**).

(together, the **Proposed Conduct**)

The joint selling and advertising conduct

- 1.9. The proposed joint selling and advertising conduct will specifically involve:

- Steeline and its members jointly discussing and negotiating common terms and conditions, including price, under which products and services will be advertised and offered for sale by Steeline on behalf of its members, for example through catalogues, advertising campaigns and an online store.
- Steeline operating an online store where customers can order products for agreed prices. The orders will then be fulfilled directly by a member (likely the nearest member to the customer) for the agreed price.
- In relation to large national customers, Steeline and its members engaging in joint selling activities where Steeline will negotiate and enter into, or otherwise tender for, national supply agreements on behalf of members. Each such supply agreement is intended to be with Steeline, however, individual members will implement the supply agreement by providing goods or services directly to the relevant customer on the terms agreed. These supply agreements are intended to include pricing terms and territories will be allocated to members to implement the relevant supply agreement with the customer.

- 1.10. The joint selling and advertising conduct is voluntary for members. Members are free to decide whether or not to participate in the joint selling conduct, and individual members who do choose to participate in the joint selling conduct will still remain free to negotiate with customers directly in relation to any terms or prices for products.

The collective bargaining conduct

- 1.11. The collective bargaining conduct will specifically involve Steeline negotiating with suppliers, on behalf of members, the terms of supply to members (including price) for products that members require in the ordinary course of carrying out steel roll-forming work. These products include steel sheet and coil, polycarbonate and fibreglass

sheeting, paints, insurance and insulation. Steeline does not expressly limit the types of products it will negotiate supply agreements for.

- 1.12. Steeline submits it currently engages in the collective bargaining conduct under protection of the joint venture provision in Act, but given its members now wish to engage in the joint advertising and selling activities, it is also seeking authorisation for the collective bargaining conduct.

2. Background

- 2.1. Roll formers are businesses which purchase various forms of steel coil inputs and use those inputs to manufacture roofing or building materials. Roll formers are typically known for the manufacture and supply of metal roofing and walling products, such as corrugated roofing and wall cladding for use in both commercial and residential properties. Roll forming is the manufacturing process where steel coil inputs are fed through contoured roller die machinery to form 'roll formed' steel in a particular profile which can then be cut to a particular length. Similar processes are also used for producing steel sheds and, as well as for producing steel products used in the construction of buildings (eg, steel frames).
- 2.2. Steeline submits not all roll formers will be able to produce every type of roll-formed steel product. For example, some of Steeline's members will only carry certain profile rollers meaning they will not be able to produce every profile of corrugated cladding. Steeline considers that as the process (and equipment) is relatively similar for producing all types of roll-formed products, a roll former that is unable to produce certain types of roll-formed products can, without significant difficulty, acquire the relevant systems and knowhow to commence manufacturing new forms of roll-formed product.
- 2.3. Steeline considers that most transactions for roll formed steel products are business-to-business. This is because most roll formers will sell to either construction companies or builders, or otherwise will sell to specialised installation companies that have an ongoing relationship with construction companies or builders.
- 2.4. Steeline submits that, traditionally, many sales occurred between local builders and locally-based roll formers. However, Steeline considers that customers are increasingly purchasing on a regional, state or national basis. Steeline considers this may be due to changes and consolidation in the construction and building industry, where there are increasingly regional, state or national construction companies or builders who look to purchase roll-formed products consistently across their entire network rather than in an ad hoc nature by geographic location.
- 2.5. Steeline submits that its members operate in highly competitive markets which include a number of large suppliers and customers, and that each member is a very small participant in these markets. Steeline estimates its members collectively represent approximately 5-10% of roll-formed steel product sales nationally. Steeline notes that IBISWorld estimates its market share at 2-3% nationally.¹ Steeline's best estimate of national market shares for the supply of roll-formed metal products is provided in the following table.²

¹ Steeline submits IBISWorld estimates that Steeline has approximately 2-3% market share in the steel roof and guttering manufacturing market. Steeline considers that the estimated market shares reflect in IBISWorld's report are relatively accurate in respect of the industry as whole.

² This table is based on the Applicants market understanding as well as on publicly available information from competitors' annual reports (where available) and IBISWorld data (although no IBISWorld report exactly matches the Applicant's understanding of the market). The total market volume of 900,000 to 1.1 million tonnes per year is based on the Applicant's estimate of the total steel coil input market, which the Applicant's has used as a proxy for the relevant tonnages that roll-formers produce and sell to customers each year.

Figure 1 Estimated share of national sales of roll-form metal products

Market participant	Estimated annual volume (tonnes)	Estimated approximate market share (national) (%)
BlueScope (Lysaght/Fielders)	200,000 – 300,000	23 - 29%
Stramit	100,000 – 150,000	12 - 14%
Metroll	90,000 – 120,000	10 - 11%
Stratco	80,000 – 90,000	9%
Steeline Members	60,000	6 - 7%
Revolution Roofing	40,000	4 - 5%
Apex Building Products	40,000	4 - 5%
Others	250,000	24 – 29%
Totals	860,000 – 1.05 million	100%

2.6. Steeline estimates that its market share in each state and territory would be approximately similar to the national market shares, but with some variation depending on whether there are more or less Steeline members in a particular geographic area. Steeline estimates:

- the market share would be less than the national estimate (closer to 1-2%) in South Australia and Western Australia, where there are fewer Steeline members,
- in smaller states and territories such as Tasmania and the Northern Territory, the market share may be slightly higher than the national estimate (around 10-15%) as there are fewer local roll formers in those geographic areas, and
- in the larger states of Queensland, New South Wales and Victoria, the market share would be approximately the national average.

2.7. In terms of the collective bargaining conduct, Steeline estimates that its members would, at most in any given product market, purchase less than 5% of the product available from manufacturers and distributors.

Rationale for the Proposed Conduct

2.8. Steeline considers the joint selling and advertising conduct will:

- enable members to compete with existing major national suppliers (such as BlueScope) for national business from large customers. In particular, Steeline submits that it has observed a trend in the building and construction industry for companies to be consolidated into larger state and national entities, which results in businesses entering into national supply agreements with steel roll formers who are able to service all branches of the company across Australia,
- enable Steeline and its members to provide better and more consistent service and pricing to customers on a national basis, and

- enable Steeline and its members to offer products for sale to a broader range of customers who purchase online, meaning that members can reach more customers, and members are not all required to operate and maintain individual online stores.
- 2.9. Steeline submits the rationale for the collective bargaining conduct is to enable members to obtain better pricing and terms from large distributors and manufacturers due to increased bargaining power and larger volume orders. In the absence of the supply agreements negotiated by Steeline, the members would be unlikely to compete profitably with larger, national corporate or franchised competitors as the supply costs for individual members would likely be too high.
- 2.10. With respect to the main product purchased by Steeline members, the steel they use to manufacture roofing and building materials, Steeline submits that as well as operating the largest roll forming businesses in Australia, BlueScope is also the largest steel coil supplier in Australia and the primary supplier of steel coil to Steeline members. Steeline submits that BlueScope is also the major supplier of steel coil products to other roll formers in Australia.
- 2.11. The ACCC understands from public submissions received during the consultation process (outlined in more detail in section 3) and market inquiries that BlueScope's agreements with roll former customers for the supply of steel coil typically include a rebate structure (including discounts based on both volumes purchased and the customer agreeing to purchase a significant portion of their total requirements of steel coil inputs from BlueScope).

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including major competitors, suppliers, customers and relevant industry associations.³
- 3.3. The ACCC received three submissions – from Croft Steel Traders, Selection Steel and the Australian Steel Association.
- 3.4. Selection Steel, a sheet and coil steel supplier, does not object to Steeline participating in the joint selling and advertising conduct, however is concerned that the collective bargaining conduct will substantially lessen competition within the metals building products market by further entrenching BlueScope's dominant position in the upstream market for the supply of steel coil inputs. Selection Steel submits that it previously supplied roll forming inputs to a number of Steeline members as well as to other national roll formers. However, the introduction by BlueScope of buyer threshold rebate arrangements (which Steeline's members are able to access through the Steeline buying group) impedes its ability, and the ability of other smaller competitors to BlueScope, to compete on price. Selection Steel is concerned that BlueScope's rebate arrangements in effect restricts roll formers, such as Steeline's members, from exploring opportunities from alternative suppliers of roll forming inputs.
- 3.5. Croft Steel Traders, a steel importer and distributor, raised similar concerns about the collective bargaining conduct potentially resulting in Steeline members being required to use BlueScope sourced steel exclusively, which would have the effect of increasing BlueScope's already significant market power.

³ The public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

- 3.6. In response to Selection Steel and Croft Steel Traders submission, Steeline submits that interested parties do not raise any issues which should affect the ACCC's assessment of the authorisation application. Steeline and its members seek authorisation to engage in collective bargaining conduct with various suppliers, including BlueScope (among others). Steeline considers the fact that Steeline and its members have preferred suppliers is not directly relevant to the application. Further, Steeline submits the terms of any agreement reached with those suppliers, including the nature of any rebates negotiated for members, is outside the scope of conduct for which authorisation is sought.
- 3.7. The Australian Steel Association's submission states that it has no issues with the application.
- 3.8. In addition to submissions received, the ACCC directly contacted and held discussions with a number of other industry participants. These discussions were initiated by the ACCC and conducted on a confidential basis.
- 3.9. Public submissions by Steeline and interested parties are on the Public Register for this matter.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. Steeline seeks authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (**authorisation test**).

Relevant areas of competition

- 4.3. To assess the likely effect of the Proposed Conduct, the ACCC will identify the relevant areas of competition likely to be impacted.
- 4.4. Steeline submits that while it does not consider it necessary to form a concluded view as to market definition, in its view:
 - the primary markets which may be impacted by the joint advertising and selling conduct are state markets for the wholesale and retail supply of metal (primarily steel) roofing and building products, and associated products and services, and
 - the primary markets which may be impacted by the collective bargaining conduct are the national markets for the wholesale acquisition of products used by steel roll formers.
- 4.5. Steeline considers that because of the trend towards consolidation in the building and construction market, the relevant geographic market for the supply of roll forming products is now, at its narrowest, state-based. Steeline submits customers of roll formers are increasingly seeking supply agreements for roll-formed products from national providers with consistent pricing, delivery and supply terms across all locations. However, Steeline and other market participants contacted by the ACCC also estimate that it becomes uncompetitive to transport roll-formed products over 250km from the manufacturing point.

- 4.6. The ACCC has considered the effect of the joint selling conduct on both state and local/regional markets for the supply of roll formed steel building and roofing products, and associated products and services. The ACCC has also considered the effect of the collective bargaining conduct on the national markets for the acquisition of products used by steel roll formers.

Future with and without the Proposed Conduct

- 4.7. In a future without the Proposed Conduct, each Steeline member would likely price, advertise and sell their roll-form steel building and roofing products to customers entirely independently of each other.
- 4.8. In the future without the Proposed Conduct each Steeline member would also likely individually negotiate the terms of supply (including price), and enter into supply agreements, with suppliers of steel roll forming inputs. In this respect, while Steeline already engages in the collective bargaining conduct, relying on the joint venture defence in the Act, and there is no suggestion that they would cease doing so if authorisation is not granted, in applying the authorisation test the ACCC compares the future with the conduct the subject the authorisation, to the likely future without the conduct.

Public benefits

- 4.9. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁴

The joint selling and advertising conduct

- 4.10. Steeline submits that the joint selling and advertising conduct is likely to result in several public benefits, including:
- Increased competition in the supply of metal roofing and building products: the joint selling conduct will enable members to compete for national customers, which will increase competition to supply these customers. Increased competition may lead to lower prices and greater choice for customers.
 - Better price transparency for certain products given that members will be able to advertise pricing online: as a result of the joint advertising conduct, customers will be able to more easily shop-around and compare Steeline members prices to other suppliers, which will potentially lead to better service or pricing for customer. Members will also be able to provide consistent service and pricing to customers who wish to purchase metal roofing and building materials across their state or national businesses.
 - Cost savings: Members will be able to share the cost of setting up a website and producing advertising and marketing materials.

⁴ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

ACCC view

- 4.11. The ACCC considers the joint selling and advertising conduct is likely to result in the public benefits in the form of cost savings, increased price transparency for customers and increased competition.
- 4.12. The joint selling and advertising conduct will enable Steeline and its members to jointly discuss and agree on common terms and conditions. As a consequence, Steeline members' will be able to jointly produce advertising and marketing materials, as well as create and operate a Steeline online store, the cost of which will be shared between members. The joint selling and advertising conduct is therefore likely to result in cost savings for members relative to the 'future without the conduct', where each individual member advertises and markets some aspects of its own business, such as the prices it charges, independently of the Steeline group.
- 4.13. The joint selling and advertising conduct may also improve online price transparency by providing customers with a centralised point to access a single price schedule for Steeline's products and services (for example on the Steeline website, in catalogues and through other advertising such as television commercials). Currently, while Steeline members engage in some joint advertising, this is confined to general promotion of the products they offer and does not include, for example, information about the prices they charge for these products, as each member sets these prices separately.
- 4.14. Steeline submits that its members are currently unable to compete to provide metal roof and building products to customers with a preference for state wide or national contracts because members cannot supply such customers individually. As discussed at paragraph 2.4, there are a range of existing suppliers that are able to supply rollformed products across regions, including nationally.
- 4.15. To the extent that the proposed joint selling and advertising conduct enables Steeline members to compete as a group to supply customers previously unavailable to Steeline members operating on an individual basis, the ACCC considers the proposed conduct is likely to result in increased customer choice and enhanced competition. All else being equal, this enhanced competition is likely to be reflected in lower prices and/or better quality of service delivered to customers.

The collective bargaining conduct

- 4.16. Steeline submits that the collective bargaining conduct is also likely to result in public benefits, including:
- Cost savings: Members are able to purchase necessary inputs and supplies at a lower cost than would be available were the members to negotiate with suppliers individually. This is due to the greater bargaining power of Steeline compared to individual members and transaction cost savings resulting from more efficient negotiations.
 - Improved quality of products and services provided: Members may be able to acquire higher quality inputs and products from larger suppliers than would be available to them if they were negotiating on an individual basis.
 - Increased competition in the supply of metal roofing and building products: as a result of these cost savings and improved quality of products, Steeline members may be able to price their products more competitively, and better compete with larger suppliers.

ACCC view

- 4.17. The ACCC considers the collective bargaining conduct is likely to result in public benefits in the form of cost savings and better inputs into contracts. The ACCC also considers the collective bargaining has the potential to enhance competition in the market for the supply of metal roofing and building products.
- 4.18. The collective bargaining conduct is likely to result in transaction cost savings for all parties to the collective negotiations, compared to a situation where Steeline members negotiate individually with suppliers. The collective bargaining conduct would enable the parties to engage in fewer negotiations, as well as potentially reducing the length of negotiations, reducing administrative and legal costs for all parties. Further, as a group, Steeline's members may be able to purchase inputs at a lower cost, due to the greater volumes being purchased and being able to access rebates/discounts offered by suppliers that may be unavailable to members purchasing on an individual basis.
- 4.19. To the extent that the collective bargaining conduct results in Steeline's members purchasing inputs and supplies at a lower cost, competitors of Steeline may also face enhanced competition from members due to their ability to offer more competitive pricing.
- 4.20. Collective negotiations may also enable individual Steeline to achieve greater input and representation of their views about the terms and conditions of their supply agreements than what they could achieve through individual negotiations. Collective bargaining is also likely to enable members to become better informed of relevant market conditions, which is likely to improve their input into contractual negotiations with suppliers to achieve more efficient outcomes.

ACCC conclusion on public benefit

- 4.21. The ACCC considers that the Proposed Conduct is likely to result in public benefits from:
- cost savings, increased price transparency for customers and increased competition as a result of the joint selling and advertising conduct, and
 - transaction cost savings for all parties to the collective negotiations as a result of the collective bargaining conduct, and better input into contracts.

Public detriments

- 4.22. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...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.⁵

- 4.23. Steeline considers there is unlikely to be any public detriment caused by either the joint selling and advertising conduct or the collective bargaining conduct.

5 Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

The joint selling and advertising conduct

4.24. Steeline submits that agreed prices for joint promotions or joint advertising between members will have a minimal effect on price competition between members, because:

- members do not usually operate in close proximity to each other, and
- participation is voluntary, members can negotiate with individual customers and have the option to charge a lower price than the one advertised by Steeline. Members are also able to continue to run their own promotions.

4.25. Steeline further submits that members will have no ability to unilaterally increase prices or decrease service levels as a result of engaging in the joint selling and advertising conduct, because:

- Steeline members have a low market share and members will be constrained by a number of strong and effective competitors which operate nationally, including BlueScope (through Fielders and Lysaght) and Apex,
- Competition is driven, among other things, by price volatility based on inputs. The majority of steel coil inputs are purchased from BlueScope, meaning most roll formers are generally subject to price movements driven by the cost of purchasing BlueScope steel coil. This means roll formers generally have less control over price and are required to compete on other elements of supply, such as quality of service,
- Supply agreements are generally not long term, any supply agreements that Steeline secures due to the conduct will not have a long-term impact on the market. There is also an ability for customers to readily switch between suppliers as switching costs are not high, and
- There are low barriers to entry into particular product segments for existing roll formers, roll formers substitute between different categories of roll formed roofing and building products with a fairly minimal investment of cost or time.

ACCC view

4.26. The ACCC considers that agreements on price between competitors in relation to the products and services they supply carries a risk of lessening competition compared to a situation where each business sets prices independently. By enabling agreement on price, the joint selling and advertising conduct may reduce competition between members for the supply of roll formed steel building and roofing products. In circumstances where members compete closely, the joint selling and advertising conduct could reduce incentives for members to compete aggressively on price with other members, which could lead to some customers paying more for members' products than they otherwise would have if members priced their products independently. The joint selling and advertising conduct could also result in fewer options being available to customers. However, the extent of any detriment likely to result from joint advertising and selling is impacted by the current level of competition between members, and the competitive constraint imposed by other suppliers.

4.27. Steeline submits that members are not usually located in close geographical proximity, which means that there are almost no local areas where strong competition exists between members. In the small number of areas supplied by more than one member, Steeline submits that members are not each other's closest competitors.

- 4.28. The ACCC has considered the extent of geographic overlap between members, and the presence of, and competitive constraint imposed by, non-member competitors in both local (up to a 250km radius) and state-based areas of competition.
- 4.29. With regard to the geographical spread of *current* Steeline members:
- one Steeline member operates in each of the Northern Territory and South Australia. The ACCC considers that the joint selling and advertising conduct, as it applies to current Steeline members, does not have the potential to increase consolidation, resulting in any lessening of competition, in these states/territories,
 - two Steeline members operate in each of Tasmania and Western Australia, and
 - the majority of Steeline members are located along the East Coast of Australia, in NSW, Victoria and Queensland where there are concentrations of Steeline members in some metropolitan and regional areas.
- 4.30. In Tasmania, the two Steeline members are not within a 250km radius and face competition from competitor roll formers including Lysaght, Metroll and Stramit. Steeline also submits that larger roll formers often service smaller markets, such as Tasmania, from their major centres in capital cities.
- 4.31. The two Steeline members operating in Western Australia are both located in the Perth area. However, the ACCC considers that these Steeline members will continue to face competition from various competitors currently operating in Perth, including Stramit, Fielders, Metroll, Stratco and Revolution Roofing. Further, Steeline submits there is limited competition between these two members because they produce different roll-formed products.
- 4.32. With regard to NSW, Victoria and Queensland, in those local areas where more than one Steeline member operates, the ACCC notes the following:
- In some of these areas, such as Cairns and Cowra-Albury, while there are two or more Steeline branded stores in close proximity to each other, these stores are under common ownership (a single Steeline member owns all the stores in the region that are part of the Steeline group). Accordingly, the ACCC does not consider that these stores are likely to compete with each other in relation to price and other terms and conditions with or without the joint selling and advertising conduct.
 - Most of the areas where there is significant geographical overlap between members are major metropolitan areas (Sydney, Melbourne and Brisbane). As a result of larger populations and greater demand for roll-formed products, each of these major metropolitan areas contains numerous competitor roll formers, including various established national suppliers as well as smaller independent suppliers, which the ACCC considers will continue to provide an effective competitive constraint on Steeline members' joint pricing and marketing in these areas.
- 4.33. The ACCC identified two regional areas where two or more separately owned Steeline members potentially compete closely, the Bendigo and Coffs Harbour/Grafton regions.
- 4.34. There are two Steeline branches in Bendigo. Steeline submits there are a number of other suppliers of the relevant products in Bendigo, including Stramit, Apex and Striproll. Further, Steeline submits that customers in Bendigo are commonly supplied roll formed products from major suppliers based in Melbourne (approximately 150km from Bendigo), Ballarat and Shepparton (both approximately 120km away). In addition to the major suppliers, Steeline also provided details of a number of other independent companies which supply and install metal roofing and associated building products in Bendigo.

- 4.35. There are Steeline members in Coffs Harbour and Grafton – approximately 85km apart. Steeline submits there are numerous potential alternatives to Steeline for customers in the Coffs Harbour region. Steeline submits that major market participants Stramit and Lysaght both have a branches in Coffs Harbour. The ACCC considers that these stores are likely to be the closest competitors to the Steeline Coffs Harbour store and are also likely to be as close competitors to the Steeline Grafton store as the Steeline Coffs Harbour store would be absent the proposed joint selling conduct.
- 4.36. Steeline also submits that there are various other smaller market participants supplying and installing metal roofing and associated building products in this area. Steeline submits that outside of Coffs Harbour, there is additionally Metroll's Lismore branch, Lysaght's Tamworth branch and various distributors of Lysaght throughout Grafton, Lismore, Port Macquarie and Armidale. The ACCC considers that these small and/or more geographically distant stores are likely to impose a more limited competitive constraint on the Steeline branches.
- 4.37. In both these areas, the ACCC considers the joint advertising and selling conduct will result in some detriment in the form of a reduction in competition between Steeline members. However, having regard to the competitive constraint likely to be imposed by other suppliers in these areas the ACCC considers that the public detriment likely to result from the reduction in competition between Steeline members is likely to be limited.
- 4.38. Accordingly, the ACCC considers that any public detriment resulting in a lessening of competition between *current* Steeline members as a result of the joint selling conduct is likely to be limited.
- 4.39. However, Steeline also seeks authorisation to enable other roll formers that join the group in the future to participate in the joint selling and advertising conduct, to cover possible changes to the group over the period of authorisation. In effect, authorisation is sought for any roll former to participate in the joint selling conduct.
- 4.40. The ACCC considers that an open-ended authorisation that, in effect, would allow any roll former that becomes a Steeline member to participate in the joint selling and advertising conduct, could potentially result in a more significant public detriment in some circumstances.
- 4.41. In many cases, further members joining the group is unlikely to result in a material reduction in competition because either: there is not an existing Steeline member/s in the relevant geographic area with whom the new member would compete; or where there is one or more existing Steeline members operating in the area, other suppliers (non Steeline members) would be likely to continue to provide an effective competitive constraint on Steeline members' joint pricing and marketing.
- 4.42. However, the extent of the competitive constraint that competing suppliers provide varies significantly from area to area. In some cases incentives for existing and new Steeline members operating in the same area to compete aggressively on price and other terms and conditions could be significantly reduced in circumstances where there are few, if any, other roll formers in the area competing vigorously and thereby imposing an effective constraint on Steeline members.
- 4.43. In response to this issue Steeline submits that:
- The likelihood of multiple roll formers in a particular geographical becoming Steeline members is low. Steeline typically does not have more than one member in the same geographical area, except in the case of capital cities, and so signing-up multiple roll formers in a particular area would be contrary to Steeline's usual

business practices. Further, it is highly unlikely that a significant number of existing roll formers in a particular area would seek to become Steeline members. For example, established companies (such as Fielders/Lysaght and Stramit) would not seek to become Steeline members.

- Even if multiple roll formers in a particular geographical area were to become Steeline members in the future, there would be no public detriment, including because those members would continue to be competitively constrained by numerous effective competitors.

4.44. The ACCC considers that under the current arrangements between Steeline members this is likely to be the case in most areas. However, if granting authorisation allowed Steeline members to collectively agree terms and conditions, including prices, *in their local areas* (rather than for the Steeline group as a whole), this would likely create additional incentives for roll formers in an area already serviced by a Steeline member to join the group; all members in a local area could take advantage of Steeline's strong position in that area by charging more or lowering service levels.

4.45. As discussed above, there are some regional areas where more than one Steeline member currently operates. In the many other areas where only one Steeline member operates there is nothing in the arrangements to preclude a second roll former also becoming a Steeline member. Further, in areas where no Steeline members currently operate, two or more existing suppliers could become Steeline members.

4.46. However, the ACCC notes that the conduct for which authorisation is sought involves Steeline members collectively agreeing a single set of common terms and conditions, including price, for which products and services will be offered by Steeline on behalf of all its members, in all areas. It is not intended, for example, that a subset of members, operating in a particular area, collectively agree on prices or other terms and conditions for that area independently of the rest of the group.

4.47. Accordingly, the single set of prices and other terms and conditions collectively agreed by Steeline members are likely to be set having regard to the competitive constraint imposed by competitors in all locations, including areas where there is strong competition to Steeline, such as major metropolitan areas.

4.48. To address the potentially more significant public detriment that may arise under an authorisation allowing new members to join the group without restriction, the ACCC proposes to:

- Limit the scope of the authorisation granted to only enable the members of the Steeline group who choose to participate in the joint selling and advertising conduct to collectively agree on a single set of common terms and conditions, including price, which would apply nationally. Any agreement between a subset of Steeline members in a particular area would not be authorised. The ACCC considers that this is consistent with the intent of Steeline and its members, and clarifies that the proposed authorisation does not extend to any conduct that is inconsistent with that intent, and
- Impose a condition of authorisation requiring Steeline to advise the ACCC whenever a new member joins the group. This will provide transparency about any future members joining the group and, if the ACCC had concerns about any new member joining the group, provide an opportunity to raise those concerns with Steeline and take other action if warranted.

The collective bargaining conduct

4.49. In respect to the collective bargaining conduct, Steeline submits:

- Members can generally choose between acquiring from a number of suppliers for a particular product that Steeline has agreements with (according to preferences and requirements). Where Steeline only has supply agreements with a single supplier in a product category it is generally because there is only one supplier of the relevant product available.
- Steeline is in a weaker bargaining position compared to its suppliers, such that suppliers (particularly those suppliers which supply key inputs, are vertically integrated in the supply chain, or are the sole supplier of a product) will still generally dictate supply terms.
- The conduct is voluntary for suppliers/manufacturers, there are various alternative market participants acquiring roll-forming inputs and, even combined, Steeline members represent a relatively small proportion of purchasers.
- Most supply agreements are short (one to two years).

ACCC view

4.50. The ACCC considers that the collective bargaining conduct is likely to result in minimal, if any, public detriment from a reduction in competition between Steeline members, because:

- Steeline members represent a small proportion of purchasers in relevant markets. In terms of product purchasing, Steeline estimates that at most in any given product market it would purchase less than 5% of the product available from manufacturers and distributors. Steeline members are likely to continue to represent a small proportion of purchasers in relevant markets notwithstanding that additional members may join Steeline in the future, and
- Participation in the collective bargaining conduct is voluntary for suppliers. There are a number of alternative purchasers of inputs and supplies used by roll formers if suppliers/manufacturers did not wish to engage with the bargaining group.

4.51. The ACCC notes the concerns raised by Selection Steel and Croft Steel Traders that the collective bargaining conduct could increase the number of roll formers which exclusively source, or source a significant portion of, their total requirements of steel coil inputs from BlueScope, resulting in a smaller portion of the roll former market being contestable for competitors to BlueScope.

4.52. The ACCC understands that there are two aspects to these concerns. These interested parties consider that:

- opportunities for other suppliers of steel coil inputs are already limited due to the preference of many roll forming businesses, including the large, nationally-operated businesses, for BlueScope steel coil inputs, and
- the preference of these roll formers for BlueScope products is driven, at least in part, by BlueScope's rebate structure which provides discounts based on both volumes purchased and the customer agreeing to purchase a significant portion of their total requirements of steel coil inputs from BlueScope.

4.53. The ACCC considers that absent the collective bargain conduct many Steeline members are likely to have a preference for purchasing steel coil inputs from BlueScope. However, the collective bargaining conduct is likely to allow Steeline members to access more favourable rebates from BlueScope making it more likely

that they will purchase steel coil inputs from BlueScope. Consequently, the proportion of steel coil inputs being purchased from other suppliers may be incrementally reduced. Interested parties are concerned that this also reduces the viability of competing suppliers thereby lessening competition for the supply of steel coil inputs.

- 4.54. However, to the extent that this is the case, the ACCC considers that it is primarily a consequence of BlueScope's existing position in the market for the supply of steel coil inputs and its rebate system, rather than Steeline members' collective bargaining conduct per se.
- 4.55. The ACCC also notes that denying Steeline members the opportunity to collective bargaining would, in effect, be denying Steeline members access the types of rebates that some of their competitors receive, increasing their costs relative to these competitors⁶ and making it more difficult for Steeline members to compete.
- 4.56. Denying Steeline members the opportunity to collectively bargain with BlueScope could also result in Steeline members, if they wished to collectively bargain, having to source roll-forming products from non-preferred suppliers.

ACCC conclusion on public detriment

- 4.57. The ACCC considers that the Proposed Conduct is likely to result in some limited public detriment in the form of a reduction in competition between some current Steeline members (i.e. those whose location means that they currently compete with another Steeline member) as a result of the joint selling and advertising conduct. However, having regard to the competitive constraint likely to be imposed by other suppliers in the geographic areas where Steeline members operate the ACCC considers that the public detriment likely to result from the reduction in competition between Steeline members is likely to be limited.
- 4.58. The ACCC considers that allowing unidentified roll formers to participate in the joint selling and advertising conduct, by becoming Steeline members in the future, could potentially result in a more significant public detriment in some circumstances.
- 4.59. However, the ACCC considers that any public detriment is limited by the likely geographic dispersion of Steeline members, including future members, and because prices and other terms and conditions will be set collectively and apply across the group as a whole. They will therefore likely be set having regard to the competitive constraint imposed by competing roll formers in all areas, including those where there is strong competition to Steeline members.

Proposed condition of authorisation

- 4.60. The ACCC may specify conditions in an authorisation.⁷ The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.⁸
- 4.61. The ACCC may specify conditions in circumstances where, although the relevant public benefit test is met, without the conditions the ACCC would not be prepared to exercise its discretion in favour of authorisation.⁹

⁶ That is, denying Steeline members the opportunity to realise the same cost savings as some of their competitors.

⁷ Subsection 88(3) of the Act.

⁸ Subsection 88(3) of the Act.

⁹ Application by Medicines Australia Inc (2007) ATPR 42-164 at [133].

4.62. The proposed condition is set out in paragraph 5.11 and aims to provide transparency about the composition of Steeline’s joint advertising and selling group and specifically, any new members that join the group.

Balance of public benefit and detriment

4.63. For the reasons outlined in this draft determination, the ACCC is satisfied, subject to the condition of authorisation, that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Length of authorisation

4.64. The Act allows the ACCC to grant authorisation for a limited period of time.¹⁰ This enables 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.

4.65. In this instance, Steeline seeks authorisation for five years. Steeline submits that this is an appropriate length of time for an initial authorisation given that the relevant product markets are not dynamic, that the barriers to entry will not change significantly in this period of time, and that the Proposed Conduct will have little to no risk of substantially lessening competition in any market.

4.66. The ACCC did not receive submissions from interested parties about the length of authorisation.

4.67. The ACCC proposes to grant authorisation for five years. The ACCC considers that this is appropriate given the public benefits and limited public detriments likely to result from current Steeline members engaging in the Proposed Conduct.

5. Draft determination

The application

5.1. On 25 June 2020, Steeline lodged application AA1000520 with the ACCC, seeking authorisation under subsection 88(1) of the Act.

5.2. Steeline seeks authorisation for the Proposed Conduct (at paragraph 1.8-1.12). Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.

5.4. For the reasons outlined in this draft determination and subject to the condition, the ACCC is satisfied, in all the circumstances, Steeline members engaging in the Proposed Conduct would be likely to result in a benefit to the public and the benefit to

¹⁰ Subsection 91(1) of the Act.

the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.

- 5.5. Accordingly, the ACCC proposes to grant authorisation to enable Steeline members to engage in the Proposed Conduct.

Conduct which the ACCC proposes to authorise

- 5.6. The ACCC proposes to grant authorisation AA1000520 to enable Steeline and its members as listed in the application for authorisation lodged with the ACCC on 25 June 2020 to engage in the Proposed Conduct, as described in paragraphs 1.8-1.12.
- 5.7. Authorisation for the joint selling and advertising conduct described at paragraphs 1.9 and 1.10 only extends to participating Steeline members engaging in that conduct as a single group. That is, authorisation only extends to participating Steeline members entering into a single agreement on prices and other terms and conditions that applies to all participating members.
- 5.8. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 5.9. The ACCC proposes to grant authorisation to AA1000520 for 5 years, subject to the proposed condition at paragraph 5.11.
- 5.10. This draft determination is made on 6 November 2020.

Proposed condition of authorisation

- 5.11. The ACCC proposes to grant authorisation subject to the following condition:
- **Condition 1:** Steeline must, at least 28 days prior to any new member joining Steeline, provide the ACCC, in a form that can be placed on the public register, the business name of the member and the names and locations (street addresses) of any stores that the member operates or will operate which supply metal roofing and/or other metal building products and/or associated products or services.

6. Interim authorisation

- 6.1. At the time of lodging the application, Steeline requested interim authorisation to engage in the joint selling and advertising conduct and the collective bargaining conduct. Steeline submits that interim authorisation may be granted on the basis that no joint advertising or joint selling activities will actually commence (and no contracts will be entered into for the sale of products or services associated with the joint selling and advertising conduct), and there will be no discussions regarding pricing of products, until the ACCC's final determination is made. Steeline submits interim authorisation will instead enable Steeline and its members to progress discussions about the joint advertising and joint selling activities, and the way in which an online store may operate. Steeline provides the following reasons support the request for interim authorisation:
- (a) interim authorisation will enable Steeline and its members to discuss between themselves advertising and marketing strategies for implementing the joint selling and advertising conduct (without reference to price), so that the joint selling and advertising conduct can commence quickly if authorised,

- (b) interim authorisation will not inhibit the market from returning to its pre-interim authorisation state if final authorisation is later denied, and
- (c) there is no impact on, or harm to, any customers or competitors if a request for interim authorisation on this basis is granted.

6.2. The ACCC has decided to grant interim authorisation to enable Steeline and its members to:

- Commence non-price discussions about the joint advertising and joint selling activities. Interim authorisation does not extend to Steeline members entering into or giving effect to any contracts for the sale of products or services associated with the joint selling and advertising conduct, or to Steeline members discussing prices or sharing any pricing information in relation to the advertising or selling of any product by them, collectively or individually, and
- Negotiate with suppliers the terms of supply arrangements with members (including price) for products purchased by them (the collective bargaining conduct). Interim authorisation does not extend to Steeline and/or its members entering into, or giving effect to, any agreements with suppliers.

6.3. In granting interim authorisation, the ACCC has taken into account the following factors:

- the relevant areas of competition are unlikely to be permanently altered if interim authorisation is granted due to the limited scope of the conduct for which interim authorisation is granted, which does not permit Steeline and its members to exchange pricing information or to enter into any contracts with customers or suppliers,
- as set out in this draft determination, the ACCC considers the Proposed Conduct, as it applies to current Steeline members, is likely to result in public benefits, which would outweigh any likely public detriments, and
- there is unlikely to be any harm to any interested parties.

6.4. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect, or the date on which the application for authorisation is withdrawn, or until the interim authorisation is revoked.

7. Next steps

7.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, Steeline or an interested party may request that the ACCC hold a conference to discuss the draft determination. Submissions should be provided by 23 November 2020.