



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

In respect of a notification lodged by
Independent Vending Machine Operators Association

in respect of
collective bargaining with suppliers of vending
machine goods

Date: 8 April 2020

Notification number: CB10000473

Commissioners:
Keogh
Rickard
Court
Ridgeway

Summary

The ACCC has decided not to object to the notification lodged by Independent Vending Machine Operators Association (IVMOA) to enable its current and future members to negotiate the terms of supply agreements with various suppliers of vending machine goods.

The ACCC considers the notified conduct is likely to result in public benefits in the form of transaction cost savings and little public detriment.

The notification was lodged on 30 January 2020 and the legal protection commenced on 13 February 2020. It will remain in force until 30 January 2026, unless it is withdrawn or revoked.

The notification

1. On 30 January 2020, the IVMOA lodged a collective bargaining notification¹ to enable it to negotiate on behalf of current and future IVMOA members the terms of supply agreements with various suppliers of vending machine goods (the **Notified Conduct**).
2. No collective boycott is proposed.
3. IVMOA has requested that the notification be in force for six years to allow for the time needed to negotiate supply agreements plus the standard five year length of such agreements.²

Consultation

4. The ACCC invited submissions from a wide range of interested parties.
5. No submissions were received.

ACCC's Assessment

6. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* C'th (**CCA**).

Future without the Notified Conduct

7. The ACCC has taken into account the likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct independent vending machine operators would continue to enter into separate supply agreements with wholesale suppliers and manufacturers of vending machine goods. There is a significant imbalance in bargaining power between independent vending machine operators and larger suppliers, such as Coca Cola

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010* (CCA) for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

² The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

Amatil, PepsiCo and Asahi Lifestyle Beverages. The most likely future without the Notified Conduct is that each IVMOA member would enter into standard form contracts on terms decided by the suppliers. To the extent that a vending machine operator sources products through normal retail channels, such as supermarkets, this is likely to continue.

Relevant areas of competition

8. The ACCC considers that the relevant areas of competition are likely to be;
 - Supply, servicing and refilling of vending machines for landlords and workplace customers.
 - Retail supply of unattended vending machine goods to consumers in local areas.
 - National wholesale supply of convenience products including sweet, savoury, healthy and frozen snack foods, beverages, toiletries, coffee maker inputs and personal protective equipment.

Public Benefit

9. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
 - Reduced transaction costs
 - Better input into contracts.

Reduced transaction costs

10. The Notified Conduct is likely to reduce the transaction costs for IVMOA members and suppliers by:
 - Removing the need for suppliers to deal with members individually; and
 - Decreasing the cost of professional representation (professional representation can be provided by IVMOA) for members when undergoing contract negotiations.
11. Sharing the costs of obtaining professional representation and advice is likely to increase the ability of IVMOA members to respond efficiently to their contract terms.

Improved input into contracts

12. The Notified Conduct is likely to give independent vending machine operators the potential to have greater input into the terms and conditions of supplier agreements than if operators were dealing with suppliers separately. IVMOA submits that this will assist its members to remain price competitive at a retail level with the major vending machine companies such as Coke Vending and Provendor Vending and with traditional retail outlets such as convenience stores (although the ACCC notes the minimal competitive restraint offered by these stores to most vending machines).
13. Additionally, IVMOA submits the collective bargaining group will have the minimum scale required for more suppliers to be willing to deal with IVMOA's members. This may make IVMOA members more competitive with major vending machine companies in dealing with site owners.

Public Detriment

14. The ACCC considers that the Notified Conduct is likely to result in a small public detriment from a reduction in competition between the members of the bargaining group for the acquisition of vending machine goods. However, the detriment is likely to be limited since:
 - Participation in the Notified Conduct is voluntary for the members of IVMOA; if members wish to negotiate individually, they remain free to do so.
 - The bargaining group is dealing with mostly large convenience product manufacturers and wholesalers and at least six large competing vending machine operators, some of which are vertically integrated with the wholesale suppliers.

Period for which the Notification will be in force

15. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
16. In this case, the IVMOA requests the Notification to be in force for a period of six years, based upon the standard distribution contract length of five years, and additional time to negotiate these contracts.
17. The ACCC considers that it is appropriate for the notification to remain in force until 30 January 2026 for the following reasons:
 - The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
 - The extended notification period is unlikely to increase the little public detriment which is likely to result from the Notified Conduct.
 - The period of time will enable both vending machine operators and suppliers to enter into contracts of sufficient length; with a shorter period likely to reduce transaction cost savings.

Decision

18. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
19. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93 AC of the Act, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
20. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 17, in accordance with s 93AD(5), the ACCC is satisfied that a six year notification period is appropriate in all the circumstances, being the period ending on 30 January 2026.
21. The protection provided by notification CB10000473 commenced on 13 February 2020 and will continue until 30 January 2026, unless the notification is withdrawn or revoked.

22. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.