



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

Notification CB10000477

lodged by

KIS Transport Australia Pty Ltd

in respect of

collective negotiation with freight carriers by freight brokers

Notification number: CB10000477

Date: 23 April 2021

Commissioners:

Brakey

Court

Ridgeway

Summary

The ACCC does not object to the notification lodged by KIS Transport Australia Pty Ltd (**KIS**) to enable it to collectively negotiate on behalf of itself, five other freight brokers and future freight brokers that may become members of the group (**Contracting Parties**), agreements with current and future freight carriers whose services will be sold to customers of the Contracting Parties.

The current Contracting Parties are KIS Transport, Hydra Logistics Solutions Australia Pty Ltd, Total Freight Logistic Services Pty Ltd, Transfreight Solutions Australia Pty Limited and KIS Corporate Pty Ltd. The freight carriers which the Contracting Parties intend to collectively negotiate with include Toll Express, TNT and Couriers Please.

The ACCC considers the notified conduct is likely to result in public benefits in the form of transaction cost savings and improved input into contracts and there is likely to be minimal public detriment.

The ACCC has decided to allow the notification to remain in force for a period of 6 years, instead of the default period of 3 years. The notification was lodged on 21 December 2020 and the legal protection commenced on 4 January 2021. It will remain in force until 20 December 2026, unless it is withdrawn or revoked.

The notification

1. On 21 December 2020, KIS lodged a collective bargaining notification¹ to enable it to negotiate on behalf of itself, five other freight broking companies and future freight brokers that may become members of the group (**Contracting Parties**), agreements with current and future freight carriers whose services will be sold to customers of the Contracting Parties (the **Notified Conduct**).
2. The Contracting Parties provide freight broking services, which connect a customer who wants to send freight, to a freight carrier, while also managing other aspects of the supply chain for that customer (such as insurance, freight monitoring, warehousing and customer services).
3. The five freight broking companies currently in the Contracting Parties group are: KIS, Hydra Logistics Solutions Australia Pty Ltd, Total Freight Logistic Services Pty Ltd, Transfreight Solutions Australia Pty Limited and KIS Corporate Pty Ltd.
4. Under the Notified Conduct KIS proposes to negotiate on behalf of the Contracting Parties the prices and terms of freight contracts with current and future freight carriers including: TNT, TOLL Express, Couriers Please, Followmont Transport, Hi-Trans Express, and Northline.
5. The Notified Conduct does not include a collective boycott, membership of the Contracting Parties group is to be open to other freight brokers, and the Contracting Parties will be free to also negotiate their own separate contracts with freight carriers.

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.

6. KIS has requested that the notification remain in force for 6 years (which allows time for negotiation), as typical industry contract lengths last one to 5 years.

Consultation

7. The ACCC invited submissions from a range of interested parties, including the named targets. No submissions were received.

ACCC's Assessment

8. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* (Cth) (the **CCA**).
9. To assist with the assessment of the Notified Conduct, the ACCC considers:
 - the relevant area of competition likely to be affected by the Notified Conduct is Australian freight services including carriage, broking and associated supply chain support such as insurance, freight monitoring, warehousing and customer services.
 - that in the likely future absent the Notified Conduct, each Contracting Party would enter into separate supply contracts with each freight carrier.

Public Benefit

10. The ACCC considers the Notified Conduct is likely to result in the following public benefits:
 - reduced overall transaction costs (such as negotiation and contracting costs, including legal fees) for the Contracting Parties and potentially for freight carriers, compared to the situation where each Contracting Party must negotiate individually with each freight carrier.
 - improved opportunity for the Contracting Parties to have greater input into their freight purchasing contracts relative to a situation where each Contracting Party negotiates individually with each freight carrier.

Public Detriment

11. The ACCC considers that the Notified Conduct is likely to result in a reduction in competition between the members of the bargaining group to acquire freight services. However, the ACCC considers that the resulting public detriment is likely to be minimal. In particular:
 - the Contracting Parties are a relatively very small proportion of overall Australian freight services.
 - participation in the Notified Conduct is voluntary for the members of the Contracting Parties group and the target freight carriers. The ACCC notes, in particular that no submissions were received in relation to the notification.
 - much of the supply of Australian freight services is dominated by very large national and multinational firms. As such, if dissatisfied with their arrangements with freight brokers, these firms are in a position to introduce their own, or expand upon their existing, freight broking services offered to end customers. The ACCC considers this threat by large freight services providers of bypassing

the services offered by the Contracting Parties is likely to provide a significant constraint on the actions of the Contracting Parties.

Period for which the notification will be in force

12. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of 3 years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
13. In this case, KIS requests the notification to be in force for a period of 6 years.
14. The ACCC considers that it is appropriate for the notification to remain in force until 20 December 2026 (i.e. 6 years from the date it was lodged) 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 minimal public detriment which is likely to result from the Notified Conduct.
 - 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.²

Decision

15. 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.
16. Accordingly, the ACCC does not object to the notification at this time.
17. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 14, in accordance with s 93AD(5), the ACCC is satisfied that a 6 year notification period is appropriate in all the circumstances, being the period ending on 20 December 2026.
18. The protection provided by notification CB1000477 commenced on 4 January 2021 and will continue until 20 December 2026, unless the notification is withdrawn or revoked.
19. 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.

² Section 93AC of the CCA.