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** In cooperation with
Trench, Rossi e Watanabe
Advogados

18 November 2020

Ms Tessa Cramond
Merger and Authorisation Review Division
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
MELBOURNE VIC 3000

Dear Ms Cramond

Steeline Members Pty Ltd application for authorisation AA1000520 Response to draft determination dated 6 November 2020

1. We refer to the ACCC's draft determination dated 6 November 2020 (**draft determination**) regarding the application for authorisation lodged by Steeline Members Pty Ltd (**Steeline**).
2. Steeline thanks the ACCC for considering its application, and makes the following comments regarding the draft determination.

Condition of authorisation – timing and form

3. The draft determination provides, in paragraph 5.11, that Steeline must inform the ACCC of any new member joining Steeline at least 28 days beforehand.
4. Steeline respectfully requests that this timeframe be shortened to 14 days. The request is made on business and practical grounds – once a company has agreed to join Steeline (which is usually after a period of time where various enquiries are made from both sides) there is generally a commercial preference to quickly integrate the company into the group, and Steeline is concerned that after 28 days the momentum and energy associated with doing so may be lost.
5. Steeline does not receive a significant number of applications for membership, and does not consider that a 14 day notice period to the ACCC is unreasonable.
6. In terms of form, Steeline proposes to provide the notification to the ACCC in a Word document which states 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.

Notification of a new Steeline member

7. In light of the ACCC's notification condition, Steeline wishes to inform the ACCC that it has a new member as of July 2020. Details of that member are:

- (a) **Name of member:** FNW Brisbane Pty Limited (ACN 633 177 830)
- (b) **Business name:** FNW Brisbane
- (c) **Names and street addresses of store/s that the member will operate:**

FNW Brisbane Pty Ltd
39-41 Paramatta Road
Underwood Qld 4119

Interim authorisation and continued reliance on joint venture defence

- 8. The draft determination, in paragraph 6.2, grants interim authorisation to Steeline and its members.
- 9. For the sake of completeness, and with reference to the collective bargaining conduct, Steeline notes that it currently engages in collective bargaining conduct under protection of the joint venture defence in the *Competition and Consumer Act 2010* (Cth).¹ Steeline will continue to do so prior to publication of the ACCC's final determination.

Authorisation of joint arrangements by a subset of members

- 10. The draft determination provides in paragraph 4.48 (the first bullet-point) that 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.”
- 11. Steeline confirms that this is the intent of Steeline and its members. For the sake of completeness, Steeline notes that not all members will agree to participate in particular proposed joint selling or advertising conduct (that is, and as stated in paragraph 1.10 of the draft determination, the joint selling conduct is voluntary). From a practical perspective, this may mean, by way of example only, that only Steeline members on the east coast of Australia choose to participate in a particular promotion (even though all Steeline members have been offered the opportunity to participate in it); and that only Steeline members which sell sheds will participate in a national shed promotion. Steeline considers that this type of conduct falls within the scope of the ACCC's proposed authorisation.

¹ Steeline application for authorisation dated June 2020, paragraph 3.7.

12. Steeline confirms that neither it nor its members intends to have a subset of members operating in a particular geographical area, collectively agree on prices or other terms and conditions for that area independently of the rest of the group.
13. Steeline further notes that its members will continue to be free to individually set prices and terms of sale, notwithstanding the authorisation.

Other comment regarding the draft determination

14. Paragraph 4.32 of the draft determination makes reference to “Cowra” whereas Steeline notes this should read “Corowa”.

Please let us know if you would like further information in relation to any of these matters.

Yours sincerely



Lynsey Edgar
Partner



Jeremy Hardy
Associate

