

17 April 2020

Kai Fu
Director
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Mr Fu

**SCENTRE GROUP & SHOPPING CENTRE COUNCIL OF AUSTRALIA
APPLICATION AUTHORISATION AA1000489**

We refer to the Australian Competition and Consumer Commission's (**ACCC**) decision on 3 April 2020 to grant interim authorisation to Scentre Group, the Shopping Centre Council of Australia (**SCCA**), and its members (**Interim Authorisation**) and to your letter dated 16 April 2020.

We confirm that in the two weeks since the Interim Authorisation was granted:

- A high level, principle based, rather than detailed or particularly prescriptive Mandatory Code of Conduct, entitled "*SME Commercial Leasing Principles During COVID-19*", was approved by the National Cabinet and announced by the Australian Government on 7 April 2020 (the **Code**); and
- State governments have begun announcing details of their implementations of the Code, including the Queensland government on 9 April, NSW government on 13 April, WA government on 14 April and the Victorian government on 15 April.

As the Code addresses broadly similar issues as the conduct the subject of the application for authorisation and the Interim Authorisation, we confirm that these developments have changed (from that which was initially envisaged) the scope of the discussions and packages that the Applicants and SCCA Members are likely to agree, if any, under the Interim Authorisation.

At the time the application for Authorisation was drafted and lodged, there was no Code nor any certainty that such a mandatory code (rather than a voluntary agreed industry position)

would be introduced. The landscape has consequently significantly changed since the application was drafted including as to the need for industry consensus and what such consensus is still likely needed to address.

In the two week since the Interim Authorisation was granted, the SCCA and its members have been focusing on the new Code, what it means and what it requires, and in discussions with State governments as how it might be best implemented. This consideration and these discussions are continuing. It is only once the SCCA and its members gain a better understanding of the Code and as to how it is to be implemented - which is likely to occur over the next week or two - that it is envisaged that the SCCA and its members will then be in a position to have the discussions the subject of the Interim Authorisation and potentially reach any agreement under the Interim Authorisation. As previously advised in our letter dated 8 April 2020 any such agreement would supplement and complement the Code. It is not, however, possible for the SCCA and its members to sensibly discuss how, and if, the Code can be supplemented and complemented until the coverage of and gaps in the Code are better understood.

As a result of the above, contrary to the position at the time application for Authorisation was lodged, it is not now expected that the SCCA and its members will, in the next two weeks, be reaching an agreement as to any relief packages for tenants under the Interim Authorisation or notifying the ACCC of such agreed relief packages.

In the circumstances, in light of the rapidly evolving landscape, the SCCA is not in a position to describe any conduct (beyond that described above) that the SCCA and its members have engaged in as part of the Interim Authorisation. We further anticipate that any public consultation the ACCC might now commence as part of its assessment of the application for authorisation will bear little if any fruit in the next two weeks as to how the Interim Authorisation is currently working in practice.

Regards



Peter Speed

