



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

Notification CB10000481

lodged by

Australian Vending Buying Association Incorporated

in respect of

collective negotiation with suppliers of goods to be sold
through unattended retail points, such as vending
machines

Notification number: CB10000481

Date: 8 July 2021

Commissioners:

Keogh

Rickard

Brakey

Ridgeway

Summary

The Australian Competition and Consumer Commission (**ACCC**) does not object to the notification lodged by Australian Vending Buying Association Incorporated (**AVBA**) on 8 June 2021. Under the notification, AVBA seeks to collectively negotiate agreements with current and future suppliers of goods to be supplied into unattended retail points, such as micro-markets¹ and vending machines. AVBA seeks to conduct these negotiations on behalf of itself and its current and future members (the **Negotiating Group**).

The ACCC is satisfied that the notified collective negotiations are likely to result in public benefits in the form of transaction cost savings and better input into contracts. The ACCC considers that the notified collective negotiations are likely to result in minimal public detriment. The ACCC is satisfied that the likely public benefits will outweigh the likely public detriments.

The ACCC has decided to allow the notification to remain in force for a period of 6 years, as requested by AVBA. The notification was lodged on 8 June 2021 and the legal protection commenced on 23 June 2021. It will remain in force until 23 June 2027, unless or until the ACCC ends the protection provided by the notification or the notification is withdrawn by the notifying business.

The ACCC may revisit this assessment at any time and take steps to remove the protection provided by the notification.

1. The notification

- 1.1 On 3 June 2021 AVBA lodged a notification² to enable it to collectively negotiate agreements with current and future suppliers of goods to be supplied into micro-markets, vending machines and unattended retail points (**Vending Points**) on behalf of itself, its current members and future entities that may become members of the negotiating group (the **Notified Conduct**).
- 1.2 The Negotiating Group currently comprises 49 small businesses which provide micro-markets, vending machine and unattended retail and industrial solutions, including advertising and promotional vending. A list of AVBA's current members is provided at Attachment A to the [Notification](#), available on the ACCC's public register.
- 1.3 The Negotiating Group collectively own approximately 6,000 vending, advertising, gift and personal protective equipment (**PPE**) machines that stock a variety of products and operate in every state and territory of Australia.
- 1.4 The Notified Conduct does not include a collective boycott. Membership of the Negotiating Group is open to other vending machine businesses that choose to join AVBA and the members of the Negotiating Group will be free to also negotiate their own separate contracts with suppliers.

¹ A micro-market is a small unattended assortment of goods with a self-service checkout.

² 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.

- 1.5 AVBA has requested that the notification remain in force for 6 years to allow time for negotiations and planned contract terms. AVBA submits that typical contract terms range from one to 5 years.
- 1.6 AVBA provides representation and administration of member businesses who manage and provide services involving vending machines.

2. Background

- 2.1 AVBA estimates that the AVBA Negotiating Group holds a 7.5% market share in the areas in which they compete (i.e. micro-markets, vending machines, unattended retail and industrial solutions, and advertising and promotional vending solutions).
- 2.2 AVBA members provide a range of products including PPE, frozen refreshments (including ice creams), hot and cold beverages, meals, snacks and confectionary, fresh food, general groceries, electronics, novelty items, general necessities and toiletries, and advertising/promotional gift vending products.
- 2.3 Large vending businesses which are not members of AVBA and compete with its members include: Coke Vending, Independent Vending Machine Association of Australia (**IVMOA**), Ivend Group, Royal Vending, Ausbox Vending, Benleigh Vending, SVA Vending and Provendora Vending.
- 2.4 AVBA estimates IMVOA represents 3 times as many members and holds an approximate market share of 15% in the relevant areas of competition, with approximately 12,000 vending machines.
- 2.5 AVBA submits that the products used to supply vending and unattended retail outlets generally cost 50% - 60% of their final sale price.

3. Consultation

- 3.1 The ACCC conducted a public consultation process regarding the notification and invited submissions from a range of potentially interested parties including major competitors to AVBA and its members, suppliers and relevant industry associations or peak bodies.³ The ACCC did not receive any submissions from interested parties in relation to the notification.

4. ACCC's Assessment

- 4.1 AVBA has Notified Conduct that would or might constitute collective bargaining within the meaning of Division 1 of Part IV of the *Competition and Consumer Act 2010* (Cth) (the **CCA**). The ACCC has considered the Notified Conduct in accordance with section 93AC of the CCA.

Relevant areas of Competition

- 4.2 To assess the likely effect of the Notified Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.

³ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

- 4.3 AVBA submits that its members provide micro-markets, vending machines, unattended retail and industrial solutions, and advertising/promotional vending solutions.
- 4.4 AVBA also notes that its members also compete with other outside and unattended retail companies, traditional retail channels (e.g. convenience stores, petrol stations and other retail outlets), other distribution channels (e.g. charity offerings, tuck shop trucks, roadside and event carts) and other fragmented supply channels (e.g. network marketing channels).
- 4.5 The ACCC considers that the relevant areas of competition are likely to be:
- Regional supply, servicing and refilling of micro-markets, vending machines and unattended retail and industrial solutions for landlords and retail customers.
 - Localised retail supply of micro-markets, vending machines and unattended retail and industrial solutions to consumers.
 - National wholesale supply of convenience products including foods, beverages, toiletries and general necessities, PPE, electronics, novelty items, and advertising/promotional gift vending products.

Future with and without the Notified Conduct

- 4.6 In applying the notification test, the ACCC compares the likely future with the Notified Conduct to the likely future in which the Notified Conduct does not occur.
- 4.7 The ACCC considers that, absent the Notified Conduct, independent vending machine operators would likely 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 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 largely determined 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.

Public Benefit

- 4.8 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

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.

- 4.9 AVBA submits that by collectively negotiating supply contracts for the AVBA Negotiating Group it will be able to receive larger discounts from current and future suppliers than its members could achieve individually. AVBA estimates that its members will save 5%-35% on purchases made through collective bargaining contracts.
- 4.10 AVBA considers that by achieving discounted supply for its members through collective bargaining, its members will be able to price their products more competitively.
- 4.11 The ACCC has considered the following public benefits:
- Reduced transaction costs
 - Better input into contracts.

Reduced transaction costs

- 4.12 The Notified Conduct is likely to reduce the transaction costs for AVBA members and suppliers by:
- Substantially reducing the number of separate negotiations that take place between members and suppliers; and
 - Significantly reducing the cost of professional representation (which can be provided by IVMOA) for members when undergoing contract negotiations.
- 4.13 Sharing the costs of obtaining professional representation and advice is likely to increase the ability of AVBA members to respond to their contract terms at a lower total cost than would have been possibly by operating individually.
- 4.14 The ACCC considers that the Notified Conduct is likely to result in a public benefit in the form of reduced transaction costs.

Improved input into contracts

- 4.15 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. AVBA 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 Provendora 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).
- 4.16 Additionally, AVBA submits the Negotiating Group will have the scale required for more suppliers to be willing to deal with AVBA's members. This may make AVBA's members more competitive with major vending machine companies in dealing with site owners.
- 4.17 The ACCC considers that the Notified Conduct is likely to result in a public benefit in the form of improved input into contracts.

Public Detriment

- 4.18 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

- 4.19 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 Negotiating Group for the acquisition of goods for unattended retail points. However, the detriment is likely to be limited since:
- Participation in the Notified Conduct does not involve a boycott, so suppliers will not be compelled with engage with or accept the terms offered by the Negotiating Group and can continue to engage with members individually.
 - Participation in the Notified Conduct is voluntary for the members of AVBA; if members wish to negotiate individually, they remain free to do so.
 - The Negotiating Group is dealing with mostly large manufacturers and wholesalers of convenience products and at least six large competing vending machine operators, some of which are vertically integrated with the wholesale suppliers.
 - The Negotiating Group comprises a relatively small proportion of the relevant areas of competition.

Balance of public benefit and detriment

- 4.20 The ACCC considers that the Notified Conduct is likely to result in public benefits in the form of reduced transaction costs for AVBA members and suppliers and by enabling AVBA members to have greater input into their contracts with suppliers.
- 4.21 The ACCC considers that the Proposed Conduct is also likely to result in a small public detriment from a reduction in competition between the members of the Negotiating Group for the acquisition of goods for unattended retail points.
- 4.22 For the reasons outlined in this Statement of Reasons the ACCC considers the extent of the likely public detriment will be limited and the ACCC is satisfied that the Notified Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Notified Conduct.

Period for which the notification will be in force

- 4.23 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.
- 4.24 In this case, AVBA requests the notification to be in force for a period of 6 years to accommodate the standard distribution contract length (of up to 5 years), and additional time to negotiate these contracts.
- 4.25 Given the expected contract lengths, the ACCC considers that it is appropriate for the notification to remain in force until 23 June 2027.

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

5. Decision

- 5.1 The ACCC considers that the Notified Conduct is likely to result in public benefits that will outweigh the likely public detriment resulting from any lessening of competition.
- 5.2 With respect to the period for which the notification will remain in force, 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 23 June 2027.
- 5.3 Accordingly, the ACCC does not object to the notification at this time. The protection provided by notification CB1000481 commenced on 23 June 2021 and will continue until 23 June 2027. However, the ACCC may revoke the notification at any time if it forms the view that the public benefits do not outweigh the public detriments.
- 5.4 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.