



23 Marcus Clarke Street  
Canberra ACT 2601

GPO Box 3131  
Canberra ACT 2601

tel: (02) 6243 1111

fax: (02) 6243 1199

[www.accc.gov.au](http://www.accc.gov.au)

Our ref: N10000537  
Contact officer: Steven Lee  
Contact phone: (02) 6243 1347

11 December 2020

[REDACTED]  
[REDACTED]  
CPB Contractors Pty Limited  
Level 18, 177 Pacific Highway  
North Sydney, NSW, 2060

***By email***

Dear [REDACTED]

**N10000537 – CPB Contractors Pty Limited – No further action**

I refer to the notification lodged with the Australian Competition and Consumer Commission (the **ACCC**) by CPB Contractors Pty Limited (**CPB Contractors**) on 19 October 2020.

CPB Contractors proposes to insert an annual audit requirement into its pre-tender documents and subcontracting agreements with heavy vehicle subcontractors, which will require heavy vehicle subcontractors to acquire an annual audit from an auditor that has been specified on a non-exhaustive, preferred auditor list (the **Notified Conduct**).

CPB Contractors advises that:

- CPB Contractors does not self-perform the majority of its project work, which is performed by subcontractors engaged by CPB Contractors to carry out work that often falls within the ambit of the Heavy Vehicle National Law (**HVNL**)
- the annual audit will be to certify that a heavy vehicle subcontractor's management plan has sufficient controls to ensure the subcontractor will comply with its obligations under the HVNL, and that the controls are, in fact, being implemented
- CPB Contractors will maintain the list and permit heavy vehicle subcontractors to nominate and acquire services from other auditors with whom subcontractors have a prior relationship
- any heavy vehicle subcontractor who does not acquire auditing services from a preferred auditor will not be permitted to tender for CPB Contractors' project work.

## Commencement of legal protection

The protection from legal action for the Notified Conduct provided by the exclusive dealing notification commenced automatically when it was validly lodged with the ACCC on 19 October 2020.

While the legal protection is in force, the notifying party may engage in the Notified Conduct without the risk of breaching the exclusive dealing provisions of the *Competition and Consumer Act 2010* (Cth).

## ACCC assessment

On the basis of the information that has been provided, the ACCC is not proposing to take any further action in respect of this notification at this time.

The ACCC notes that while the Notified Conduct will only allow heavy vehicle subcontractors to tender for CPB Contractors' project work if they have an annual audit conducted from a preferred auditor, it is the case that:

- the list of preferred auditors is not limited or exhaustive and CPB Contractors will permit heavy vehicle subcontractors to acquire services from other auditors with whom they have a prior relationship and/or who could demonstrate that they are of similar quality, knowledge, skill and experience to the selected preferred auditors; and
- the Notified Conduct may provide a public benefit of encouraging compliance with the obligations heavy vehicle subcontractors have under the HVNL.

As a result, the legal protection provided by the notification will continue unless or until the ACCC revokes the notification or it is withdrawn.

If circumstances change, or the ACCC receives further information, such that it is satisfied that the Notified Conduct has the purpose, effect or likely effect of substantially lessening competition and that the public benefits do not outweigh the public detriments, the ACCC may take steps to remove the legal protection by revoking the notification.

The notification and this letter will be placed on the ACCC's [exclusive dealing notifications public register](#).

Please contact Steven Lee on (02) 6243 1347 or by email to [exemptions@acc.gov.au](mailto:exemptions@acc.gov.au) if you have any questions about this matter.

Yours sincerely



Daniel McCracken-Hewson  
General Manager  
Competition Exemptions