

NOTIFICATION OF COLLECTIVE BARGAINING

1. PROVIDE DETAILS OF THE NOTIFYING PARTY, INCLUDING:

1.1 Name, address (registered office), telephone number and ACN

Name: KIS Transport Australia Pty Ltd (**the Notifying Party**)
ACN: 155 179 972

1.2 Contact person's name, telephone number and email address:

Name: Andrew John Taylor
Telephone No: [REDACTED]
Email address: [REDACTED]

1.3 A description of business activities:

What are freight broking services?

The meaning of freight broking services is determined by look at what a freight broker does as a service. A freight broker is an intermediary who connects customers, who wish to send freight, to the best available freight carriers (based on a number of metrics) while managing various other aspects of the supply chain for those customers such as insurance, freight monitoring, warehousing and customer services (**Freight Brokers**).

The freight carrier company is the company that transports the goods. There are numerous freight carriers in the Australian marketplace (Toll, TNT, Carters Transport etc). Some specialise in certain freight lanes across Australia, some specialise in certain Australian states or to overseas companies, others specialise in freight of a certain good (**Freight Carriers**).

Freight Brokers develop contractual arrangements with Freight Carriers depending on the type of service they wish to offer a customer. If a Freight Broker wishes to specialise in ugly freight (awkwardly sized, fragile and valuable goods) they may only contract with Freight Carriers that provide freight transport of those types of goods.

Freight broking services then is the provision of a service by a Freight Broker who joins a customer to a Freight Carrier to transport the customer's goods (**Freight Broking Services**). In the context of this notification, Freight Broking Services are offered to customers via a web platform and Freight Brokers are intermediaries between Freight Carriers and customers.

Freight Broking Services offer a near turnkey solution to customers who need to transport goods. In this respect customers no longer have to deal directly with the Freight Carriers. Instead customers have contracts with a Freight Broking Service and that Freight Broking Service then essentially takes care of the entire freight transport lifecycle for a customer. This assists customers because (this is just a few examples):

- Freight Broking Services have contracts with Freight Carriers under which Freight Carriers offer more competitive pricing for freight transport and this pricing advantage is offered to customers;
- Freight Broking Services will list the pricing of all of their Freight Carriers for the transport of goods to enable customers to choose from;
- customers are able to track and trace with the Freight Broker all of their transported goods using different Freight Carriers from one web portal;
- customers do not have to deal with the Freight Carriers at all. Freight Broking Services are the customer service point and Freight Broking Services generally have service level agreements with Freight Carriers enabling superior customer service.

Freight Brokers (at least the Notifying Parties) do not offer back-haul services to other freight carriers. Freight carriers are not the customer of the Freight Brokers.

1.4 Email address for service of documents in Australia:

████████████████████

2. INDICATE WHETHER THE NOTIFIED CONDUCT IS FOR:

2.1 Exclusive Dealing (s47)?

No

2.2 Resale Price Maintenance (s48)?

No

2.3 Collective Bargaining (s93AB)? If the notified conduct is for collective bargaining, does the notified conduct include a collective boycott?

The notified conduct is for collective bargaining only and does not include a collective boycott and all members of the group are permitted to opt out of any dealing at any time.

3. PROVIDE DETAILS OF THE NOTIFIED CONDUCT INCLUDING

3.1 A description of the notified conduct:

The Notifying Party will negotiate on behalf of the Contracting Parties, collective bargaining agreements with various (including current and future) freight carriers whose services will be sold to customers of the Contracting Parties. The collective bargaining agreements will negotiate terms and conditions of contract between freight carriers and members of the group.

The freight industry is dominated by a handful of large-scale international freight carriers (Toll, TNT etc), and the Contracting Parties believe that by collective bargaining, the Contracting Parties will be able to achieve more favourable terms in contractual negotiations which it will be able to pass on to their customers.

The notifying party is seeking to collectively bargain on behalf of current and potential future members of the group. The current group members all currently use the same client booking integration system and would like to negotiate on behalf of future members of the group.

Contracts

Each contract that the bargaining group enters into will detail the costs as well as the services to be provided. It is trade practice that the contracts will typically continue for periods between 1-5 years; therefore, the group is requesting protection by the ACCC of 6 years to cover the contract terms and negotiations before that.

By ensuring that the Contracting Parties are allowed to negotiate contracts together rather than just individually, the Contracting Parties will be able to achieve more competitive shipping rates for more extended periods.

Relevant background

Freight brokering is a relatively recent addition to the logistics industry where the freight broker acts as an intermediary between a shipping/freight carrier and its customers. Freight brokers will negotiate two different rates between the shipping/freight company and its customers and charge a commission to the customer, which is reflected in the overall price provided to its customers.

In recent years, the acquisition of local freight and delivery companies by large multinational corporations has resulted in a less competitive marketplace for freight.

As the cost of freight transport has increased, the freight brokers have ultimately had to pass this cost onto their customers, resulting in an increased cost to the general public and decreasing access to the service because of the perceived expense associated with the use of freight transport.

Currently, the contracting parties all use the same software, which allows the freight carriers to negotiate with the members of the group separately. Although the group are allowed to negotiate terms with the freight carriers, due to the size of the international freight carriers, the group's bargaining power is severely limited.

3.2 Any relevant documents detailing the terms of the notified conduct

N/A

3.3 The rationale for the notified conduct

The rationale for the notified conduct is to use a collective bargaining process to address the issues raised in 3.1 to ensure that the members of the group can continue to provide Customers access to affordable freight broking services.

Amid significant pressure from internationally owned businesses, the logistics and freight industry, small to medium-sized Australian-owned companies such as the members of the group require additional assistance to survive and remain competitive to ensure that that the Australian public is still provided with access to competitive and fair pricing of freight and shipping services.

Due to its geographical position, Australia is one of the most remote continents in the world and as such is heavily reliant on the shipping industry for the transportation of almost every product, goods or resource that cannot be manufactured or grown in Australia. As a result of this practically every product purchased by the Australian public is shipped and transported around Australia and the general public ultimately pays the costs of this shipping. Even domestically sourced products/goods are also subject to transportation costs, and this is reflected in the purchase price of goods.

As larger multinational corporations have purchased a significant amount of freight companies operating in Australia, these corporations can deal with each other on a global stage resulting in the negotiation of competitive pricing for foreign companies resulting in some locally owned companies paying significantly more in freight costs than is otherwise fair. In addition the Contracting Parties, for the purposes of providing efficient services to their customers, are largely a captive audience of the national freight carriers. The Contracting Parties cannot logistically use small or undercapitalised freight carriers because those companies do not service Australia or the types of freight being moved.

Negotiating reduced freight rates would improve the competitiveness of Australian companies and lessen the disadvantage the Australian companies suffer in comparison to their international competitors.

There will also be increased efficiencies in the negotiation process for members of the bargaining group by engaging the Notifying Party to negotiate on its behalf, creating a single point of contact with target freight carriers. Currently, each member of the group would be consulting directly with a freight carriers. Separate rates would be agreed to on an individual basis and after individual and separate periods of consultation which results in a significant inefficiency in the 'doubling up' of negotiations.

3.4 Any time period relevant to the notified conduct

As mentioned in 3.3, most contracts negotiated are usually between 1-5 years so therefore the group is requesting protection for a period of 6 years. the Contracting Parties wish for the notified conduct to commence immediately.

4. PROVIDE DOCUMENTS SUBMITTED TO THE NOTIFYING PARTY'S BOARD OR PREPARED BY OR FOR THE NOTIFYING PARTY'S SENIOR MANAGEMENT FOR PURPOSES OF ASSESSING OR MAKING A DECISION IN RELATION TO NOTIFIED CONDUCT AND ANY MINUTES OR RECORDS OF THE DECISION MADE

NIL

5. PROVIDE THE NAMES AND/OR A DESCRIPTION OF THE PERSONS OR CLASSES OF PERSONS WHO MAY BE DIRECTLY IMPACTED BY THE NOTIFIED CONDUCT (INCLUDING TARGETS IN COLLECTIVE BARGAINING OR BOYCOTT CONDUCT) AND DETAIL HOW OR WHY THEY MIGHT BE IMPACTED

Outside of the Targets who maybe affected financially due to the equality in bargaining power being flattened, the Contracting Parties do not know of any third party who would be directly impacted.

The Targets that the group intends on negotiating with include:

- a. TNT;
- b. TOLL Express;
- c. Couriers Please;
- d. Followmont Transport;
- e. Hi-Trans Express;
- f. Northline;

The group also intends on negotiating with future freight carriers as well.

6. DESCRIBE THE PRODUCTS AND/OR SERVICES SUPPLIED AND THE GEOGRAPHIC AREAS SUPPLIED, BY THE NOTIFYING PARTIES. IDENTIFY ALL PRODUCTS AND SERVICES IN WHICH TWO OR MORE PARTIES TO THE NOTIFIED CONDUCT OVERLAP (COMPETE WITH EACH OTHER) OR HAVE A VERTICAL RELATIONSHIP (EG SUPPLIER/CUSTOMER)

All of the Contracting Parties compete with each other to a certain degree. Some of the Contracting Parties may provide ugly freight services whereas others do not. They are all brokers and therefore all provide the same service to customers.

7. DESCRIBE THE RELEVANT INDUSTRY OR INDUSTRIES. WHERE RELEVANT, DESCRIBE THE SALES PROCESS, THE SUPPLY CHAINS OF ANY PRODUCTS OR SERVICES INVOLVED AND THE MANUFACTURING PROCESS

The freight broking industry is relatively new as it only came into existence following the conclusion of the second World War. The freight broker negotiates with freight providers to organise transportation rates that the broker then provides to its customers.

Generally, the sale process is the cold-calling of prospective customers who might require freight services. Appointments are made for the purposes of securing the customer.

In terms of the supply chain, the Contracting Parties are free to engage on terms satisfactory to each of the Contracting Parties with whichever freight carrier meets their requirements or standards. One Contracting Party may use Toll, TNT and other similar freight carriers. Another Contracting Party may use specialised freight carriers because that Contracting Party offers ugly (i.e. very heavy, dangerous, very light, oversized, etc.) or bulk freight services. It depends entirely on the Contracting Parties service offering and overall business model.

8. **IN RESPECT OF THE OVERLAPPING PRODUCTS AND/OR SERVICES IDENTIFIED, PROVIDE ESTIMATED MARKET SHARES FOR EACH OF THE PARTIES WHERE READILY AVAILABLE.**

To the knowledge of the Notifying Party, there is no industry-wide data available. There is no ability to benchmark against peers. As such, there is no data available for the Contracting Parties to determine market share.

9. **DESCRIBE THE COMPETITIVE CONSTRAINTS ON THE PARTIES TO THE PROPOSED CONDUCT, INCLUDING ANY LIKELY CHANGE TO THOSE CONSTRAINTS SHOULD AUTHORISATION BE GRANTED. YOU SHOULD ADDRESS**

There are many existing freight brokers who are not Contracting Parties, including (but not limited to):

- (a) Freightlinks
- (b) John Ryan Freight Services
- (c) Batson Logistics
- (d) Austwide Freight
- (e) Advanced Freight Management

9.1 The likelihood of entry by new competitors

The market for freight brokers is relatively mature insofar as it is a service that has been provided for some time and aggregation and culling has already occurred. Anecdotally freight suppliers (such as TNT and Toll) are unlikely to engage with new or small freight brokers at this juncture. However, the proposed collective bargaining may allow new players to emerge.

As there is no overarching industry body collecting industry-wide data, declarations in this notification about factual circumstances concerning such things as the number of competitors, the direction of the freight broking services market and other industry-related projections are based only on involvement by the Contracting Parties in the industry itself.

9.2 Any countervailing power of customers and/or suppliers

Customers have significant power in determining which freight broker to choose. A large part of that power comes from pricing, service offering and choice of freight suppliers.

The proposed bargaining group is unlikely to alter any balance of strength between the customer and the freight broker. Rather, the bargaining group intends on offering greater efficiencies and reduced costs to its customers as a result of the collective bargaining.

9.3 Any other relevant factors

There are no other relevant factors

10. **DESCRIBE THE BENEFITS TO THE PUBLIC THAT ARE LIKELY TO RESULT FROM THE NOTIFIED CONDUCT. PROVIDE INFORMATION, DATA, DOCUMENTS OR OTHER EVIDENCE RELEVANT TO THE ACCC'S ASSESSMENT OF PUBLIC BENEFITS.**

There are a number of public benefits which will, or are likely to result from the notified conduct.

Those benefits, and the facts and information which support their existence, are:

- (a) The continued choice of a number of freight brokers from a price and service perspective because existing freight brokers will not be forced out of the market. Stronger negotiations will ensure a competitive market place. If the Contracting Parties are not permitted to engage in collective bargaining it may result in some Contracting Parties exiting the market lessening competition and choice for Customers.

- (b) The negotiation of more favourable terms (including a lower price for shipping) which is then passed onto consumers. These terms may allow the consumers to either ship in greater quantities or at shorter timeframes which in turn would allow them to grow their businesses.
- (c) A sustained opportunity for smaller freight brokers to continue to carve out a market share which does not unfairly prejudice them.
- (d) The provision of an enhanced level of input by the Contracting Parties in contractual negotiations and the potential to negotiate the apportionment of risk more fairly than would be the case if they were to negotiate individually.
- (e) There is likely to be reduced transaction costs for Contracting Parties in comparison with individual negotiations.
- (f) A lessening of legal expenses because of the negotiation of a set of common terms.

11. DESCRIBE ANY DETRIMENTS TO THE PUBLIC THAT ARE LIKELY TO RESULT FROM THE NOTIFIED CONDUCT, INCLUDING THOSE LIKELY TO RESULT FROM ANY LESSENING OF COMPETITION. PROVIDE INFORMATION, DATA, DOCUMENTS OR OTHER EVIDENCE RELEVANT TO THE ACCC'S ASSESSMENT OF THE DETRIMENTS.

The notified conduct will have no detriment to the public. Competition is not lessened because of the collective bargaining. The group only represents a small minority of freight brokers and freight broking represents a small percentage of the hirers of the freight carriers' services (which can include third party logistics and warehousing of goods).

There is no secondary boycott activity involved in the notified conduct and all members of the group are open and free to negotiating their own contracts

12. IDENTIFY AND/OR PROVIDE CONTACT DETAILS (PHONE NUMBER AND EMAIL ADDRESS) FOR LIKELY INTERESTED PARTIES, SUCH AS ACTUAL OR POTENTIAL COMPETITORS, CUSTOMERS AND SUPPLIERS, TRADE OR INDUSTRY ASSOCIATIONS AND REGULATORS

As far as the Contracting Parties are aware, the only interested parties are the Contracting Parties, the Targets and the Associated Parties that provide freight brokerage services (i.e. EFM).

13. PROVIDE ANY OTHER INFORMATION YOU CONSIDER RELEVANT TO THE ACCC'S ASSESSMENT OF THE NOTIFIED CONDUCT

Not applicable.

14. CONFIRM THAT THE NOTIFYING PARTY IS NOT A TRADE UNION, AN OFFICER OF A TRADE UNION OR ACTING AT THE DIRECTION OF A TRADE UNION

The notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.

All members of the group are Australian registered entities.

15. PROVIDE DETAILS (NAME, PHONE NUMBER AND EMAIL ADDRESS) OF THE PERSONS WHO ARE CURRENT MEMBERS OF THE GROUP (CONTRACTING PARTIES) ON WHOSE BEHALF THE NOTIFICATION IS LODGED. IF RELEVANT, IDENTIFY THE CLASSES OF PERSONS WHO MAY BECOME CONTRACTING PARTIES IN THE FUTURE AND ON WHOSE BEHALF THE NOTIFICATION IS LODGED

1. KIS Transport Australia Pty Ltd (the Notifying Party)
2. Hydra Logistics Solutions Australia Pty Ltd
3. Total Freight Logistic Services Pty Ltd
4. Transfreight Solutions Australia Pty Limited
5. KIS Corporate Pty. Ltd. ACN 617 236 352

The notifying party is seeking to collectively bargain on behalf of current and future freight brokers that may become members of the group. The current group members all currently use the same client booking integration system and would like to negotiate on behalf of future members of the group.

16. CONFIRM EACH CONTRACTING PARTY REASONABLY EXPECTS TO MAKE ONE OR MORE CONTRACTS WITH THE TARGET FOR THE SUPPLY OR ACQUISITION OF THE RELEVANT GOODS OR SERVICES AND THE VALUE OF EACH CONTRACT WILL NOT EXCEED A\$3MILLION (OR ANY OTHER AMOUNT PRESCRIBED BY REGULATION) IN ANY 12 MONTH PERIOD. PROVIDE DETAILS OF THE BASIS FOR THAT EXPECTATION

Each of the Contracting Parties reasonably expects that contractual payments between the Contracting Parties and the Targets for the supply of the freight services will not exceed \$3M in any financial year.

The larger freight brokerage companies are multinational corporations that control a significant portion of the market share.

17. IF THE CONTRACTING PARTIES PROPOSE TO ENGAGE IN A COLLECTIVE BOYCOTT WITH RESPECT TO THE TARGETS, PROVIDE DETAILS OF:

Not applicable.

17.1 The process that would be followed

Not applicable.

17.2 Any proposed notice period to be given to the target/s prior to commencing a collective boycott

Not applicable.

17.3 Any proposed dispute resolution procedure between the contracting parties and the targets

Not applicable.

Declaration by notifying party

Authorised persons of the notifying party must complete the following declaration.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Solicitor

Office held

Andrew Taylor

(Print) Name of authorised person

This, 18th day of December 2020