



**Scentre Group and Shopping Council of Australia –
Application for authorisation AA1000489
Interim authorisation decision
3 April 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional interim authorisation in respect of the application for authorisation AA1000489, lodged by Scentre Group and the Shopping Council of Australia on 2 April 2020.
2. Scentre Group and the Shopping Centre Council of Australia (the **Applicants**) have applied for authorisation on behalf of themselves and the Shopping Centre Council of Australia's (**SCCA**) members to take urgent industry wide action to assist small and medium enterprise (**SME**) tenants adversely financially impacted by the outbreak of COVID-19.
3. The ACCC has granted conditional interim authorisation to the Applicants to enable them to discuss, share information, and agree and give effect to contracts, arrangements or understandings to benefit their SME tenants, which have the purpose of providing rent relief to SME tenants, including through the deferment or amelioration of the payments or rent and other payments which tenants might otherwise be obliged to pay to SCCA members. The condition requires the Applicants to notify the ACCC of any proposed rent relief measures not less than 24 hours before the measure is implemented.
4. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

5. The Applicants applied for authorisation on behalf of themselves and members of the Shopping Centre Council of Australia (see **Annexure A**) to ACCC to discuss, share information, agree, and in due course give effect to arrangements and understandings between SCCA members that have the purpose of providing rental relief to these tenants, including through the deferment or amelioration of the payment of rents and other payments which tenants might otherwise be obliged to pay to SCCA members. (the **Proposed Conduct**).
6. The Applicants are seeking authorisation for twelve months from the ACCC's grant of final authorisation.
7. The Applicants submit that authorisation of the Proposed Conduct would permit SCCA Members to discuss and work together during the period of the authorisation to:
 - discuss and share information regarding the financial difficulties their tenants are facing and which tenants or classes of tenants would benefit most from relief and the nature of the relief that might be offered,
 - provisionally enter into agreements as to the nature of the relief which might be offered to these tenants, or classes of tenants, by SCCA members, and
 - to give effect to those agreements (subject to the notification procedures).

Tenants include all licensees of floor space in an SCCA member's centre.

Rent relief extends to outgoings, operating expenses, marketing fund and other contributions, levies and license fees.

8. The notification procedures require the Applicants to advise the ACCC of the relief measures proposed, before being implemented. These notifications will be placed on the ACCC's Public Register. In addition, centre managers will email affected SME tenants about the agreed measures. Where applicable and permissible pursuant to the terms of their leases with the tenants, centre managers will also notify any franchisees operating out of potentially affected tenancies.

Rent relief measures

9. The Applicants advise that relief measures are proposed to apply to SMEs which are tenants with a group wide annual turnover of up to \$50 million. The makeup of SME tenants varies between SCCA members, however as an example, Scentre Group estimates that SMEs in its centres make up approximately 80% by the number of tenants and 50% by the number of premises.
10. The Proposed Conduct would also apply to an SME franchisee where the franchisor holds the lease and the franchisee is liable under a licence to reimburse the franchisor for some or all of the rent payable under the lease.
11. Examples of relief measures the SCCA members may discuss and agree to include:
 - deferral of the payment of rent due for a number of months for SME tenants who suffer financial hardship from COVID-19
 - the repayment of that deferred rent over an agreed longer term pursuant to a payment plan that might be tailored to individual tenants
 - the waiver or partial waiver of interest or finance charges on the deferred rent
 - SME tenants given an option of extending their lease terms for the length of any rent deferment period.
12. The Applicants submit that while it is expected relief measures would be generally available to SME tenants who face financial hardship from COVID-19, the specific criteria will be adapted to account for an individual SME tenant's circumstances or the particular circumstances of a category of SME tenants. For example, any time frames agreed that generally to apply to SME tenants might be reduced if there is only a short period remaining in the term of an applicable lease (or during holdover). Similarly, SME tenants already in administration or receivership, or already in non-financial default under their lease may be treated differently or addressed through individual discussions with the applicable SCCA Member from whom they lease space.
13. The Applicants advise that:
 - It is not mandatory for SCCA members to participate in the conduct;
 - Individual members can choose to offer more generous or tailored relief to their SME tenants;
 - The relief measure will also apply to licensees of floor space in an SCCA' members centre and includes casual mall licensees;
 - Any agreements provisionally arising out of the Proposed Conduct may, not apply to all (or apply equally to all) different types of tenant or licensees. It is not, for instance, expected that casual mall licensees would receive the same (if any) relief as longer term permanent tenants. Similarly, an agreement might be reached only in respect of rent and not outgoings (or vice versa).

The authorisation process

14. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.

Interim authorisation

15. The ACCC may, where it considers it appropriate, grant an interim authorisation which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
16. The Applicants request urgent interim authorisation to enable the SCCA members to take urgent industry wide action in response to the financial difficulties faced by SME tenants due to the COVID-19 pandemic.

Consultation

17. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation in light of the urgent need for shopping centres to provide relief immediately to SME tenants in the context of the unprecedented circumstances impacting the economy and SME businesses and due to the compelling nature of the public benefits likely to result from the request for interim authorisation.
18. The ACCC will conduct a public consultation process on the substantive application for authorisation, and details regarding how to make a submission will be available on the [ACCC's authorisations public register](#).

Granting of conditional interim authorisation

19. The ACCC grants interim authorisation subject to the following condition that seeks to ensure there is sufficient transparency over the various agreements reached under the Proposed Conduct:

Notification condition

- The Applicants must notify the ACCC of any rental relief measure arising from the Proposed Conduct prior to the measure being implemented, or otherwise given effect to.
- The Applicants must provide notification to the ACCC (by sending an email to adjudication@acc.gov.au) as soon as practicable after they have reached agreement on the terms of the measure, but not less than 24 hours before the relief measure is implemented, or otherwise given effect to.

The notification to the ACCC must include at a minimum:

- a description of the relief measure, including (if applicable) a description of the SME tenant group/s, or classes of SME tenants, intended to be impacted by the relief measure (if not all SME tenants)
- the criteria to be applied in identifying those tenants, or classes of tenants, and the rationale for applying relief to some SME tenants and not others (if applicable)
- the SCCA members which, at the time of the notification, have agreed to implement the relief measure; and
- when the relief measure is intended to be implemented.

20. The ACCC will place the notification on the public register relevant to this application for authorisation.

Reasons for decision

21. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the significant challenges that SME tenants are facing due to the COVID-19 pandemic.

22. The ACCC considers that:

- It is unlikely that the Proposed Conduct will materially alter the competitive dynamics in any market, and markets will be able to return to substantially their current state once the emergency circumstances subside. In particular:
 - Coordination between SCCA members on rent relief measures is temporary, and will only apply for the duration of the pandemic.
 - SCCA members are individually able to offer terms more favourable and more tailored than those agreed. The Applicants note that the rental relief measures agreed to will operate as a guide for SCCA members, and that members and tenants will still be able to negotiate greater rental relief on a case-by-case basis.
 - The notification condition provides transparency in relation to the outcomes of the Proposed Conduct and if the ACCC identifies major concerns interim authorisation is able to be revoked, or the ACCC may request amendments to be made to the notified relief measure. The ACCC will place the notifications on the public register.
- There are likely to be significant public benefits in the current unprecedented emergency circumstances, including:
 - Urgently assisting SMEs experiencing financial difficulties by enabling the SCCA members to coordinate to provide short-term and immediate relief, including in response to Government requests. In this regard, the Applicants note that the COVID-19 pandemic together with the restrictions on public gatherings have significantly adversely impacted, and will continue to significantly adversely impact SME tenants that operated from shopping centres owned and/or managed by members of the SCCA.
 - Enabling a consistent and industry wide approach to rent relief, thereby providing SME tenants with rental relief across their portfolio of tenancies more efficiently and effectively, compared to a scenario where SME tenants would have to negotiate terms individually with each landlord and/or manager. In this regard, the Applicants note that individual negotiation of terms for rent relief with each shopping centre would delay the provision of relief.
 - Assisting eligible businesses to remain viable and continue to employ their workers.

Reconsideration of interim authorisation

23. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

Shopping Council of Australia members

- Abacus Property
- AXA Investment Managers
- AMP Capital
- Blackstone
- Gateway
- Brookfield
- Challenger
- Charter Hall
- Dexu
- GPT Group
- ISPT
- Jen Retail Properties
- JLL
- Lancini Property & Development
- Lend Lease
- McConaghy Properties
- McConaghy Group
- Mirvac
- Perron Group
- Precision Group
- QIC
- Savills
- SCA Property Group
- Scentre Group
- Stockland
- Vicinity Centres