



**Australian
Competition &
Consumer
Commission**

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Re: ACCC enquiry into audio visual supply arrangements relating to Staging Connections.

I refer to your complaint submitted to the Australian Competition and Consumer Commission (ACCC) in May 2013 and subsequent discussions and correspondence relating to your complaint. The ACCC has now concluded its investigation relating to your complaint regarding in-house supply arrangements entered into by Staging Connections Group Limited (**Staging Connections**) and various hotels for the supply of audio visual (AV) services to customers of hotel venues.

As you are aware, the ACCC is responsible for administering the *Competition and Consumer Act 2010* (CCA). One of the main purposes of the CCA is to promote competition and efficiency in markets within Australia and to protect consumers and business from unlawful and unfair practices that are prohibited by the CCA.

Third line forcing allegations regarding hotels

I understand that you alleged that hotels which have in-house AV suppliers (such as Staging Connections) are engaging in third line forcing which is prohibited under the CCA.

The third line forcing provisions of the CCA are sections 47(6) and (7), of which only section 47(6) was relevant to your complaint. Section 47(6) prohibits a company (first

party) from supplying goods or services to a second party *on condition* that the second party will acquire goods or services of a particular kind directly or indirectly from a third party that is nominated by the first party.

For section 47(6) to apply in relation to this matter, it would need to be proved that a hotel will only supply event and function facilities to a customer on condition that they also acquire AV services from Staging Connections.

To demonstrate a contravention of section 47(6), among other things, two elements need to be satisfied:

- that the first party will only supply goods or services “on condition”; and
- evidence of two distinct sales to one party.

Based on the information gathered during our investigation, hotels do not supply goods or services strictly “on condition” that the customer purchases its AV services from Staging Connections. Customers are able to still obtain AV services from other AV providers albeit subject to additional fees.

Secondly, when customers opt to use the in-house AV services of Staging Connections, this transaction is billed through the hotel. As such, the customer does not enter into a supply arrangement with Staging Connections, rather it elects to purchase services through the hotel which are supplied by Staging Connections. The hotel therefore offers a bundled package which includes venue hire with AV services. In this context there is no second sale and therefore section 47(6) cannot apply.

Based on the reasons above we do not consider that the conduct complained of is in contravention of section 47(6).

Other areas of enquiry

In reviewing the conduct, we also considered whether the arrangements between hotels and Staging Connections were likely to result in a contravention of section 45 of the CCA. Section 45 of the CCA prohibits parties entering into contracts, arrangements or understandings which contain a provision which has the purpose or effect, or likely effect of substantially lessening of competition.

We considered whether arrangements entered into by Staging Connections and various hotels, when aggregated, were likely to have the purpose or effect of substantially lessening competition in the AV supply market for five star hotels in Melbourne and Sydney.

In particular, the ACCC sought to understand whether hotels charging customers Technician on Duty (TOD) and other miscellaneous fees (such as fees for access to lifts and other venue facilities) had an anti-competitive purpose or effect.

Although it may seem that, by charging TOD and other fees, hotels customers are being deterred from engaging an external AV supplier, the fact that customers are still permitted to engage those suppliers suggests that this conduct is less likely to be for the *purpose* of substantially lessening competition. Further, we found that the hotels had legitimate reasons for charging these fees which were unrelated to anti-competitive conduct. In particular, we understand that hotels frequently require the

use of a technician on duty to manage risk to infrastructure and venue facilities, compliance with OH&S regulations, and ensuring the reputation of the hotel is maintained by ensuring adequate service delivery to customers.

Our market enquiries also revealed that Staging Connections faces significant competition in the market from other AV suppliers. A number of competitors to Staging Connections do not consider the charging of TOD fees and other miscellaneous fees as a barrier to competing against Staging Connections. This suggests that the conduct is unlikely to have the *effect* of substantially lessening competition.

Further comments

Based on these findings, the ACCC has now concluded its investigation into Staging Connections and the AV supply arrangements provided by hotels. The ACCC has decided not to take any further action in relation to this matter. This decision was based on information gathered during market enquiries.

Should any of the circumstances which formed the basis for the ACCC's decision change, or if new information is provided by market participants that is relevant to the ACCC's decision, it is open to the ACCC to resume or commence a new investigation at any time.

Whilst, the ACCC has decided to discontinue its investigation at this stage, I note that nothing in this letter prohibits you from taking your own legal action. I note that the ACCC does not provide legal advice to members of the public and therefore you should not consider anything in this letter to be legal advice. If you intend on taking your own legal action I recommend that you obtain independent legal advice.

Thank you for your co-operation during the ACCC's investigation. Should you have any queries regarding anything contained in this letter please do not hesitate to contact me on 03 9290 1944.

Yours sincerely,



Sharon Deano
Assistant Director
Enforcement Group Victoria