

**Application for urgent interim and final
authorisation under s88(1) of the
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

Ingham's Group Ltd

**on behalf of itself, other chicken processors
and the ACMF**

6 August 2020

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1 Summary

1.1 Background

This application is made by Ingham's Group Limited (**Ingham's**), on behalf of:

- (a) itself and its related bodies corporate;
- (b) Turosi Pty Ltd and its related bodies corporate (**Turosi**);
- (c) Hazeldene's Chicken Farm Proprietary Limited and its related bodies corporate (**Hazeldene**); and
- (d) the Australian Chicken Meat Federation (**ACMF**),

(the **Parties**).

Each of Ingham's, Turosi and Hazeldene (together, the **Processors**) are producers, processors and distributors of chicken meat in Victoria. ACMF is the peak coordinating body for participants in the chicken meat industry in Australia and represents all elements of the industry, including chicken processors and growers, at the national level.

The Processors are integral to the Victorian economy and community, as they support thousands of jobs through direct employment as well as indirectly through their contract growers. They supply the majority of chicken and chicken meat products to millions of Victorians each week. Chicken meat is the most popular animal protein in Australian and a staple part of the diet of most Australians. Chicken meat produced in Victoria is sold and consumed across multiple channels. The Processors are key suppliers of chicken meat products to major east coast customers including the major supermarkets, quick service restaurants, and other takeaway food outlets. Importantly in the current COVID environment the Processors are major suppliers to hospitals, nursing homes and a wide range of other service sectors.

On and from 3 August 2020, in response to the COVID-19 pandemic, the Victorian Government has imposed further restrictions on Victorian businesses for a period of at least 6 weeks (**Stage 4 Restrictions**). The Stage 4 Restrictions involve directions that a large number of Victorian businesses are to close. Stringent (and still evolving) limitations and restrictions have also been placed on those businesses that are permitted to operate (**Permitted Businesses**). While the Processors are a Permitted Business under the *Restricted Activity Directions (Restricted Areas) (No 6)* (which came into effect 5 August 2020), clause 6(1) of that Direction relevantly limits their operation "to the extent permitted by the Directions currently in force". This differs significantly to the Stage 3 restrictions (reflected in the now repealed *Restricted Activity Directions (Restricted Areas) (No 5)*) which only required that "[a]n employer whose premises is located in the Restricted Area must not permit an employee to perform work at the employer's premises where it is **reasonably practicable for the employee to work at the employee's place of residence or another suitable premises which is not the employer's premises**" (emphasis added) (clause 16(1)).

On 3 August 2020, as part of the announcement of those further restrictions, the Victorian Premier Daniel Andrews announced that those businesses permitted to stay open would face conditions on their opening which included mandated reductions to the number of workers onsite. In the meat industry, the workforce was to be scaled back by 33%. On 6 August 2020, it was announced by the Victorian Premier that this would be changed to require a workforce reduction of 20%. This is a material reduction in the number of employees the Processors are able to maintain at any one time as compared to the Stage 3 restrictions.

While the specific directions for these additional measures have not yet been finalised by the Victorian Government, the expectation is that they will come into effect on and from 11.59pm on 7 August 2020.

The Stage 4 Restrictions, in combination with other impacts from the COVID-19 pandemic and any further restrictions that may be imposed (**Restrictions**), will significantly impact the capacity and output of the Processors, which could have disastrous consequences for the Processors and the community generally, including:

- (a) the culling of chickens that cannot be processed and the destruction of eggs to be used for growing future chickens to maintain supply;
- (b) job losses as a result of reduced output and/or supply chain interruptions;
- (c) a significant impact on any growers who are left with empty farms because the Processors do not have the capacity to process the chickens that would be grown;
- (d) shortages of chicken and chicken products in Victorian supermarkets, cafes, and restaurants; and
- (e) retail price increases for Victorian consumers of chicken and chicken meat products.

On 3 August 2020, the Victorian Government initiated discussions with the Processors to assess and assist in managing the impacts of the Stage 4 Restrictions.

The Proposed Conduct (as described in section 3 of this application) is intended to minimise these impacts by facilitating coordination between the Processors to ensure that chickens can be processed in the most efficient way possible, while also complying with the Restrictions and ensuring the Processors employ all necessary precautions to address the health risks posed by the COVID-19 pandemic.

In particular, the Processors are seeking solutions that, in the context of complying with the Restrictions, to the extent possible:

- (a) avoid or reduce the need to cull chickens;
- (b) reduce the risk and magnitude of job losses;
- (c) minimise impacts on growers and other parts of the supply chain; and
- (d) ensure sufficient supply of chickens to meet Victorian demand.

1.2 Application for urgent interim authorisation

Each week the Processors process approximately [XXX - redacted] chickens. As the Restrictions have effect from 11.59pm Friday 7 August 2020 (based on current information), the Processors consider that immediate action is required to avoid material supply chain and associated impacts.

Accordingly, the Processors seek urgent interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (CCA) to engage in the **Proposed Conduct**, as described in section 3 of this application.

2 Parties to the Proposed Conduct

2.1 Applicant

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
Ingham's Group Limited (ACN 162 709 506) Level 4, 1 Julius Ave North Ryde NSW 2113 +64 212469613	David Matthews Group General Counsel [XXX - redacted]	Production and supply of chicken and turkey products across vertically integrated primary, free range, value enhanced, further processed and ingredient categories.

2.2 Address in Australia for service of documents

Caroline Coops
Partner, King & Wood Mallesons
Level 27, Collins Arch, 447 Collins Street, Melbourne VIC 3000
[XXX - redacted]

2.3 Other Persons who propose to engage in the Proposed Conduct

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
Hazeldene's Chicken Farm Proprietary Limited 74 Hazeldene's Road Lockwood VIC 3551 (03) 5431 1300	Mark Heintz Chief Executive Officer [XXX - redacted]	Production and supply of chicken products, including the breeding, growing and processing of chickens.
Turosi Pty Ltd (ACN 620 198 165) 5 Lipton Drive Thomastown VIC 3074 (03) 9495 5300	Phil Hand Chief Executive Officer [XXX - redacted]	Manufacture and supply of fresh poultry and prepared food solutions.
The Australian Chicken Meat Federation Inc Level 7, 122 Walker Street	Dr Vivien Kite Executive Director [XXX - redacted]	The peak coordinating body for participants in the chicken meat industry in Australia, including the promotion and

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Short description of business carried out by applicant
North Sydney NSW 2059 (02) 9929 4077		representation of the interests of the chicken meat industry.

3 Proposed Conduct

3.1 Description of conduct for which authorisation is sought

The Processors seek authorisation to discuss, enter into or give effect to any contract, arrangement or understanding, or engage in any conduct, between themselves which has the purpose of:

- (a) facilitating, coordinating or ensuring the production and processing of chicken and chicken meat products in Victoria in order to:
 - (i) meet ongoing demand; and
 - (ii) adequately deal with the supply of live chickens currently "on farm" without the need to euthanize flocks;
- (b) sharing or coordinating the use of essential personnel, facilities and inputs (including chickens) in order to process as many chickens as possible by the Processors,

(the **Proposed Conduct**).

The Processors only seek authorisation to engage in the Proposed Conduct insofar as it is for the sole purpose of seeking to maximise the number of chickens that are able to be processed by the Processors, so as to minimise to the extent possible the impacts that the Restrictions have, or may reasonably have, on the capacity of Processors to process chickens, and as a result, the associated impacts on growers and customers.

The Proposed Conduct will be developed and implemented by a special working group established by the Parties for the purposes of responding to the Restrictions (**COVID Working Group**).

The Proposed Conduct will:

- (a) not involve collective decisions relating to the price at which the Processors acquire or supply goods or services;
- (b) not involve collective decisions relating to the arrangements between the Processors and their respective chicken growers, or the supply arrangements between the Processors and their respective customers;
- (c) not be compulsory; and
- (d) form a temporary response to the difficulties which the Processors face as a result of the COVID-19 crisis and the Restrictions.

3.2 Reporting commitments

If the ACCC authorises the Proposed Conduct, the Processors will commit to:

- (a) notify the ACCC, at an interval agreed between the ACCC and the Parties, of the material decisions of the COVID Working Group which involve or otherwise relate to the Proposed Conduct;
- (b) provide any information that the ACCC reasonably requests (through a contact person nominated by the Parties) about the Proposed Conduct being engaged in under the requested authorisation; and
- (c) meet with the ACCC to provide regular updates on the Proposed Conduct, as agreed between the Parties and the ACCC.

Unless stated otherwise, the Parties request that any information provided under (a) to (c) above will be treated by the ACCC as confidential in accordance with the ACCC's usual processes for protecting confidential information.

3.3 Impact on growers

As noted in section 3.1, the Proposed Conduct will not involve collective decisions relating to the arrangements between the Processors and their respective chicken growers.

However, the Proposed Conduct will reduce the risk of potential impact of the Restrictions and the COVID-19 pandemic on chicken growers. Each Processor has contracts with various growers for the growing of chickens for processing. If a Processor is not able to process chickens in sufficient volumes, this will result in adverse impacts for the growers, including the potential for farms to have a materially reduced supply of chickens and be empty of birds for a period, with associated impacts on growers' revenues.

The Proposed Conduct is intended to minimise the impact of the Restrictions upon growers to the extent possible by assisting in maximising the volumes of chickens able to be processed by the Processors over the period in which the Restrictions apply. Further, the Proposed Conduct significantly reduces the potential impacts of the Restrictions on growers, as compared to the potential impacts of the Restrictions in the absence of the Proposed Conduct.

The intention of the Processors is that growers will not be worse off as a result of the Proposed Conduct, as compared to the position under the Restrictions and absent the Proposed Conduct. It is in the joint interests of the Processors and the relevant growers that overall chicken processing capacity be maximised over the periods in which any Restrictions apply. Failing to maximise overall processing capacity through the Proposed Conduct during this period is likely to lead to greater reductions in the supply of chicken meat for Victorians (with possible associated retail price increases), increased culling of chickens and eggs (for future chicken meat), and greater adverse financial impacts for growers and Processors than would otherwise be the case. The involvement of the ACMF in the COVID Working Group will assist in ensuring that the interests of the growers are taken into account.

The Processors also acknowledge that the authorisation (if granted) will not override the contractual agreements between a Processor and any relevant grower.

3.4 Term of authorisation sought

The Processors seek authorisation to engage in the Proposed Conduct until 31 December 2020. This term reflects the uncertainty surrounding the ongoing impacts of the COVID-19 pandemic (including the length of the Restrictions) and the need for the Processors to make decisions about the supply of chickens at least 12 weeks in advance (as this is the typical planning cycle for chicken production from breeder farms laying eggs through to collecting birds for processing).

However, the Processors only intend to engage in the Proposed Conduct for as long as is necessary to respond to the challenges created by the Restrictions.

3.5 Application for interim authorisation

The Processors consider that immediate action is required to avoid material supply chain impacts and significant adverse animal welfare outcomes resulting from the culling of chickens, and are therefore seeking interim authorisation on an urgent basis.

The Processors acknowledge that if, during the interim authorisation period, the ACCC identifies concerns about the Proposed Conduct, the ACCC may review and revoke that authorisation at any time.

3.6 Provisions of the CCA which might apply to the Proposed Conduct

The Processors compete for the acquisition of inputs relating to the production and processing of chickens and the supply of chicken meat and chicken products to retailers.

Absent authorisation, the Proposed Conduct may contravene sections 45AF, 45AG, 45AJ, 45AK, and/or 45 of the CCA.

4 Public benefits

The Processors consider that the Proposed Conduct will likely result in the following public benefits:

- (a) **Avoiding culls of chickens:** If the Processors do not proceed with the Proposed Conduct, the levels of culls of chickens is likely to be materially increased and/or there is likely to be reduced placements for growers and/or early processing of chickens that will be sent to render. In determining the processing constraints, the above options will be taken into account as options to manage chickens in the field. Not only would this be an avoidable and regrettable waste of chickens' lives and the food they would have provided, it will also result in material financial loss for the Processors and the growers.
- (b) **Ensuring food supply security:** Without the Proposed Conduct, the Processors consider that the potential for material shortages of chicken meat in Victorian supermarkets, cafes, and restaurants, and in the important service sector of hospitals and aged care facilities, is significantly increased. Further, these shortages could persist for longer than just the period of the Stage 4 Restrictions. This is because the Processors need to make immediate decisions about their ongoing ability and capacity to produce and process chickens pursuant to the Stage 4 Restrictions, as these decisions have a 12 week impact (i.e., the typical planning cycle for production of chickens is 12

weeks, so the decisions the Processors need to make now (e.g., whether to produce and set eggs for hatching eggs or to cull chickens) will have impacts on the amount of chickens that can be processed and produced in 12 weeks' time).

- (c) **Keeping chicken affordable for Victorians:** If the Processors are unable to meet Victorian consumer demand for chicken, there is likely to be an associated impact on the retail price of chicken and chicken meat products. Chicken is a staple of the diet of many Victorians and is the most popular animal protein in Australia, due to its low price relative to other animal proteins.
- (d) **Reducing impacts on growers:** The Proposed Conduct is intended to minimise the impact of the Restrictions upon growers to the extent possible by assisting in maximising the volumes of chickens able to be processed by the Processors over the period in which the Restrictions apply. It is in the joint interests of the Processors and the relevant growers that overall chicken processing capacity be maximised.
- (e) **Protecting jobs:** If the Processors are not able to discuss and seek solutions to efficiently manage output and workforces collectively, there is the real potential for a greater number of Victorian employees to be laid off or otherwise adversely impacted (including those staff employed by growers) than would be the case in the absence of the Proposed Conduct.

5 Public detriments

The Parties submit that the Proposed Conduct will not give rise to public detriments as a result of the public benefits described in section 4 and having regard to the following:

- (a) the period of authorisation is limited until 31 December 2020, and the Parties only intend to engage in the Proposed Conduct for as long as is necessary to respond to the challenges created by the Restrictions;
- (b) in the current circumstances, and without the Proposed Conduct, the Processors are facing material supply chain issues which will result in difficulties in processing 100% of available chickens and meeting consumer demand. In this way, the Proposed Conduct will facilitate, rather than limit, supply;
- (c) the fact that the Proposed Conduct does not extend to any agreements about the price at which the Processors will acquire or sell any goods or services; and
- (d) the Proposed Conduct is not compulsory, and any participant can opt out of any proposed collaboration the subject of this application.

6 Declaration by applicant(s)

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 undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

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

Name: David Matthews

Position title: Group General Counsel, Ingham's Group

Date: 6 August 2020