

**NOTIFICATION OF COLLECTIVE BARGAINING –
VEGETABLE EXPORTERS IN TASMANIA**

Notifying party

1. Provide details of the notifying party, including:

1.1. name, address (registered office), telephone number, and ACN

*Name: Agility Logistics Pty Ltd
Registered Office: 28-32 Sky Road, Melbourne Airport, VIC 3045
Telephone No: (03) 9339 0888
ACN: 004 265 721*

1.2. contact person's name, telephone number, and email address

*Name: Craig Spagnol
Telephone No: (03) 9209 0287
email: cspagnol@agility.com*

1.3. a description of business activities

Tasmanian exporters of vegetables (in particular carrots and onions)

1.4. email address for service of documents in Australia.

Craig Spagnol: cspagnol@agility.com

Details of the notified conduct

2. Indicate whether the notified conduct is for:

2.1. exclusive dealing (s. 47 of the Competition and Consumer Act 2010 (Cth) (the Act);

No.

2.2. resale price maintenance (s. 48)

No.

2.3. collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, does the notified conduct include a collective boycott?

The conduct is for collective bargaining only and does not include a collective boycott. The bargaining group will be free to negotiate and engage suppliers (being shipping lines or their agents or representatives) for the purpose of attaining more competitive shipping costs.

3. Provide details of the notified conduct including:

3.1. a description of the notified conduct

The bargaining group seeks to negotiate with shipping lines (or their agents or suppliers) improved rates for the cost of container shipment based on aggregated volumes of the individual group members as well as improved general trading terms and conditions.

3.2. any relevant documents detailing the terms of the notified conduct

Nil.

3.3. the rationale for the notified conduct

In the case of onions in particular, the tonnage of crops exported from Australia over the past five years has dropped substantially. The most significant drops have occurred in exports to Europe, to which Tasmanian farmers have historically (and currently) been the major exporter from Australia. The major reason associated with the drop in tonnage (and therefore market share) has been price of the goods (of which freight is the most significant component).

Due to its geographical location, Tasmanian ports are the furthest away from target markets overseas. As a result, freight costs for Tasmanian exporters are greater than exporters for other states. Reduced freight rates would improve the competitiveness of Tasmanian exporters and lessen the disadvantage the Tasmanian exporters suffer in comparison to their mainland and international competitors.

With the principal objective of coordinating and working with the Tasmanian fruit and vegetable industry to explore and facilitate the development of export opportunities, the Tasmanian Fruit & Vegetable Export Facilitation Group (TF&VEFG) was formed with funding from the Federal and Tasmanian Governments and industry. A Tasmanian Government business enterprise, Tasmanian Irrigation Pty Ltd, provides treasury, governance and oversight mechanisms over the TF&VEFG. One of the strategic pathways of the TF&VEFG is to minimise the cost of freight to overseas markets. The Export Facilitator of the TF&VEFG contacted known major exporters of Tasmanian onions to determine if there was an opportunity for onion exporters to work collaboratively to achieve a common freight rate that was underscored by combining individual tonnages to achieve a greater quantity that would underwrite more competitive freight rates from international shipping companies.

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 shipping lines. Currently, each member of the group would be negotiating directly with a shipping line or through a freight forwarder (such as the Notifying Party). Separate rates would be agreed to on an individual basis and after individual and separate periods of consultation.

3.4. any time period relevant to the notified conduct.

*Shipping line freight rates can change on a quarterly and are normally negotiated on an annual basis, As negotiation of freight rates is an ongoing process, the bargaining group would seek a **ten year term** for the notified conduct*

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 record of the decision made.

Not relevant

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.

The following shipping lines will be the likely targets of negotiation for freight rates:

OOCL; ANL; Hamburg Sud; MSC; CMA-CGM; MAERSK

Market information and concentration

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).

The bargaining group consists of Tasmanian exporters of fresh onions and carrots who have come together at the encouragement of the TF&VEFG. "Exporters" is used here as a generic term for businesses that grow, pack and export fresh onions. This structure of grow/pack/export has been synonymous with the industry since the 1970s. Each member of the bargaining group is unrelated and in competition for share of the carrot and onion market, both domestically and abroad.

The collective bargaining conduct relates to transport of carrots and onions to overseas markets, being in general terms, Europe, Asia, the Middle East and the Pacific Islands. The bargaining group competes in the northern hemisphere international market against other southern hemisphere exporters including New Zealand and Chile and northern hemisphere exporters including the United States, Europe, India and China. The predominant European exporters are the Netherlands and Spain.

There are six onion exporters based in Tasmania. All three members of the bargaining group are onion exporters. There are three carrot exporters based in Tasmania and two of those exporters are represented in the bargaining group.

In the case of carrots, outside the November to June harvest season, Tasmanian exporters purchase their produce for export from mainland suppliers. To this end any increase in exports as result of reduced freight costs will also benefit mainland farmers.

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 industry comprises vegetable growers and exporters (in particular, carrots and onions) in Tasmania. The relevant step of the sales process in which collective bargaining will occur is the negotiation of rates for shipping for reefer containers (and some fantainers) used for the transport of these perishable goods to overseas markets.

8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

These figures are not readily available to the Notifying Party.

9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted.

9.1. existing or potential competitors

Existing competitors consist of exporters of carrots and onions based in other countries and, to a lesser extent, exporters based in Tasmania that are not part of the bargaining group and mainland exporters.

9.2. the likelihood of entry by new competitors

The entry into the market of new competitors as export suppliers, in Tasmania, is unlikely; any new entrant would have considerable challenges starting up. The members of the collective bargaining group have vertically structured export models that have been built over decades and to successfully replicate this model would take substantial capital investment and considerable intellectual capital to enter into a relatively small market.

9.3. any countervailing power of customers and/or suppliers

The only cost effective manner in which to export fresh vegetables is by sea using reefer containers (and to a lesser extent, fantainers). Due to its geographical remoteness Tasmania is only serviced by the shipping lines listed in Item 12 for the export of fresh vegetables. This places individual exporters at a significant disadvantage with limited bargaining power. Importantly, the shipping lines have limited competition between themselves as they do not necessarily service each port.

9.4. any other relevant factors.

Nil

Public benefit

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 the public benefits.

Reduced freight costs will potentially allow Tasmanian onions and carrots to be exported at a lower price. This could make Tasmanian fresh vegetables more attractive in the international marketplace and more competitive with other exporters in the international marketplace. Any increase in export traffic is beneficial to the Australian economy. It will also make Tasmanian onions and carrots more competitively priced by addressing the unfair disadvantage they face against Australian mainland based exporters that are able to access lower freight rates.

These public benefits outweigh and public detriment which may arise from the notified conduct.

Public detriment including any competition effects

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.

Nil.

Contact details of relevant market participants

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.

The following shipping lines will be the likely targets of negotiation for freight rates:

OOCL; ANL; Hamburg Sud; MSC; CMA-CGM; MAERSK

Any other information

13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.

Nil.

Additional information for collective bargaining (with or without a collective boycott) conduct only

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 or acting at the direction of a trade union.

15. Provide details (name, phone number, 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.

*Jim Ertler, Managing Director
Premium Fresh Tasmania ABN 61 162 974 923
Ph 03 6498 8888
Email: Jim.Ertler@premiumfresh.com.au*

*Tim Groom, Managing Director
Wynyon Pty Ltd ABN 31 094 856 229
Ph 03 6437 2462
Email: sales@wynyon.com.au*

*Neil Armstrong, Managing Director
Forth Farm Produce Pty Ltd T/as Harvest Moon ABN 25 009 527 913
Ph 03 6428 2505
Email: narmstrong@harvestmoon.com.au*

The group is not formally constituted. Other exporters will be allowed to join the bargaining group and would be encouraged to do by the TF&VEFG.

16. Confirm each contracting party reasonably expects to make one or more contracts with the targets for the supply or acquisition of the relevant goods or services and the value of each contract will not exceed A\$3 million (or any other amount prescribed by regulation) in any 12 month period. Provide details of the basis for that expectation.

Each member has declared in writing that the value of each contract entered into with the target suppliers will not exceed A\$3 million in any 12 month period.

17. If the contracting parties propose to engage in a collective boycott with respect to the targets, provide details of:

17.1. the event/s that would trigger a collective boycott

Not applicable

17.2. the process that would be followed

Not applicable

17.3. any proposed notice period to be given to the target/s prior to commencing a collective boycott

Not applicable

17.4. 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 of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Date: 29 October 2018



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Craig Spagnol

Legal Counsel for Agility Logistics Pty Ltd