



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

in respect of a notification lodged by

Highlands Potatoes and Ag Incorporated

in respect of

information sharing and collective bargaining

Date: 12 September 2019

Notification number: CB10000469

Commissioners:

Rickard
Court
Ridgeway

Summary

The ACCC does not object at this time to the collective bargaining notification lodged by Highlands Potatoes and Ag Incorporated (**HPAI**) on behalf of itself and 11 current, and any future, potato growers from the Central Highlands region of Victoria that grow and supply potatoes to current and any future potato processors.

The group proposes to share information amongst themselves and then collectively negotiate with potato processors, including large international processors such as McCain Foods Australia.

The ACCC considers that the proposed conduct is likely to result in public benefits in the form of information sharing efficiencies, transaction cost savings and enabling better input into contracts. There is likely to be limited, if any, public detriments.

The ACCC has decided to allow the notification to remain in force for a period of 10 years, instead of the default period of three years. The notification was lodged with the ACCC on 29 July 2019 and came into force on 12 August 2019. The notification will remain in force until 28 July 2029, unless it is withdrawn or revoked.

The notification

1. On 29 July 2019, HPAI on behalf of itself and 11 current potato grower members, and any future potato grower members, lodged a collective bargaining notification¹ to enable potato growers to share information among themselves and to collectively bargain with McCain Foods Australia (**McCain**), Lamb Weston Holdings Inc.² (through Marvel Packers Pty Ltd and Ready Meals Pty Ltd) and any future potato buyers.
2. Specifically, HPAI submits that the purpose of the notification is to enable current and future members of HPAI to:
 - share information about costs of production and methods for potato production
 - share information about various terms in the contract and to seek collective legal advice
 - share information about the market for a range of potato products and price points to assist in negotiation
 - have a sub group, council or individual to negotiate contractual terms and price paid for potatoes by potato processors on behalf of members of the group.

(the **Notified Conduct**)

3. The notification is available on the [ACCC's public register](#).
4. The Notified Conduct does not include a collective boycott.

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (Act)* for collective bargaining, including associated collective boycotts, by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

² Lamb Weston Holdings Inc is an American food processing company but recently acquired Australian potato processors Marvel Packers Pty Ltd and Ready Meals Pty Ltd.

5. HPAI requests that the notification continue for 10 years.

Background

6. The potato growers are located in the Central Highlands region of Victoria. The members grow, market and supply processing potatoes for chips, wedges and fries as well as other agricultural crops.
7. HPAI submits that many of the potato varieties grown for large scale international processors are not tradeable on the open market as they are protected by plant breeder rights.
8. HPAI was previously named the McCain Grower Group Incorporated, a sub-group of the Victorian Potato Growers Council (**VPGC**), which is an umbrella group for various individual potato growing representative bodies.
9. On 12 December 2012, the ACCC granted authorisation A91321 to members of the VPGC to enable them to collectively bargain the terms and conditions of supply contracts with potato buyers until 3 January 2018. This authorisation replaced a similar collective bargaining authorisation granted to VPGC on 27 June 2007.³

Consultation

10. The ACCC invited submissions in respect of the notification from interested parties.
11. No submissions were received and no objections to the Notified Conduct were raised.

ACCC's assessment

12. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* (the **Act**).
13. In doing so, the ACCC has taken into account:
 - The likely future with and without the Notified Conduct. In particular, the ACCC considers that absent the Notified Conduct, member potato growers would be unable to share the information set out in paragraph 2 above and each grower would individually negotiate contractual terms and the price paid for their potato crop with potato processors.
 - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary area of competition relates to the supply of processing potatoes to McCain, Lamb Weston and any future potato buyers in Victoria.

Public benefits are likely to arise

14. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
 - Information sharing efficiencies as growers will be able to share information about contract terms, the market for potato production and prices.

³ A91048

- Transaction cost savings (such as negotiating and contracting costs, including the time taken to negotiate and the cost of obtaining professional representation in negotiations) for growers and processors, compared to the situation where growers conduct negotiations with processors on an individual basis.
- Better input into contracts, as collective bargaining can partly redress any bargaining imbalance between growers and processors, which may result in growers being able to unduly influence the terms and conditions of contracts.

Minimal public detriment

15. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment:

- Participation in the Notified Conduct is voluntary for potato growers and potato processors; if parties wish to negotiate individually, they remain free to do so.
- Potato processors source potatoes from a range of growers; it is unlikely that HPAI member growers will gain significant market power.
- Notification does not protect parties from legal action should they breach their agreements with processors, including any confidentiality obligations. This means that HPAI and its current and any future members will need to ensure that any information sharing does not breach confidentiality obligations in their respective agreements with processors.

Period for which the Notification will be in force

16. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.

17. In this case, HPAI has requested that the notification remain in place for 10 years.

18. The ACCC considers that it is appropriate for the notification to remain in force until 28 July 2029, for the following reasons:

- The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
- The extended notification period is unlikely to change the minimal, if any public detriment which is likely to result from the Notified Conduct.

Decision

19. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh any detriment to the public that is likely to result.

20. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s. 93AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.

21. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 18 in accordance with s 93AD(5), the ACCC is satisfied that:
- a three year notification period is not appropriate in all the circumstances, and
 - another period is appropriate in all the circumstances, being the period ending on 28 July 2029.⁴
22. The protection provided by notification CB10000469 commenced on 12 August 2019 and will continue until 28 July 2029, unless the notification is withdrawn or revoked.
23. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the Act.

⁴ As required by s 93AD(5)(b), this period will end no later than 10 years after the day that the notification was lodged.