

AGREEMENTS AFFECTING COMPETITION: - APPLICATION FOR AUTHORIZATION FORM B

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the Trade Practices Act 1974 for an authorisation under that subsection

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- (Strike out whichever is not applicable)

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of applicant: CSR Limited

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by applicant: Manufacturing/processing inputs into building products and materials

(c) Address in Australia for service of documents on the applicant: 7 Help Street, Chatswood NSW 2067

2. (a) Brief description of contract, arrangement or understanding and where already made, its date: See attachment

(b) Names and addresses of other parties or proposed parties to contract, arrangement or understanding: To be provided in detail

(See Direction 4 on the back of this Form)

3. Names and addresses (where known) of parties and other persons on whose behalf application is made: Not known

4. (a) Grounds for grant of authorisation: See attachment

(b) Facts and contentions relied upon in support of those grounds: See attachment

(See Notice 1 on the back of this Form)

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding

(a) Is this application to be so expressed? No

(b) If so, the following information is to be furnished:

(i) the names of the parties to each other contract, arrangement or understanding:

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application:

(See Direction 5 and Notice 2 on the back of this Form)

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974)? No

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

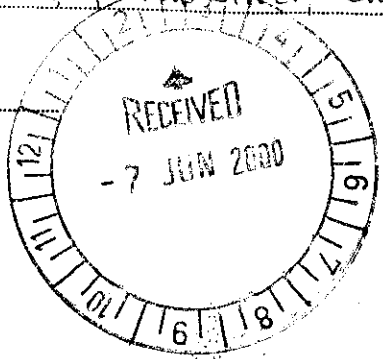
(c) If so, by whom or on whose behalf are those other applications being made?

7. Name and address of person authorised by the applicant to provide additional information in relation to this application:

Ian Mutton of c/o CSR Limited, 9 Help Street, Chatswood, NSW 2067

Signed by/on behalf of the applicant

Date 26 May 2000



(Signature) Ian Mutton  
(Full Name) Ian Mutton  
(Description) Secretary



## ATTACHMENT 1

### DESCRIPTION OF CONTRACT, ARRANGEMENT OR UNDERSTANDING

#### 1. DEFINITIONS

In this application for authorisation:

“Area” means ~~Queensland~~-Western Australia

“Carriers” means those entities which, as independent contractors, are from time to time engaged in the business of the delivery by road of pre-mixed concrete for CSR from plants producing pre-mixed concrete within the Area.

“CSR” means CSR Limited.

#### 2. DESCRIPTION OF CONTRACT, ARRANGEMENT OR UNDERSTANDING

CSR and the Carriers wish to negotiate contracts, arrangements or understandings which establish a formula for cartage rates payable to the Carriers for delivery of CSR’s pre-mixed concrete within the Area.

In addition to establishing the cartage rate, it is intended that the proposed contracts, arrangements or understandings will also:

- a) ~~confirm the application of relevant Award conditions for the Carriers and drivers employed by Carriers;~~
- b) ~~specify an annual earnings safety net for the Carriers;~~
- c) detail methods of calculation and payment of cartage rates;
- d) provide Carriers with the security of long term contracts;
- e) specify rights and obligations with respect to:
  - delivery hours;
  - transfer between plants;
  - compliance with statutory requirements;
  - suitability of vehicles;
  - communication equipment;
  - provision of a mixer;
  - maintenance of mixers and vehicles;

- painting of mixer;
- manning of vehicles;
- training;
- dispute procedures;
- occupational health and safety;
- rostering;
- storage of Carrier's equipment; and
- environment protection and pollution control.

It is intended that the formula for the cartage rates payable to Carriers will:

- i) create an incentive for the Carriers to maximise the volume of pre-mixed concrete transported by the Carriers so as to reduce the average load cost, and thereby to allow CSR to become more competitive in the market for the supply of pre-mixed concrete to consumers; and
- ii) make allowance for labour, ownership, overhead and running costs to adequately compensate the Carriers.

## ATTACHMENT 2

### NAMES AND ADDRESSES OF OTHER PARTIES TO CONTRACT, ARRANGEMENT OR UNDERSTANDING

The persons who will be a party to the contracts, arrangements or understandings with CSR are those entities when, as independent contractors, are from time to time engaged in the business of the delivery by road of pre-mixed concrete for CSR and from plants producing pre-mixed concrete within the Area.

The group of Carriers may expand or contract over time and the individual entities which comprise the Carriers may change over time.

As at the date of this application, the Carriers comprise the 224 60 entities listed on the attached pages.

As at the date of this application, the Carriers are spread throughout Queensland WA as shown in the table below:

<b>Region</b>	<b>No. of Carriers</b>
<del>Brisbane-Perth</del>	<del>52-57</del>
<del>Gold Coast-Mandurah</del>	<del>31-1</del>
<del>Sunshine Coast</del>	<del>61-2</del>
Northam	
Teowoomba	11
Central Queensland	26
Cairns	27
Townsville	16

Approximately 90% of the Carriers are incorporated.

## ATTACHMENT 3

### GROUNDS FOR AUTHORISATION

#### 1. AUTHORISATION SOUGHT

CSR seeks the following authorisation (using terminology as defined in attachment 1 to this application for authorisation):

- a) The Carriers are hereby authorised to enter from time to time into contracts, arrangements or understandings between themselves and with CSR as to the rates and conditions for delivery by road transport of pre-mixed concrete for CSR from plants producing pre-mixed concrete in the Area.
- b) The Carriers are hereby authorised collectively through representatives appointed by the Carriers from time to time, to enter into negotiations with CSR as to the said rates and conditions.
- c) The Carriers and CSR are each hereby authorised from time to time to enter into and give effects to contracts, arrangements or understandings with each other whereunder:
  - i) CSR offers the Carriers standard and agreed rates and conditions for the delivery by the Carriers by road transport of pre-mixed concrete from CSR plants situated within the Area; and
  - ii) the Carriers agree to undertake the delivery by road transport of pre-mixed concrete upon such standard and agreed rates and conditions.
- d) Nothing in this authorisation permits:
  - i) the making of any contract, arrangement or understanding containing an exclusionary provision as defined in section 4D of the Trade Practices Act, 1974; or
  - ii) without limiting the generality of the foregoing, the making of any contract, arrangement or understanding containing any provision, the substance or effect of which, would be to prevent or limit CSR and any Carrier or Carriers negotiating and agreeing upon variations to the standard and agreed rates and conditions in respect of particular jobs as on-site or otherwise as special circumstances might require.

#### 2. BACKGROUND

- a) In 1979, the Commission granted authorisation to the Pre-mixed Concrete Manufacturers Association of Queensland ("PCMA") (Application A2564) in similar terms to the authorisation sought by this application.

- b) The authorisation granted to the PCMA was followed by an authorisation granted to the National Ready Mixed Concrete Association (“NRMCA”) (Applications A90314) in May 1980. The NRMCA application was made because of the transfer of the functions of the PCMA to the NRMCA.
- c) Both the PCMA and the NRMCA members comprised pre-mixed concrete manufactures which included CSR (through its predecessor in title, Farley & Lewers (Queensland) Pty Ltd). The application by the NRMCA was lodged on its own behalf, on behalf of its members and on behalf of those persons in Queensland operating as independent contractors involved in the business of delivery by road transport of pre-mixed concrete from manufacturer’s plants.
- d) The NRMCA no longer represents CSR in dealings between CSR and the Carriers and therefore, CSR is seeking this authorisation.
- e) Whilst the terms of the contract, arrangement or understanding which CSR proposes to reach with the Carriers will be in different terms to the contract, arrangement or understanding which was the subject of the previous authorisations in favour of the PCMA and the NRMCA, the conduct which requires authorisation is identical.
- f) The authorisation granted to the PCMA (Application A2564) provides a summary of the way in which the industry has been structured and has operated. A significant departure from the past practice discussed in the previous authorisations is that companies such as CSR are entering direct negotiations with their Carriers in order to improve efficiency and competitiveness on an enterprise basis. Another departure from past practice is that most carriers are no longer members of the Queensland Road Transport Association Limited.

### 3. GROUNDS FOR AUTHORISATION AND SUPPORTING FACTS

- a) Authorisation is sought on the basis that the public benefit flowing from the proposed contract, arrangement or understanding will outweigh the detriment (if any).
- b) Some of the public benefits flowing from the proposed contract, arrangement or understanding were accepted by the Commission in relation to the previous authorisations granted to the PCMA and the NRMCA in relation to similar arrangements.
- c) In addition to the public benefits previously accepted by the Commission, CSR identifies the following public benefits as arising from the proposed contract, arrangement or understanding:
  - i) CSR currently deals with 224 55 Carriers as independent contractors. It is both impractical and inequitable for CSR to enter separate negotiations and contracts, arrangements or understandings with each individual independent contractor.

By allowing the independent contractors to negotiate with CSR as a combined body the parties will achieve:

- higher levels of business efficiency through standardisation of operational practices;
- a more efficient allocation of resources through groups acceptance of standard rostering and job allocation procedures;
- industrial harmony through equality of treatment;
- improvement in the quality and safety of services through the adoption of uniform minimum standards of safety and maintenance; and
- uniformity of approach to concrete delivery procedures in order to ensure compliance with all requirements of relevant legislation including the Environmental Protection Act 1994.

- b) There are significant cost savings to be made by increasing the volume of pre-mixed concrete carted by each Carrier so as to reduce the average cost of cartage per load.

The proposed contract, arrangement or understanding is intended to contain financial incentives for Carriers to increase the volume of pre-mixed concrete carried by each Carrier so as to reduce the average cost of supply to end users, and to thereby allow CSR to become more competitive.

- c) The pricing structure in the proposed contract, arrangement or understanding is intended to make allowance for labour, ownership, overhead and running costs to ensure that Carriers are adequately compensated. This will ensure that Carriers can comply with the requirements of the proposed contract, arrangement or understanding in relation to:

- maintenance of their vehicles;
- safety;
- environment protection and pollution control; and
- training.



Australian Competition & Consumer Commission

PO Box 1199  
Dickson ACT 2602

470 Northbourne A.  
Dickson ACT 2602  
Australia

Ph (02) 6243 1111  
Fax (02) 6243 1199

Our Ref: CA 98/5  
Contact Officer: Garry Hones  
Contact Phone: (02) 6243 1232

8 April, 1998

Mr Ian Mutton  
Corporate Lawyer  
CSR Limited  
Locked Bag 6  
CHATSWOOD NSW 2057

Dear Mr Mutton

**Application for Authorisation A90656 - CSR Limited, relating to the negotiation of contracts with product carriers in Western Australia.**

I refer to your submission lodged with the Commission on 12 March 1998. I note that it relies, to an extent, on information supplied to the Commission in relation to Application for Authorisation A50016, lodged by CSR Ltd in relation to the Queensland market for the supply of pre-mixed concrete.

To assist the Commission in its consideration of the application, I would be grateful if you could provide some additional information by, say, 30 April 1998.

Broadly, I would like information on the current operation of the market in Western Australia. The type of information I am seeking is as follows :-

- (A1) The names of CSR's competitors in the market for pre-mixed concrete in WA, and the estimated market shares of those companies and CSR ?
- (A2) The names and addresses of CSR's major customers in WA, including companies and government authorities.
- (A3) The estimated size of the pre-mixed concrete market in WA, in terms of annual volume and value (including CSR's share).
- (A4) Has there been any pay rises for owner /drivers in the last 18 months ?
- (A5) What is the current system of calculation of cartage rates by carriers in WA ?





(A6) How many CSR owned trucks operate in the regions of Perth, Mandurah and Northam (the regions covered by the carriers) ?

(A7) Of the 59 carriers whom CSR proposes to be parties to the contracts, how many trucks will be operated by the carriers, and how many carriers have multiple truck operations ?

(A8) The name and address of the organisation representing concrete carriers in WA ?

(A9) Has CSR placed any advertisements in WA newspapers etc seeking owner/drivers in the last two years, and what has been the response ?

(A10) What is the entry criteria for carriers to be contracted to CSR ?

I am also seeking information on the conduct the subject of the application. What I had in mind is as follows :-

(B1) Who will represent the carriers in negotiations eg carriers' negotiating committee, union, or other organisation ?

(B2) What will be the role and basis of operation of the representative body ?

(B3) A copy of the draft contract or agreement to be entered into with carriers.

(B4) What is the proposed system of calculation of rates by CSR in WA ?

(B5) If the arrangements, the subject of the application, are implemented, what will happen to the arrangements of the five carriers with whom CSR already deals ?

(B6) The definition for '*Products*' in your submission appears to cover the cartage of materials, used in the manufacture of pre-mixed concrete, to CSR plants. Will the carriers of pre-mixed concrete also be the carriers of 'materials', and will the arrangements (and consequently the public benefits claimed by you in your submission) apply to the operation of 'materials' carriage ?

(B7) How, specifically will the proposed arrangements enhance the owner/driver's ability to meet legal obligations and maintain their vehicles in good condition ?

(B8) Efficiency of operation - how, specifically will measures such as increases in the average volume carted per load; standardisation of operations; and improved resource allocation through rostering, reduce the cost of cartage ? By how much will it reduce such cost, and why is CSR not capable of introducing such measures now ?

(B9) Industrial harmony - as there does not appear to be a history of widespread disharmony in the industry, how could the proposed agreement lead to any greater harmony ?

(B10) Training - please outline details of any proposed training program for owner/drivers during the 12 month period subsequent to any authorisation.

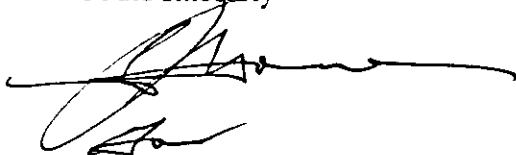
(B11) Cost of running trucks - copies of reports prepared by CSR, or acquired by CSR, for the purpose of estimating the costs of running concrete (and material) trucks in WA.

(B12) CSR's assessment of the potential for anti-competitive conduct to arise from the proposed arrangements.

Submissions to the Commission will be publicly available and placed on a public register for that purpose. If you wish to include information in your submission which is of a confidential nature (such as the costs of manufacture and distribution, etc), it should be clearly marked as such and a claim for confidentiality for the material should also be submitted.

If you have any queries on the matter, please contact Garry Hones on (02) 62431232.

Yours sincerely



J P O'Neill  
Senior Assistant Commissioner  
Adjudication Branch

*A1. Perth Pre-Mix Concrete suppliers and estimated market share*

CSR	24%	
Pioneer		23%
Boral	23%	
BGC	23%	
Go Crete	6%	
Others	1%	

*A2. The names and addresses of CSR's major customers in Perth, including companies and Govt Authorities.*

Transfield Construction P/L  
Const Services  
Derwent Const Pty Ltd  
Kerb Qic & Co  
Pindan Constructions  
Filomena Nominees Pty Ltd

*A3. The estimated size of the pre-mixed concrete market in WA, in terms of annual volume and value (including CSR's share)*

1,150,000 cubic metres.  
Value estimated to be \$125 million

*A4. Has there been any pay rises for owner / drivers in the last 18 months.*

Yes. The revenue model includes cost recovery for operating expenses, labour defined by Award Rates and CPI Index for profit.

*A5. What is the current system of calculation of cartage rates by carriers in Perth Metro.*

The rates are reviewed quarterly. The revenue is as in A4 plus allowances for minimum size loads, waiting time, travelling empty to plants plus mixing small loads. This revenue is then divided by the metres carted in the previous quarter.

*A6. How many CSR owned trucks operate in the regions of Perth, Mandurah and Northam (the regions covered by the carriers).*

3 ( 1 is in Northam and does not affect this proposal )

*A7. Of the 59 carriers (now 58 excluding Northam ) whom CSR proposes to be parties to the contracts, how many trucks will be operated by the carriers, and how many carriers have multiple truck operations ?*

47 will be owner operated by the carriers  
2 carriers have multiple truck operations (one has 9, the other has 2)

*A8. The name and address of the organisation representing concrete carriers in Perth ?*

There is none.

A9. *Has CSR placed any advertisements in WA newspapers, etc seeking owner / drivers in the last two years, and what has been then the response.*

Yes. An advertisement was placed in September 1999. We gained 5 new contractors. We had about 30 enquiries.

The other 5 new contractors came from trade references and one was a contractor whose original CSR contract had expired and he accepted the new version contract.

A10. *What is the entry criteria for carriers to be contracted to CSR ?*

Driving capabilities

Provide proof through presented signed forms that he has had both a legal and financial advisor read the contracts and advise him as to what it means

References as to his previous work

The contracts are assignable, and either party has a 3-month notice clause subject to conditions.

B1 *Who will represent the carriers in negotiations*

Carriers negotiating team.

B2. *What will be the role and the basis of operation of the representative body ?*

To understand and accept the competitive marketing pressures

To operate within the guidelines of the TPA

To present the intentions of the carriers

To negotiate in good faith with CSR

To be prepared to accept, as does CSR, the possible need to use an Arbitrator for critical issues.

B3. *A copy of the draft contract or agreement to be entered into with the carriers.*

See attachments

B4. *What is proposed system of calculation of Rates by CSR in Perth ?*

The review is done quarterly.

Revenue defined as labour, fixed costs, variable costs based on industry data plus an "incentive to invest" (reviewed annually). This is divided by the previous quarter's fleet average delivered volumes to calculate a \$ / m3 rate.

B5. *To be provided*

B6. *To be provided*

- B7. How, specifically will the proposed arrangements enhance the owner/driver's ability to meet legal obligations and maintain their vehicles in good condition.*

The maximum loads carried by a carrier will vary with another carrier depending on the tare weight of his truck, the truck manufacturer's safe operating limits, and the limits allowable under the Department of Transport regulations.

So no truck is loaded beyond its legal or safe limits.

The allowance within the contracts for maintenance are based on current cost data for tyres, parts, etc. So CSR's contract provides the carrier with the ability to maintain his truck in good condition.

- B8. Efficiency of operation - how specifically will measures such as increases in the average volume per load, standardisation of operations, and improved resource allocation through rostering, reduce the cost of cartage.*

*By how much will it reduce such cost, and why is CSR not capable of introducing such measures now ?*

**Average volume per load** - under the new arrangements, trucks can carry greater than 5.0 m3 will do so and the payment for loads greater than 5.0 m3 will be capped at the payment for a 5.0 m3 load.

This means that the productivity of the newer trucks (for which CSR provides a full depreciation allowance) are passed on and the cost of cartage is reduced.

An equalisation of trips is a **rostering system** with agreed exceptions has the potential to optimise fleet availability for CSR and to reward fairly those carriers who make themselves available for work more often.

**Standardisation of operations.** There will be concessions by the carriers for partial reductions in allowances paid for minimum cartage and waiting time.

**How much will it reduce such cost.** For the contractors parties to the terms of settlement costs may be reduced by about 5% in the first year

**Why is CSR not capable of introducing such measures now ?** Attempts to negotiate with individual carriers met with silence or similar responses. CSR's response has been to offer contracts to new entrants as and when available cartage capacity was less than requirement.

- B9. Industrial Harmony - as there does not appear to be a history of widespread disharmony (I assume they mean a withdrawal of services) in the industry, how could the proposed agreement lead to any greater harmony?*

The correct wording may be that the arrangement will lead to a continuation of the harmony in the industry, whereas without the arrangement disharmony may develop.

*B10. Training - please outline details of any proposed training program for owner / drivers during the 12 month period subsequent to any authorisation.*

Training will occur in areas of safe operation, environmental compliance, compliance with quality policy.

CSR has a series of programs already developed including an extensive program titled Driver Induction - Training module that is also used for re-training.

The carriers will participate in Safety, Health and Environment work teams.

They will also participate in training courses built around CSR's quality policy with respect to mixing and delivery procedures and customer service.

*B11. Cost of running trucks - copies of reports prepared by CSR, or acquired by CSR, for the purpose of estimating the costs running concrete trucks in Perth.*

The contractors have agreed on these costs at the start of the contract and have accepted that the base rates applied in 1994 and the variations each quarter since then are accepted and not contested by them with but one or two questions. These exceptions have been satisfactorily explained and accepted.

*B12. CSR's assessment of the potential anti-competitive conduct to arise from the proposed arrangements.*

CSR anticipates the emergence of groups of carters and the emergence of competitive tensions which will, with the passage of time lead to increased efficiencies in the form of lower unit costs being incurred by carriers and lower deliver charges being offered to CSR and through it to its customers.