



**Australian
Competition &
Consumer
Commission**

Determination

Application for Authorisation

Lodged by

**Clay Brick and Paver Association of
Victoria**

in relation to a scheme to increase the number of trained
bricklayers in Victoria

Date: 12 December 2000

Authorisation No: A90738

**Commissioners:
Fels
Shogren
Cousins
Martin
Bhojani
Jones**

File No: C2000/1207

Summary

On 27 July 2000, the Clay Brick and Paver Association of Victoria (CBPAV) lodged an application for authorisation (A90738) with the Australian Competition and Consumer Commission. Authorisation was sought to make and give effect to a contract, arrangement or understanding which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Trade Practices Act.

In particular, the application relates to CBPAV's proposal to charge a common levy on its members, and prospective parties to the arrangements, in order to establish a training initiative that will assist with overcoming the shortage of skilled bricklayers in Victoria.

The training initiative will establish a Bricklayer Training Centre (BTC) at which the provision of high quality training for apprentice and trainee bricklayers will be located, and a Group Training Company which will assist host employers in providing employment for apprentice and trainee bricklayers. The arrangement between CBPAV members is to charge a \$2.00 levy per thousand bricks sold to fund the training initiative.

While the Commission found that the \$2.00 levy may have the effect of a marginal increase in the price of bricks to consumers, the Commission also found that a public benefit would arise from the proposed arrangements through:

- an alleviation of the skills shortage in Victoria's bricklaying trade, by increasing the number of skilled bricklayers capable of offering high quality work to consumers;
- an alleviation of the cyclical increases in the cost of hiring bricklayers caused by shortages during periods of peak demand, by increasing the overall supply of skilled bricklayers in the market; and
- a reduction in completion times flowing from avoidance in delays caused by bricklayer shortages.

The Commission concluded that the public benefits likely to result from the arrangements will outweigh the anti-competitive detriment. The Commission therefore granted authorisation to CBPAV in respect of application for authorisation A90738, for a period of three years. The Commission considers that to grant authorisation for an indefinite period of time would not be appropriate given that a continued strong demand for bricklayers will be dependent on future economic conditions.

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1. Introduction

- 1.1 On 27 July 2000, the Clay Brick and Paver Association of Victoria (CBPAV) lodged an application for authorisation (A90738) with the Australian Competition and Consumer Commission (the Commission). The application was made under subsection 88(1) of the Trade Practices Act 1974 (the Act) for authorisation to make and give effect to a contract, arrangement or understanding which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 1.2 The application relates to an arrangement involving Boral Bricks Pty Ltd, Daniel Robertsons Australia Pty Ltd, Nubrik Pty Ltd and Selkirk Brick Pty Ltd, as members of CBPAV, to fund an industry based training initiative for apprentice and trainee bricklayers, and to charge a common levy to finance the initiative. Non-members of the CBPAV who may financially support the initiative, may also become party to the arrangements. The aim of the CBPAV is to increase the intake of apprentice and trainee bricklayers in Victoria, and to address the problem of cyclical shortages (including the current shortage) in the number of skilled bricklayers in Victoria.
- 1.3 Under the proposed arrangements, CBPAV members are proposing a levy of \$2.00 per thousand bricks sold to be added to the price of bricks, and payable by member brick manufacturers. The levy will be used to develop a Bricklaying Training Centre (BTC) at Holmesglen Institute of TAFE, and to facilitate the placement and on-the-job training of apprentice and trainee bricklayers through a Group Training Company. The intention of CBPAV is to build on the existing training facilities at Holmesglen Institute of TAFE, and to provide a comprehensive approach to the provision of bricklayer training.
- 1.4 The funding in total for the BTC will come from four sources: the existing recurrent funding from the Office of Post Compulsory Education, Training and Employment provided to Holmesglen Institute of TAFE; the proposed levy raised by CBPAV from brick manufacturers; payments from host employers of the Group Training Company as part of the BTC; and other fee for service activities. It is intended that the levy would be passed on to consumers, and reflected in the price of clay bricks and pavers.
- 1.5 Holmesglen Institute of TAFE is currently the largest provider of training for the brick industry in Victoria. It is envisaged that the proposed levy and the improved training facility will double the existing training capacity at Holmesglen Institute of TAFE. The BTC will focus on delivering apprenticeship, pre-apprenticeship and industry based short courses.

2. The arrangement

- 2.1 The arrangement between CBPAV members for which authorisation is sought allows for:
- the CBPAV to impose on its members a levy of \$2.00 per thousand bricks sold towards establishing a BTC and a Group Training Company at Holmesglen Institute of TAFE;
 - the BTC to improve on the existing training facilities at Holmesglen Institute of TAFE; and
 - the Group Training Company and the BTC to alleviate the skill shortages in Victoria's bricklaying trade, by increasing or maintaining the intake of apprentice and trainee bricklayers in Victoria, and assisting host employers with the cost of employing and training apprentices and trainees.
- 2.2 A number of parties who may also give commitment to financially support the training of bricklayers may also become party to the arrangements. These include:
- Victorian clay brick manufacturers located in country Victoria, who are not members of the CBPAV;
 - concrete and masonry block manufacturers; and
 - manufacturers of clay bricks and concrete and masonry blocks located interstate who supply the Victorian market.
- 2.3 Where concrete and masonry block manufacturers become party to the arrangements, the levy will be based on a per square metre rate, and will amount to approximately 5 cents per square metre of blocks laid.
- 2.4 The levy collected will be held and controlled by the CBPAV, through its board of directors.
- 2.5 It is envisaged that if the arrangement is authorised, on current estimates, the levy would raise in the vicinity of \$0.45 million-\$1.6 million per annum.

3. Background

Supply of bricklayers in Victoria

- 3.1 The CBPAV has provided the following information by way of background to its application for authorisation:

- the BTC is a joint initiative of the CBPAV and Holmesglen Institute of TAFE and has come about as a result of industry concerns on the current shortage of competent bricklayers in Victoria (which is also evident in other states), the high percentage of bricklaying being performed by informally trained people, and the low number of apprentice bricklayers in Victoria. The industry is of the opinion that there is an urgent need for a long-term increase in the number of trainee and apprentice bricklayers in Victoria;
- the shortage of bricklayers is of particular importance to the housing sector of the industry where approximately 85% of homes in Melbourne and 70% of homes in the rest of Victoria are currently constructed using clay or masonry bricks. This sector of the industry is currently suffering from a critical shortage of qualified bricklayers. This shortage is causing serious delays for builders across the state, and a lowering in the standards of bricklaying;
- training facilities across the state are full and there are apprentices on waiting lists. This is partly caused by the current boom cycle in the industry. However, the upturn in building activity has been evident for several years, and training places have not kept up with industry demand for skilled bricklayers;
- during the current year, because of the severe shortage of trained bricklayers, there has been an increase in the number of trainees enrolled for both pre-apprenticeship and apprenticeship training. There are currently in Victoria seven providers offering training in pre-apprenticeship, apprenticeship or a combination of both training modes. There are also a number of Victorian apprentices attending Albury Institute of TAFE (NSW). With some exceptions, the current facilities are operating at capacity. In addition, some facilities are already operating above their design capacity by using temporary accommodation, and five of the providers have a waiting list of either pre-apprentices, apprentices or both;
- to alleviate these problems, the CBPAV proposes to create a training centre which will improve the current provision of training at Holmesglen Institute of TAFE, and provide a more comprehensive approach to bricklayer training in Victoria;
- the BTC will attempt to increase the number of qualified bricklayers in the industry, by increasing the number of training places, and by implementing an effective method for labour market forecasting; and
- a similar training facility has been developed in NSW, through the NSW Clay Brick and Paver Association, which commenced early this year. Funding for this centre has been partly raised through an industry based levy following an authorisation by the Commission in 1999.

3.2 At the time that the NSW Clay Brick and Paver Association application for authorisation was assessed, labour market information was obtained for the purpose of confirming labour shortages in the bricklaying trade. The NSW Labour Economics Office provided a background to the current shortage in the supply of bricklayers in NSW and in other states. It stated that as a result of high levels of activity in both residential and non-residential building, coupled with a low rate of apprenticeship training in the bricklaying trade in recent times, severe shortages had developed in the

trade across most sectors of the building industry while pay rates for bricklayers had risen sharply.¹

Rising Costs

- 3.3 The CBPAV has stated that over the past two years the shortage of bricklayers has caused an increase in the average cost of brickwork from \$450 per thousand laid in 1997 to \$750 per thousand over the past two years, and as high as \$1200 per thousand in some areas of the housing sector in 1999, which has been passed on as an increase in the cost of building.
- 3.4 The CBPAV has also stated that the shortage of bricklayers has also increased delays in housing starts for builders of domestic housing, from 12 to 20 weeks in 1998-99.

Labour Market Forecasting

- 3.5 The CBPAV has stated that the cyclical nature of the building industry has made it difficult to accurately predict training demands and the appropriate funding needs. As a result, the numbers in training have on many occasions failed to match the needs of the industry. The Tasmanian Building and Construction Industry Training Board has developed labour market forecasting software capable of forecasting the skills requirements for the industry. The CBPAV has stated that the BTC could access the labour forecast model for its own forecasting. In addition, the CBPAV says that the model may be used as a fee for service activity for other potential industry sectors, including the Housing Industry Association and others.

Group Training Companies

- 3.6 The function of a Group Training Company, such as that proposed by the applicant, is to place apprentices and trainees with host employers for a fee. The apprentices' wages and other costs (such as workers compensation) would be paid by the host employers, but administered through the Group Training Company. The convenience of using a Group Training Company to administer the hiring of trainees and apprentices, has made Group Training Company services a popular option for many employers.
- 3.7 A Group Training Company not only carries out the administrative work associated with employing staff, but also allows apprentices to work towards completing their apprenticeships without the need to find an employer willing to enter into a four-year commitment. Administrative work carried out by a Group Training Company include the payment of apprentice wages, the calculation of weekly tax deductions and related tasks.

¹ NSW labour Economics Office, DEWRSB, Labour Market Rating, December 1998, p. 1.

- 3.8 The flexibility in the work experience provided by a Group Training Company towards the completion of apprenticeships, means that apprentices may receive on-the-job training from many employers through short stints rather than the one employer providing the entire four-year training. It also means that while an apprentice is able to accumulate the experience obtained from different employers towards completion of an apprenticeship, an employer is able to reduce labour costs by employing an apprentice on a needs basis.

Organisation of the Group Training Scheme

- 3.9 The structure of the Group Training Scheme will include a Group Training Company as a function of the BTC and as part of the Holmesglen Institute of TAFE.
- 3.10 The CBPAV has stated that the State Government has been reluctant to allow an institute of TAFE to operate as a Group Training Company, which has prompted a discussion about the preferred structure of the Group Training Company in the proposed scheme. The CBPAV's preferred option would be to negotiate with the Clay Brick and Paver Association of NSW with a view to setting up a Group Training Company as subsidiary of the NSW Group Training Company. However, other options for negotiation include the setting up of the Group Training Company under the auspices of the CBPAV but operated as part of the BTC, and extending or re-negotiating the current arrangement that Holmesglen Institute of TAFE has with the Southern Suburbs Group Training Incorporated.
- 3.11 The levy raised by the CBPAV may also be used for the operating costs associated with the Group Training Company, which are not recouped from payments made by host employers using the scheme to place trainee and apprentice bricklayers.

4. The statutory test

- 4.1 Application A90738 was made under subsection 88(1) of the Act, concerning arrangements that may have the effect of substantially lessening competition. The Act provides that the Commission shall only grant authorisation if the applicant satisfies the relevant test in subsection 90(7) of the Act.
- 4.2 Sub-section 90(7) provides that the Commission may only grant authorisation if it is satisfied in all the circumstances that:
- the provisions of the subject arrangements or conduct would result, or be likely to result, in a benefit to the public; and
 - the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from giving effect to the arrangements.

- 4.3 In deciding whether it should grant authorisation, the Commission must examine the anti-competitive aspects of the arrangements, the public benefits arising from the arrangements, and then weigh the two to determine which is the greater. Should the public benefits or expected public benefits outweigh the anti-competitive aspects, the Commission may grant authorisation or grant authorisation subject to conditions.

5. Applicant's submission

Aims and objectives

- 5.1 In its submission lodged in support of this application, the CBPAV has stated that the BTC has the following objectives: -
- to create a bricklaying training centre capable of being a major focus for the Victorian bricklaying industry;
 - to improve the standard of bricklaying in the industry;
 - to increase the number of training places for the industry;
 - to create a more articulated pathway for bricklaying training, from entry level to post trade studies;
 - to create a centre capable of applied research and consultancy in the bricklaying area; and
 - to gain government support and assistance for this initiative in the short and long term.
- 5.2 The CBPAV has stated its Group Training Scheme has the following objectives:
- provide a steady supply of apprentices and tradespeople available to the industry at minimum cost to host employers, by coordinating the available government and industry funds;
 - improve the pathways into post trade training, including skills training and management or organisational training;
 - assist in the development of a BTC, and facilities in other parts of the state that will provide quality training to new entrants to the industry, and improve the skill levels of those in the industry that are informally trained;
 - appoint and develop a management team capable of managing the Group Training Scheme as a business;
 - ensure that trainees have the appropriate skills and competencies required by host employers; and

- develop the necessary organisational and training skills, to meet the training needs of the bricklaying trade throughout Victoria, including regional Victoria.

Public benefit

5.3 The CBPAV claims that the proposed arrangements subject to the authorisation application provides the following public benefits:

- consumers would benefit from an increase in the number of qualified bricklayers on the market, such benefits flowing from an improvement in the quality of work provided to consumers by the fully trained bricklayers;
- an increase in the number of skilled and job-ready bricklayers on the market would address the cyclical nature of building activity, which results in significant increases in labour hiring costs during periods of peak demand, and would thus benefit consumers;
- consumers would benefit from a likely improvement in completion times arising from avoidance of delays due to bricklayer shortages;
- a greater range of facilities to address the entry level training needs of the industry would be established;
- improved pathways for students would develop;
- there would be increased support to employers through the group training arm of the scheme; and
- more accurate labour market forecast services for the building industry would be provided.

6. Submissions from interested parties

6.1 On 26 September 2000 the Commission wrote to a number of interested parties seeking written submissions on the likely effect on competition and public benefits of the proposed levy and training scheme (Application A90738).

6.2 Submissions were received from the Master Builders Association of Victoria, the Housing Industry Association of Victoria, the Office of Post Compulsory Education, Training and Employment and Holmesglen Institute of TAFE. All submissions supported CBPAV's public benefit claim that the proposed levy would assist in overcoming the skill shortage in Victoria's bricklaying trade. Some also submitted that any price increases that would flow from the levy would be offset by lower labour costs resulting from an increase in the supply of bricklayers.

7. Commission consideration

- 7.1 The Commission's consideration of the application is in accordance with the statutory test outlined in section 4 of this determination.
- 7.2 As required by the test, it is necessary for the Commission to assess the likely public benefit and detriment, including the effects on competition, resulting from the proposed arrangements.

Effect on competition

- 7.3 The Commission considers that the arrangement involving CBPAV members and non-members who may become party to the arrangement to impose a \$2.00 levy per thousand bricks sold, may result in an increase in prices to builders and consumers.
- 7.4 However, the Commission is of the view that any increase in price resulting from the levy will be minimal. For instance, the additional cost to builders and consumers resulting from the payment of the levy would be very small in comparison to the average cost of building a house.
- 7.5 The Commission also notes that the \$2.00 levy is intended to apply to all CBPAV members equally, and does not preclude price competition between the members.
- 7.6 Furthermore, the small increase in the price of bricks caused by the imposition of the levy could be offset by labour cost savings as a result of a potential increase in the supply of skilled bricklayers. The anti-competitive effect of the proposed arrangements would therefore appear to be minimal.
- 7.7 It should be noted, however, that the Commission would be concerned if under the guise of the proposed arrangement, issues other than the raising of a levy to fund the training of bricklayers were collectively decided, with a view towards price setting or other conduct that may be in breach of the Act. The Commission would also be concerned if the collection of the levy were to be administered in such a way that the claimed benefits would be unlikely to be achieved.

Consideration of public benefit

- 7.8 The Commission considers that the raising of a \$2.00 levy to fund a training initiative for trainee and apprentice bricklayers is likely to lead to an increase in the number of skilled bricklayers in Victoria, and assist in overcoming the shortage of bricklayers in Victoria. The Commission considers that a training initiative designed to overcome the skill shortage in bricklaying, is likely to result in significant public benefit.
- 7.9 The proposed training scheme, is likely to alleviate the cyclical increases in the cost of hiring bricklayers caused by shortages during periods of peak demand, by

increasing the overall supply of skilled bricklayers in the market. Savings in the cost of hiring bricklayers should be passed on to consumers.

- 7.10 An increase in the number of bricklayers who have fully completed their training through CBPAV's training initiative is likely to lead to improvements in the quality of work by bricklayers for builders and consumers.
- 7.11 The Commission accepts CBPAV's claim that overcoming the shortage in skilled bricklayers is likely to lead to improvements in project completion times, such benefits flowing from the potential increase in the supply of bricklayers in the market.
- 7.12 The provision of labour market forecasting through the BTC, allowing for more accurate prediction of the industry's human resource needs, is also likely to lead to a benefit, by providing a systematic approach to the avoidance of future skill shortages in the industry.

Commission conclusion

- 7.13 On balance, after considering the submissions made by the CBPAV and interested parties, the Commission considers that the public benefits likely to result from the proposed arrangements will outweigh any anti-competitive detriment likely to result from the arrangements.
- 7.14 In all the circumstances, the Commission considers that an authorisation granted for a period of three years would be appropriate. This will allow the industry to establish the scheme and monitor its effects. Secondly, the Commission considers that a continued strong demand for bricklayers will be dependent on future economic conditions.
- 7.15 Following this time, should the CBPAV members wish to retain the benefits of authorisation in respect of the arrangements, a fresh application for authorisation would need to be considered by the Commission.

8. Determination

8.1 For the reasons outlined in section 7 of this determination, the Commission concludes that in all the circumstances the arrangements for which CBPAV has sought authorisation :

- would be likely to result in a benefit to the public; and
- that benefit would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the giving effect to the arrangements.

8.2 On 1 November 2000 the Commission issued a draft determination proposing, subject to any pre-decision conference requested pursuant to section 90A of the Act, to grant authorisation to CBPAV in respect of arrangements and conduct the subject of the application for authorisation. No pre-decision conference was requested.

8.3 The Commission therefore grants authorisation to CBPAV in respect of the arrangements the subject of application for authorisation A90738 for a period of three years from the date of this determination.

8.4 Pursuant to subsection 88(10) of the Act, the authorisation granted will apply to persons who become parties to the arrangements after the authorisation is granted.

8.5 This determination is made on 12 December 2000. If no application for a review is made to the Australian Competition Tribunal, it will come into effect on 3 January 2001. If an application for review is made to the Tribunal, the determination will come into effect:-

- where the application is not withdrawn – on the day on which the Tribunal makes a determination on the review;
- where the application is withdrawn – on the day on which the application is withdrawn.