

L A W Y E R S

26 October 2001

BY EXPRESS POST

Angela Razborssek
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Partner
Eddie Scuderi (07) 3228 9319
Email: Eddie_Scuderi@corrs.com.au

Our reference
ECS/CSRL4753-5103455

Dear Ms Razborssek

AUTHORISATION APPLICATION - CSR LIMITED

We refer to your letter of 17 October 2001 regarding Authorisation No. A50016 granted on the application of our client on 9 October 1997.

We remain of the view that although the current Authorisation expires on 31 October 2001, it should operate to protect those contracts entered into pursuant to the Authorisation which extend beyond its expiry date.

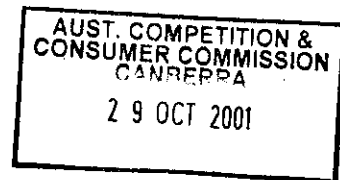
However, given your confirmation that the Commission disagrees and considers that a new authorisation is required, we **enclose** our client's application for a new authorisation. We also **enclose** our client's cheque for \$7,500.00 in payment of the prescribed application fee.

The application also asks that the Commission grant an interim authorisation pending the Commission's full investigation of the matter, so that the existing contracts have their validity preserved beyond October 2001 and until a new authorisation is granted or refused.

Yours faithfully
CORRS CHAMBERS WESTGARTH

Eddie Scuderi
Partner

encl



WATERFRONT PLACE 1 EAGLE STREET BRISBANE 4000
GPO BOX 9925 QLD 4001
TELEPHONE (07) 3228 9333 INT +617 3228 9333 FAX (07) 3228 9444
DX 135 BRISBANE

SYDNEY MELBOURNE BRISBANE PERTH CANBERRA GOLD COAST

OUR LIABILITY IS LIMITED BY THE SOLICITORS SCHEME, APPROVED UNDER THE PROFESSIONAL STANDARDS ACT 1994 (NSW)

THIS LIMITATION OF LIABILITY APPLIES TO CLAIMS THE PROPER LAW OF WHICH IS THE LAW OF NEW SOUTH WALES.
B/505784/1

FORM B

COMMONWEALTH OF AUSTRALIA
Trade Practices Act 1974 – Subsection 88(1)

**AGREEMENTS AFFECTING COMPETITION:
APPLICATION FOR AUTHORISATION**

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.

1

(a) **Name of Applicant**

CSR Limited (ABN 90 000 001 276)

(b) **Short description of business carried on by applicant**

The manufacture and supply of pre-mixed concrete to consumers.

(c) **Address in Australia for service of documents on the applicant**

c/- Eddie Scuderi
Partner
Corrs Chambers Westgarth
GPO Box 9925
BRISBANE QLD 4001

Tel: (07) 3228 9319

Fax: (07) 3228 9444

2

(a) **Brief description of contract, arrangement or understanding and, where already made, its date**

Please see the Attachment.

(b) **Names and addresses of other parties or proposed parties to contract, arrangement or understanding**

Please see the Attachment.

3

- (a) **Names and addresses of parties and other persons on whose behalf application is made**

Please see the Attachment.

4

- (a) **Grounds for grant of authorisation**

Please see the Attachment

- (b) **Facts and contentions relied upon in support of those grounds**

Please see the Attachment

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

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?**

Not Applicable

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

Not Applicable.

7

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

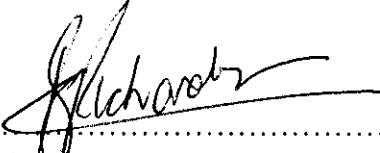
Eddie Scuderi
Partner
Corrs Chambers Westgarth
GPO Box 9925
BRISBANE QLD 4001

Tel: (07) 3228 9319
Fax: (07) 3228 9444
Eddie_Scuderi@corrs.com.au

Dated 26th October

2001

Signed by/on behalf of the applicant



.....
(Signature)

.....
CHARLES BEVAN RICHARDSON

(Full Name)

.....
TRANSPORT MANAGER - QLD

(Description)

**ATTACHMENT TO
APPLICATION FOR AUTHORISATION BY CSR LIMITED**

1 BACKGROUND

- 1.1 On 9 October 1997 the Commission granted authorisation (Authorisation No. A50016) on an application by CSR Limited in relation to collective negotiation of owner/driver contracts in respect of their South-East Queensland Readymix concrete fleet (“**Current Authorisation**”).
- 1.2 The Current Authorisation was granted for a period of 4 years from 31 October 1997. The Commission’s determination authorised, amongst other matters, the carriers and CSR giving effect to contracts, arrangements or understandings with each other whereunder:
- (a) CSR offers the carriers standard and agreed rates and conditions for delivery by the carriers by road transport of pre-mixed concrete from CSR plants situated within the area; and
 - (b) the carriers agree to undertake the delivery by road transport of pre-mixed concrete upon such standard and agreed rates and conditions.
- 1.3 CSR’s application for Current Authorisation indicated that the contracts for which authorisation was sought would be for a minimum of one year and up to a maximum of 10 years depending on the age of the carrier’s truck. The Commission has recently advised CSR (in a letter from Angela Razborsek of the Commission to CSR’s solicitors dated 17 October 2001) that in its view, the Current Authorisation does not extend to protect existing contracts entered into pursuant to the Current Authorisation with terms extending beyond 31 October 2001.
- 1.4 CSR does not agree with the Commission’s view, and maintains that given the Commission knew that the contracts would have terms extending beyond 31 October 2001, and in light of the fact that the authorisation extended to cover “giving effect” to contracts, the current authorisation should protect those existing contracts.
- 1.5 However, given the Commission’s view as expressed in Angela Razborsek’s letter of 17 October 2001 to CSR’s solicitors, CSR applies for a new authorisation, and an interim authorisation pending the Commission’s full investigation of the matter so that the existing

contracts have their validity preserved beyond 31 October 2001 and at least until their expiry, and until a new authorisation is granted or refused.

2 THE AGREEMENTS

2.1 CSR seeks authorisation for the same agreements that are protected under the Current Authorisation, in the same terms sought in its application for the Current Authorisation. Protection is sought for at least the term of the existing contracts, the potential length of which was known to the Commission at the time it granted the Current Authorisation. CSR does not have any current intention of negotiating a different form of standard contract with carriers acting collectively.

3 NAMES AND ADDRESSES OF OTHER PARTIES TO AGREEMENTS

3.1 The names and addresses of the other parties or proposed parties to the agreements are the same as those specified in Attachment 2 to CSR's application for the Current Authorisation.

3.2 The names and addresses of the parties on whose behalf this application is made are:

CSR Limited and the carriers specified in Attachment 2 to CSR's application for the Current Authorisation.

4 GROUNDS FOR GRANT OF AUTHORISATION AND SUPPORTING FACTS

4.1 Authorisation is sought on the basis that the public benefit flowing from the proposed agreements will continue to outweigh the detriment (if any). In this regard CSR asks that the Commission consider the attainment of the benefits claimed by CSR in its application for the Current Authorisation.

4.2 In making its application for the Current Authorisation, CSR relied on various public benefits which CSR believed would flow from the proposed conduct and contract terms. CSR is pleased to confirm that those public benefits have been achieved.

Industrial Harmony

4.3 CSR claimed that allowing collective negotiation of standard terms and conditions including rates would lead to industrial harmony. Since the standard form agreements were collectively negotiated and entered into, there have been no industrial stoppages or threats of stoppages.

Fairness of the negotiating process

- 4.4 CSR claimed that collective negotiation by the carriers would deliver a fair result to all of the carriers and would avoid any possibility of unfair treatment arising from the inequality of bargaining strength. The collective negotiation of the contract by the carriers did in fact lead to a fair result, as is evidenced by the lack of industrial dispute over the term of the contract or its operation.
- 4.5 It is also important to note that the contract has delivered to the carriers significant improved earnings as compared with the arrangements that preceded the contract. This fact and the effect of the contract on CSR's business and the savings to customers of CSR are dealt with in more detail below in the section on efficiency of CSR's operations.

Compliance with statutory requirements

- 4.6 When considering CSR's application for the Current Authorisation, the Commission formed the view that the provision by CSR of a safety net payment under the cartage rate formula in the standard form contract to allow carriers to comply with legal requirements relating to roadworthiness, safety, environmental protection and pollution control, could equally be achieved by individual level contracts as opposed to the collectively negotiated contracts for which authorisation was sought. Despite that view, the fact remains that the safety net and cartage rate formula has allowed carriers to comply with those requirements.

Efficiency of operations

- 4.7 CSR submitted in its application for the Current Authorisation that the collectively negotiated standard contract would increase its efficiency and competitiveness through:
- increases in average volume of concrete carted, standardisation of operations and improved resource allocation; and
 - reduction in transaction costs.
- 4.8 CSR also submitted that these benefits would have the flow-on effect of reducing the average cost of delivery services which would make CSR more competitive in the market place.

4.9 CSR is pleased to confirm that:

- the incentive-based cartage rate formula in the standard form contract has led to increases in the average volume of concrete carted by the carriers which has simultaneously reduced the cost of delivery services for CSR, thereby making it more competitive, and increased the income to the independent carriers as compared to the income earned under the previous arrangements; and
- the average volume carried by independent carriers prior to the contract in South-East Queensland was 4,286m³ per annum as compared to 5,884m³ per annum since the contract was entered into. This has significantly improved earnings to those carriers covered by the contract.

4.10 The efficiencies gained through the incentive based cartage rate contract have allowed CSR to pass on savings to customers. Again, CSR asks the Commission to take into account the benefits that have flowed from the standard form contract when considering this application for authorisation.

Involvement of the TWU

4.11 In considering this application for authorisation, CSR asks the Commission to note the reason stated by the Commission in its determination for limiting the Current Authorisation to a 4 year term. In this regard we refer the Commission to paragraph 8.48 of its determination. In effect, the Commission granted a limited period authorisation because it was concerned about "the role of the TWU".

4.12 As the Commission may recall, the Transport Workers Union was engaged by the carriers to assist them in relation to the contract proposed by CSR. The Commission was concerned that if the TWU were to negotiate on behalf of carriers of CSR and other companies, there would be a likelihood of uniform rates and conditions between competitors in the concrete industry, which would significantly increase the anti-competitive effect of the contract proposed by CSR.

4.13 The Commission's concern in this regard was apparently alleviated by the TWU stating to the Commission that its role would not be to negotiate on behalf of carriers, but rather to provide advisory and secretarial services.

4.14 CSR is able to confirm that the TWU has not sought to negotiate any terms and conditions with CSR and indeed, has had a very limited role in providing advice and secretarial services to carriers since the Current Authorisation was granted. On this basis, CSR reiterates its request that the Commission grant a new authorisation for a sufficient period to protect the owner/driver contracts with the longest potential terms of 10 years from their commencement.