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Form B

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 88(1)
**AGREEMENTS AFFECTING COMPETITION:
 APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section

- to make a contact 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

Tasmanian Farmers and Graziers Association (TFGA) – Vegetable Council on its own behalf and on behalf of its (vegetable grower) members.

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by applicant

The TFGA is a farmer representative organisation. TFGA vegetable grower members are vegetable farmers in the state of Tasmania.

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

PO Box 193 Launceston Tasmania 7250

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

Arrangement between present and future TFGA vegetable grower members to collectively negotiate the terms and conditions of growing contracts with Processors.

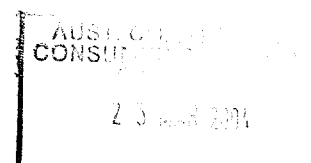
Arrangement between present and future TFGA vegetable grower members for the TFGA to assist them in their negotiations with Processors.

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

Simplot Australia Pty Ltd
 McCain Foods (Aust) Pty Ltd
 Future TGFA vegetable grower members

(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



TFGA vegetable grower members. Individual commodity groups represented under the umbrella of the TFGA Vegetable Council (as detailed in attached submission in support of authorisation).

4. (a) Grounds for grant of authorisation

See attached submission in support of authorisation.

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

See attached submission in support of authorisation

(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? Yes

(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

Future TFGA vegetable grower members.

Other potential buyers of contracted crops who may enter the industry.

(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

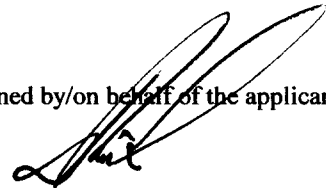
(c) If so, by whom or on whose behalf are those other applications being made

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

John Rich
Executive Officer
Tasmanian Farmers and Graziers Association
PO Box 193
LAUNCESTON TASMANIA 7250

Dated 16 March, 2004

Signed by/on behalf of the applicant



John Rich
Executive Officer, TFGA

Submission in support of authorisation

by the Tasmanian Farmers and Graziers Association (TFGA) – Vegetable Council

The parties to the application

The Tasmanian Farmers and Graziers Association (TFGA) – Vegetable Council is a representative organisation for farmers. The individual commodity groups represented under the umbrella of the TFGA are:

Simplot Processed Potato Growers Group
Simplot Seed Potato Growers Group
Simplot Pea Growers Group
Simplot Bean Growers Group
Simplot Carrot Growers Group
Simplot Brassica Growers Group

McCain Processed Potato Growers Group
McCain Seed Potato Growers Group
McCain Pea Growers Group
McCain Bean Growers Group
McCain Brassica Growers Group

The members of the Vegetable Council of the TFGA, being the representative body covering each of the relevant commodity groups, has agreed for this Authorisation application to be submitted on their behalf.

Background

The TFGA represents the interests of its vegetable grower members in their collective contract negotiations with vegetable processors, McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Ltd.

McCain is a privately owned company based in Canada. Simplot is a privately owned company based in the United States. It is acknowledged and well understood that individual growers are generally in a weak bargaining position when dealing with large global companies.

While some growers supply both McCain and Simplot, a number of growers have no choice but to supply a single processor. This restriction in supply options is often largely due to the location of the grower and their proximity to the processors factory.

The cost of Bass Strait freight on crops shipped from Tasmania to the mainland for processing means that it is uneconomical for vegetable producers to supply their product to processors outside Tasmania.

From time to time growers report on moves by the processors to pursue sole supply arrangements. Growers being placed in this position generally feel threatened by this action and their comments indicate that they believe this further weakens the already limited opportunity they have to apply pricing pressure on the processors.

The nature of vegetable growing means that growers are required to invest considerable amounts of money in land, machinery and equipment. Once that is done they then appear to be "locked in" and are vulnerable to company pressure which can be applied to contract growers.

It should be noted that for the processing industry to secure supply in an organised fashion, the contract system is an essential part of Tasmanian crop farming. It is necessary for the processors to manage planting and harvest schedules so that the factories can operate efficiently, with a secure and known intake for the duration of the season for each crop. Intake management is by way of plantings being scheduled to ensure the crops are ready for harvest at different times, thereby providing an orderly supply system. The Tasmanian climate is temperate which gives generally reliable weather and which leads to reliable supply. This is why Tasmania produces somewhere between 60% and 70% of Australia's frozen processed vegetables.

Authorisation sought

Authorisation is sought for TFGA vegetable grower members to collectively negotiate, through grower representatives on their various commodity group boards, terms and conditions of growing contracts with farmers. Authorisation is also sought for the TFGA to join with grower representatives from the various commodity groups and assist them with negotiations with processors. The TFGA, as such, would not be the negotiator; rather it would provide information and administrative support for each of the commodity groups. The TFGA has joined with grower representatives and assisted them in negotiations with processors in this manner for many years.

At this time the groups consist of Simplot processed potato growers, Simplot seed potato growers, Simplot pea growers, Simplot bean growers, Simplot carrot growers, Simplot brassica growers, McCain processed potato growers, McCain seed potato growers, McCain pea growers, McCain bean growers and McCain brassica growers. Each of these groups is included in the composition of the Vegetable Council of the TFGA.

The proposed arrangements apply to all vegetable crops grown under contract for supply to the vegetable processors McCain and Simplot. Each of these groups acts autonomously, as individual commodity groups. However, based on past experience, all will basically follow a similar path. Each group has their own meetings, their own office bearers and operate with the administrative support of the TFGA. The levy paying members of the commodity groups are also members of the TFGA. Membership of the commodity groups of the TFGA is not compulsory. The commodity group

activity in respect to price and contract arrangements is only ever done on behalf of, and at the request of, the financial members of each of the groups.

It may be necessary to add further commodity groups in the future. The situation may arise when additional crops will be grown under contract and/or other buyers of contracted crops may enter the industry. It would be expected that growers of these crops would require the TFGA Vegetable Council to represent their interests in the collective bargaining process.

The Vegetable Council therefore wish to have the ability to be able to apply to the Australian Competition and Consumer Commission for additions to this list.

Details of the arrangements

Even though there is relatively high percentage of TFGA members growing crops in each commodity, there are always some growers who choose to remain independent of the TFGA membership. The McCain and Simplot contracts both have clauses which invite growers to nominate if they wish to have the TFGA membership levy deducted from the proceeds of sale of produce to the companies. The Companies remit the collected levies to the TFGA and provide the names of those who contribute. The Commodity Groups and the TFGA do not know who choose to not contribute and therefore only ever set out to represent the interests of those who pay the voluntary membership levy.

The TFGA does not contract with either of the processors and all of its activity is only ever on behalf of the particular commodity group being assisted at any time. All contracts eventually made are between individual growers and their processor.

The role of the TFGA has always been to obtain and disseminate relevant information to each of the commodity groups to assist with the price and contract deliberations. The TFGA provides important administrative assistance to the commodity groups with secretariat support covering such matters as newsletters, meeting arrangements, minute taking, letter writing, press releases and general lobbying on any issues affecting the members. The TFGA representative joins with the members of the Committee of the various Commodity Groups during meetings with processors on price and contract arrangements. The representative of the TFGA is required to be directly responsible to the Chairman of the relevant commodity group.

The intention of the commodity groups is to continue to represent the best interests of growers of the various commodities and arrange price and contract conditions with McCain and Simplot. The TFGA would expect to continue to provide relevant and timely administrative service to the members.

Neither the commodity group nor the TFGA contracts with the processors. Each grower is required to determine whether or not to agree to accept the terms and conditions of the individual contracts with the respective

processors. The tonnages to be contracted and acceptance of the price and conditions, following discussions of the commodity groups, will always be expected to be a matter between the growers and the processor. The commodity group/TFGA representation to processors always endeavours to reach an agreement on contract price and conditions. Growers always look for a recommendation from the Committee to accept what has been agreed. There can be times when agreement is not able to be achieved, in which case, the Committee is likely to recommend that growers should consider their individual positions.

It should be noted there a number of growers who supply both processors. Whilst the contracts are similar for each commodity they are not necessarily the same, primarily because each processor can have a different product requirement or specification.

Harvest Schedules and Timing

Harvest schedules and timing vary for each crop and are as follows:

Potatoes harvested from January to September
Peas harvested from November to February
Beans harvested from January through to April
Carrots harvested from January through to November
Brassicas harvested January to August
Seed Potatoes harvested April, May June

It is always the intention of the commodity groups to have contracts settled before planting commences. With this in mind, much of the negotiation activity can be expected to take place from about March though to July. For this reason, interim authorisation is also sought for the proposed arrangements.

Details of the negotiation process

For many years the TFGA arranged to have cost of production studies prepared for each of the respective commodity groups and the crops being represented. These cost studies were designed to give the growers and their committees' knowledge about what had happened to on-farm costs from one year to the next. They were intended to assist growers in determining the price levels required to be negotiated for the next season. From the TFGA and the Committee perspective, these studies were most useful and assisted in having a meaningful solid base from which to argue. The growers never approached price negotiations with ambit claims. They always had regard to their understanding of what had occurred with farm input costs during the previous year and based the argument on the cost study results.

The processors generally ignored the sound basis of argument presented by the growers. When challenged, they were never able to identify any errors in the cost study calculations.

Unfortunately, some years ago, the TFGA had to abandon the Cost Studies for two reasons. One was that the processors ignored the information and the other was the need to review the information and the high cost to complete this exercise. The preferred position would have been to continue to have cost of production studies prepared. As explained, this was not possible.

Since that time the grower groups felt that the most logical system for now is to focus on CPI as the measure for what is required. This is intended to ensure the grower's terms of trade are not continually, or further eroded. The intention remains to avoid ambit claims and to have some sound basis for argument.

Further attention can be expected to be given to the options available to the grower groups to present their price argument.

The mechanism for commodity negotiation discussions to commence can be triggered by the relevant commodity group or by either of the processors. The growers would always aim to have an early decision, having regard for farm planning. It would be logical to expect the processors to also want early settlement to give time for field staff to secure contracts, etc. Sometimes this works, at other times the negotiation process can be dragged out for extended periods.

Having decided that negotiations should commence, a meeting of the relevant commodity committee members with the processor is generally called. This meeting will often review the past season and consider the outlook for the season ahead. The processor can ask the committee to advise of their price expectations, or, the processor may take a more positive approach and advise what they intend to do with the price and conditions. If the committee members feel that what is being offered is reasonable and in line with the knowledge they have of grower expectations, they can recommend acceptance of the offer. This recommendation is then made to the members by way of a newsletter. The company can then contact growers to secure individual acceptance and settle contractual details.

If the committee feels that what is being offered is less than reasonable and/or unable to be recommended to growers, then a grower meeting is called. At this meeting growers will be advised of the conditions surrounding the company position and will be provided with as much information as is able to be obtained by the Commodity Committee and the TFGA. The meeting will be asked to provide a directive to the committee about the grower price and conditions. The committee representatives will transfer this information to the company, generally at a meeting called for this purpose.

Sometimes representatives from the relevant company will attend a grower meeting to put their position. The representatives will then leave the meeting. The members will consider the information provided and advise the committee about the direction required to be taken. The committee will transfer this request to the company.

Once agreement as been reached, the committee then recommends acceptance.

If the offer is not able to be accepted because it does not fit the understanding of what is desired, the committee may call another grower meeting, or, if there is a total impasse then the committee can recommend that individual growers consider their own position, having regard to the viability of the offer, etc.

The parties who participate in the negotiation process are grower representatives who are always elected from commodity meetings. The committee members must be growers of the particular commodity being represented and be a levy paying member to the TFGA for that commodity. The TFGA representative, who is attached to each of the Committees, is the Vegetable Council Executive Officer.

The views of the Processors in respect of the TFGA negotiating on behalf of its members

The TFGA, in providing administrative and information gathering assistance to the various vegetable commodity groups, would appear to be an accepted part of the negotiation activity during many years of operating in this manner. The TFGA Vegetable Council Executive Officer, when accompanying grower representatives to meetings with processors, is attending as a staff member, providing relevant assistance to the Chairman and committee members of the particular commodity group.

No doubt the processors would acknowledge that relationships between themselves and the grower/TFGA representations have been strained at times. Even so, a cordial and respectful working relationship has been maintained.

Public benefits of the proposed arrangements

It is well known that growers, as individuals, are always in a weak bargaining position. McCain and Simplot will use the might and power of their respective world wide resources and knowledge to achieve their aims. It is clear that some security is given to the growers through the use of the collective bargaining process.

The TFGA considers the collective bargaining approach to be an organised and cost effective means to cover the issue of arranging contract prices and conditions for vegetable crops grown for processing in Tasmania.

Individual growers are seen to be in a weak bargaining position and could not be expected to have the skills required to deal with well resourced multi-national processors. It would not be practical, or economical, for them to individually employ negotiators each time they wished to settle a commodity contract. Most farmers are multi-commodity growers.

Collective bargaining, although sometimes difficult between the negotiating parties, is intended to provide support and industry stability for growers. This transfers to Tasmanian growers being able to maintain pace with and continue to adopt relevant technology. Study Tours arranged by the TFGA with grower groups, from time to time, indicate that this industry is very efficient at grower level. There is always a strong desire for growers to continue to adopt suitable technology for industry advancement and progress.

The practice of open consultation with each of the commodity groups by their respective leaders, ensures that a considered grower position is always adopted when the negotiating groups meet with the processor representatives.

Anti-competitive detriment

It is unlikely that the activity of growers in collectively bargaining will have any significant effect on consumers.

The TFGA estimate the grower share of the retail value of the products to range from around 1% to about 11%, depending on the specific vegetable crop. This means that any increase to the grower prices will only ever be small, relative to the consumer price.

For instance, the delivered factory price being paid to growers of processing potatoes is currently around \$220.00 per tonne. The same potatoes, when sold to consumers by a major Quick Serve Restaurant (QSR) chain in Sydney, will have a value of around \$22,000.00 per tonne. The growers therefore receive only 1% of the retail value of this product.

In 2001 the potato growers argued for a moderate increase of \$30.00 per tonne, after ten years with no price increase. The growers felt they could have been justified in asking for more than double that amount, having regard to CPI. The amount of \$30.00 per tonne would seem to be a big increase. In fact it is only 3 cents per kilogram on a product which has a retail value of around \$22 per kilogram. The growers wanted an increase which equated to 0.136% of the retail value of the product.

In looking at the same QSR chain's prices over the previous nine years to 2001 the TFGA estimates that their retail prices appeared to have increased by about 70%. In addition, the TFGA considers that the pack size was reduced in this period. Not one cent of those consumer price increases was passed back to growers during that time.

One of the processors this year will increase the price of peas by 2.5%. This increase is about an average increase of just under one cent per kg to growers, for a product which retails for just over \$3.00 per kg.

It could also be argued that there is no immediate need for any price increase to be passed to consumers. The level of supermarket discounting which

occurs almost on a weekly basis would indicate to the TFGA and to the growers that there is much flexibility in the system.

Coles and Woolworths supermarkets regularly offer discounts for frozen potato products and peas. McCain peas are listed in the Woolworths brochure dated 1st March 2004 at a price reduced by \$1.04 from \$3.29 per 1 kg pack. Simplot (Birds Eye) french fries are listed in the Coles brochure dated 1st March 2004 at a price reduced by 66 cents from \$3.54 per 1 kg pack. McCain french fries appear in the Woolworths brochure dated 23rd February 2004 at a discount of 71 cents per 1 kg pack from a price of \$2.99. These discounts are about 3 times what the growers are paid.

It is the TFGA's understanding that the processors are required to fund most, if not all of these discounts. Maybe this is a reflection of the buying power of the supermarkets, who are able to extract seemingly ridiculous discounts from the processors, most likely at the expense of growers.

If Tasmanian growers and processors are not able to achieve a realistic return on their investment then it would be expected that Australian consumers would have to pay considerably more should product have to be imported. The small grower share of the retail value of frozen processed vegetables and potatoes clearly does not give consumers cause to blame the growers for the prices they are asked to pay.

Term of authorisation

Most of the processing vegetable contracts are for a period of one year or, to describe it another way, for one season. Many of the crops are planted in one year and harvested in the next, e.g peas planted in August 2003 are harvested in January 2004.

There has been a move to have longer term contracts, particularly for potatoes. The current Simplot potato contract is for three years covering the seasons of 2001/2, 2002/3 and 2003/4. The present McCain potato contract is for two years covering seasons 2001/2 and 2002/3. The longer term contracts only have price and conditions fixed for the contracted period. The processors reserve the right to adjust the tonnages each year, if necessary.

Longer term contracts are seen by many growers as giving some degree of stability to the industry.

In order to allow for growers to negotiate longer term contracts where appropriate, and to provide greater certainty regarding the negotiating environment for those growers who negotiate year to year, authorisation is sought for an initial period of 5 years.