



Australian Competition & Consumer Commission

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Dr Timothy Ryan
11 Shirley Court
Boronia Victoria 3155

By Facsimile: 03 9762 8007

Dear Mr Ryan

Authorisation application A90905 lodged by Baiada Poultry Pty Ltd

I refer to the applications for authorisation lodged by Victorian chicken meat processors (the processors) and some growers and in particular A90905 which was lodged by Baiada Poultry Pty Ltd (Baiada).

Specifically, I refer to the following aspects of Baiada's application and supporting submission:

Application (Form B) for authorisation lodged by Baiada

2(a)1. Baiada seeks authorisation to give effect to arrangements for the growing of chickens, each of which agreements was negotiated by Baiada on a collective basis with the growers detail in Annexure A and are on a form similar to the agreement contained in Annexure B.

Annexure D (page 4) to the application for authorisation lodged by Baiada

Baiada seeks authorisation on its own behalf to give effect to contracts for the growing of chickens that were entered into by it with 83 growers in April 2003 (while Authorisation A90750 was still in force). Each contract is either in the form of an amended Marven or Eatmore contract, with the 2003 amendments that were negotiated by the former Marven and Eatmore growers with Baiada appended to it...*Baiada negotiated the terms of each of these amended forms of contracts with the growers collectively, the growers having elected representatives to negotiate the terms of the agreement on their behalf. Baiada negotiated with the growers (by their representatives) a common fee to be paid to all of the growers, and the manner by which such a fee was to be calculated.* (emphasis added)

As you are aware, the Commission is currently in the process of seeking the views of interested parties in relation to the processors applications for both interim and substantive



authorisation. The Commission has become aware that a number of other parties have a different view on the current existence, or otherwise, of the 83 contracts purported to have been agreed by Baiada with its growers on a collective basis during the period in which authorisation A90750 was in effect. Specifically, the Commission has received submissions from the Victorian Farmers Federation (VFF) and Baiada growers claiming that no new contracts were collectively agreed between Baiada and its growers.

The VFF have stated in their submission relating the to the processors application for authorisation:

Baiada Poultry Pty Ltd seeks authorisation to give effect to agreements said to have been negotiated with growers detailed in Annexure A, in a form similar to the agreement in Annexure B. We have not seen Annexure A and are deprived of the opportunity to see Annexure B by reason of Baiada's request for confidentiality. From previous versions of the application we believe that Baiada suggests that it has negotiated new contracts with 83 growers. As we understand the position, in fact all that happened was that when the former Marven and Eatmore operations were merged, as a matter of practicality it was necessary to rationalise the differing productivity adjustments applying to the two groups of growers, productivity adjustments being an aspect of the regulated system involving adjustment to the common fee to allow for different batch rates and conditions.

In addition, the Commission has received a number of submissions from Baiada growers who claim that, whilst some negotiations did occur, no new contracts were ever finalised with Baiada.

The purpose of this letter is to afford you the opportunity to provide the Commission with your comments in relation to the above submissions. In order to allow the Commission to progress Baiada's request for interim authorisation in relation to this aspect of its application expeditiously, I would appreciate your response by no later than close of business 13 March 2004.

Should you wish to discuss this, or any other aspect of this matter, please contact Liam Stewart on (02) 6243 1275 or at liam.stewart@accc.gov.au.

Yours sincerely



Gavin Jones
Acting Manager
Adjudication Branch