

Mayrhofer, Tania

From: Ian [ianl@smyl.com.au]
Sent: Thursday, 13 May 2004 6:37 PM
To: Mayrhofer, Tania
Cc: Stan Liaros; GTAWA
Subject: RE: Pre determination conference

Tania
Thanks for the email and the discussion this morning which cleared up a lot of issues with regard to the Pre-Decision Conference, I have attached the written submission which The Group Training Association of Western Australia (GTAWA) would like to present at the conference and request that we attend through Video at your Perth office. I would request that the attendees are Ian Linn President of GTAWA and Stan Liaros executive committee member GTAWA do you need any details of our association, constitution or letter of endorsement from the WA Department of Education and Training who register Group Training Companies in this State.
Regards
Ian Linn

From: Mayrhofer, Tania [mailto:Tania.Mayrhofer@ACCC.GOV.AU]
Sent: Thursday, 13 May 2004 12:12 PM
To: Ian
Subject: Pre determination conference

ian

Please find below the letter I sent to Cheryl earlier this week. Also, as discussed, if you would like to link into our Sydney office via video conferencing from our Perth office, would you mind letting me know as soon as possible.

Please do not hesitate to contact me if you would like to discuss further.

kind regards
Tania

Tania Mayrhofer
Adjudication
Australian Competition & Consumer Commission

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Our Ref: C2004/22
Contact Officer: Tania Mayrhofer
Contact Phone: 02 6243 1070

Dear Ian

Authorisation No. A90895 - Clay Brick and Paver Institute

PRE-DECISION CONFERENCE

The West Australian Group Training Scheme Inc, Skill Hire Pty Ltd and the Master Builders of Australia have requested that the Australian Competition & Consumer Commission (the Commission) convene a conference in relation to the draft determination issued by the Commission on 21 April 2004 proposing to grant authorisation A90895.

14/05/2004

The draft determination follows an application by the Clay Brick and Paver Institute for itself and on behalf of the Concrete Masonry Association of Australia, for authorisation in respect of an agreement between their members to impose training levies on the sale of clay bricks and pavers and concrete masonry products sold in NSW, SA, WA, QLD and the ACT. The Commission concluded in its draft determination that overall it was satisfied that the public benefit flowing from the proposed arrangements is likely to outweigh any anti-competitive detriment and proposed to grant authorisation to the application. A copy of the application and draft determination can be found on the Commission's website: www.accc.gov.au.

A pre-determination conference provides a valuable opportunity for applicants and interested parties to make oral submissions to the Commission about its draft determination.

The Commission will hold the conference on **Friday 4 June 2004**, at the Commission's offices in Sydney - Level 7, 123 Pitt Street, Sydney. The conference will commence at 2.30pm. Deputy Chair of the Commission, Louise Sylvan, will chair the conference.

Under the *Trade Practices Act 1974* (the Act), the conference may be attended by the applicant and other interested parties. If you wish to attend, you must notify the Commission of your intention by **cob Monday 31 May 2004** and briefly indicate why you or your company or organisation has an interest in the matter. Notifications must be in writing and addressed to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 1199

DICKSON ACT 2602

You can also notify the Commission by e-mail to: adjudication@accc.gov.au or by facsimile on (02) 6243 1211.

You should provide details of a contact name, telephone number, mailing address and, if possible, a facsimile number or e-mail address so that you can be notified of any late changes to conference arrangements.

If you represent a company or organisation you should also provide a list of attendees and their position titles, and indicate who will be the chief spokesperson.

I would also note that, while conference participants may bring outside legal or other professional advisers to assist them, the Act prohibits these advisers from participating in conference discussions.

Attached for your information are procedures usually followed at pre-decision conferences.

If you require any further information in regard to the conference or wish to clarify whether you may be considered an 'interested person' within the terms of the Act, please call Tania Mayrhofer on (02) 6243 1070.

Yours sincerely

Tim Grimwade
General Manager
Adjudication Branch

**AN OUTLINE OF THE PROCEDURES
USUALLY FOLLOWED AT PRE-DETERMINATION CONFERENCES**

The Commission tries to conduct such conferences as informally, flexibly and speedily as possible. Where necessary a conference may be adjourned and reconvened at a later time.

An interested party attending a conference may have the assistance of outside legal or other professional advisers. Although such persons may attend the conference to assist; they are not entitled to participate in the discussion.

The conference will serve a useful purpose in that it gives the Commission and all interested parties the opportunity to meet face-to-face to discuss the operation and effect of the applicant's conduct and the Commission's draft determination. The applicant and/or interested persons has/have the opportunity to persuade the Commission to accept their view. The Commission benefits from direct contact with the parties, and its perceptions of public benefit and competition are tested in a forum of interested parties where points are often quickly and forcefully made.

1. Preliminary procedures

- (a) When you arrive at the conference you will find that a seating plan may be available. You should identify yourself to the Commission staff before the conference begins and indicate clearly if you expect messages to be left for you during the conference. Further, please complete the attendance book when arriving at the conference. This assists Commission staff to identify attendees for the purpose of recording the discussion.
- (b) The Chair (a Commissioner) will open the conference by welcoming those present and outlining the

14/05/2004

requirements of the Trade Practices Act and the manner in which the conference will be conducted. An agenda may be circulated.

- (c) If you intend to present a written comment (and you are encouraged to do so), it is helpful if the Commission receives it before the conference date. It can then be copied and distributed at the conference. In this way, both the Commission and other parties present are assisted, and your submission also forms part of the conference record. If you cannot complete the written submission earlier, it is helpful if you come to the conference with extra copies which can be distributed.
- (d) If you intend to present a submission at the conference and you wish it (or certain details in it) to remain confidential, you should make your confidentiality request to the Chair at the time of presenting the document, and you should state in general terms the reason for your request. The Chair may request other parties present to leave the conference for a short period, so that you may be given the opportunity, if necessary to expand on your reasons.

If your request for the document (or parts of it) to remain confidential is denied you may ask for the document (or parts of it) to be returned to you. Any material returned to you will ordinarily not be taken into consideration by the Commission in making its final decision (unless, of course, it was supplied from another source).

Any document you present without making any request for confidentiality will be placed on the Commission's public register, and the information it contains may be used by the Commission in making its decision. Where confidentiality is granted, the confidential information may also be taken into account, although such material will not be placed on the public register.

2. General procedures

- (a) The conference has been convened to discuss the draft determination, to canvass points of view and to assist the Commission's weighing of issues and its interpretation of the information given to it.
- (b) The procedure is discretionary. The Chair controls the order of discussion, and may take particular topics separately, so that all the discussion, on any given topic may be heard at the one time.
- (c) The conference is not a court, and there is no right of cross-examination. You may request the Chair to ask questions of other parties present, but the Chair retains the discretion as to whether your questions will be put. The Chair, of course, may also directly question the parties at the conference, and they have discretion whether or not to answer.
- (d) Commission staff present will make a record of the discussion. This will be in minute form, not a verbatim record. The conference record is placed on the public register, and all who attend the conference will receive a copy.
- (e) When the Chair believes that all present have been given a reasonable opportunity to express their views, he/she may terminate the conference.
- (f) The Chair (and any other Commissioner at the conference) cannot give a final decision at the close of the conference. Each Commissioner is only a representative of the Commission and is required to report back to the Commission, which will make the final decision.

3. Other matters

- (a) Following the pre-determination conference, the Commission will review its draft determination in the light of discussion and further submissions made at the conference (or within a set period of time after the conference), and will publish its final determination as soon as possible thereafter.

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Application for Authorisation Lodged by the Clay Brick & Paver Institute for itself and on behalf of the Concrete Masonry Association of Australia

As the peak body representing group training companies in Western Australia, we would like to convey issues that we feel the Commission needs to be aware when reaching its final determination.

Members of Group Training (WA) employ a significant number of apprentices (metropolitan and regional) in the building and construction industry and allied trades including:

- Brick Laying
- Carpentry and Joinery
- Wall and Ceiling Fixing
- Plastering
- Plumbing and Gasfitting
- Painting and Decorating
- Wall-Floor Tiling
- Cabinet Making
- Electricians

Market share of in training figures at June quarter 2003 indicate that 42.16% of apprentices in the WA construction industry are employed through Group Training. Of those employed, 226 bricklaying apprentices are currently in training across the state with a further 67 employed in direct indenture arrangements.

This compares to some 165 apprentices in NSW, three years after implementation of the brick levy strategy and 80 apprentices in Victoria nearly 12 months later.

Though we acknowledge brick/block laying as a national skills shortage trade, the number of apprentices in training in WA far exceeds numbers in Victoria and New South Wales where the brick levy arrangement has been operating for some time.

For this, and other reasons detailed below the environment in WA differs from other states and should be considered by the Commission when making a determination that will apply nationally.

Key Points

- Group Training Australia (WA) fully supports any initiative that increases the number of apprentices and or trainees.
- Brick/block laying is acknowledged as a skill shortage area in WA

- WA has a group training network that services the building and construction industry in both metropolitan and regional areas.
- In fact, WA has group training companies (“GTC’s”) specifically focussed on building and construction trades unlike Victoria for example.
- Like Tasmania, South Australia and Australian Capital Territory, Western Australia has a Building Construction Industry Training Fund (“BCITF”) that places a levy on construction activity for the purpose of funding training opportunities in the industry. The amount of the levy varies from one jurisdiction to another. Queensland also has a training board but it is funded from reserves of long-service leave.
The Construction Forestry Mining and Energy Union (CFMEU) and Master Builders Association are lobbying new South Wales, Victorian, Northern Territory and Federal Governments to introduce training levies for the industry. The states and territory are considering paying but the Federal Government has refused.
- The BCITF supports training with funding and also takes a role of promoting the careers available in the building and construction industry. The BCITF makes up to \$9000 available to companies who employ apprentices in WA. This is 9000 dollars more than employers in Victoria and NSW receive which is likely a major factor when comparing the number of bricklaying apprentices in WA with those states.
- Unfortunately it is clear in WA that even with the options of group training companies focussed on providing an excellent service to the industry and BCITF support, we are still experiencing a skills shortage. This demonstrates that cost to host employers is only one part of the skill shortage problem.
- WA group training companies operating in the building and construction industry, the BCITF and the Department of Education and Training are working together to explore how to attract people to apprenticeships, through new marketing initiatives, piloting innovative projects, additional funding for training etc.
- Demand for apprentices already outstrips demand. The proposal intends to *“subsidise employment and administration costs to (host) employers”*. This will further increase demand for apprentices, when the problem actually facing the industry is attracting people to the brick/block laying trade in the first instance.

Our concerns

The major concern for the Association and it’s members is that the ACCC will endorse the setting up of a new Group Training Company in WA who will exclusively receive the levy raised by the brick manufacturers.

This would establish a competitive edge over existing group training companies because the additional brick levy funds would allow for a reduced charge out rate that existing companies could not match. This would not, as stated by the ACCC in the draft determination, *“improve the quality of these (existing) services”* when the basis for introducing a levy suggests the determining factor for employers is cost rather than quality.

Though not opposed to competition, the Association acknowledges that any negative impact on the existing market would reflect poorly on the trade, industry and the state. That is why we have an expectation that all group training companies be given the same opportunity to access the brick levy fund.

Unless work is done to market the trade to potential apprentices and the number of people entering the trade increases, it is possible that existing group training companies will lose their existing apprentices to a new entrant who is offering host employers a cheaper rate. This would simply be a shuffling around of apprentices within the system rather than building numbers, and would not meet the objectives of the proposal.

Should the ACCC endorse the collection of the brick levy across the nation, we would strongly suggest that the applicants consider using some of the funds raised to promote the trade as a career option.

Further, we suggest that authorisation be conditional on the levy being equally distributed to any organisation employing brick laying apprentices. By doing so, an incentive is provided to everyone operating in the industry to increase the number of brick/block laying apprentices in training.

For your consideration.

Yours sincerely,

Cheryl Jahour
Coordinator

6 May 2004