



Victorian Farmers Federation

Chicken Meat Group

15 July 2004

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

FILE No:
DOC:
MARS/PRISM:

Dear General Manager

Authorisation Application A90901 to A90905

We refer to the letter from Timothy J Ryan and Associates dated 24 June 2004 and respond to a number of assertions. While most of the points raised in Dr. Ryan's letter have been covered in other submissions, the VFF takes the opportunity to respond to some issues being raised.

Negotiation of Agreements

Dr Ryan seems to suggest that a 12-month negotiating period is not a sufficient time frame for processors to negotiate agreements with growers. Regardless of when negotiations between growers and processors commenced under authorisation A90750, the fact remains that these negotiations continued for a 12-month period without **any** new contracts being agreed.

Dr. Ryan makes the point that some contracts were concluded or very close to agreement when the Full Federal Court judgement was handed down in August 2003. This is a distortion of the facts because all VFF members (including the Baiada free range growers) are operating under the terms and conditions of VBINC contracts, or in the case of some Baiada growers, under letters of intent issued by Eatmore Poultry Pty Ltd, which may or may not be legally enforceable.

Inghams and Bartter were the closest to agreement on new formal contracts but failed to reach agreement on the price to be paid, the price adjustment mechanism and pool and efficiency system (the most difficult part of any contract negotiation). We cannot comment on the La Ionica contracts because of the confidentiality claimed. We would however question if these are truly independent contract farms or company related farms.

The VFF makes no mention of the Baiada Free Range Contract as according to Free Range Growers, there are no new contracts.

The Code

Dr Ryan claims the Code, as attached to the processor applications, is preferred as it does not mandate outcomes. The experience of growers is that the significant market power held by processors allows them to mandate their desired outcomes despite what is written in the Code. As has been stated elsewhere the Code does nothing to provide growers with a measure of countervailing power, was ineffective in bring negotiations to conclusions in a 12 month time frame, and supports the market power of processors.

Dr. Ryan appears to be suggesting that under the processor Code if there is failure to reach agreement on an annual fee review the matter could go to arbitration. This is not our understanding

of the application of the Code. Furthermore, it tends to suggest a preference for the reinstatement of a VBINC type system where a third party determines the growing fee.

The argument does support the VFF's position that circuit breaking mechanisms are required in order to reach concluded agreements. The VFF has chosen to apply for an ability to boycott as it was apparent that seeking arbitration on growing fees and contract terms and conditions would be viewed as more anti-competitive.

Contract Renewals

Dr. Ryan in his explanation of contract renewals seems to support the VBINC concept of standard contracts with automatic price adjustments and roll over of contracts. What he is conveniently ignoring is that there is no VBINC to oversee this process and no mechanism to ensure negotiations are conducted in good faith. Authorisation would be unnecessary if growers enjoyed a normal competitive market for their services. The VFF application seeks to address this imbalance by having all contracts commencing and expiring at the same time. This creates a (potential) market where growers and processors can compete for the provision of grower's services. The other VFF initiative is to have defined 6-month pre-contract negotiation period with one-month mediation period. This must surely be sufficient time for parties to conclude contract negotiations if these are conducted in good faith. The request for boycott and contract suspension is only necessary to ensure the parties do actually negotiate in good faith and limit the timeframe of such negotiations.

Growers Face Moral Hazard

We cannot see the moral hazard faced by growers but agree that if initial contracts are negotiated in good faith and concluded within the timeframe authorised, then the initial boycott whether granted or not, will have achieved its purpose. This does not lessen the need for the boycott provision for contract re-negotiation.

Dr Ryan appears to be suggesting that growers will not deal in good faith, and would deliberately avoid coming to agreement as justification for being granted the boycott provision. This argument lacks logic. Growers are well aware of the effects of any collective boycott of supply because two such 3-month events occurred in the 1970's and led to the regulation of the industry. The industry is now much more intensive and consequently the effect of a boycott would be disastrous for many growers. Growers are not in a position to boycott wilfully.

The inability of growers being able to use a boycott in an attempt to drive an anti competitive outcome has been covered extensively elsewhere.

Parties can avoid any boycott or other interruptions to the supply chain simply by negotiating in good faith, and completing such negotiations within the timeframe specified. The negotiation process has a circuit breaker in that any issues unable to be agreed can be referred to mediation.

However, growers lack the power to compel processors to negotiate fairly or to negotiate at all. One processor has already stated that they will not negotiate with the VFF grower group under the terms granted in the interim authorisation. This demonstrates clearly the level of market power held by processors, in that even a potential boycott of growers may be insufficient to bring them to the negotiating table.

Concluding Comment

The processors claim to welcome the application for authorisation by the VFF but only if such authorisation is emasculated to such an extent that it is ineffective (like failed authorisation A90750). We maintain our view that a boycott provision is necessary to ensure conclusions to formal contract negotiations. If, as the processors claim, *this is demonstrably incorrect* and that formal contracts replacing the old VBINC contracts have been concluded with VFF members in the past two years, they should table such contracts with the ACCC and forward copies to the respective growers.

In conclusion it obvious that changing from a regulated industry was never going to be easy for broiler growers and processors, and that the stability enjoyed by the parties including consumers would inevitably be compromised in a deregulated environment. The VFF believes that processors who negotiate in good faith with their growers under the VFF authorisation have nothing to fear and that fair and competitive contracts providing the necessary stability in our industry will be re-established. Processors who thought they were to gain a competitive advantage from this process are clearly misinformed.

Yours faithfully,

A handwritten signature in black ink, appearing to read "John Clarke". The signature is fluid and cursive, with the first name "John" being larger and more prominent than the last name "Clarke".

JOHN CLARKE

President VFF Chicken Meat Group