#### 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.
- \* (Strike out whichever is not applicable)

#### (PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of applicant:

BARTTER ENTERPRISES PTY LTD ("Bartter") on its own behalf and on behalf of the growers set out in Annexure "A" ("the Growers").

- (b) Short description of business carried on by applicant:
  - 1. Bartter is a fully integrated processor of the meat of chickens grown by growers (including the Growers). The chicken meat is processed, distributed and marketed by Bartter.
  - 2. The Growers are growers who (together with other growers) grow or propose to grow chicken meat under contract to Bartter.
- (c) Address in Australia for service of documents on the applicants:

Dr Timothy J. Ryan, Principal Consultant Timothy J. Ryan & Associates Pty Ltd 11 Shirley Crt, Boronia Vic 3155

- 2. (a) Brief description of contract, arrangement or understanding and where already made, its date:
- 1. Bartter and the Growers seek authorisation to give effect to 10 farm contracts agreed by 9 growers in July 2001 for the growing of chickens. Each contract is identical except for the name of the grower. A copy of a contract is contained

in Annexure B. (Bartter requests that Annexure B be excluded from the Public Register because of its confidential nature).

2. Bartter and the growers seek authorisation (on their own behalf and in respect of their own conduct) to negotiate further contracts (whether with or without other growers including those identified in Annexure C) on a collective basis, each of which contracts will be in a form similar to the contract contained in Annexure B. The negotiations will be conducted by Bartter with the grower group(s) through a nominated representative or representative(s). Bartter requests that Annexure C be excluded from the Public Register because of its confidential nature.

The terms of the agreement will provide for a common fee to be paid to growers for the growing of chicken meat, and the basis upon which such fee is to be calculated.

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

See Annexure C.

3. Names and addresses (where known) of parties and other persons on whose behalf application is made:

See Annexure A.

The names and addresses of other growers who may enter into collective negotiations for a growing agreement with Bartter are not known at this time.

4. (a) Grounds for grant of authorisation:

See Annexure D

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

See Annexure D

- 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:

Not Applicable

(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application: See Annexure C. The names and addresses of other growers who may join in collective negotiations for a growing agreement with Bartter on the terms of Annexure B are not known at this time. 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: Dr Timothy J. Ryan, Principal Consultant Timothy J. Ryan & Associates Pty Ltd 11 Shirley Crt, Boronia Vic 3155 Signed by/on behalf of Bartter Full Name Patrick Gerard McCaffrey Description Regional Manager Southern Region Bartter Enterprises Pty Ltd Address Bartter Enterprises Pty Ltd **PO Box 379** 

Belmont Vic 3216

Date .....

#### ANNEXURE A

# CONSENTING BUSINESSES: BARTTER ENTERPRISES

The following 10 grower company/ businesses have provided letters of consent. Copies of the signed letters of consent are attached. There are 9 letters, one signed by Doug Wade covers two businesses, Tomahawk Pty Ltd and Lakeview Pty Ltd.

Bosut Pty Ltd.	Phone	03 5264 5088
Nikola Blagojevic	Mobile	0400 645 044
760 Anglesea Road	Fax	03 5264 5088
FRESHWATER CREEK		
Mr B Hepburn	Phone	03 5266 1466
505 Reservoir Road	Mobile	0404 001 367
MORIAC 3240	Mobile	0427 503 556
	Fax	03 5266 1190
	Email	heppy53@bigpond.com
Mr P Hole	Phone	03 5267 2391
95 Holes Lane	Mobile	0438 360 584
WINCHELSEA 3241	Fax	03 5267 2391
	Email	chicks56@pipeline.com.au
Lakeview Pty Ltd	Phone	03 5232 2775
James Bonello	Mobile – James	0419 877 514
Cororooke Road	Fax	03 5232 2775
COLAC 3250		
Lyndale Trading Co Pty Ltd	Phone	03 5267 2644
Mr Keith Leigh	Mobile	0407 535 091
505 Cressy Road	Mobile	0427 652 673
WINCHELSEA 3241	Fax	03 5267 3063
	Email	kmleigh@bigpond.com.au
Mr M Palmer	Phone	03 5266 2015

### **BARTTER:ANNEXURE A**

Lady Hay Farm	Mobile	0438 662 015				
RMB 990 Princes Highway	Fax	03 5266 2015				
MT MORIAC 3240						
Peel Agri Business Pty Ltd	Phone	03 5265 1212				
13 Lochgoin Mews	Fax	03 5221 0211				
HIGHTON 3216	Mobile – Colin	0409 236936				
	Email	colinpeel@bigpond.com.au				
	Email Farm	cpeel@sunset.com.au				
F & B TeWierik	Phone	03 5266 1276				
1280 Cape Otway Road	Fax	03 5266 1259				
MODEWARRE 3240	Email	ftew@bigpond.com.au				
Mr K Tischler	Phone	03 5281 1392				
Olive Grove	Fax	03 5281 1392				
99 McCurdy's Road	Email	kevintischler@ozemail.com.au				
GHERINGHAP 3331						
Tomahawk Pty Ltd	Phone	03 5235 1300				
D Wade	Mobile	0412 100 106				
105 Tomahawk Creek Road	Fax	03 5235 1311				
PIRRON YALLOCK 3249						



BARTTER ENTERPRISES PTY LIMITED A.B.N. 22 000 451 374

41-47 Leather Street. Breakwater, VIC 3219, Australia

P.O. Box 379, Belmont, VIC 3216, Australia

Telephone; (03) 5227 6666

Dear [Grower],

Fax: (03) 5227 6601

On 5 August 2003 the Federal Court ordered that the ACCC's authorisation of 28 June 2001 that allowed growers to negotiate collectively with their processor without contravening the Trade Practices Act, be set aside. The Court made this order because the growers who were to be authorised to negotiate collectively with processors were not named as parties to the application for authorisation made to the ACCC.

The Court's order setting aside the authorisation will take effect on 4 September 2003. The decision means that all agreements and negotiations that depend on that authorisation for protection from the Trade Practices Act (TPA) are no longer shielded from the provisions of the TPA. To permit agreements reached or negotiations to proceed without either growers or processors contravening the provisions of the TPA, we are in the process of making an application to the ACCC for authorisation to permit negotiations to occur on a collective basis.

To ensure the validity of this application, we intend to make plain that each of the processors and growers that are parties to it have consented to the application being made. If the authorisation is subsequently granted it should have the effect of enabling agreements already negotiated collectively to continue in effect and also allow those growers who wish to do so to negotiate collectively with their processor without contravening the Trade Practices Act.

If you wish to be able to participate in collective negotiations, we invite you to consent to and thereby join in the new application for authorisation being made to the ACCC, by countersigning this letter in the space provided below.

We intend to attach a copy of each countersigned letter to the application to the ACCC.

Yours Faithfully, BARTTER ENTERPRISES PTY LIMITED

In countersigning this letter, I confirm my consent to the proposed application for authorisation to the ACCC and agree to be a party to that application.

NAME OF GROWER COMPANY / BUSINESS

27-8-03

DATE

SIGNATURE OF PERSON AUTHORISED TO SIGN FOR COMPANY / BUSINESS





Dear [Grower].

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TO SIGN FOR COMPANY / BUSINESS

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NAME OF GROWER COMPANY / BUSINESS

DATE

<sup>7</sup> 3-2003

SIGNATURE OF PERSON AUTHORISED TO SIGN FOR COMPANY / BUSINESS

FPBURN.





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NAME OF GROWER COMPANY / BUSINESS

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PRINT NAME OF PERSON SIGNING

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NB: THIS CONSENT

a) LAKEVIEW PTY. LTD.

b) TOMAHAWK PTY. LTD.
PIRRON YALLOCK



BARTTER ENTERPRISES PTY LIMITED

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PRINT NAME OF PERSON SIGNING

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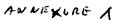
A-T- 1 F.B. TE WIERIK

NAME OF GROWER COMPANY / BUSINESS

27-8-03

SIGNATURE OF PERSON AUTHORISED TO S.GN FOR COMPANY / BUSINESS

F.B. FEWICRIK





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KA. H.IN TISCHLER

29.08.03

NAME OF GROWER COMPANY / BUSINESS

DATE

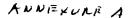
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Kruin A TISCHLER

PRINT NAME OF PERSON SIGNING



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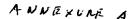
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NAME OF GROWER COMPANY / BUSINESS

DATE

SIGNATURE OF PERSON AUTHORISED TO SIGN FOR COMPANY / BUSINESS

PRINT NAME OF PERSON SIGNING





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NAME OF GROWER COMPANY / BUSINESS

TRADING TRUST.

DATE

28.8-2003

SIGNATURE OF PERSON AUTHORISED

TO SIGN FOR COMPANY / BUSINESS

PRINT NAME OF PERSON SIGNING

\\BTRAUGEENT01\\yonss\$\SolicitorLtr to Growers 030826.doc

### Bartter Enterprises Pty Ltd

Confidentiality granted for Annexures B and C