

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

BARTTER:ANNEXURE A

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



25 August 2003

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

Fax: (03) 5227 6601

Dear [Grower],

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.

M e J. PALMER

27-8-03

NAME OF GROWER COMPANY / BUSINESS

DATE

J. I. Palmer

SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

JANET PALMER

PRINT NAME OF PERSON SIGNING





25 August 2003

BARTTER ENTERPRISES PTY LIMITED
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BOSUT P.T.Y. LTD.

27-08-2003

NAME OF GROWER COMPANY / BUSINESS

DATE

Bosut Nikola Blagojevic

SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

NIKOLA BLAGOJEVIC

PRINT NAME OF PERSON SIGNING





25 August 2003

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Yours Faithfully,
BARTTER ENTERPRISES PTY LIMITED

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B.M. + B.L. HEPBURN.

28-3-2003

NAME OF GROWER COMPANY / BUSINESS

DATE

Bryan M. HEPBURN.

SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

BRYAN HEPBURN.

PRINT NAME OF PERSON SIGNING





ANNEXURE 1

25 August 2003

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

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Yours Faithfully,
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D. I. WADE BARTTER ENTERPRISES P/L

NAME OF GROWER COMPANY / BUSINESS

DATE

28/8/03

SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

DOUGLAS THOMAS WADE

PRINT NAME OF PERSON SIGNING

NB: THIS CONSENT COVER
2 FARMS

a) LAKEVIEW PTY. LTD.
COLAC

b) TOMAHAWK PTY. LTD.
PIRRON YALLOCK





ANNEXURE A

25 August 2003

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 6656

Fax: (03) 5227 6601

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P J & W D HOLE

NAME OF GROWER COMPANY / BUSINESS

Peter J Hole

SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

PETER J HOLE

PRINT NAME OF PERSON SIGNING

28/08/03

DATE





25 August 2003

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A.J. F.B. TE WIERIK

NAME OF GROWER COMPANY / BUSINESS

27-8-03

DATE

[Signature]

SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

F.B. TE WIERIK

PRINT NAME OF PERSON SIGNING





25 August 2003

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BARTTER ENTERPRISES PTY LIMITED

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KA. H. M. TISCHLER

29.08.03

NAME OF GROWER COMPANY / BUSINESS

DATE

Ken A. Tait

SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

Kevin A. Tischler

PRINT NAME OF PERSON SIGNING





522
ANNEXURE A

25 August 2003

BARTTER ENTERPRISES PTY LIMITED
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BARTTER ENTERPRISES PTY LIMITED

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PEEL AGRICULTURAL BUSINESS

NAME OF GROWER COMPANY / BUSINESS

28/08/03

DATE

John Peel

SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

CONIN PEEL

PRINT NAME OF PERSON SIGNING





KICH
ANNEXURE A

25 August 2003

BARTTER ENTERPRISES PTY LIMITED
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LYNDALE TRADING TRUST.

28.8.2003

NAME OF GROWER COMPANY / BUSINESS

DATE

[Signature]
SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

KEITH LEIGHT.

PRINT NAME OF PERSON SIGNING



Bartter Enterprises Pty Ltd

Confidentiality granted for Annexures B and C