

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:

LA IONICA FARMING OPERATIONS PTY LTD ("La Ionica") on its own behalf and on behalf of Tarwood Pty Ltd ("Tarwood"), a grower (see Annexure A).

(b) Short description of business carried on by applicant:

1. La Ionica is a fully integrated processor of the meat of chickens grown by growers (including Tarwood). The chicken meat is processed, distributed and marketed by La Ionica.
2. Tarwood is a grower who (together with other growers) proposes to grow chicken meat under contract to La Ionica.

(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. La Ionica and Tarwood seek authorisation (on their own behalf and in respect of their own conduct) to negotiate the terms of a chicken growing agreement between themselves and other growers, all of which growers will act on a collective basis and which agreement will be in a form similar to that outlined in Annexure B. **(La Ionica requests that Annexure B be excluded from the Public Register because of its confidential nature).**
2. La Ionica seeks authorisation (on its own behalf and in respect of its own conduct) to negotiate further agreements with other growers acting on a collective basis including those identified in Annexure C **(La Ionica requests that Annexure C be excluded from the Public Register because of its confidential nature).** The negotiations will be conducted by La Ionica with a grower group or groups through a nominated representative or representatives.

The contracts described in paragraphs 1 and 2 of subparagraph 2(a) above will provide for a common fee to be paid to growers for growing chicken meat.

(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 La Ionica are not known at this time.

4. (a) Grounds for grant of authorisation:

As set Out In Annexure D

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

As set Out In 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 La Ionica 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 La Ionica

Full Name
Description

Gavin Campbell Eckersley
Managing Director
La Ionica Farming Operations Pty Ltd
5 Lipton Drive
Thomastown Vic 3074

Date

**ANNEXURE A CONSENTING BUSINESSES:
LA IONICA PTY LTD**

Tarwood Pty Ltd. Gavin Eckersley is the Managing Director of La Ionica and he is the sole Director of Tarwood. The farm is categorized as a processor interest farm. Processor interest farms do not negotiate directly with the processor on their contract terms and conditions, nor do they play an active role in the Processor Negotiation Group (PNG). They do however accept the terms, conditions and fee that result from the PNG negotiations and grow chickens under that PNG agreement.

A copy of the letter of consent is attached.

Tarwood Pty Ltd

Eckersley	Gavin	380 Pakenham Kooweerup Rd	KooWeeRup	3981
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LA IONICA FARMING OPERATIONS PTY. LTD.

t 078 145 909

A.B.N. 77 321 006 411

PART OF ANNEXURE A

5 Lipton Drive
Thomastown
Victoria 3074
tel. 9460 8833
fax. 9787 1848

28th August 2003

Dear Gavin,

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.

The Court's ruling will now prevent me from meeting the commitment I made to La Ionica growers to back pay growers the final fee negotiated with your PNG representatives. This fee was to be backdated to birds placed from January 14th. I confidently say that we were within a few days of fixing this fee when the Court's decision became known. The only legal way this can be actioned is via an interim authorisation allowing the fee to be finalised and then paid. Any other way would be in contravention of the Trade Practices Act. On behalf of La Ionica I am not prepared to entertain any approach that would in anyway contravene the Act.

To ensure the validity of this application, it is intended 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.

I am seeking the individual consent of you as a La Ionica grower to participate in this application and to confirm this by signing the consent at the base of this letter. The letter will need to be faxed back to me on or before Tuesday of next week, with the original mailed to arrive later. I fully realise that it is the present stance of the VFF to advise growers not to participate to enable political pressure to be brought to bear on Government to bring back legislation to control our industry.

In this regard I make the following points:-

- There is significant doubt that such legislation will be put in place.
- If there is legislation then such legislation will override the authorisation.
- The cancellation of the previous authorisation does not prevent the "one on one" contracts still continuing to be entered into, which was one of the main areas of concern to growers.
- I sincerely believe the industry's long term interests are best served by collective negotiations and in particular I wish to retain the right to sit down with La Ionica growers to work out what is best for us and us alone.

PART OF ANNEXURE A

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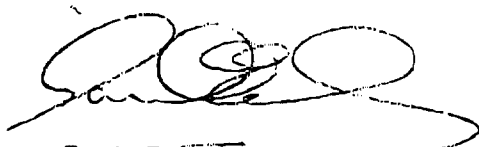
- I have advised your PNG representatives convenor of my letter to you and my reasons for my action.

I sincerely ask you to consider this request very carefully so we can continue the good work that has been commenced and more importantly that I can continue to work directly with my growers into the future.

If you would like to discuss this with me on a confidential basis please ring me on 0419 868130.

It is intended to attach a copy of each countersigned letter to the application to the ACCC.

Yours Faithfully,



Gavin Eckersley
Director

La Ionica Farming Operations Pty. Ltd.

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.

FARWOOD PTY LTD.

NAME OF GROWER COMPANY / BUSINESS

3rd SEPTEMBER '03

DATE


SIGNATURE OF PERSON AUTHORISED
TO SIGN FOR COMPANY / BUSINESS

SON DIRECTOR GAVIN ECKERSLEY

PRINT NAME OF PERSON SIGNING

La Ionica Framing Operations Pty Ltd

Confidentiality granted for Annexures B and C