



Australian Competition & Consumer Commission

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Dr Timothy Ryan
Timothy J Ryan & Associates Pty Ltd
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Dear Dr Ryan

**Requests for interim authorisation lodged by Bartter Enterprises Pty Ltd & other
Victorian chicken meat processors and the Victorian Farmers Federation on behalf of
its member growers.**

I refer to your request to the Australian Competition and Consumer Commission (the Commission) for interim authorisation for applications lodged by Bartter Enterprises Pty Ltd (A90901), La Ionica Operations Pty (A90902), Hazeldene Chicken Farm Pty Ltd (A90903), Inghams Enterprises Pty Ltd (A90904) & Baiada Poultry Pty Ltd (A90905) and some consenting Victorian chicken meat growers (collectively referred to as 'the processor applications').

In addition, I refer to a request for interim authorisation for an application lodged by the Victorian Farmers Federation on behalf of its member growers (A40093) (the VFF application).

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the *Trade Practices Act 1974* (the Act) while the Commission considers and evaluates the merits of the application.

Broadly, the processor applications seek authorisation to enable the giving of effect to contracts already negotiated between individual Victorian chicken meat processors and their growers acting collectively and to allow proposed or future contracts to be negotiated.

The VFF application seeks authorisation on behalf of Victorian chicken meat growers to allow them to collectively negotiate, within their respective grower groups, the terms and conditions, including growing fees, of contracts for the provision of chicken growing services to Victorian chicken meat processors. Additionally, the VFF application seeks authorisation to allow growers to collectively boycott the supply of chickens from processors if after a prescribed negotiation period agreed contract terms, including a growing fee, have not been reached.



The Commission has considered both the processors and VFF's requests for interim authorisation and has decided to grant interim authorisation to both requests on a limited basis.

The processor applications

The processor applications are granted as follows:

Processor	Interim Authorisation
Bartter Enterprises Pty Ltd	Granted in full
La Ionica Operations Pty	Granted in full
Baiada Poultry Pty Ltd	Granted to give effect to 83 existing contracts only
Hazeldene Chicken Farm Pty Ltd	Denied
Inghams Enterprises Pty Ltd	Denied

In effect, the Commission has only granted interim authorisation to those aspects of the processors applications that can work in practice.

Specifically, interim authorisation is granted to the continued giving of effect to arrangements entered into under the previously authorised arrangements (the Bartter and Baiada contracts) and for the collective negotiation of new contracts by those growers who have consented to the processor application being made on their behalf (one La Ionica and ten consenting Bartter growers). In respect of those La Ionica and Bartter growers who did not consent to the applications, they are still authorised to collectively negotiate new arrangements with La Ionica and Bartter, provided at least one grower who has consented to the application is a party to any agreement between the growers to collectively negotiate.

With respect to the negotiation of future contracts, those applications that do not have any grower support (Hazeldene, Inghams & Baiada) have been denied interim authorisation. The Commission considers that the necessary precondition for collective negotiations to occur, namely an agreement between growers alone to collectively negotiate, would not be covered by any authorisation granted and if it did occur it would likely be in breach of the Act.

The VFF application

The VFF's application for interim authorisation is granted in full except for authorisation to allow collective boycotts and the right for bargaining groups to seek to impose any restrictions on a processor's ability to negotiate more favourable contract terms and conditions with a grower who is not a member of a VFF collective bargaining group than those offered to the VFF bargaining groups.

The Commission considers that since the VFF application does not contemplate collective boycotts being used for at least 7 month after the negotiating period begins, it is not necessary to address the issue of collective boycotts at this stage. As the Commission has not granted interim authorisation to allow collective boycotts, growers are not authorised, at this time, to discuss or agree to withhold supply of their growing services from the processors. The Commission will fully consider the growers application for the right to collectively boycott when it issues its draft determination in the next few months.

In assessing the requests for interim authorisation, the Commission gave consideration to the following:

- that granting interim authorisation is unlikely to adversely impact on other parties such as consumers; and
- there is likely to be little, if any, public detriment in allowing the arrangements to proceed in the short term.

In respect of the processors applications the Commission considers that, without support from the majority of Victorian chicken meat growers, any future substantive authorisations granted would again be limited in their scope and utility. Accordingly, the Commission encourages the processors and the VFF to develop a mutually acceptable framework for negotiations which has the support of both parties.

Nevertheless, the Commission's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the Commission.

Please also note that under subsection 91(2AB) of the Act, the Commission may revoke an interim authorisation at any time.

I attach for your information a copy of the Commission's media release in relation to this matter in addition to the letter sent to interested parties informing them of the Commission's decision.

If you have any questions please contact Liam Stewart on (02) 6243 1275.

Yours sincerely



Tim Grimwade
General Manager
Adjudication Branch