



**Australian
Competition &
Consumer
Commission**

Our Ref: C2004/443
Contact Officer: Gavin Jones
Contact Phone: (03) 9290 1959

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

23 September 2004

Mr John Rich
Executive Officer
Tasmanian Farmers and Graziers Association
PO Box 193
Launceston TAS 7250

Dear Mr Rich

**Application for authorisation A90914
lodged by the Tasmanian Farmers and Graziers Association**

I refer to your application for authorisation (A90914) in relation to a proposed agreement between present and future TFGA vegetable grower members to collectively negotiate, through grower representatives on their various commodity group boards, terms and conditions of growing contracts with the processors to whom they supply, namely McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Ltd. Authorisation is also sought for an agreement between TFGA vegetable grower members for the TFGA to assist them in their negotiations with processors.

The Commission has issued a draft determination proposing to grant authorisation to the proposed arrangements for a period of five years.

A copy of the draft determination is enclosed. The draft determination will also be available on the Commission's website: www.accc.gov.au.

As you are aware, on 22 April 2004, the Commission granted interim authorisation to the proposed arrangements while the Commission makes a decision on the merits of the substantive application. Interim authorisation will continue to protect the proposed arrangements from action under the *Trade Practices Act 1974* (the TPA) until the date that the Commission's final determination comes into effect or until the Commission decides to revoke interim authorisation.

Before the Commission makes a final decision regarding the application, it provides an opportunity for the applicant and interested parties to make submissions to the Commission. The processes for providing submissions, both oral and written, are provided below.



Pre-decision conference

In accordance with section 90A of the TPA an interested party may notify the Commission in writing by close of business on **Friday 8 October 2004** if that party wishes the Commission to hold a pre-determination conference in relation to the draft determination. The TPA does not allow the Commission to extend this deadline.

A pre-determination conference provides the opportunity for interested parties, particularly in the event they are dissatisfied with the Commission's draft determination, to make oral submissions in response to the draft determination. In the event of such a conference taking place it would be held as soon as possible. The TPA requires that the conference be held no later than **Monday 8 November 2004**.

Submissions

Submissions to the Commission should be made in writing. Unless confidentiality is requested, they will be publicly available and placed on a public register for that purpose. If you wish to include information in a submission which is of a confidential nature, it should be clearly marked as such and a claim for confidentiality for the material should also be submitted. You will be informed of the outcome of that claim and, if it is refused, the relevant material will be returned to you if you wish. Material for which confidentiality is granted will not be publicly available, but may be taken into account by the Commission in making a final decision regarding the application. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, would you please address it to:

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

Alternatively, submissions may be faxed to (02) 6243 1211 or emailed to adjudication@accc.gov.au

We request that submissions reach the Commission no later than close of business on **Friday 15 October 2004**. If you have any queries or if you wish to discuss any aspect of this application further, please contact Scott Gregson on (02) 6243 1107.

Yours sincerely



Tim Grimwade
General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications.

Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words “**Restriction of Publication Claimed**” should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words “**Restriction of Publication of Part Claimed**” should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.