



Determination

Application for Revocation of A90738 and its Substitution by A90887

lodged by

**The Victorian Brick and Blocklaying Training Foundation Ltd
(VBBTF) for itself and on behalf of the Clay Brick and Paver
Association of Victoria (CBPAV)**

*in relation to an agreement between VBBTF and CBPAV members to
increase the current training levy on the sale of clay bricks and concrete
masonry products sold in Victoria*

Date: 4 November 2004

Authorisation no. A90887

Public Register no. C2003/1591

Commissioners:

Samuel
Sylvan
King
Martin
McNeill
Smith
Willett

Executive Summary

The application

On 12 December 2000, authorisation A90738 was granted by the Australian Competition and Consumer Commission (the Commission), to the Clay and Brick Paver Association of Victoria (CBPAV), for an agreement between its members to impose two levies, one on the price of clay bricks and one on the price of concrete blocks sold in the state of Victoria. These levies entail \$1.00 per thousand clay bricks and 5c per square metre of concrete blocks sold in the state. Authorisation was granted for three years.

Money raised by the levies was to be used to fund a training scheme for apprentice bricklayers, in an attempt to alleviate the shortage of skilled bricklayers in the state. The levies are matched by clay brick and concrete block manufacturers as voluntary industry contributions.

On 4 December 2003, the Victorian Brick and Blocklaying Foundation Ltd (VBBTF) lodged an application for itself and its members on behalf of the CBPAV and its members, under section 91C of the *Trade Practices Act 1974* (the TPA) for the revocation and substitution of authorisation A90738.

The authorisation process

A key objective of the TPA is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.

The TPA, however, allows the Commission to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the Commission for what is known as an ‘authorisation’.

Broadly, the Commission may ‘authorise’ businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.

Additionally under the TPA, the Commission may grant an application to revoke an existing authorisation and grant a substitute authorisation when the benefit from the conduct proposed to be authorised (that is, under the substitute authorisation) outweighs the detriment.

Before the Commission may grant an application to revoke an existing authorisation and grant a substitute authorisation, it conducts the same public consultation process as it would conduct for a new application for authorisation.

The proposed arrangements

The proposed substitute authorisation, A90887, is identical to A90738, except that the applicants propose to increase the levy on clay bricks from \$1.00 per thousand bricks

sold, to \$2.00 per thousand bricks and the levy on concrete masonry products from 5 cents per square metre to 10 cents per square metre sold in Victoria.

The VBBTF and CBPAV also applied for interim authorisation for the extension of the scheme authorised in A90738, to commence before authorisation A90738 expired on 3 January 2004. On 10 December 2003, the Commission agreed to suspend the operation of authorisation A90738 and to grant interim authorisation to the substitute arrangements while it considered the merits of the application for revocation and substitution.

Prior to issuing a draft determination, the Commission invited interested parties to make submissions regarding the revocation of A90738 and substitution of an authorisation in the terms proposed by the VBBTF and CBPAV. Five submissions were received from interested parties. All submissions supported the proposed arrangements.

The Commission issued a draft determination on 14 April 2004 proposing to grant the revocation of A90738 and its substitution with A90887 for a period of three years from the date of the final determination.

On 5 May 2004, the applicant amended its application for authorisation in the following manner:

- the proposed levy arrangements will not only increase the levy on the sale of clay bricks from \$1.00 per thousand to \$2.00 per thousand but also increase the equivalent levy applicable to the sale of concrete masonry products from 5 cents to 10 cents per square metre; and
- the levy will not apply to pavers, landscape products and special shapes. These exclusions apply to the current levy.

In response to the draft determination and the amendment made to the application, one submission was received from an interested party expressing support for the proposed levy arrangements. A further submission was received raising concerns in respect of the levy arrangements.

Assessment of public benefit and anti-competitive detriment

The Commission considers the anti-competitive detriment generated by the proposed arrangements is likely to be minimal. In particular, the Commission does not consider that the proposed levy will significantly impact on the price of building a home.

The Commission is satisfied that the proposed arrangements are likely to generate a public benefit. Specifically, the Commission considers that the proposed arrangements will lead to an increase in the number of apprentice bricklayers, and the breadth of training provided, which will improve the quality of workmanship across the industry and reduce construction times and costs.

The Commission is satisfied that an increase in the current levy amount applied to the price of clay bricks and concrete masonry products sold in Victoria, by the applicants, is likely to result in a net public benefit.

Therefore, the Commission grants revocation of Authorisation A90738 and its substitution with authorisation (A90887), as sought by the VBBTF and CBPAV, for a period of three years from the date the authorisation comes into effect.

The interim authorisation granted by the Commission on 10 December 2003 will continue to protect the proposed arrangements until the date that the Commission's final determination comes into effect.

List of Abbreviations

AMBA	Australian Master Bricklayers Association Incorporated
CPBA	Clay Brick and Paver Association of New South Wales
CBPAV	Clay Brick and Paver Association of Victoria
CBPI	Clay Brick and Paver Institute
CMAA	Concrete Masonry Association of Australia
DRA	Daniel Robertson Australia
HIA	Housing Industry Association Ltd – Victorian Region
MBAV	Master Builders Association of Victoria
TPA	<i>Trade Practices Act 1974</i>
VBBTF	Victorian Brick and Blocklaying Training Foundation Ltd
WAGTS	West Australian Group Training Scheme Inc.

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1. INTRODUCTION

Authorisations

- 1.1 The Australian Competition and Consumer Commission (the Commission) is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the TPA). A key objective of the TPA is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.
- 1.2 The TPA, however, allows the Commission to grant immunity from legal action for anticompetitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the Commission for what is known as an ‘authorisation’.
- 1.3 Broadly, the Commission may ‘authorise’ businesses to engage in anticompetitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.
- 1.4 The Commission conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.

Revocation and substitution of authorisations

- 1.5 Additionally under the TPA, the Commission may grant an application to revoke an existing authorisation and grant a substitute authorisation when the benefit from the conduct proposed to be authorised (that is, under the substitute authorisation) outweighs the detriment.
- 1.6 Before the Commission may grant an application to revoke an existing authorisation and grant a substitute authorisation, it must conduct the same public consultation process as it would conduct for a new application for authorisation. This process involves informing interested parties about the application for revocation and substitution and inviting submissions in response to it. The Commission then issues a draft determination and invites interested parties to lodge further submissions in response to it and/or call a conference to discuss the draft. The Commission then issues a final determination.

This application

- 1.7 On 12 December 2000, the Commission issued a final determination granting authorisation (A90738) for an agreement between CBPAV members to impose two levies, one on the price of clay bricks and one on the price of concrete blocks sold in Victoria. The levies entail \$1.00 per thousand clay bricks sold and 5c per square metre of concrete blocks sold in the state. The authorisation is described in more detail in Section 3.

- 1.8 On 4 December 2003, the Victorian Brick and Blocklaying Training Foundation Ltd (VBBTF) lodged an application with the Commission, for itself and its members on behalf of the Clay and Brick Paver Association of Victoria (CBPAV) and its members, for the revocation and substitution of authorisation A90738 and for interim authorisation of the substitute arrangements. The application was made pursuant to section 91C of the TPA¹. The application is described in Section 4.
- 1.9 Essentially, authorisation is sought to continue to engage in the arrangements the subject of Authorisation A90738 on the same terms, except that the applicants propose to increase the levy on clay bricks from the current level of \$1.00 per thousand bricks, to \$2.00 per thousand bricks and to increase the levy on concrete masonry products from 5 cents to 10 cents per square metre.

Chronology

- 1.10 Below is a chronology of significant dates in the consideration of the application.

DATE	ACTION
4 December 2003	Application for revocation and substitution A90887 received by the Commission. Request for interim authorisation received.
5 December 2003	The Commission sought submissions from interested parties.
10 December 2003	Interim authorisation granted.
16 January 2004	Closing date for submissions from interested parties. Five submissions were received.
8 April 2004	The Commission requested further information from the applicants.
13 April 2004	The Commission received additional information from the applicants.
21 April 2004	Draft determination issued.
21 April 2004	The Commission sought submissions from interested parties and invited interested parties to call a pre-determination conference.
5 May 2004	The applicant amended the application for revocation and substitution.
7 May 2004	Closing date for requests for a pre-determination conference. A pre-determination conference was not called.

¹ The application has also been considered as an application under the Victorian *Competition Code*.

13 May 2004	The Commission sought submissions from interested parties in relation to the amended application.
28 May 2004	Closing date for submissions from interested parties. One submission was received.
2 August 2004	Further submission received from an interested party.
4 November 2004	Final determination issued.

2. BACKGROUND

The Victorian Brick and Blocklaying Training Foundation

- 2.1 The Victorian Brick and Blocklaying Training Foundation (VBBTF) was formed by the CBPAV, in conjunction with the Master Builders Association of Victoria, Holmesglen Institute of TAFE, Housing Industry Association and major concrete masonry suppliers. The VBBTF's main objective is to improve bricklayer numbers by supporting a range of initiatives. These include funding successful pre-apprenticeship programs, subsidising apprentice bricklayer costs to contractors through group schemes managed by group training companies and participating builders, promoting careers in bricklaying and providing financial support to the bricklaying training centre run by the Holmesglen TAFE.
- 2.2 VBBTF members predominantly consist of clay and concrete masonry brick and block manufacturers. VBBTF members who match the levy imposed on consumers with their own voluntary contributions include:
- Boral Bricks Pty Ltd (*also CBPAV member*)
 - Boral Masonry Pty Ltd
 - C and M Bricks Pty Ltd
 - Daniel Robertson Australia Pty Ltd (*also CBPAV member*)
 - Nubrick Pty Ltd (*also CBPAV member*)
 - Selkirk Brick Pty Ltd (*also CBPAV member*)
- 2.3 The following members are represented on the board of the VBBTF as directors, but do not collect the levies and do not contribute to the funding of the VBBTF:
- Holmesglen Institute of TAFE
 - Housing Industry Association – Victoria
 - Master Builders Association of Victoria

The Market for Bricklaying

- 2.4 Bricklaying forms a part of the general construction industry. According to the Building and Construction Working Group, the building and construction industries 'are the engine room of the Australian economy...[leading] national

- economic activity and build[ing] the infrastructure within which value creation occurs².
- 2.5 Approximately 210,000 firms operate in the building and construction industry, Australia-wide, with the majority of firms being small businesses. An average of \$35 billion of work is completed annually by the industry³.
- 2.6 Collectively the industry contributes 11.3% of GDP, greater than agriculture, mining, gas, electricity and water facilities.⁴
- 2.7 The building and construction industry consists of three main groups⁵:
- Commercial
 - Industrial
 - Housing
- 2.8 Housing forms the largest group and is a sector that has seen dramatic growth and demand in recent years as a part of the housing boom.
- 2.9 The applicants submit that the VBBTF and CPBAV members who are parties to the proposed arrangements, supply 95% of product sold in the segmental walling market in Victoria. Such product includes clay and concrete masonry bricks and blocks.
- 2.10 The focus of the arrangements the subject of this application is on the housing sector, as it is an area that is less likely to employ apprentice bricklayers and is the sector of highest demand at present.

Shortage of Bricklayers

- 2.11 It has been recognised by varying sources⁶ that the building and construction industry is suffering from a severe shortage of skilled bricklayers.
- 2.12 According to the National and State Skills Shortage Lists Australia 2003, the Bricklaying Trade has a national shortage of skilled tradesman.⁷ The states of Victoria, Queensland, Western Australia, Tasmania and the Northern Territory have particular problems, with state wide shortages, whilst the states of New

² Building and Construction Working Group, *Present and Future Skills Needs in the Building and Construction Industry – Draft report*, August 2001, available at www.skillsinitiative.gov.au, p 2.

³ Ibid, p 10.

⁴ Ibid.

⁵ Ibid, p 12.

⁶ Department of Employment and Workplace Relations, *National and State Skill Shortage Lists Australia – 2003*, provided to the Commission by the applicants for authorisation A90895; Productivity Commission, *First Home Ownership – Productivity Commission Discussion Draft*, December 2003, Melbourne; Building and Construction Working Group, *Present and Future Skills Needs in the Building and Construction Industry – draft report*, August 2001, available at www.skillsinitiative.gov.au.

⁷ Department of Employment and Workplace Relations, *National and State Skill Shortage Lists Australia – 2003*, provided to the Commission by the applicant.

South Wales and South Australia are suffering severe shortages in Metropolitan regions.⁸

2.13 The Productivity Commission recently supported this proposition in its draft report into first home ownership, where it reported that severe skills shortages have resulted in significant delays in construction times and added to the costs of building.⁹ These problems have been particularly prevalent in recent years, during the ‘housing boom’, and according to the Productivity Commission, this is a common occurrence during peak periods of demand.¹⁰

2.14 There are several factors that have been highlighted as having contributed to a national shortage of skilled bricklayers. These include:

- the cyclical nature of the trade means that it is viewed by young people as lacking security;¹¹
- low wages in the industry make the trade unattractive to young people;¹²
- the trade consists of a largely ageing population;¹³
- training programmes are not flexible enough to cater for certain demographics¹⁴;
- certain employers prefer to hire skilled staff as opposed to untrained apprentices;¹⁵
- certain employers tend not to hire apprentices due to the added costs to their businesses and the added administrative work;¹⁶ and
- similarly, certain employers fear that if they hire an apprentice, the apprentice will abandon the employer for alternative employment at the completion of their apprentice training.¹⁷

2.15 According to a survey conducted by the Building and Construction Working Group which appears in its draft report, a majority of employers in the construction trades chose not to hire apprentices for the reasons outlined above.¹⁸ Those employers who do hire apprentices generally chose to use a group training company. According to the survey, there are three main reasons for this preference. Group training schemes offer:

⁸ Ibid.

⁹ Productivity Commission, *First Home Ownership – Productivity Commission Discussion Draft*, December 2003, Melbourne, p 131

¹⁰ Ibid.

¹¹ Ibid.

¹² Building and Construction Working Group, n 2, p 84.

¹³ Productivity Commission, n 9.

¹⁴ Building and Construction Working Group, n 2, p 19.

¹⁵ Ibid, p 83.

¹⁶ Ibid, p 78.

¹⁷ Ibid.

¹⁸ Ibid, p 79-80.

- flexibility in employment;
 - the ability for employers to have a choice of apprentice; and
 - a reduction in workers' compensation claims.¹⁹
- 2.16 The use of group training schemes to alleviate skills shortages has already been implemented by industry groups in Victoria and New South Wales, and there is evidence that such schemes are operated by independent entities in other states.²⁰ This is discussed in greater detail at 2.20 to 2.28 and in Section 3.
- 2.17 The VBBTF and CBPAV recognised in their submission in support of their current application that there is a paramount need to increase the numbers of apprentices attending group training companies, in order to better meet market demands for skilled bricklayers.
- 2.18 Consistent with this proposition, the Productivity Commission recently reported that skills shortages are forecast to increase over the next 7-10 years in the housing sector²¹ which, as stated above, represents the largest component of the construction industry²².
- 2.19 It is apparent that the supply of skilled bricklayers in Victoria falls far below levels of current demand and there is a strong need to increase the number of trained bricklayers in the industry.

Related Authorisation

- 2.20 The Commission is currently assessing a request for authorisation (A90895), lodged by the Clay Brick and Paver Institute (CBPI) and its members, and on behalf of the Concrete Masonry Association of Australia (CMAA) and its members, for an agreement on substantially similar terms to the current application by the VBBTF and CBPAV.
- 2.21 On 18 December 2003, the CBPI and CMAA lodged an application for authorisation for an agreement between their members for the imposition of two levies on the price of clay bricks and pavers and concrete masonry bricks and blocks, sold in the states of New South Wales (NSW), South Australia (SA), Western Australia (WA), Queensland (QLD) and the Australian Capital Territory (ACT). It is proposed that the levies will be matched by CBPI and CMAA members as voluntary industry contributions.
- 2.22 Money raised from the levies will be used to fund a training scheme for apprentice bricklayers, to subsidise their employment and to promote bricklaying as a career choice to the community. The levies will appear as a separate item on all invoices. This proposed training scheme will use group

¹⁹ Ibid.

²⁰ Skill Hire Pty Ltd and West Australian Group Training Scheme Inc, joint submission to the Commission, 13 February 2004; re authorisation A90895.

²¹ Productivity Commission, n 9, p 131.

²² Building and Construction Working Group, n 2, p 10.

training companies to facilitate the placement of apprentice bricklayers with host employers. The objective of the proposed arrangements is to increase the number of skilled bricklayers in the building and construction industry, in an attempt to alleviate a national skill shortage.

- 2.23 The arrangements proposed by the CBPI and CMAA are based on similar arrangements currently in place in NSW, and which were authorised by the Commission on 23 October 2002 (A90676).
- 2.24 On 21 April 2004, the Commission released a draft determination proposing to grant authorisation A90895 as sought by the CBPI.
- 2.25 Interested parties called a pre-determination conference which was held on 4 June 2004.
- 2.26 This related authorisation raises issues in relation to the potential for the arrangements to distort competition in the markets associated with the supply of group training service providers. Specifically, concerns were raised that the use of a small number of group training service providers may place them at a competitive advantage vis-à-vis competing service providers.
- 2.27 The Commission does not consider that this issue is likely to arise in the arrangements for which the VBBTF seeks re-authorisation due to the direction of levy funds to a significant number of group training schemes rather than only a small number of selected group training companies.
- 2.28 A separate final determination will be concurrently issued by the Commission in respect of the CBPI and CMAA application for authorisation.

3. AUTHORISATION A90738

- 3.1 On 27 July 2000, the CBPAV lodged an application for authorisation (A90738) with the Commission. The CBPAV sought authorisation for an agreement between its members for two levies to be imposed, one on the price of clay bricks and one on the price of concrete bricks and blocks sold in Victoria. The levies entailed \$1.00 per thousand clay bricks sold in Victoria and 5c per square metre of concrete bricks and blocks sold in Victoria.
- 3.2 The levies were to be passed on to consumers in the cost of purchasing clay and concrete bricks and blocks and were to appear as separate items on all invoices. Money raised from the levies was to be used to help fund a training scheme for apprentice bricklayers and to promote the industry to the community, in an attempt to increase apprentice intake numbers and to relieve the shortage of skilled bricklayers in Victoria.
- 3.3 It was intended that the levy funds be administered through the VBBTF. However, the VBBTF was not actually established until authorisation was granted. Consequently, the CBPAV was the sole applicant for authorisation.
- 3.4 As a part of the CBPAV's training initiative, it proposed to develop a Bricklayer Training Centre at the Holmesglen TAFE and to use a Group Training Centre to facilitate the placement of apprentice bricklayers with host employers.
- 3.5 Funding for the training scheme was to come from five sources:
- the Office of Post Compulsory Education, Training and Employment;
 - payments from host employers of the proposed Group Training Company;
 - the proposed levies;
 - members matching the proposed levies; and
 - other fees for service activities.
- 3.6 It was envisaged that the levy arrangements would increase the training capacity at the Holmesglen Institute of TAFE by two fold thereby increasing apprentice bricklayer numbers.
- 3.7 The Commission assessed the CBPAV's application for authorisation and concluded that while the levies had the effect of increasing the price of clay and concrete bricks and blocks sold to consumers, this increase in price was likely to be minimal.
- 3.8 The Commission considered that the proposed levies would result in public benefits as they were likely to:

- alleviate the shortage of skilled workers in the Victorian bricklaying trade;
 - alleviate cyclical fluctuations in the laying rates of bricks; and
 - reduce construction times
- 3.9 The Commission concluded that the imposition of the training levy was likely to result in a net public benefit and on 12 December 2000, the Commission granted authorisation to the CBPAV, for a period of three years from 3 January 2001 (the arrangements expired on 3 January 2004).
- 3.10 The levies commenced on 1 July 2003. The VBBTF has informed the Commission that the delay in implementing the scheme was due to the length of time taken for the CBPAV and the VBBTF members to decide on how best to implement and administer the levy arrangements. The applicants state that it took considerably more time than anticipated for the CBPAV and VBBTF to consult with industry members and to decide on the most appropriate way to implement the authorised arrangements.
- 3.11 The levies are currently collected on the following basis:
- \$1.00 paid by Victorian purchasers of clay bricks; and
 - \$1.00 paid by CBPAV manufacturing members, as voluntary industry contributions.
- 3.12 In addition, a levy of 5 cents per square metre levy is applied by VBBTF and CBPAV members, to the price of concrete masonry bricks and blocks sold in Victoria. This levy is also matched by the requisite manufacturers as voluntary industry contributions.
- 3.13 The original manufacturing members of the VBBTF (i.e. CBPAV members) have now grown to include concrete masonry manufacturers.
- 3.14 VBBTF members contributing to the arrangements include:
- Boral Bricks Pty Ltd (*also CBPAV member*)
 - Boral Masonry Pty Ltd
 - C and M Bricks Pty Ltd
 - Daniel Robertson Australia Pty Ltd (*also CBPAV member*)
 - Nubrick Pty Ltd (*also CBPAV member*)
 - Selkirk Brick Pty Ltd (*also CBPAV member*)
- 3.15 In addition, there are certain non-VBBTF members who may become parties to the above arrangements, including:

- Victorian clay brick manufacturers located in country Victoria;
- small concrete and masonry block manufacturers; and
- manufacturers of clay bricks and concrete masonry blocks located interstate who supply the Victorian market.

Administration of the levy funds

- 3.16 Funds raised from the levies are used by the VBBTF for varying purposes. The funds are used to subsidise the training of apprentice bricklayers, to subsidise the employment costs of apprentice bricklayers to host employers, through group training companies, to provide financial support to the Holmesglen TAFE bricklayer training centre, to promote the bricklaying trade to young people in the community, to provide incentives for pre-apprenticeship training and for mature age apprentice support.
- 3.17 The VBBTF uses a network of existing, independent, group training companies to place apprentices with host employers and provides wages support for such apprentices to host employers involved in the programme.
- 3.18 In addition, the VBBTF provides a \$400 incentive to young people to complete a pre-apprenticeship course in bricklaying and to begin an apprenticeship in the trade. Similarly, VBBTF funds promotional and marketing activities for the bricklaying trade, in an attempt to attract greater numbers of people to the trade.
- 3.19 According to the VBBTF, a significant portion of the funds raised by the levies is used to promote the bricklaying trade to the community. The VBBTF's bricklayer promotion targets secondary school students, so that students of that age are well informed of the nature and benefits of a career in bricklaying.
- 3.20 The VBBTF also funds "taster" programs for years 9 and 10 students, which involve a 40 hour bricklayer training course at a nominated TAFE college. The VBBTF states that it has budgeted to support 150 secondary students in the 2004 program.
- 3.21 In addition to funding training programs for secondary students, the VBBTF promotes the bricklaying trade via:
- radio campaigns;
 - press advertisements; and
 - presentations to schools, the community and career and industry groups.
- 3.22 The levy funds are collected by the requisite VBBTF and CBPAV members, and are then passed on to the VBBTF on a monthly basis. The VBBTF then administers and distributes the funds.
- 3.23 The VBBTF has a written procedure for the collection of levy funds, which it provides to each brick and block manufacturers involved in the scheme. The

- procedure requires manufacturers to provide the VBBTF with an “advice form”, once a month, indicating the total levy amount collected during the period (from the sale of concrete masonry products and clay bricks and blocks and from the manufacturer’s voluntary contributions).
- 3.24 The “advice form” must be received by the VBBTF by the 10th of each month. The VBBTF then prepares tax invoices and sends the receipts to the relevant manufacturers.
 - 3.25 Manufacturers must remit the levy amount to the VBBTF within 45 days of the VBBTF receiving the “advice form”.
 - 3.26 All expenditure of the levy funds must be ratified at VBBTF board meetings. In addition, a director is required to be a signatory to the general cheque account. The VBBTF accounts are also audited by an independent auditor. The VBBTF has provided the Commission with a copy of its audit report for the year ending 30 June 2003.
 - 3.27 With regard to the wage support that the VBBTF provides to host employers of apprentice bricklayers with money raised from the levies, all group training companies used by the VBBTF to place apprentice bricklayers with host employers are required to sign a wage support agreement, which outlines who the subsidies will apply to and on what basis.
 - 3.28 The Wage Support Agreement for the Employment of Apprentice Bricklayers provides for the VBBTF to pay a subsidy to group training companies at a rate of up to \$3,600 per annum for a first year apprentice, up to \$2,520 per annum for a second year apprentice and up to \$1,800 per annum for a third year apprentice. The subsidy is administered by the group training company and applied directly to the host employer.
 - 3.29 Under the agreement the group training company has the responsibility to pass on the GST on the subsidy amounts to the Australian Tax Office.
 - 3.30 The subsidy only applies to apprentices who have not been directly employed by a bricklayer in the six months prior to commencement with a group training company and the subsidy is only payable by the VBBTF for the time that the apprentice spends with the host employer.
 - 3.31 If the apprentice fails to complete the relevant training, the subsidy is terminated on the apprentices last working day.
 - 3.32 Pursuant to the agreement, the VBBTF reimburses the group training company for the subsidy costs monthly, within seven days after the VBBTF receives the claim.
 - 3.33 Under the wage support agreement the group training company must:
 - ensure that the apprentice bricklayer is enrolled in an approved bricklayer training program at a TAFE college and in accordance with the relevant legislation;

- conduct an onsite visit of each apprentice in the first two weeks of employment and then at least every six weeks;
- employ the apprentice in accordance with the pay and conditions specified in the National Building and Construction Industry Award 2000 and any other relevant industrial agreements;
- promote bricklaying as a career and actively seek new apprentices; and
- make apprentice bricklayer files and records available to the VBBTF, at its request, to support subsidy claims.

3.34 Further, the wage support agreement provides that the VBBTF, in conjunction with Group Training Australia Victoria Inc, will conduct regular forums to review the progress of the group training companies used by the VBBTF and to develop projections for future training potential.

How has authorisation A90738 worked in practice?

3.35 The authorised arrangement was in effect the imposition of a levy per thousand bricks and per square metre of concrete masonry products sold. As outlined above, the levies have been in place since 1 July 2003 with \$1.00 collected from the market (brick purchasers) and \$1.00 contributed by the manufacturing member companies, for every 1000 bricks sold and 5 cents collected from the market (concrete masonry product purchasers) and 5 cents contributed by manufacturing member companies, for every square metre of concrete masonry product sold.

3.36 The VBBTF submits that as of August 2004 there were approximately 600 bricklayer apprentice employed by through both group training schemes and employed directly by bricklayers. The following table demonstrates the increase in bricklayer apprentice numbers since the introduction of the levies on 1 July 2003.

	August 2004	June 2003	Growth
Apprentices employed through group training schemes	94	44	50
Apprentices employed directly by bricklayers	506	482	26
Total apprentices	600	526	76

3.37 The applicants submit that the VBBTF strategy to increase bricklayer numbers relies on the supported employment of apprentices through group training schemes, and consider that the results to date have seen the employment through group schemes being the primary factor in influencing overall growth in apprentice numbers.

- 3.38 The applicants consider that the strategy to direct funds towards group training schemes is seen to be the most effective way of not only increasing numbers but ensuring that apprentices are provided with appropriate pay and conditions, have their development and working relationships monitored by field officer site visits and ensure they attend regular TAFE training. The applicants submit that wages support for the employment of the current 94 apprentices is channelled through 15 group training schemes which minimises the VBBTF's administration costs and improves the relationship and growth potential of the scheme.
- 3.39 The applicants submit that there has been wide industry and market support for the levy based scheme and there have been no reports of non-payment of the levies.
- 3.40 The applicants note that all bricklayers are not required to pay the levy as a majority of bricks and blocks are purchased by builders. In the housing market, the levy is generally paid by builders who purchase bricks and separately engage bricklayers on contract. In the commercial market, bricks and blocks are generally purchased by bricklayers who quote work for commercial builders on a supply and lay basis.
- 3.41 In support of the scheme, the VBBTF and CBPAV submit that manufacturing members have signed an agreement to collect the levy, make a matching contribution and to commit to the apprenticeship scheme.
- 3.42 It was originally estimated that the levy would raise between \$0.45 million and \$1.6 million per annum. Similarly, it was estimated that the levy would raise \$262,105 in the July to October 2003 period and \$780,000 in the 2003/04 financial year.
- 3.43 During the financial year 2003/2004, the amount of \$752,796 was raised by the VBBTF on the basis on a levy on bricks and block sales of \$376, 398 and a matching contribution from brick and block manufacturers of \$376,398.
- 3.44 The VBBTF informs the Commission that in 2000, it was the CBPAV's intention to incorporate their own group training company to administer the placement of apprentices with host employers. However in practice, the VBBTF has used the services of existing group training companies to place apprentices.
- 3.45 The VBBTF and CBPAV state that since the introduction of the levy on 1 July 2003, there has been an increase in apprentice bricklayer numbers through group training companies due to the wages support that the VBBTF provides to host employers. The applicants state that in the first five months of operation apprentice training numbers increased by 14, as a result of the scheme. In addition, the applicants claim that in the 14 months to August 2004, the number of supported apprentices through group training schemes has grown by 50 (i.e from 44 to 94)²³. As stated earlier in this draft determination, the

²³ The VBBTF submit that this growth is net of departures of apprentices not continuing or completing their apprenticeships.

VBBTF has also allocated funds in its budget for the next two years to support the Bricklayer Training Centre at the Holmesglen TAFE. The VBBTF states that this support will enable the training centre to promote, train and service the special needs of the bricklaying trade.

- 3.46 In addition, the applicants state that there has been greater interest in pre-apprenticeship courses in bricklaying following VBBTF information and promotion nights throughout Victoria.

Strategies implemented by the VBBTF

- 3.47 Since its establishment, the VBBTF has implemented the following strategies in an attempt to alleviate bricklayer shortages:

- promoting bricklaying as a trade and career choice to young people in schools;
- supporting and encouraging greater numbers and quality of people in pre-apprenticeship training courses (including the \$400 incentive scheme, outlined above);
- aiming to achieve better monitoring, training and control of apprentices by subsidising the Group Training Company rates to host employers (a wages support to host employers currently operates);
- providing boots and overalls to students attending a VCAL course which includes the equivalent of first year apprenticeship in bricklaying.
- funding taster programs for secondary school students for a 40 hour bricklaying experience at TAFE;
- supporting the employment of apprentice bricklayers under builders group schemes by subsidising rates to their host contractors²⁴; and
- supporting quality bricklayer training by being involved in a proposal for an expanded Bricklayer Training Centre at Holmesglen TAFE (plans are currently in place for such expansion).

²⁴ The VBBTF informs the Commission that in the financial year 2003/2004 the VBBTF has subsidised the employment cost of apprentice bricklayers to host employers by \$179,306. The subsidy for the two months to August 2004 was \$48,502.

4. APPLICATION FOR REVOCATION AND SUBSTITUTION

- 4.1 On 4 December 2003, the VBBTF and the CBPAV applied to the Commission for the revocation and substitution of authorisation A90738 with an agreement in similar terms to A90738.
- 4.2 The proposed substitute authorisation (A90887) is identical to A90738, except with regard to the levy amount charged on clay bricks, which the VBBTF and CBPAV propose to increase from \$1.00 per thousand bricks sold, to \$2.00 per thousand bricks sold. The proposed levy arrangements will also increase the levy applicable to the sale of concrete masonry products from 5 cents to 10 cents per square metre.
- 4.3 Consistent with the current arrangements, it is proposed that the \$2.00/10c levy will be paid for by consumers in the price of clay bricks and concrete masonry products sold in Victoria. In addition, it is envisaged that this levy will be matched by relevant VBBTF and CBPAV members, as voluntary industry contributions.
- 4.4 Authorisation A90738 was due to expire on 3 January 2004. Therefore the CBPAV and VBBTF also sought interim authorisation for the proposed substitute arrangements.
- 4.5 On 10 December 2003, the Commission granted interim authorisation to the VBBTF and CBPAV for the proposed substitute arrangements.
- 4.6 On 21 April 2004, the Commission issued a draft determination proposing to grant the revocation of A90738 and its substitution with A90887 for a period of three years from the date of the final determination. The Commission sought further submissions from interested parties and, in accordance with the requirements of section 90A of the Act, provided interested parties with the opportunity to request a pre-decision conference.
- 4.7 On 5 May 2004, the applicant amended its application for authorisation in the following manner:
- the proposed levy arrangements will not only increase the levy on the sale of clay bricks from \$1.00 per thousand to \$2.00 per thousand but also increase the equivalent levy applicable to the sale of concrete masonry products from 5 cents to 10 cents per square metre; and
 - the levy will not apply to pavers, landscape products and special shapes. These exclusions apply to the current levy.
- 4.8 Two submissions were received from interested parties in respect of the draft determination and amended application. One submission expressed support for the proposed levy arrangements. Another submission raised concerns in respect of the levy arrangements.

5. SUBMISSIONS RECEIVED PRIOR TO THE DRAFT DETERMINATION

- 5.1 The VBBTF and the CBPAV provided a joint supporting submission with their application for revocation and substitution. The CBPAV also provided an additional submission to the Commission.
- 5.2 The Commission sought submissions from a wide range of interested parties, including industry groups, consumer groups, brick and masonry block manufacturers, relevant government departments and other interested industry participants. It received submissions from the following interested parties:
- Housing Industry Association Ltd – Victorian Region
 - Daniel Robertson Australia Pty Ltd
 - Department of Education, Science and Training
 - Master Builders Association of Victoria
- 5.3 Copies of all submissions were placed on the Commission’s public register.

Submission from the Applicants

Claimed public benefits

- 5.4 In their supporting submission, the VBBTF and CBPAV submit that their continued promotion of the bricklaying trade and support for training and employment will bring greater numbers of people into bricklaying training to help address the critical shortage in the trade.
- 5.5 The applicants state that there will be several public benefits that will flow from an increase in bricklayer numbers, including:
- an alleviation of the skills shortage in Victoria’s bricklaying trade;
 - an alleviation of the critical increases in the cost of hiring bricklayers;
and
 - a reduction in construction completion times due to alleviation of bricklayer shortages.
- 5.6 The applicants submit that an increase in the relevant levy will enable ongoing funding for the above strategy when sales volumes are lower in a possible downturn in the housing market.
- 5.7 Similarly, the applicants argue that an increase in the levy will better enable the VBBTF to implement a recently approved pilot course in bricklaying for year 11 students, resulting in the above public benefits.

- 5.8 In summary, the applicants consider that their ongoing promotion to raise the image and profile of bricklaying throughout Victorian together with support for taster programs, pre-apprenticeship training and mature age apprentices is providing all bricklayers with excellent prospects to employ greater numbers of better quality young people as apprentices. The applicants submit that all bricklayers also have the option to engage apprentices through group schemes at subsidised rates.

Anti-competitive detriment

- 5.9 The VBBTF and CBPAV do not raise the issue of anti-competitive detriment in their supporting submission.

Additional submission from the Clay Brick and Paver Association of Victoria

- 5.10 In its additional submission, the CBPAV further emphasised the need to increase apprentice bricklayer numbers in Victoria and that an increase in the levy arrangements is a viable avenue by which to reach this outcome.
- 5.11 The CBPAV stated that the current training programme run by the VBBTF has resulted in an increase in apprentice numbers and that these numbers will continue to improve.
- 5.12 The CBPAV further noted that it was not aware of any detriment arising to competition and/or the public as a result of the levy arrangements. The CBPAV also commented on the positive response by the building and construction industry to the arrangements currently in place.

Submissions from Interested Parties

Housing Industry Association Ltd –Victorian Region

- 5.13 The Housing Industry Association Ltd – Victorian Region (HIA), agrees with the submission provided by the applicants. The HIA concurs with the applicants' claimed public benefits and commends the training programme as a direct means of arresting the market deficiency, resulting from a severe shortage of skilled bricklayers in Victoria.
- 5.14 The HIA is of the view that the public benefits have already begun to flow from the existing levy arrangements.
- 5.15 In addition, the HIA states that the proposed arrangements will assist to improve the quality of work performed in the bricklaying industry, which in turn will assist affordability and quality of homes.
- 5.16 The HIA argues that there will be no detriment to competition flowing from the proposed increase in the clay brick levy.

Daniel Robertson Australia Pty Ltd

- 5.17 Daniel Robertson Australia Pty Ltd (DRA) is a Victorian manufacturer of clay bricks, tiles and pavers. DRA agrees with the submission provided by the VBBTF and CBPAV. DRA concurs with the public benefits claimed by the applicants and emphasises the need to alleviate current skilled bricklayer shortages in the market.
- 5.18 Similarly, DRA noted that during periods of high demand for bricklayers, laying rates escalate, causing higher costs to consumers and considerable delays in construction.
- 5.19 DRA considers that there will be no detriment to consumers as a result of the proposed arrangements, as the member VBBTF and CBPAV companies supply 95% of brick and masonry blocks in the Victorian market.
- 5.20 In addition, DRA states that it can only perceive improvements to the benefits already enjoyed by the public, flowing from an increase in the levy on clay bricks.

Department of Education, Science and Training (Federal)

- 5.21 The Department of Education, Science and Training (the Department) agrees with the submission provided by the VBBTF and CBPAV and commends the arrangements as vital to the success of national initiatives aimed at addressing skills shortages for bricklayers.
- 5.22 The Department believes that it is significant that leading industry employer organisations, the HIA and Master Builders Association of Victoria (MBAV) are members of the VBBTF.
- 5.23 Similarly, it considers that the involvement of the Holmesglen TAFE is also significant because the building and construction industry has well established links with the education and training programmes provided by Holmesglen TAFE.
- 5.24 The Department confirms that it has had discussions with industry representatives and that there is wide spread industry support for the levy based training scheme.
- 5.25 The Department notes that the current initiatives have had a positive effect, with evidence of growth in bricklayer training at Holmesglen TAFE, supplemented by funding provided for the recently approved pilot, school based vocational training course in bricklaying for students completing a Year 12 qualification.
- 5.26 The Department notes that the VBBTF and CBPAV's proposal is consistent with the Department of Employment and Workplace Relation's Building and Construction Industry Task Force action plan, which was established to assist industry meet its current and emerging skill needs.

- 5.27 In addition, the Department states that group training companies will be valuable inclusions in the future, as the building and construction industry undergoes structural changes, brought about by changing needs in the market. In other words, the Department notes that there is now greater reliance on specialised skills and the use of specialist sub-contractors in the building and construction industry and it is predicted that group training companies will be able to meet these demands by placing specialist employees where they are needed and thus rotating employees per demand.
- 5.28 Further, the Department notes that the establishment of the Bricklayer Training Centre at Holmesglen TAFE is consistent with the current Skill Centre Programme which is funded and managed by the Australian National Training Authority.
- 5.29 With regard to the use of training levies to fund training schemes, the Department notes that this is a well established practice in the building and construction industry and that such schemes are generally well received.

Master Builders Association of Victoria

- 5.30 The MBAV supports the applicants' proposal to increase its current levy on clay bricks and concrete masonry products by two fold.
- 5.31 The MBA emphasised the importance of the training scheme as a means to address the shortage of skilled bricklayers in the state of Victoria. In addition, the MBA stated that the voluntary industry contributions provided by manufacturing members of VBBTF and the CBPAV demonstrates such members' continued commitment to the programme.

6. SUBMISSIONS RECEIVED IN RESPONSE TO THE DRAFT DETERMINATION AND AMENDED APPLICATION

- 6.1 The Commission sought the views of interested parties on both the draft determination and the amendment made to the application for authorisation. Two interested parties responded.

Daniel Robertson Australia Pty Ltd

- 6.2 Daniel Robertson Australia Pty Ltd (DRA) supports the proposed levy arrangements and states that it sees the arrangements as a major initiative to assist in the promotion of training young people in the art of bricklaying to ensure the future of the industry going forward. In addition, DRA submits that the arrangements will ensure that there are enough quality brick and block layers going into the system to ensure pricing will remain competitive.

Australian Master Bricklayers Association Incorporated

- 6.3 Essentially the Australian Master Bricklayers Association Incorporated (AMBA) supports the concept of the levy arrangements if the funds raised are used effectively and fairly. However it is concerned that the levy funds have been used exclusively towards group training companies and that the scheme is not fair or equitable. The main concern AMBA raises is that employers directly employing bricklayer apprentices do not have access to the funds raised by the levy because the levy funds are only directed through group training companies.
- 6.4 AMBA submits that it does not support the scheme as it currently operates because the scheme does not support the bricklaying industry as a whole. AMBA believes that any initiative to progress any area of the industry should include and provide opportunities for all bricklayers and employers of apprentices, not just the select few bricklayers employed through group training schemes.
- 6.5 AMBA states that members of the National Federation of Bricklayers & Masonry Employers Association are also unable to access funding through the levy scheme.
- 6.6 AMBA submits that the increase in training numbers has been slight and that funding of group training companies through the levy funds has not had a great impact on the increase of bricklayer numbers.
- 6.7 AMBA considers that employing an apprentice through a group training company is expensive and that in some cases the processes involved with employing an apprentice through a group training company lacks consistency for the apprentice in that, AMBA claims, there is evidence of some host employers using apprentices as labourers and thereafter being stood down as the group training company is unable to place them.

- 6.8 In addition, AMBA submits that the levy scheme will not have a great impact on the number of bricklayer apprentices unless it is applied to the whole industry, not just those bricklayer apprentices employed in the housing sector.
- 6.9 AMBA submits that it is the opinion and expressed view of its members that employing through group training companies will not lift the number of apprentices in Victoria and not lift the standards. AMBA considers that the funding must be made available to all employers of bricklayer apprentices not just a select few.

7. STATUTORY PROVISIONS

- 7.1 Under section 91C of the TPA, the Commission may grant an application to revoke an existing authorisation and grant a substitute authorisation at the request of the party to whom the authorisation has been granted, or another person on behalf of such a party.
- 7.2 In order for the Commission to grant an application to revoke an existing authorisation and grant a substitute authorisation, the Commission must consider the substitute authorisation in the same manner as the standard authorisation process.
- 7.3 This initially involves informing interested parties about the application for revocation and substitution and inviting submissions in response to it. After considering submissions the Commission prepares a draft determination. It then invites interested parties to call a pre-decision conference and/or lodge further submissions in response to this draft. Finally, the Commission issues a determination in writing either revoking the authorisation and granting a substitute authorisation or deciding not to revoke the authorisation.
- 7.4 The Commission must not make a determination revoking an authorisation and substituting another authorisation unless the Commission is satisfied that it would not be prevented under subsection 90(6) from making a determination granting the substituted authorisation, if it were a new authorisation sought under section 88.
- 7.5 Under section 90(6) of the TPA, the Commission may grant authorisation in respect of a proposed contract, arrangement or understanding that may have the purpose or effect of substantially lessening competition if it is satisfied that:
- the contract, arrangement or understanding would be likely to result in a benefit to the public; and
 - this benefit would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the contract, arrangement or understanding.

8. COMMISSION EVALUATION

This application for revocation and substitution

- 8.1 As discussed above at Section 4, the VBBTF and CBPAV have applied to the Commission for the revocation of authorisation A90738 and the granting of a substitute authorisation in similar terms, except for an increase in the levy applied to clay bricks and concrete masonry products sold in Victoria.
- 8.2 Currently the levy on clay bricks is \$1.00 per thousand bricks sold. It is proposed that this levy increase to \$2.00 per thousand bricks sold. At present the \$1.00 levy is matched by certain VBBTF and CBPAV manufacturing members, as voluntary industry contributions, and it is proposed that this will continue to be the case
- 8.3 It is proposed that the current 5 cent per square metre levy on concrete masonry blocks will increase to 10 cents per square metre.
- 8.4 It is also proposed that the levy will not apply to pavers, landscape products and special shapes. The Commission understands that these exclusions apply to the current levy.
- 8.5 Following is a discussion of the anti-competitive detriment and public benefits the Commission considers are likely to flow from the proposed levy arrangements.

Market definition

- 8.6 The first step in assessing the competitive effects and the public benefit/detriment of the conduct for which authorisation is sought is to consider the relevant market(s) in which that conduct occurs.
- 8.7 The Commission may use market analysis to identify and measure the public benefit and anti-competitive detriment resulting from arrangements for which authorisation has been sought. However, depending on the circumstances, the Commission may not need to comprehensively define the relevant markets as it may be apparent that a net public benefit will or will not arise regardless of the scope of those markets.
- 8.8 The Commission did not receive any submissions from the applicant or interested parties in relation to market definition.
- 8.9 In its consideration of this application for authorisation, the Commission considers that it is not necessary to comprehensively define the relevant markets. In this respect, it is the Commission's view that its assessment will not be overly affected by the possible variation in precise market definition.
- 8.10 In considering this application the Commission has identified three relevant areas of competition, being those associated with:

- the supply of clay bricks and concrete masonry blocks in commercial and housing construction in Victoria;
- the supply of masonry products in commercial and housing construction in Victoria; and
- the supply of bricklaying services in these sectors.

8.11 With respect to the markets for the supply of clay bricks and masonry products, arguably there is some degree of substitutability between these products. Additionally, it is arguable that these markets could be delineated into separate markets for the supply of these products in each of the housing and commercial application sectors.

8.12 With regard to the geographical boundaries of these markets the Commission considers these boundaries to be, at their broadest, state based for the following reasons:

- interstate transportation costs are not economical;²⁵ and
- it is more convenient to use local manufacturers/suppliers with regard to time and cost considerations.²⁶

8.13 With respect to the market for the supply of bricklaying services, again it could be argued that this market could be delineated into separate markets for the supply of these services in housing and commercial construction. Additionally, it could be argued that the placement of apprentice bricklayers is a sub-market to the broader market for the supply of these services.

8.14 With regard to the geographical boundaries of this market, the Commission considers these boundaries to be, at their broadest, state based for the following reasons:

- interstate transportation costs are not economical;
- it is more convenient to use a local bricklayer with regard to time and cost considerations; and
- consumers are more likely to support local bricklayers.

8.15 Again, as noted above, the Commission does not consider that its assessment of the proposed arrangements will be overly affected by possible variation in the precise definition of these markets.

²⁵ Building and Construction Working Group, n 2, p 11.

²⁶ Ibid.

Future with-and-without test

- 8.16 In order to identify and measure the public benefit and public detriment generated by the conduct for which authorisation is sought the Commission applies the ‘future with-and-without test’. This involves identifying a counterfactual, that is, making a prediction as to what will happen if authorisation is denied. The Commission will compare the public benefits and public detriment that will result in the future if revocation and substitution is granted, with the counterfactual.
- 8.17 The Commission did not receive any submissions from the applicant or interested parties on what an appropriate counterfactual would be.
- 8.18 The Commission considers that the likely counterfactual is a situation where the proposed levies do not apply and thus where the funds raised by the levies are not available to fund apprentice bricklayer training schemes in Victoria.

Effect on Competition

- 8.19 As discussed in Section 7, the Commission must assess the extent to which the proposed arrangements give rise to detriment to the public constituted by any lessening of competition that flows from the proposed arrangements.
- 8.20 Importantly, with respect to the proposed arrangements, the Commission notes that they place no restriction on the ability of VBBTF and CBPAV members to compete, beyond the common \$2.00 per 1000 bricks/10c per square metre concrete block levy charged.
- 8.21 The Commission’s view on each of the potential anti-competitive detriments flowing from the proposed arrangements is discussed below.

General increase in the cost of clay bricks and concrete blocks and a subsequent increase in the cost of building

- 8.22 As mentioned at paragraph 2.9, VBBTF and CBPAV members supply a large proportion of product sold in the relevant markets.²⁷ If VBBTF and CBPAV members impose the levies, as proposed, it is likely to result in a general increase in the cost of clay bricks and concrete blocks, across Victoria, compared to a situation where the levy was not imposed. In other words, the proposed arrangements will effectively fix an increase in the price of clay bricks sold in Victoria.
- 8.23 The Commission has accepted in the past that where proposed arrangements are likely to result in increased prices to consumers this could constitute an anti-competitive detriment. However, in this case, the Commission does not consider that the likely increase in the price of clay bricks, as a result of the proposed levies will be significant.

²⁷ 95% of clay bricks and concrete blocks.

- 8.24 The Commission notes that the impact of the levies on the cost of the average house is likely to be negligible in comparison to the total cost of building a house. Therefore, the Commission does not consider that the proposed arrangements will generate any significant anti-competitive detriment in the form of increased prices to consumers. Whether the proposed arrangements may actually reduce such prices in the long run is discussed below in respect of the public benefits the Commission considers will be generated by the proposed arrangements.

Potential for collusive anticompetitive conduct beyond that authorised

- 8.25 As noted at paragraph 8.20, the Commission does not consider that the collection of levies will hinder ordinary competitive practices. However, the Commission would be concerned if, under the guise of the arrangement, any other issues, including pricing, were collectively determined between VBBTF and CBPAV members. However, in this regard the Commission notes that there is no evidence to suggest that the levies have been or are likely to be utilised in any way contrary to that claimed in this application for authorisation.

Direction of funds towards group training schemes.

- 8.26 The Commission notes that the VBBTF strategy to increase bricklayer numbers relies on the supported employment of apprentices through group training companies. AMBA submits that the scheme would be more effective where it applied to all apprentices rather than just those employed through group training companies. The applicants consider that the strategy to direct funds towards group training schemes is the most effective way of not only increasing numbers but also ensuring that apprentices are provided with appropriate pay and conditions, have their development and working relationships monitored by field officer site visits and ensure they attend regular TAFE training. In this regard, the Commission accepts that direction of wages support for the employment of the bricklayer apprentices which is channelled through group training schemes is likely to minimise the VBBTF's administration costs and possibly improve the relationships.
- 8.27 The Commission accepts that it would have been possible for the applicants to propose the support of apprentices employed outside group training companies. The applicants have, however, for the reasons described above, chosen to propose the application of apprentice support through group training companies only. It is not a matter for the Commission to determine the preferred arrangements, but rather only to consider whether it is satisfied that the arrangements proposed are in the public interest.

Conclusion

- 8.28 For the reasons outlined above, the Commission considers the anti-competitive detriment generated by the proposed arrangements is likely to be minimal. In particular, the Commission does not consider that the proposed levy will significantly impact on the price of building a home.

Public Benefit

- 8.29 As discussed in Section 7, in order to grant authorisation the Commission must be satisfied that the proposed arrangements would result in a benefit to the public that outweighs any detriment to the public constituted by any lessening of competition arising from the arrangements.
- 8.30 The Commission considers the public is likely to benefit from the introduction of the proposed substitute arrangements on several levels.
- 8.31 The Commission considers that it is likely that the proposed arrangements will result in an increase in the numbers of skilled bricklayers in the building and construction industry. The Commission notes that the increase in training numbers as a result of the scheme to date has been slight, however, the Commission notes that it has taken considerably longer than initially anticipated for the training scheme to commence operating. Specifically, collection of levies only commenced in July 2003.
- 8.32 The Commission notes the widespread support amongst the industry for the scheme. All submissions received by the Commission supported the applicants' contention that the arrangements will contribute to alleviating the shortage of skilled bricklayers in Victoria. The Department of Education, Science and Training also noted that the scheme is consistent with the Department of Workplace Relation's Building and Construction Industry Task Force action plan, which was established to assist the industry in meeting its current and emerging skill needs.
- 8.33 Based on the available information it would therefore appear that the proposed arrangements are likely to assist in alleviating the shortage of skilled bricklayers in Victoria. In particular, the Commission notes the VBBTF's commitment to the promotion of the bricklaying trade to young people and the community as a whole, as an avenue to increase skilled bricklayer numbers.
- 8.34 The Commission accepts that the arrangements are likely to increase the number of apprentices/skilled workers.
- 8.35 The Commission considers that the VBBTF's promotion of the bricklaying industry to the community, coupled with its programme of subsidising employment costs to host employers and dealing with the administration involved in employing an apprentice bricklayer, is likely to result in an increase in bricklayers numbers beyond which would be achieved absent of the proposed arrangements.
- 8.36 The VBBTF's promotion of bricklaying as a career option is likely to encourage more people to become involved in bricklayer training and the subsidies offered to host employers, in particular small contracting teams which are generally less inclined to take on an apprentice due to the time and costs involved in doing so.
- 8.37 With respect to the proposed increase in the levy on bricks and concrete masonry products sold, the Commission again notes the support of all interested parties who provided submissions for this increase, as a means of generating the

- additional funds necessary to ensure appropriate numbers of apprentice bricklayers are provided with training opportunities to meet industry demand.
- 8.38 The Commission considers that the \$2.00/10c levy will result in a greater collection of funds by the VBBTF and CBPAV than the past scheme, which will enable the applicants to support greater numbers of apprentice bricklayers and to improve the quality and reach of their promotional work. The Commission considers that this is likely to assist in increasing the volume of apprentice bricklayers to a number more compatible with industry demand.
- 8.39 The Commission considers that the increase in the number of apprentices/skilled workers should contribute to addressing the generally accepted shortage of skilled workers in the area and therefore constitute public benefits manifested by:
- improved quality of workmanship;
 - reduced construction times; and
 - reduction in construction costs.
- 8.40 In addition, the Commission considers that the funds raised by the proposed \$2.00/10c levy will enable the VBBTF and CBPAV to better promote and market construction trades as viable career choices to the community and to schools. The likely positive effect of such promotion is a greater interest in the building and construction industry and thus further increases in apprentice bricklayer numbers. The current lack of promotion was an issue that was raised by the Building and Construction Working Group in their draft paper on skill needs in the building and construction industry.²⁸
- 8.41 Further, the Commission considers that the proposed arrangements are likely to attract and involve more companies as host employers of apprentice bricklayers. The Commission considers that the increase in funds raised from the proposed levy and the corresponding subsidies, will attract smaller construction entities to become host employers.
- 8.42 To the extent that smaller entities are more likely to become host employers under the proposed arrangements, this will increase not only the number of host employers providing training, but also the range of host employers providing training. This is likely to increase the range of training provided to apprentices and better equip them to meet the changing needs of the industry.
- 8.43 Further the Commission considers that continuing the arrangements that are currently in place in Victoria will enable those Victorian apprentices undergoing subsidised on-site training with host employers to continue training without disruption.

²⁸ Building and Construction Working Group, n 2, p 20.

Conclusion

- 8.44 Overall the Commission is satisfied that the proposed arrangements are likely to generate a public benefit. Specifically, the Commission considers that the proposed arrangements will lead to an increase in the number of apprentice bricklayers, and the breadth of training provided, which will improve the quality of workmanship across the industry and reduce construction times and costs.

Balance of public benefit and detriment

- 8.45 The Commission may only grant revocation and substitution if it is satisfied that, in all the circumstances, the proposed arrangements are likely to result in a public benefit that will outweigh any public detriment constituted by any lessening of competition.
- 8.46 At paragraph 8.28, the Commission concluded that minimal public detriment is likely to flow as a result of the arrangements. Therefore in order for the Commission to grant the substitute authorisation the public benefit likely to flow from the arrangements needs only be more than minimal. At paragraph 8.44, the Commission has concluded this is the case.
- 8.47 Specifically, the Commission has concluded that the anti-competitive detriment generated by the proposed arrangements is likely to be minimal. In particular, the Commission does not consider that the proposed levy will significantly impact on the price of building a home.
- 8.48 The Commission is satisfied that the proposed arrangements are likely to generate a public benefit. Specifically, the Commission considers that the proposed arrangements will lead to an increase in the number of apprentice bricklayers, and the breadth of training provided, which will improve the quality of workmanship across the industry and reduce construction times and costs.
- 8.49 Therefore, the Commission revokes Authorisation A90738 and grants a substitute authorisation A90887 as requested by the VBBTF and CBPAV.

Term of Authorisation

- 8.48 The Commission grants authorisation as requested by the VBBTF and CBPAV for a period of 3 years from the date the authorisation comes into force. In general, authorising arrangements for a limited time period allows the Commission, at the end of the period of authorisation, to evaluate whether the public benefits upon which its decision is made actually eventuate in practice and the appropriateness of the authorisation in the current market environment.
- 8.49 In this respect, the Commission notes that increases in the number of bricklaying apprentices have not matched the predictions made by the CBPAV in respect of its original application for authorisation. However, the significant delays in implementation of the training program mean that it is too early, at this time, to accurately assess the success or otherwise of the scheme in promoting increases in apprentice bricklayer numbers.

- 8.50 While the Commission has accepted that the proposed arrangements are likely to increase apprentice numbers, with the associated public benefits, it would be concerned if actual numbers of apprentices trained through the scheme continued to fall short of projections. If this were the case, the public benefits likely to flow from the arrangements would be reduced accordingly.
- 8.51 In this context, the Commission considers a three year authorisation appropriate so as to allow for an early review of the success of the scheme.

9. DETERMINATION – APPLICATION FOR REVOCATION AND SUBSTITUTION

The Application

- 9.1 The Australian Competition and Consumer Commission (the Commission) granted authorisation A90738 on 12 December 2000, in response to an application from the Clay and Brick Association of Victoria (CBPAV). Broadly, the Commission authorised an agreement between CBPAV members to impose two levies on such members; a \$1.00 levy per thousand clay bricks sold and a 5 cent levy per square metre of concrete masonry bricks and blocks sold in Victoria.
- 9.2 The money raised from the levies was to be used to fund an industry based training initiative for apprentice and trainee bricklayers, with the objective of alleviating critical skill shortages in the trade.
- 9.3 On 4 December 2003, the Victorian Brick and Blocklaying Training Foundation (VBBTF) lodged an application for itself and on behalf of the CBPAV, under section 91C of the *Trade Practices Act 1974* (the TPA) and the Victorian *Competition Code*, for a revocation and substitution of authorisation A90738. The substituted authorisation sought is substantially similar to the arrangements authorised in A90738, except that the applicants seek an increase in the levy to be applied; a rise from \$1.00 per thousand bricks sold, to \$2.00 per thousand bricks sold and a rise in the levy applicable to the sale of concrete masonry products from 5 cents to 10 cents per square metre.

The Statutory Test

- 9.4 For the reasons outlined in Section 8 of this determination, the Commission is satisfied that the proposed revocation and substitution of Authorisation A90738 is likely to result in public benefits that outweigh the public detriment constituted by any lessening of competition that would be likely to result from the arrangements.

Conduct for which the Commission grants authorisation

- 9.5 Accordingly, the Commission revokes Authorisation A90738 and grants a substitute authorisation A90887 under the TPA and the Competition Code for a period of three years from the date the authorisation comes into force.
- 9.6 The substitute authorisation the Commission is granting is for arrangements identical to those authorised in A90738, except for an increase to the levy on clay bricks from \$1.00 per thousand bricks sold, to \$2.00 per thousand bricks and an increase in the levy applicable to the sale of concrete masonry products from 5 cents to 10 cents per square metre sold in Victoria.
- 9.7 The authorisation is in respect of the levies and training scheme as they stand at the time authorisation is granted. As a result, any amendments to the arrangements during the term of the authorisation would need to be the subject

of an application for minor variation of the authorisation under section 91A of the TPA, or revocation and substitution of the authorisation under section 91C of the TPA.

9.8 This determination is made on 4 November 2004.

Interim Authorisation

9.9 At the time of lodging the application, the VBBTF and the CBPAV requested interim authorisation for the proposed substitute arrangements. On 10 December 2003, the Commission granted interim authorisation in respect of the proposed substitute arrangements pending Commission consideration of the application.

9.10 Interim authorisation will continue to protect the proposed arrangements until the date the Commission's final determination comes in to effect.

The effective date of the determination

9.11 This decision is subject to any application to the Australian Competition Tribunal for its review.

9.12 This determination is made on 4 November 2004. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 26 November 2004. If an application is made to the Tribunal, the determination will come into force:

- (a) when the application is not withdrawn – on the day on which the Tribunal makes a determination on the review; or
- (b) when the application is withdrawn – on the day on which the application is withdrawn.