



**Australian
Competition &
Consumer
Commission**

Ref: C2004/642 & C2004/38
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18 November 2004

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Dear

Applications for authorisation lodged by Bartter Enterprises & other Victorian chicken meat processors and the Victorian Farmers Federation on behalf of its member growers

I refer to applications for authorisation received by the Australian Competition and Consumer Commission (the ACCC) 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 two applications for authorisation lodged by the Victorian Farmers Federation on behalf of its member growers (A40093 & A90931) (the VFF applications).

Broadly, the processor applications sought 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 on a collective basis.

The VFF applications sought authorisation on behalf of its member 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 sought 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 ACCC has issued draft determinations proposing to grant authorisation to certain aspects of the proposed arrangements described in the processor and VFF applications. Copies of the draft determinations are enclosed. The draft determinations will also be available on the ACCC's website: www.accc.gov.au.



The processor applications

In relation to future contracts, the ACCC proposes to allow Bartter Enterprises Pty Ltd (Bartter) and its consenting chicken meat growers to collectively bargain future chicken growing contracts, in accordance with the Code of Conduct, and to give effect to contracts reached pursuant to those arrangements. The authorisation is proposed to be granted for a period of five years.

In relation to existing contracts, the ACCC proposes to grant authorisation, again for a period of five years, to allow Bartter and Baiada Poultry Pty Ltd to continue giving effect to existing chicken growing contracts negotiated under previously authorised collective bargaining arrangements.

The ACCC considers that in respect of the remaining aspects of the processor applications, because they do not, for the most part, have any grower support, they are unlikely to result in future collective bargaining. The ACCC therefore proposes to deny those aspects of the processor applications.

The VFF application

The ACCC proposes to grant the VFF applications to collective bargain and collectively boycott for a period of five years, subject to certain conditions.

These conditions include:

- prior to any collective boycott occurring there will be a minimum six month bargaining period followed by a 28 day mediation period, which may include a 21 day notice of intention to boycott
- all terms and conditions included in the application will be open to negotiation between the parties and will not be mandatory
- there will not be any common representation of growing groups and
- the growing of any batch of chickens held by a Victorian chicken grower at the time a boycott becomes available to them will be completed in accordance with the terms of their growing contract.

Interim authorisation, which protects the arrangements for which authorisation is sought from legal action under the *Trade Practices Act 1974* (the TPA) while the ACCC considers and evaluates the merits of the application, was granted to both the processor and VFF applications, on a limited basis, on 9 June 2004 and will remain unchanged.

Further submissions

Before the ACCC makes a final decision regarding the applications, it provides an opportunity for the applicants and interested parties to make submissions in relation to the proposed authorisations. The processes for providing submissions, both oral and written, are provided below.

In accordance with section 90A of the TPA, an interested party may notify the ACCC in writing by close of business on **2 December 2004** if that party wishes the ACCC to hold a pre-determination conference in relation to the draft determination. The TPA does not allow the ACCC to extend this deadline.

A pre-determination conference provides the opportunity for interested parties, particularly in the event they are dissatisfied with the ACCC'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 30 days after it is requested.

Submissions to the ACCC 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 ACCC 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

As is the ACCC's practice in these matters, the ACCC has written to a cross section of interested parties seeking their views on the application including government departments, industry associations and each of the five Victorian chicken meat processors. However, the list of interested parties the ACCC has consulted is not exhaustive. Of course the ACCC would be happy to receive a submission from any grower or other interested party who has not been formally consulted.

We request that submissions reach the ACCC no later than close of business on **10 December 2004**. If you have any queries or if you wish to discuss any aspect of this application further, please contact Liam Stewart on (02) 6243 1275.

Yours sincerely

Scott Gregson
Director
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the ACCC 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 ACCC 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 ACCC 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 ACCC 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 ACCC:

- (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 ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

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

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

| Name | Company | Address | Sal |
|----------------------|---------|--|-----------------------|
| Mr Paul Mannes | | 116 Mannes Lane Strathfieldsaye VIC 3551 | Mr Mannes |
| Mr Michael Shaw | | 15 Derril Rd Moorooduc VIC 3933 | Mr Shaw |
| Mr Anthony Acciarto | | 360 K Rd Werribee South VIC 3030 | Mr Acciarto |
| Mr Ron Metz | | 310 Snell Rd Nar Nar Goon VIC 3812 | Mr Metz |
| Mr Glenn Bannister | | PO Box 1290 Kangaroo Flats VIC 3555 | Mr Bannister |
| Mr Chris Jones | | Puntly Lane Shoreham VIC 3916 | Mr Jones |
| Mr & Mrs E Ormazabal | | Main Road Garfield VIC 3814 | Mr & Mrs Ormazabal |
| Mr G & Mrs S Yates | | 1110 Derrill Road Moorooduc VIC 3933 | Mr & Mrs Yates |
| K Tischler | | 99 McCurdys Rd Gheringap VIC 3331 | Sir/Madam |
| Mr Keith Leigh | | 505 Cressy Road Winchelsea VIC 3241 | Mr Leigh |
| Mr P & Mrs T Parsons | | 665 Larnach Road Pearcedale VIC 3912 | Mr & Mrs Parsons |
| Mr Joe Arrigo | | 380 K Road Werribee VIC 3030 | Mr Arrigo |

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| Mr Les Brain | | 96 Stanleys Rd Red Hill South VIC 3937 | Mr Brain |
| Mr Doug Andrews | | Gallus Park 39 McCurdy Rd Gheringhap VIC 3331 | Mr Andrews |
| Mr Max Guzelian | | 990 Ballan Rd Lovely Banks VIC 3221 | Mr Guzelian |
| Mr Bryan Hepburn | | 505 Reservoir Rd Moriac VIC 3240 | Mr Hepburn |
| Mr Robert Mace | | 213 Main Creek Rd Main Ridge VIC 3928 | Mr Mace |
| Mr & Mrs McKee | | 243 Coolart Rd Tyabb VIC 3913 | Mr & Mrs McKee |
| Mr Colin Peel | | 13 Lochgoin Mews Highton VIC 3321 | Mr Peel |
| Mr Les Peel | | 695 Derrimut Rd Hoppers Crossing VIC 3029 | Mr Peel |
| Mr Michael Sweetnam | | RMB 4000 Bittern- Dromana Rd Dromana VIC 3936 | Mr Sweetnam |
| Mr Norman Rawlings | | Main Creek Road Main Ridge VIC 3928 | Mr Rawlings |
| Mr John Scott | | 74 Barnes Road Marong VIC 3515 | Mr Scott |
| Mr Greg Hattam | | 1336 Frankston- Flinders Rd Tyabb VIC 3913 | Mr Hattam |

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| Mr Bob Vukadinovic | | 70 Godfrey La Officer VIC 3809 | Mr Vukadinovic |
| Ms Alison Waller | | Toru Farm RBM 8026 Hyslops Road Main Ridge VIC 3928 | Ms Waller |
| Mr Ray Davies | | 823 Derril Road Moorooduc VIC 3933 | Mr Davies |
| Mr Jim Papworth | | Cypress Grove 795 Anglesea Rd Freashwater Creek VIC 3216 | Mr Papworth |
| Mr Jamie Munster | | 271 Pearcedale Rd Cranbourne South VIC 3977 | Mr Munster |
| Mr Bruce Thompson | | 37 Dandenong-Hastings Rd Tyabb VIC 3913 | Mr Thompson |
| Mr Donald Grant | | PO Box 66 Inverleigh VIC 3321 | Mr Grant |
| Mr Barry Jupp | | PO Box 449MDC Cranbourne VIC 3977 | Mr Jupp |
| Jo & Ossie Femino | | PO Box 633 Pakenham VIC 3810 | Sir/Madam |
| Mr Mick Xerri | | PO Box 512 Laverton VIC 3028 | Mr Xerri |
| Mr Pedro Pegan | | 60 Mill Rd Lara VIC 3212 | Mr Pegan |

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|---|--|--|----------------|
| Mr Graeme Ford Executive Officer | Victorian Farmers Federation | Farrer House 24 – 28 Collins St Melbourne VIC 3000 | Mr Ford |
| Mr John Clarke President | Victorian Farmers Federation Chicken Meat Group | Farrer House 24 - 28 Collins St Melbourne VIC 3000 | Mr Jones |
| Ms Jenny Cleeve Senior Policy Analyst | Animal Industries Agricultural Policy Group Dept of Primary Industries | PO Box 500 East Melbourne Victoria 3002 | |
| Mr Richard McEnroe | Victorian Department of Treasury and Finance | 1 Treasury Place Melbourne VIC 3002 | Mr McEnroe |
| Ms Anna Cronin Executive Director | National Farmers Federation | PO Box E10 Kingston ACT 2604 | Ms Cronin |
| Dr Jeff Fairbrother Executive Director | Australian Poultry Industries Association | 122 Walker Street North Sydney NSW 2060 | Dr Fairbrother |
| Mr Simon Camilleri Managing Director | Baiada Poultry P/L | PO Box W484 West Tamworth NSW 2340 | Mr Camilleri |
| Mr Chris Turner General Manager | Inghams Enterprises P/L | PO Box 37 Somerville VIC 3912 | Mr Turner |
| Mr Patrick McCaffrey General Manager | Bartter Enterprises P/L | PO Box 379 Belmont VIC 3216 | Mr McCaffrey |
| Ms Vicki Gaudion Manager | Hazeldenes Chicken Farm P/L | 345 High St Kangaroo Flat VIC 3555 | Ms Gaudion |

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|---------------------------------------|---|--|----------------|
| Mr Gavin Eckersley General Manager | Farming Operations (La Ionica) P/L | 5 Lipton Drive Thomastown VIC 3074 | Mr Eckersley |
| Dr Timothy Ryan | Timothy J Ryan & Associates Pty Ltd | 11 Shirley Crt Boronia VIC 3155 | Dr Ryan |
| Ms Laura Fell Chair | Chicken Meat Committee SA Farmers Federation | PO Box 6014 Halifax St, Adelaide SA 5000 | Ms Fell |
| Mr Philip Schmidt | | Anderson Rd Echunga SA 5153 | Mr Schmidt |
| Mr Michael Crutchfield MLA | Member for South Barwon | 152 High St Belmont VIC 3216 | Mr Crutchfield |
| Mr Luke Donnellan MP | State Member for Narre Warren North | Shop 101, Endeavour Hills Shopping Centre Endeavour Hills VIC 3802 | Mr Donnellan |
| The Hon. John Brumby MP | Treasurer | C/- Victorian Department of Treasury and Finance 1 Treasury Place Melbourne VIC 3002 | Treasurer |
| The Hon. Bob Cameron MP | Minister for Agriculture | PO Box 500 East Melbourne Victoria 3002 | Minister |