

**Australian Government****Department of Employment and  
Workplace Relations****Facsimile**

GPO Box 9879 CANBERRA ACT 2601

<b>To:</b> Scott Gregson	
<b>Organisation:</b> ACCC	
<b>Fax number:</b> 02) 6243 1211	<b>Phone number:</b>

<b>From:</b> Simon Madden	
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<b>Date:</b> Monday, 18 April 2005	<b>No. pages:</b> 4

**Message**

Mr Gregson

Please see attached letter and interim DEWR submission.

Regards

Simon Madden  
Workplace Relations Policy Group**Privacy and confidentiality notice**The information contained in this facsimile message is intended only for the nominated recipient.  
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**Australian Government**

**Department of Employment and  
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Mr Scott Gregson  
A/g General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
By fax: (02) 6243 1211

**Application for authorisations A90964 and A90965 -  
CSR Building Products Ltd request for interim authorisation**

Dear Mr Gregson

I refer to your letter of 5 April 2005, inviting the Department of Employment and Workplace Relations ('the Department') to make a submission to the Australian Competition and Consumer Commission ('the Commission') in relation to the collective bargaining authorisation applications (A90964 and A90965) lodged by CSR ('the Company'), and to comment on the Company's request for interim authorisation for those arrangements.

I wish to advise you that the Department anticipates making submissions to oppose both CSR applications on public interest grounds, prior to the requested date of 29 April 2005. Please also find attached an interim Departmental submission opposing the Company's request for interim authorisation of these collective bargaining arrangements.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Pointon', with a stylized flourish at the end.

Miranda Pointon  
Assistant Secretary  
Strategic Policy Branch  
18 April 2005



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**Application for authorisations A90964 and A90965 -  
CSR Building Products Ltd request for interim authorisation**

The Department of Employment and Workplace Relations ('the Department') is aware that the Australian Competition and Consumer Commission ('the Commission') has previously granted CSR authorisation applications for collective bargaining arrangements with owner-drivers delivering pre-mixed concrete, in 1997 (A50016) and 2003 (A90808). We note, however, that the 1997 application was conditionally granted for a period of four years, with the Commission concerned about the potential for the Transport Workers Union (TWU) to become involved in negotiating standard conditions on an industry-wide basis. The Commission considered that this would increase the likely anti-competitive detriment of collective bargaining arrangements.

In the absence of sufficient information from CSR, the TWU and owner drivers the role of trade unions in respect of the proposed collective bargaining arrangements is not immediately clear. We understand, however, that the Commission is currently in the process of making inquiries in an attempt to ascertain further information regarding the arrangements, including the extent and nature of union involvement in bargaining.

The Department does not believe it would be prudent for the Commission to grant the Company's request for interim authorisations in the absence of reliable information regarding third party involvement in the negotiations.

The Minister for Employment and Workplace Relations, the Hon Kevin Andrews MP, remains concerned generally about union attempts to limit the ability of independent contractors to contract freely. The proposed Independent Contractors Act, which is currently in its public consultation phase, is planned to protect independent contractors from inappropriate workplace relations regulations and practice. However, concerns remain in relation to immunity being obtained under the *Trade Practices Act 1974* (TP Act) for contractor collective bargaining arrangements that are contrary to the public interest. The Department has, as you would be aware, previously expressed concerns to the Commission that the collective bargaining notification process recommended initially by the Dawson review (and now contained in the Trade Practices Legislation Amendment Bill 2005 that is currently before the Parliament) could result in immunity being temporarily obtained for arrangements later found by the Commission to be contrary to the public interest.

The Commission has previously stated that it is unlikely to grant interim authorisation where to do so would permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim state if the authorisation is later denied. In this context, it is worth noting evidence of the Housing Industry Association (HIA) to the 'Senate Economics References Committee (SERC) Inquiry into the effectiveness of the TP Act in protecting small business' regarding proposed collective bargaining notifications. The HIA suggested to the Inquiry that once a common rate for small contractors was negotiated with a representative large head contractor (with the arrangement immunised from Part IV of the TP Act via a single notification), the building union could then move to publicise the

arrangement as an accepted standard, and use industrial pressure to pursue a joint rate for small contractors and employees doing work of the same nature across the entire industry.

This scenario indicates how the operation of industrial and commercial realities in an industry where use of contract labour is common and unions are active and strategically focused, might see damaging industry-wide effects result from a decision of the Commission to grant immunity, even temporarily, for collective contractor bargaining arrangements involving a single large business.

In preparing any final submission on the current CSR applications, the Department will closely consider the Company's claims of public benefit, including the claimed benefits regarding the likelihood of increased industrial harmony.