

Our Ref: A90964 and A90965
Contact Officer: Cameron Martin
Contact Phone: 02 6243 1107

5 April 2005

Dear

**Application for authorisations A90964 and A90965
lodged by CSR Building Products Ltd**

The Australian Competition and Consumer Commission (the ACCC) has received two applications for authorisation (A90964 and A90965) from CSR Building Products Ltd (CSR) each seeking to allow a group of owner-drivers to collectively negotiate the terms and conditions of their contracts with CSR. The purpose of this letter is to seek your comments in relation to CSR's proposals as a potentially interested party.

By way of background, the ACCC is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act 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.

The Act, however, allows the ACCC to grant immunity from the Act for anti-competitive conduct in certain circumstances.

Authorisation is a process whereby the ACCC, in response to an application, has the power to grant immunity from court action for arrangements or conduct which might otherwise be in breach of the Act. In order to grant authorisation the ACCC must be satisfied the public benefit arising from the arrangements outweighs any anti-competitive detriment. The authorisation process is conducted in an open and transparent manner – submissions from applicants and interested parties are generally publicly available from the ACCC's website, as is further general information regarding the authorisation process (www.accc.gov.au).

Building products

In their application for authorisation A90964, CSR proposes to allow a group of lorry owner-drivers (LODs), who provide cartage services for CSR's building products (bricks, pavers, blocks, pallets, and related products), to collectively negotiate the terms and conditions of their contracts with CSR for the delivery of building products to CSR's customers. CSR submit that the proposed arrangements will include collective negotiation of:

- standard rates to be paid by CSR for delivery by the LODs;
- a formula for the progressive increases of those rates; and
- the prescribed conditions of delivery by LODs.

Quarry products

On 1 April 2004 the ACCC received a second application for authorisation (A90965) from CSR. This application proposes to allow a group of semi-tipper owner-drivers (STODs), who provide cartage services for raw materials from quarries to CSR for use in the manufacture of CSR's building products, to collectively negotiate the terms and conditions of their contracts with CSR. In relation to this application CSR submit that the proposed arrangements will include the collective negotiation of:

- standard rates to be paid by CSR for delivery;
- a formula for the progressive increases of those rates;
- prescribed conditions of delivery by the STODs; and
- a provision for review of rates based on productivity

Copies of CSR's applications are attached for your information.

Request for submissions

To assist the ACCC in assessing these applications you are invited to provide comments in relation to the applications, in particular your view is sought as to the likely benefits to the public and the potential effect on competition of the proposed arrangements.

In this respect I note that CSR has submitted that a number of public benefits are likely to flow from the proposed arrangements, including:

1. the likelihood of a reduction in the occurrence of industrial stoppages due to increased industrial harmony resulting from collective negotiations;
2. collective negotiations may provide an outcome that is fair to the individual owner-drivers, owner-drivers in general and to CSR;
3. the standardisation of CSR's contracts with owner-drivers may to promote efficiencies within CSR which may result in them becoming more competitive in the market for building supplies; and
4. transaction cost savings for both CSR and the owner-drivers.

If you intend to provide a submission in relation to either of CSR's applications for authorisation, I would be grateful if you could do so by **29 April 2005**.

Interim authorisation

CSR has requested that the ACCC grant 'interim' authorisation to both of these applications. In particular CSR has sought interim authorisation to allow it:

1. to collectively negotiate with the owner-drivers regarding the terms of any collective agreement;

2. to reach agreement with the owner-drivers; and
3. to give effect to that agreement.

In simple terms, interim authorisation allows parties to engage in the proposed conduct while the ACCC considers the substantive merits of the application. The ACCC 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 authorisation is later denied, unless there are special circumstances.

The ACCC is also seeking comments from interested parties regarding CSR's request for interim authorisation. I note that ACCC generally seeks to complete its assessment of an application for interim authorisation within one month of receiving the application. With this in mind, should you plan to make comment on the application for interim authorisation, I would appreciate if you could do so by **14 April 2005**.

General information

The ACCC asks for submissions to be in writing so that they can be made publicly available. Submissions are placed on a public register and may also be placed on the ACCC's website. The ACCC may, where appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the ACCC you may request that information included in the submission be treated as confidential and not placed on the public register or the ACCC's website. The ACCC may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are attached for your information ([attachment A](#))

Should you wish to lodge a submission, please address it to:

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

Submissions can also be lodged by email to adjudication@accc.gov.au, or by facsimile on 02 6243 1211.

Should you have any queries or if you wish to discuss any aspect of this matter please do not hesitate to contact Cameron Martin on 02 6243 1107.

Yours sincerely

Scott Gregson
A/g General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

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

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

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

- (i) secret formulae or process;
- (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.

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

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

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

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

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

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

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

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the Act.

Name	Title	Address
1.	General Manager	James Hardie Building Products
2.	General Manager	Local Government Association of Queensland
3. Mr Bruce Wilson	Director-General	Queensland Transport
4. Mr Hughie Williams	Branch Secretary	Transport Workers Union
5. Mr Peter Henneken	Director-General	Department of Industrial Relations Queensland
6.	General Manager	Boral Ltd
7. B Petersen		6 Watson Street
8. BA & PM Brown		3 Bomby Court
9. BV & DJ Teske		8 Berkey Court
10.	Manager	Burstion Holdings Pty Ltd
11. J Mitchell		118/120 A Summervilles Road
12. JD & SA Aheam		31 Mooralla Street
13. M & L Aheam		29 Marawa Drive
14. A McEwen		29 Freeth Street
15.		Mycorp Australia Pty Ltd
16. N G Nielson		

17.	P King		
18.	S Runge		
19.	TR & DJ Allison		
20.	Dr Peter Boxall	Secretary	Department of Employment and Workplace Relations
21.	Mr Michael Taylor	Secretary	Department of Transport and Regional Services
22.	Mr Derek Pingel	President	Queensland Master Builders Association
23.	Mr Rick Wiley	Executive Director	Housing Industry Association (Qld)
24.	Louis Sultan	General Manager, Building General Manager	AV Jennings Architects Australia Pty Ltd
25.			
26.	Ms Paula Whitman	President	Royal Australian Institute of Architects (Queensland)
27.		General Manager	Hanson Construction Materials Pty Ltd
28.	Matthew Johnson		Bristle Roofing
29.	Mr Len Buckeridge	Executive Chairperson General Manager	BGC (Australia) Pty Ltd Ritek-Building Solutions Pty Ltd
30.			
31.	Mr Guy Gibson	General Manager, Queensland and Northern Territory	Delfin Lend Lease
32.	Mr D Devine	Managing Director	Devine Limited
33.		General Manager	Brickworks Ltd

34. Mr Russell Brandon	Executive Director	Building Designers Association of Queensland
35. Mr Kevin Bryer		Kevin A Bryer Nominees Pty Ltd
36. Mr Keith Messenger		Messenger Contracting
37. Mr Kenneth Pocock		Flyteline Pty Ltd
38. Mr Grahame Rigby		Rigby Transport
39. Mr Paul Clarke		Sandax Pty Ltd
40. Mr Aldo Fillaggi		Torp (No 22) Pty Ltd
41. Mr David French		French Transport Services Pty Ltd
42. Mr Lyal Daniell		Cordeaux Nominees Pty Ltd
43. Mr Sam Zerafa		Rathyes Pty Ltd