



**Australian
Competition &
Consumer
Commission**

Our Ref: C2005/524
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20 April 2005

Mr Dennis Martin
Snedden Hall & Gallop
4th Floor
11 London Circuit
GPO Box 794
Canberra City ACT 2601

Dear Mr Martin

Application for authorisation A90963 lodged by AgSafe Ltd – request for interim authorisation

I refer to the application for revocation of authorisation A90781 and replacement by substitute authorisation A90963 lodged with the Australian Competition and Consumer Commission (the ACCC) by AgSafe on 18 March 2005.

You would recall that, as part of this application, AgSafe requested that the ACCC grant interim authorisation to the substitute arrangements. If granted interim authorisation would allow AgSafe to give effect to the substitute arrangements while the ACCC considered the merits of the substantive application.

I wish to advise that the ACCC has now considered this request and has decided to postpone a decision on interim authorisation until such time as it issues a draft determination in respect of the application for substitute authorisation.

I note that the ACCC has previously stated that, in exercising its discretion to grant interim authorisation, it will not usually grant interim authorisation where the effect of allowing the proposed conduct to occur would prevent the market from being able to return to its pre-interim authorisation state if it were to later deny authorisation.

In assessing AgSafe's request for interim authorisation the ACCC considered that it was not satisfied that it would be appropriate to grant interim authorisation under section 91, where



such interim authorisation would allow funds accumulated for an authorised purpose to be applied to a purpose that had not been fully considered by the ACCC.

More generally it was considered the request failed to suitably demonstrate that the urgency of the occasion justified a grant of immunity without an assessment of the merits of the arrangement. The ACCC was also concerned that the information provided in the supporting submission was not sufficient to allow it to make a preliminary assessment of the matter.

In light of these considerations the ACCC concluded that the request failed to suitably demonstrate that a grant of interim authorisation was appropriate at this time.

Please note, the ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the ACCC.

Furthermore, as noted above, while it has decided to postpone this decision at this time, the ACCC will reconsider this request at such time as it issues its draft determination in respect of the substitute arrangements.

Request for further information

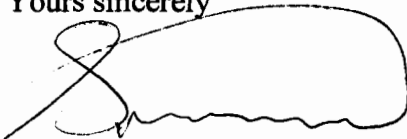
As noted above, the ACCC requires further information to assist in its consideration of AgSafe's application. In particular the ACCC seeks:

1. a comparative analysis of those chemicals currently attracting the ChemClear levy and those chemicals currently attracting the *drumMUSTER* levy;
2. details as to whether the *drumMUSTER* levy is charged on any chemicals that would not be eligible for collection under the ChemClear program;
3. an estimate of the amount of funds the drumMUSTER levy is expected to raise in a given year; and
4. the estimated annual cost of operating the two programs.

It would be appreciated if your response to these queries could be provided by **Friday 6 May 2005**.

A copy of this letter has been placed on the ACCC's public register. 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