



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2005/405
Contact Officer: Michael Green
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27 April 2005

Mr Michael Whillas
South Australian Oyster Growers Association Inc.
C/- DMAW Lawyers
Level 3, 80 King William Street
Adelaide SA 5000

Dear Mr Whillas

**Re: South Australian Oyster Growers Association Inc. applications for authorisation
A60024 and A60025 - request for interim authorisation**

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the applications for authorisation lodged by the South Australian Oyster Growers Association (SAOGA) on 25 February 2005 and 11 March 2005 respectively and amended on 5 April 2005.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Trade Practices Act 1974* (the TPA) while the ACCC considers and evaluates the merits of the application.

Summary of considerations

The ACCC has considered the request for interim authorisation and has decided to grant interim authorisation until it issues a determination in this matter (unless circumstances warrant revocation or amendment of the interim authorisation at an earlier stage).

In assessing the request for interim authorisation the ACCC considered that there is likely to be little, if any, public detriment in allowing the arrangements to proceed in the short term given that it is likely to have the effect of maintaining the status quo.

Please be advised that 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.

The ACCC notes that interim authorisation was sought to apply retrospectively, from 7 September 2004, being the date that a previous authorisation in respect of similar



arrangements (A60023) expired. As Gavin Jones and Michael Green of this office advised Anna Bailie of DMAW Lawyers, representing SAOGA, on 3 March 2005, the ACCC is not able to grant interim authorisation retrospectively. The interim authorisation granted by the ACCC affords immunity to the arrangements the subject of the application only from 27 April 2005.

Any conduct engaged in by the relevant parties between 7 September 2004 and 27 April 2005 would be subject to the provisions of the TPA. In this respect the ACCC is concerned that it appears that SAOGA continued to engage in conduct which may raise concerns under the TPA without authorisation.

Next steps

For your information, the next step in the process is for the ACCC to release a draft determination which will take account of any submissions from SAOGA and interested parties and will indicate the ACCC's preliminary views on the merits of the application. The ACCC will provide both SAOGA and interested parties with the opportunity to provide a further submission on the draft determination before the ACCC issues its final decision.

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 Michael Green on 03 9290 1960.

Yours sincerely



Gavin Jones
A/g Director
Adjudication Branch