



Our Ref: GSD 50031
 Your Ref:
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10 March 2005

Australian Competition and Consumer Commission
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Dear Sirs

**South Australian Oyster Growers Association Inc
 Application for Authorisation A60024**

1. We refer to our telephone discussion with Gavin Jones on 3 March 2005.
2. Mr Jones requested the names and contact details of the members of the above Association. We provide these below, along with details of the members of the South Australian Oyster Research Council (**SAORC**). It may be helpful for the ACCC to speak with the SAORC members, who are familiar with the application and will be able to provide information regarding the objects of SAORC and its current and proposed projects.

| SAORC Members | Contact |
|--|----------------|
| Gary Zippel – Chair | |
| Theo Eleftheriou – Treasurer | |
| Paul Dee | |
| SAOGA Members | Contact |
| Michael Whillas – President | |
| Steven Pope – Treasurer | |
| Mark Sexton – Far West/Smoky | |
| Theo Eleftheriou – Far West/Denial | |
| Noel Box – Mid West/Streaky Bay | |
| Vicki Bleasing – Lower Eyre/Coffin Bay | |

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| Sonya Ivey - Yorke Peninsula | |
| Paul Dee - Stansbury | |
| Mark Jarvis - Eastern Eyre/Cowell | |
| Phil Page - Kangaroo Island | |

3. Mr Jones raised the issue whether the arrangement has a price fixing element, so as to require a separate application for authorisation. As we understand it, the ACCC has not formed a view about whether the arrangement would breach the price fixing provisions, but suggested our client apply for authorisation as a precaution.
4. We do not consider that the arrangement amounts to fixing, maintaining or controlling the price of oyster spat within the meaning of sections 45 and 45A. We note:
 - 4.1 the hatcheries compete with each other in relation to the price of oyster spat - price competition is not precluded by the proposed levy, which applies equally to all hatcheries;
 - 4.2 a levy of \$1 per 1000 spat is minor when compared with the average price of \$17 per 1000 spat;
 - 4.3 In addition, the levy may be off-set by a reduction in oyster farming costs as a result of research and development undertaken by SAORC;
 - 4.4 the hatcheries do not profit from the levy, which is paid to SAORC;
 - 4.5 in any event, the oyster growers can choose to seek a refund of the levy at the end of the financial year.
5. Notwithstanding this, our client does not wish to run the risk of this being raised by the ACCC in the future and have to bear the costs of dealing with any investigation which may ensue. Accordingly we propose to lodge an application for authorisation. We confirm that the concessional fee of \$1,500 will apply provided the application is lodged by Friday 11 March 2005.
6. We would be grateful if you would consider the above matters and advise us immediately if the ACCC considers there is no price fixing issue. If we receive such confirmation by Friday 11 March, this will save our client from incurring unnecessary expenses.

Yours faithfully
DMAW Lawyers


for Glenn Davis

Copy to: Gavin Jones, ACCC
By facsimile: 03 9663 3699