



**Australian
Competition &
Consumer
Commission**

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

Our Ref: C2005/524
Contact Officer: Cameron Martin
Contact Phone: 02 6243 1107

6 July 2005

Mr Dennis Martin
Snedden Hall & Gallop
GPO Box 794
Canberra ACT 2601

Dear Mr Martin

**Application for revocation of authorisation A90871 and substitution by
replacement authorisation A90963 lodged by Agsafe Ltd**

I refer to the abovementioned application for revocation of authorisation A90871 and its substitution by authorisation A90963 received by the Australian Competition and Consumer Commission (the ACCC) on 18 March 2005.

As you are aware, authorisation A90871 was granted to Agsafe in 2003 and relate to the collection and recycling of empty agricultural and veterinary chemical containers, funded by an industry levy (currently \$0.04 per litre/kilogram). This arrangement is more commonly known as the drumMUSTER program.

Under the proposed substitute authorisation, Agsafe seeks to establish an Industry Waste Reduction Scheme (IWRS), funded by the existing drumMUSTER levy arrangements. The IWRS will involve the amalgamation of Agsafe's drumMUSTER program with its ChemClear program, which is a national scheme for the collection, transport, storage and disposal of unwanted chemical waste.

The ACCC has issued a draft determination proposing to grant authorisation to the arrangements, subject to conditions, for a period of three years. A copy of the draft determination is attached to this email and will also be available on the ACCC's website: www.accc.gov.au.



Proposed conditions

As noted in its draft determination, the ACCC is concerned that the current IWRS levy may not reflect the cost of operating the IWRS. Consequently, the ACCC proposes to grant authorisation to the proposed arrangements subject to the following conditions:

C1 Agsafe is to engage an independent auditor to:

1. assess the cost of operating the *drumMUSTER* and ChemClear programs
2. assess the level of the levy in light of these costs and other sources of funding, including existing reserve funds and
3. to make recommendations as to the appropriate level of the IWRS levy.

This assessment is to be completed no later than 30 September 2005.

C2 To the extent that the independent audit recommends that the IWRS levy should be set below its current level, Agsafe is to implement its findings no later than 31 December 2005.

Interim authorisation

The ACCC has also decided to grant interim authorisation to the proposed substitute arrangements on conditions outlined above. In simple terms, interim authorisation allows parties to engage in the proposed conduct prior to the ACCC releasing its final determination.

Further submissions

Before the ACCC makes a final decision regarding the application, it provides an opportunity for the applicants and interested parties to make submissions in relation to the proposed authorisation. The processes for providing submissions, both oral and written, are provided below.

Pre-determination conference

In accordance with section 90A of the *Trade Practices Act 1974* (TPA), an interested party may notify the ACCC in writing by close of business on **Thursday 21 July 2005** if that party wishes the ACCC to hold a pre-determination conference in relation to the draft determination. The TPA does not allow the ACCC to extend this deadline.

A pre-determination conference provides the opportunity for interested parties, particularly in the event they are dissatisfied with the ACCC's draft determination, to make oral submissions in response to the draft determination. The TPA requires that the conference be held no later than 30 days after it is requested.

Submissions

The ACCC encourages interested parties to provide written submissions commenting on its draft determination. Unless confidentiality is requested, submissions will be publicly available and placed on a public register for that purpose. If you wish to include information

in a submission which is of a confidential nature, it should be clearly marked as such and a claim for confidentiality for the material should also be submitted. You will be informed of the outcome of that claim and, if it is refused, the relevant material will be returned to you if you wish. Material for which confidentiality is granted will not be publicly available, but may be taken into account by the ACCC in making a final decision regarding the application. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, would you please address it to:

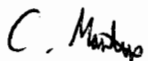
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Alternatively, submissions may be faxed to (02) 6243 1211 or emailed to adjudication@acc.gov.au

Submissions should be provided to the ACCC no later than close of business on **Wednesday 10 August 2005**.

If you have any queries or if you wish to discuss any aspect of this application further, please 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 *Trade Practices Act*.