

# **Determination**

## **Application for Minor Variation of Authorisation**

lodged by

**Agsafe Limited**

in respect of

**The authorisation of the Agsafe  
agricultural and veterinary chemicals  
accreditation program, Code of Conduct  
and sanctions process**

**Date: 3 October 2002**

<b>Authorisation no:</b>	A90680 A90681	<b>Commissioners:</b>	Fels Martin Jones Mc'Neill
<b>Public Register Number:</b>	C2000/965 C2000/966		

# 1. The Application

- 1.1 On 21 August 2002, Agsafe Limited (Agsafe) lodged an application under s 91A of the *Trade Practices Act 1974* (TPA) for a minor variation to authorisations A90680 and A90681, that were granted to Agsafe for its agricultural and veterinary chemicals accreditation program, Code of Conduct and sanction process on the 22 May 2002 (the Determination).
- 1.2 Authorisation A90680 relates to the making and giving effect to provisions of an agreement that would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of s 45 of the TPA. Authorisation A90681 relates to conduct that may constitute the practice of exclusive dealing under section 47 of the TPA. The authorisations were granted for a five-year period that came into effect on 11 July 2002.<sup>1</sup>
- 1.3 Authorisation was granted for Agsafe's accreditation scheme that requires persons and premises involved in the transport, handling and storage of agricultural and veterinary chemicals (agvet chemicals) which are hazardous substances, to be accredited. Authorisation was also granted for a Code of Conduct (the Code) which outlines the requirements for compliance with the accreditation program and for the ability to apply trading sanctions to premises that fail to meet accreditation standards.
- 1.4 The Agsafe scheme has been operating under authorisation for more than 10 years. The current authorisation, granted by the Commission on 22 May 2002, for the renewal of the existing scheme and for several changes to the scheme, included a change to the definition of the scope of agricultural and veterinary chemicals (Agvet chemicals), covered by the scheme. Agsafe claims that an unintended consequence of this change to the scheme was in the expanding of its scope, it included veterinarians and veterinary chemical wholesalers not originally intended to be covered by the scheme.
- 1.5 Agsafe has lodged this application for a minor variation to clarify the scope of the authorisations as they apply to veterinarians and veterinary chemical wholesalers.
- 1.6 Agsafe is proposing that the existing exemption criteria for veterinarians and veterinary chemical wholesalers be revised from:

The scope of accreditation does not apply to:

Products prescribed and used exclusively by veterinarians where a bonafide veterinarian/patient relationship exists (refer para 1.1.4 Australian Veterinarians Association Members' Directory and Policy Compendium) and these products in the supply chain when being wholesaled to these veterinarian practices.

---

<sup>1</sup> The Commission's determination was made on the 22 May 2002. On the 12 June 2002, the Veterinary Manufacturers and Distributors Association made an application for review of the Commission's determination to the Australian Competition Tribunal.

Where an application for review is made to the Tribunal, the determination comes into effect:

- where the application is not withdrawn - on the day on which the Tribunal makes a determination on the review; or
- where the application is withdrawn - on the day on which the application is withdrawn.

The VMDA withdrew its application for review on the 11 July 2002.

To:

The accreditation program does not cover veterinarians or veterinary chemical wholesalers where the quantity of agricultural and veterinary chemical products (as defined above) held by the veterinarian or the veterinary chemical wholesaler does not at any time exceed 500L or 500kg, and they do not hold on their premises other chemical products which are the subject of the program.

## **2. Statutory provisions**

- 2.1 Section 91A of the Act provides that on receipt of an application for a minor variation of an authorisation the Commission must, if it is satisfied that the variation sought is a minor variation, invite submissions from interested parties.
- 2.2 A minor variation in relation to an authorisation is defined (section 87D) as a single variation that does not involve a material change in the effect of the authorisation. A person may apply for two or more minor variations at the same time, and the Commission may deal with all the variations together, if it is satisfied that the combined effect of those variations, if all were granted, would not involve a material change in the effect of the authorisation.
- 2.3 After consideration of the application and any submissions received, the Commission may make a determination varying the authorisation or dismissing the application. The tests for varying an authorisation are in sub-sections 91A(4) and (5) of the Act.
- 2.4 In respect of arrangements and conduct that may substantially lessen competition, the Commission must be satisfied that the variation would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation.
- 2.5 In respect of exclusionary provisions and third line forcing exclusive dealing conduct, the Commission must be satisfied that the variation would not result, or would be likely not to result, in a reduction in the benefit to the public that arose from the original authorisation.

## **3 Submissions**

### **Agsafe's submission**

- 3.1 Agsafe noted that the change to the definition of the scope of the Agvet chemicals covered by the scheme might have an unintended effect on veterinarians and veterinary chemical wholesalers originally not intended to be covered by the scheme.
- 3.2 Agsafe contended that as the current authorisation excludes veterinarians where a bonafide relationship existed between patient and vet, the proposed minor variation has no direct impact upon the public benefits identified by the Commission in its determination. Further, Agsafe argued that veterinarians who have undergone specialised training and Veterinary Manufacturers and Distributors Association (VMDA) courses continue to be recognised by Agsafe as a low risk to contamination of exported food and fibre, and regulatory compliance, particularly where low quantities of product covered by the authorisation are stored.
- 3.3 Agsafe noted that agreement on the proposed minor variation was reached between Agsafe and VMDA on the understanding that premises covered by the exemption,

which would be storing quantities greater than minor storage limits, would adhere to all applicable regulations independently.

- 3.4 Agsafe also noted that the program does not currently focus on small-scale veterinarians and proposes that they will continue to be monitored by the VMDA, representing little variation to the current authorisation.

#### **Submissions from interested parties**

- 3.5 The Commission received submissions from the following interested parties:

- Veterinary Manufacturers and Distributors Association;
- National Registration Authority (NRA); and
- NSW Farmers Association (NFA).

- 3.6 All submissions supported the proposed minor variation.

- 3.7 However, NRA in its support for the variation suggested that as part of the monitoring of the accreditation program Agsafe should specifically seek comments from the VMDA and the relevant Veterinary Surgeons Boards (VSB) in each State and Territory confirming that the continued exemption of veterinary surgeons and veterinary wholesalers is appropriate and that any adverse events occurring in relation to inadequate storage or handling are evaluated at Agsafe's annual monitoring meeting.

- 3.8 The NFA broadly supported the variation but also suggested its own preferred wording for the variation.

#### **Agsafe's response to the submissions from interested parties**

- 3.9 The Commission consulted Agsafe on 13 September 2002, seeking its views on the submissions received from interested parties. Agsafe responded on 17 September 2002.

##### *Monitoring of the accreditation program's exception category*

- 3.10 With regard to NRA's suggestion that Agsafe specifically seek comments from VMDA and the relevant VSB in each State and Territory to confirm that the continued exemption of veterinary surgeons and veterinary wholesalers is appropriate, Agsafe stated that it currently has strong ties with the VMDA through the membership of Bill Blackhall from Virbac Australia<sup>2</sup> as the Avcare<sup>3</sup> representative on the Agsafe Council.
- 3.11 Furthermore, Agsafe stated that it had recently consulted with both NRA and VMDA about the need for extra monitoring of any adverse events in relation to inadequate storage or handling among those veterinarians and veterinary wholesalers who would be exempt from Agsafe accreditation. As a result of this consultation Agsafe proposed the following monitoring mechanisms:

---

<sup>2</sup> Virbac Australia is a joint venture company between Australian management and Virbac (SA) France. It is a specialist animal health company with its core business in sheep and cattle products, veterinary pharmaceuticals, a wide range of petcare products for dogs and cats, plus a broad range of products for horses.

<sup>3</sup> Avcare is the parent company to Agsafe Limited.

- A coordinated response mechanism to adverse incidents (similar to that currently in place within Agsafe) be approved and implemented by both organisations;
- VMDA compile and present a report to the Agsafe monitoring meeting covering a twelve month period from approval date of authorisation by the ACCC, on any adverse events within stores covered by the exemption; and
- If a significant number of incidents are reported in the review period the conditions of the exemption may need to be reviewed.

## **4. Commission's Evaluation**

- 4.1 In the Commission's Final Determination dated 22 May 2002, granting authorisations A90680 and A90681, subject to a number conditions set out in section ten of that determination, it concluded that the arrangements would be likely to result in benefit to users of Agvet chemicals and the community generally by promoting the safe use of agvet chemicals and Australia-wide uniformity in the storage of agvet chemicals.
- 4.2 The Commission accepts that an unintended consequence of the changes in the Agsafe authorisation was to extend its scope to include veterinarians and veterinary chemical wholesalers not originally intended to be covered by the scheme.
- 4.3 The Commission considers that the proposed minor variation will clarify that veterinarians and veterinary chemical wholesalers selling, storing and handling hazardous substances in quantities less than 500kg or 500L, were not intended to be, and as a result of the minor variation, will not be covered by the Agsafe program.
- 4.4 In regard to NRA's submission, the Commission notes that NRA conceded that veterinarians and veterinary chemical wholesalers are sufficiently well qualified to handle, store and dispense veterinary chemicals normally covered by the Agsafe scheme. Nevertheless, NRA believe it prudent to monitor the proposed exemption over a period of time to ensure that non-accredited compliance is working.
- 4.5 The Commission notes that Agsafe, in response to NRA's suggestion, has proposed strategies to monitor possible incidents of either poor handling or storage by those parties who are not covered by the scope of the Agsafe program.
- 4.6 The Commission is also aware that the State and Territories have legislation and Codes of Practice modelled on National Model Regulations for the Control of Workplace Hazardous Substances [NOHSC: 1005(1994)] that stipulate guidelines for safety compliance for amounts of hazardous substances below the Agsafe threshold. This includes compliance for training, storage and handling.
- 4.7 Should the monitoring of non-accredited veterinarians and veterinary chemical wholesalers who are outside the Agsafe program, find that poor controls are in place, options to ensure compliance with relevant State and Territory occupational health and safety regulations would need to be considered.
- 4.8 One such option could be the inclusion of these parties into the scope of the Agsafe program. In this case, Agsafe would have the option of applying for a variation to its authorisation to accommodate this.

- 4.9 In conclusion, the Commission is of the view that that the proposed variation will not impact on the net public benefit identified in the original authorisation. The Commission is satisfied that the proposed amendment merely clarifies the original intentions of the scheme.

## **5 Determination**

- 5.1 The Commission is satisfied that the variation to authorisations A90680 and A90681 is minor, and it does not involve a material change in the effect of the authorisations.

- 5.2 The Commission is satisfied that the variation to authorisations A90680 and A90681 which is the subject of this application would not result, or would be likely not to result, in a reduction in:

- the extent to which the benefit to the public of the authorisations outweighs any detriment to the public caused by the authorisations; or
- the benefit to the public that arose from the original authorisations.

- 5.3 The Commission therefore varies authorisations A90680 and A90681 to include the revised exclusion criteria that is the subject of this application.

- 5.4 The authorisations remain in force until 11 July 2007, five years from the day on which the determination came into effect.

- 5.5 This determination is made on 3 October 2002. If no application for a review of the determination is made to the Australian Competition Tribunal, it will come into force on 24 October 2002. If an application for review is made to the Tribunal, the determination will come into effect:

- where the application is not withdrawn – on the day on which the Tribunal makes a determination on the review; or
- where the application is withdrawn – on the day on which the application is withdrawn.