

Office: Melbourne
Our Ref: PVR:EW:67396

Home Wilkinson Lowry
LAWYERS

~~"Restriction of Publication claimed"~~ CM

5 December 2005

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Gregson

Application for Authorisation A90992 lodged by the Australian Nurserymen's Fruit Improvement Company Ltd

Further to our recent letters and telephone conversations, we provide, on a confidential basis, the further information requested in your 18 November 2005 letter. Confidentiality is requested because our client has developed the proposed activity on a confidential basis for its members. The further information could be used to the disadvantage of our client and its members. If confidentiality is not granted, kindly inform us and we will obtain our client's further instructions.

1. ANFIC Member details

Commercial Activities

Each ANFIC Member is a Fruit Tree Nursery business in their own right. The majority of the members produce in-ground deciduous fruit trees for sale to commercial orchardists. Some members grow fruit trees in containers for sale to both commercial orchardists and the retail garden trade.

The ANFIC Members are located in various strategic areas of Australia to suit the many fruit production industries in Australia eg. our only Queensland nursery produces subtropical and tropical fruit trees while the southern Australian nursery members produce deciduous fruit trees such as apples, pears and stonefruit (peach, nectarine, apricot, cherry and plum).

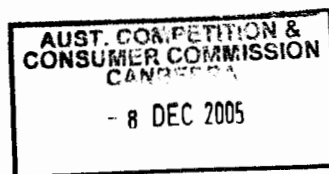
The ANFIC Members are licensed by ANFIC to produce fruit trees for sale to orchardists throughout Australia. Instructions from ANFIC, as part of the license agreement, outline the royalty collection requirements for each fruit variety managed by ANFIC in Australia and any other limitations of the sale of a new fruit variety.

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VIC 3000

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NSW 2000

Norwest
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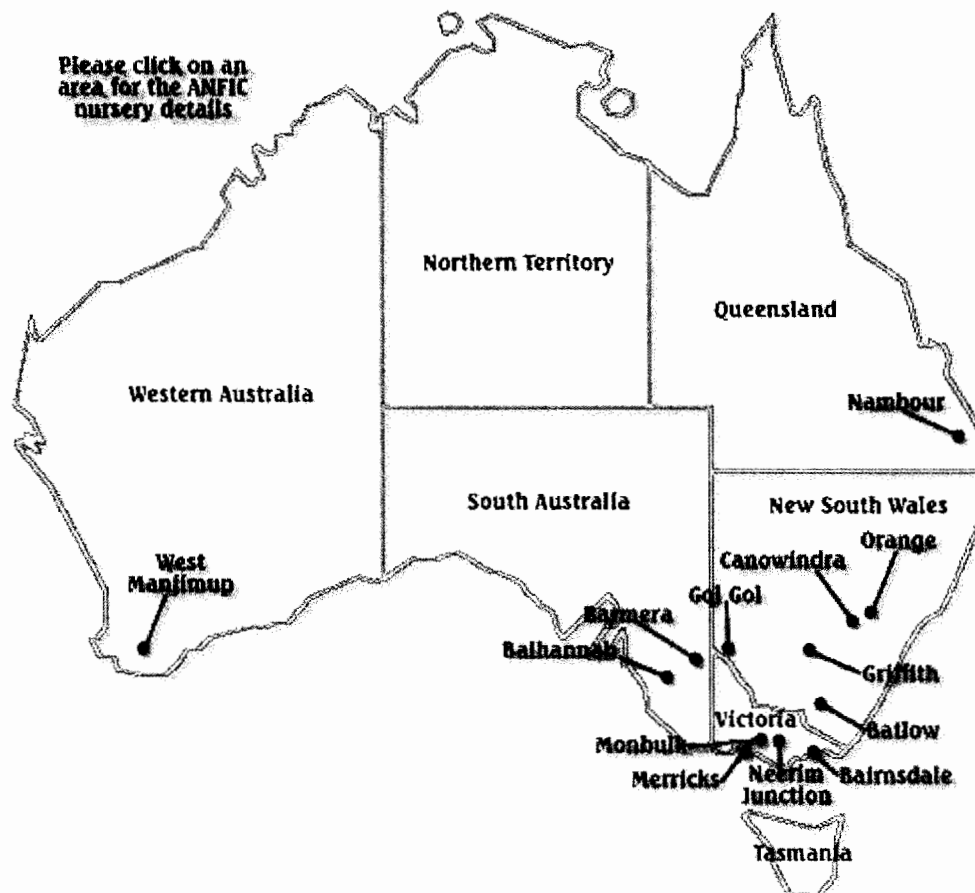
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2. Grower details

ANFIC has not commenced any preliminary discussions with any growers pertaining to this submission at this time. The new 'exceptional' fruit varieties relating to this submission are either still in Plant Quarantine or in the early stages of propagation. The ANFIC Board has been willing to wait for the ACCC decision before discussions commenced with any fruit growers and marketers.

3. Copies of Proposed Contracts with Growers

A draft version of these contracts is attached and marked "A".

4. Marketer details

ANFIC has not commenced any preliminary discussions with any marketers pertaining to this submission at this time. The new 'exceptional' fruit varieties relating to this submission are either still in Plant Quarantine or in the early stages of propagation. The ANFIC Board has been willing to wait for the ACCC decision before discussions commenced with any fruit growers and marketers.

5. Copies of Proposed Contracts with Marketers

A draft version of these contracts is attached and marked "B".

6. Details of 'Exceptional' Fruit Varieties

The detail of these 'exceptional' fruit varieties is confidential at this time. While ANFIC has an early indication of which fruit varieties may suit this Coordinated Marketing approach, until a decision is made on the ACCC submission, it is all circumspect at this time. New fruit varieties suitable for this approach will include varieties where the owner/breeder has requested a tree and production royalty and a limit on planted acreage in Australia as part of a global marketing strategy. This information is commercially sensitive and cannot be shared at this time due to existing Confidentiality Agreements in place with many owner/breeders.

7. Details of the basis for capped production/acreage

These production/acreage caps may be specified by the owner/breeder as part of the Master License with ANFIC or calculated according to the market share a new 'exceptional' fruit variety may capture. As outlined in the original submission, the projected market share of a new 'exceptional' fruit variety would not capture more than 2% of the industry production.

8. Projected annual royalty fees on a variety by variety basis and royalties for the last 3 years

As there are no 'exceptional' fruit varieties currently included in the proposed Coordinated Marketing arrangements, there have been no royalties collected during the last 3 years. Projected annual royalty fees for these new fruit varieties would nominally be based on a 4% production royalty which may equate to \$2000/ha/year. Total acreage planted to these new varieties will depend on the industry, its size, the potential market (both domestic and export) and acceptance rate of Australian growers. Every new fruit variety will be developed with its own unique 'Royalty Model' dependent on the owner/breeders requirements and the Australian Fruit Industry involved. There is no preset 'Royalty Model' that applies to every new fruit variety and industry.



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9. Authorization period

The original submission sought a 10 year period but considering the quarantine period of 3-5 years, initial establishment of plant material for propagation and planting by growers and the delay to harvest of 3-4 years, an Authorization period of 25 years related to the term for Plant Breeders Rights is requested.

10. Exclusive Dealing Conduct

Fruit growers as part of this Coordinated Marketing program will be provided with a choice of marketers/market agents/direct sellers/exporters for their fruit marketing. This choice will be limited to potentially 2 market agents in each capital city market. Coordination of fruit volumes will be required to ensure that each capital city market receives an appropriate volume of fruit for their customers. This national coordination will assist greatly the buyers for this fruit.

This coordinated direction for growers is no different to the way they currently market their fruit, although there may be a different market agent required in a particular capital city market than currently used by the fruit grower. There is no requirement to obtain any additional services from the marketers other than fruit marketing at the direction of the ANFIC Commercial Company directions. These directions may change each season as some marketers strive to improve the returns for the growers or other marketers have contracts terminated due to poor performance.

11. Interim Authorisation

While it appears that Interim Authorization will not be granted, ANFIC will not be holding any preliminary discussions with growers or marketers until such time as a decision by the ACCC is made.

In relation to the Application, we request that the following be deleted from the public register: the last third of the second-last page headed "How does a Strategic Alliance maintain a Competitive Advantage" and the Figure 3 regarding strategic options for vertical coordination. The reason for the request is that the competitors may use the information to better understand our client's position regarding the benefits of strategic alliances.

Please indicate if you want to meet with a representative of our client.

Yours faithfully
Home Wilkinson Lowry


Peter van Rompaey
Partner

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