



**Australian  
Competition &  
Consumer  
Commission**

# **Determination**

## **Application for Authorisation**

Lodged by

**Clay Brick and Paver Association of  
New South Wales**

in relation to a scheme to increase the number of trained  
bricklayers in NSW

**Date: 11 May 1999**

Authorisation No: A90676

Commissioners:  
Asher  
Bhojani  
Shogren

File No:CA98/29

## ● Summary

On 23 September 1998, the Clay Brick and Paver Association of New South Wales (Association) lodged an application for authorisation (A90676) with the Australian Competition and Consumer Commission. Authorisation was sought to make and give effect to a contract, arrangement or understanding which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Trade Practices Act.

In particular, the application relates to the Association's proposal to charge a levy on its members in order to establish a Group Training Company, which has the aim of encouraging and assisting host employers with the employment of apprentice bricklayers. The agreement between Association members is to charge a \$1.00 levy per thousand bricks sold.

On 7 April 1999, the Commission issued a draft determination proposing to grant authorisation to the proposed arrangement for a period of three years. This was distributed to a wide range of interested parties, inviting their comment. The Commission received no written submissions in relation to its draft determination.

While the Commission found that the \$1.00 levy would have the effect of increasing the price of bricks to consumers, the Commission also found that public benefit would flow from the proposed arrangements through:

- an alleviation of skill shortages in the NSW bricklaying trade, allowing for an increase in the number of skilled tradespeople capable of offering high quality work to consumers;
- an alleviation of cyclical fluctuations in the laying rates, with sharp increases in bricklaying costs during periods of high demand for scarce bricklayers;
- a reduction in the time required to complete building projects due to a more readily available supply of skilled bricklayers.

The Commission concluded that the public benefits likely to result from the arrangements will outweigh the anti-competitive detriment. As such the Commission upholds the decision made in its draft determination and grants authorisation to the application for authorisation A90676, for a period of three years commencing from 11 May 1999.

The Commission grants authorisation to the proposed arrangements for a period of three years to allow the industry to monitor the effectiveness of the scheme. The Commission considered that to grant authorisation for an indefinite period of time would not be appropriate given that a continued strong demand for bricklayers will be dependent on future economic conditions.

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# 1. Introduction

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- 1.1 On 23 September 1998, the Clay Brick and Paver Association of New South Wales (Association) lodged an application for authorisation (A90676) with the Australian Competition and Consumer Commission (the Commission). The application was made under subsection 88(1) of the Trade Practices Act 1974 (the Act) for authorisation to make and give effect to a contract, arrangement or understanding which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 1.2 The application relates to an agreement between The Austral Brick Co Pty Ltd, AJ Baker (Wingham) Pty Ltd, Bowral Brickworks Pty Ltd, Bulli Tile & Brick Co Pty Ltd, Boral Bricks (NSW) Pty Ltd, Glen Innes Brickworks, CSR Building Materials, Norwest Ltd and Willis Bricks (Wagga) Pty Ltd, to conduct an industry based training scheme, and to charge a common levy to finance the scheme.
- 1.3 Under the proposed agreement, the Association members are proposing a levy of \$1.00 per thousand bricks sold to be added to the price of bricks, and payable by all the members of the Association. This levy, together with other contributions from members, will be used to subsidise the employment of apprentice bricklayers via an industry based Group Training Company.
- 1.4 It is proposed that the levy under the agreement will be passed on to consumers.
- 1.5 The Group Training Company will be known as the Brick Industry Group Training Company Pty Ltd, and will be wholly owned and administered by the Association.
- 1.6 At present, the Association is funded by contributions from members based on a rate of per thousand bricks produced. The Association advises that these contributions are in the form of levies raised for administration, promotion and research, and are not currently passed on to consumers. It is proposed that members will continue to pay these levies to the Association.
- 1.7 In addition to the proposed levy under the agreement, the Association advises that a further contribution of \$1.00 per thousand bricks sold will also be made by the Association members, and will also not be passed on to consumers. Thus in total, the Association will receive the levies that are already in place, the proposed levy under the agreement and the proposed further contribution from members.
- 1.8 The Association currently conducts a training school through the Brick Industry Training School Pty Ltd, which offers a 10-week basic skills course for trainees. The intention of the Association is to apprentice those trainees to the Brick Industry Group Training Company, which will offer the trainees to host employers to continue their on-site training. Those that go on to complete their apprenticeship training through the Group Training Company, will become trades qualified bricklayers.

- 1.9 The levy will be used to offset the cost of employing and training the apprentices, enabling the Group Training Company to create an estimated minimum of 100 extra placements per year.
- 1.10 It is proposed that the levy under the agreement would be disclosed on all invoices as a separate item from the price charged. This will enable the Association members to continue with their normal pricing policies.
- 1.11 The scheme will be controlled by the Association through its members, however, the funds raised from the levy will be paid to an independent accountant who will then pay the Group Training Company directly.

## 2. The agreement

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- 2.1 The agreement between Association members for which authorisation is sought allows for: -
- the Association to impose on its members a levy of \$1.00 per thousand bricks sold towards establishing a Group Training Company;
  - the Group Training Company to alleviate the skill shortages in the NSW bricklaying trade, by assisting host employers with the cost of employing apprentice bricklayers;
  - the Group Training Company to administer the payment of all wages and on-costs for the apprentices;
  - the Association, through its members, to maintain control of the Group Training Company;
  - an independent accountant to hold the funds raised from the levy, and to pay the Group Training Company directly.
- 2.2 Under the proposed arrangements, a host employer will pay the Group Training Company the award pay, and the funds raised by the levy will be used by the Group Training Company to offset the extra costs of employing the apprentice. Such costs include workers compensation, annual leave and loading, sick leave, public holidays, apprentices' tool insurance, TAFE college fees, payroll tax, superannuation, MEND Rehabilitation fees and down-time caused through bad weather. Normally, employers would be required to pay the Group Training Company the above on-costs, plus the apprentice wages and administration fees.
- 2.3 Under the arrangements, while the apprentices would be contracted to the Group Training Company for the full four-year term of the indenture, the Group Training Company would contribute towards the apprentices' above mentioned on-costs. This may be either a total or a partial coverage of the total on-costs.
- 2.4 Host employers would only come from NSW, and it is not intended that interstate employers would also receive the assistance for their apprentices. Accordingly, all NSW host employers would be eligible to receive assistance under the scheme.
- 2.5 Consistent with (2.4), interstate manufacturers who supply the NSW market, and interstate based operations of NSW manufacturers, would not be required to pay the levy.
- 2.6 It is envisaged that if the agreement is authorised, on current estimates, the levy would raise in the vicinity of \$650 000-\$700 000 per annum. It is also estimated that the running costs of the Group Training Company are likely to be in the vicinity of \$360 000 per annum.

### 3. Background

#### Supply of bricklayers in NSW

- 3.1 The latest labour market forecast by the NSW Labour Economics Office, Department of Employment, Workplace Relations and Small Business (DEWRSB) confirms the Association's concerns of a current shortage of trained bricklayers in NSW.
- 3.2 The forecast states that the "supply of bricklayers from apprenticeship completions is projected to remain steady in 1998-99 before falling sharply in 1999-2000."<sup>1</sup> It also states that the projected shortage in supply of skilled bricklayers from the year 2000 may worsen for that year without a substantial decline in demand<sup>2</sup>. But although the forecast does not provide any evidence of a sharp decline in demand, it does predict that the rate of growth of demand for bricklayers should ease, especially in the residential sector<sup>3</sup>.
- 3.3 The NSW Labour Economics Office also provides a background as to the current shortage in the supply of bricklayers in NSW and in other states. It states that as a result of high levels of activity in both residential and non-residential building, coupled with a low rate of apprenticeship training in the bricklaying trade, severe shortages have developed in the trade across most sectors of the building industry while pay rates for bricklayers have risen sharply<sup>4</sup>.
- 3.4 Finally, the NSW Labour Economics Office states that an employer recruitment survey in late 1998 for bricklaying vacancies, found that only 38% of vacancies were filled within four weeks of initial advertising. The survey also cites employers' experience across the construction sectors of a difficulty in filling vacancies for bricklayers, and the high demand for qualified bricklayers causing a significant increase in the pay rates for bricklayers<sup>5</sup>.

#### Group Training Companies

- 3.5 Generally, the function of a Group Training Company, such as the one proposed by the applicant, is to employ apprentices then place them with host employers for a fee. The apprentices' wages and other costs (such as workers compensation) are also paid

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<sup>1</sup> Labour Market Rating, December 1998, p.1.

<sup>2</sup> Ibid., p. 2.

<sup>3</sup> Ibid., p. 2.

<sup>4</sup> Ibid., p. 1.

<sup>5</sup> Ibid., p. 1.

by the host employers, but are administered through the Group Training Company. The use of Group Training Companies to administer the hiring and training of apprentices and trainees, is a common practice among many employers.

- 3.6 Such arrangements allow the Group Training Company to carry out all the administrative work associated with employing staff, while allowing apprentices to work towards completing their apprenticeships, without having to find employers willing to enter into a four-year commitment. Administrative work carried out by the Group Training Company also include the payment of apprentice wages, the calculation of weekly tax deductions and the monitoring of leave entitlements.
- 3.7 The flexibility in the work experience provided by the Group Training Company towards the completion of apprenticeships, means that apprentices may be employed and trained by many employers for shorter periods of time, rather than the one employer for a period of four years. It also means that while apprentices are working with many different employers towards obtaining their qualifications, employers are gaining the benefit of employing apprentices during peak workloads.
- 3.8 There are a large number of Group Training Companies in NSW, and other states, who provide their services to employers on a competitive basis. This includes the provision of apprentices, including apprentice bricklayers, to employers who require them.



#### **4. The statutory test**

- 4.1 Application A90676 was made under subsection 88(1) of the Act, concerning arrangements that may have the effect of substantially lessening competition. The Act provides that the Commission shall only grant authorisation if the applicant satisfies the relevant test in subsection 90(7) of the Act.
- 4.2 Sub-section 90(7) provides that the Commission may only grant authorisation if it is satisfied in all the circumstances that:
- the provisions of the subject arrangements or conduct would result, or be likely to result, in a benefit to the public; and
  - the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from giving effect to the arrangements.
- 4.3 In deciding whether it should grant authorisation, the Commission must examine the anti-competitive aspects of the arrangements, the public benefits arising from the arrangements, and then weigh the two to determine which is the greater. Should the public benefits or expected public benefits outweigh the anti-competitive aspects, the Commission may grant authorisation or grant authorisation subject to conditions.

## **5. Applicant's submission**

### **Aims and objectives**

5.1 In its submission lodged in support of this application, the Association has stated that the Brick Industry Group Training Company has the following objectives: -

- to provide apprenticeships for trainees who have successfully completed a 10-week basic bricklaying course through the Brick Industry Training School Pty Ltd;
- to make those apprentices available to host employers (such as bricklaying contractors and builders);
- to provide a subsidy to host employers to cover a variety of employee costs, such as sick leave, public holidays and workers compensation;
- to assist employers with the employment of apprentice bricklayers, by making such a proposition for employers as affordable as possible;
- to aim at increasing the number of host employers through successful liaison with builders and bricklaying contractors;
- to liaise with other public and private bodies with a view to lifting the profile of bricklaying as a trade, and to seek ways to alleviate the problem of skill shortages in the trade.

### **Public benefit**

5.2 The Association claims that the proposed training scheme will benefit consumers in a number of ways, in particular:

- consumers would benefit from an increase in the number of qualified bricklayers on the market, such benefits flowing from an improvement in the quality of work provided to consumers by the fully trained bricklayers;
- consumers would benefit from the flattening of peaks and troughs in demand for bricklayers, which has the effect of raising the cost of hiring bricklayers during periods of peak demand;
- a greater availability of bricklayers, would increase the likelihood of builders completing building projects on time as a result of trained bricklayers becoming more readily available to employers.

**Anti competitive detriment**

- 5.3 The Association claims that the public detriment suffered by the passing of the levy to consumers will be minimal in relation to the overall cost of the average building project. Therefore, any anti-competitive detriment that may flow from the conduct will be outweighed by the benefits to the public.

## **6. Commission consideration**

- 6.1 The Commission's consideration of the application is in accordance with the statutory test outlined in section 4 of this determination.
- 6.2 As required by the test, it is necessary for the Commission to assess the likely public benefit and detriment, including the effects on competition, resulting from the proposed arrangements.

### **Effect on competition**

- 6.3 The Commission considers that the agreement between Association members to impose a \$1.00 levy per thousand bricks sold, on members, who hold approximately 98% of the NSW market, to have some effect on competition, and will result in increased prices to builders and consumers.
- 6.4 The Commission also considers that the limit in choice for builders and consumers who may not be prepared to pay the additional levy results from the Association members' dominance in the NSW brick market, and from the fact that the agreement to impose the additional levy does not provide a withdrawal clause, which would allow members to withdraw from the agreement if they so wished, and cause the Association's market dominance to be reduced.
- 6.5 The Commission, however, holds the view that the additional levy to be borne by consumers will be minimal. The Commission accepts the applicant's submission that the impact on the cost of the average house of 14 000 bricks, the increase in the overall cost will be in the vicinity of \$14. This represents a small increase in comparison to the total cost of building the average house, which the applicant states, may range between \$100 000 and \$200 000.
- 6.6 The Commission also notes that the \$1.00 levy is intended to apply to all Association members equally, and does not preclude price competition between the members. This continuance in price competition between Association members will be further assisted by the proposal to indicate the levy charged on the purchaser's invoice. This proposal is also likely to reduce any loss of transparency in the pricing that may result from the imposition of the levy.
- 6.7 The Commission also considers that the small increase in the price of bricks would be offset by any savings derived from reductions in the cost of hiring scarce bricklayers.
- 6.8 It should be noted, however, that the Commission would be concerned if under the guise of the proposed agreement, issues other than the raising of a levy to fund the training of bricklayers were collectively decided, with a view towards price setting or other conduct which may be in breach of the Act.
- 6.9 The Commission would also be concerned if the collection of the levy were to be administered in such a way that the claimed benefits were not likely to be achieved.

This would include the intention that the proposed levy would be utilised for the sole benefit of the Association members, or particular Association members, rather than the public. Moreover, the Commission would view unfavourably a situation whereby the training scheme was to bring about a large oversupply of bricklayers in NSW.

- 6.10 The Commission, however, considers that there is no evidence to suggest that the levy will be utilised in any way contrary to that claimed in this authorisation.

#### **Consideration of public benefit**

- 6.11 The Commission considers that the raising of a levy to implement a Group Training Company is likely to result in an increase in the number of skilled bricklayers in NSW, and may assist in overcoming the shortage in the number of bricklayers in NSW.
- 6.12 The Commission also considers that the proposed scheme may alleviate the fluctuations in the cost of hiring bricklayers, by increasing the supply of skilled bricklayers in the labour market. Such cost savings to builders may then flow on to consumers.
- 6.13 The Commission accepts that by increasing the number of apprentices that go on to complete their trade courses, the Association is likely to be in a position to alleviate the current situation, as stated by the NSW Labour Economics Office forecast, whereby the shortage in the number of qualified bricklayers may be forcing some employers into employing unqualified bricklayers<sup>6</sup>.
- 6.14 The Commission considers that an increase in the number of bricklayers who have fully completed their training, with the aid of the Association's training scheme, is also likely to improve the quality of bricklayers available to builders and consumers. That is, qualified bricklayers are likely to offer a better standard of work to consumers than non-qualified bricklayers.
- 6.15 The Commission also accepts the applicant's claim that an increase in the supply of skilled bricklayers is likely to reduce construction times from the present levels, by making qualified bricklayers more readily available to employers.

#### **Balance of public benefit and public detriment**

- 6.16 The Commission considers that although the agreement to raise a levy on Association members may result in an increase in the price of bricks supplied, one factor which is likely to limit the detrimental effect on competition is the fact that the levy is relatively small, and is likely to have only a minimal effect on the overall cost of building to consumers.

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<sup>6</sup> Labour Market Rating, December 1998, p. 2.

- 6.17 The Commission accepts that there are several public benefits arising from the proposed arrangements. In particular, the Commission considers that there is public benefit in alleviating the current skills shortage in the bricklaying trade, such a benefit deriving from the flattening of the fluctuations in the pricing of hiring bricklayers. There is also likely to be an increase in the quality of work provided by bricklayers, and a reduction in the time taken to complete building work as a result of a greater availability of skilled bricklayers.
- 6.18 On balance, after considering the submissions made by the Association, the Commission considers that the public benefits likely to result from the proposed arrangements will outweigh the anti-competitive detriment.

#### **Commission conclusion**

- 6.21 In all the circumstances, the Commission considers that an authorisation granted for a period of three years would be appropriate. This will allow the industry to establish the scheme and monitor its effects. Secondly, the Commission considers that a continued strong demand for bricklayers will be dependent on future economic conditions.
- 6.22 Following this time, should the Association members wish to retain the benefits of authorisation (ie immunity from court action under the Act) in respect of the arrangements, a fresh application for authorisation would need to be considered by the Commission.

## **7. Draft determination**

- 7.1 On 7 April 1999 the Commission issued a draft determination proposing to grant authorisation to the proposed arrangements by the Association and its members. Interested parties were invited to comment on the draft determination and were offered the opportunity to request a pre-decision conference pursuant to section 90A of the Act.
- 7.2 No submissions were received from any of the interested parties in relation to the draft determination.

## 8. Determination

8.1 For the reasons outlined in section 6 of this determination, the Commission concludes that in all the circumstances the arrangements for which the Association has sought authorisation :

- would be likely to result in a benefit to the public; and
- that benefit would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the giving effect to the arrangements.

8.2 The Commission therefore grants authorisation to the Association in respect of the arrangements the subject of application for authorisation A90676 for a period of three years from the date of this determination.

8.3 Pursuant to subsection 88(10) of the Act, the grant of authorisation will apply to persons who become parties to the agreement after the authorisation is granted.

8.4 This determination is made on 11 May 1999. If no application for a review is made to the Australian Competition Tribunal, it will come into effect on 2 June 1999. 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;
- where the application is withdrawn – on the day on which the application is withdrawn.