



Australian  
Competition &  
Consumer  
Commission

# Determination

## Application for Minor Variation of Authorisation A90993

Lodged by

**Australian Brick & Blocklaying  
Training Foundation Ltd**

*In relation to*

*The authorisation of levies on sales of clay bricks  
and concrete masonry products*

**Date: 30 August 2006**

**Commissioners:** Samuel  
Sylvan  
King  
Martin  
McNeill  
Smith  
Willet

**Authorisation no. A90993**

**Public Register no. C2006/1541**

## **1. The Application**

- 1.1 On 31 July 2006, the Australian Brick & Blocklaying Training Foundation Ltd (ABBTF) applied for a minor variation of authorisation A90993 under section 91A of the *Trade Practices Act 1974*.
- 1.2 The ABBTF administers a scheme to increase the number of bricklaying apprenticeship places and apprentices in order to overcome a shortage of skilled workers which is adversely affecting the residential construction industry. The scheme is funded from levies imposed on sales of clay bricks and concrete masonry products in accordance with the terms of Authorisation A90993.
- 1.3 The applicants for Authorisation A90993 were the ABBTF, for itself and its members, and on behalf of the Clay Brick & Paver Institute (CBPI) and the Concrete Masonry Association of Australia (CMAA), and the members of those organisations.
- 1.4 The ABBTF seeks to vary Authorisation A90993 by amending it to include the following statement:

“For the sake of clarity, this authorisation also applies to bodies corporate which are subsidiaries, within the meaning of *section 4A* of the *Trade Practices Act*, of the members of the Australian Brick and Blocklaying Training Foundation Ltd, the Clay Brick & Paver Institute and the Concrete Masonry Association of Australia, and are manufacturers of the clay brick and concrete masonry products to which the authorised levies will apply.”

## **2. Statutory Provisions**

- 2.1 Section 87ZD of the Act defines a minor variation as a single variation that does not involve a material change in the effect of the authorisation.
- 2.2 Section 91A of the Act provides that the ACCC must, if it is satisfied that the proposed variation is a minor variation, invite submissions from interested parties. After consideration of the application and any submissions received, the ACCC may make a determination varying the authorisation or dismissing the application.
- 2.3 Section 91A (4) of the Act provides that the ACCC may grant a minor variation to an authorisation granted under section 88 (1), where it is 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.

### **3. Submissions**

- 3.1 The ACCC sought submissions from interested parties on the ABBTF's application for minor variation. The TAFE Division of the Victorian Department of Education & Training, Master Builders Australia and the Department of Education, Science & Training responded to the invitation by indicating either: that they would not lodge a submission; or that they had no concerns regarding the proposed minor variation.

### **4. ACCC Evaluation**

- 4.1 The ACCC granted Authorisation A90993 on 26 April 2006, allowing the applicants to enter into arrangements with manufacturers of clay bricks and concrete masonry products for the imposition and collection of the specific, authorised levies. The ACCC considers the authorisation therefore applies to such agreements between the ABBTF and any manufacturers of clay bricks and concrete masonry products, including subsidiaries of members of the ABBTF, the CBPI and the CMAA.
- 4.2 Accordingly, the ACCC considers that the terms of the authorisation granted on 26 April 2006 are sufficiently broad to cover the subsidiary companies of members of the applicant organisations. However, the proposed minor variation will remove any doubt by making express provision for such arrangements.
- 4.3 The ACCC considers that the variation sought by the ABBTF is minor and merely removes any doubt that the authorisation extends to parties that the Commission always intended would be covered. Consequently, it would not result, or be likely to result, in a reduction in the net benefit to the public caused by Authorisation A90993.

### **5. Determination**

#### **The Application**

- 5.1 Pursuant to section 91A(4) of the Act, for the reasons outlined in Section 4 of this determination, the ACCC concludes that the minor variation would not result, or would not be likely to result, in a reduction in the extent to which the benefit to the public recognised in Authorisation A90993 outweighs any detriment to the public identified in Authorisation A90993.
- 5.2 Accordingly, pursuant to section 91A(3) of the Act, the ACCC makes a determination varying Authorisation A90993 by inserting the following text immediately after paragraph 8.10:

“For the sake of clarity, this authorisation also applies to bodies corporate which are subsidiaries, within the meaning of *section 4A* of the *Trade Practices Act*, of the members of the Australian Brick and Blocklaying Training Foundation Ltd, the Clay Brick & Paver Institute and the Concrete

Masonry Association of Australia, and are manufacturers of the clay brick and concrete masonry products to which the authorised levies will apply.”

- 5.3 This determination is made on 30 August 2006. If no application for review of this determination is made to the Australian Competition Tribunal in accordance with section 101 of the Act, this determination will come into force on 21 September 2006.
- 5.4 If an application for review is made to the Tribunal, this determination will come into force:
- a) Where the application is not withdrawn, on the day on which the Tribunal makes a determination on the review and grants an authorisation; or
  - b) Where the application for review is withdrawn, on the day on which the application is withdrawn.