



**Australian
Competition &
Consumer
Commission**

Our Ref: A91027 & A91028
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7 February 2007

Dear

**Re: Agsafe's application for revocation and substitution A91027 and A91028 –
interested party consultation**

Introduction

The Australian Competition and Consumer Commission (ACCC) has received an application for revocation and substitution lodged by Agsafe Limited (Agsafe). Agsafe is seeking revocation of its existing authorisations A90680 and A90681 and substitution of a new authorisation for its Code of Conduct.

The purpose of this letter is to seek your comments in relation to the application as a potential interested party.

Agsafe's application

Among other things, the Code of Conduct outlines the requirements for compliance with the industry accreditation program (known as the Guardian Program). The Code of Conduct provides for the imposition of trading sanctions on businesses that are not accredited under the Guardian Program. In essence this involves:

- chemical manufacturers agreeing not to supply agricultural and veterinary chemicals to distributors or retailers of chemicals who have not obtained accreditation through the Agsafe Guardian Program; and
- retailers and distributors of chemicals agreeing not to purchase agricultural and veterinary chemicals from manufacturers who have not obtained accreditation through the Agsafe Guardian Program.

Trading sanctions can be applied to both members and non-members of Agsafe and in instances where a business otherwise appears to comply with applicable legislation.

A copy of Agsafe's application for revocation and substitution and supporting submission is enclosed for your information. These documents will also be available on the ACCC's website: www.accc.gov.au (by following the Public Registers and Authorisations links).



Authorisation

By way of background, the ACCC is the Australian Government agency responsible for administering the Trade Practices Act 1974 (the TPA). A key objective of the TPA is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The TPA, however, allows the ACCC to grant immunity from the TPA for anti-competitive conduct in certain circumstances.

One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any detriment to the public including that constituted by any lessening of competition. The ACCC conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.

Request for submissions

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, arising from the Code of Conduct.

A key issue for the ACCC will be the ability for Agsafe and its members to boycott (through the imposition of trading sanctions) those businesses who have not obtained Agsafe accreditation under the Guardian Program. To assist the ACCC consider the public benefits and likely effect on competition arising from this conduct the ACCC would appreciate it if you could particularly address the questions which are outlined below:

1. Could you please briefly outline the types of agricultural and veterinary chemicals you manufacture?
2. Is your business currently accredited under the Agsafe Guardian Program?
3. If your business is not accredited through Agsafe, does this affect the ability of your business to attract buyers for your agricultural and veterinary chemicals?
4. Has your business experienced any difficulty in supplying agricultural and veterinary chemicals because of the existence of the Agsafe Guardian Program?
5. How does your business ensure that it has complied with the applicable legislative requirements? For example, does your business have internal procedures in place, are audits conducted by relevant Government agencies or does your business engage a consultant to assist with compliance?
6. Could you please advise where the main buyers of your agricultural and veterinary chemicals are located? Are you able to supply chemicals to buyers in other States or Territories?

7. Any other comments you may wish to make on the ability of Agsafe and its members to impose trading sanctions on businesses who are not accredited under the Guardian Program.

I would be grateful if you could please provide a response to the questions listed above and any other comments you may wish to make on Agsafe's Code of Conduct by **20 February 2007**.

General information

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, please address your submission to:

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

Submissions can also be lodged by email to adjudication@accc.gov.au or by facsimile on 02 6243 1211. If relevant, please provide a preferred email address for any future correspondence from the ACCC.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Danielle Staltari on 02 6243 1362.

Yours sincerely

Joanne Palisi
Director
Adjudication

Ospray Pty Ltd
Kenso Agcare
Victorian Chemicals
Spraygro Liquid Fertilizers