



**Australian
Competition &
Consumer
Commission**

Our Ref: C2007/106
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28 March 2007

Mr Sam Ponder
General Manager
Agsafe Limited
GPO Box 816
Canberra ACT 2601

Dear Mr Ponder

**Re: Agsafe's application for revocation and substitution A91027 – A91030
- draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the application for revocation and substitution lodged by Agsafe on 18 December 2006.

The substitute authorisations sought by Agsafe relate to the 6th edition of its Code of Conduct (Code of Conduct). The Code of Conduct requires persons and premises involved in the storage, handling, transport and distribution of agricultural and veterinary chemicals to be accredited through the industry accreditation program (known as the Guardian Program).

The Code of Conduct also provides for the imposition of trading sanctions on businesses that are not accredited under the Guardian Program.

A copy of the draft determination is enclosed and is available on the ACCC's website at www.accc.gov.au. A brief summary of the ACCC's reasons for its draft decision is outlined below.

Summary of ACCC considerations

The ACCC proposes to grant authorisation for a period of 18 months to those provisions of the Code of Conduct which allow Agsafe, CropLife and Animal Health Alliance members to refuse supply of agricultural and veterinary chemicals to businesses because they have not obtained accreditation from Agsafe under the Guardian Program.



The ACCC considers that the Guardian Program provides a number of benefits to the industry and end users of farm chemicals. It assists individuals to safely use agricultural and veterinary chemicals and assists businesses to comply with the legislative requirements for the use, storage and handling of such chemicals.

However, the ACCC considers that the ability of Agsafe to impose trading sanctions on non-accredited businesses results in a significant public detriment. This detriment arises from the compulsory requirement on businesses, who are otherwise legally compliant, to be accredited by Agsafe in order to trade in agricultural and veterinary chemicals.

The ACCC considers that, in the long term, the public detriments likely to result from the imposition of trading sanctions are not likely to outweigh the public benefits arising from the Code of Conduct.

The ACCC considers that the ability of Agsafe to impose trading sanctions, through the authorisation process, confers a very significant power on an industry association – a power which would ordinarily require government oversight or authority.

The ACCC acknowledges, however, that a public detriment can arise from a too sudden change in the way agricultural and veterinary chemicals are regulated.

The ACCC considers that in the short term a continuation of the status quo will provide some benefit as industry or the relevant government agencies can consider whether current arrangements are sufficient to ensure agricultural and veterinary chemicals are safely managed.

Accordingly, the ACCC proposes to grant authorisation for a transitional period of 18 months to allow Agsafe to impose trading sanctions on non-accredited businesses. However, the ACCC notes that once this transitional period expires it can see no benefit in allowing Agsafe to continue to impose trading sanctions.

The ACCC also proposes to grant authorisation to the remainder of Agsafe's Code of Conduct which includes the requirement that members of Agsafe, CropLife and Animal Health Alliance are to be accredited under the Agsafe Guardian Program for a period of 5 years.

Next steps

Once the ACCC issues a draft determination, the Applicant or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the *Trade Practices Act 1974*, the ACCC must set a date within 14 days of which any pre-decision conference must be requested. Accordingly, if you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **17 April 2007**.

Alternatively, you are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by **23 April 2007** at the following address:

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

Submissions can also be lodged by e-mail to adjudication@acc.gov.au or by facsimile on 02 6243 1211.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register in certain circumstances. Submissions which are excluded from the public register may still be taken into account by the ACCC when conducting its assessment of an authorisation application. Guidelines for seeking exclusion from the public register are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to these applications.

This letter has been placed on the ACCC's public register.

If you wish to discuss any aspect of this matter or would like a copy of the draft determination sent to you, please do not hesitate to contact Danielle Staltari on 02 6243 1362.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', written over a light blue horizontal line.

Scott Gregson
General Manager
Adjudication Branch