



Australian  
Competition &  
Consumer  
Commission

Our Ref: A91048  
Contact Officer: Sharon Clancy  
Contact Phone: (02) 6243 1217

24 April 2007

This letter, with enclosures,  
was posted to the attached  
list of interested parties

SC  
24/4/07

PO Box 1199  
Dickson ACT 2602  
470 Northbourne Ave  
Dickson ACT 2602  
Tel: (02) 6243 1111  
Fax: (02) 6243 1199  
[www.accc.gov.au](http://www.accc.gov.au)

Dear

**Victorian Potato Growers Council application for authorisation A91048 - interested party consultation**

The Australian Competition and Consumer Commission (the ACCC) is currently conducting an interested party consultation process in relation to an application for authorisation made by the Victorian Potato Growers Council (VPGC).

The purpose of this letter is to invite you, as a potentially interested party, to comment on the issues outlined in this letter and the VPGC's application.

**The VPGC's application**

The VPGC has sought authorisation in relation to an agreement between current and future members of the VPGC to collectively negotiate the terms and conditions of contracts between VPGC members (potato growers) and potato buyers, with or without the assistance of the VPGC. The VPGC has applied for authorisation for collective negotiations to take place with four specific potato buyers (Snackbrands Australia (Arnott's SnackFoods), McCain Foods, Smiths Snackfoods and Elders Limited) as well as other unidentified potato buyers in the future.

The VPGC has also applied for authorisation to allow it to participate in any dispute resolution mechanism for disputes between potato growers and buyers.

A copy of the VPGC's application for authorisation and supporting submission is enclosed for your information. These documents will also be available on the ACCC's website [www.accc.gov.au](http://www.accc.gov.au) (by the following the Public registers and Authorisations links).

**Authorisation**

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



The Act, however, allows the ACCC to grant immunity from legal action 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 on the application for authorisation**

To assist the ACCC in its consideration of the application for authorisation lodged by the VPGC it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

If you intend to provide a submission in relation to the application, I would be grateful if you could do so by close of business **16 May 2007**.

### **Interim authorisation**

The VPGC has requested interim authorisation to permit it to commence collective negotiations on behalf of its members with McCain Foods.

Interim authorisation would allow the collective negotiation with McCain Foods to commence as if it had full authorisation while the substantive application is being considered by the ACCC.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefit and detriment likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors, including harm to the applicant and other parties if interim is or is not granted, possible benefit and detriment to the public, the urgency of the matter and whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

The ACCC is interested in your views on the request for interim authorisation. Should you intend to make comment on the application for interim authorisation, I would appreciate if you could do so by close of business **9 May 2007**.

### **How to provide submissions**

From 1 January 2007, a six-month time limit now applies to the ACCC's consideration of applications for non-merger authorisations. The time limit imposes a discipline on all those involved in the authorisation process. Consultation with interested parties will take place according to an indicative timetable and the ACCC may be limited in its ability to take into account information provided outside those timeframes. An indicative timetable for the consideration of this matter is attached.

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 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.

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@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on 02 6243 1211. If relevant, please provide a preferred email address for any future correspondence from the ACCC.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of these applications at the draft and final determination stages. You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding this application. Please also inform us if you wish to be removed from the ACCC's list of interested parties for this matter.

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 Sharon Clancy on (02) 6243 1217 or me on (02) 6243 4925.

Yours sincerely

Darrell Channing  
Director  
Adjudication Branch

**VPGC application for authorisation A91048 – Indicative timetable**

<b>23 April 2007</b>	Lodgement of application and supporting submission.
<b>24 April 2007</b>	Public consultation process begins.
<b>9 May 2007</b>	Closing date for submissions on interim authorisation.
<b>May 2007</b>	ACCC decision regarding interim authorisation.
<b>16 May 2007</b>	Closing date for submissions from interested parties.
<b>May / June 2007</b>	Applicant responds to issues raised in the public consultation process.
<b>June / July 2007</b>	ACCC assessment.
<b>June / July 2007</b>	Draft determination.
<b>July / August 2007</b>	Final determination.

**List of interested parties for A91048**

Arnett's Snackfoods Limited  
Ballarat Certified Seed Potato Grower Group  
Department of Primary Industries (Victoria)  
Elders Limited  
Gippsland Certified Seed Potato Growers Group  
Kinglake Certified Seed Potato Grower Group  
McCain Foods  
McCain Grower Group  
National Farmers Federation  
Otways Certified Seed Potato Grower Group  
Portland Certified Seed Potato Grower Group  
Potato Crisping Research Group  
Potato Processing Association of Australia  
Produce & Grocery Industry Ombudsman  
Seed Potatoes Victoria  
Smiths Snackfoods  
VFF Gippsland Potato Grower Group  
Victorian Farmers Federation