

FILE No:

DOC:

MARS/PRISM:

McMAHON CLARKE LEGAL

26 July 2007

Mr Scott Gregson
Director, Adjudication
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Scott

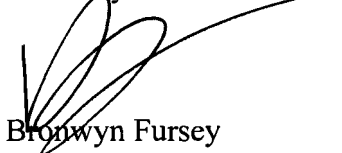
NELSON ENTERPRISES PTY LTD—NOTIFICATIONS OF COLLECTIVE BARGAINING

Further to your previous correspondence, please find attached our client's cheque in the sum of \$1,000 in payment of the application fee for the notifications of collective bargaining lodged on behalf of Nelson Enterprises Pty Ltd and others.

We confirm that the notifications are related, and therefore request you accept a single lodgement fee.

We also attach the original notification.

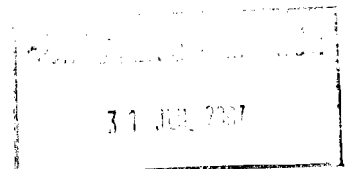
Sincerely



Bronwyn Fursey
Senior Associate
McMAHON CLARKE LEGAL

Direct line: 07 3239 2928

tmdocs1-#140299-v1-



Our ref: Bronwyn Fursey:050620 Your ref: Scott Gregson

62 Charlotte Street Brisbane GPO Box 1279 Brisbane Q 4001 T 07 3831 8999 F 07 3831 1121 www.mcmahonclarke.com
Brisbane • Sydney • Melbourne

Form GA

CB00001

Commonwealth of Australia

CB00002

Trade Practices Act 1974 — subsection 93AB (1)

NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notification is hereby given under subsection 93AB (1) of the *Trade Practices Act 1974*:

- to make, or propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2)(a) of the *Trade Practices Act 1974*; or
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2)(b) of the *Trade Practices Act 1974*.
(Strike out if not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

Section A – general information

1. Applicant

(a) **Name of the applicant:** Nelson Enterprises Pty Ltd ACN 010 085 793 as trustee for the Cavan Street Trust, Campbells Citrus Consulting Pty Ltd ACN 085 982 994, Nelson Enterprises Pty Ltd as trustee for the Michael McMahon Family Trust, and John Bernard Stephens and Sally-Anne Stephens as trustees for the J & S Stephens Family Trust (together known as Abbotsleigh), Dermark Pty Ltd ACN 010 550 393 as trustee for the Sandy Trust (Dermark) and Bayntun & Co Pty Ltd ACN 073 178 266 (Bayntun)

(b) **Description of business carried on by the applicant:**
(refer to Direction 2)

Each of Abbotsleigh, Dermark and Bayntun grow citrus fruit on separate properties and market the fruit produced.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?
(refer to Direction 3)

No.
.....
.....

- (d) Address in Australia for service of documents on the applicant:

McMahon Clarke Legal, 62 Charlotte Street, Brisbane Qld 4000
.....
.....

2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:
(refer to Direction 4)

The application is lodged on behalf of each of the applicants identified at paragraph 1(a).
.....
.....

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:
(refer to Direction 5)

Each of the applicants listed at paragraph 1(a) has signed this form on page 6.
.....
.....

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

No.
.....
.....

- (ii) details of the first-mentioned notification, including but not limited to:

- (A) the name of the applicant; and
(B) the date the notification was said to be lodged; and
(C) if known or applicable — the registration number allocated to that collective bargaining notification.

.....
.....
.....

Section B – collective bargaining arrangements

3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:

(refer to direction 6)

Woolworths Limited (Woolworths Supermarkets), Mr. John Grove, Produce Business
Manager (02) 8885 3812

TGA Distribution Limited (IGA Fresh), Mr. Clem Hodgman State Merchandise Manager
QLD. (07) 3379 3883

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

The goods supplied will be citrus fruits grown and packed separately by each of the participants.

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?

(refer to direction 7)

Yes, subject to successful negotiations with the target.

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

Representatives of the participants have had discussions with the targets as to the targets' standard terms for the supply of citrus fruit. It is the understanding of the participants that in order to meet the minimum quantities of produce considered acceptable to the targets it will be necessary to co-ordinate the supply on a joint basis.

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?

(refer to direction 8)

Yes.

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

Woolworths Limited - \$250,000 per participant per year

IGA Distribution Limited - \$100,000 per participant per year

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:

- (i) the process by which participants propose to undertake collective bargaining with the target; and
- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and
- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and
- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and
- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and
- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:

(refer to direction 9)

(please see the additional pages attached to this form)

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

(please see the additional pages attached to this form)

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and
- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
 - (A) details of the events that would trigger any such activity; and
 - (B) details of the process that would be followed in undertaking any such activity; and

- (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
 - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity.
- (refer to direction 10)*

The agreement does not contain any provisions which operate as exclusionary provisions.

Section C – public detriments

4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(refer to direction 11)

(please see the additional pages attached to this form)

5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

(please see the additional pages attached to this form)

- (b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

No other detriments will arise from the notified conduct.

Section D – public benefits

6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

(please see the additional page attached to this form)

.....
.....
.....

Section E - authority

7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

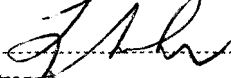
Bronwyn Fursey, 07 3239 2928, c/- McMahon Clarke Legal, 62 Charlotte Street, Brisbane Qld 4000

.....

(refer to direction 12)

Dated.....

Signed by/on behalf of the applicant


.....
(Signature)

TERENCE Mc MAHON

(Full Name)


Nelson Enterprises Pty Ltd ACN 010 085 793 as trustee for the Cavan Street Trust

(Organisation)

SECRETARY

(Position in Organisation)

Signed by/on behalf of the applicant


.....
(Signature)

PETRONELLA MARIA CAMPBELL

(Full Name)

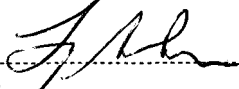
Campbells Citrus Consulting Pty Ltd ACN 085 982 994

(Organisation)

DIRECTOR

(Position in Organisation)

Signed by/on behalf of the applicant


.....
(Signature)

TERENCE Mc MAHON

(Full Name)

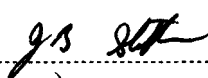
Nelson Enterprises Pty Ltd as trustee for the Michael McMahon Family Trust

(Organisation)

SECRETARY

(Position in Organisation)

Signed by/on behalf of the applicant


.....
(Signature)

JOHN BERNARD STEPHENS

(Full Name)

John Bernard Stephens and Sally-Anne Stephens as trustees for the J & S Stephens Family Trust

(Organisation)

DIRECTOR

(Position in Organisation)

Signed by/on behalf of the applicant

R. McLay

(Signature)

ROGER DONALD M'LAY

(Full Name)

Dermark Pty Ltd ACN 010 550 393 as trustee for the Sandy Trust

(Organisation)

DIRECTOR

(Position in Organisation)

Signed by/on behalf of the applicant

B.A. Bayntun

(Signature)

Barry Arthur Bayntun

(Full Name)

Bayntun & Co Pty Ltd ACN 073 178 266

(Organisation)

Director

(Position in Organisation)

DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

Additional pages

- 3(g)** The collective bargaining arrangements between the participants will be the subject of a joint venture agreement. The joint venture will operate under the business name "Citrus Direct".

The participants agree to supply citrus fruit to supermarket targets in accordance with an ordering system set out in the joint venture agreement. A committee is established for the purpose of co-ordinating that ordering system and a representative of each of the parties is appointed to the committee.

The ordering system requires participants (please note that the participants comprising "Abbotsleigh" are not separate growers, but together operating one property) to confirm to the committee the quantity and grade of produce they are able to supply. At a weekly committee meeting the committee agrees a floor price and a supply price for each variety, size and grade of produce available to supply. The floor price is the minimum price at which fruit will be sold to a supermarket. The supply price is the price at which the fruit will be offered to supermarkets.

Any participant not prepared to supply produce above an agreed floor price, may advise the committee and will not be obliged to do so.

The chairman of the committee is appointed to negotiate with a supermarket's representative on behalf of the joint venture to achieve the agreed supply price (or higher) for the supply of produce. The chairman has the discretion to agree to sell the produce at any price above the agreed floor price. If orders are secured, then the committee will determine which grower will fill each order or part of an order. In the event of disagreement, the disputed part of the order is to be allocated between each grower in proportion to the total produce they have available to fill that order. Each grower is responsible for packaging and transporting their produce (at their own cost) to the supermarket.

Participants are entitled to withdraw from the joint venture at any time on giving 24 hours notice to the other parties. The joint venture agreement contains a dispute resolution provision requiring the delivery of dispute notices followed by mediation, if necessary.

The key terms to be negotiated in the collective bargaining process are price and the volume of produce available for supply.

There are no proposed dispute resolution procedures between participants and targets throughout the collective bargaining process. There are no proposed dispute resolution procedures to deal with disputes throughout the terms of contract entered into with the target, as it is anticipated these will be governed by the standard terms of supply proposed by each supermarket.

Proposed commencement and duration of contracts to be negotiated with the target will be dependant upon the availability of fruit during the growing season.

- 3(h)** The parts of the proposed collective arrangement relating to possible price agreements are contained in the ordering system forming part of the joint venture agreement between the participants. The participants will agree the price at which fruit will be supplied to the targets. The agreement will include an agreed minimum price (floor price) and a supply price at which fruit will be offered. Participants are not obliged to supply fruit at the agreed floor price.

4. The relevant market is the market for the wholesale supply of citrus fruits within Australia. The participants supply fruit primarily within Queensland, New South Wales and Victoria. The market for the supply of citrus fruits in Australia is seasonal, in that supermarkets will obtain supply from Queensland growers during the Queensland growing season, and otherwise from Southern growers. As a group, the participants have no significant market share. To the extent possible we estimate that produce supplied by the participants under the proposed arrangement would be less than five per cent of the total Australian market. No other markets will be affected by the conduct.
- 5(a) The applicants submit that the notified conduct will have no negative effect on prices at either the wholesale or retail level. Jointly, the participants have insufficient market share to cause the conduct to have any realistic impact on price.
- 6(a) Individually, the participants are unable to supply produce in sufficient volumes to be considered a reliable source of supply for the targets. The public benefit arising from the proposed arrangement is the opportunity for growers to have access to a market from which they are otherwise excluded due to their inability to supply sufficient volumes of produce on a reliable basis. The result will be potentially improved competition in the market for the wholesale supply of citrus fruits which is a public benefit. Ultimately, a competitive supply chain must remain efficient therefore ensuring the supply of fresher and better quality products to the consumer.