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Mr David Hatfield  
Director  
Adjudication Branch  
Australian Competition & Consumer  
Commission  
GPO Box 520  
Melbourne VIC 3001

31 October 2008

Dear Mr Hatfield

## **A91103 – Application for authorisation for collective negotiations by CFMEU**

Thank you for your letter of 14 October 2008, and for providing Thiess with the opportunity to make a submission in relation to A91103 – Application for authorisation for collective negotiations by CFMEU (**the Application**).

### **1 Application not validly made**

We respectfully submit the Application cannot proceed because it has not been validly lodged. Section 88 of the *Trade Practices Act 1974* (Cth) (**Act**) allows an application for authorisation to be lodged “by or on behalf of a corporation”. The Application has not been lodged “by or on behalf of a corporation”.

#### **1.1 CFMEU is not a corporation**

The CFMEU is a registered association under industrial relations legislation. While that legislation grants the CFMEU corporate status, there is no basis upon which the CFMEU has shown it is a trading corporation to fall within the definition of ‘corporation’ in section 4 of the Act.

Because the CFMEU is not a ‘corporation’ as defined, it cannot make an application under section 88(1) of the Act on its own behalf.

#### **1.2 CFMEU members are not corporations**

The Application purports to be made by the CFMEU on behalf of ‘owner drivers’ (also described in the Application as ‘independent contractors’) who are members of the CFMEU.

We note that the union states ‘owner drivers’ commonly operate through a range of legal structures eg corporations, partnerships or unincorporated sole traders (ie individual persons).

Under the CFMEU’s own Rules, only individual persons are eligible for membership of the CFMEU. Corporations are not eligible for membership of an organisation of employees. The ‘owner drivers’ the CFMEU purports to represent can only be members of the CFMEU as individuals. If those members conduct businesses as corporations, partnerships, family trusts etc, those corporations etc are not and cannot be members of the CFMEU.



Individuals cannot make a valid application for authorisation under section 88(1) of the Act. Individuals who are members of a union can bargain collectively under the *Workplace Relations Act 1996* (Cth). There is no basis for an application under the Act.

### **1.3 CFMEU cannot be authorised on behalf of a corporation**

The CFMEU has not provided the Commission with evidence that it is authorised to make the Application on behalf of any corporation.

It is possible that some of the CFMEU's members own and operate a truck driving business through a company. However, in such circumstances, the individual (who is a member of the CFMEU) and their company (which is not entitled to be a member of the CFMEU) are separate legal entities. Even if the CFMEU is 'authorised' to make the Application 'on behalf of its members' (which we do not concede), it is only able to represent those members in their capacity as individual persons.

The CFMEU is not authorised to act on behalf of any corporation by virtue of the owner or employee of such company being a member of the CFMEU. The Application has not been made "on behalf of a corporation". Further, the union's own rules only permit it to act on behalf of members. As a corporation cannot be a member, the CFMEU cannot act for any corporations.

## **2 Other observations**

Thiess is opposed to the limitation on or reduction in competition in the building and construction industry. Thiess considers that the collective bargaining arrangements proposed by the CFMEU will reduce the level of competition in the market and as such will be detrimental to the public interest.

In the event that the Commission decides that the Application has been validly made, then, subject to reviewing the basis for the Commission's decision, Thiess reserves its right to make submissions about:

- (1) the substance of the Application, including the adverse effect on competition and public detriment that will arise from the Commission authorising the proposed collective bargaining arrangements;
- (2) any procedural issues with the Application; and
- (3) conditions which should be imposed on the authorisation if granted.

Please do not hesitate to contact me if you require any clarification in relation to the matters outlined in this letter.

Yours faithfully

A handwritten signature in black ink, appearing to read "David McAdam", written over a horizontal line.

David McAdam  
General Manager Queensland  
Thiess Pty Ltd

Copy  
Mr Jaime Martin  
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