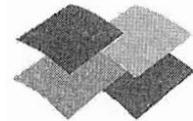


# Commerce Queensland

QUEENSLAND'S CHAMBER OF COMMERCE AND INDUSTRY



31 October 2008

Australian Competition & Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne VIC 3000

(By email: [jaimemartin@accc.gov.au](mailto:jaimemartin@accc.gov.au))

Dear Jaime

**RE: Application for Authorisation (A91103) for Collective Negotiations by Owner Drivers with Earthmoving Contractors in South East Queensland**

Thank you for the opportunity to make a submission on the likely public benefits and the effect on competition, or any other public detriment regarding the Application for Authorisation by the CFMEU.

Commerce Queensland is the State's largest business organisation. It has a State-wide membership across all industry sectors. In total we represent in excess of 25,000 businesses, with 3,700 members spread across the State and links to 135 local chambers of commerce and 60 industry associations. We have a number of members working in the construction industry.

We acknowledge that small businesses wishing to collectively negotiate can lodge a collective bargaining notification with the Australian Competition and Consumer Commission (ACCC).

The Application for Authorisation by the CFMEU on behalf of some of their members is flawed, as the CFMEU, being a Trade Union is prevented by s93AB (9) from lodging on behalf of a corporation by a trade union. The Application that was lodged does not identify which owner drivers (businesses) are seeking this authorisation.

We acknowledge that CFMEU can assist owner drivers to prepare their application and may act as a bargaining agent on their behalf. The Application that was lodged does not include any authorised letters from the owner drivers authorising the CFMEU to act as their bargaining agent.

Furthermore, the Application is made by the CFMEU and not by named owner drivers.

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375 Wickham Terrace  
Brisbane Queensland 4000

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**Member of**

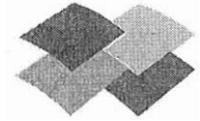


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The CFMEU can enrol owner drivers under their union rules. However, we would submit that this does not allow the CFMEU to make application on behalf of small businesses to collectively bargain. The small businesses are not employees but are businesses, which is a totally separate issue when making such an application.

Unless there has been an express consent in writing, and the names of businesses that wish to make such an application are included in the Application to obtain immunity from legal action, this Application cannot succeed.

We would submit that the application that has been made by the CFMEU has not been made by a member of the group of businesses that is seeking this protection, but has been lodged on the direction of the CFMEU. This is not lawful under the *Trade Practices Act 1974* (the Act).

It is difficult to gauge the impact of this Application on the likely effect on competition, as we do not know which businesses will be involved in these negotiations. If it is only a small number of businesses, then the impact may be minimal. However, if this small group of businesses can achieve significant increases in rates, then it is possible that this outcome could have a multiplying affect across the industry and not be limited to the south east corner of Queensland.

If one group of businesses is successful in their application to gain higher rates, then the flow-on effect to other owner drivers covering other occupations such as truck drivers, is a potential threat. This will result in pressure being put on the Contractors to increase rates of pay in other areas.

It also has the potential to create anomalies within the workforce itself, where the CFMEU could or would seek to increase wages for employees performing similar work through the bargaining process under the *Workplace Relations Act 1996*.

The CFMEU's claim that the proposed collective bargaining arrangements will improve the fairness of the competition is questionable. There is no evidence that has been submitted to support such an assertion. Secondly, there is no evidence to support the assertion that such a process will improve safety. There are other avenues available to the CFMEU if they want to address the issue of safety in this industry. The ACCC should not consider this issue as a reason to approve the Application. Thirdly, there is no evidence submitted that the granting of this Application will improve the "efficient business viability" as claimed by the CFMEU.

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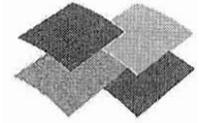
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Accordingly, for the reasons given above, the Application for Authorisation by the CFMEU to collectively negotiate should be refused.

Enquiries regarding the above submissions may be directed to Mr Stephen Nance, whose contact details are below:

Telephone: (07) 3842 2236

Mobile: 0419 707812

Facsimile: (07) 3013 3427

Email: [snance@commerceqld.com.au](mailto:snance@commerceqld.com.au)

Yours sincerely

**Stephen Nance**  
State Manager, Workplace Relations Services

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