



CIVIL CONTRACTORS FEDERATION

**Additional Submission in respect of the Draft Determination
Application for Authorisation (A91103) for
Collective Negotiations by Owner Drivers with Earthmoving
Contractors in South East Queensland.**

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1 Introduction

The Civil Contractors Federation makes the following submissions in regard to the Draft Determination Application for Authorisation for Collective Negotiations by Owner Drivers with Earthmoving Contractors in South East Queensland.

At the outset we reiterate our general position that we do not support the authorisation for the reasons previously outlined in our submission of November 2008.

We note that the Draft Determination for Authorisation provides conditions to enable the ACCC to review the authorisation on a periodical basis. It is in respect of these conditions that we wish to make the following points.

2 Conditions on Authorisation

The conditions are as follows;

CFMEU Qld will, on an annual basis, provide the ACCC with:

- a. the number of participating owner drivers
- b. details of any collective bargaining group including the group's current membership
- c. the identity of any targets approached by a collective bargaining group which are not identified in Attachment A to this draft determination.

3 Concerns with conditions

The CCF submits that the information to be provided by the CFMEUQ annually is limited and may fail to provide the ACCC with the ability to make a proper assessment of the impact of the authorisation on the civil construction and earthmoving industry and the community as a whole over time.

The data required as set out by the draft determination will only provide statistical information on the number of participating owner drivers and the level of bargaining activity over the previous 12 months. It is submitted that the basis of the assessment on public interest appears to be limited to a view that the public interest will only be affected by the size of the owner drivers' group represented by the CFMEUQ. If this view were to prevail, an interested party could reasonably be expected to ask at what threshold or volume of representation by CFMEUQ does the ACCC believe there will be a change to net public benefit?

The CCF argues that the scope of information required to make future assessments on the impact goes beyond merely the volume of activity. Section 91C of the *Trade Practices Act 1974* states that an authorisation may be revoked if there has been a material change in circumstances since the authorisation was granted. In this context, it is submitted that the conditional provision of information by CFMEUQ will be insufficient for the ACCC to supervise the authorisation over time.

The effects of a collective authorisation, as submitted by CCF in our initial submission, related to a potential adverse effect on the market price of owner drivers and the potential adverse behaviour that may occur from owner drivers and their agents. It is our submission that these outcomes will not be accurately assessed on the basis of the limited information sought annually from the CFMEUQ.

4 Suggested conditions that should be applied

In order to address these concerns and to satisfy the requirements of Section 91C of the *Trade Practices Act 1974* it is submitted that the ACCC alter the Draft Determination to provide additional conditions for the granting of the authorisation.

We suggest additional conditions as follows;

on an annual basis interested parties will be invited to make submissions on;

- the outcomes that the authorisation created in relation to industry and
- any material change of circumstances since the authorisation was granted.

In particular these submissions can address the following issues that in our view go to the ongoing assessment of a Net Public Benefit Test.

- The influence of any negotiated rate arising directly from the authorisation on other service providers and consumers.
- The development of minimum / floor prices arising from any negotiations from the authorisation in the market
- The promotion by the CFMEUQ of negotiated rates as a means of improving membership in areas/sectors beyond the initial group of owner drivers.
- The industrial and/or commercial behaviour of the CFMEUQ and/or member owner drivers arising from the determination.
- The flow on effect of other parties and entities seeking similar authorisations.
- Any other matters that go to the detriment of public interest.

The consideration of submissions that address these issues on an annual basis will provide the ACCC with any sufficient material to assess the authorisation on an ongoing basis.