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Our Reference: DEM:RJH: 91383
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10 November 2009

Susan Philp
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Ms Philp,

Tasmanian Farmers & Graziers Association (Authorisation A90914)

Further to our email letter of 6 November, 2009, we **enclose** herewith original Form FC executed by our client.

Yours faithfully,
WILL EDWARDS LAWYERS

per:

DANIEL MORGAN
Email: dmorgan@willedwards.com.au
Encl

AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA
12 NOV 2009

Form FC

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Trade Practices Act 1974* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

A91197

Tasmanian Farmers & Graziers Association (“TFGA”) – Vegetable Council on its on behalf and on behalf of its (vegetable grower) members

- (b) Description of business carried on by applicant:
(Refer to direction 3)

The TFGA is a farmer representative organisation. TFGA vegetable grower members are vegetable farmers in Tasmania.

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

PO Box 193, Launceston in Tasmania, 7250.

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

ACCC Authorisation A90914 in relation to collective bargaining by various vegetable grower commodity groups with processors they supply (namely, Simplot Australia Pty Ltd (“Simplot”) and McCain Food (Aust) Pty Ltd (“McCain”).

- (b) Provide details of the basis upon which revocation is sought:

The revocation is sought due to the pending expiry of authorisation A90914 on 9 December, 2009.

3. Substitution of authorisation

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:

(Refer to direction 4)

An arrangement between present and future TFGA vegetable grower members to collectively negotiate the terms and conditions of growing contracts with processors.

An arrangement between present and future TFGA vegetable grower members for the TFGA to assist them in their negotiations with processors.

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

Price setting on a seasonal basis between the processors, McCain and Simplot, and present and future TFGA vegetable grower members.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

Five (5) years (as per previous authorisation).

4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

Simplot

McCain

TFGA vegetable grower members (present and future).

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

TFGA vegetable grower members. Individual commodity groups represented under the umbrella of the TFGA Vegetable Council; namely:-

Simplot Processed Potato Growers Group

Simplot Seed Potato Growers Group

Simplot Pea Growers Group

Simplot Bean Growers Group

Simplot Carrot Growers Group

Simplot Brassica Growers Group

McCain Processed Potato Growers Group

McCain Seed Potato Growers Group

McCain Pea Growers Group

McCain Bean Growers Group

McCain Brassica Growers Group

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Vegetable growers- current non TFGA members.

5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:

It is well known that growers, as individuals, are always in a weak bargaining position. McCain and Simplot will use the might and power of their respective world wide resources and knowledge to achieve their aims. It is clear that some security is given to the growers through the use of the collective bargaining process.

We consider the collective bargaining approach to be an organised and cost effective means to cover the issue of arranging contract prices and conditions for vegetable crops grown for processing in Tasmania.

Individual growers are seen to be in a weak bargaining position and could not be expected to have the skills required to deal with well resourced multinational processors. It would not be practical, or economical, for them to individually employ negotiators each time they wished to settle a commodity contract. Most farmers are multi-commodity growers.

Collective bargaining, although sometimes difficult between the negotiating parties, is intended to provide support and industry stability for growers. This transfers to Tasmanian growers being able to maintain pace with and continue to adopt relevant technology.

The practice of open consultation with each of the commodity groups by their respective leaders ensures that a considered grower position is always adopted when the negotiating groups meet with the processor representatives.

(See Direction 6 of this Form)

- (b) Facts and evidence relied upon in support of these claims:

The administrative benefits of collecting bargaining enable price stability and results in lower costs and added benefits to the local economy.

The manner and method of negotiating prices has not been altered by us since the initial Authorisation (A90914).

6. 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):

The Vegetable Processing Sector.

(See Direction 7 of this Form)

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the 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:

We consider that it is unlikely that the activity of the growers in collectively bargaining with the processors will have any significant effect on consumers.

(See Direction 8 of this Form)

- (b) Facts and evidence relevant to these detriments:

We estimate the grower share of the retail value of the products the subject of the proposed arrangements to range from around 1% to 11% depending on the specific vegetable crop.

We submit that this effectively means that any increase in the price paid to growers will only be small relative to the price paid by consumers. For example, the delivered factory price being paid to potato growers is currently around \$320/tonne. We note that when the same potatoes are sold to consumers by a major quick serve restaurant

chain in Sydney the growers receive only 1% of the retail value of the product.

We estimate that over the past fourteen (14) years, when potato growers received no increase in the price paid for their potatoes, the same quick serve restaurant appears to have increased its prices by around 70%.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

Yes

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Future TFGA vegetable grower members

Other potential buyers of contracted crops who may enter into the industry.

(See Direction 9 of this Form)

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

Not applicable.

(See Direction 5 of this Form)

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

As per 8 (b) (i)

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not Applicable

- (c) If so, by whom or on whose behalf are those other applications being made?

Not Applicable

10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Mr. Chris Oldfield

Chief Executive Officer

Tasmanian Farmers and Graziers Association

PO Box 193

Launceston TAS 7250

Dated 5.11.09

Signed by/on behalf of the applicant

(Signature)

(Full Name)

(Organisation)

(Position in Organisation)

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