



**Australian
Competition &
Consumer
Commission**

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4 March 2009

Des Hindson
General Manager
Inghams Enterprises Pty Ltd
Burton Rd
Burton SA 5110

(by email: jrussell@ingham.com.au; pcox@ingham.com.au)

Dear Mr Hindson

**Collective Bargaining Notification lodged by the South Australian Farmers Federation
on behalf of a group of South Australian chicken growers CB00070
- request for submission**

On 27 February 2009, the Australian Competition and Consumer Commission (the ACCC) received a collective bargaining notification from South Australian chicken growers with regard to negotiation of the terms and conditions of their growing contracts with Inghams Enterprises Pty Ltd (Inghams).

The purpose of this letter is to ask for your comments on the collective bargaining notification lodged by South Australian Farmers Federation on behalf of a group of South Australian chicken growers.

Collective bargaining notification process

The ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). The broad objective of the Act is to benefit all Australians by promoting competition and to ensure consumers are treated fairly.

The competition provisions of the Act prohibit certain forms of anti-competitive agreements or conduct including agreements which typically occur during collective bargaining.

Collective bargaining refers to an arrangement where one or more competitors in an industry come together to negotiate terms and conditions (including price) with a supplier or a customer.

While the Act prohibits certain forms of anti-competitive conduct, it does recognise that conduct which may otherwise breach the Act may, in some circumstances, be of benefit to the public. The Act accordingly allows businesses that are considering engaging in anti-competitive arrangements to seek immunity from legal action. One way businesses may obtain immunity to engage in collective bargaining conduct that may be at risk of breaching the Act is to lodge a notification with the ACCC.

Once a notification has been validly lodged with the ACCC, immunity from legal action in respect of the notified conduct commences 14 days after the notification was lodged – in this case on **14 March 2009**, unless the ACCC issues a draft objection notice proposing to prevent the immunity coming into effect.

Should Inghams be concerned that the proposed conduct would adversely affect it were immunity to commence, please contact Richard Chadwick, General Manager Adjudication immediately on 0434 655 993 so that the ACCC can make a decision regarding whether to issue a draft objection notice prior to immunity commencing on 14 March 2009.

The ACCC may proceed to remove the immunity provided by a collective bargaining notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

The collective bargaining notification process is outlined in more detail in the attached ACCC publication *Collective bargaining notifications – a summary*.

Collective bargaining notification lodged by the South Australian Farmers Federation

The South Australian Farmers Federation (SAFF) lodged a collective bargaining notification on 27 February 2009 on behalf of 18 South Australian chicken growers, collectively known as the Inghams SA Chicken Growers. The parties propose to negotiate the terms and conditions of their growing contracts with Inghams Enterprises Pty Ltd (Inghams), including:

- duration of contracts and renewal
- growing fees and the manner in which they will be reviewed or adjusted during the terms of the contracts
- performance schemes and other adjustments to growing fees, including arrangements relating to mortalities, density levels and batch rates
- procedures for resolution of disputes between growers and the processor during the term of contracts and
- other terms and conditions relating to supply and growing of chickens.

The immunity from legal action provided by notification CB00070 will commence on 14 March 2009 provided the ACCC does not issue a draft objection notice proposing to prevent the immunity coming into effect.

A copy of the notification submitted is attached.

An electronic copy of the notification can also be found on the collective bargaining notification register, available on the ACCC's website at www.accc.gov.au.

Request for submissions

To assist the ACCC in its consideration of the notification it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available on its public register and website.

Submissions can be lodged by email to adjudication@acc.gov.au , by facsimile on (02) 6243 1211 or posted to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

If you intend to provide a submission in relation to this collective bargaining notification, please do so by the close of business **18 March 2009**.

Persons lodging a submission with the ACCC may request that information included in a submission be excluded from the public register. If a request to exclude information from the public register is made, please provide the ACCC with reasons justifying the claim for the information to be excluded. The ACCC will not grant a request to exclude information from the public register for documents which are clearly not of a confidential nature unless there are compelling reasons to do so. The ACCC publication *Guidelines for excluding information from the public register* is attached for your information.

If the ACCC decides to exclude any information from the public register, the ACCC may take it into account even though it is not publicly available.

You may forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Simon Mitchell on (03) 9290 6909 or at simon.mitchell@acc.gov.au.

Yours sincerely



David Hatfield
Director
Adjudication Branch