



Australian
Competition &
Consumer
Commission

Decision

in respect of a collective bargaining
notification lodged by

**the South Australian Farmers
Federation on behalf of eighteen
South Australian chicken growers**

Date: 26 March 2009

Notification no. CB00070

Public Register no. C2009/520

Commissioners:
**Samuel
Kell
Court
Dimasi
Martin
Willett**

Summary

The ACCC does not object to the collective bargaining notification lodged by the South Australian Farmers Federation on behalf of a group of 18 South Australian chicken growers.

The group proposes to collectively negotiate the terms and conditions of their growing contracts with Inghams Enterprises Pty Ltd (Inghams).

The ACCC considers that the proposed arrangements will provide greater opportunity for individual growers to provide input into their contract terms and conditions, to achieve more balanced and mutually beneficial commercial outcomes. The proposed arrangements may also result in transaction cost savings for both Inghams and the growers. The ACCC notes that the proposed arrangements are voluntary, such that any party that does not consider the collective process to be in their commercial interests has the option of not participating.

The small business collective bargaining notification process

Collective bargaining refers to two or more competitors collectively negotiating terms and conditions with a supplier or customer. Without protection, it can raise concerns under the competition provisions of the *Trade Practices Act 1974* (the Act).

Small businesses can obtain protection from legal action under the Act for collective bargaining arrangements by lodging a notification with the ACCC. Provided the ACCC does not object to the notified arrangement, protection commences 14 days after lodgement.

The ACCC will only object to and remove the immunity provided by a collective bargaining notification when it is satisfied that any public benefits from the proposed collective bargaining arrangement would not outweigh the public detriments (and the arrangements substantially lessen competition for notifications that do not concern price fixing or exclusionary conduct).

The notification

On 27 February 2009, the South Australian Farmers Federation (SAFF) lodged collective bargaining notification CB00070 on behalf of a group of 18 South Australian chicken growers (the notifying parties). A list of the 18 notifying parties is provided at [Attachment A](#).

The notifying 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 the supply and growing of chickens.

The notified conduct is outlined in greater detail in the Background section of this Decision.

ACCC assessment of the notification

The ACCC considers that the proposed arrangements is likely to result in some public benefits. In particular:

- by providing greater opportunity for individual growers to provide input into contract terms and conditions, to achieve a more balanced and mutually beneficial commercial outcomes, and
- transaction cost savings.

The ACCC considers that the anti-competitive detriment generated by the proposed arrangements is limited by a number of features, including:

- the level of competition between individual growers is unlikely to be significantly affected
- the comparative bargaining position of Inghams in comparison to the notifying parties whether negotiating individually or collectively
- the proposed arrangements are voluntary for all parties and
- the arrangements do not include collective boycott activity.

ACCC Decision

On the information available, the ACCC is satisfied that the benefits arising from the notified arrangements are likely to outweigh the identified detriments. Accordingly, the ACCC does not object to the notification.

Protection afforded by this notification commenced on 14 March 2009 and will cease 3 years from the date of lodgement (27 February 2012). However, as with any notification, the ACCC may act to remove the immunity afforded by the notification at a later stage should concerns arise.

1. Introduction

- 1.1. The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.
- 1.2. In the context of the Act, collective bargaining involves two or more competitors agreeing to collectively negotiate terms and conditions (which can include price) with a supplier or a customer (the target or counterparty).
- 1.3. Arrangements will amount to a collective boycott where the collective bargaining group agrees not to acquire goods or services from, or not to supply goods or services to, the counterparty unless it accepts the terms and conditions offered by the group.
- 1.4. Collective bargaining and collective boycott arrangements can have a detrimental effect on competition and consumers and are likely to raise concerns under the competition provisions of the Act.
- 1.5. The Act, however, allows businesses to obtain protection from legal action in relation to collective bargaining and collective boycott arrangements in certain circumstances. One way in which small business bargaining groups may obtain protection is to lodge a collective bargaining notification with the ACCC.
- 1.6. Provided the ACCC does not object to the notified arrangement, protection commences 14 days after lodgement. The immunity from a collective bargaining notification expires three years from the date it was lodged.
- 1.7. The ACCC may object to a collective bargaining notification if it is satisfied that any public benefits from the proposed collective bargaining arrangement would not outweigh the public detriments (and substantially lessen competition for notifications that do not concern price fixing or exclusionary conduct).
- 1.8. The collective bargaining notification process is transparent involving public registers and interested party consultation. Where the ACCC proposes to object, it must first issue a draft objection notice setting out its reasons and providing an opportunity for interested parties to request a conference. If the ACCC issues a draft objection notice before the expiration of the 14 day statutory period, legal protection from the notification does not commence.

2. Background

The proposed arrangement

- 2.1. Collective Bargaining Notification CB00070 was lodged on 27 February 2009 by the South Australian Farmers Federation (SAFF) on behalf of 18 South Australian chicken growers (the notifying parties).
- 2.2. The notifying 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 the contracts and
 - other terms and conditions relating to the supply and growing of chickens.
- 2.3. The proposed dispute resolution process between the notifying parties and Inghams is outlined as follows:
 - the parties must endeavour to resolve the dispute within a specified period of time by consultation and negotiation
 - if the dispute is not resolved within the period for consultation and negotiation, and if there is legislation relating to the broiler chicken industry which includes a dispute resolution procedure, either party may refer the dispute for determination pursuant to the statutory procedure
 - if there is no such statutory procedure, or if neither party invokes it within a specified period, the dispute will be referred to the Produce and Grocery Industry Ombudsman for mediation and
 - if the dispute is not resolved by mediation within a further specified period it will be referred for determination to an arbitrator agreed by both parties, or failing agreement to an arbitrator appointed by the Institute of Arbitrators and Mediators Australia.
- 2.4. The notifying parties propose engaging in negotiations with Inghams through negotiating representatives elected or appointed in accordance with the rules of the notifying parties.

The notifying parties

- 2.5. The notifying parties are either currently providing chicken growing services to Inghams in South Australia, or reasonably expect to in the future provide chicken growing services to Inghams in South Australia.
- 2.6. The notifying parties that are currently providing growing services to Inghams have been contracted for a period of five years. There are several notifying parties who commenced providing growing services to Inghams or acquired existing farms during that period and accordingly have been contracted for periods of less than five years.

Similar arrangements previously authorised

- 2.7. In March 2002, Inghams lodged authorisation application A90825 for a proposed arrangement to allow it and its contracted South Australian chicken growers to negotiate collectively regarding contract terms and conditions, including in relation to growing fees. The arrangement was expressed to cover all current and future chicken growers in South Australia contracted to Inghams. Authorisation was sought for a period of five years.
- 2.8. In assessing the application, the ACCC considered that there were a number of factors that limited the potential for anti-competitive detriment. These factors, included:
 - chicken growers can opt out of the collective arrangements to negotiate individually with Inghams
 - producer negotiating groups cannot use the same adviser in their negotiations
 - there is a pre-existing limited degree of competition between growers
 - there is strong countervailing power at the retail end of the market
 - the chicken growing fee only forms a small proportion of the retail price and
 - there is an oversupply of chicken meat in South Australia.
- 2.9. In assessing the application, the ACCC considered that there were some public benefits that may result from the proposed arrangement. These included:
 - providing participating growers with an improved bargaining position relative to Inghams with the potential for a reduction in the likelihood of harsh or unfair contractual terms and

- reducing the costs through negotiating collectively rather than on an individual basis. These savings may be passed onto consumers in the form of lower prices.
- 2.10. The ACCC granted authorisation application A90825 on 22 January 2003 for a period of five years. The authorisation was granted subject to two conditions:
- i) All subjects executed under the South Australian Code of Practice are to be made available to the ACCC upon request.
 - ii) The matters listed in the Minimum Contract Guidelines must be addressed in all contracts entered into between a processor and participating grower negotiated with the processor negotiation group.
- 2.11. Authorisation A90825 expired on 13 February 2008.
- 2.12. A copy of the ACCC's determination in respect of Authorisation A90825 is available on the ACCC's website ACCC's website (www.accc.gov.au) by following the 'Public Registers' and 'Authorisations & notifications registers' links.

The chicken growing industry

- 2.13. The majority of participants in the chicken growing industry are individual farmers who produce under contract to major processors, such as Inghams.¹ The chicken growing stage commences when batches of day old chicks are placed by processors with broiler farms. Broiler is a term used to refer to chickens who are either in the growing process or at the end of the growing process. As well as chicks, the processor supplies the farmer with feed and veterinary requirements.
- 2.14. Once the broilers are at slaughter weight, the processor transports the broilers to the processing facilities. Processing facilities are often located on the outskirts of metropolitan areas. In South Australia, the Inghams plant is located at Bolivar near Burton. Generally, the growers for the respective processor will be located within one to one and a half hours drive from the processing facilities.² There are economic benefits to the processor from clustering growers in one area through lower transport and logistic costs.³ Processors endeavour to deliver the processed chicken meat to customers within one day of the chicken being processed at the plant.⁴

¹ IBISWorld, *Poultry Meat Farming in Australia: A0141*, 11 December 2008, p. 27.

² ACCC, *Public Competition Assessment: Baiada Poultry Pty Ltd – proposed acquisition of Bartter Enterprises Pty Ltd*, 27 February 2009.

³ South Australian Farmers Federation, *Collective bargaining notification CB00070*, Attachment 3, p.15.

⁴ ACCC, *Public Competition Assessment: Baiada Poultry Pty Ltd – proposed acquisition of Bartter Enterprises Pty Ltd*, 27 February 2009.

- 2.15. The farmer is paid a fee for raising day old chicks to slaughter weight. The period of raising/growing the chicks is usually five to eight weeks. IBISWorld reports that the fee paid to farmers for raising the chicks is approximately 17 per cent of the total cost of producing live chicken meat.⁵
- 2.16. In Australia, the largest processor is Inghams followed by Bartter Enterprises Pty Ltd (trading as Steggles) and then Baiada Poultry Pty Ltd.⁶ These three processors supply the majority of processed chicken meat to large volume buyers such as the supermarket chains and fast food restaurants. In South Australia, the major chicken processors are Inghams, Baiada Poultry, Gourmet Poultry and Adelaide Poultry.⁷

Important dates

DATE	ACTION
27 February 2009	Lodgement of collective bargaining notification.
4 March 2009	Public consultation process commenced.
10 March 2009	Inghams' lodges submission in respect to the collective bargaining notification.
14 March 2009	Immunity for the notified conduct automatically commences
18 March 2009	Closing date for submissions from interested parties.
18 March 2009	Closing date for notifying parties to respond to issues raised in the Inghams' submission.
26 March 2009	ACCC assessment of notified arrangement issued.

⁵ IBISWorld, *Poultry Meat Farming in Australia: A0141*, 11 December 2008, p. 27.

⁶ Ibid, p. 7.

⁷ South Australian Farmers Federation, *Collective bargaining notification CB00070*, Attachment 3, p.14.

3. ACCC consultation

- 3.1. The ACCC sought submissions from a number of interested parties, including Inghams. Submissions were received from the Australian Chicken Growers' Council Ltd and Inghams.
- 3.2. A full copy of both submissions is available on the ACCC's website (www.accc.gov.au) by following the 'Public Registers' and 'Authorisations & notifications registers' links.

Australian Chicken Growers' Council Ltd (ACGC) submission

- 3.3. The ACGC in its submission supports the notification and makes the following points
 - where no collective bargaining arrangements are available, individual growers lack countervailing power. The ACGC further adds that individual growers are “economically captured” given the fixed nature and high investment cost of their shedding
 - collective bargaining reduces transaction costs for both growers and processor, in particular with respect to the grower engagement of expert advice
 - growers can gain greater access to industry and market information under collective bargaining enabling them to make more better business decisions
 - collectively negotiated payment systems are more likely to improve outcomes in efficiency as a result of growers being able to compare performance
 - collective bargaining arrangements are more likely to lead to greater stability in the industry with growers being more involved in contract terms and conditions and
 - there is no evidence to suggest that chicken grower collective bargaining arrangements are detrimental to the public.

Inghams submission

- 3.4. In summary, the submission from Inghams raised the following points with respect to the notification:
 - Inghams has previously supported collective bargaining but feels that the collective process is not suitable for the negotiation of grower fees and productivity as this is dependent on individual grower circumstances

- Inghams currently contracts with 17 South Australian chicken growers. All Inghams' growers have opted for individual contracts as opposed to the collective arrangements that are available under South Australian legislation
- Inghams is opposed to any boycott component of collective bargaining
- Inghams is opposed to the South Australian Farmers Federation (SAFF) representing the notifying parties in collective negotiations. Inghams submits that SAFF may be representing growers contracted to Baiada Poultry Pty Ltd and Gourmet Poultry Pty Ltd
- Inghams will not be bound by arbitration in contract negotiation. Inghams' current individual contracts already contain provisions for mediation on disputes and mediation and arbitration on disputes over fees during the contract period and
- Inghams disputes that the notified conduct will result in transaction cost savings.

The Notifying parties' response to Inghams' submission

3.5. On 11 March 2009, the ACCC wrote to the notifying parties requesting a response to several questions that were raised in the Inghams' submission. The notifying parties responded on 18 March 2009. The questions and the notifying parties' response is as follows:

- What progress has been made in the election or appointment of negotiating representatives?

The farmers concerned with the collective bargaining agreement have not appointed or elected a negotiating representative, but they will do so in the due course of the formation of the collective bargaining group. However, significant progress has been made towards electing negotiating representatives. The farmers have formed an incorporated group, with a constitution and an official Chairperson and Secretary. The name of the group is 'The South Australian Ingham's Growers Association Inc.'⁸

- Is it foreseeable that the SAFF will be appointed as the negotiator with Inghams on behalf of the notifying parties?

It is not foreseeable that the SAFF will be appointed as the negotiator with Ingham's on behalf of the notifying parties. This is not the current or foreseeable role of the SAFF. The SAFF both provide and foresee that they will provide administrative support only. Examples of this support include council rooms, computers and secretarial work.⁹

⁸ South Australian Farmers Federation, *Letter to the ACCC*, 18 March 2009.

⁹ Ibid.

- Does the SAFF have any role in representing South Australian chicken growers in negotiations with other processors, such as Baiada Poultry Pty Ltd or Gourmet Poultry Pty Ltd?

The SAFF do not have any role in representing South Australian chicken growers in negotiations with other processors, such as Baiada Poultry Pty Ltd or Gourmet Poultry Pty Ltd. Nor do the SAFF foresee that they represent chicken growers in this role in the future.¹⁰

4. Public benefit test

- 4.1. The ACCC may revoke a collective bargaining notification where the relevant test in section 93AC of the Act is satisfied.
- 4.2. For notifications that involve collective boycott, conduct within the meaning of s 45(2)(a)(i) or (b)(i) of the Act (exclusionary provisions), or a collective arrangement under which competitors will negotiate prices, the ACCC may object to a collective bargaining notification if it is satisfied:
 - that the benefit to the public that would result, or is likely to result, from the proposed arrangements does not outweigh the detriment to the public.
- 4.3. For notifications that do not involve collective boycotts (or other exclusionary provisions) or price fixing but involve conduct that may otherwise substantially lessen competition within the meaning of s 45(2)(a)(ii) or (b)(ii) of the Act, the ACCC may object to a collective bargaining notification if it is satisfied:
 - that in all the circumstances the conduct would, or would likely result in a substantial lessening of competition, and
 - the conduct has not resulted or is not likely to result in a benefit to the public or the benefit to the public would not outweigh the detriment to the public constituted by any lessening of competition resulting from the conduct.
- 4.4. The proposed collective bargaining arrangement involves an agreement on price and is therefore subject to the test described in paragraph 4.2.

¹⁰ South Australian Farmers Federation, *Letter to the ACCC*, 18 March 2009.

5. ACCC assessment

Affected markets

- 5.1. In considering the benefits and detriments associated with collective bargaining arrangements, it often assists to identify the markets affected. Where a market starts and finishes will be influenced by the degree of substitutability of different products and across different geographic areas.
- 5.2. The notifying parties submit that the markets relevant to the notification are:
- the market for contract chicken growing services and
 - the market for processed chicken meat.

The market for contract chicken growing services

- 5.3. Broadly, the notifying parties consider the market for growing services in South Australia to be defined by inelasticity on the supply side and high degree of elasticity on the demand side.¹¹
- 5.4. The notifying parties submit that growers have limited capacity to move between processors:
- While theoretically the Inghams growers, or many of them, are able to supply any of the metropolitan suppliers in South Australia, historically it has been the case that processor are very reluctant to take another processor's growers and as a result it has for all practical purposes been impossible...¹²
- 5.5. The notifying parties also advise that growers are not able to substitute the shedding and equipment used in the growing of the broiler chickens into other agricultural activities.¹³
- 5.6. With respect to processors, the notifying parties submit that:

processors such as Inghams are able to respond to increases in growing fees in a particular market by sourcing growing facilities in other states...¹⁴

¹¹ South Australian Farmers Federation, *Collective bargaining notification CB00070*, Attachment 3, p.16.

¹² Ibid, p. 15.

¹³ Ibid.

¹⁴ Ibid.

The market for contract chicken growing services

- 5.7. The notifying parties consider that the major customers for processed chicken are the large supermarket chains and the food service industry. Further, they advise that the minority of processed chicken meat is sold under contract with the result that processors have a strong focus on production costs. Partly due to production efficiencies the price of chicken meat has fallen in real terms.¹⁵
- 5.8. With respect to the focus on production costs, the notifying parties submit that:
- processors have been able to reduce costs by having a high degree of control over the production and processing chain. While feed costs have been volatile it has been estimated that growing costs amounted to approximately 6% of the retail price for a whole chicken.¹⁶
- 5.9. The notifying parties submit that processors will often move processed chicken between states. They give the example of Bartter Enterprises selling into South Australia with chicken processed in Victoria.¹⁷

ACCC's conclusion on the relevant markets

- 5.10. The ACCC's notes that in some instances processors based in South Australia could meet supply commitments through sourcing processed chicken meat from Victoria. Further, processors that are not based in South Australia are able to transport processed chicken meat from Victoria for sale in South Australia. The ACCC has previously found that most processors sell at least 60 per cent of their output in the state in which their processing plants are located.¹⁸
- 5.11. For the purposes of this notification, the ACCC considers the relevant markets to be the market for contract chicken growing services and the market for processed chicken meat. Further, the ACCC considers the relevant markets to be mostly situated in South Australia. However, the ACCC acknowledges that South Australian processed chicken meat may in some cases be substituted by Victorian processed chicken meat.

¹⁵ South Australian Farmers Federation, *Collective bargaining notification CB00070*, Attachment 3, p.16.

¹⁶ Ibid.

¹⁷ Ibid, p. 17.

¹⁸ ACCC, *Public Competition Assessment: Baiada Poultry Pty Ltd – proposed acquisition of Bartter Enterprises Pty Ltd*, 27 February 2009.

- 5.12. The ACCC notes that contracts between growers and processors typically last up to five years.¹⁹ As noted previously, growers generally need to be located within a one to one and a half hour drive from the relevant processor's plant. Further, the ACCC considers it unlikely that a farmer would commit to investing in the necessary on-farm infrastructure, due to the high cost, without the commitment of a contract with a processor.²⁰ For these reasons, the ACCC considers that the level of competition between individual growers is likely to be low.
- 5.13. The ACCC considers that the level of competition between processors in the processed chicken meat market appears to be high. As noted previously, Inghams, Baiada and Bartter/Steggles supply the majority of processed chicken meat to major supermarkets and fast food restaurants. Further, there are several small processors, such as Gourmet Poultry in South Australia, who compete to supply smaller outlets. IBISWorld noted in December 2008 that one of the reasons for the decline in profitability in the industry was due to increased competition.²¹

The future with or without test

- 5.14. The ACCC uses the 'future-with-and-without-test' established by the Australian Competition Tribunal to identify and measure the public benefit and anti-competitive detriment generated by the proposed arrangement.
- 5.15. The notifying parties submit that they are either currently providing contracted chicken growing services to Inghams in South Australia, or reasonably expect to provide contracted chicken growing services to Inghams in South Australia. In most cases the growers that are currently providing services to Inghams are contracted for five years.
- 5.16. The ACCC notes that a collective negotiating mechanism exists for South Australian chicken growers under the *Chicken Meat Industry Act 2003 (SA)*. This structure provides for grower groups to elect a representative to negotiate with processors on their behalf. Negotiations and the dispute resolution process is facilitated by the Chicken Meat Registrar.
- 5.17. However, the ACCC considers that, in the absence of the legal protection afforded by the notification, the most likely counterfactual would be the chicken growers entering into individual contract negotiations with Inghams at the conclusion of their current individually negotiated contracts. The ACCC notes that in its submission, Inghams expressed a preference for individual contract negotiation over collective negotiation, particularly with respect to grower fees and productivity.

¹⁹ IBISWorld, *Poultry Meat Farming in Australia: A0141*, 11 December 2008, p. 28.

²⁰ Ibid, p 14.

²¹ Ibid, p. 29.

Public benefits

Notifying parties' submission

- 5.18. The notifying parties submit that the proposed collective bargaining arrangement will result in the following public benefits:
- greater stability and security for growers through more grower input into contract terms and conditions
 - greater comparison of grower performance through the creation of benchmark and pool systems
 - reduction in information asymmetry from the grower's perspective in negotiating with Inghams as through collective negotiations the grower becomes more informed on relevant industry and market information and
 - transaction and administration cost savings for both growers and Inghams as opposed to the development and maintenance of individual contracts with each grower.

Inghams' submission

- 5.19. Inghams does not consider that collective bargaining is suitable for the negotiation of grower fees and productivity. In particular, under the pool system proposed by the notifying parties, efficient growers in the collective group would receive lower fees than if they had negotiated individually.²²
- 5.20. Inghams submits that it already consults with growers on contract terms and questions whether a collective bargaining process will bring about greater grower input.²³
- 5.21. Inghams disputes that the collective bargaining process will result in transaction cost savings. In particular, the reluctance of more efficient growers to accept lower fees in a collective process may result in disagreement and a negotiation process that will be lengthier than otherwise would have been the case.²⁴

²² Inghams, *submission in respect to CB00070*, 10 March 2009, p. 3.

²³ *Ibid.*, p. 4

²⁴ *Ibid.*, p. 5

Australian Chicken Growers' Council Ltd (ACGC) submission

- 5.22. The ACGC in its submission supported the notifying parties' public benefit claim that the proposed collective arrangements would result in transaction cost savings. In particular, the ACGC noted:

Where expert advice is required there can be a significant cost impost which is spread over a number of growers in a collective bargaining arrangement but would be borne wholly by an individual grower where no such arrangement existed.²⁵

- 5.23. The ACGC further noted in its submissions that it considered that collective bargaining provided growers with greater access to industry information, more input into contract negotiations and some degree of countervailing power.²⁶

ACCC's conclusion on public benefits

- 5.24. The ACCC considers that collective bargaining arrangements can result in public benefit by facilitating improvements in the level of input a party has in their contractual negotiations. Based on the information before it, the ACCC accepts that there is an imbalance in bargaining power between individual growers and Inghams. As noted previously, the ACCC recognises that individual growers may be restricted in their ability to move between processors. To this extent, the ACCC considers that the proposed arrangements may provide opportunity for the individual growers to have more effective input into contract terms and conditions.
- 5.25. The ACCC recognises that while pool systems may enable benchmarking and comparison between growers it may not be suitable for the structuring of grower payments. The ACCC notes that Inghams considers it more appropriate for contracts to reflect an individual grower's circumstances. Under pool systems there is a risk that inefficient growers may be rewarded at the expense of efficient growers. The ACCC notes that the proposed arrangements are voluntary, giving growers who are not satisfied with the structure of the arrangements the opportunity to negotiate individually with Inghams.
- 5.26. The ACCC also notes that common contracts negotiated through collective bargaining may be designed to incorporate productivity elements that reward efficient producers.

²⁵ Australian Chicken Growers' Council Ltd, *submission in respect to CB00070*, 18 March 2009.

²⁶ *Ibid.*

- 5.27. As noted above, the ACCC accepts that the proposed arrangement is likely to result in public benefit through individual growers having greater input into contract terms and conditions. This extends to the issue of information asymmetry, where Inghams as a result of its larger resources may be more informed on market conditions and prices than individual growers. Through pooling their knowledge and utilising elected negotiating representatives individual growers may be able to reduce this information asymmetry. The ACCC considers that individual growers becoming more informed on market conditions to be a public benefit.
- 5.28. The ACCC has previously considered that transaction costs are likely to be lower in negotiating a collective bargaining agreement involving a single negotiating process relative to a situation where negotiation occurs between many individual parties. Transaction cost savings may occur for the Inghams through only dealing with one negotiating party or for the growers through pooling their knowledge to reach more informed decisions. Consequently, the ACCC considers that to the extent that transaction cost savings do arise under the proposed arrangements they are likely to constitute a public benefit. However, the ACCC notes Inghams submission that should disagreement in the negotiations lead to lengthy time delays, then any transaction cost savings may be reduced.

Public detriments

- 5.29. Under collective bargaining arrangements, competitors come together to negotiate terms and conditions, which can include price, with a supplier or customer.
- 5.30. Generally speaking, competition between individual businesses generates price signals which direct resources to their most efficient use. Collective agreements to negotiate terms and conditions can interfere with these price signals and accordingly lead to inefficiencies. The capacity of new entrants to compete for the rights to undertake the business of existing market participants subject to the collective bargaining agreement also has implications for how competition is affected. However, the extent of the detriment and the impact on competition of the collective agreement will depend upon the specific circumstances involved.
- 5.31. The ACCC has previously identified that the anti-competitive effect of collective bargaining arrangements constituted by lost efficiencies is likely to be more limited where the following features are present
- the current level of negotiations between individual members of the group and the proposed counterparties on the matters that they seek to negotiate is low
 - there are restrictions on the coverage and composition of the bargaining group
 - participation in the collective bargaining arrangements is voluntary and
 - there is no boycott activity.

Notifying parties' submission

- 5.32. The notifying parties submit that the proposed arrangements are unlikely to significantly increase Inghams' costs. In any event, they note that growing fees constitute only a small percentage of the cost of processed chicken meat. Further, they consider that the balance of the bargaining power will continue to remain with Inghams.²⁷
- 5.33. The notifying parties also submit that the proposed arrangement will have no impact on the market for growing services. They note that growers are tightly bound to their respective processors and that grower groups are located in geographic areas aligned to individual processors.

ACCC's conclusion on public detriments

- 5.34. Where the current level of individual bargaining between members of a proposed collective group and the target is low, the difference between the level of competition with or without the collective arrangements may also be low.
- 5.35. Based on the information before it, the ACCC considers that a low level of competition currently exists between individual growers in respect negotiating with Inghams the terms and conditions that are subject of this notification. As noted previously, individual growers appear to be restricted in their ability to offer services to competitors of Inghams.
- 5.36. The ACCC considers that where the size of the bargaining group is limited, any anti-competitive effect is likely to be smaller having regard to the small area of trade directly affected and having regard to the competition provided by those suppliers outside the group.
- 5.37. The ACCC notes that the proposed arrangements are restricted to 18 current and future Inghams' growers. Further, based on figures provided by the notifying parties, the proposed arrangements represent approximately only one third of chicken growers in South Australia.²⁸ The chicken growers who are not contracted to Inghams, service either Baiada Poultry or Gourmet Poultry. The ACCC also notes that Inghams has the option of sourcing processed chicken meat from Victoria. For these reasons, the ACCC considers that Inghams will continue to have countervailing bargaining power that will limit the potential for anti-competitive detriment from the proposed arrangements.

²⁷ South Australian Farmers Federation, *Collective bargaining notification CB00070*, Attachment 3, p.17.

²⁸ South Australian Farmers Federation, *Collective bargaining notification CB00070*, Attachment 3, p.17.

- 5.38. The ACCC has previously expressed concern about separate grower groups having a common negotiator. The ACCC notes that SAFF does not intend to represent the notifying parties and does not currently represent other South Australian chicken growers in negotiations with processors. However, if SAFF were to represent these growers as well as other grower groups in South Australia, the ACCC would expect SAFF to set up appropriate internal ring fencing arrangements to ensure that confidential information is not inappropriately transferred or used from one collective negotiation to another.
- 5.39. Participation in the proposed collective bargaining arrangement is voluntary. The notifying parties may opt out of the collective bargaining process at any time and negotiate individually with Inghams. Alternatively, Inghams may choose not to participate in collective negotiations with the notifying parties.
- 5.40. The notification does not provide immunity for the notifying parties to engage in collective boycott activity.

6. Conclusion

- 6.1. The proposed collective bargaining arrangement involves an agreement on price and is therefore subject to the test described in paragraph 4.2.
- 6.2. Consistent with that test the ACCC will object to a notified arrangement where it is satisfied that the benefit to the public that would result, or is likely to result, from the proposed arrangements does not outweigh the detriment to the public.
- 6.3. The ACCC considers that the proposed collective bargaining arrangements are likely to result in some public benefits. In particular:
 - by providing greater opportunity for individual growers to provide input into contract terms and conditions, to achieve more balanced and mutually beneficial commercial outcomes, and
 - transaction cost savings.
- 6.4. The ACCC has identified a number of features which mitigate against the potential for the arrangements to have an anti-competitive impact. In particular, the ACCC notes:
 - the level of competition between individual growers is unlikely to be significantly affected
 - the comparative bargaining position of Inghams in comparison to the notifying parties whether negotiating individually or collectively
 - the proposed arrangements are voluntary for all parties and
 - the arrangements do not include collective boycott activity.
- 6.5. On the information available, the ACCC is not satisfied that the benefits likely to arise from the notified arrangements would not outweigh the identified detriments.
- 6.6. Accordingly, the ACCC does not object to collective bargaining notification CB00070. Protection from legal action provided by notification CB00070 commenced on 14 March 2009 and will cease 3 years from the date of lodgement (27 February 2012).
- 6.7. As with any notification, the ACCC may review this notification at a later stage should concerns arise.

Attachment A

Notifying parties to collective bargaining notification CB00070

1. Beaufort Poultry Pty Ltd
2. Dajmak Pty Ltd
3. E & L Braendler
4. Eagle Poultry Pty Ltd
5. Ferati Holdings Pty Ltd
6. Glenellen Pty Ltd
7. Lelpin Lodge Pty Ltd
8. Lockwood Valley Pty Ltd
9. MS and CH Hampel Pty Ltd
10. Murray Lands Broiler Management Pty Ltd
11. Orland Poultry Pty Ltd
12. Pineview Poultry Pty Ltd
13. PJ & GE Samuel
14. PJ & SL Williams Pty Ltd
15. Poussin Poultry Pty Ltd
16. PR & RE Schmidt
17. RLS Enterprises (Aust) Pty Ltd
18. Southern Poultry Pty Ltd