



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2008/1626
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23 January 2009

Mr Charles Massy
Associate
Hall Payne Lawyers
GPO Box 3114
Brisbane QLD 4001

Via email: charlesm@hallpayne.com.au

Dear Mr Massy

**Construction, Forestry, Mining and Energy Union, Queensland application
for authorisation A91103**

I refer to the application for authorisation lodged by the Construction, Forestry, Mining and Energy Union of Employees, Queensland (the Union).

As part of its interested party consultations, the ACCC has received a submission from Theiss Pty Ltd (Theiss) dated 21 January 2009 relating to the validity of the Union's application (the Theiss submission). A copy of the Theiss submission will appear on the public register and is attached.

The Theiss submission suggests that:

- (a) the Union does not have the requisite nexus to Queensland to fall within the scope of application of the Queensland Competition Code; and
- (b) the owner drivers cannot be members of the Union as '[t]ruck drivers under the *Industrial Relations Act 1999* (Qld) (either as employees or independent contractors) are not eligible to enrol as members' of the Union under its rules and list of callings in Queensland.

Accordingly, the ACCC invites the Union to comment on these matters, including whether:

- (a) the Union is a person (i) carrying on business in Queensland, (ii) ordinarily resident in Queensland, or (iii) otherwise connected with Queensland, within the terms of s 8(1) of the *Competition Policy Reform Act 1996* (Qld);

- (b) owner drivers are eligible to be members of the Union under its rules (by reference to those rules and any other relevant information); and
- (c) the owner drivers listed in Annexure A of the Form B Application for Authorisation are, in fact, members of the Union.

The ACCC also invites the Union to comment on any other matter raised in the Theiss submission if the Union considers it necessary to do so.

Please provide a response to the matters raised in this letter by 27 January 2009.

If you have any questions in relation to this letter, please contact Sharon Clancy on (02) 6243 1217.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R Chadwick', with a long horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch