

# Transport Workers Union of Australia

## SA/NT Branch



Ms Sue Philp  
Director  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

29 July 2009

Dear Sue,

Re Application for Authorisation

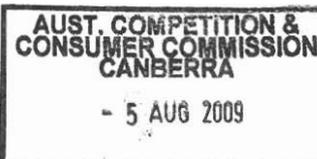
We act on behalf of the Milk Vendors in South Australia and enclose the following documents for lodgement with your office:

- Form B Application for Authorisation
- Attachment to Form B (submission in support);and
- A letter requesting Waiving the Application Fee

We look forward to receiving confirmation of the lodgement of these documents.

Yours Sincerely

Alex Gallacher  
Branch Secretary  
Transport Workers Union SA/NT Branch



## **Form B**

Commonwealth of Australia

*Trade Practices Act 1974 — subsections 88 (1A) and (1)*

### **AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### **1. Applicant**

(a) Name of Applicant:

*(Refer to direction 2)*

Transport Workers Union of Australia SA/NT Branch

A91179

(b) Short description of business carried on by applicant:  
(Refer to direction 3)

The Union is the Principal Union in the Transport Industry which also now represent South Australian Milk Vendors who are responsible for the distribution of milk and milk products to retail customers and private residents.

(c) Address in Australia for service of documents on the applicant:  
Mr A Gallacher  
Branch Secretary  
Transport Workers Union of Australia SA/NT Branch  
PO Box 137  
Welland  
SA 5007

## **2. Contract, arrangement or understanding**

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)

Please refer attachment to the application for authorisation lodged on the 25 June 09

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:  
(Refer to direction 4)

Please refer attachment to the application for authorisation lodged on the 25 June 09

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

Please refer attachment to the application for authorisation lodged on the 25 June 09

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

The time limit of the authorisation is initially sought for a period of five years.

## **3. Parties to the proposed arrangement**

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

- National Foods Milk Limited

- 167 Cross Keys Road, Salisbury SA 5018
- The Future Dairy Distribution Company who purchases Dairy Farmers (Pauls Parmalat have a binding agreement to purchase Dairy Farmers)  
154 Caulfield Avenue Clarence Gardens SA 5039
- Such existing and future Milk Vendors (being members or non-members of the Union) who may elect to appoint the Union to negotiate on their behalf.

(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)*

Please refer attachment to the application for authorisation lodged on the 25 June 09

#### **4. Public benefit claims**

(a) Arguments in support of authorisation:  
*(Refer to direction 6)*

Please refer attachment to the application for authorisation lodged on the 25 June 09

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

Please refer attachment to the application for authorisation lodged on the 25 June 09

#### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) 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):

*(Refer to direction 7)*

Please refer attachment to the application for authorisation lodged on the 25 June 09

#### **6. Public detriments**

(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

Please refer attachment to the application for authorisation lodged on the 25 June 09

(b) Facts and evidence relevant to these detriments:

Please refer attachment to the application for authorisation lodged on the 25 June 09

**7. Contract, arrangements or understandings in similar terms**

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

(a) Is this application to be so expressed?

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

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

*(Refer to direction 9)*

Not applicable

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable

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

Not applicable

**8. 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

**9. Further information**

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Roger Prime  
Transport Workers Union of Australia SA/NT  
PO Box 137 Welland SA 5007  
Tel (08) 8364 4177 Fax (08) 8364 8580 Mob 0408410517  
E-Mail [roger.prime@twusant.com.au](mailto:roger.prime@twusant.com.au)

Dated 3/8/09.....

Signed by/on behalf of the applicant



.....  
(Signature)

Alex Gallacher  
(Full Name)

Branch Secretary  
(Position in Organisation)

## **DIRECTIONS**

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.

4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

(a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and

(b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the contract, arrangement or

understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.

8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

**ATTACHMENT TO  
APPLICATION FOR AUTHORISATION BY  
THE TRANSPORT WORKERS UNION OF AUSTRALIA SA/NT BRANCH**

The Transport Workers Union of Australia SA/NT (“the Union”) seeks authorisation under section 88 (1) of the Trade Practices Act 1974 (Cth):

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

Authorisation is sought for the purpose of engaging in the following proposed conduct:

- (a) An arrangement between milk vendor members and non members (both present and future) of the Transport Workers Union of Australia SA/NT Branch for the Union to collectively bargain on their behalf with National Foods Milk Limited (“National Foods”) and the future purchaser of Dairy Farmers (Pauls Parmalat) in South Australia in relation to the terms and conditions of distribution contracts between those parties, National Foods and the future purchaser of Dairy Farmers (Pauls Parmalat) in South Australia.
- (b) An arrangement between milk vendor members and non-members (both present and future) of the Transport Workers Union of Australia SA/NT branch to give effect to any contracts agreed by the Union with National Foods and the future purchaser of Dairy Farmers in South Australia.(Pauls Parmalat)
- (c) An arrangement between:
  - Milk Vendor Members and non members (both present and future) of the Transport Workers Union of Australia SA/NT Branch; and
  - National Foods Milk Limited; and
  - The future purchaser of Dairy Farmers in South Australia.(Pauls Parmalat)
- (d) Particular items which are proposed to negotiate include:

- Milk margins paid to accredited vendors.
  - Delivery fees paid to accredited vendors.
  - Rationalisation of Distribution businesses.
  - Acceptable date codes on products.
  - Non supply of products.
  - On-site management of depots and cold chain compliance.
- (e) The Union and its milk vendor members are not seeking an authorisation for making a contract or arrangement for arriving at an understanding containing an exclusionary provision. The proposed negotiation process will be voluntary and each accredited vendor will independently need to make a decision regarding whether or not to participate in the process or to adopt any collective negotiated terms and conditions.
- (f) The likely collective bargaining process, should the authorisation be granted, is as follows.
- The Union will write to vendors (both members and non-members of the Union) to notify them of the authorisation and to advise the vendors that they may nominate the Union to negotiate contract terms and conditions on their behalf.
  - Vendors may then nominate the Union to negotiate on their behalf.
  - The Union will then notify the relevant processor (NFML or the future purchaser of Dairy Farmers (Pauls Parmalat)) that it has been authorised to negotiate on behalf of the relevant vendors.
  - The Union will then engage in negotiations on behalf of those vendors with the relevant processor.
  - The Union will then report back to the relevant vendors.
  - There may be further negotiations with the relevant processor.
  - Vendors will then make individual decisions as to whether or not to contract with the relevant processor.
  -

For all further additional information please refer to application for authorisation lodged on 25 June 09 and attached appendices

Dated 3/8/09

Signed by/on behalf of the applicant 

Alex Gallacher  
Branch Secretary