



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: C2008/1626  
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2 February 2009

Mr Michael Coonan  
Partner  
Freehills  
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By email: [michael.coonan@freehills.com](mailto:michael.coonan@freehills.com)

Dear Mr Coonan

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

I refer to the application for authorisation lodged on 6 October 2008 by the Construction, Forestry, Mining and Energy Union of Employees, Queensland (the Union) and to the submission from Theiss Pty Ltd (Theiss) dated 21 January 2009 relating to the validity of the Union's application (the Theiss submission).

Prior to receiving the Theiss submission, the ACCC received a letter from the Union's lawyers dated 15 January 2009 which stated that there was a typographical error in section 1(a) of the Form B Application for Authorisation and that the correct name of the entity making the application is the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland. A copy of this letter appears on the public register. The ACCC considers that this addresses the issue, raised in the Theiss submission, of which entity made the application.

After receiving the Theiss submission, the ACCC wrote to the Union and invited it to comment on the matters raised in the Theiss submission. Specifically, the ACCC invited comments from the Union on 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 Union provided a response by way of a further submission on 27 January 2009 (the further submission). The further submission is enclosed and also appears on the public register.

After having considered the information provided by the Union at paragraphs 3.10 – 3.16 of the further submission, the ACCC is satisfied that the Union does have the requisite nexus to Queensland to fall within the scope of application of the Queensland Competition Code. To that extent, the ACCC considers that the application for authorisation has been validly made.

The further submission addresses the issue of whether owner drivers are eligible to be members of the Union at paragraphs 3.14-3.18. At paragraph 3.18, the Union 'submits and formally requests that the authorisation be granted in terms of allowing owner drivers who have engaged the Union to provide them with services to support and facilitate the collective bargaining by such owners drivers'. The further submission also states that the Union will provide the ACCC with the written confirmation from the 24 owner drivers listed in Annexure A to the attachment to the Form B that they have authorised the Union to make the application for authorisation on their behalf.

The ACCC will have regard to these matters, as well as the issues raised in the Theiss submission, when considering whether to grant the application for authorisation. Accordingly, Theiss is invited to comment on the matters raised in paragraph 3.18, or any of the other matters raised in the further submission, should it wish to do so. If Theiss does wish to comment, it should note the indicative timetable (revised) for the ACCC's decision which appears in the letter dated 25 November 2008 from the ACCC to interested parties. Theiss will also have the opportunity to respond to the ACCC's draft determination concerning the Union's application for authorisation.

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

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch