



Australian  
Competition &  
Consumer  
Commission

# **Draft** Determination

## **Application for revocation of A90914 and substitution with A91197**

lodged by

**Tasmanian Farmers & Graziers Association**

in respect of

an arrangement between present and future vegetable grower members to collectively negotiate the terms and conditions of growing contracts with McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Limited.

**Date: 24 February 2010**

**Authorisation no.:** A91197

**Commissioners:** Samuel  
Kell  
Schaper  
Court  
Dimasi  
Walker  
Willett

**Public Register no.:** C2009/1886

## Summary

The ACCC proposes to revoke authorisation A90914 and grant authorisation A91197 in substitution. The authorisation is subject to a proposed condition and enables the continuation of an arrangement between present and future vegetable grower members of the TFGA to collectively negotiate the terms and conditions of growing contracts with McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Limited and any future vegetable processor in Tasmania. The authorisation also enables the TFGA to assist vegetable grower members in their negotiations.

The proposed condition restricts the collective bargaining groups from disclosing information obtained in the course of collective negotiations to growers outside the group.

The ACCC proposes to grant authorisation for five years.

On 13 November 2009, the Tasmanian Farmers & Graziers Association (TFGA) lodged an application for re-authorisation (revocation and substitution) for an arrangement between present and future vegetable grower members to collectively negotiate the terms and conditions of growing contracts with McCain Foods (Aust) Pty Ltd (McCain) and Simplot Australia Pty Limited (Simplot) and any future vegetable processor in Tasmania.

The TFGA also seeks authorisation to assist vegetable grower members in their negotiations.

The TFGA's vegetable grower members have been operating under an authorisation to collectively negotiate on a commodity by commodity basis with McCain and Simplot since 2004.

The ACCC considers that the collective bargaining arrangements are likely to continue to result in public benefits through transaction cost savings and providing the opportunity for increased grower input into contracts.

The ACCC considers that the collective bargaining arrangements are unlikely to result in significant anticompetitive detriment. Participating in collective negotiations is voluntary for both growers and processors. Collectively negotiated contracts will only be agreed and implemented where both growers and their processor consider it is in their commercial best interest to do so.

On balance, the ACCC considers that the likely benefits that will result from the arrangements will outweigh any public detriments and the ACCC proposes to grant authorisation for five years.

The ACCC is now seeking further submissions in relation to this draft determination prior to making its final decision. The TFGA and/or any interested parties may also request that a conference be held to make oral submissions on the draft determination.

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## List of abbreviations

ACCC	Australian Competition and Consumer Commission
McCain	McCain Foods (Aust) Pty Ltd
Processors	McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Limited
Simplot	Simplot Australia Pty Limited
TFGA	Tasmanian Famers & Graziers Association
The Act	<i>Trade Practices Act 1974</i>

# 1. The application for authorisation

- 1.1. On 13 November 2009, the Tasmanian Farmers & Graziers Association (TFGA) lodged an application for the revocation of authorisation A90914 and the substitution of a new authorisation A91197 for the one revoked.
- 1.2. Authorisation is a transparent process where the ACCC may grant immunity from legal action for conduct that might otherwise breach the *Trade Practices Act 1974* (the Act). The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Further information about the authorisation process is contained in Attachment A.
- 1.3. Application A91197 was made under section 91C(1) of the Act. Under section 91C of the Act, the ACCC may revoke an existing authorisation and grant another authorisation in substitution for the one revoked (re-authorisation). In order for the ACCC to re-authorise, the ACCC must consider the substitute authorisation in the same manner as the standard authorisation process.
- 1.4. A chronology of the significant dates in the ACCC's consideration of this application is contained in Attachment B.
- 1.5. The TFGA is seeking re-authorisation of an arrangement between present and future<sup>1</sup> vegetable grower members to collectively negotiate the terms and conditions of growing contracts with McCain Foods (Aust) Pty Ltd (McCain) and Simplot Australia Pty Limited (Simplot). The TFGA also seeks authorisation to collectively negotiate with any new entrant vegetable processor in Tasmania.
- 1.6. The TFGA seeks re-authorisation of the arrangements for a further five years.

## Interim authorisation

- 1.7. The TFGA sought interim authorisation for the collective bargaining arrangements due to the pending expiry of the existing authorisation.
- 1.8. On 4 December 2009, the ACCC granted interim authorisation to the TFGA which allows the TFGA's vegetable grower members to continue to engage in collective bargaining negotiations with the processors while the substantive application for authorisation is being considered.
- 1.9. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

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<sup>1</sup> Under section 88(6) of the Act, any authorisation granted by the ACCC is automatically extended to cover any person named in the authorisation as being a party or proposed party to the conduct.

## **Previous authorisations**

- 1.10. On 17 November 2004, the ACCC granted authorisation A90914 to the TFGA for five years for an arrangement between present and future TFGA vegetable grower members to collectively bargain the terms and conditions of growing contracts with McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Limited.
- 1.11. Authorisation was granted for negotiations to occur on a commodity group by commodity group basis. That is, authorisation was granted for McCain potato growers to negotiate in one group, Simplot potato growers to negotiate in another group, McCain pea growers to negotiate in another group, and so on.
- 1.12. Authorisation was also granted to allow the TFGA Vegetable Council Executive Officer to assist growers in their negotiations.
- 1.13. On 24 February 2009, the TFGA sought minor variation to authorisation A90914 for amendments to allow any TFGA nominated employee or consultant to assist grower groups in their negotiations (i.e no longer limited to the Vegetable Council Executive Officer). The ACCC issued a determination on 15 April 2009 granting this minor variation.

## **The arrangements**

- 1.14. Consistent with what was previously authorised, collective negotiations will occur on a commodity basis and the particular processor supplied, namely:
  1. Simplot Processed Potato Growers Group
  2. Simplot Potato Growers group
  3. Simplot Pea Growers Group
  4. Simplot Bean Growers Group
  5. Simplot Carrot Growers Group
  6. Simplot Brassica Growers Group
  7. McCain Processed Potato Growers Group
  8. McCain Seed Potato Growers Group
  9. McCain Pea Growers Group
  10. McCain Bean Growers Group
  11. McCain Brassica Growers Group
- 1.15. Each of the eleven negotiating groups act autonomously and negotiate with the processors separately, although they each follow a similar negotiation process.
- 1.16. The process for collective negotiations to commence can be triggered by the relevant commodity group or by the processor. Once it is agreed that collective negotiations should commence a negotiating group committee is elected by the growers in the commodity group. The committee members must be growers of the particular commodity being represented and be levy paying members of the TFGA for that commodity. Any vegetable grower who supplies both Simplot and McCain can only qualify for one negotiating committee.

- 1.17. While there is a TFGA representative attached to each committee it does not act as the negotiator. The role of the TFGA is to:
- obtain and disseminate relevant information to each of the commodity groups to assist with price and contract deliberations
  - provide administrative assistance to the commodity groups with secretariat support covering such matters as newsletters, meeting arrangements, minute taking, letter writing, press releases and general lobbying on any issues affecting members
  - join the commodity groups during meetings with the processors to discuss price and contract arrangements. The representative of the TFGA is required to be directly responsible to the chairman of the relevant commodity group.
- 1.18. Under the arrangements the negotiating group committee and the processor review the past season and consider the outlook for the season ahead. The processor may advise of its expectations with regard to price and conditions or ask the committee about its expectations.
- 1.19. If the committee members consider what is being offered is reasonable and in line with their understanding of grower expectations, they can recommend acceptance of the offer to growers. This recommendation would be made to members by way of a newsletter. The processor can then contact growers to secure individual acceptance and settle contractual details.
- 1.20. If the committee considers that what is being offered is less than reasonable and/or is unable to be recommended to growers, then a grower meeting would be called. At this meeting growers would be advised of the conditions surrounding the processor's position. Growers would be asked to provide a directive to the committee about the grower expectations regarding price and conditions. The committee representatives would then communicate these expectations to the processor.
- 1.21. It is envisaged that representatives from the processor attend the grower meeting to put their position if appropriate. The processor representatives would then leave the meeting while the growers considered the information provided and advised the committee about the direction required to be taken.
- 1.22. While the commodity group/TFGA will endeavour to reach an agreement with processors on contract price and conditions there may be times when agreement is not able to be reached, in which case, the committee is likely to recommend that growers consider their individual positions.
- 1.23. The tonnages to be contracted and acceptance of the price and conditions following discussions of the commodity groups will remain a matter between each individual grower and processor. Neither the commodity group nor the TFGA will contract with the processors. Each grower will determine whether or not to agree to accept the terms and conditions of the individual contract offered by the respective processors as a result of the negotiations.
- 1.24. In this context, it is important to note that re-authorisation does not extend to the TFGA to engage in collective boycott activity. Any such conduct would not be protected from legal action under the Act.

## 2. Background to the application

### Tasmanian Farmers & Graziers Association

- 2.1. The TFGA is Tasmania's peak agricultural body, representing 3100 agricultural enterprises.<sup>2</sup> The TFGA Vegetable Council represents the interests of vegetable growers in Tasmania and assists in their collective contract negotiations with vegetable processors. Vegetable grower crops include potatoes, onions, beans, peas, carrots and brassica's (broccoli, cauliflower and brussel sprouts).<sup>3</sup>

### Tasmanian Vegetable Industry

- 2.2. The vegetable industry represents 18 per cent of the value of Tasmanian agriculture, valued at approximately \$352 million per annum when packed and/or processed.<sup>4</sup>
- 2.3. The three major fresh vegetables grown in Tasmania are potatoes, onion and carrots. Potatoes are the largest component of the vegetable industry and once packed and processed, account for 56 per cent of sales. Tasmania produces approximately 25 per cent of the 1.3 million tonnes of potatoes produced nationally. Onions are the second most valuable crop after potatoes, with Tasmania producing approximately 25 per cent of the national crop.<sup>5</sup>
- 2.4. In Tasmania, up to 75 per cent of total vegetable output is sold to vegetable processors.<sup>6</sup> Most vegetables are produced under contract for processing into frozen product by McCain and Simplot.
- 2.5. Growers are generally contracted for set periods of time, for example, for a season or consecutive seasons. It is generally the case that overall production is managed by the processor to maintain a supply profile that is in line with the needs of the business.<sup>7</sup>
- 2.6. Growing contracts usually provide for the area, timing, yield performance, product specifications, price and terms of supply. In many cases, the contracts will impose penalties for variation from these specifications to avoid wastage or poor yields.<sup>8</sup>

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<sup>2</sup> Tasmanian Farmers & Graziers Association, *Home*, viewed November 2009 <[www.tfga.com.au](http://www.tfga.com.au)>

<sup>3</sup> Tasmanian Farmers & Graziers Association, *Commodities*, viewed November 2009 <[www.tfga.com.au/commodities/vegetable.aspx](http://www.tfga.com.au/commodities/vegetable.aspx)>

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> IBISWorld Industry Report, *Vegetable growing in Australia*: A0113, IBISWorld, 4 December 2009.

<sup>7</sup> Spencer, S 2004. *Price Determination in the Australian Food Industry: a report*, Australian Government Department of Agriculture, Fisheries and Forestry, Canberra.

<sup>8</sup> Ibid



### **3. Submissions received by the ACCC**

- 3.1. The ACCC tests the claims made by the applicant in support of an application for re-authorisation through an open and transparent public consultation process. To this end the ACCC aims to consult extensively with interested parties that may be affected by the proposed conduct to provide them with the opportunity to comment on the application.

#### **TFGA submissions**

- 3.2. Broadly, the TFGA submits that:
- vegetable growers, as individuals, are in a weak bargaining position and could not be expected to have the skills required to deal with well resourced multinational processors
  - the collective bargaining approach is an organised and cost effective means to cover the issue of arranging contract prices and conditions
  - collective bargaining provides support and industry stability for growers. This transfers to growers being able to maintain pace with, and continue to adopt, relevant technology
  - the practice of open consultation with each of the commodity groups ensures that a considered grower position is always adopted when the negotiating groups meet with the processor representatives
  - it is unlikely that growers collectively bargaining with processors will have any significant effect on consumers.

#### **Interested party submissions**

- 3.3. The ACCC sought submissions from interested parties potentially affected by the application, including the TFGA Vegetable Council, McCain and Simplot and relevant government departments. A summary of the public submissions received from interested parties follows.

##### *McCain Foods (Aust) Pty Ltd (McCain)*

- 3.4. Broadly, McCain supports the re-authorisation of the collective arrangements. In particular it submits that:
- they do not see the growers as being in a weak bargaining position and that growers do have the skills and resources to negotiate with the processors
  - the collective bargaining approach is administratively easier and a more cost effective approach to setting contract prices
  - they do not acknowledge that collective bargaining has resulted in lower costs and added benefits to the economy
  - whilst the intention of collective bargaining is to provide support and industry stability it has not been the case of recent times with reduction in processing capabilities, reduction in contracted crop tonnages and increased import activity by more cost competitive producers

- locally sourced and processed vegetable products are becoming dearer and consequently enabling lower priced imported products to be sourced and supplied. This will ultimately lead to a reduced availability of locally produced frozen vegetable products
- in the past 13 years, the McCain Processed Potato Growers have received increases in their contracted potato prices per tonne of in excess of 70%.

*Simplot Australia Pty Limited (Simplot)*

- 3.5. Broadly, Simplot agrees that there will be public benefit in permitting collective bargaining, including:
- greater consistency for growers
  - improved bargaining position for growers arising from being better informed and represented which will counter the perception of a power imbalance between growers and processors
  - greater efficiencies in finalisation of contracts
  - an improved ability for growers and processors to respond quickly to changing market conditions, whether they relate to price and contract terms or to issues relating to varieties of vegetables and farming processes
  - a flow on effect to consumers through improved competitiveness in the industry and improved quality of, and research into, vegetable varieties.
- 3.6. Simplot considers that public detriment flowing from the collective bargaining arrangements will be minimal.
- 3.7. The views of the TFGA and interested parties are further outlined in the ACCC's evaluation of the arrangements in Chapter 4 of this draft determination. Copies of public submissions may be obtained from the ACCC's website ([www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister)) and by following the links to this matter.

## 4. ACCC evaluation

- 4.1. Broadly, under section 91C(7) the ACCC must not make a determination revoking an authorisation and substituting another authorisation unless the ACCC is satisfied that the relevant statutory tests are met.
- 4.2. The ACCC's evaluation of the conduct is in accordance with tests found in sections:
- 90(6) and 90(7) of the Act which state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:
    - the provision of the proposed contract, arrangement or understanding in the case of section 90(6) would result, or be likely to result, or in the case of section 90(7) has resulted or is likely to result, in a benefit to the public and
    - that benefit, in the case of section 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of section 90(7) has resulted or is likely to result from giving effect to the provision.
  - sections 90(5A) and 90(5B) of the Act which state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:
    - the provision, in the case of section 90(5A) would result, or be likely to result, or in the case of section 90(5B) has resulted or is likely to result, in a benefit to the public and
    - that benefit, in the case of section 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of section 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.
- 4.3. For more information about the tests for authorisation and relevant provisions of the Act, please see [Attachment C](#).

### The market

- 4.4. The first step in assessing the effect of the conduct for which re-authorisation is sought is to consider the relevant market affected by that conduct.
- 4.5. In the consideration of the original authorisation, the ACCC identified two areas of competition relevant to the collective bargaining arrangements, namely:
- the supply of vegetables to Tasmanian vegetable processors
  - the supply of vegetables to retailers and food service industries – that is restaurants, caterers and fast food/takeaway outlets.

- 4.6. Simplot submits that these continue to be the relevant markets and that each of these markets is highly competitive.
- 4.7. McCain submits that collective negotiation effects not only the vegetable processing sector but also other areas of the supply chain including the retail frozen vegetable industry supply chain, the wholesale frozen vegetable distribution supply chain, the quick service restaurant supply chain and ultimately consumers of Australian produced products supplied by those channels. McCain submits that at all points in the respective supply chain, the participants have alternative supply capabilities such as fresh produce, or imported frozen products.
- 4.8. The ACCC considers that the markets previously identified remain relevant to the assessment of the application for authorisation. It is not necessary to further disaggregate the market for the purpose of assessing the application. The ACCC considers that the features of these markets apply irrespective of whether each is broadly defined to include all vegetables or more narrowly defined as separate markets for specific vegetable, for example potatoes.
- 4.9. With respect to the market for the supply of vegetables by Tasmanian growers to McCain and Simplot (or any other processor which could potentially establish a processing facility in Tasmania), the ACCC notes that:
- as contended by McCain, there is some capacity for growers to alter the composition and volume of crops grown from one season to another and/or switch processors. However, more generally, vegetable growing requires significant preparation and forward planning, resources and relevant capital equipment, with little scope to make significant changes to crops and planting schedules should farmers wish to exit the industry in favour of other farming activities
  - the growing fee paid to the farmer is a relatively small percentage of the end retail price of the product.
- 4.10. With respect to the supply of vegetables to retailers and food service industries, the ACCC notes that:
- vegetables processed by McCain and Simplot are sold both in Tasmania and mainland states
  - McCain and Simplot advise that retailers and food service customers are able to source imported frozen products or fresh produce and that any price increase paid to growers is not able to be passed on to customers in full.

## **The counterfactual**

- 4.11. The ACCC applies the ‘future with-and-without test’ established by the Tribunal to identify and weigh the public benefit and public detriment generated by arrangements for which authorisation has been sought.<sup>9</sup>
- 4.12. Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those

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<sup>9</sup> *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936. See also for example: *Australian Association of Pathology Practices Incorporated* (2004) ATPR 41-985 at 48,556; *Re Media Council of Australia* (No.2) (1987) ATPR 40-774 at 48,419.

generated if the authorisation is not granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the 'counterfactual'.

- 4.13. The ACCC considers that the likely counterfactual is one where the vegetable growers are required to negotiate the terms and conditions of growing contracts with the processors individually.
- 4.14. It is in the ACCC's experience that absent of authorisation to collectively bargain, processors offer producers standard form contracts with little capacity to negotiate the terms and conditions offered. The ACCC considers that in these circumstances, the processors would either negotiate the terms and conditions of individual contracts with each vegetable grower, or alternatively offer standard contracts which are likely to have limited options regarding variations to the terms and conditions.

## **Public benefit**

- 4.15. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.<sup>10</sup>

- 4.16. The public benefits claimed by the TFGA can be broadly categorised as follows:

- increased bargaining power
- transaction cost savings
- contract certainty

### *Increased bargaining power and greater input into contracts*

- 4.17. The TFGA submits that growers, as individuals, are in a weak bargaining position relative to the processors. Further, the TFGA considers that individual growers would not be expected to have the skills required to deal with well resourced multinational processors in contract negotiations.
- 4.18. The TFGA also notes that the practice of open consultation with each of the commodity groups by their respective leaders ensures that a considered grower position is adopted when the negotiating groups meet with the processors.
- 4.19. The TFGA submits that under the authorised arrangements prices received by vegetable growers have generally been within market expectations. For example, two years ago growers received a price increase in line with increasing costs and increasing demand, while during the current season growers accepted a lower price due to softer demand, decreased input costs and import threats from New Zealand.
- 4.20. Simplot believes that the improved bargaining position for growers arising from being better informed and represented will counter the perception of a power imbalance between growers and processors. However, Simplot does not agree with the TFGA's

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<sup>10</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677. See also Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242.

claim that Simplot has or “will use the might and power of [its] world wide resources and knowledge to achieve [its] aims”.

- 4.21. McCain does not see the growers as being in a weak bargaining position and considers that growers have skills and resources to negotiate with the processors. Further, McCain considers vegetable growers to have the capability to vary their crops, the processors with whom they deal or vary the type of farming they undertake on their land. McCain also submits that collective negotiation is only one of a number of methods by which satisfactory pricing outcomes can be achieved.
- 4.22. The ACCC considers that collective bargaining arrangements, such as the arrangements proposed by the TFGA, can result in benefits to the public by facilitating improvement in the level of input a party has in their contractual negotiations. This improved input provides a mechanism through which the negotiating parties can identify and achieve greater efficiencies in their business, for example by addressing common contractual problems in a more streamlined and effective manner. This is potentially a very significant benefit for the parties involved.

#### *Transaction cost savings*

- 4.23. Transaction costs are likely to be lower in negotiating a collective agreement involving a single negotiating process relative to a situation where individual negotiation occurs with many smaller businesses. Consequently, the ACCC considers that to the extent that these transaction costs savings do arise they are likely to constitute a public benefit.
- 4.24. The TFGA submits that the administrative benefits of collective bargaining enables price stability and results in lower costs and added benefits to the local economy. The TFGA considers collective bargaining to be an organised and cost effective means to cover the issue of arranging contract prices and conditions for vegetable crops grown for processing in Tasmania. The TFGA notes that it would not be practical or economical for them to individually employ negotiators each time they wished to settle a commodity contract, particularly as most farmers are multi-commodity growers.
- 4.25. Simplot submits that one of the benefits from the collective bargaining arrangements is greater efficiencies in finalisation of contracts.
- 4.26. McCain agrees that the collective bargaining approach is administratively easier and a more cost effective approach to setting contract prices. However, McCain does not acknowledge that the administrative benefits from collective bargaining have provided lower costs and added benefits to the industry.
- 4.27. The ACCC notes that there are generally costs associated with entering contracts (whether they are individually or collectively negotiated) in the form of legal and/or professional advice. The ACCC notes that where contracts are collectively negotiated, these costs may be shared.
- 4.28. The ACCC considers that there are transaction costs savings resulting from the collective bargaining arrangements compared to a situation where vegetable growers are required to negotiate individually with each processor they supply.

#### *Contract certainty*

- 4.29. The TFGA considers that collective bargaining, although sometimes difficult between the negotiating parties, is intended to provide support and industry stability for growers.

The TFGA submits that this helps Tasmanian growers to maintain pace with, and continue to adopt, relevant technology.

- 4.30. Simplot submits that the collective bargaining arrangements will result in greater consistency and an improved ability for growers and processors to respond quickly to changing market conditions, whether they relate to price and contract terms or to issues relating to varieties of vegetables and farming processes. Simplot also notes that the collective bargaining arrangements may result in improved competitiveness in the industry and improved quality of and research into vegetable varieties.
- 4.31. However, McCain notes that whilst the intention of collective bargaining is to provide support and industry stability this has not been the case in recent times with reductions in processing capabilities, reduction in contracted crop tonnages and increased import activity by more cost competitive producers.
- 4.32. McCain has recently announced that its vegetable plant in Tasmania will cease operations following completion of the processing season at the end of April 2010. Packaging will cease in October or November 2010. The french fry factory at Smithton in Tasmania will continue to operate. The reason given for the plant closure is that the investments needed to modernise the plant, coupled with rising input costs, were not economically justified.<sup>11</sup>
- 4.33. While the ACCC does not consider that industry stability necessarily results from collective bargaining, the collective negotiations may provide vegetable growers with increased input into contract terms and conditions. This may provide growers with greater confidence and certainty regarding their ability to supply the processors in the longer term and provide a framework to assist with, for example, the adoption of new technology or improved processes.

### **ACCC conclusion on public benefits**

- 4.34. The ACCC accepts that the collective bargaining arrangements are likely to continue to result in public benefits resulting from improving the level of input that vegetable grower members of the TFGA have into contract negotiations with processors. There is also likely to be some transaction cost savings and efficiencies from collective negotiations relative to a situation where each grower individually negotiates and settles contracts. The collective bargaining arrangements may in this case also provide a framework to assist with the adoption of new technology and improved processes.

### **Public detriment**

- 4.35. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>12</sup>

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<sup>11</sup> McCain Foods Limited, *News*, viewed February 2010

<[www.mccain.com/Newsroom/Announcements/Pages/McCainFoodsAustralia.aspx](http://www.mccain.com/Newsroom/Announcements/Pages/McCainFoodsAustralia.aspx)>

<sup>12</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

- 4.36. Collective bargaining refers to an arrangement under which two or more competitors in an industry come together to negotiate terms and conditions, which can include price, with a supplier or customer.
- 4.37. The TFGA considers that it is unlikely that growers collectively bargaining with the processors will have any significant effect on consumers. The TFGA estimates that the grower share of the retail value of the products the subject of the collective arrangements ranges from 1% to 11% depending on the specific vegetable crop. The TFGA submits that this means that any increase in the price paid to growers will only be small relative to the price paid by consumers.
- 4.38. The TFGA advise that under the current collective arrangements prices received by vegetable growers have generally been within market expectations. For example, two years ago growers received a price increase in line with increasing costs and increasing demand, while during the current season growers accepted a lower price due to softer demand, decreased input costs and import threats from New Zealand.
- 4.39. McCain submits that whilst there is no direct effect on consumers due to the availability of other lower cost products, the indirect effect is that the high cost local product is being supplanted by the consumer moving demand to other products including imported products. This will ultimately lead to a reduced availability of locally produced frozen vegetable products and the consequent impacts on the agricultural and processing industries within the supply chain.
- 4.40. McCain submits that in the past 13 years the McCain Smithton processed potato growers have received increases in their contracted potato prices per tonne of in excess of 70%. McCain advise in the current competitive environment it has not passed on these increases to retailers.
- 4.41. Simplot considers that any public detriment from collective bargaining will be minimal. Simplot notes that potato growers have generally benefited from price increases over the past 10 years. Simplot advises it has not passed the full extent of the increase on to its customers and therefore has not been passed on to consumers.
- 4.42. The ACCC notes that even where growers are able to negotiate increases in prices paid to them as a result of bargaining collectively, Simplot and McCain advise that the capacity for such increases in price to be passed on to consumers is limited.
- 4.43. Further, the capacity for collective bargaining to result in an anti-competitive effect is likely to be limited where the following four features are present:
- the current level of negotiations between individual members of the group and the proposed counterparty(s) on the matters to be negotiated is low
  - participation in the collective bargaining arrangement is voluntary
  - there are restrictions on the coverage and composition of the bargaining group
  - there is no boycott activity.

*Current level of negotiations*

- 4.44. Where the current level of individual bargaining between members of the bargaining group and the target is low, the difference between the level of competition with or without the collective arrangements may also be low.



- 4.45. The ACCC considers that absent any form of collective negotiation, vegetable grower members would be offered largely standard form contracts under which the capacity for individual members to vary the terms and conditions of the agreement would be limited.
- 4.46. Therefore, the ACCC considers that the level of competition amongst the vegetable grower members with or without the collective negotiations would be low.

*Voluntary participation in the collective bargaining arrangements*

- 4.47. The collective bargaining arrangements are voluntary and neither the processors nor individual growers would be compelled to participate. Each would remain free to individually negotiate either variations to the collectively agreed contracts or to negotiate individual stand alone contracts.
- 4.48. In this regard, McCain notes that they reserve the right to undertake price negotiation under approved processes other than collective negotiation should they deem it necessary to achieve realistic pricing outcomes for the vegetable processing industry.
- 4.49. The ACCC understands that collectively negotiated contracts will only be entered into where both the vegetable growers and the relevant processor consider it to be in their best commercial interest to do so. The ACCC notes that both McCain and Simplot support the collective bargaining arrangements.

*Size/composition of bargaining groups*

- 4.50. The ACCC considers that where the size of the bargaining group is restricted, any anti-competitive effect is likely to be smaller having regard to the smaller area of trade directly affected and to the competition provided by those suppliers outside the group.
- 4.51. In general, the ACCC considers that limiting bargaining groups (for example by geography, or the size of the counterparty) allows negotiations to better take into account the specific demand or supply characteristics of particular businesses. This significantly reduces the anti-competitive effects associated with 'one size fits all' negotiations and allows competition between groups to provide the competitive discipline that leads to efficient resource use.
- 4.52. The TFGA bargaining groups consist only of those growers in the relevant commodity group growing for a particular processor. For example, McCain potato growers will form a group with other McCain potato growers and collectively negotiate the terms and conditions of potato growing contracts with McCain.
- 4.53. The ACCC notes that there may be circumstances where the growing groups overlap. Some farmers may produce various vegetable varieties and sell their produce to both McCain and Simplot. While this results in cross over between group membership, the ACCC notes that a grower who supplies both processors cannot be on both negotiating committees and can only qualify for one. Simplot submits that a condition of authorisation be imposed so only those growers who are growing the particular vegetable commodity for a particular processor be permitted to be a member of the negotiating committee for that processor (see paragraphs 4.59 - 4.62).

### *Boycott activity*

- 4.54. The TFGA has not applied for authorisation to engage in collective boycott activity. Accordingly, any such conduct, should it occur, would not be protected from legal action under the Act.

### **ACCC conclusion on public detriments**

- 4.55. The ACCC considers that the public detriment likely to result from the collective bargaining arrangements are minimal. Participation in the collective arrangements is voluntary for both growers and processors and a collective agreement will only be reached where all parties consider it to be in their commercial interest. Further, increases in the price paid to growers are unlikely to be fully reflected in the end price to consumers.

### **Balance of public benefit and detriment**

- 4.56. In general, the ACCC may only grant authorisation if it is satisfied that, in all the circumstances, the collective bargaining arrangement is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment.
- 4.57. In the context of applying the net public benefit test at section 90(8)<sup>13</sup> of the Act, the Tribunal commented that:
- ... something more than a negligible benefit is required before the power to grant authorisation can be exercised.<sup>14</sup>
- 4.58. For the reasons outlined in this chapter the ACCC considers the public benefits likely to result from the collective bargaining arrangements would outweigh the public detriment.
- 4.59. The ACCC notes that Simplot considers that it would be appropriate to formally require as a condition of authorisation that:
- only growers who are growing the particular vegetable commodity for a particular processor be permitted to be members of the grower group negotiating committee for that processor (i.e. only Simplot potato growers can be members of the Simplot Potato Grower Group negotiating committee)
  - growers who attend meetings at which one of the processors prices are discussed be required to keep those prices confidential and not discuss them with growers who are growing for competing processors.
- 4.60. The ACCC notes that under the terms of the authorisation being sought each individual commodity group negotiates with the processors separately and the negotiating group committee must comprise of growers of that particular commodity. Further, the ACCC notes that vegetable growers that supply both McCain and Simplot cannot be on both negotiating committees.

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<sup>13</sup> The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

<sup>14</sup> Re Application by Michael Jools, President of the NSW Taxi Drivers Association [2006] ACompT 5 at paragraph 22.

- 4.61. In collective bargaining, provisions restricting the sharing of information between groups serve to limit the anti-competitive effects in a similar fashion to restrictions on the coverage and cross representation of the bargaining groups. The ACCC sees benefit in introducing a condition that reinforces the operation of the collective bargaining groups as commodity and processor specific. Therefore, the ACCC proposes to introduce the following condition of authorisation:

**Proposed condition 1**

**Members or third party representatives of a collective bargaining group may not disclose, other than to members or third party representatives of the same group, information which was obtained by them in the course of collective negotiations with a processor and which the processor has advised them is confidential.**

- 4.62. The ACCC invites comment on the proposed condition.

### **Future processors**

- 4.63. The TFGA seeks authorisation to enable it to collectively negotiate with new entrant vegetable processors in Tasmania.
- 4.64. The ACCC proposes to enable current and future TFGA members to engage in collective negotiations with any new entrant vegetable processor in Tasmania, should that processor wish to participate. That is, the arrangements are voluntary and the proposed authorisation does not extend to any collective boycott activity by growers.

### **Length of authorisation**

- 4.65. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>15</sup> The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.
- 4.66. In this instance, TFGA seeks authorisation for five years.
- 4.67. No submissions were received regarding the proposed length of authorisation.
- 4.68. The ACCC proposes to re-authorise the collective bargaining arrangements for a further five years.

### **Variations to the arrangement**

- 4.69. The ACCC notes that any amendments to the arrangement during the proposed term of this re-authorisation would not be covered by the proposed re-authorisation.

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<sup>15</sup> Section 91(1).

## **5. Draft determination**

### **The application**

- 5.1. On 13 November 2009, the TFGA lodged an application for the revocation of authorisation A90914 and the substitution of authorisation A91197 for the one revoked.
- 5.2. Application A91197 was made under section 91C(1) of the Act. Under section 91C of the Act, the ACCC may revoke an existing authorisation and grant another authorisation in substitution for the one revoked (re-authorisation). In order for the ACCC to re-authorise, the ACCC must consider the substitute authorisation in the same manner as the standard authorisation process. Relevantly, the ACCC may grant authorisation under:
  - subsection 88 (1) of the Act to make and give effect to a contract or arrangement or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.
  - subsection 88 (1A) of the Act to make and give effect to 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 the Act (other than a provision which would also be, or might be, an exclusionary provision within the meaning of section 45 of that Act).
- 5.3. In particular, the TFGA seeks authorisation for an arrangement between present and future vegetable grower members to collectively negotiate the terms and conditions of growing contracts with McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Limited. The TFGA also seeks authorisation to collectively negotiate with any new entrant vegetable processor in Tasmania.
- 5.4. The TFGA also seeks authorisation to assist vegetable grower members in their negotiations.
- 5.5. Section 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

### **The net public benefit test**

- 5.6. For the reasons outlined in Chapter 4 of this draft determination, the ACCC considers that in all the circumstances the arrangements for which the substitute authorisation is sought are likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.
- 5.7. The ACCC therefore proposes to revoke authorisation A90914 and grant authorisation A91197 in substitution. The ACCC proposes to grant authorisation for five years.

### **Conduct for which the ACCC proposes to grant authorisation**

- 5.8. The authorisation proposed to be granted by the ACCC is for current and future TFGA vegetable grower members to collectively bargain, through negotiating committees formed by grower representatives on their various commodity group boards, the terms and conditions of growing contracts with McCain Food (Aust) Pty Ltd and Simplot

Australia Pty Limited. Such negotiation will occur on a commodity group by commodity group basis in the following growers groups:

- McCain: processed potato growers, seed potato growers, pea growers, bean growers, brassica growers.
  - Simplot: processed potato growers, seed potato growers, pea growers, bean growers, carrot growers, brassica growers.
- 5.9. The ACCC also proposes to grant authorisation for the TFGA to assist grower groups in their negotiations. The role of the TFGA will be to obtain and disseminate relevant information to each commodity group and to assist each group, including by attendance at negotiations with processors, with price and contract deliberations.
- 5.10. Neither the commodity group or the TFGA will contract with processors. Each grower will determine whether or not to accept the terms and conditions of the individual contract offered by the respective processor as a result of negotiations. Tonnages to be contracted and acceptance of price and conditions, following discussions of the commodity group, will remain a matter between each individual grower and the processor.
- 5.11. Negotiating group committees will consist of levy paying members of the TFGA for that commodity. Each negotiating group will act autonomously as an individual commodity group in its negotiations with processors.
- 5.12. Members that supply both Simplot and McCain cannot be on both negotiating committees.
- 5.13. The ACCC proposes to grant authorisation subject to the following condition:

**Proposed condition 1**

**Members or third party representatives of a collective bargaining group may not disclose, other than to members or third party representatives of the same group, information which was obtained by them in the course of collective negotiations with a processor and which the processor has advised them is confidential.**

- 5.14. This draft determination is made on 24 February 2010.
- 5.15. The attachments to this determination are part of the draft determination.

## **Future Parties**

- 5.16. The proposed re-authorisation extends to any future vegetable grower that becomes a member of the TFGA.
- 5.17. The proposed re-authorisation enables current and future vegetable grower members of the TFGA to collectively negotiate with new entrant vegetable processors in Tasmania should that processor agree to participate.

## **Conduct not proposed to be authorised**

- 5.18. The proposed re-authorisation does not extend to the TFGA to engage in collective boycott activity. Any such conduct would not be protected from legal action under the Act.

## **Interim authorisation**

- 5.19. At the time of lodging the application, the TFGA requested interim authorisation for the collective bargaining arrangements.
- 5.20. The ACCC granted interim authorisation to the arrangements on 4 December 2009.
- 5.21. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

## **Further submissions**

- 5.22. The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

## **Attachment A — the authorisation process**

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 conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’.

The ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.

The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.

After considering submissions, the ACCC issues a draft determination proposing to either grant the application or deny the application.

Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft.

The ACCC then reconsiders the application taking into account the comments made at the conference (if one is requested) and any further submissions received and issues a final determination. Should the public benefit outweigh the public detriment, the ACCC may grant authorisation. If not, authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed which sufficiently increase the benefit to the public or reduce the public detriment.

## **Attachment B - chronology of ACCC assessment for application A91197**

The following table provides a chronology of significant dates in the consideration of the application lodged by TFGA.

<b>DATE</b>	<b>ACTION</b>
13 November 2009	Application for revocation and substitution lodged with the ACCC, including an application for interim authorisation.
25 November 2009	Closing date for submissions from interested parties in relation to the request for interim authorisation.
4 December 2009	The ACCC granted interim authorisation
11 December 2009	Closing date for submissions from interested parties in relation to the substantive application for authorisation.
9 February 2010	Submission received from TFGA in response to interested party submissions.
24 February 2010	Draft determination issued.



# Attachment C — the tests for authorisation and other relevant provisions of the Act

## Trade Practices Act 1974

### Section 90—Determination of applications for authorisations

- (1) The Commission shall, in respect of an application for an authorization:
  - (a) make a determination in writing granting such authorization as it considers appropriate; or
  - (b) make a determination in writing dismissing the application.
- (2) The Commission shall take into account any submissions in relation to the application made to it by the applicant, by the Commonwealth, by a State or by any other person.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.
- (4) The Commission shall state in writing its reasons for a determination made by it.
- (5) Before making a determination in respect of an application for an authorization the Commission shall comply with the requirements of section 90A.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.
- (5A) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a proposed contract, arrangement or understanding that would be, or might be, a cartel provision, unless the Commission is satisfied in all the circumstances:
  - (a) that the provision would result, or be likely to result, in a benefit to the public; and
  - (b) that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:
    - (i) the proposed contract or arrangement were made, or the proposed understanding were arrived at; and
    - (ii) the provision were given effect to.
- (5B) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a contract, arrangement or understanding that is or may be a cartel provision, unless the Commission is satisfied in all the circumstances:
  - (a) that the provision has resulted, or is likely to result, in a benefit to the public; and
  - (b) that the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision.
- (6) The Commission shall not make a determination granting an authorization under subsection 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct (other than conduct to which subsection 47(6) or (7) applies), unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to

the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct were engaged in;

as the case may be.

(7) The Commission shall not make a determination granting an authorization under subsection 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.

(8) The Commission shall not:

- (a) make a determination granting:
  - (i) an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
  - (ii) an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
  - (iii) an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
  - (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

(9) The Commission shall not make a determination granting an authorization under subsection 88(9) in respect of a proposed acquisition of shares in the capital of a body corporate or of assets of a person or in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 50A unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

(9A) In determining what amounts to a benefit to the public for the purposes of subsection (9):

- (a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):
  - (i) a significant increase in the real value of exports;

- (ii) a significant substitution of domestic products for imported goods; and
- (b) without limiting the matters that may be taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

## Variation in the language of the tests

There is some variation in the language in the Act, particularly between the tests in sections 90(6) and 90(8).

The Australian Competition Tribunal (the Tribunal) has found that the tests are not precisely the same. The Tribunal has stated that the test under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition but the test under section 90(8) is not so limited.<sup>16</sup>

However, the Tribunal has previously stated that regarding the test under section 90(6):

[the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.<sup>17</sup>

Consequently, when applying either test, the ACCC can take most, if not all, public detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.

Given the similarity in wording between sections 90(6) and 90(7), the ACCC considers the approach described above in relation to section 90(6) is also applicable to section 90(7). Further, as the wording in sections 90(5A) and 90(5B) is similar, this approach will also be applied in the test for conduct that may be a cartel provision.

## Conditions

The Act allows the ACCC to grant authorisation subject to conditions.<sup>18</sup>

## Future and other parties

Applications to make or give effect to contracts, arrangements or understandings that might substantially lessen competition or constitute exclusionary provisions may be expressed to extend to:

- persons who become party to the contract, arrangement or understanding at some time in the future<sup>19</sup>

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<sup>16</sup> *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004. This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation* [2006] ACompT9 at paragraph 67.

<sup>17</sup> *Re Association of Consulting Engineers, Australia* (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty. Ltd., Cadbury Schweppes Pty Ltd and Amatil Ltd for review* (1981) ATPR 40-200 at 42,763, 42766.

<sup>18</sup> Section 91(3).

- persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.<sup>20</sup>

## **Six- month time limit**

A six-month time limit applies to the ACCC's consideration of new applications for authorisation.<sup>21</sup> It does not apply to applications for revocation, revocation and substitution, or minor variation. The six-month period can be extended by up to a further six months in certain circumstances.

## **Minor variation**

A person to whom an authorisation has been granted (or a person on their behalf) may apply to the ACCC for a minor variation to the authorisation.<sup>22</sup> The Act limits applications for minor variation to applications for:

... a single variation that does not involve a material change in the effect of the authorisation.<sup>23</sup>

When assessing applications for minor variation, the ACCC must be satisfied that:

- the proposed variation satisfies the definition of a 'minor variation' and
- if the proposed variation is minor, the ACCC must assess whether it results in any reduction to the net benefit of the arrangements.

## **Revocation; revocation and substitution**

A person to whom an authorisation has been granted may request that the ACCC revoke the authorisation.<sup>24</sup> The ACCC may also review an authorisation with a view to revoking it in certain circumstances.<sup>25</sup>

The holder of an authorisation may apply to the ACCC to revoke the authorisation and substitute a new authorisation in its place.<sup>26</sup> The ACCC may also review an authorisation with a view to revoking it and substituting a new authorisation in its place in certain circumstances.<sup>27</sup>

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<sup>19</sup> Section 88(10)

<sup>20</sup> Section 88(6)

<sup>21</sup> Section 90(10A)

<sup>22</sup> Subsection 91A(1)

<sup>23</sup> Subsection 87ZD(1)

<sup>24</sup> Subsection 91B(1)

<sup>25</sup> Subsection 91B(3)

<sup>26</sup> Subsection 91C(1)

<sup>27</sup> Subsection 91C(3)