



**Western Australian chicken growers
– application for authorisation A91262 –
request for interim authorisation**

REASONS

25 February 2011

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation with respect to application for authorisation A91262 lodged by the Western Australian Broiler Growers' Association (WABGA) on 8 February 2011.

In particular, the ACCC grants interim authorisation for Western Australian chicken growers to collectively bargain with the chicken processors for whom they grow, namely Inghams Enterprises, Baiada Poultry or Finesse Fine Foods.

The WABGA has advised the ACCC that it is intended that:

- growers will form bargaining groups based on the processor for whom they grow, with collective bargaining to occur on a processor by processor basis
- no participant in, or advisor to, any grower bargaining group will have any involvement with any other bargaining group in sharing knowledge about the bargaining process or outcomes and/or provide any other assistance in relation to contract negotiations to any other bargaining group
- the matters set out in annexures A and B of WABGA's application, which include a contract negotiation process and details about contract terms and conditions are intended to be indicative only and all matters in relation to the manner in which collective bargaining will be undertaken and the form of any contracts will be open to negotiation between the parties and will not be mandatory.

The ACCC has granted interim authorisation on the basis of the information provided by the WABGA about the way it is intended that the arrangements will operate.

Were WABGA members to act other than in accordance with this intent, the ACCC would review the interim authorisation.

Interim authorisation commences immediately and will remain in place until the date the ACCC's final determination comes into effect or is revoked.

BACKGROUND

Until recently, growing fees and growing agreements in Western Australia were regulated by the Chicken Meat Industry Act. Growing fees and prescribed growing agreements were set under this Act.

In December 2010, following a review of the effectiveness of this act the Western Australian Economic Regulatory Authority recommended that the Act be repealed. This recommendation was accepted by the Minister for Agriculture and Food and the Act was allowed to expire on 31 December 2010.

THE APPLICATION

The WABGA seeks authorisation for its current and future grower members to form bargaining groups according to the processor for whom they provide growing services and to collectively bargain with nominated chicken processors. In this regard there would be three separate collective bargaining growing groups, one for each processor.

Participation in the bargaining groups will be voluntary for both individual chicken growers and their processors and any party that does not wish to participate in collective bargaining will be free to negotiate contracts individually.

The WABGA is seeking authorisation for a minimum period of at least five years.

Further information regarding the application is available on the ACCC's public register at www.accc.gov.au/AuthorisationsRegister.

THE AUTHORISATION PROCESS

The ACCC can grant immunity from the application of the competition provisions of the *Competition and Consumer Act 2010* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

CONSULTATION

Upon receipt of the application for authorisation on 8 February 2011, the ACCC undertook interested party consultation in order to consider the request for interim authorisation.

Inghams, a chicken meat processor operating in Western Australia, provided a submission stating that it supports collective bargaining by its growers. No submissions were received opposing the request for interim authorisation.

REASONS FOR DECISION

The ACCC considers that granting interim authorisation will provide a mechanism for growers and processors to negotiate contract terms and conditions in the newly deregulated environment while the ACCC considers the substantive application.

In assessing the request for interim authorisation, the ACCC had regard to the advice from the WABGA that the industry did not anticipate that the Chicken Meat Industry Act would be allowed to expire on 31 December 2010.

RECONSIDERATION OF DECISION

The ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.