



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2012/630
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23 August 2012

Mr Damien Varnis
Company Secretary
McCain Foods (Aust) Pty Ltd
PO Box 105
Wendouree VIC 3355

By email: Chris.Evans@ashurst.com

Dear Mr Varnis

**South East Potato Growers Association application for authorisation A91322
- interim authorisation decision**

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the application for authorisation lodged by the South East Potato Growers Association (SEPGA) on 12 July 2012. A copy of the ACCC decision is attached.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Competition and Consumer Act 2010* while the ACCC considers and evaluates the merits of the application.

Next steps

For your information, the next step in the process is for the ACCC to release a draft determination which will take account of any submissions from SEPGA and interested parties and will indicate the ACCC's preliminary views on the merits of the application. The ACCC will give both SEPGA and interested parties the opportunity to provide a further submission on the draft determination before the ACCC issues its final decision.

As noted in the attached decision, the ACCC may review its decision on interim authorisation at any time. In this regard the ACCC will reconsider this decision at the time of issuing its draft determination. 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 by the ACCC.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Jasmine Tan on 02 6243 1363 or by email to jasmine.tan@acc.gov.au.

Yours sincerely

A handwritten signature in blue ink, consisting of a vertical loop on the left and a long horizontal line extending to the right.

Imogen Hartcher-O'Brien
Director
Adjudication Branch



The South East Potato Growers Association – application for authorisation A91322 Interim authorisation decision 23 August 2012

Decision

The Australian Competition and Consumer Commission (the ACCC) has suspended the operation of authorisation A91057 granted in 2007 and granted interim authorisation in substitution in respect of the application for authorisation lodged by the South East Potato Growers Association (SEPGA) on 12 July 2012 (application A91322).

Interim authorisation is granted to the SEPGA to collectively negotiate the terms and conditions of supply contracts with processors and other buyers, as well as establish a price recommendation for the supply of seed potatoes to other potato growers in Australia. It will also allow the SEPGA and its members to give effect to contracts negotiated under the 2007 authorisation.

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

The application for authorisation

The SEPGA is a processing grower representative body authorised under the South Australian Farmers Federation (SAFF). It is a regional sub branch of SAFF. The SEPGA was formed to represent the interests of South Australian potato growing businesses and currently has 17 members.

The SEPGA seeks revocation of its authorisation A91057, which will expire on 29 August 2012, and seeks substitution of a new authorisation (reauthorisation) to allow present and future members of the SEPGA to collectively negotiate the terms and conditions of supply contracts with processors and other buyers, as well as establish a price recommendation for the supply of seed potatoes to other potato growers in Australia.

The SEPGA is seeking reauthorisation for a period of five years.

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

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. 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 SEPGA requested interim authorisation on the basis that the statutory protection afforded by authorisation A91057 to its members to collective negotiations will end on 29 August 2012 and it may wish to start early negotiations.

Consultation

Upon receipt of the application for authorisation, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. The ACCC received one public submission in relation to the request for interim authorisation, from McCain Foods (Aust) Pty Ltd and Safries Pty Ltd (together, McCain).

McCain opposes the authorisation. It submits that the conduct will not result in any public benefit and is likely to result in public detriments in the form of: inefficiency and additional cost; and impairment to productivity, quality improvements and industry viability.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting interim authorisation, the ACCC considers that:

- interim authorisation will maintain the status quo and is very unlikely to result in permanent changes to the relevant market before a final decision is reached on whether to grant authorisation;
- it is unlikely that it will cause harm to any of the market participants as it will maintain the status quo and growers and processors remain able to negotiate on an individual basis if they wish to do so;
- interim authorisation is urgently required due to the expiry of statutory protection for existing arrangements granted by authorisation A91057 on 29 August 2012. Interim authorisation will enable the SEPGA and its members to continue to give effect to existing contracts with processors and other buyers; and
- failure to grant interim authorisation may cause significant detriment, after 29 August 2012, to any potato grower which may need to give effect to a potato contract negotiated pursuant to A91057 in that the contract is likely to breach the Act.

Reconsideration of interim authorisation

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