

4 September 2012

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission

By email: Richard.Chadwick@accc.gov.au

Dear Dr Chadwick

Transport Workers' Union of Australia Queensland Branch – application for authorisation A91331

I act for Hanson Construction Materials Pty Ltd (Hanson) and refer to your letter dated 28 August 2012 inviting submissions on the above request by the TWU for interim authorisation to engage in collective bargaining with Hanson on behalf of existing and future owner drivers.

The TWU's statement at paragraph 8 of its Submissions in Support that "*The Applicant presently has 113 owner driver members employed by Hanson ...*" is not correct. Hanson does not employ any owner drivers. Nor does it engage any natural persons as owner drivers. Hanson's owner driver fleet is provided through contractual arrangements with constitutional corporations. It is because Hanson's owner drivers are corporations that the TWU requires ACCC authorisation to legally engage in collective bargaining on their behalf. If the owner drivers were employees of Hanson, the TWU would not need ACCC authorisation to legally collectively bargain on their behalf.

Paragraphs 8 and 9 of the TWU's Submissions in Support refer to a "list of the names of members" on whose behalf the TWU seeks authorisation to collectively bargain. Neither the TWU nor the ACCC have provided, or intend to provide, this list of names to my client. Nevertheless, it is understood from previous correspondence with your office that the list is composed entirely of the names of natural persons. Neither the list, nor the TWU's Application contain any evidence that these natural persons have the legal capacity and authorisation from any of Hanson's owner driver corporations to authorise the TWU to seek ACCC authorisation for the TWU to collectively bargain on behalf of any owner driver

corporation. These individuals, as natural persons, have no contractual relations with Hanson and are strangers to Hanson's contractual arrangements with its owner driver corporations.

The TWU's application purports to be made under ss.88(1A) and 88(1) of the *Competition and Consumer Act 2010*. These section relate to applications "by or on behalf of a corporation" for authorizations "to the corporation". However, your office has advised:

"Consistent with previous practice, the ACCC has treated the application as also made under the Queensland Competition Code, the 'mirror' to the Competition and Consumer Act . The Code contains direct equivalents of Parts IV and VII (including the authorisation provisions) of the Act that applies to and brings within the ACCC's jurisdiction natural persons."

In my submission, without the ACCC satisfying itself that the natural persons on the list mentioned in the TWU's application have the capacity to authorise, and have in fact authorised, the TWU to seek the application on behalf of Hanson's owner driver corporations, any authorisation the ACCC gives can only relate to the TWU collectively bargaining on behalf of the named individuals, in their own right *as natural persons*. Such an ACCC authorisation will have no relevance to the TWU attempting to purportedly collective bargain in relation to Hanson's owner driver corporations. Therefore, it would provide no rights to the TWU, or legal protection to any corporations, in relation to purported collective bargaining on behalf of owner driver corporations.

Therefore, the public interest would not be served by the ACCC dedicating resources to issuing an authorisation which only related to natural persons and would have no standing in relation to the TWU's desire to collectively bargain on behalf of Hanson's owner driver corporations.

Finally, if the TWU was to submit a fresh application naming the correct owner driver corporate parties on whose behalf it was authorised to seek an ACCC authorisation, we respectfully request that the ACCC provided us with the names of the owner driver corporations so we have some certainty in relation to which corporations the TWU represents in bargaining.

Yours faithfully



Philip Copeland - Principal
Queensland Law Society Accredited Specialist -
Workplace Relations