



Australian
Competition &
Consumer
Commission

Draft Determination

Application for authorisation

lodged by

Queensland Chicken Growers Association

in respect of

collective bargaining with Inghams
Enterprises, Baiada Poultry and
Golden Cockerel

Date: 28 November 2012

Authorisation number: A91347

Commissioners: Sims
Rickard
Schaper
Court
Dimasi
Walker

Summary

The ACCC proposes to grant authorisation for ten years to Queensland Chicken Growers Association Incorporated to collectively negotiate supply contract terms and conditions, including growing fees, with Inghams Enterprises Pty Ltd, Baiada Poultry Pty Ltd and Golden Cockerel.

Next steps

The ACCC will seek further submissions in relation to this draft determination before making its final decision. The applicant and interested parties may also request the ACCC to hold a pre-decision conference to allow oral submissions on the draft determination.

The application for authorisation

1. On 5 November 2012 Queensland Chicken Growers Association Incorporated (**QCGA**) lodged an application for authorisation (A91347) with the ACCC under sections 88(1A) and 88(1) of the *Competition and Consumer Act 2010* (the **Act**).
2. QCGA seeks authorisation for ten years for its current and future members to collectively negotiate with Inghams Enterprises Pty Ltd, Baiada Poultry Pty Ltd and Golden Cockerel (the **Targets**) regarding:
 - growing fees;
 - terms and conditions of meat chicken growing contracts including tenure and renewal terms, obligation and responsibility of both parties, dispute resolution, templates for calculation of fees, pool systems based on growers performance;
 - adjustment and review of growing fees and other matters arising from time to time under the terms of meat chicken growing contracts; and
 - resolution of disputes which may arise from time to time under meat chicken growing contracts(the **Collective Bargaining**).
3. The Collective Bargaining groups will be formed on the basis of the processor for whom the growers grow chicken meat, with collective bargaining to occur on a processor by processor basis.

Industry background

4. Currently around 93 growers in Queensland supply Queensland's chicken meat processors. QCGA currently has approximately 58 grower members. Growers supply one processor at a time and are bound by exclusive contracts. The contracts are for several years duration due to the need for long term planning and coordination of breeding, production and industry investment. Geographic

factors and transport costs also limit the ability of individual growers to switch processors.

5. Currently the *Chicken Meat Industry Committee Act 1976* (**CMIC Act**) provides statutory authorisation for voluntary collective negotiations between growers and processors in Queensland,¹ similar to the Collective Bargaining proposed in the current authorisation application lodged by QCGA with the ACCC. The collective negotiation arrangements under CMIC Act have operated for approximately 12 years.
6. There has been an increasing trend across a number of jurisdictions to move away from the use of state based legislative collective negotiations for chicken meat growers and towards authorisation of collective negotiation arrangements by the ACCC. This trend has occurred in the context of deregulation of various agricultural industries, including the chicken meat industry. Western Australia, Victoria, South Australia and Tasmania have removed state based statutory protection for collective bargaining and the growers in these states have sought and been granted ACCC authorisation to collectively negotiate with processors.
7. QCGA has sought authorisation to enable growers and processors to continue to collectively negotiate with the Targets, although under the ACCC's authorisation process rather than the CMIC Act. It submits that if the Collective Bargaining arrangements are authorised by the ACCC it will work with the Queensland government to repeal the CMIC Act.

ACCC evaluation

8. The ACCC may authorise anti-competitive conduct such as collective bargaining if it is satisfied that the likely public benefits of the conduct will outweigh the likely public detriments.² Further details regarding the authorisation application can be found on the ACCC's Public Register.
9. In its evaluation of authorisation application A91294 the ACCC has taken into account:
 - that no submissions objecting to the application for authorisation were received;³
 - information available to the ACCC regarding similar previous matters;⁴
 - the likely future if authorisation is not granted.⁵ In particular, the ACCC considers that, absent authorisation, if the CMIC Act continues to provide statutory authorisation for voluntary collective negotiations, the status quo is likely to continue, although there may be a question regarding how long the current legislation will remain in force. Alternatively, absent authorisation, if the

¹ Section 22 of the CMIC Act provides for statutory authorisation as an exemption under section 51 of the Act.

² The statutory tests for granting authorisation are outlined at Attachment A. The ACCC's Guide to Authorisation 2007 (available from the ACCC website) has more details regarding the ACCC's authorisation process.

³ Please see the ACCC's Public Register for more details, including a list of parties consulted.

⁴ South Australian Inghams Chicken Growers A91294; Western Australian Broiler Growers Association Incorporated – Authorisation A91262; Victorian Farmers Federation – Revocation and Substitution A91214.

⁵ For more discussion see paragraphs 5.38-5.40 of the ACCC's Guide to Authorisation 2007.

provisions of the CMIC Act and any associated regulations supporting collective negotiation arrangements are repealed, QCGA members will bargain individually with the Targets;

- that participation is voluntary for all parties (i.e. members of the Collective Bargaining group and the Targets);
- that the Targets are supportive of, or do not object to, the Collective Bargaining;
- that no collective boycott activity is proposed;
- the relevant areas of competition likely to be affected by the Collective Bargaining, particularly competition to provide chicken growing services to chicken processors in Queensland;
- the ten year authorisation period requested, which is consistent with the term of a number of existing contracts and likely term of proposed future contracts.⁶

Public benefits and public detriments

10. The ACCC considers that compared to a scenario of growers negotiating individually with the processors the proposed Collective Bargaining is likely to result in a number of public benefits including:

- transaction cost savings (including in contract administration) for both growers and the Targets due to a single negotiation rather than a series of individual negotiations;
- improved grower input into contracts and better documentation of negotiated outcomes, providing greater certainty to individual growers thus encouraging industry investment;
- through collective negotiations growers may become more informed of relevant market information resulting in more efficient bargaining outcomes.

11. The ACCC notes that in the absence of authorisation, if the provisions of the CMIC Act continue to support voluntary collective negotiation, these benefits could be achieved both with and without authorisation by the ACCC. Although in this case, the ACCC authorisation of Collective Bargaining may enable different arrangements to be put in place to allow collective negotiations between the growers and Targets as it allows collective negotiations to continue whether or not the CMIC Act remains in force or is repealed.

12. On balance the ACCC considers that the Collective Bargaining is likely to result in little if any public detriment since:

- participation in the Collective Bargaining is voluntary for all parties;
- there is no proposed boycott activity;
- the market for growing services in Queensland is likely to remain relatively unchanged given the current structure involves a separate negotiating group

⁶ Submission from Queensland Chicken Growers Association Incorporated, 5 November 2012, Annexure B.

between growers and each processor and this is likely to remain unchanged with or without the authorisation; and

- even if, in the absence of the authorisation, growers negotiate individually with processors, contracts adopted under such circumstances tend to be standard contracts.

13. On balance, the ACCC considers that the Collective Bargaining is likely to result in a benefit to the public and that this benefit would outweigh the detriment to the public due to any lessening of competition that is likely to result from the Collective Bargaining.

Draft determination

14. Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination. For the reasons above, the ACCC is satisfied that the tests in sections 90(5A), 90(5B), 90(6) and 90(7) of the Act are met⁷. Accordingly, under sections 88(1A) and 88(1) of the Act, the ACCC proposes to grant authorisation A91347 for 10 years to enable members of QCGA to Collectively Bargain with the Targets over the terms and conditions as defined in paragraph 2 of this draft determination. The ACCC proposes to authorise growers to form bargaining groups based on the processor for whom they grow, with collective bargaining to occur on a processor by processor basis.

15. Under section 88(10) of the Act, the ACCC proposes to extend the authorisation to future participants in the Collective Bargaining group that also grow or propose to grow chickens for the Targets and are members of QCGA.

16. The proposed authorisation does not extend to QCGA engaging in boycott activity or to common representation or sharing of information about contractual arrangements between bargaining groups.

⁷ See Attachment A.

Attachment A - Summary of relevant statutory tests

Subsections 90(5A) and 90(5B) provide 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 subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 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 subsection 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.

Subsections 90(6) and 90(7) 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 subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 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 subsection 90(7) has resulted or is likely to result from giving effect to the provision.