



Transport Workers Union (Qld Branch) – application for collective bargaining authorisation A91310 – request for interim authorisation

REASONS

24 May 2012

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant conditional interim authorisation in respect of the application for authorisation lodged by the Transport Workers Union Queensland Branch (TWU Qld Branch) on 2 May 2012. Interim authorisation will enable the TWU Qld Branch to commence negotiations with CEVA Logistics.

Interim authorisation is granted on the condition that the TWU Queensland Branch and / or its members who supply services to CEVA Logistics do not enter into any contracts, arrangements or understandings as a result of these negotiations.

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

THE APPLICATION

The TWU Qld Branch is seeking authorisation for owner drivers contracted with CEVA (a car carrying business) to engage in collective bargaining arrangements for a five year period. The TWU proposes to negotiate the following terms and conditions on behalf of owner drivers:

- carrying rates
- a mechanism for those rates to increase from year to year
- penalties for carrying outside standard hours
- damage penalties and excesses
- demurrage rates and
- equipment including painting and badging of prime movers.

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 in relation to certain 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 the 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. Further information on interim authorisation is [attached](#).

CONSULTATION

The ACCC undertook interested party consultation in its consideration of the request for interim authorisation. CEVA, the target expressed concerns with the application. It submits that the conduct would increase its costs and make it less competitive relative to other car-carrying companies. Submissions are available on the ACCC's public register at www.accc.gov.au/AuthorisationsRegister

REASONS FOR DECISION

For the reasons set out below, the ACCC grants conditional authorisation:

- the TWU has submitted that it is seeking interim authorisation to commence the negotiation process, and that no contract, arrangement or understanding will be entered into until final authorisation is granted by the ACCC
- it is unlikely that negotiations during interim authorisation will result in permanent changes to the relevant markets should final authorisation not be granted
- interim authorisation will facilitate the commencement of negotiations
- the concerns raised by the target, CEVA. However, interim authorisation does not compel CEVA or TWU Qld Branch members to participate in the collective negotiations and
- the TWU Qld Branch has not sought authorisation for collective boycotts.

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.

When can Interim Authorisation be Granted?

Section 91 of the *Competition and Consumer Act 2010* allows the Australian Competition and Consumer Commission (ACCC) to grant interim authorisation without making a decision on the merits of the application. Interim authorisation allows the applicant to engage in the relevant conduct as if it had authorisation while the substance of the merits of the application is considered by the ACCC.

By way of guidance on how it will exercise its discretion to grant interim authorisation, the ACCC has stated that it will not usually grant interim authorisation where the effect of allowing the proposed conduct to occur would prevent the market from being able to return to its pre-interim authorisation state if the ACCC later denied authorisation.

There are a number of other factors the ACCC may take into account, depending on the circumstances, in considering requests for interim authorisation.

The current ACCC *Guide to Authorisation* provides some key factors that are relevant in considering applications for interim authorisation, which include:

- (A) The extent to which the relevant market will change if interim authorisation is granted. Interim authorisation is more likely to be granted when it will maintain the market status quo.
- (B) The urgency of the need for interim authorisation.
- (C) The possible harm, if any, to the applicant and other interested parties if interim authorisation is granted or denied.
- (D) Any possible benefit or detriment to the public that the ACCC could assess at the time of considering the request for interim authorisation.