



Australian
Competition &
Consumer
Commission

Draft Determination

Application for authorisation

lodged by

the NSW Farmers' Association

in respect of

collective bargaining with chicken, turkey
and duck meat processors

Date: 29 May 2014

Authorisation number: A91417

Commissioners: Sims
Rickard
Schaper
Cifuentes
Court
Walker

Summary

The ACCC proposes to grant authorisation for ten years to enable poultry growers who are members of the New South Wales Farmers Association to form a series of common interest grower groups which will each collectively bargain the terms and conditions of grower contracts with the relevant poultry processor.

The ACCC invites submissions in response to this draft determination before making its final decision.

The application

1. On 7 April 2014, the NSW Farmers' Association (NSWFA) lodged application A91417 with the ACCC under sections 88(1A) and 88(1) of the Competition and Consumer Act 2010 (the Act).
2. The NSWFA is seeking authorisation, on behalf of present and future members who provide chicken, turkey or duck (poultry) growing services, to collectively bargain over the terms and conditions of grower contracts with poultry processors in New South Wales.
3. NSWFA has advised that poultry growers will form Common Interest Grower Groups on the basis of the processor to whom growers are contracted, and collective bargaining will occur on a processor by processor basis. The NSWFA submits that collective negotiations are intended to include such matters as:
 - a. growing fees
 - b. terms and conditions of growing contracts, including tenure and renewal terms, obligation and responsibility of both parties, templates for calculation of fees, and pool systems based on growers performance
 - c. adjustment and review of growing fees and other matters arising from time to time under the terms of poultry growing contracts, and
 - d. dispute resolution.(the Conduct).
4. There are currently four chicken and turkey processors in NSW: Inghams Enterprises Pty Ltd; Baiada Poultry Pty Ltd; Red Lea Chickens Pty Ltd and Cordina Chicken Farms Pty Ltd. There is one duck processor in NSW – Pepes Ducks Ltd.
5. The NSWFA submits that given the long term commitments that growers must make, particularly in relation to finance, and pressure from banks for longer term contracts, it would be optimal that authorisation be granted for ten years.
6. There are approximately 265 chicken and turkey growers in NSW, 180 of whom are members of the NSWFA and are currently able to collectively negotiate with processors under the *Poultry Meat Industry Act 1986 (NSW)* (Poultry Meat Act). There are also approximately 20 duck growers in NSW but the Poultry Meat Act does not provide them with statutory protection to collectively bargain with processors.

7. The NSWFA is seeking authorisation in anticipation of the abolition of the Poultry Meat Act in the near future, and to also enable duck growers to commence collective negotiations.
8. The NSWFA submits that grower fees have not kept pace with investment costs, which has significantly eroded their return on investment. In particular, the NSWFA submits that the introduction of higher welfare requirements imposed on poultry growers, such as the requirement to be accredited by the RSPCA, has resulted in higher costs from increased workloads and additional equipment. While changed growing conditions are a result of negotiations between processors and retailers, the NSWFA submits that it is the grower who has to bear the costs of new practices without the benefit of being able to negotiate a potentially higher growing fee.

Consultation

9. The ACCC sought comments from interested parties potentially affected by this application for authorisation, including from poultry processors, industry associations and government departments. The ACCC received two public submissions.
10. Inghams Enterprises supported collective bargaining but also raised concerns about the use of the same bargaining representative across different bargaining groups. Inghams Enterprises submitted that it is important for confidentiality and the competitive process that arrangements with one poultry processor group not be extended across the other groups.
11. The NSWFA confirmed that there will be separate collective bargaining groups based on the processor to whom the group provides poultry growing services, and each bargaining group will have different representatives.
12. Pepe's Ducks submitted that it does not object to the application and it would remain happy to negotiate future contracts either individually or jointly, with or without the NSWFA.
13. 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.

ACCC evaluation

14. The ACCC's evaluation of the Conduct is in accordance with the relevant net public benefits tests¹ contained in the *Competition and Consumer Act 2010* (the Act).
15. In its evaluation of A91417 the ACCC has taken into account:
 - a. the application and submissions received from interested parties²
 - b. information available to the ACCC from consideration of previous matters³

¹ Subsections 90(5A), 90(5B), 90(6) and 90(7) of the Act.

² Please see the ACCC's Public Register for more details, including a list of parties consulted.

³ See Queensland Chicken Growers' Association A91347, South Australian Inghams Chicken Growers – Authorisation A91294, South Australian Farmers Federation – Collective Bargaining Notification CB00070; Western Australian Broiler Growers Association Incorporated – Authorisation A91262; Victorian Farmers Federation – Revocation and Substitution A91214; Inghams Enterprises Pty Limited – Authorisation A90825.

- c. the likely future without the Conduct for which authorisation is sought.⁴ In particular, the ACCC considers that, absent the Conduct, it is likely that chicken and turkey growers will negotiate individually with poultry processors once the Poultry Meat Act is repealed, and duck growers will continue to individually negotiate with processors⁵
- d. the relevant areas of competition likely to be affected by the proposed Conduct, particularly competition to provide poultry growing services in regions around poultry processing plants and poultry processing in New South Wales
- e. the ten year authorisation period sought.

Public benefits

- 16. The ACCC considers that the Conduct is likely to result in public benefits.
- 17. Growers sharing transaction costs (such as employing expert advisors) can improve their input into contracts resulting in more efficient contracts that better reflect the circumstances of the growers and processor.
- 18. Collective bargaining also enables growers to become better informed of relevant market information which assists them in developing more efficient contracts with processors and can provide greater certainty to individual growers thus encouraging industry investment.

Public detriments

- 19. The ACCC considers that the Conduct is likely to result in little if any public detriment since:
 - a. in the absence of collective bargaining the level of competition between growers is likely to be low due to processors offering standard form contracts
 - b. participation in the collective bargaining is voluntary for both processors and the poultry growers who supply them and
 - c. there is no proposed boycott activity.

Balance of public benefit and detriment

- 20. For the reasons discussed in this draft determination, on balance, the ACCC considers that the Conduct is likely to result in public benefit that would outweigh any detriment to the public constituted by any lessening of competition arising from the Conduct. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met and proposes to grant authorisation for ten years.

⁴ For more discussion see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines.

Draft determination

21. Application A91417 was made using a Form B. The NSWFA, on behalf of present and future members who provide chicken, turkey or duck growing services, is seeking authorisation under sections 88(1A) and 88(1) of the Act.
22. Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.
23. For the reasons outlined in this draft determination, the ACCC is satisfied that the tests in sections 90(5A), 90(5B), 90(6) and 90(7) of the Act are met.
24. Accordingly, the ACCC proposes to grant authorisation A91417, for ten years, to enable members of the NSWFA who provide chicken, turkey or duck (poultry) growing services to collectively bargain with poultry processors in NSW over the terms and conditions of grower contracts.
25. Authorisation is proposed to allow poultry growers to form Common Interest Grower Groups to collectively bargain with processors, based on the processor that they provide growing services to – that is, there will be five Common Interest Grower Groups – an Inghams Enterprises grower group; a Baiada Poultry grower group; a Red Lea Chickens grower group; a Cordina Chicken Farms grower group and a Pepes Ducks grower group.
26. Under section 88(10) of the Act, the ACCC proposes to extend the authorisation to future participants that also grow or propose to grow poultry for the processors and are members of the NSWFA.
27. The proposed authorisation does not extend to:
 - the grower groups engaging in boycott activity, or
 - collective negotiations conducted by a common representative across the grower groups.

Next steps

28. The ACCC now seeks further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.