



Australian
Competition &
Consumer
Commission

Draft Determination

Application for authorisation

lodged by

Transport Workers' Union of Australia Queensland
Branch

in respect of

collective bargaining with Toll Transport Pty Ltd

Date: 22 July 2014

Authorisation number: A91427

Commissioners:
Rickard
Schaper
Cifuentes
Featherston
Walker

Summary

The ACCC proposes to grant authorisation for three years to the Transport Workers' Union of Australia Queensland Branch (the Applicant) and the owner drivers it represents to collectively bargain over certain terms and conditions with Toll Transport Pty Ltd for the purpose of establishing new contractual arrangements for the supply of air freight courier transport.

The ACCC has also decided to grant interim authorisation to enable the Applicant to commence collective bargaining while the ACCC assesses the substantive application. Interim authorisation will remain in place until either the date the ACCC's final determination comes into effect, or until the ACCC decides to revoke interim authorisation.

Next steps

The ACCC will seek 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 discuss the draft determination.

The application for authorisation

1. On 5 May 2014, the Transport Workers' Union of Australia Queensland Branch (the Applicant) lodged application A91427 with the ACCC under subsection 88(1A) and 88(1) of the *Competition and Consumer Act 2010* (the CCA). The Applicant also requested interim authorisation to commence collective bargaining while the ACCC is considering the substantive application.
2. The Applicant seeks authorisation for owner driver members contracted to Toll Transport Pty Ltd (Toll) to engage in collective bargaining with Toll, with the assistance of the Applicant, for the purpose of establishing new contractual arrangements for the supply of air freight courier transport services. The application only relates to owner drivers engaged by Toll in Queensland from the Toll Priority Brisbane depot, which is located near Brisbane Airport.
3. The Applicant seeks authorisation for three years,¹ for collective bargaining over matters including:
 - carriage rates (including the 'labour component');
 - a mechanism for those rates to increase from year to year;
 - penalties for services provided outside standard hours;
 - increased rates for specialist loads;
 - return on investment;
 - demurrage rates; and
 - equipment, including painting and badging of vehicles.

¹ The Applicant's initial application requested authorisation for a period of five years but this was amended to three years on 24 June 2014.

(the Conduct)

4. Toll is an integrated logistics company that operates in each State and Territory in Australia. Relevant to this application, Toll is a supplier of freight courier transport services across Australia. The Applicant submits that there are a number of competitors to Toll in Queensland including DHL, TNT Express, Fed Ex, UPS and Startrack.
5. The Applicant submits that the proposed collective bargaining will redress the substantial imbalance between Toll and owner drivers in the negotiating process and ensure the maintenance of appropriate minimum standards for the affected owner drivers.
6. Toll initially opposed the granting of interim authorisation, however it withdrew its opposition on 24 June 2014 subsequent to the Applicant reducing the period of authorisation sought from five to three years. Toll also indicated that it will not be making any further submissions in relation to this application for authorisation.

ACCC evaluation

7. The ACCC's evaluation of the Conduct is in accordance with the relevant net public benefits tests² contained in the CCA.
8. In its evaluation of A91427, the ACCC has taken into account:
 - a. the application and submissions by the Applicant;³
 - b. information available to the ACCC from its consideration of previous matters;⁴
 - c. the likely future without the Conduct for which authorisation is sought.⁵ In particular, the ACCC considers that absent the Conduct each owner driver would likely continue to individually contract with Toll with minimal scope for the negotiation of contract terms;
 - d. the relevant areas of competition likely to be affected by the Conduct. Primarily, competition amongst drivers to supply air freight courier services in Queensland; and, secondly, the supply of freight services to customers.
 - e. the three year authorisation period sought.

² Subsections 90(5A), 90(5B), 90(6) and 90(7) of the CCA.

³ Please see the ACCC's Public Register for more details
<http://registers.accc.gov.au/content/index.phtml/itemId/6031>

⁴ Please see Transport Workers' Union of Australia Queensland Branch A91331 for concrete cartage services.

⁵ For more discussion see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines.

Public benefit

9. The ACCC considers that the Conduct is likely to result in some public benefits including:
- a. **Transaction cost savings:** The collective bargaining arrangement is likely to result in public benefits from transaction cost savings (including legal and expert advisor costs) for owner drivers and Toll due to a single negotiation process occurring rather than a series of individual negotiations. Sharing transaction costs will enable more of the potential benefits of the parties negotiating improved terms with each other to be exploited, thus making both parties better off.
 - b. **Improved input into contracts:** Collective bargaining may allow for more effective negotiation, where the negotiating parties have a greater opportunity to identify and achieve business efficiencies, for example on issues relating to rates, standards and equipment as well as the timing and delivery of services. Collective bargaining is also likely to enable members of the bargaining group to become better informed of relevant market conditions, which is likely to improve their input into contractual negotiations with Toll to achieve more efficient contracts.

Public detriment

10. The ACCC considers that the Conduct is likely to result in little if any public detriment for the following reasons:
- a. there is currently limited competition between owner drivers for the supply of their air freight courier services to Toll, particularly with respect to those terms on which they are seeking to negotiate, as there is little, if any, negotiation of terms between individual owner drivers and Toll;
 - b. the proposed counterparty, Toll, does not have to negotiate with the collective bargaining group; and
 - c. owner drivers are able to opt out of the negotiations or leave the collective bargaining group at any time and deal individually with Toll.

Balance of public benefit and detriment

11. For the reasons outlined in this draft determination the ACCC is satisfied that the likely benefit to the public resulting from the Conduct would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the Conduct.
12. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met.

Draft determination

13. Application A91427 was made using a Form B. The Applicant, on behalf of current and future members, is seeking authorisation under subsections 88(1A) and 88(1) of the CCA.
14. Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

15. For the reasons outlined in this draft determination, the ACCC is satisfied that the tests in subsections 90(5A), 90(5B), 90(6) and 90(7) of the CCA are met.
16. Accordingly, the ACCC proposes to grant authorisation A91427, for three years, to the Applicant and owner drivers contracted to Toll to bargain collectively with Toll over matters including:
 - carriage rates (including the 'labour component');
 - a mechanism for those rates to increase from year to year;
 - penalties for services provided outside standard hours;
 - increased rates for specialist loads;
 - return on investment;
 - demurrage rates; and
 - equipment, including painting and badging of vehicles.

Next steps

17. The ACCC will now seek 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 CCA.

Interim authorisation

18. At the time of lodging the application, the Applicant requested interim authorisation in order to be able to commence collective bargaining with Toll before the ACCC issues a final determination.
19. The ACCC considers that it is appropriate to grant interim authorisation at this time as no contract will be formally entered into with Toll before the ACCC makes a final determination in this matter.
20. Therefore, the ACCC **grants** interim authorisation under subsection 91(2) of the CCA to enable the Applicant and owner drivers to commence collective bargaining with Toll.
21. Interim authorisation will commence immediately and remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.