



Australian
Competition &
Consumer
Commission

Application for Minor Variation of Authorisation A91294

Lodged by the
Ingham Chicken Growers Association Inc

in respect of

collective bargaining with
Inghams Enterprises Pty Ltd

Date: 7 August 2015

Authorisation number: A91294

Commissioners: Sims
Rickard
Schaper
Walker
Featherston

Summary

The ACCC has decided to vary the authorisation granted to South Australian chicken growers contracted to Inghams Enterprises Pty Ltd allowing them to collectively bargain with Inghams.

The current authorisation allows new growers who commence growing chickens for Inghams to join the collective bargaining group provided they are South Australian Farmers Federation members. As the SAFF has ceased to operate the ACCC has decided to vary the authorisation so that future participants in the collective bargaining group do not have to be members of the SAFF in order to be eligible to join the group.

The application for minor variation

1. On 3 June 2015, the Ingham Chicken Growers Association Inc (the **Applicants**) applied for minor variation to authorisation A91294¹ under section 91A of the *Competition and Consumer Act 2010* (the **CCA**).² Authorisation A91294 was granted by the ACCC on 14 June 2012 and came into effect on 6 July 2012.
2. Authorisation A91294 was granted to 16 South Australian chicken growers contracted to Inghams Enterprises Pty Ltd (**Inghams**) to allow them to collectively bargain with Inghams for ten years. In accordance with the terms of the authorisation sought by the Applicants, this authorisation was extended under section 88(10) of the CCA to 'future participants in the collective bargaining group that also grow or propose to grow chickens for Inghams and are members of [South Australian Farmers Federation (**SAFF**)]'.³ The members of the collective bargaining group were all SAFF members and the SAFF had lodged the application on their behalf.
3. The South Australian chicken growers contracted to Inghams have applied for a variation to the authorisation so that future participants in the bargaining group would no longer have to be members of the SAFF in order to be eligible to join the group. The Applicants state that they are proposing this change because the SAFF has ceased operating. The ACCC understands that the SAFF ceased operating in 2013 when the SAFF members voted to disband SAFF and replace it with a new representative association, Primary Producers SA. The Applicants submit that the effect of the change to the authorisation will be that the scope of future growers able to join the bargaining group will remain as originally intended when authorisation was granted.
4. While the SAFF lodged the original application for authorisation, it did so on behalf of the 16 SAFF members identified in the application who provided chicken growing

¹ Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the CCA). Applicants seek authorisation where they wish to engage in conduct which is at risk of breaching the CCA but nonetheless consider there is an offsetting public benefit from the conduct. Detailed information about the authorisation process is available in the ACCC's Authorisation Guidelines at www.accc.gov.au/publications/authorisation-guidelines-2013

² The application for minor variation was lodged by Ingham Chicken Growers Association Inc on behalf of a number of chicken growers who are members of the currently authorised collective bargaining group. A person to whom an authorisation was granted, or another person on behalf of such a person, may apply for a minor variation of an authorisation – subsection 91A(1) of the CCA

³ ACCC *Determination of application for authorisation lodged by South Australian Inghams chicken growers* 14 June 2012 p 4.

services to Inghams. The authorisation was granted to these chicken growers (and relevant future chicken growers). Accordingly, the authorisation continues to have effect despite the fact that the SAFF has now ceased to operate.

Consultation

5. After establishing that the proposed amendment was consistent with the definition of a minor variation in the CCA, the ACCC invited submissions from interested parties. One submission was received from Inghams.⁴ Inghams submits that it agrees with the proposal to vary the authorisation.
6. However, Inghams also raised a separate issue in relation to the existing authorisation. Inghams submits that since authorisation was granted it has commenced contracting with several free range chicken growers. Inghams submits that due to differences in their shedding, growing fees, growing cycles, rearing techniques and batch rates it is not appropriate for free range growers and commercial barn raised growers to negotiate as a single bargaining group. Inghams submits that the terms of the authorisation granted should be amended so that free range growers and commercial barn growers have to negotiate as separate bargaining groups.
7. In response, the Applicants submitted that:
 - Inghams' current Victorian contracts include differing fee structures and other arrangements for free range and conventional growers collectively negotiated by a single grower group consisting of free range and conventional growers
 - nearly all of the Inghams South Australian free-range chicken growers also raise barn raised chickens for Inghams, and
 - in a number of instances, Inghams are currently including provisions in new contracts requiring growers to meet the RSPCA standards for both free range and barn raised chickens, apparently so that Inghams will have the option to place either with the grower.
8. The submissions by the Applicant and Inghams are considered as part of the ACCC's assessment.

ACCC assessment

9. The ACCC has assessed the application for a minor variation to authorisation A91294 in accordance with the tests in section 91A of the Act.
10. Broadly, the ACCC may vary an authorisation if it is satisfied that:
 - the proposed variation is minor, and
 - the variation would not result or would not be likely to result in a reduction in the net public benefit that arises from the authorisation.
11. The ACCC's assessment is limited to consideration of the conduct the subject of the proposed variation. In this instance, the proposal that future participants in the bargaining group would no longer have to be members of the SAFF in order to be eligible to join the group.

⁴ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

12. The ACCC notes Inghams' concern that joint collective bargaining by free range chicken growers and barn raised chicken growers will lead to bargaining inefficiencies and that the authorisation should be amended to separate the two groups. However, the terms of the existing authorisation do not require free range and barn raised chicken growers to form separate bargaining groups. Rather, authorisation was granted to SAFF members who provide chicken growing services to Inghams to collectively bargain with Inghams. Therefore free range and barn raised chicken growers will be able to form a single bargaining group in the future whether or not the application for minor variation is granted. In this respect, the CCA does not provide any discretion to the ACCC to consider broader changes to the conduct the subject of an authorisation granted, such as those suggested by Inghams, when considering an application for minor variation.
13. Accordingly, the ACCC has separately responded to Inghams in relation to its concerns. A copy of the ACCC's letter to Inghams is available at <http://registers.acc.gov.au/content/index.phtml/itemId/1187002/fromItemId/278039/display/accCorrespondence> on the ACCC's public register.

The proposed variation is minor

14. Section 87ZP of the CCA defines a minor variation as a single variation that does not involve a material change in the effect of the authorisation.
15. The ACCC notes that the authorisation originally granted was for South Australian chicken growers contracted to Inghams to collectively bargain. Authorisation was also granted for growers who grow or propose to grow chickens for Inghams in the future and are members of the SAFF to join the bargaining group.
16. The intent of the original authorisation was that as new growers commenced growing chickens for Inghams they would be able to join the collective bargaining group. As the SAFF has now ceased to operate the requirement that new members of the bargaining group must be SAFF members, which was included at the request of the Applicants, means that no new growers who commence growing chickens for Inghams are able to join the bargaining group.
17. The ACCC considers that the variation sought, which addresses this unintended consequence of requiring future participants in the bargaining group to be SAFF members, is consistent with the intent of the original authorisation granted.
18. For this reasons, the ACCC is satisfied that the proposed variation is minor.

No reduction in the net public benefit of the arrangements

19. The assessment of the effect of the variation on the net public benefit takes account of the likely benefits and detriments of the arrangements as reflected in the ACCC's determination of 14 June 2012.

ACCC's determination to grant authorisation – 14 June 2012

20. In its determination the ACCC considered that the collective bargaining arrangements were likely to result in a number of public benefits including:
 - improved grower input into contracts and better documentation of negotiated outcomes, providing greater certainty to individual growers thus encouraging industry investment

- transaction cost savings (including in contract administration) for both growers and Inghams due to a single negotiation rather than a series of individual negotiations
 - adoption of a payments system that will introduce an element of competition between growers, encouraging continuous improvement, and
 - through collective negotiations growers may become more informed of relevant market information resulting in more efficient bargaining outcomes.⁵
21. The ACCC considered that the collective bargaining arrangements were likely to result in little if any public detriment since:
- the authorisation covered collective bargaining conduct by a relatively small proportion of all South Australian chicken growers (around 23%)
 - the level of competition between growers was low
 - although the SAFF (whose members included chicken growers for all the South Australian processors) lodged the application, it did not conduct the negotiations
 - participation in the collective bargaining conduct is voluntary from the view of both Inghams and the chicken growers which supply it, and
 - no boycott activity was proposed.⁶
22. The ACCC was satisfied that the collective bargaining arrangements were likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition likely to result from the conduct and granted authorisation for 10 years.

Effect of the proposed variation on the net public benefit of the authorisation

23. The Applicants submit that the minor variation will not affect the public benefits resulting from the original authorisation other than by ensuring that the authorisation extends to all persons originally intended to be covered. Inghams supports the proposed variation.
24. The ACCC considers that the SAFF ceasing to operate has created an unintentional and artificial distinction, in terms of eligibility to join the bargaining group, between growers contracted to Inghams at the time authorisation was granted and growers who have commenced growing for Inghams since authorisation was granted or who may commence doing so in the future. The ACCC considers that removing the requirement for growers wishing to join the bargaining group to be SAFF members will allow all Inghams South Australian growers to collectively bargain as a single group, contributing to the realisation of the public benefits noted at paragraph 20.
25. The ACCC considers that the proposed minor variation is not likely to result in additional public detriment. In particular, the scope of the bargaining group will not change from what it would have been if the SAFF had not ceased to operate.
26. The ACCC considers that the variation would not result or would not be likely to result in a reduction in the net public benefit that arises from the authorisation.

⁵ ACCC determination, 14 June 2012, p.4

⁶ ACCC determination, 14 June 2012, p.4

Determination

27. The ACCC is satisfied that the variation is minor.
28. The ACCC is also satisfied that the public benefit test under section 91A(4) of the CCA is met – that is, the variation would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation.
29. Pursuant to section 91A(3) of the CCA the ACCC makes this determination varying authorisation A91294 so that future participants in the collective bargaining group do not have to be members of the SAFF in order to be eligible to join the group.
30. This determination is made on 7 August 2015. If no application for a review of the determination is made with the Australian Competition Tribunal, the determination will come into force on 29 August 2015.