

Australian Competition and Consumer Commission

Reference No.: A91514

In the Matter of:

**Application for Authorisation to engage in Collective Bargaining (the Application)
By Transport Workers' Union of Australia SA/NT Branch (TWU)**

TWU RESPONSE TO ICA OBJECTION

1. The TWU confirms receipt of objections by the ICA dated 12 November 2015.
2. The TWU notes that objections were directed by the ACCC to be lodged by 20 October 2015.

First Objection

3. The TWU denies and rejects the ICA's first objection to the Application.
4. The TWU submits that the transcripts of the Royal Commission into Trade Union Governance are not relevant for consideration with respect to the Application.
5. The TWU submits that no evidence has been provided by the ICA to substantiate the ICA's first objection.
6. The ICA lodged a similar objection in the matter of A91427.
7. The ACCC found that the ICA's objection in the matter of A91427 was "not relevant."
8. The ICA sought to appeal the ACCC's decision to the Federal Court but the ICA was denied standing.
9. The ACCC, through its own detailed investigation into the Royal Commission evidence of TWU-Toll collusion, concluded that there was no breach of Competition law.¹
10. The TWU submits that the ACCC Chairman, Rod Sims, and his speech to the Law Council on 14 August is an irrelevant consideration with respect to the Application.

¹ <https://www.accc.gov.au/media-release/accc-concludes-investigation-into-alleged-anti-competitive-conduct-by-toll>

Lodged by

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(on behalf of the Applicant)*

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11. The TWU assert that the submission provided by the ICA (to suspend applications for collective bargaining between Toll and the TWU) is without judicial standing or merit as no such suspension is available under the CC Act.
12. Based on the above, the TWU Submits that the first ground of objection should be struck out for want of factual merit, judicial basis and evidentiary foundation.

Second Objection

13. The TWU submits that Part VII, Division 1 of the *Competition and Consumer Act 2010* (The CC Act) contains the relevant provisions under which the ACCC may grant an Authorisation.
14. It is able to do so under s88(1A) in respect of cartel provisions , upon application by or on behalf of a corporation, and under s88(1) to grant such an authorisation upon application by or on behalf of a corporation in respect of other provisions which may contravene s.45 of the CC Act.
15. Section 88(11) of the CC Act enables an authorisation to apply to or in relation to future parties, relevantly in the present context, those owner drivers who may during the period of the authorisation become members of the TWU.
16. Section 93 of the CC Act deals with “Notification of exclusive dealing or private disclosure of pricing information.”
17. Nothing in s.93 of the CC Act prohibits the TWU from making an Application under s.88(1A).
18. The TWU submits that the ACCC has granted applications for authorisations under s.88(1A) of the CC Act.
19. The Australian Competition Tribunal has considered s.88(1A) of the CC Act and through its considerations has relevantly determined that s.88(11) enables an authorisation to apply to owner drivers who are members of the TWU.
20. Based on the above, the TWU submits that the ICA’s second ground of objection should be struck out for want of statutory foundation.

Conclusion

21. The TWU submits that objections of the ICA do not prevent the TWU from making an Application for Authorisation.

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