WESTERN AUSTRALIAN BROILER GROWER ASSOCIATION

15th March 2016

Mr Baethan Mullen
General Manager
Adjudication Branch
Australian Competition and Consumer Commission (ACCC)
23 Marcus Clarke Street
Canberra ACT 2601

Sent via email to: Adjudication@accc.gov.au; gina.d'ettorre@accc.gov.au

Dear Mr Mullen,

RE: WABGA - APPLICATION - AUTHORISATION A91262
RESPONSE FROM WABGA TO BAIADA POULTRY'S COMMENTS ON THE APPLICATION FOR RE-AUTHORISATION PERMITTING WABGA'S CURRENT AND FUTURE MEMBER GROWERS TO ENGAGE IN COLLECTIVE BARGAINING APPLICATION (DATED 2ND MARCH 2016)

Please find below our comments in response in BLUE text to the quoted comments submitted on behalf of Baiada Poultry by Mr Scott Murray, General Manager - Legal & Corporate Affairs.

1. *Overall we are neutral on whether the WA growers collective bargaining application should be re-authorised on the same terms for another 5 years by ACCC. We are not convinced that the claimed public benefits are as extensive as those claimed in the application although we do accept that similar applications have previously been authorised by the ACCC in WA (eg A91262) and in other growing regions as having, on balance, a net public benefit.*

   Noted.

2. *The ACCC letter states that the reference in the application about the contract negotiation process and/or details about contract terms is only intended to be indicative. There are matters in the application, whether indicative or not, which we wish to comment on as these should not set the expectation for the collective bargaining negotiation (if the application is re-authorised from 31 July 2016):*

   Noted.

- *Page 3 – we do not agree with mandated bargaining periods being the last 6 months of the preceding contract. Both parties need to plan in advance and in nobody's interest to have negotiation impasse on the final date before the contract expires. The bargaining period should be in advance of potential contract expiry. Similarly it should be open for the contracts which are negotiated to have different end dates if that suited a particular grower (eg has constructed new additional shedding) and the processor.*

  In response to the above comment, from a grower's perspective, six (6) months minimum notice would suffice. However, there is nothing that prohibits a processor from entering into a dialogue at an earlier date.

  After all, one of the target's total contracts expired in 1999. These are all still in vogue with a six month termination notice by either party.

- *Page 3 – the method for adjustment to the base growing fee might reflect the list of the grower matters as appear in the submission plus the Processors' investment and costs. If one growing region is far most expensive than another then the Processor is likely to plan to change its production/growing capacity accordingly - when it is able to do so.*

  This makes common sense and to our knowledge this is what happens in the market place

- *Page 4: grower's group representatives/scrutineers can be consulted on performance calculations but we will not agree to such persons having the unilateral right to adjust performance results*

  We are prepared to re-phrase the above in this manner:

  "Growers group representatives/scrutineers may be consulted on performance calculations and request the processor to adjust the result where an evidence base exists".

- *Page 4: we do not agree with the blanket statement as to which growers can be in the scheme. Other Baiada growers in the region – whom have similar inputs & growing methods, can be included in the performance scheme*

  We have no objections to this provided that there is transparently around the grow fee: i.e. the Prize Money in the "Pool", is the same. Basically this would mean that all participants are on the same base growing fee.

- *Page 4: we are unlikely to agree with the confusing term of an "option to negotiate an agreed extension" for continuation of the contract. Most of our contracts contain one automatic renewal period unless either party gives prior notice it wishes to terminate at the end of initial contract period.*

  We see no confusion as you have stated in your following points that the growing landscape is prone to change and as such the renewal options required flexibility to accommodate the impact of external market forces that are driving consumer choice.

- *Page 4: we do not agree that any new contract during the contract period must be on same identical terms as those negotiated and agreed as at the start of the contract period. The terms of contracts evolve on a national basis over time for what is best practice (egg a new welfare standard) – it makes no sense to leave no room for improvement changes which can be negotiated with the grower group.*

  Agree with above statement

- *Page 4: a grower who opts out of collective bargaining group should not be required to have a contract that ends on same date as contract period for WABGA growers. This is unfairly restrictive on an individual grower (eg a corporate rural ag fund) whom may wish to deal with the Processor in some other manner*

  This has nothing to do with the WABGA as this body has no input into contracts or price negotiation and as such the contract period and starting dates is negotiated between each target processor and their individual growers.

- *Page 5: we do not agree that at end of any bargaining period that the matter of contract renewal will be decided by a mediator and/or arbitrator in a final and binding manner.*

  Agree however, if the grower is aggrieved by the decision it is the individual growers right to seek legal advice on options available for recourse.

3. *Pages 9-12: we do not agree with all the statements regarding the descriptions of the market for growing services and the market for processed chicken meat. As one example where we do not agree, and as alluded to elsewhere in the application, there is unprecedented demand for quality growing facilities and the processor are actively competing for growers in WA and in otherregions. It is not "practically impossible" for a grower to transfer from one processor to another.*

   Let me remind you of what we said in our submission:

   Growers are contracted exclusively to one processor and demands for grower services will be largely affected by the demand for product at that processors plant in the relevant state. Historically it has been the case that processors are very reluctant to take other processors growers and as a result it has for all practical purposes been impossible for a grower to transfer from one processor to another without the consent of both processors.

   This has recently changed with an unprecedented demand for growing facilities coupled with an unrealistic demand for upgrading by a processor of facilities, leading to the transfer of some 50,000 square metres of growing space.

   I now re-iterate that prior to the acquisition of Inghams by TPG basically no facilities were transferred between target Processors. Statutory declarations can be provided supporting an evidence base demonstrating the negative response by the targets to negotiate a meaningful transfer of farms.

4. *Page 13: we are concerned by the statement that growers are "culled" by processors – we are not aware of any case where a WA grower has been terminated. In our experience if there was a contract termination, it would be in accordance with terms of the contract such as for a very serious breach, the inability to upgrade farms so as to grow to modern welfare and processor standards and/or for some other particular reason relating to the grower (e.g. insolvency/loss of capacity*).

   We concur with the above and have supported the termination of contracts for growers that have in one way or another, breached their contracts. However we do not apologise for the use of the word "cull" and if you can suggest a descriptive word more appropriate, so be it.

Yours sincerely,

LEN BRAJKOVICH, OAM, JP
Western Australian Broiler Growers Association