



Australian
Competition &
Consumer
Commission

Draft Determination

Application for revocation of authorisation A91262
and substitution with authorisation A91527

lodged by

Western Australian Broiler Growers' Association Inc

in respect of

collective bargaining by Western Australian
chicken grower groups with their
nominated processor

Date: 30 March 2016

Authorisation number: A91527

Commissioners: Sims
Rickard
Schaper
Featherston
Walker

Summary

The ACCC proposes to grant authorisation for 10 years to chicken grower members of the Western Australian Broiler Growers' Association to allow them to collectively bargain with the chicken processor they supply.

The application for authorisation

1. On 15 February 2016, the Western Australian Broiler Growers' Association Inc (WABGA) applied for the revocation of authorisation A91262 and the substitution with authorisation A91527 (re-authorisation). WABGA is seeking re-authorisation for 10 years to enable its chicken grower members to continue to collectively bargain with the chicken processor they supply (the **Conduct**).
2. WABGA grower members will form bargaining groups based on the processor they supply, with collective bargaining to occur on a processor by processor basis. At present WABGA members include 19 Baiada Poultry Pty Ltd growers, nine Inghams Enterprises Pty Ltd growers and one Mt Barker Chicken grower¹.
3. WABGA confirmed that no grower will participate in another grower bargaining group nor have any involvement with any other bargaining group in sharing knowledge about the bargaining process or outcomes, nor provide any other assistance in relation to contract negotiations to any other group.
4. Participation in a bargaining group is voluntary.
5. WABGA provided an indicative list of matters that may be included in collective negotiations, such as base grower fees, facilities, methods for calculating fees and adjustments, facilitating benchmarking and pooling systems and dispute resolution procedures.

Background

The Applicant

6. WABGA is a not for profit organisation and is a member of the Western Australian Chicken Meat Association which is in turn a member of the Australian Chicken Meat Federation. WABGA is also a member of the Australian Chicken Growers Council Limited.
7. WABGA's primary objective is to provide its members with a representative body dedicated to the promotion and advancement of its members' interests with regard to chicken meat growing.

¹ While a single grower cannot form a bargaining group, any future Mt Barker chicken growers, who are also members of WABGA will be able to form a collective bargaining group to negotiate terms and conditions of contracts with Mt Barker.

The processors

8. Baiada and Inghams are fully integrated national companies with breeder farms, hatcheries, processing plants and in some cases, feed mills and chicken growing farms. Baiada and Inghams supply more than 70% of Australia's broiler chickens.²
9. Mt Barker is a Milne Agrigroup Pty Ltd business and primarily produces free range broiler chickens.

Similar authorisations

10. The ACCC has considered applications for authorisation and notifications regarding collective bargaining from broiler poultry growers in other states – see the following.
 - The Tasmanian Chicken Growers Association to collectively bargain with Inghams, on behalf of six of its member broiler chicken growers. The collective bargaining notification expires on 2 September 2018.³
 - New South Wales Farmers' Association is authorised until 17 June 2024 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.⁴
 - South Australian chicken growers are authorised until 30 June 2022 to collectively bargain over certain terms and conditions with Inghams.⁵
11. In each case, the ACCC granted authorisation on the basis that the collective bargaining conduct was likely to result in a net public benefit.

Consultation/submission

12. The ACCC invited submissions from the relevant chicken processors seeking comment on the application for re-authorisation. The ACCC received one submission from Baiada Poultry Pty Ltd. Baiada submitted that overall it is neutral about whether the arrangements should be re-authorised. However, Baiada expressed concern at some of the references to terms and conditions of contracts contained in the application for re-authorisation, and some of the language used in the application. Baiada recognised that the included terms are only intended to be indicative but it nevertheless remained concerned that they may set expectations and so wished to comment on them.
13. Baiada disagreed with the description of the market for growing services and the market for processed chicken meat as articulated by WABGA. Baiada submitted there is unprecedented demand for quality growing facilities and processors are actively competing for growers in Western Australia and in other regions. Baiada submitted that it is possible for a grower to transfer from one processor to another.
14. Further information in relation to the application for re-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.

² Sourced from <http://www.chicken.org.au/page.php?id=2>

³ Tasmanian Chicken Growers' Association CB00323, 2 September 2015.

⁴ NSW Farmers' Association A91417, 25 June 2014.

⁵ South Australian Inghams Chicken Growers A91294, 14 June 2012.

ACCC assessment

15. The ACCC's assessment of the Conduct is in accordance with the relevant net public benefits tests⁶ contained in the *Competition and Consumer Act 2010* (the CCA).
16. In its assessment of the application the ACCC has taken into account:
- the application and submissions received from the applicant and Baiada⁷
 - other relevant information available to the ACCC, including information from consideration of previous matters⁸
 - the likely future without the Conduct that is the subject of the authorisation.⁹ In particular, the ACCC considers that, absent the Conduct, it is likely that growers will individually seek to negotiate terms and conditions of their contracts with their respective processor, or accept standard form contracts
 - the relevant areas of competition likely to be affected by the Conduct, particularly competition to provide poultry growing services in regions around poultry processing plants in Western Australia
 - the ten year authorisation period requested
 - there is no proposed collective boycott activity and
 - participation in the Conduct is voluntary for chicken growers and processors, that is, neither party can be compelled to participate in collective negotiations.

Public benefits

17. The ACCC is satisfied based on the information before it that the Conduct is likely to result in some public benefits, as follows.

Transaction cost savings

18. An individual grower negotiating with a processor will incur transaction costs (such as administrative costs, the costs of obtaining legal and expert advice, and the cost of the time taken to negotiate). The processor will also incur transaction costs in negotiating with individual growers. Individual negotiations will stop when the costs of continued negotiation outweigh the expected benefits to be realised for either party. At this point, it is likely that the contract will not fully capture the potential mutual benefits from trade. It may in fact mean that no negotiation occurs at all and growers are effectively provided with a standard form contract prepared by a processor.
19. Collective bargaining removes the need for bilateral negotiations between each grower and a processor which is likely to result in public benefits from transaction cost savings, including through sharing of costs for growers.

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

⁷ Please see the ACCC's Public Register for more details.

⁸ See NSW Farmers' Association A91417, Queensland Chicken Growers' Association A91347, South Australian Chicken Growers' Association A91294, Tasmanian Chicken Growers' Association CB000286.

⁹ For more discussion see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines.

Improved input into contracts resulting in efficiencies

20. The ACCC accepts that when negotiating with large suppliers, small businesses can be at a disadvantage, in terms of resources and experience of negotiating in complex commercial environments. One way in which a small business can seek to redress such disadvantage is to bargain collectively. Collective bargaining may allow for more effective negotiation, where the negotiating parties have a greater opportunity to identify and achieve business efficiencies that better reflect the circumstances of WABGA members and the processors that they supply, in relation to common issues. 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 processors to achieve more efficient outcomes.

Public detriments

21. The ACCC considers that in some cases collective bargaining could lessen competition and efficiency. The ACCC notes that any bargaining group is unlikely to be homogenous in composition and the application of a 'one size fits all' collectively negotiated contract could lead to inefficient outcomes, such as by rewarding inefficient growers within the bargaining group.

22. However, the ACCC considers any detriment resulting from the Conduct is likely to be limited by its voluntary nature and the absence of any boycott activity.

23. The ACCC also notes that the bargaining groups formed under the authorisation are processor specific and will not necessarily result in a single outcome applied uniformly to all participants within each group. The growers and the processors to whom they supply are free to determine the structure of the bargaining arrangement and the terms and conditions that will ultimately apply. Negotiations may, for example, result in a schedule of terms and conditions which reward more efficient growers. Alternatively, because participation in the collective is voluntary, more efficient growers have the option of negotiating separately and seeking to agree terms and conditions that better reflect their circumstances.

Balance of public benefit and detriment

24. For the reasons outlined in this draft determination, the ACCC considers that the Conduct is likely to result in public benefit that would outweigh any public detriment, including from any lessening of competition. Accordingly, the ACCC is satisfied, that the relevant net public benefit tests are met.

Draft determination

The application

25. Application A91527 was made using a Form FC. WABGA, on behalf of its current and future broiler grower members, has sought authorisation under subsection 88(1 and 1A) of the CCA. Authorisation is sought to make and give effect to the Conduct described in paragraphs 1 - 4 above.

The net public benefit test

26. For the reasons outlined in this draft determination the ACCC is satisfied, pursuant to sections 90(5A), 90(5B), 90(6) and 90(7) of the CCA, that in all the circumstances the Conduct for which authorisation is sought is likely to result in a public benefit that would outweigh any likely detriment to the public constituted by any lessening of competition arising from the Conduct.

Conduct which the ACCC proposes to authorise

27. The ACCC proposes to revoke authorisation A91262 and to grant authorisation A91527 in substitution. A91527 is proposed to allow WABGA's chicken grower members to continue to collectively bargain with the chicken processor they supply. The ACCC proposes to re-authorise the Conduct for ten years.
28. WABGA has not sought authorisation for specific contract terms.
29. Under section 88(10) of the CCA, the ACCC proposes to extend the authorisation to allow chicken growers that join WABGA in the future to participate in the Conduct by joining a relevant bargaining group.
30. This draft determination is made on 30 March 2016.

Next steps

31. The ACCC now seeks submissions on this draft determination. 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.