



Australian
Competition &
Consumer
Commission

Draft Determination

Application for authorisation

lodged by

Victorian Farmers Federation

in respect of

collective bargaining by Victorian
chicken meat grower groups with the
processor they supply

Date: 11 May 2016

Authorisation number: A91534

Commissioners: Sims
Rickard
Court

Summary

The ACCC proposes to grant authorisation to enable current and future chicken meat growers in Victoria that are members of the Victorian Farmers Federation to collectively bargain with the chicken meat processor that they supply.

The ACCC proposes to grant authorisation for ten years.

Next steps

The ACCC will seek submissions in relation to this draft determination before making its final decision.

The application for authorisation

1. On 7 April 2016, the Victorian Farmers Federation (VFF) lodged application for authorisation A91534 with the Australian Competition and Consumer Commission (ACCC) seeking authorisation for collective bargaining conduct.
2. The VFF seeks authorisation on behalf of current and future members of each of its chicken meat grower groups to collectively bargain with the processor to which they provide growing services. The four processors are – Baiada Poultry Pty Ltd, Hazeldene Chicken Farm Pty Ltd, Ingham Enterprises Pty Ltd, and Turi Foods Farming Division Pty Ltd. Each grower group will collectively bargain with their respective processor in relation to:
 - a. growing fees and other terms and conditions of chicken growing contracts;
 - b. adjustment and review of growing fees and other matters arising from time to time under/or in relation to terms of chicken growing contracts; and
 - c. resolution of disputes which from time to time arise under chicken growing contracts or otherwise arise between the processor and a grower or growers (the **Conduct**).
3. Authorisation is sought for ten years.

Background

The Applicant

4. The VFF currently has 258 chicken meat grower members. These members are split into four grower groups based on the processor to which they supply chicken meat growing services.

The processors

5. Baiada, Inghams, Turi and Hazeldene are fully integrated chicken meat processors operating breeding farms, hatcheries, processing plants and in some cases, feed mills and chicken growing farms.

6. Baiada and Inghams operate nationally and supply more than 70 per cent of Australia's broiler chickens¹, while Turi and Hazeldene operate only in Victoria.

Previous authorisations

7. The ACCC first granted authorisation for chicken meat growers that are members of the VFF to collectively bargain in groups formed on a processor basis in March 2005. These arrangements were re-authorised in April 2010. This authorisation expired May 2015. The current application for authorisation has been lodged to allow the VFF's chicken grower members to continue to collectively bargain with their processors.

Similar authorisations

8. The ACCC has considered a number of applications for authorisation and notifications regarding collective bargaining by chicken meat growers in other states.
 - The Western Australian Broiler Growers' Association is authorised until 31 July 2016 for its members to collectively bargain with their processors. On 30 March 2016, the ACCC released a draft determination proposing to re-authorise the arrangements for a further 10 years.²
 - The Tasmanian Chicken Growers Association lodged a collective bargaining notification on behalf of six of its broiler chicken growers to collectively bargain with Inghams. The collective bargaining notification expires on 2 September 2018.³
 - The 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
 - The Queensland Chicken Growers Association is authorised until 14 February 2023 for its members to collectively negotiate with their processors.⁶
9. In each case, the ACCC allowed the collective bargaining arrangements on the basis that there was likely to be a net public benefit.

Consultation/submission

10. The ACCC invited submissions from the relevant chicken processors seeking comment on the application for authorisation. The ACCC received one submission from Baiada Poultry Pty Ltd. Baiada advised that overall it is neutral about whether the arrangements should be authorised. Baiada recognised that similar applications for authorisation in other growing regions have been recognised as having, on

¹ Australian Chicken Meat Federation Inc., Industry facts and figures, www.chicken.org.au

² Western Australian Broiler Grower Association Incorporated - Revocation and Substitution - A91527, 30 March 2016

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

⁶ Queensland Chicken Growers Association - A91347, 24 January 2013

balance, a net public benefit. For this reason, Baiada does not oppose the application.

11. Further information in relation to the application for 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.

ACCC assessment

12. The ACCC's assessment of the Conduct is in accordance with the relevant net public benefits tests⁷ contained in the *Competition and Consumer Act 2010* (the **CCA**).
13. In its assessment of the application the ACCC has taken into account:
 - the application and submissions received from the applicant⁸
 - other relevant information available to the ACCC, including information from consideration of previous matters⁹
 - the likely future without the Conduct that is the subject of the authorisation.¹⁰ 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 the supply of poultry growing services in regions around poultry processing plants in Victoria
 - the ten year authorisation period requested 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

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

Transaction cost savings

15. 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. 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.

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

⁸ Please see the ACCC's Public Register for more details

⁹ See NSW Farmers' Association A91417, Queensland Chicken Growers' Association A91347, South Australian Chicken Growers' Association A91294, Tasmanian Chicken Growers' Association CB000323

¹⁰ For more discussion see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines

Improved input into contracts resulting in efficiencies

16. 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 VFF 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

17. The ACCC notes that in some cases collective bargaining can lessen competition and efficiency. The ACCC also notes that bargaining groups may not 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.
18. However, the ACCC considers any detriment resulting from the Conduct is likely to be limited by its voluntary nature.
19. 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 bargaining 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

20. 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.

Length of authorisation

21. The VFF seeks authorisation for ten years. The VFF submits that a minimum ten year term is necessary as increasingly chicken growing contracts are entered into for ten year terms because of the very high capital costs of establishing new chicken farms, which tend to be significantly higher than in the past.
22. The VFF also submits that a number of authorisations have been granted to chicken growers in different parts of Australia for ten years, thus minimising the need for chicken growers to go through the re-authorisation process as often.

23. As noted by the VFF, recent authorisations for chicken growers to collectively bargain with processors have been granted for 10 years.¹¹ The VFF's collective bargaining arrangements have also been operating under authorisation for 10 years (they are the subject of two previous authorisations, each for five years). Given the ACCC's conclusion on the balance of public benefits and public detriments, and that the ACCC has observed the collective bargaining arrangements over the past ten years the ACCC proposes to grant authorisation for ten years.

Draft determination

The application

24. Application A91534 was made using a Form B. VFF, on behalf of its current and future chicken meat 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.
25. Subsection 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

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 grant authorisation to the VFF for ten years to enable each of its four chicken meat grower groups to collectively bargain with the processor to which they provide growing services. Each grower group will collectively bargain with their respective processor in relation to:
- a. growing fees and other terms and conditions of chicken growing contracts;
 - b. adjustment and review of growing fees and other matters arising from time to time under/or in relation to terms of chicken growing contracts; and
 - c. resolution of disputes which from time to time arise under chicken growing contracts or otherwise arise between the processor and a grower or growers.
28. Under section 88(10) of the CCA, the ACCC proposes to extend the authorisation to allow chicken growers that join VFF in the future to participate in the Conduct by joining a relevant grower group.
29. The proposed authorisation does not extend to collective negotiations conducted by a common representative across the grower groups.

¹¹ See NSW Farmers' Association - A91417, 25 June 2014, South Australian Inghams Chicken Growers - A91294, 14 June 2012 and Queensland Chicken Growers Association – A91347, 24 January 2013

30. This draft determination is made on 11 May 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.