



## **Transport Workers Union SA/NT Branch – application for authorisation A91589 (Whyalla)**

### **Interim authorisation decision**

**3 August 2017**

#### **Decision**

The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in the application for authorisation lodged by the Transport Workers Union SA/NT Branch (the **TWU**) on 27 June 2017.

Interim authorisation is granted to enable the TWU to commence collective bargaining with Toll Transport Pty Ltd (**Toll**). Interim authorisation does not extend to the TWU and Toll finalising any agreements before the ACCC makes a decision on the substantive application.

Interim authorisation commences immediately and remains in place unless it is revoked or the date the ACCC's final determination comes into effect.

#### **The application for authorisation**

The TWU seeks authorisation for its owner driver members who are contracted to Toll to collectively bargain with Toll, with assistance from the TWU, to establish new contracts for the supply of freight courier transport services in Whyalla, South Australia.

In particular, the TWU seeks to collectively negotiate the terms and conditions of a proposed '2017 Toll Whyalla Agreement', including matters such as:

- carriage rates (including the labour component thereof)
- a mechanism for those rates to increase from year to year
- penalties for services provided outside standard hours
- equipment, including painting and badging of vehicles
- classification of work
- supply and fitting of communications equipment
- right to assignment of work
- supply of work uniforms, and
- dispute settlement procedure.

Participation in the collective bargaining group is voluntary. The TWU will invite all 6 owner drivers currently contracted to Toll and any future owner drivers who become contracted to Toll to join the group, including owner drivers who are not members of the TWU. The TWU seeks authorisation for 5 years.

### **The authorisation process**

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

The TWU has requested interim authorisation to commence collective bargaining as soon as possible on the basis that its owner drivers are currently experiencing financial hardship. Therefore, the TWU submits that interim authorisation would allow for more time to address individual concerns of its owner driver members and increase the overall efficiency of collective negotiations with Toll. The TWU advises that it will not finalise bargaining until the ACCC made its final determination.

### **Consultation**

The ACCC sought submissions from interested parties potentially affected by this application for authorisation, including the relevant owner-driver members of the TWU, Toll, competitors to Toll, and various government and industry bodies.

Toll did not raise any objections to the interim authorisation request. The ACCC did not receive any submissions from other interested parties regarding the TWU's request for interim authorisation.

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 [Authorisations Public Register](#).

### **Reasons for decision**

In granting interim authorisation, the ACCC has taken into account the following factors:

- granting interim authorisation is not likely to permanently alter the status quo of the freight transport industry in Whyalla, South Australia, as the TWU does not intend to conclude any agreements with Toll before the ACCC makes its final decision
- denying interim authorisation could delay the ability of the TWU and the affected owner drivers to identify ways to address individual concerns and to efficiently conduct collective negotiations with Toll, and
- as the proposed arrangements are voluntary, do not include a collective boycott, and the size of the collective bargaining group is relatively small, the proposed conduct is

not likely to significantly impact competition in any relevant market during the period of the interim authorisation.

### **Reconsideration of interim authorisation**

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.