



**Ingham's & Ors –
Application for authorisation AA1000527
Interim authorisation decision
7 August 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional interim authorisation to Ingham's Group Limited and its related bodies corporate (**Ingham's**), Turosi Pty Ltd and its related bodies corporate (**Turosi**), Hazeldene's Chicken Farm Proprietary Limited and its related bodies corporate (**Hazeldene**), and the Australian Chicken Meat Federation (**ACMF**), (together, the **Parties**) in respect of the application for authorisation AA1000527, lodged by Ingham's (the **Applicant**) on 6 August 2020.
2. The Parties have sought urgent interim authorisation to enable them to minimise the disruption that would otherwise be caused to chicken meat processing and supply by the imminent Stage 4 restrictions imposed by the Victorian Government in response to the COVID-19 Pandemic.
3. The ACCC has granted conditional interim authorisation to the Parties to enable them to discuss, enter into or give effect to any contract, arrangement or understanding, or engage in any conduct, between themselves which has the purpose of:
 - a. facilitating, coordinating or ensuring the production and processing of chicken and chicken meat products in Victoria in order to:
 - i. meet ongoing demand; and
 - ii. adequately deal with the supply of live chickens currently "on farm" without the need to euthanise flocks;
 - b. sharing or coordinating the use of essential personnel, facilities and inputs (including chickens) in order to process as many chickens as possible by the Processors(the **Proposed Conduct**).
4. The ACCC has granted interim authorisation in relation to the Proposed Conduct subject to the compliance of the Parties with the conditions set out in paragraph 9 to paragraph 13 of this decision document.
5. The ACCC only grants conditional interim authorisation for the Parties to engage in the Proposed Conduct insofar as it is for the purpose of minimising disruption to processing of chicken meat products in Victoria during the COVID-19 pandemic. In particular, the Parties are granted conditional interim authorisation to engage in the Proposed Conduct for the sole purpose of seeking to maximise the number of chickens that are able to be processed by Ingham's, Turosi and Hazeldene (together, the **Processors**), so as to minimise - to the extent possible - the impacts that the restrictions imposed by the Victorian government on businesses have, or may reasonably have, on the capacity of Processors to process chickens.

6. The Proposed Conduct the subject of this conditional interim authorisation does:
 - a. not involve collective decisions relating to the price at which the Processors acquire or supply goods or services;
 - b. not involve collective decisions relating to the arrangements between the Processors and their respective chicken growers, or the supply arrangements between the Processors and their respective customers.
7. The Proposed Conduct is not compulsory and is intended to form a temporary response to the difficulties which the Processors face as a result of the COVID-19 crisis and the restrictions recently imposed by the Victorian government.
8. Interim authorisation commences immediately and remains in place until:
 - a. it is revoked;
 - b. the date the ACCC's final determination comes into effect; or
 - c. the date on which the application for authorisation is withdrawn.

Conditions of interim authorisation

9. Given the breadth of the Proposed Conduct, and that the urgency of the application has meant that the ACCC has not yet had the opportunity to consult, the ACCC considers it appropriate to impose reporting conditions on the grant of interim authorisation.
10. Interim authorisation is granted subject to the following conditions:

(1) Reporting obligations

11. The Parties provide a report to the ACCC on a weekly basis (or as otherwise agreed by the ACCC) setting out details of each material decision made by the COVID Working Group (as defined below) which involves or otherwise relates to the Proposed Conduct. The ACCC proposes to publish the report subject to the assessment of any confidentiality claim.
12. The Parties arrange to meet with the ACCC to provide regular updates, as agreed between the Applicant and the ACCC.

(2) Provision of further information

13. The Parties provide any further information that the ACCC reasonably requests (through a contact person nominated by the Parties) about the Proposed Conduct being engaged in under the requested authorisation.

Background

14. On 3 August 2020, the Victorian Government announced that further restrictions would be imposed on Victorian businesses as a result of the COVID-19 pandemic, for a period of at least 6 weeks (**Stage 4 Restrictions**). The Stage 4 Restrictions involve directions that a large number of Victorian businesses are to close. Businesses that permitted to stay open are required to reduce the number of workers onsite. In the poultry industry a workforce reduction of 20% is likely to be required. The Stage 4 Restrictions are expected to come into effect at 11.59pm on 7 August 2020.

The application for authorisation

15. The Parties to Application AA1000527 are the Processors and ACMF. The Applicant sought authorisation for the Proposed Conduct until 31 December 2020.
16. The Processors produce or manufacture, and supply, chicken meat products in Victoria. The Applicant submits that, together, the Processors process and supply the majority of chicken and chicken meat products to millions of Victorians each week.

17. The ACMF is the peak coordinating body for participants in the chicken meat industry in Australia, including the promoting and representation of the chicken meat industry.
18. The Applicant seeks authorisation for the Parties to discuss, enter into or give effect to any contract, arrangement or understanding, or engage in any conduct, between themselves which has the purpose of:
 - a. facilitating, coordinating or ensuring the production and processing of chicken and chicken meat products in Victoria in order to:
 - i. meet ongoing demand; and
 - ii. adequately deal with the supply of live chickens currently “on farm” without the need to euthanise flocks;
 - b. sharing or coordinating the use of essential personnel, facilities and inputs (including chickens) in order to process as many chickens as possible by the Processors.
19. The Applicant only seeks authorisation for the Parties to engage in the Proposed Conduct insofar as it is for the sole purpose of seeking to maximise the number of chickens that are able to be processed by the Processors, so as to minimise to the extent possible the impacts that the Restrictions have, or may reasonably have, on the capacity of Processors to process chickens, and as a result, the associated impacts on growers and customers.
20. The Proposed Conduct will be developed and implemented by a special working group established by the Parties for the purposes of responding to the Restrictions (**COVID Working Group**).
21. The Applicant submits that the Proposed Conduct will:
 - a. not involve collective decisions relating to the price at which the Processors acquire or supply goods or services;
 - b. not involve collective decisions relating to the arrangements between the Processors and their respective chicken growers, or the supply arrangements between the Processors and their respective customers;
 - c. not be compulsory; and
 - d. form a temporary response to the difficulties which the Processors face as a result of the COVID-19 crisis and the Restrictions.

Reasons for the application

22. The Applicant advises that the Stage 4 Restrictions, in combination with other impacts from the COVID-19 pandemic and any further restrictions that may be imposed (the **Restrictions**), will significantly impact the capacity and output of the Processors, which could have disastrous consequences for the Processors and the community generally, including:
 - a. the culling of chickens that cannot be processed and the destruction of eggs to be used for growing future chickens to maintain supply;
 - b. job losses as a result of reduced output and/or supply chain interruptions;
 - c. a significant impact on any growers who are left with empty farms because the Processors do not have the capacity to process the chickens that would be grown;
 - d. shortages of chicken and chicken products in Victorian supermarkets, cafes, and restaurants; and
 - e. retail price increases for Victorian consumers of chicken and chicken meat products.

23. The Parties advise that the Proposed Conduct is intended to minimise the impacts of the Restrictions by facilitating coordination between the Processors to ensure that chickens can be processed in the most efficient way possible, while also complying with the Restrictions and ensuring the Processors employ all necessary precautions to address the health risks posed by the COVID-19 pandemic.
24. In particular, the Processors are seeking solutions that, in the context of complying with the Restrictions, to the extent possible:
- a. avoid or reduce the need to cull chickens;
 - b. reduce the risk and magnitude of job losses;
 - c. minimise impacts on growers and other parts of the supply chain; and
 - d. ensure sufficient supply of chickens to meet Victorian demand.
25. Given the imminent introduction of Stage 4 Restrictions, the Processors consider that immediate action is required to avoid material supply chain and associated impacts.

Transparency

26. The Applicant states that, should the Proposed Conduct be authorised by the ACCC, the Parties will:
- a. notify the ACCC, at an interval agreed between the ACCC and the Parties, of the material decisions of the COVID Working Group which involve or otherwise relate to the Proposed Conduct;
 - b. provide any information that the ACCC reasonably requests (through a contact person nominated by the Parties) about the Proposed Conduct being engaged in under the requested authorisation; and
 - c. meet with the ACCC to provide regular updates on the Proposed Conduct, as agreed between the Parties and the ACCC.

Impact on growers

27. The Applicant notes that the Proposed Conduct will not involve collective decisions relating to the arrangements between the Processors and their respective chicken growers.
28. The Applicant submits that the Proposed Conduct will reduce the impact of the Restrictions on chicken growers to the extent possible by assisting in maximising the volumes of chickens able to be processed by the Processors over the period in which the Restrictions apply.
29. Interim authorisation of the Proposed Conduct does not override any of the contractual arrangements between individual Processors and growers.

The authorisation process

30. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (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.
31. The ACCC may specify conditions in an authorisation. The legal protection provided by an authorisation does not apply if any conditions are not complied with.

Interim authorisation

32. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
33. The Applicant urgently requested interim authorisation on the basis that immediate action is required to avoid material supply chain and associated impacts described at paragraph 22 above, given the Stage 4 Restrictions will come into effect from 11.59pm Friday 7 August 2020.

Consultation

34. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation.
35. The ACCC will conduct a public consultation process on the substantive application for authorisation and will further examine the public benefits and detriments likely to result from the Proposed Conduct during that process. Details regarding how to make a submission will be available on the ACCC's authorisations public register.
36. 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.

Reasons for decision

37. In granting conditional interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the difficulties that the Processors are likely to face due to the restrictions on the Processors' workforces imposed by the Victorian Government, and the more general difficulties participants in the chicken processing sector have been facing due to the COVID-19 pandemic.
38. The ACCC considers that it is unlikely that granting conditional interim authorisation will materially alter the competitive dynamics in any relevant market on an ongoing basis, and relevant markets will likely be able to return to substantially their current state once the emergency circumstances subside. In particular, the ACCC notes that:
 - There is some transparency in relation to the implementation of the Proposed Conduct during the period of interim authorisation, particularly by the COVID Working Group, due to the commitment by the Parties to provide the information the ACCC reasonably requests about the conduct during the authorisation and the reporting obligations set out in the conditions described above at paragraph 9 to paragraph 13 above.
 - The Proposed Conduct does not extend to any agreements about the price at which the Processors will acquire or sell any goods or services.
 - The Proposed Conduct does not involve collective decisions relating to the arrangements between the Parties and their respective chicken growers, or the supply arrangements between the Parties and their respective customers. Further, the Proposed Conduct does not allow the Processor to share information regarding their respective arrangements with growers and customers.
 - The ACCC may review its decision to grant interim authorisation at any time including in response to feedback as the Proposed Conduct is rolled out. If growers or retailers have concerns with the arrangements during the period of interim authorisation, they are encouraged to advise the ACCC.

39. The ACCC considers the Proposed Conduct is likely to increase the number of chickens processed in Victoria than would otherwise be the case without the Proposed Conduct in circumstances where the Stage 4 Restrictions come into effect, and is therefore likely to result in public benefits in the form of:
- maximising supply of chicken meat to Victorian customers during the Restrictions, for example by Producers agreeing to send birds to each other's processing facility when a Processor has insufficient capacity
 - reducing the likelihood of price increases of chicken meat for Victorian customers
 - limiting any fall in revenue of chicken growers and processors that may otherwise occur
 - limiting the need to cull chickens, which are not processed for sale, and
 - reducing the extent of job losses for workers in chicken growing and chicken processing.
40. The ACCC notes the potential for public detriment resulting from the Proposed Conduct, as a result of the Parties sharing information or coordinating. However, the ACCC considers that the likelihood for detriment is reduced:
- by the voluntary nature of the Proposed Conduct
 - by the transparency of the Proposed Conduct as a result of the reporting requirements and commitments
 - because the Proposed Conduct does not relate to nor involve any contracts with growers, and does not relate to retail pricing, and
 - because the Proposed Conduct is for a limited period of time.
41. On the basis of the information currently available to it, the ACCC considers that the Proposed Conduct is likely to result in a net public benefit, and that any public detriments arising from the Proposed Conduct are likely to be limited. The ACCC is satisfied that given the extraordinary circumstances of the COVID-19 crisis and the particular circumstances in Victoria it is appropriate to grant interim authorisation subject to the conditions as specified in paragraph 9 to paragraph 13 above.

Reconsideration of interim authorisation

42. 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.