



**South Australian Oyster Growers Association –  
Application for revocation of A91229 and A91230 and the  
substitution of authorisation AA1000531  
Interim authorisation decision  
22 October 2020**

### **Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to suspend the operation of authorisations A91229 and A91230 and grant interim authorisation in substitution.
2. The ACCC grants interim authorisation to the South Australian Oyster Growers Association (SAOGA), and such other parties that had the benefit of authorisations A91229 and A91230, to participate in the oyster spat (juvenile oysters) levy agreement to collectively finance and benefit from oyster research and development on the same basis as previously authorised by A91229 and A91230, while the re-authorisation process continues.
3. Interim authorisation commences immediately and remains in place until it is revoked, the date on which the application for re-authorisation is withdrawn, or the date the ACCC's final determination comes into effect.

### **Background**

4. SAOGA and the South Australian Oyster Research Council Pty Ltd (**SAORC**) (together **the Applicants** for re-authorisation) lodged an application for revocation of authorisations A91229 and A91230 and substitution of authorisation AA1000531 on 9 October 2020. The Applicants seek re-authorisation for the imposition of a levy on all purchases of spat by South Australian oyster growers from South Australian hatcheries, which is then remitted to SAORC to support research and development activities.
5. The ACCC granted authorisations A91229 and A91230 on 1 October 2010. Authorisation was granted for 10 years and came into force on 23 October 2010. It is due to expire on 23 October 2020. The ACCC previously authorised substantially the same conduct on 8 September 1999 (A60023) and on 3 August 2005 (A60024 & A60025).

### **The Applicants**

6. SAOGA is a not-for-profit membership-based organisation that provides support and advocacy services for its oyster grower members. SAOGA currently has 80 members, which represents 80 per cent of all oyster licence holders in South Australia.
7. SAORC is a wholly owned subsidiary of SAOGA and is dedicated to research and development in the oyster industry. One hundred per cent of South Australian oyster growers are members of SAORC.

## **The authorisation process**

8. 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 proposed conduct results in a net public benefit.

## **Interim authorisation**

9. The ACCC may, where it considers it appropriate, grant an interim authorisation which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
10. Given the imminent expiry of authorisations A91229 and A91230, the Applicants requested interim authorisation to allow the conduct authorised under the existing authorisations to continue while the application for re-authorisation is considered.
11. The Applicants submit that, if interim authorisation is not granted, there is a material risk that existing investment in research and development activities undertaken by SAORC will be severely impacted. The Applicants further submit that, since the South Australian oyster industry has been operating under a requirement to remit the levy for more than 20 years, interrupting this arrangement may impose significant administrative burdens on the industry to alter existing practices.

## **Consultation**

12. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation. This is due to the urgency of granting interim authorisation to avoid adversely impacting existing investment in research and development activities undertaken by SAORC.
13. The ACCC will conduct a public consultation process on the substantive application for authorisation, and how the conduct is operating under the interim authorisation. Details about how to make a submission will be available on the ACCC's authorisations [public register](#).

## **Reasons for decision**

14. The ACCC considers it appropriate to grant interim authorisation, noting:
  - interim authorisation will maintain the status quo while the re-authorisation process continues and due consideration is given to the application for re-authorisation;
  - the urgency of the request for interim authorisation with the approaching expiry of the current authorisations; and
  - the conduct is substantially the same conduct previously authorised in 1999 and 2005 and the same conduct that was authorised in 2010. On each occasion, the ACCC concluded that the likely public benefits outweighed any likely public detriments.

## **Reconsideration of interim authorisation**

15. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation.
16. 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.