



Draft Determination

Application for revocation of A91418 and the substitution of
authorisation AA1000656

lodged by

the Australian Brick & Blocklaying Training Foundation

in respect of

an industry agreement to impose levies on the sale of clay bricks and
concrete masonry products

29 February 2024

Commissioners: Keogh
Lowe
Carver

Summary

The ACCC proposes to grant authorisation to enable the Australian Brick & Blocklaying Training Foundation, Think Brick Australia and the Concrete Masonry Association of Australia and their members to impose a levy of up to \$2 per 1,000 clay bricks and 10 cents per square metre on concrete masonry walling products, and for members of Think Brick Australia and the Concrete Masonry Association of Australia to agree to match the levy. The funds will be used for programs to address the skill shortage in bricklaying.

The levy has been authorised by the ACCC since 2006. The amount of the levy for which authorisation is sought has not changed since that time. Similar state-based schemes were authorised prior to that time.

The ACCC proposes to grant authorisation for 10 years.

The ACCC considers the conduct is likely to result in public benefits through addressing the ongoing skill shortages in the bricklaying industry, reducing the resulting delays in construction times. The ACCC considers the conduct is unlikely to result in significant public detriment.

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

1. The application for authorisation revocation and substitution

- 1.1. On 6 December 2023, the Australian Brick & Blocklaying Training Foundation Ltd (the **Applicant**) lodged an application with the Australian Competition and Consumer Commission (the **ACCC**) to revoke authorisation A91418 and substitute authorisation AA1000656 for the one revoked. The Applicant is seeking authorisation on behalf of itself, Clay Brick and Paver Institute Ltd trading as Think Brick Australia (**Think Brick Australia**) and the Concrete Masonry Association of Australia Ltd (the **Concrete Masonry Association of Australia**) and their members to continue to apply a levy of up to \$2 per 1,000 clay bricks sold and 10 cents per square metre on concrete masonry walling products sold in Victoria, New South Wales, Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory (the **levy**), and for members of Think Brick Australia and the Concrete Masonry Association of Australia to agree to match the levy (the **Conduct**). The funds raised will be used for programs to address the skills shortage in bricklaying.
- 1.2. The Applicant seeks authorisation for 10 years.
- 1.3. This application for revocation and substitution was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would or is likely to result in benefit to the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).

2. Background

- 2.1. The Australian Brick & Blocklaying Training Foundation is a not-for-profit organisation that was established to address a national shortage of skilled bricklayers. Think Brick Australia

represents Australia's clay brick and paver manufacturers. The Concrete Masonry Association of Australia represents concrete masonry manufacturers.

- 2.2. The ACCC understands there is an ongoing skill shortage of bricklayers across Australia and a large group of older bricklayers are approaching retirement. The skills shortage impacts construction costs, especially in peak periods. The ACCC understands that many bricklayers are small to medium businesses and the risk of investing in training an apprentice who may not complete the training may make bricklayers reluctant to take on apprentices.
- 2.3. Most bricks and blocks sold in Australia are manufactured locally and the supply of bricks and blocks is restricted geographically due to the high cost of transport over long distances.
- 2.4. The purpose of the Australian Brick & Blocklaying Training Foundation is to ensure that there is an adequate and competent bricklaying and blocklaying workforce to support the demand for bricks and blocks as a construction material. The Australian Brick & Blocklaying Training Foundation administers a national program that is designed to promote the profile of bricklaying as a trade, improve the retention rate of apprentices in the industry, and upskill the existing bricklaying workforce.
- 2.5. The program includes strategies intended to increase the take up of apprenticeships (including marketing of the trade, outreach and education programs in schools), support for bricklayers in taking on apprentices (including incentives and benefits), strategies intended to increase retention rates in bricklaying apprenticeships (such as assistance to recommencing out-of-trade apprentices, mentoring, travel support, and profiling of apprenticeship candidates), and strategies to improve the standard of skills in the workforce (including recognition of skills for existing unqualified bricklayers towards a qualification, monitoring of training progress for apprentices as a condition of subsidies to their supervisors, and promotion of best practice through newsletters and websites).
- 2.6. The program is funded by a levy which is matched by the members of Think Brick Australia and the Concrete Masonry Association of Australia.
- 2.7. The levy has been authorised by the ACCC since 2006. The amount of the levy for which authorisation is sought has not changed since that time. Similar state-based schemes were authorised prior to that time.

3. Consultation

- 3.1. The ACCC invites submissions commenting on the application and in response to this draft determination.

4. ACCC assessment

- 4.1. The Applicant has sought authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsections 90(7) and 90(8) of the Act,¹ the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result.
- 4.2. To assist with the assessment of the Proposed Conduct, the ACCC considers that:

¹ See subsection 91C(7).

- the relevant areas of competition likely to be affected by the Conduct are competition between suppliers of clay bricks and pavers in commercial and housing construction, suppliers of concrete masonry products in commercial and housing construction, and suppliers of bricklaying services in commercial and housing construction
- the likely future without the Conduct is that there would be no scheme that is funded by the levy and administered by the Australian Block & Bricklaying Training Foundation for the purposes of promoting bricklaying apprenticeships and providing incentives to employers of apprentices.

Public benefits

- 4.3. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.²

- 4.4. The Applicant submits that the Conduct will result in public benefits by addressing the ongoing skills shortage of bricklayers across Australia. The Australian Brick and Block Training Foundation uses the levy to attract candidates to the industry and then place them within those businesses, and to run retention programs to keep apprentices in the industry.
- 4.5. The Applicant submits that without the continued work of the Australian Brick and Block Training Foundation, the industry will struggle to meet the demand for housing in Australia due to a lack of future trades. The Applicant submits that build times of houses are being extended by a lack of trades available to install the bricks and blocks.
- 4.6. The ACCC understands that there is an ongoing shortage of bricklayers, and a large group of older bricklayers are approaching retirement. The Applicant submits that the challenge of attracting apprentices into the trade has led to an increasingly aged workforce, but that over the past 15 years since the Australian Brick and Block Training Foundation began operating, there has been a clear increase in the number of bricklayers and stonemasons under the age of 35. The Applicant submits that without strong apprentice growth the industry will suffer more acute shortages.
- 4.7. The ACCC notes that although there has been an influx of bricklaying apprentices, the skills shortage in bricklaying is ongoing. The ACCC acknowledges the difficulties in attracting enough talent to address the skills shortage, and the difficulties in maintaining and growing the workforce as a significant group of bricklayers age out of the workforce. The ACCC also acknowledges the impact that the COVID-19 pandemic had on housing trades, particularly bricklaying. The ACCC accepts that the Australian Brick and Block Training Foundation's work in attracting and retaining apprentices has prevented more acute skill shortages.
- 4.8. The ACCC is satisfied on the information currently before it that the Conduct has previously delivered benefits by addressing skill shortages in the bricklaying industry and reducing the resulting delays in construction times, and considers that the ongoing

² Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

operation of the Australian Brick and Blocklaying Training Foundation's programs facilitated by the levy on clay bricks and concrete masonry products are likely to continue to provide these benefits. The ACCC notes that the levy shares the costs of apprentice training throughout the industry, and funds programs to encourage retention of apprentices, which reduces the risk to a bricklayer of taking on an apprentice.

Public detriments

4.9. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.³

4.10. The Applicant submits that the public detriment is the additional amount included in the total product sold, being an additional \$16 for the average sized home in all states except Western Australia, where double brick construction means the additional amount would represent \$40 for the average house.

4.11. The ACCC considers the conduct is unlikely to result in significant public detriment because:

- The amount of the levy is negligible relative to the cost of construction.
- The levy is likely to result in little, if any, impact on the relevant areas of competition.
- Detailed information of individual levy collection is not shared with participating companies of the scheme, and only totals are shared as a means of managing funds through the Australian Brick & Blocklaying Training Foundation board.
- The conduct provides little opportunity for anti-competitive conduct beyond the scope of the authorisation, and there is no evidence that the existing authorisation has had an anticompetitive effect.

Balance of public benefit and detriment

4.12. For the reasons outlined in this draft determination, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Conduct.

5. Draft determination

The application

5.1. On 6 December 2023, the Australian Brick & Blocklaying Training Foundation Ltd (the **Applicant**) lodged an application with the Australian Competition and Consumer Commission (the **ACCC**) to revoke authorisation A91418 and substitute authorisation AA1000656 for the one revoked.

5.2. The Applicant is seeking authorisation on behalf of itself, Think Brick Australia and the Concrete Masonry Association of Australia and their members to continue to apply a

³ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

levy of up to \$2 per 1,000 clay bricks sold and 10 cents per square metre on concrete masonry walling products sold in Victoria, New South Wales, Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory, and for members of Think Brick Australia and the Concrete Masonry Association of Australia to agree to match the levy.

- 5.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.
- 5.6. Accordingly, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise

- 5.7. The ACCC proposes to revoke authorisation A91418 and grant authorisation AA1000656 in substitution.
- 5.8. The ACCC proposes to grant authorisation AA1000656 to the Australian Brick & Blocklaying Training Foundation, Think Brick Australia, the Concrete Masonry Association of Australia Ltd, their members and future members to make and give effect to arrangements necessary to:
 - (a) apply a levy of up to \$2 per 1,000 clay bricks sold and 10 cents per square metre on concrete masonry walling products sold in Victoria, New South Wales, Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory
 - (b) for members of Think Brick Australia and the Concrete Masonry Association of Australia to agree to match the levy applied.
- 5.9. The ACCC proposes to grant authorisation in relation to Division 1 of Part IV of the Act, and section 45 of the Act.
- 5.10. The ACCC proposes to grant authorisation AA1000656 for 10 years.
- 5.11. This draft determination is made on 29 February 2024.

6. Next steps

- 6.1. The ACCC invites submissions on the application and in response to this draft determination. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.