

APPLICATION FOR COLLECTIVE BARGAINING

NOTIFYING PARTY

Highlands Potatoes and Ag Incorporated
(previously named the McCain Grower Group Incorporated)

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Highlands Potatoes and Ag Incorporated has members who are located in the Central Highlands region of Victoria. Members individually grow, market and supply processing potatoes (for chips, wedges and fries) and other agricultural crops to a limited number of markets. The group works collaboratively with members and the broader supply chain to improve technical production, collect, analyse and disseminate data and seek out market opportunities.

DETAILS OF THE NOTIFIED CONDUCT

Highlands Potatoes and Ag Incorporated (HPAI) is applying for permission to collectively bargain to replace authorisation A91321.

Existing and future members of the HPAI are seeking legal protection to:

- collectively negotiate the terms and conditions of supply contracts with current and future potato buyers,
- permit HPAI to assist its members in their negotiations with current and future potato buyers,
- allow the sharing of information and expertise among current and future potato growers.

The permission does not include a collective boycott.

Description of notified conduct

Relevant documents and information are also contained in the 2012 determination. (A91321)

The potato market is dominated by a handful of large-scale international potato processors. The processing companies purchase raw potatoes from growers and then process and package the potatoes for sale into the quick serve restaurant market, the supermarkets or for export.

Many of the potato varieties grown for the large-scale international processors are not tradeable on the open market as they are protected by Plant Breeder Rights.

Potato growers and members of HPAI sign supply contracts with these large-scale international businesses to grow and deliver the crop under the terms of the contract. Growers are very small businesses in comparison to the monopsony purchaser and hence are in a weak position to negotiate contract terms and price.

It is proposed, as has occurred in the past, under permission, that members of HPAI be allowed to:

- share information about costs of production and methods for potato production,
- share information about various terms in the contract and to seek collective legal advice to provide efficiency and improve the supply contracts,
- share information about the market for a range of potato products and price points to assist in negotiation, and
- to have a sub group, or council or individual to negotiate the contractual terms and price paid for potatoes on behalf of members of the group. This process would not be compulsory, but voluntary for members who choose to participate.

Rationale

The following dot points outline the rationale for the notification.

- Growers of potatoes are very small businesses compared to the international corporations who purchase the processing potatoes. The resources available to these large businesses is far greater than the resources available to individual growers to manage market information to achieve an informed position, negotiate and agree on contractual terms and price. Large corporations have access to specialist negotiation skills and market information where as individual potato growers do not.
- There exist administrative benefits that include a more cost-effective method of obtaining a price which will see more stability and added benefits for the local economy. This includes the ability to share administrative tasks between suppliers.
- The ability to achieve common advice on purchase contracts where issues are relevant to all growers who enter into purchase agreements results in cost savings to small businesses.
- Open communication and dissemination of market information to a collective group of growers allows a considered position to be put forward in negotiating benefits for the entire industry.
- Collective bargaining is an organised and cost-effective means of managing potato purchase contracts providing stability and benefits to the local economy. This stability has significant flow on benefits throughout local communities and also to a range of businesses that support potato growers.
- A long history of beneficial collective bargaining between McCain and growers that may have otherwise achieved less beneficial outcomes if individual negotiations had occurred.

It is proposed that the term of notified conduct be approved for ten (10) years.

At the recent AGM held on Tuesday 28th May, 2019, the members unanimously agreed the following motion.

The members instruct the Executive Officer (EO) to apply for notification to collectively bargain, similar to previous authorisations held by the organisation and comply with necessary legislative frameworks. The EO is to liaise with the Executive Committee and ACCC for specific details and advice on the application. The ability to collectively bargain provides administrative, legal and information transfer efficiency benefits to all parties. The application is to include all French Fry processors that purchase potatoes from the Ballarat region. There is an estimated fee of \$1,000 for notification to ACCC which is to be paid by the group.

Businesses likely to be impacted

The following business may be impacted through collective bargaining. These businesses purchase large volumes of potatoes for processing into potato chips, potato wedges and French fries. These businesses currently enter into individual agreements with potato growers.

They may be impacted through increased communication and collaboration of the growers. The ability to negotiate single supply agreements with quality parameters on behalf of a number of suppliers.

- McCain Foods Aust
- Lamb Weston (through Marvel Packers P/L and Ready Meals P/L)
- Any other buyers in the future.

MARKET INFORMATION AND CONCENTRATION

The HPAI consists of approximately 11 growers that supply processing potatoes and may represent around half the volume of potatoes grown in the region. Processing, distribution and transport of these potatoes adds significantly to the local employment and economic activity of the Central Highlands (Victoria) region.

Typically, contracts are provided prior to planting of the crop. These contracts are for the supply of a quantity of potatoes at harvest. Most potatoes are grown and sold under contracts in which the potato growers bear significant financial risk if they are unable to supply contracted volumes. Growers typically plant each paddock with a specific variety under a specific contract for a specific purchaser with parameters around quality and delivery timelines.

Potatoes are stored so as to provide 12 month supply to the processing factories. Potatoes can only be stored in specialised large-scale facilities which are typically owned by the large processors, thus there is little opportunity for a competitive market to exist for processing potatoes due to existing contracts in place, short delivery windows, plant breeder rights and insufficient competition in the market.

Generally, specific processing potato varieties are used for processed products, such as frozen potato chips or French fries. The specific varieties of potato are often grown under licence through plant breeder rights, meaning that they are unable to be sold to processors that do not have a licence for a particular variety. This also further inhibits competition.

Once processed, the potatoes are typically sold as frozen goods to supermarkets or quick serve restaurants.

In Victoria, the major processor has been McCain Foods who hold a monopsony position in the market. In recent years, some smaller processors have also been operating and purchasing potatoes on the open market. This past 6 months (early 2019) has seen Lamb Weston, another global company purchase two smaller processors to enter into the market in Victoria. This acquisition has reduced competition as two smaller processors have been replaced with another multi national company.

PUBLIC BENEFIT

As outlined in determination A91321, the public benefits of this notification include:

- Achieving more equity through collective bargaining between multinational corporations and individual potato growers. Large corporations have access to specialist negotiation skills and market information where as individual potato growers do not.
- Open communication and dissemination of market information to a collective group of growers allows a considered position to be put forward in negotiating benefits for the entire industry. Collective bargaining is an organised and cost-effective means of managing potato purchase contracts providing stability and benefits to the local economy.
- A long history of beneficial collective bargaining between McCain and growers that may have otherwise achieved less beneficial outcomes if individual negotiations had occurred.
- Improved information and market data for growers allows understanding of competitors and productivity enhancements to be achieved.

Achieving more equity in contractual negotiations.

There is a clear disparity between McCain, and now also Lamb Weston, both true multinational companies that trade in markets across the globe, and an individual potato grower in the Central Highlands region. The access to legal, market, production and management specialists that large companies have is vastly superior than that available to an individual grower.

HPIA operate collectively and utilise professional services through the Executive Officer and other professionals from time to time. This professional input to potato growers and contractual negotiations does not occur when any individual negotiates with a multinational.

Without collective bargaining, most growers do not have the financial means to access sufficient professional services as individuals. The robustness of negotiation and contractual arrangements is improved through potato growers sharing the costs of professional services; this is a public benefit. Without a shared approach to these professional services, they tend to be absent from the process, simply due to the significant cost to an individual business.

Effective markets and information transfer

A key requirement for an efficient functioning marketplace is readily available information for supply, demand and price. Impediments to information transfer prevent competition and enhances the monopsony position that McCain has held in the Victorian market. Multinational companies have access to specific market information that informs price signals through the supply chain, where multinational companies control all the information, market signals are absent.

Quarantine restrictions restrict Victorian processing potato grower's market options. As such, there is a significant requirement for access to market information to understand production parameters and prices that occur in this global industry. We believe that a transparent collective bargaining arrangement that accesses market signals to inform all growers is a significant public benefit.

Providing sustainable production systems

Collective negotiations provide a framework for sustainable agricultural production. Profitable production systems include maintenance and enhancement of agricultural assets rather than short-term expedient production. Unfortunately, in many agricultural industries where profit margins are low (or negative), resources are depleted. These activities include the underuse of fertilisers or repeat cropping of paddocks causing nutrients, mineral and organic matter to be 'mined' from production systems.

Collective bargaining encourages all farmers to fully price the private and public benefit of healthy soils, landscapes and natural resources. A collective bargaining framework allows sustainability issues to be considered into pricing mechanisms and is applied to the entire community of potato growers. Profitable production systems allow for ongoing reinvestment in new technology and production efficiencies. Protecting agricultural resources and creating profitable production systems provides significant public benefit.

Collective bargaining promotes productivity

The HPAI have collectively been seeking to understand the real cost of production in the domestic industry against interstate and international competitors. There is advantage in wide dissemination of productivity enhancements rather than individual businesses working exclusively on production systems resulting in multiple trials and technology assessments without an integrated approach. The HPAI believe there is advantage in open dialogue and dissemination of information that occurs through transparent and public industry facilitation such as occurs with collective bargaining.

PUBLIC DETRIMENT INCLUDING ANY COMPETITION EFFECTS

The HPAI believe there will be no public detriment as a result of collective negotiation.

Collective bargaining does not delay settlement of contracts and create supply uncertainty

A significant volume of processing potato varieties is under plant breeder rights, i.e., they cannot be sold to any other processor. This license mechanism guarantees supply of potatoes (given normal agricultural production risks) as there is only one purchaser for the licensed variety.

The negotiation process has been historically difficult with some degree of conflict. The historical difficulty highlights the critical business issues, and requirement for robust open dialogue. The HPAI is not aware of any specific detrimental business impact to processors such as loss of a customer as a result of negotiations.

The HPAI have always sought early commencement and rapid conclusion to contractual negotiations as these price and quality mechanisms impact both the buyer and seller. We would also encourage more long-term pricing mechanisms to remove delays and provide further supply chain certainty.

Collective bargaining creates efficiency

Some aspects of the supply contracts relate to an individual grower. However, the majority of content in the supply contracts content is applied to all growers. This consistency in contracts is required for price, quality, delivery and payment terms. Single point negotiation on key contractual terms actually achieves efficiency in contract management rather than individually negotiating terms and then managing multiple customised contracts.

Individual growers are often frightened and intimidated (due to the inequality of bargaining power) to request reasonable changes to contracts; thus the perception of easier contract management to large scale purchasers. Individual negotiation is not creating better outcomes for industry or the public; rather it creates more expedient outcomes for the purchaser.

Cost of potatoes to consumers

The cost of potatoes received by the grower is a small part of the total cost of goods to the public (consumer). If potato price increases were to be passed on through the supply chain, the actual impact to consumers is negligible as a percentage of the total cost of sales. Historically, any increases in the finished product price has not been directly passed on to the grower.

Market competition

Potato growers are acutely aware of their role in the supply chain and requirement for all parts of the supply chain to work efficiently, collaboratively and profitably. The success of any particular potato processor either domestically or internationally is linked to the performance of their supply chain. Both growers and processors need to be efficient and competitive in the marketplace.

Competition in the marketplace from potato production in Tasmania, South Australia, Europe, New Zealand and America are setting market prices for Australian consumers. High potato costs (or margins) and high processing costs (or margins) will not compete in the marketplace due to the competition. This competition is appropriate and is the ultimate mechanism that drives supply chain efficiencies; this free market approach creates public benefit and is not impacted by domestic collective bargaining.

CONTACT DETAILS OF RELEVANT MARKET PARTICIPANTS

McCain Foods Aust Pty Ltd: [REDACTED]

Lamb Weston: (though acquisitions of Marvel Packers P/L and Ready Meals P/L)

- [REDACTED]
- [REDACTED]

ADDITIONAL INFORMATION FOR COLLECTIVE BARGAINING

- The notifying party is not a trade union or acting at the direction of a trade union.
- Each of the members of the group on whose behalf the notification is lodged are grower/farmers in the Central Highlands who actively grow potatoes and contract with potato processing companies.
- The threshold for primary production contracts is \$5m (Regulation 71A-71D). At approximately \$300 per tonne, this would result in a contract for 16,600 tonnes of potatoes. There are no growers in the group that supply anywhere near that volume of product in a 12 month period.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Executive Officer

Luke Rolley

This 29th day of July 2019.