



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Statement of Reasons

In respect of a notification lodged by
Tasmanian Farmers and Graziers Association
in respect of
collective bargaining for the supply of pyrethrum

Date: 10 February 2021

Notification number: CB10000476

Commissioners:
Ridgeway
Keogh
Brakey
Court

Summary

The ACCC does not object to the notification lodged by the Tasmanian Farmers and Graziers Association (**TFGA**) to enable itself, the TFGA Pyrethrum Committee (comprised of five primary producers who grow pyrethrum) and current and future Tasmanian pyrethrum growers to collectively bargain terms and conditions (including price) for the supply of pyrethrum to pyrethrum processor, Botanical Resources Australia.

The ACCC considers the notified conduct is likely to result in public benefits in the form of transaction cost savings and enabling the TFGA Pyrethrum Committee and pyrethrum growers to have better input into contracts. There is likely to be minimal, if any, public detriment.

The notification was lodged on 11 December 2020 and the ACCC has decided to allow it to remain in force for 10 years, instead of the default three year period. The notification came into force on 25 December 2020 and will remain in force until 10 December 2030, unless it is withdrawn or revoked.

The notification

1. On 11 December 2020, the Tasmanian Farmers and Graziers Association (**TFGA**) lodged a collective bargaining notification¹ to enable itself, the TFGA Pyrethrum Committee, and current and future Tasmanian pyrethrum growers to collectively bargain terms and conditions (including price) for the supply of pyrethrum to pyrethrum processor, Botanical Resources Australia (**BRA**) (the **Notified Conduct**).
2. The TFGA represents 60-70% of the approximately 100 pyrethrum growers in Tasmania. The TFGA Pyrethrum Committee represents the interests of pyrethrum growers in Tasmania and is currently comprised of five primary producers. Pyrethrum flowers are used to make a natural insecticide that is exported globally.
3. BRA is the sole pyrethrum processor in Australia, and is estimated to be responsible for 60-70% of the global supply of pyrethrum concentrate. The TFGA estimates that BRA grow 30% of the overall pyrethrum supply in Tasmania, and source the remainder from Tasmanian pyrethrum growers.
4. Under the Notified Conduct the TFGA Pyrethrum Committee proposes to negotiate with BRA on behalf of Tasmanian pyrethrum growers (both TFGA members and non-members) the terms (including price, which is the principal item to be negotiated initially) of the Pyrethrum Growing Agreement, which would be entered into by BRA and individual pyrethrum growers. The TFGA submits that there has been no increase in the price of pyrethrum since 2014, and that without an increase in price growers may instead choose to repurpose the land used for pyrethrum growing for more profitable commodities.
5. The Notified Conduct does not include a collective boycott.

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

6. The TFGA has requested that the notification be in force for ten years to allow for future rounds of bargaining to occur in response to increases in production costs and competition with different commodities.²

Consultation

7. The ACCC invited submissions from a range interested parties, including BRA, the Australian Horticultural Exporters Association and relevant state and federal government bodies. No submissions were received.

ACCC's Assessment

8. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Future without the Notified Conduct

9. The ACCC has taken into account the likely future with and without the Notified Conduct. The ACCC considers that, absent the Notified Conduct, as the TFGA would not be able to collectively bargain terms and conditions for the supply of pyrethrum on behalf of the group, Tasmanian pyrethrum growers would continue to enter into individual standard form agreements for the sale of pyrethrum with BRA.
10. The TFGA submit that without successful individual negotiations, growers could potentially repurpose the growing areas used for pyrethrum for other commodities such as cereals, vegetables and livestock, and subsequently leave the market.

Relevant areas of competition

11. The ACCC considers that the primary area of competition likely to be affected by the Notified Conduct is the supply and acquisition of pyrethrum in Tasmania.

Public Benefit

12. The ACCC considers that the Notified Conduct is likely to result in the following public benefits:
 - Reduced transaction costs (such as negotiation and contracting costs) for Tasmanian pyrethrum growers and BRA, compared to the situation where pyrethrum growers negotiate individually with BRA.
 - Increased opportunity for Tasmanian pyrethrum growers to have input into supply agreements relative to a situation where Tasmanian pyrethrum growers individually negotiate with BRA. This is because collective bargaining can enable growers to become more informed and engaged participants in negotiations and improve their input into contracts. This may lead to terms of supply that are more comprehensive and that better reflect the circumstances of the group and BRA, resulting in more efficient outcomes.

² The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

Public Detriment

13. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between pyrethrum growers in Tasmania because:
 - The Notified Conduct is likely to have minimal, if any, effect on the level of competition between pyrethrum growers for the supply of pyrethrum. The ACCC notes BRA's dominant position as the sole purchaser of pyrethrum in Australia (as noted in paragraph 4), and that there is unlikely to be meaningful competition between pyrethrum growers without the Notified Conduct.
 - Participation in the Notified Conduct is voluntary for the members of the TFGA, Tasmanian pyrethrum growers, and BRA.
14. The TFGA submits that there have been preliminary discussions between the TFGA Pyrethrum Committee and BRA with both parties indicating that they are willing to enter into price negotiations.

Period for which the Notification will be in force

15. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
16. In this case the TFGA requests the notification to be in force for ten years.
17. The ACCC considers that it is appropriate for the notification to remain in force until 10 December 2030 for the following reasons:
 - The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
 - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.

Decision

18. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the minimal, if any, detriment to the public that is likely to result.
19. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93 AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
20. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 17, in accordance with s 93AD(5), the ACCC is satisfied that a ten year notification period is appropriate in all the circumstances.
21. Therefore, the protection provided by notification CB10000476 commenced on 25 December 2020 and will continue until 10 December 2030, unless the notification is withdrawn or revoked.
22. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.