



Australian Seafood Industries Pty Ltd – application for authorisation A91444 Interim authorisation decision 14 August 2014

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation with respect to the application for authorisation lodged by the Australian Seafood Industries Pty Ltd (ASI) on 14 July 2014.

Interim authorisation is granted to enable ASI to collect a levy, in conjunction with hatcheries, on the purchase of Pacific oyster spat by Australian oyster growers to fund research into developing spat with resistance to Pacific Oyster Mortality Syndrome (POMS) virus.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

ASI seeks authorisation to make and give effect to arrangements with the South Australian Oyster Research Council (SAORC), the Tasmanian Oyster Research Council Limited (TORC) and hatcheries that produce Pacific oyster spat, for the collection of a levy from oyster growers who purchase Pacific oyster spat.

The levy is to be collected, either by ASI or on its behalf by oyster hatcheries, from oyster growers who purchase Pacific oyster spat from hatcheries. ASI will remove its royalty fee of \$2.00 per 1000 spat and introduce a levy on the purchase of all Pacific oyster spat, commencing at \$2.80 per 1000 spat, indexed annually by CPI, to be collected for a period of up to 10 years. ASI will use the collected monies to fund research and development of Pacific oyster broodstock with an increased resistance to the POMS virus.

The POMS virus has a 90-100% mortality rate in infected oysters, and outbreaks have occurred both overseas and in Australian oyster farms. ASI submits that outbreaks of the POMS virus can devastate the commercial production of Pacific oysters in any affected region, and cause irreparable financial damage to affected growers.

ASI seeks authorisation to make or give effect to arrangements for the imposition of the levy for a period of ten years.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the CCA). 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.

Interim authorisation

Section 91 of the CCA allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

ASI requested interim authorisation on the basis that:

- earlier implementation of the levy would enable ASI to commence its research and development activities sooner, and respond to the POMS virus more quickly
- the cyclical nature of peak sales periods for the commercial cultivation of oysters means that there may be a tendency for growers to draw forward purchases of spat prior to the ACCC granting authorisation, which could skew regular production cycles and may adversely affect the supply of mature oysters to market.

Consultation

The ACCC sought submissions from 44 interested parties potentially affected by the application, including oyster growers, grower associations, hatcheries and government departments. The ACCC received one submission from the Australian Seafood Cooperative Research Centre in support of ASI's application for authorisation.

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

In deciding to grant interim authorisation, the ACCC considers that:

- interim authorisation will enable ASI to respond to the POMS virus earlier, which may mitigate damage to the commercial cultivation of the Pacific oyster in Australia
- in the absence of government funded research, an industry wide levy is likely to be an efficient means of funding research to develop POMS-resistant Pacific oyster broodstock
- by bringing forward the introduction of the levy so that it aligns more closely with the public announcement of its proposed implementation, interim authorisation may prevent distortion to regular production cycles and any disruption to the supply of oysters to market
- significant public detriment is unlikely to result from the arrangements, given the relatively small cost that the levy represents (it is less than 1% of the final farm gate sale price of Pacific oysters).

Reconsideration of interim authorisation

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.