

# Application for Authorisation of a Restrictive Trade Practice (Streamlined Process)

---

**WAIKATO-BAY OF PLENTY CHICKEN GROWERS ASSOCIATION  
INCORPORATED**

**ON BEHALF OF ITS CURRENT AND FUTURE MEMBERS**

**PURSUANT TO SECTIONS 58(1) AND 58(2) OF THE COMMERCE ACT 1986**

**20 SEPTEMBER 2017**

**lane neave.**

## Table of Contents

1. Executive Summary .....	1
2. Part 1: Details of Applicant and Other Parties.....	5
3. Part 2: The Industry .....	6
4. Part 3: Market Definition .....	12
5. Part 4: Counterfactual .....	16
6. Part 5: Existing Competitors.....	19
7. Part 6: Potential Competition.....	20
8. Part 7: Public Benefits and Detriments .....	21
9. Part 8: Identification of Interested Parties .....	27
10. Part 9: Confidentiality .....	31
Appendix A – Covec Report.....	34
Appendix B – Names and Contact Details of Current Growers .....	35
Appendix C – Map of New Zealand Processing Facilities .....	36
Appendix D – Prospectus.....	37
Appendix E – Supplementary Prospectus .....	38
Appendix F – Code of Welfare: Transport Within New Zealand .....	39
Appendix G – Map of Inghams’ Operations .....	40

## 1. Executive Summary

---

### Introduction

- 1.1 This is an application for authorisation under sections 58(1) and 58(2) of the Commerce Act 1986 (**Act**) made by the Waikato-Bay of Plenty Chicken Growers Association Incorporated on behalf of its current and future members (**Applicant**).

### Factual Background

- 1.2 This application concerns the provision of broiler chicken growing services.
- 1.3 The Applicant is an industry association, whose current members (**Current Growers**) supply broiler chicken growing services to one of New Zealand's three major chicken processors, Inghams Enterprises (NZ) Pty Limited (**Inghams**).
- 1.4 Inghams' business model is typical of Australasian chicken processors. Under this model, the processor undertakes most stages in the production and processing of chicken meat, with the exception of the growing of chickens which is outsourced to contract growers. The processor supplies the growers with day-old chickens, feed and medication, and the growers rear the chickens in accordance with the processor's detailed specifications. The chickens are delivered to the growers by the processor, and collected again by the processor once they have reached the weight that the processor desires. Growers provide specialist shedding and variable inputs such as labour, gas, electricity and litter, together with management expertise. Ownership of the chickens remains with the processor at all times.
- 1.5 As is common in the broiler chicken growing services market, Inghams is a monopsonist purchaser of the Current Growers' services.
- 1.6 The Applicant has always negotiated the terms of supply of chicken growing services to Inghams on behalf of its members.
- 1.7 However, the Applicant and its members have recently become aware that the collective negotiation of the contract growers' terms and conditions (including fees) (**Growers' Contracts**) may constitute a breach of the Act.
- 1.8 To rectify this situation going forward, the Applicant is seeking an authorisation from the Commerce Commission under sections 58(1) and 58(2) of the Act.
- 1.9 The Australian Competition and Consumer Commission (**ACCC**) has repeatedly authorised similar conduct in Australia since the mid-1990s.<sup>1</sup> Currently in Australia:
- (a) Chicken growers that are members of the Victorian Farmers Federation are authorised until 7 July 2026 to collectively bargain with the chicken processor they supply.<sup>2</sup>
  - (b) The Western Australian Broiler Growers' Association is authorised until 21 June 2026 for its chicken grower members to collectively bargain with the chicken processor they supply.<sup>3</sup>

---

<sup>1</sup> See, for example, Australian Competition and Consumer Commission, *A90595: Inghams Enterprises Pty Ltd* (Interim Determination 26 June 1996, Final Determination 9 April 1997); Australian Competition and Consumer Commission, *A30183: Steggles Limited* (20 May 1998); and Australian Competition and Consumer Commission, *A90659: Inghams Enterprises Pty Limited* (17 March 1999).

<sup>2</sup> Australian Competition and Consumer Commission, *A91534: Victorian Farmers Federation* (16 June 2016).

- (i) The Tasmanian Chicken Growers Association lodged a collective bargaining notification on behalf of six of its broiler chicken growers to collectively bargain with Inghams. The collective bargaining notification expires on 2 September 2018.<sup>4</sup>
- (ii) The New South Wales Farmers' Association is authorised until 17 July 2024 to form a series of common interest grower groups which will each collectively bargain the terms and conditions of grower contracts with the relevant poultry processor.<sup>5</sup>
- (iii) The South Australian chicken growers are authorised until 30 June 2022 to collectively bargain over certain terms and conditions with Inghams Enterprises Pty Limited.<sup>6</sup>
- (iv) The Queensland Chicken Growers Association is authorised until 14 February 2023 for its members to collectively negotiate with their processors.<sup>7</sup>

In each case, the ACCC authorised the conduct on the basis that it was likely to result in a net public benefit.

### The Proposed Arrangements

1.10 The Applicant seeks authorisation on behalf of the Current Growers and future members of the Applicant (**Future Growers**) to:

- (a) collectively bargain with Inghams in relation to:
  - (i) growing fees and other terms and conditions of chicken growing contracts;
  - (ii) adjustment and review of growing fees and other matters arising from time to time under/or in relation to terms of chicken growing contracts; and
  - (iii) resolutions of disputes which from time to time arise under chicken growing contracts or otherwise arise between Inghams and a grower or growers;
- (b) enter into agreements collectively negotiated between Inghams and the Applicant relating to the matters described at subparagraph (a) above; and
- (c) give effect to agreements collectively negotiated between Inghams and the Applicant relating to the matters described at subparagraph (a) above.

1.11 Growers who elect not to negotiate collectively will be free to opt out of the collective process and negotiate with Inghams individually.

---

<sup>3</sup> Australian Competition and Consumer Commission, *A91527: Western Australian Broiler Grower Association* (31 May 2016).

<sup>4</sup> Australian Competition and Consumer Commission, *CB00323: Tasmanian Chicken Growers' Association* (2 September 2015).

<sup>5</sup> Australian Competition and Consumer Commission, *A91417: NSW Farmers' Association* (25 June 2014).

<sup>6</sup> Australian Competition and Consumer Commission, *A91294: South Australian Inghams Chicken Growers* (14 June 2012).

<sup>7</sup> Australian Competition and Consumer Commission, *A91347: Queensland Chicken Growers Association* (24 January 2013).



## Public Benefits and Detriments of the Proposed Arrangements

1.12 This application is supported by an independent report written by John Small at Covec Limited (**Covec Report**) attached as Appendix A. The Covec Report concludes that the proposed arrangements have clear public benefits, and are not likely to result in any detriments. The key findings in the Covec Report are that:

- (a) The proposed arrangements have two chief public benefits, specifically reduced transaction costs in negotiating contracts for broiler chicken growing services between Inghams and Current and Future Growers, and contract price changes resulting in the avoidance of a wealth transfer to persons who are not members of the public.
- (b) In respect of the reduced transaction costs, under reasonable assumptions collective bargaining will save approximately [ ] each time the parties negotiate [ ]. Even under extremely low estimates of costs, collective bargaining is substantially less costly than individual bargaining.
- (c) In respect of the contract price changes:
  - (i) If Inghams were to implement an individual contract negotiation model, rationally it would seek to more than recoup the materially higher transaction costs it would otherwise incur.
  - (ii) The Covec Report models this as occurring through downward pressure on the per bird prices paid to growers (while noting that other mechanisms could be used without detracting from the economic analysis).
  - (iii) The Covec Report considers that it would be reasonable, absent authorisation, for Inghams to reduce grower payments by [ ].
  - (iv) Since Inghams' is foreign-owned, the wealth transfer from the growers to Inghams that would occur as a result of the reduction in grower fees represents a public detriment to New Zealand. The Covec Report considers that implementing the proposed arrangements would eliminate a wealth loss from New Zealand of around [ ] per annum.
- (d) In terms of potential public detriments arising from the authorisation of the proposed arrangements, the Covec Report concludes that authorisation will have no effect on the retail prices paid for chicken meat by consumers as, for reasons explained in the report, there is no real incentive for Inghams to pass on any cost savings to retailers.

## Streamlined Authorisation Sought

1.13 Streamlined authorisation is sought for this application on the basis that:

- (a) While the application peripherally concerns the downstream market(s) for the supply of chicken meat, the only market that is significantly affected by the proposed arrangements is the market for chicken-growing services in the Waikato and Bay of Plenty regions.
- (b) The Commerce Commission is familiar with these markets from *Decision 658*,<sup>8</sup> which concerned Tegel Foods Limited's (**Tegel**) request for clearance to acquire the assets and poultry business of 'Brinks'.<sup>9</sup>

---

<sup>8</sup> *Re Tegel Foods and Brinks* [2008] NZCC 658.

- (c) Quantification of benefits versus detriments is relatively straightforward, as explained in the Covec Report which concludes that the proposed arrangements have:
- (i) clear public benefits which offset the relatively limited impact on competition in the regional market for chicken-growing services; and
  - (ii) no impact on competition, prices or the volume of purchases in the downstream wholesale and retail markets for the supply of chicken meat.
- (d) As noted at paragraph 1.9 above, the ACCC has authorised similar conduct in Australia since the mid-1990s and chicken growers are currently authorised to negotiate collectively with processors in five Australian States.
- (e) With the exception of Inghams, all of the parties to the proposed arrangements are small-to-medium enterprises, typically employing between 1 and 3 fulltime staff.
- (f) The Applicant and the Current Growers unanimously support the proposed arrangements and accept that the Commerce Commission has jurisdiction to grant the authorisation.
- (g) [ ], the Applicant notes that:
- (i) Inghams has always negotiated its contracts for the supply of chicken growing services through the Applicant, [ ]].
  - (ii) In the late 1990s and early 2000s, Inghams' Australian parent company, Inghams Enterprises Pty Limited, sought and was granted two authorisations by the ACCC for conduct similar in Australia to that proposed in this authorisation.
  - (iii) In Australia, Inghams Enterprises Pty Limited has never opposed, and has written several letters to the ACCC in support of,<sup>10</sup> authorisations for similar conduct.
- (h) [ ]
- ]

---

<sup>9</sup> Which at that time comprised P H Van den Brink Limited, VDB Industries Limited, Brinks South Island Limited, Southland VDB Limited and BAT Promotions Limited.

<sup>10</sup> Most recently, in respect of Australian Competition and Consumer Commission, *A91417: NSW Farmers' Association* (25 June 2014); Australian Competition and Consumer Commission, *A91347: Queensland Chicken Growers Association Incorporated* (24 January 2013); Australian Competition and Consumer Commission, *A91294: South Australian Ingham Chicken Growers* (14 June 2012); and Australian Competition and Consumer Commission, *A91262: Western Australian Broiler Growers Association Incorporated* (16 June 2011).

## 2. Part 1: Details of Applicant and Other Parties

---

### Applicant

2.1 This application is made by:

Waikato-Bay of Plenty Chicken Growers Association Incorporated  
5 Tower View Terrace  
Te Aroha 3320

**Attention:** David Syme  
Acting Secretary/Treasurer  
djsyme01@gmail.com  
Mobile: 021 754 344

2.2 The Applicant requests that all correspondence is directed in the first instance to:

Lane Neave  
141 Cambridge Terrace  
West End  
Christchurch 8013

**Attention:** Anna Ryan  
Senior Associate  
03 377 6395  
[anna.ryan@laneneave.co.nz](mailto:anna.ryan@laneneave.co.nz)

### Other Parties

2.3 The other parties to the proposed restrictive trade practices are:

- (a) the Current Growers;
- (b) Future Growers; and
- (c) Inghams.

2.4 The names and contact details of the Current Growers are set out in a table in Appendix B.

2.5 Inghams' contact details are as follows:

Inghams Enterprises (NZ) Pty Limited  
624 Waiheke Road  
RD 1  
Waitoa 3380

**Attention:** David Matthews  
Group General Counsel  
021 246 9613  
[dmatthews@ingham.com.au](mailto:dmatthews@ingham.com.au)

### Proposed Practices

2.6 Since entering the New Zealand market in 1990, Inghams has outsourced the growing of its meat chickens to contract growers.

2.7 The negotiation of Growers' Contracts has always been conducted between Inghams and the Applicant on behalf of the contract growers.

- 2.8 The Applicant and the Current Growers have recently become aware that the collective negotiation of Growers' Contracts may constitute a breach of the Act.
- 2.9 To rectify this going forward, the Applicant seeks authorisation to:
- (a) collectively bargain with Inghams in relation to:
    - (i) growing fees and other terms and conditions of chicken growing contracts;
    - (ii) adjustment and review of growing fees and other matters arising from time to time under/or in relation to terms of chicken growing contracts; and
    - (iii) resolution of disputes which from time to time arise under chicken growing contracts or otherwise arise between Inghams and a grower or growers;
  - (b) enter into agreements collectively negotiated between Inghams and the Applicant relating to the matters described at subparagraph (a) above; and
  - (c) give effect to agreements collectively negotiated between Inghams and the Applicant relating to the matters described at subparagraph (a) above,
- in all cases as the representative of the Current Growers and Future Growers.
- 2.10 Growers who choose not to negotiate collectively will be free to opt out of the collective process and negotiate with Inghams individually.
- 2.11 Authorisation is sought for a period of ten years, on the basis that:
- (a) The need of authorisation is an industry structural issue and not a temporary or localised issue requiring authorisation for a limited period. This argument has been accepted by the ACCC in respect of the Australian chicken growing industry<sup>11</sup> (which is structurally very similar to the New Zealand chicken growing industry), which in most Australian States has operated under authorisations since the repeal of industry-specific regulation.
  - (b) There is a general trend in the Australasian poultry industry towards contracts of a longer duration, in part in response to financiers' desire to see lending arrangements underpinned by longer-term commitments from processors.

### 3. Part 2: The Industry

---

#### Introduction

- 3.1 This application concerns the chicken meat growing services industry.
- 3.2 Because demand for chicken growing services directly derives from the demand for chicken meat, the Applicant submits that it is helpful to consider the industry against the backdrop of the chicken meat industry as a whole.

---

<sup>11</sup> Australian Competition and Consumer Commission, *A91534: Victorian Farmers Federation* (16 June 2016); Australian Competition and Consumer Commission, *A91417: NSW Farmers' Association* (25 June 2014); and Australian Competition and Consumer Commission, *A91347: Queensland Chicken Growers Association* (24 January 2013).

## Chicken Meat Industry

### Overview

- 3.3 Chicken has been the most consumed meat in New Zealand since 2001.<sup>12</sup> Last year, the Poultry Industry Association of New Zealand estimated that New Zealanders consume approximately 39 kilograms of chicken per person, per annum.<sup>13</sup>
- 3.4 Approximately 100 million chickens are processed annually in New Zealand for domestic consumption and export.<sup>14</sup>
- 3.5 As there are biosecurity restrictions on the importation of chicken meat, all chicken meat in New Zealand is produced domestically.<sup>15</sup>

### Stages of Production

- 3.6 The Commerce Commission examined New Zealand's chicken meat industry in *Decision 658*. In that decision, the Commission noted that the production of chicken products comprises a number of distinct steps that can be separated into upstream and downstream activities. Upstream activities include the production of breeding stock, day-old chickens and chicken feed, and the growing of broiler chickens. Downstream activities include the processing and supply of chicken products.<sup>16</sup>

### Vertical Integration

- 3.7 Significantly, there is a high degree of vertical integration in New Zealand's chicken meat industry. Most stages in the production and processing of chicken meat are undertaken by the processors, with the exception of the chicken meat growing phase which is outsourced to contract growers.
- 3.8 The structure of the New Zealand chicken meat industry reflects common characteristics found internationally. Processors in Australia,<sup>17</sup> the United States<sup>18</sup> and the European Union<sup>19</sup> typically operate vertically integrated business models, aside from contracting out growing services. Both in New Zealand and overseas, vertical integration has been a feature of the chicken meat industry for many decades.<sup>20</sup>

---

<sup>12</sup> Elton Rikihana Smallman and Joseph Pearson "New Zealand's Chicken Addiction" *Stuff News Media* (online ed, 7 October 2016).

<sup>13</sup> Ibid.

<sup>14</sup> New Zealand Herald "Chicken Prices Hit Nin-Year Low But Set to Rise" *New Zealand Herald* (online ed, 13 October 2016).

<sup>15</sup> Coriolis and Ministry of Business, Innovation & Employment "*The investors guide to the New Zealand meat industry*" (version 1.02, June 2017) at 5.

<sup>16</sup> *Re Tegel Foods and Brinks* [2008] NZCC 658 at [E5].

<sup>17</sup> Australian Chicken Meat Federation Incorporated "The Australian Chicken Meat Industry: An Industry in Profile" (2011) at 3.1.

<sup>18</sup> National Chicken Council "Vertical Integration" <<http://www.nationalchickencouncil.org/industry-issues/vertical-integration/>>.

<sup>19</sup> Association of Poultry Processors and Poultry Trade in the European Union (AVEC) *2016 Annual Report* (Brussels, Belgium, 2016) at 13.

<sup>20</sup> Economic Regulation Authority of Western Australia *Inquiry into the Chicken Meat Industry Act 1977: Final Report* (1 November 2010) at 10.

## Chicken Meat Processors

- 3.9 New Zealand's chicken meat industry is dominated by three major processors: Inghams, Tegel and Brinks.
- 3.10 Together, these processors produce almost all of the chicken meat for New Zealand's domestic and export markets.<sup>21</sup>
- 3.11 Attached as Appendix C is a map showing the locations of the processing facilities of Inghams, Tegel and Brinks.

### *Inghams*

- 3.12 Inghams is a wholly-owned subsidiary of Inghams Enterprises Pty Limited (**Inghams Enterprises**), an Australia-based processor. Inghams Enterprises is the only processor with operations in both New Zealand and Australia.
- 3.13 Attached as Appendix D is a Prospectus issued by Inghams Enterprises dated 21 October 2016 (**Prospectus**). In the Prospectus, Inghams Enterprises describes itself as holding the “#1 market position in Australia for chicken with approximately 40% estimated market share” and the “#2 market position in New Zealand with approximately 34% estimated market share” based on chicken sales by value.<sup>22</sup>
- 3.14 Inghams Enterprises was founded in New South Wales in 1918, and entered the New Zealand market in 1990 through the acquisition of Harvey Farms (in receivership).
- 3.15 Inghams Enterprises remained in family ownership until 2013, at which time it was sold to an American private equity firm, Texas Pacific Group Capital (**TPG Capital**).
- 3.16 In both New Zealand and Australia, Inghams operates a vertically integrated business model, with the exception of chicken growing services which it outsources to growers.
- 3.17 At the time of Inghams Enterprises' sale to TPG Capital, in New Zealand Inghams owned:
- (a) four breeder farms in the Waikato;
  - (b) a hatchery in Matamata;
  - (c) a primary processing plant in Ngarua (where Inghams processes all live birds);
  - (d) further processing facilities in Cambridge; and
  - (e) three feed-manufacturing mills, one in Mt Maunganui specialising in producing feed for meat chickens, and two stockfeed mills in Hamilton and Whanganui.<sup>23</sup>
- 3.18 Nine months after acquiring Inghams Enterprises, TPG Capital put Inghams' properties up for sale as part of a sell down of the processor's Australasian property portfolio.

---

<sup>21</sup> In 2008, Michael Rozen, the Board chair of the Poultry Industry Association of New Zealand and representative for Inghams, stated that Tegel, Brinks and Inghams together represent 95% of the chicken meat industry in New Zealand, as in *Re Tegel Foods and Brinks* [2008] NZCC 658 at [398].

<sup>22</sup> Inghams Group Limited “Ingham's Prospectus: Initial Public Offering of Ordinary Shares” (12 October 2016) at 8.

<sup>23</sup> John Morgan and Australian Associated Press “Poultry producer sale includes NZ wing” *Stuff News Media* (online ed, 16 July 2012).

- 3.19 Investment group Caniwi Capital purchased six of Inghams' properties in mid-July 2014, including the four breeder farms, the hatchery in Matamata and the processing plant in Ngarua.<sup>24</sup> The sites were sold subject to a 25 year leaseback to Inghams with renewal rights for a further 50 years.<sup>25</sup> The Applicant's understanding is that Inghams continues to own the stockfeed mill in Hamilton and the processing plant in Cambridge.
- 3.20 On 21 October 2016, TPG Capital made an initial public offer in Australia of between 50% - 70% of their shares in Inghams Enterprises. This figure was subsequently revised to 40% under a Supplementary Prospectus dated 2 November 2016 (attached as Appendix E). Trading of these shares on the ASX commenced on 7 November 2016.

### *Tegel*

- 3.21 Tegel is New Zealand's largest poultry processor, with approximately 52 percent market share based on chicken sales by value.<sup>26</sup>
- 3.22 Like Inghams, Tegel's business is fully vertically integrated, with the exception of chicken growing services which are outsourced to growers.
- 3.23 Tegel's operations are based in Auckland, New Plymouth and Christchurch. In each region, Tegel has a hatchery, a feedmill, breeder farms, a processing facility and a distribution centre.<sup>27</sup>
- 3.24 Tegel was acquired by H J Heinz in 1992 as part of its acquisition of Goodman Fielder and Watties. It was sold to Australian private equity fund Pacific Equity Partners in late 2005.<sup>28</sup> In 2011, Tegel was acquired by Singapore-based Claris Investments Pte (**Claris Investments**), which is owned by private equity firm Affinity Equity Partners.<sup>29</sup> In May 2016, Tegel was listed on the New Zealand stock exchange. Claris Investments currently continues to hold a 45 percent shareholding in the company.<sup>30</sup>

### *Brinks*

- 3.25 Brinks is the third largest processor in New Zealand. Based on the information published by Tegel and Inghams regarding their market shares, the Applicant estimates Brinks' market share based on chicken sales by value to be approximately 10 percent.
- 3.26 Unlike Inghams and Tegel, Brinks is not fully vertically integrated. Rather, its core business is contracting out the growing of broiler chickens, and processing and selling chicken products.
- 3.27 Brinks' operations are based in Karaka and Tuakau in South Auckland, and Rolleston, near Christchurch.

---

<sup>24</sup> Caniwi Capital Investment and Advisory Group "Inghams – Waikato" (29 August 2017) <<http://www.caniwicapital.com/inghams-portfolio.aspx>>.

<sup>25</sup> Anne Gibson "Properties sold in leaseback deal" *New Zealand Herald* (online ed, 22 July 2014).

<sup>26</sup> David Jackson and Phil Hand *Tegel Annual Report 2017* (21 July 2017) at 10.

<sup>27</sup> Tegel Group Holdings Limited "Product Disclosure Statement" (31 March 2016) at 16.

<sup>28</sup> Gareth Vaughn "Pacific Equity Partners, ANZ Capital sell Tegel Foods to Affinity Equity Partners in NZ\$600 million leveraged buyout" (25 January 2011) *Interest News* (online ed, 25 January 2011).

<sup>29</sup> *Ibid.*

<sup>30</sup> David Jackson and Phil Hand *Tegel Annual Report 2017* (21 July 2017) at 74.

- 3.28 Also unlike Inghams and Tegel, Brinks has remained in private ownership since it was established in 1954. It is 100% beneficially owned by Paul Kenneth Foster, Anthony Andrew Peter Van den Brink and Karl Joseph Van den Brink.
- 3.29 Tegel sought to acquire Brinks in 2008. The acquisition did not proceed after the Commerce Commission declined clearance pursuant to section 66(3)(b) of the Act.

### Chicken Meat Growing Services Industry

3.30 As noted above, it is standard practice in New Zealand and elsewhere for processors to outsource the growing component of the chicken meat supply chain.

3.31 This system of outsourcing chicken growing services has the following characteristics:

- (a) *Processor control of inputs and rearing specifications:* The processors control the genetic material for breeding chickens. They supply contract growers with day-old chickens to be reared according to detailed specifications. The processor also provides other important inputs to the growing process including all feed and medications.
- (b) *Growing of chickens under contract:* The processors and growers enter into contracts. Under these contracts, growers are independent contractors, not employees of the processor. Contract growers never own the chicks they rear. Under the contracts, growers provide specialist shedding and variable inputs such as labour, gas, electricity and litter, together with management expertise.
- (c) *Capital investment:* The contract growing of chickens is capital intensive.  
[

] Chicken growing sheds are highly specialised and have virtually no alternative use. In addition, they are non-portable and are built to the particular processor's precise specifications (which differ from the specifications of other processors).

- (d) *The growing fee comprises a small component of the cost of chicken meat:* The Current Growers currently receive [ ] for each commercial bird, and [ ] for each free range bird. Taking bird weight into account, these payments are estimated to be approximately [ ] of the wholesale price of chicken meat.
- (e) *Distance:* For reasons of animal welfare, growers' farms are located as short a distance as possible from the hatchery from which the day-old chickens are supplied, and the processor's processing plant. In practice, no grower's farm in New Zealand would be located more than two hours from the relevant processing facility. In consequence, the New Zealand chicken meat growing services industry is best understood as comprising a series of regional markets. In each regional market, grower farms are clustered around processing plants. In the case of Inghams, the physical separation between its processing plant and those of Tegel and Brinks make Inghams effectively a monopsonist with respect to its growers.

### Growers' Associations

3.32 It is common in New Zealand and Australia<sup>31</sup> for the providers of chicken growing services to be represented by industry associations. These industry associations provide a wide range of services to their members, including:

<sup>31</sup> For example, New South Wales Farmers Poultry Meat Group; Queensland Chicken Growers Association; Victorian Federated Farmers Chicken Meat Group; South Australian Farmers Federation Poultry Meat Group; Western Australia Broiler Growers Association; and Tasmanian Farmers and Graziers Association.



- (a) the negotiation of contracts for the supply of broiler chicken growing services with the processor on behalf of members;
- (b) the provision of technical knowledge, advice and expertise in connection with chicken growing and related matters;
- (c) assistance with regulatory matters (such as obtaining resource consents);
- (d) the organisation of seminars and social events;
- (e) providing processors with practical assistance; and
- (f) representing the growers in industry matters.

#### *The Applicant*

- 3.33 In New Zealand, the suppliers of chicken growing services to Inghams are represented by the Applicant.
- 3.34 The Applicant was formed in 1984, and is registered as an incorporated society (Registration No. 248290).
- 3.35 The activities of the Applicant are undertaken by an unpaid Executive<sup>32</sup> comprising up to 10 of the Current Growers, who are elected by the Current Growers at the Applicant's annual general meeting. The Applicant does not employ any staff.

#### *Tegel Growers' Associations*

- 3.36 Tegel chicken growers are represented through three regional industry associations:
- (a) the Canterbury Poultry Meat Producers' Association Incorporated (Registration No. 220153, incorporated on 30 April 1968);
  - (b) the Auckland Meat Chicken Growers Association Incorporated (Registration No. 222228, incorporated on 30 July 1973); and
  - (c) the Taranaki Broiler Chicken Growers Association Incorporated (Registration No. 215254, incorporated on 10 July 1980).
- 3.37 There is also a national industry association called the New Zealand Tegel Growers Association Incorporated (Registration No. 215254, incorporated on 10 July 1980). Membership of this association comprises the associations listed at paragraph 3.36 above.

---

<sup>32</sup> The Chairperson of the Applicant receives a [ ] annual honorarium.

### *Brinks Growers' Association*

- 3.38 Brinks chicken growers are also represented through an industry association, the Brinks Growers Association Incorporated (Registration No. 2568580, incorporated on 25 October 2012). Membership of this association comprises suppliers of chicken growing services to Brinks.

### **Chicken Growers**

#### *The Current Growers*

- 3.39 Currently, 37 farms supply chicken growing services to Inghams. All of these farms are based within 75 kilometre radius of Inghams' processing plant in Ngarua, and are family owned and operated.
- 3.40 The farms that supply chicken growing services to Inghams are owned and operated by the Current Growers. All of the Current Growers are members of the Applicant. Four of the Current Growers own two farms each, meaning that there are 33 Current Growers in total.

#### *Tegel Chicken Growers*

- 3.41 Tegel's Product Disclosure Statement for its initial public offering of shares on the NZX dated 31 March 2016 recorded that:<sup>33</sup>

*"Tegel's growing requirements are spread across 93 farms, located in close proximity to each of its three processing facilities. Nearly all are operated under contract, whereby the property is managed by the landowner or by a third party. Tegel has exclusive long term contracts with its farmers, and throughout the growing period Tegel retains ownership of the chickens and supplies all feed requirements."*

#### *Brinks Chicken Growers*

- 3.42 The Applicant estimates that approximately 23 farms supply chicken growing services to Brinks.

### **Mergers**

- 3.43 The Applicant is not aware of any mergers relevant to this application that have occurred over the past three years.
- 3.44 As noted above, in 2008 Tegel attempted to acquire Brinks and sought clearance to do so from the Commerce Commission.
- 3.45 On 22 October 2008, the Commerce Commission declined this application pursuant to section 66(3)(b) of the Act.<sup>34</sup>

## **4. Part 3: Market Definition**

---

- 4.1 The Applicant submits that the markets relevant to this application are:
- (a) the market for broiler chicken growing services in the Waikato and Bay of Plenty regions; and

---

<sup>33</sup> Tegel Group Holdings Limited "Product Disclosure Statement" (31 March 2016) at 24.

<sup>34</sup> *Re Tegel Foods and Brinks* [2008] NZCC 658.

- (b) one or more markets for the wholesale supply of primary and secondary processed chicken products.

4.2 These markets are considered in more detail below.

### **The Market for Broiler Chicken Growing Services in the Waikato and Bay of Plenty Regions**

4.3 One market relevant to this application is the market for the provision of broiler chicken growing services in the Waikato and Bay of Plenty.

4.4 The market for the provision of chicken growing services was considered by the Commerce Commission in *Decision 658*. In that decision, the Commission held that the geographical dimension of the market for the provision of chicken growing services was a regional market. The Commission noted that:<sup>35</sup>

*“The Applicant submitted that it is necessary for growing facilities to be located in close proximity to processing plants. This is because of animal welfare concerns, meaning live fully-grown birds cannot be transported for long periods. Accordingly, most contract broiler growers tend to be located within approximately two hours drive from the primary processing plant, but it is possible for birds to be transported to the place of slaughter (by road) for up to four to six hours or longer.*

*Growers interviewed by the Commission agreed with Tegel’s submission advising that they were only able to grow for processors within their particular region. The Commission therefore considers that the markets for the provision of chicken growing services are likely to be regional in scope.”*

4.5 The Applicant agrees with the Commerce Commission’s conclusion in *Decision 658* that markets for the provision of chicken growing services are regional in scope. While the precise geographic boundaries are not known with certainty, the Current Growers have no realistic prospect of switching supply to a different processor, primarily due to animal welfare concerns.

4.6 Specifically, the transportation of animals is regulated under the Code of Welfare: Transport Within New Zealand dated 16 December 2016 (**Code**) issued under the Animal Welfare Act 1999. A copy of the Code is attached as Appendix F.

4.7 The Code applies to all live animals being transported within New Zealand. Minimum Standard No. 4, in Part 4 of the Code, governs ‘Journey Planning and Documentation’. Minimum Standard No. 4(a) stipulates that ‘*Transport must be planned to minimise the risk of injury, fatigue or metabolic and nutritional disorders*’. Part 4.1 of the Code recommends a best practice for animal journey duration. All animals should be transported for the shortest possible time, especially animals which are young, pregnant, at peak lactation, or at the end of their production lives or cycles (such as end-of-lay hens or cull cows). Unnecessary transport should be avoided and if animals are to be killed, they should, if possible, be killed at the nearest facility. Under the Animal Welfare Act 1999, it is an offence for any person to transport an animal in a manner that causes the animal unreasonable or unnecessary pain or distress.

4.8 While the Applicant accepts that under the Code, it may theoretically be possible to transport live chickens that have reached maturity for more than two hours to reach a processing plant, in practice this does not occur. Growers’ farms are located as short a distance as possible from the processing plant, for reasons of animal welfare.

4.9 Inghams’ chickens are processed at its processing plant in Ngarua. The farthest farm belonging to a Current Grower is 74 kilometres from this processing plant. Inghams has a

---

<sup>35</sup> *Re Tegel Foods and Brinks* [2008] NZCC 658 at [123] and [124].

further processing facility in Cambridge. However, all live birds are processed at the Ngarua processing plant.

- 4.10 Even more relevant to the geographic dimension of the market for chicken growing services is the location of the hatchery from which the processor sources day-old chickens. The Code emphasises that while all animals should be transported for the shortest possible time, this is particularly important where young animals are concerned. The hatchery from which Inghams sources its day-old chickens is located in Matamata. The greatest distance between a farm belonging to a Current Grower and the hatchery used by Inghams is approximately 59 kilometres.
- 4.11 In the table set out in Appendix B, each of the farms operated by the Current Growers is ascribed a number. These numbers correspond to the numbered stickers on the map set out in Appendix G, which show the location of the farms relative to Inghams' processing plant in Ngarua and the hatchery in Matamata.
- 4.12 All geographical markets for the provision of broiler chicken growing services are similarly influenced by animal welfare concerns. Geographically, the closest processor to Inghams is Brinks, which operates two processing plants in South Auckland, in Karaka and Tuakau. The Applicant estimates that no supplier of chicken growing services to Brinks would operate a farm more than 41 kilometres from one of these processing plants. Brinks does not have a hatchery. Rather, it sources day-old chickens from:
- (a) Tegel's hatchery in Tegel Road, Drury, Auckland; and
  - (b) Bromley Park Hatcheries in Brown Road, Tuakau.
- 4.13 Significantly, Tegel's hatchery is located approximately 15 kilometres from Brinks' processing plant in Karaka, and approximately 22 kilometres from its processing plant in Tuakau. Similarly, Bromley Park Hatcheries is located approximately 17 kilometres away from Brinks' processing plant in Karaka, and approximately 35 kilometres away from its processing plant in Tuakau.

#### **One or More Markets for the Supply of Processed Chicken Meat**

- 4.14 The activities for which authorisation is sought could potentially also impact on one or more downstream markets for the supply of processed chicken meat.
- 4.15 As an industry association representing the interests of the suppliers of chicken growing services to Inghams, the Applicant has limited information regarding the specific dimensions of the market(s) for the supply of processed chicken meat.
- 4.16 However, the Applicant notes that the Commerce Commission has previously considered the market(s) for the supply of processed chicken meat in *Decision 658*. In that decision, the Commission reached the following conclusions regarding market dimensions:
- (a) *Product dimension:*
    - (i) Chicken was found to be in a discrete product market from other forms of animal protein.
    - (ii) Primary processed chicken products (i.e. whole dressed chickens) and secondary processed chicken products (i.e. chicken which has been cut into pieces and/or deboned) were found to be sufficiently similar to be included in the same product market.
    - (iii) Fresh and frozen primary and secondary processed chicken products were similarly found to be sufficiently similar as to fall within the same product market.

- (iv) Further processed chicken products/small goods were found to constitute a discrete market as they had significantly different product characteristics from primary and secondary processed chicken products. In particular:
- (i) branding was more prevalent and important in respect of the sale of further processed and small goods products; and
  - (ii) further processed and small goods products could be differentiated from primary and secondary processed chicken products on the basis of price (with the Commission citing the example of the cost of one kilo of primary/secondary processed chicken meat being likely to cost far less than the price of a kilo of Chicken Kiev because of the value added to the Chicken Kiev).
- (b) *Functional dimension:* The functional dimension of the market was found to be the wholesale supply of primary and secondary processed chicken products. The Applicant submits that this is also the primary functional dimension relevant to this application, as Inghams does not sell directly into the retail market for processed chicken products. Nevertheless, to evaluate public benefits and detriments, the Covec Report does also consider some retail market issues.
- (c) *Customer dimension:*
- (i) Customers in the market for wholesale supply of primary and secondary processed chicken products could be divided into three distinct categories, based on their product requirements and purchasing behaviours.
  - (ii) Supermarkets formed the largest customer category. These customers were able to negotiate favourable prices by buying in bulk via centralised purchasing agreements.
  - (iii) Fast food restaurant chains (termed 'quick service restaurants' or 'QSRs') formed a separate customer category as they required processors to meet very precise product specifications and service levels. Like supermarkets, these customers were also able to secure favourable prices because they purchased in high volumes.
  - (iv) Food service customers also formed a separate customer category. Customers in this market included:
    - (i) manufacturers who purchase fresh whole dressed birds in bulk from the processors and carry out processing into a variety of value-added products, such as Santa Rosa;
    - (ii) distributors of a wide range of food products, including chickens, such as Gilmours; and
    - (iii) retailers, such as the Mad Butcher and Raeward Fresh.

In general, these customers ordered on a daily or weekly basis, and there were few fixed contracts.
- (d) *Geographic dimension:*
- (i) In the Commerce Commission's investigation report of 8 July 1996 concerning Tegel and Pacifica Poultry Ltd, the Commission held that there was a national market for the processing and wholesale distribution of chicken meat products (both fresh and frozen).

- (ii) In *Decision 658*, Tegel argued that a narrower geographic distinction would be even less plausible in 2006 than it was in 1996, given that technological advances had increased the shelf life of fresh chicken meat to between eight and ten days depending on the cut of chicken, and chicken could be easily transported to the South Island within 24 hours. Tegel advised that Inghams and Brinks transported products to the South Island on a daily basis.
- (iii) However, the Commerce Commission concluded that the quantitative and qualitative evidence suggested that the North Island and the South Island formed discrete geographic markets in respect of the wholesale supply of primary and secondary processed chicken products to supermarkets and food service providers.
- (iv) By contrast, the geographic scope of the market for the supply to fast food restaurant chains was found to be national as the major chains such as KFC, McDonalds and Burger King required processors to be able to supply on a nationwide basis. To meet KFC's requirement for nationwide supply, the Commerce Commission noted that Inghams deep chilled the chicken products and operated a distribution centre in the South Island.

4.17 In summary, in *Decision 658*, the Commerce Commission considered that there were separate markets for the wholesale supply of primary and secondary processed chicken products to:

- (a) North Island supermarkets;
- (b) South Island supermarkets;
- (c) North Island food service providers;
- (d) South Island food service providers; and
- (e) fast food restaurant chains throughout New Zealand.

4.18 The accompanying economic analysis emphasises that there is an order-of-magnitude difference between the price paid to growers (which may be reduced under individual contracting) and the wholesale price for chicken meat. It assesses the potential impact on wholesale and retail chicken prices on the assumption that Inghams competes directly with Tegel and Brinks in the supply of chicken meat, and concludes that Inghams will retain the full benefit of any cost saving. The Applicant therefore submits that even under the most narrow definition of wholesale and retail markets for processed chicken there will be no price difference between the factual and counterfactual scenarios.

## 5. **Part 4: Counterfactual**

---

### *Status Quo Cannot Continue*

- 5.1 It is likely that the Applicant has represented the suppliers of chicken growing services in the Waikato and Bay of Plenty regions in contractual negotiations with the processor (first Harvey Farms Limited, and later, Inghams) since it was incorporated in 1984. One of the Current Growers, [ ], has been a member of the Applicant since 1986, and has confirmed that the Applicant has represented the chicken growers in the Waikato and Bay of Plenty regions in negotiations with the processor for the past three decades.
- 5.2 However, because the collective negotiation of the fees and terms of supply for chicken growing services most likely constitutes an infringement of the Act, absent the authorisation sought, it is unlikely that the Applicant will be able to continue to represent the Current Growers in contract negotiations with Inghams in the future.

- 5.3 If the Commerce Commission declines to grant this authorisation, the Applicant believes that there are two potential counterfactuals:
- (a) Inghams might negotiate the fees and conditions for the supply of chicken growing services with each grower individually; or
  - (b) Inghams might offer the Growers contracts which are essentially 'standard form', with little scope for growers to negotiate variations to the standard terms or conditions.
- 5.4 Each of these counterfactuals is considered in more detail below.

*Scenario One: Individually Negotiated Contracts*

- 5.5 Absent authorisation, one possibility is that Inghams might choose to conduct one-on-one contract negotiations with individual growers.
- 5.6 The ACCC has repeatedly acknowledged that chicken growers have very little bargaining power compared with chicken processors. This view is also supported by the accompanying economic report.

[

]

*Scenario Two: Standard Form Contracts*

- 5.11 Another possibility in the absence of the authorisation sought is that Inghams might offer the growers contracts which are essentially standard form.
- 5.12 This is the counterfactual that has been preferred by the ACCC in recent authorisations of collective bargaining in Australian markets for the supply of chicken growing services.
- 5.13 In a determination issued in 2005 concerning the collective negotiation of chicken growers' contracts in Victoria,<sup>36</sup> the ACCC made the following observations in respect of the likely counterfactual:

*"As for what form any individual negotiations might take, this is somewhat difficult to speculate given that collective negotiations, in one form or another, have apparently been occurring for over 20 years.*

*Absent authorisation, the processors would have two options available to them in offering contracts to the growers. Either they could negotiate the terms and conditions of any contract arrangements individually with each grower or offer each grower a standard form contract with limited scope for variation of terms and conditions.*

*The ACCC has previously considered numerous applications for small primary producers to collective bargaining [sic] with the processors to whom they supply. In its past consideration of these applications the ACCC has generally found that the most common situation in the absence of an authorisation to collectively bargain, or some form of industry regulation, is one where primary producers offering a common good or service in similar circumstances are offered essentially standard form contracts with little capacity to negotiate variations on those standard terms or conditions.*

*In particular, where imbalances in bargaining power are observed, the result is, generally speaking, the offering of standard form contracts on terms likely to be to the advantage of the party offering the contract. That is not to say that the other party will always be at a disadvantage as a result, but rather that, as with any commercial arrangement, the party offering the contract will seek to ensure the most favourable deal for itself. Such contracts are generally offered on a 'take it or leave it' basis, with limited, if any, scope for the other party to have input into the terms of the contract.*

*In the current instance, as noted, there is very little capacity for growers to provide a different service which is mainly due to the specificity of their assets and the associated cost of adapting them for an alternative use. In addition, whilst growers do have some capacity to change processors, there are significant switching costs associated with doing this, costs which are generally borne by the grower.*

*These switching costs would significantly limit the ability for growers to do anything other than continue to provide their service to the processor, at least in the short-term,*

---

<sup>36</sup> Australian Competition and Consumer Commission, A40093 and A90931: *Victorian Farmers Federation* (2 March 2005) at [9.9] – [9.16]. See also Australian Competition and Consumer Commission, A90901, A90902, A90903, A90904 and A90905: *Bartter Enterprises Pty Ltd, La Ionica Operations Pty Ltd, Hazeldene Chicken Farm Pty Ltd, Inghams Enterprises Pty Ltd, Baiada Poultry Pty Ltd and consenting Victorian chicken growers* (2 March 2005) at [8.21] – [8.27].



*even where unfavourable terms and conditions were offered. That is to say, failure to negotiate a mutually satisfactory agreement with an individual grower would not place the processors' business at the same commercial risk as it would the growers.*

*In addition, the processors are generally large, well resourced businesses with significant commercial and negotiating expertise. In contrast, VFF member growers are, in general, small primary producers with often limited resources and expertise to engage in effective negotiation with businesses with the size and negotiating experience of the processors.*

*It could therefore be expected, in a situation where growers were required to negotiate contracts with processors individually, that the consequences of such an imbalance in bargaining positions would be the offering of standard form contracts by processors to each of their growers, with little input from the growers, or scope for them to vary the terms and conditions of such contracts."*

- 5.14 The Applicant notes that there is an even greater imbalance in bargaining power between the Current Growers and Inghams than there was in the Victorian market described above, as in the Victorian market the growers had at least some capacity to change processors, although there were significant switching costs associated with doing so. In contrast, whether the relevant market for chicken growing services is regional or sub-regional, Inghams is effectively a monopsonist in the chicken growing services market currently under consideration.

#### *Long Term Outlook*

- 5.15 In the longer term, absent authorisation, the lack of demand side competition in the market for chicken growing services in the Waikato and Bay of Plenty regions and the scope for the exercise of substantial market power by Inghams in relation to the purchase of those services may necessitate intervention under Part 4 of the Act.
- 5.16 As noted elsewhere in this application, Australasian markets for the supply of chicken growing services are relatively uniform, structurally. The fact that in Australia, the ACCC has been granting authorisations for growers to engage in collective bargaining with processors since the mid 1990s, and prior to this, chicken growing services were regulated by state governments, indicates that the market has structural characteristics that inhibit competitive outcomes.

## **6. Part 5: Existing Competitors**

---

### **The Market for Broiler Chicken Growing Services in the Waikato and Bay of Plenty Regions**

#### *Supply side competition*

- 6.1 The Current Growers are the suppliers of chicken growing services to Inghams. All are located within 75 kilometres of Inghams processing plant in Ngarua.
- 6.2 [

]

*Demand side competition*

- 6.3 Inghams is a monopsonist over the Current Growers due to the animal welfare considerations described above. Chicken grower sheds are also built to processor-specific specifications, which would prevent a grower switching between processors even if it were possible to do so from an animal welfare perspective.

**One or More Markets for the Supply of Processed Chicken Meat**

- 6.4 As noted in Part 3 of this application, New Zealand's chicken meat industry is dominated by three major processors: Inghams, Tegel and Brinks. Together, these processors produce almost all of the chicken meat for New Zealand's domestic and export markets.
- 6.5 Further details concerning each processor, including their estimated market shares, are set out in Part 3 of this application.

**7. Part 6: Potential Competition****The Market for Broiler Chicken Growing Services in the Waikato and Bay of Plenty Regions***Demand side competition*

- 7.1 There is a very low likelihood of another processor entering the market for broiler chicken growing services in the Waikato and Bay of Plenty regions within the next two years.
- 7.2 There are significant barriers to entry into processor market due to such matters as:
- (a) relatively high start-up costs;
  - (b) long and uncertain lead times required to seek resource consents;
  - (c) the high levels of vertical integration in the processed chicken meat industry; and
  - (d) potential difficulties in establishing wholesaling contracts in a well established market for the supply of processed chicken meat.

[

]

7.4 [

]

#### *Supply side competition*

7.5 It would be virtually impossible for a grower to enter the broiler chicken growing services industry in the Waikato and Bay of Plenty regions without satisfying Inghams' start up requirements and entering into a growing contract. As the ACCC observed in an early authorisation for collective bargaining lodged by Inghams in respect of the Tasmanian chicken growing industry, "*Given the level of vertical integration within the market growers have a limited ability to vertically integrate upwards or downwards making entry into the market very difficult without an arrangement with the processor*".<sup>37</sup>

7.6 Even with Inghams' support, there are a number of barriers to market entry that new growers must overcome. For instance, the capital investment required in order to begin providing growing services is substantial. [

].

7.7 In order to be able to carry out chicken growing activities on their properties, growers must also obtain the necessary resource consents and build their growing sheds. The Applicant estimates that a greenfield development on the scale contemplated above would take between 18 months and two years to complete.

7.8 [

]

#### **One or More Markets for the Supply of Processed Chicken Meat**

7.9 For the reasons outlined at paragraphs 7.2 and 7.3 above, the Applicant considers that new entry into the market for the supply of processed chicken meat in New Zealand is unlikely in the next two years.

### **8. Part 7: Public Benefits and Detriments**

---

8.1 This application for authorisation is supported by an independent report written by John Small at Covec Limited. The Covec Report concludes that the proposed arrangements have clear public benefits, and are not likely to result in any detriments. By way of summary:

- (a) The proposed arrangements have two chief public benefits, specifically reduced transaction costs in negotiating contracts for broiler chicken growing services

---

<sup>37</sup> Australian Competition and Consumer Commission, *A90659: Inghams Enterprises Pty Ltd* (17 March 1999) at p 19.

between Inghams and Current and Future Growers, and contract price changes resulting in the avoidance of a wealth transfer to persons who are not members of the public.

- (b) In respect of the reduced transaction costs, under reasonable assumptions collective bargaining will save approximately [ ] each time the parties negotiate [ ]. Even under extremely low estimates of costs, collective bargaining is substantially less costly than individual bargaining because there are 37 farms in total, owned by 33 Current Growers.
- (c) In respect of the contract price changes:
- (i) If Inghams were to implement an individual contract negotiation model, rationally it would seek to more than recoup the materially higher transaction costs it would incur.
  - (ii) The Covec Report models this as occurring through downward pressure on the per bird prices paid to growers (while noting that other mechanisms could be used without detracting from the economic analysis).
  - (iii) The Covec Report considers that bearing in mind the desirability of retaining growers it would be reasonable, absent authorisation, for Inghams to reduce grower payments by [ ].
  - (iv) Since Inghams' is foreign-owned, the wealth transfer from the growers to Inghams that would occur as a result of the reduction in grower fees represents a public detriment to New Zealand, for the reasons outlined in the Covec Report. The Covec Report considers that implementing the proposed arrangements would eliminate a wealth loss from New Zealand of around [ ] per annum (after deducting the extra transaction costs borne by Inghams).
- (d) In terms of potential public detriments arising from the authorisation of the proposed arrangements, the Covec Report concludes that authorisation will have no effect on the retail prices paid for chicken meat by consumers. This is partly because growers are only paid around [ ] of the wholesale price, so a [ ] reduction in this [ ] generates such a small cost reduction that it will not change retail prices. Therefore there is no competitive incentive for Inghams to pass on any cost savings to retailers.

## Public Benefits

### *Transaction Costs*

- 8.2 Even under the most conservative estimates, the proposed arrangements will result in substantially lower transaction costs than any other likely form of contracting.
- 8.3 In the absence of authorisation, the Applicant submits that it is likely that either:
- (a) each grower will negotiate an individual growing contract with Inghams; or
  - (b) Inghams may offer each grower a standard form contract, on a largely take-it or leave-it basis.
- 8.4 The Covec Report maintains that Inghams' incentives to use a standard form contracting model are contingent on a range of factors which its information sources are insufficient to assess, much less to draw reliable inferences about how Inghams would trade-off the opposing factors (e.g. less costly negotiations against the risk of more costly disputes). Accordingly, the Covec Report uses the costs associated with individual contracting to model

the transaction costs absent authorisation, and addresses the uncertainty surrounding standard form contracting through sensitivity analysis.

8.5 The Covec Report concludes that:

- (a) under reasonable assumptions, the proposed arrangements would result in transaction cost savings of around [ ] per annum; and
- (b) even under extremely low estimates of costs, collective bargaining is substantially less costly than individual bargaining.

8.6 The Applicant notes that in the ACCC's 2005 determination concerning the collective negotiation of chicken growers' contracts in Victoria (discussed at paragraph 5.13 above), the ACCC found that:

- (a) even if the processor were to adopt a standard form contracting model, this would not reduce transaction costs in the same manner in which it might otherwise be expected to, due to the fact that the growers were not used to negotiating their contracts directly with the processor; and
- (b) when comparing collective bargaining and a standard form contracting model, collective bargaining would still result in cost savings as a result of a likely reduction in disputes.

8.7 Specifically, the ACCC held:<sup>38</sup>

*"The ACCC is of the view that as Victorian chicken meat growers have not, in the past, been required to negotiate their own growing contracts they would be likely to incur expenses, regardless of whether they were offered a standard form contract or not, in an effort to understand the terms and conditions of the contracts and then in their efforts to negotiate some better deal with their processor. The ACCC considers that because growers would have no mechanism to discuss their contracts with their growing group or [Victoria Federated Farmers] as a common adviser, these costs would be borne by each individual grower, costs which would not occur with the proposed collective bargaining arrangements in place.*

*The ACCC also considers that there would be some savings in the form of reduced cost resulting from disputes. That is, because growers would not have the terms and conditions offered to them as standard form contracts by processors, as would likely be the case under the counterfactual situation, but instead would be able to have effective input into the construction of their contracts, the likelihood of a grower disputing a contract to which they have had a considerable contribution would be significantly reduced. This would result in a reduction in costly disputes by both parties."*

8.8 Recent evidence also suggests that even under a standard form contracting model, Inghams will still incur specific transaction costs in respect of each growing contract. [

---

<sup>38</sup> Australian Competition and Consumer Commission, A40093 and A90931: *Victorian Farmers Federation* (2 March 2005) at [11.20] – [11.21]. See also Australian Competition and Consumer Commission, A90901, A90902, A90903, A90904 and A90905: *Barter Enterprises Pty Ltd, La Ionica Operations Pty Ltd, Hazeldene Chicken Farm Pty Ltd, Inghams Enterprises Pty Ltd, Baiada Poultry Pty Ltd and consenting Victorian chicken growers* (2 March 2005) at [10.18] – [10.19].

]

### *Contract Price Changes*

8.9 The Applicant has represented the growers in contract negotiations with Inghams for many years. [

].

8.10 The analysis in the Covec Report illustrates that Inghams would incur extra costs under an individual contract negotiation model. Therefore, preferring this model would not be rational unless some other benefit were available to offset the additional cost.

8.11 Significantly, shifting to individual bargaining will substantially increase the bargaining power that Inghams has over each of the Current Growers (a fact which is supported by the economic analysis and has been consistently accepted by the ACCC in Australian authorisation applications concerning the collective negotiation of chicken growing contracts).

8.12 The Covec Report demonstrates that it is reasonable to assume that Inghams will use this increased bargaining power to reduce grower payments by [ ].

8.13 While in some circumstances, economic analysis is agnostic about wealth transfers, in this case the absence of an authorisation would result in wealth of approximately [ ] per annum transferring from the Current Growers, who are members of the public for the purposes of the Act, to the shareholders of Inghams, which is listed on the Companies Office as a foreign-owned entity. The avoidance of this wealth loss from New Zealand through the implementation of the proposed arrangements would result in a public benefit, for the reasons outlined in the Covec Report.

[

---

39 [ ]

40 [

]

41 [ ]

42 [ ]





.]

### Detriments

- 8.18 If the proposed arrangements were to result in consumers paying a higher retail price for chicken than they would absent authorisation, then authorisation would generate a public detriment.
- 8.19 The Covec Report considers that in the absence of the authorisation sought, Inghams might reasonably expect to reduce grower fees by [ ], or slightly more than [ ] per annum per grower, on average.
- 8.20 However, the Covec Report finds that Inghams is unlikely to pass on any unit cost savings in its chicken prices to retailers, or for there to be any consequent impact on retail prices.
- 8.21 There are two reasons for this. Firstly, Inghams would only pass on its unit cost savings to retailers if there was a rational justification for doing so. The most likely reason would be if Inghams wished to increase its market share. There is no real evidence of this. If anything, it appears that Inghams currently does not have a lot of spare capacity. While Inghams is planning to expand its production capacity by 50% over the next decade, demand for chicken is increasing in New Zealand so Inghams will need to expand production simply to maintain its market share.
- 8.22 Secondly, even if Inghams were looking to increase its market share, passing through unit cost savings would only be an effective strategy if the pass through would materially impact on the price of chicken at the retail level. The Covec Report estimates that Inghams' cost savings from individual contracting would be [ ] of Inghams' estimated selling price to retailers. Such a small price reduction is unlikely to be passed on by retailers. Moreover, the Covec Report notes that even if it were fully passed on by retailers, a cost saving of four times this amount would result (at best) in a tiny shift in the retail price of Inghams' chicken relative to its rivals. Since there is no real prospect of a retail market advantage, Inghams' incentive is to retain the benefits of lower growing prices rather than pass them on to retailers.

## 9. Part 8: Identification of Interested Parties

---

- 9.1 Other parties who may be interested in this application include:
- (a) other New Zealand poultry processors;
  - (b) other New Zealand chicken grower industry associations;
  - (c) major customers of Inghams; and
  - (d) [ ].
- 9.2 Their details are set out below:

**(a) New Zealand Poultry Processors**

<b>Name of company</b>	<b>Address</b>	<b>Contact Person</b>	<b>Telephone</b>	<b>Email</b>
Van Den Brink Poultry Limited ('Brinks')	652 Great South Road  PO Box 63-007 Manukau City 2241		0800 BRINKS	service@brinks.co.nz
Tegel Foods Limited	Level 3, Tower B 100 Carlton Road Newmarket Auckland  Private Bag 99927 Newmarket Auckland		0800 4 TEGEL	

**(b) Chicken Grower Industry Associations**

<b>Name of company</b>	<b>Address</b>	<b>Contact Person</b>	<b>Telephone</b>	<b>Email</b>
New Zealand Poultry Meat Producers Society	[			
Brinks Growers Association Incorporated				
New Zealand Tegel Growers Association Incorporated				
Canterbury Poultry Meat Producers' Association Incorporated				

Auckland Meat Chicken Growers Association Incorporated				
Taranaki Broiler Growers Association Incorporated				

]

**(c) Major Customers of Inghams**

Type of customer	Name of company	Address	Contact Person	Telephone	Email
Supermarkets	Foodstuffs NZ Limited	[			
	Progressive Enterprises Limited				

Food service providers	Foodfirst Limited				
	Bidfood Limited				
	Countrywide Distributors (NZ) Limited				
	Provida Foods				
	Gilmours				
	Hamilton Wholesale Meats				
Quick service restaurants	KFC i.e. Restaurant Brands Limited				
	McDonalds Restaurants (New Zealand) Limited				
	Burger King				
	Subway				

--	--	--	--	--	--

]

(d) [

Name of company	Address	Contact Person	Telephone	Email

]

**10. Part 9: Confidentiality**

---

10.1 Confidentiality is requested for the information in this application that is contained in square brackets and highlighted in either yellow or green, on the basis that:

- (a) the information is commercially sensitive and valuable information which is confidential to the Applicant and/or the Current Growers; and
- (b) disclosure of the information would be likely unreasonably to prejudice the commercial position of the Applicant and/or the Current Growers, or the person who is the subject to the information.

10.2 [

]

10.3 The Applicant requests that it be notified if a request is made to the Commerce Commission under the Official Information Act 1982 for the release of the information for which confidentiality has been claimed, and given a chance to provide submissions to the Commission on whether it should make disclosure prior to any such disclosure taking place.

- 10.4 This applies equally in respect of any additional information that is expressed to be confidential subsequently provided to the Commerce Commission during the course of its consideration of this application.
- 10.5 Confidential and public versions of this application have been provided to the Commission.

## Declaration

**This notice** is given by Waikato-Bay of Plenty Chicken Growers Association Incorporated on behalf of its current and future members.

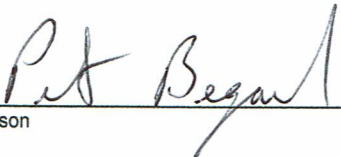
Waikato-Bay of Plenty Chicken Growers Association Incorporated hereby confirms that:

- all information specified by the Commerce Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant which is relevant to the consideration of this application/notice has been supplied; and
- all information supplied is correct as at the date of this application/notice.

Waikato-Bay of Plenty Chicken Growers Association undertakes to advise the Commerce Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 20<sup>th</sup> day of September 2017

Signed by Waikato-Bay of Plenty Chicken Growers Association Incorporated

  
\_\_\_\_\_  
Chairperson

I am an officer of the incorporated society and am duly authorised to make this application/notice

## Appendix A – Covec Report

---



**Appendix B – Names and Contact Details of Current Growers**

---

[ ]

## Appendix C – Map of New Zealand Processing Facilities

---

## Appendix D – Prospectus

---

## Appendix E – Supplementary Prospectus

---

## Appendix F – Code of Welfare: Transport Within New Zealand

---

## Appendix G – Map of Inghams’ Operations

---

[ ]