



Australian  
Competition &  
Consumer  
Commission

# Guide to authorisation

Addendum

April 2011



# Foreword

In 2007, the ACCC released the 'Guide to Authorisation' (the Guide). The Guide is intended to help applicants prepare applications for authorisation and for interested parties to better understand and participate in the authorisation process.

Since its initial publication, the Guide has been updated in order to reflect that the *Competition and Consumer Act 2010* has replaced the *Trade Practices Act 1974* on 1 January 2011.

Recent reforms to the *Freedom of Information Act 1982* (the FOI Act) have also necessitated amendments to the Guide. The *Freedom of Information Amendment (Reform) Act 2010* has introduced a new information publication scheme for Australian Government Agencies. Under this scheme, which commences on 1 May 2011, Government Agencies are required to publish specific categories of information, including the agency's operational information. That is, information that assists the agency to exercise its functions or powers in making decisions or recommendations that affect members of the public.

In order to meet its FOI obligations, the ACCC has made some revisions to the Guide, as contained in the following Addendum. The ACCC is also currently conducting a comprehensive review of this Guide. Once this review is completed, a new version of the Guide will be published.

The ACCC anticipates releasing the new Guide for public comment later this year.

In the interim, the Commission will continue to apply the Guide and changes as outlined in the Addendum when making authorisation decisions.

# Addendum

**Mergers**—(replaces heading ‘Mergers and energy matters’ on p.2)

< Replace paragraph 1.14 with the following: >

1.14 Authorisation applications for mergers (other than acquisitions that occur outside Australia) are considered by the Australian Competition Tribunal (the Tribunal).

< Delete paragraph 1.15 >

## When to apply for authorisation

< In paragraph 2.2, following ‘resale price maintenance’, insert the following bullet point: >

- dual listed company arrangements that affect competition<sup>1</sup>

< In paragraph 2.5, following the sentence ‘The ACCC cannot provide legal advice, although it is able to provide general guidance on the issues’, insert the sentence: >

Further, the ACCC strongly encourages parties considering making an application for authorisation to discuss the process and its application in advance of lodging.

< In paragraph 2.6, following the words ‘...they should consult the Act’, add the words: >

and/or their legal advisor.

< In paragraph 2.7, replace the second bullet point - ‘substantially lessen competition’—with the following bullet point: >

- have the purpose or would have or be likely to have the effect of substantially lessening competition<sup>2</sup>

< Following paragraph 2.7, insert the following paragraph: >

2.7A The Act explicitly notes that an industry code of conduct is a contract.<sup>3</sup>

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<sup>1</sup> Section 88(8B)–(8D). Not discussed further in this guide.

<sup>2</sup> Sections 45(2)(a)(ii) and 45(2)(b)(ii).

<sup>3</sup> Section 88(15)(a).

< Replace paragraph 2.18 with the following: >

- 2.18 Therefore, unless it is clear that there is no risk that conduct will breach the Act, or that there is no reasonable grounds for the belief that there is no risk of a contravention, the ACCC will consider the application for authorisation.

### **How to Apply for Authorisation**

< In paragraph 3.6, bullet point Form DA, insert the following before 'agreements affecting the supply...' >

boycott agreements:

< Replace the section 'Invalid Applications' (paragraphs 3.51 to 3.53) with the following: >

### **How to lodge a valid application for authorisation**

- 3.51 Applications for authorisation may be lodged by mail, in person at an ACCC office or electronically.

- 3.51A Applications lodged by mail should be addressed to:

General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

- 3.51B Applications may also be lodged electronically, either by fax to (02) 6243 1211 or by email to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au).

Unless waived, the application must be accompanied by the correct fees or evidence that the fees have been paid. If waived, a copy of the waiver letter must accompany the form.

#### *Payment of fees*

- 3.52 The ACCC prefers payment by electronic funds transfer (EFT). Payment by credit card (Visa and Mastercard only) or cheque will also be accepted.

- 3.52A Payment by EFT. The ACCC's EFT account details are:  
Account Name: ACCC Administered receipts account  
Bank: Westpac Banking Corporation  
BSB: 032-730  
Account Number: 146550  
Payment narrative: <name of company> Authorisation Fees.
- 3.52B For proof of payment, applicants should include a copy of the receipt of the transaction from their financial institution which includes the following details:  
The receipt number  
Transaction date and time  
From account details  
To account details  
To account description  
The value of the payment made in Australian dollars
- 3.52C Payment by credit card. If paying by credit card, please provide the following details:  
Name of applicant/s  
Name on the credit card  
Type of card (Mastercard or Visa only)  
Credit Card number  
Date of expiry  
3 digit security number (from back of card)  
The value to be charged to the credit card in Australian dollars
- 3.52D Payment by cheque. Cheques should be made out to the Australian Competition and Consumer Commission.
- 3.52E When applications are lodged and/or fees are paid electronically, the date of receipt of the application will be, when lodged on a business day, that day and when lodged on a weekend or a public holiday in the Australian Capital Territory (the ACT), the next business day in the ACT.

*Requirements for a valid application*

- 3.53 Parties considering lodging an application for authorisation must ensure that they have satisfied the following criteria in order to ensure they lodge a valid application:
- the application is lodged on the correct form(s), which can be obtained from the ACCC's website ([www.accc.gov.au](http://www.accc.gov.au))
  - a clear and complete description of the arrangement or conduct for which authorisation is being sought is provided on the relevant form
  - there must be an answer to every question on the form(s) that will be placed on the public register. In some cases, it may be appropriate for an answer to refer to an attached supporting submission. Further guidance on supporting submissions is provided below

- the application is accompanied by the correct fees or evidence that the fees have been paid (or waived)
- if the application is lodged on behalf of a party engaging in the conduct, then this should be noted in a covering letter with evidence of consent provided by the party who will engage in the conduct. For example, a law firm lodging on behalf of a client should note in the covering letter that it represents the respective company
- contact details for the relevant representative of the applicant should be provided on the form and/or the covering letter
- no answer or part of an answer to a question on the form(s) can be marked as confidential and requested to be excluded from the public register.

### **Assessing the validity of an application**

- 3.53A When the ACCC receives an authorisation application it will assess whether it is valid. The ACCC is required under the Act to consider the issue of validity within five business days of lodgement. The ACCC will take into account the criteria listed above in considering whether an application is substantially compliant with the validity requirements.
- 3.53B The ACCC will undertake an initial validity assessment within five business days of receiving an application.
- 3.53C If the ACCC considers that an application is invalid, it will notify the party that lodged the application that the application is invalid and provide reasons for its decision. In most cases, the party will be provided with an opportunity to rectify the matters that resulted in invalidity and re-submit the application. The date of lodgement in this situation will be the date the rectified or corrected application is provided (assuming the corrected application is valid).
- 3.53D If the party decides not to submit a corrected application, the application fees that have been paid to the ACCC will be refunded to the relevant party.
- 3.53E If the ACCC considers that an application is valid it will commence public consultation and the matter will be listed on the ACCC's website as being under consideration.
- 3.53F If, after the initial five day period, it becomes clear that the validity requirements have not been met, the ACCC will notify the relevant party at that time that the application is invalid and will follow the procedure set out above in paragraphs 3.53C–3.53D.

< Delete paragraph 3.56 and replace with the following paragraphs: >

- 3.56 As noted above, the relevant completed application form will be placed in its entirety on the public register. Confidentiality will not be granted to any response or part thereof to a question or questions on the form. Where a party has claimed confidentiality over an answer or part thereof to a question on the form, the form will be considered to be invalid. In most cases, the party will be provided with an opportunity to rectify the matters that resulted in invalidity and to resubmit the application.

3.57 Applicants, however, may request that confidential information provided in a supporting submission be excluded from the public register. This process is discussed in paragraph 4.60.

< Delete the section entitled 'How to lodge an application for authorisation' (paragraphs 3.57 to 3.58). >

< In 'Checklist for supporting submissions' (p.14) insert the following bullet point before 'relevant market characteristics': >

- ☐ the arrangement or conduct for which authorisation is being sought

< and insert the following bullet point before 'how the conduct has been framed to minimise the public detriment': >

- ☐ the public detriments which result or are likely to result from the proposed conduct

## **The Authorisation Process**

< After the shaded box 'Transparency of the authorisation process' (p.16), insert the following new section: >

### **Date of receipt of a valid application**

4.6A The ACCC will consider an application has been validly lodged when a complete form and the correct fee has been received or waived. If payment is made by EFT or if the fee is waived, evidence of such payment or waiver, as applicable, must be included in the application for the application to be validly lodged.

4.6B For applications lodged by mail or in person at one of its offices, the date of receipt of the application will be the same day it is physically received.

4.6C For applications lodged electronically (i.e., by email to adjudication@accc.gov.au or by fax to (02) 6243 1211), the date of receipt of the application will be, when lodged on a business day, that day and when lodged on a weekend or a public holiday in the ACT, the next business day in the ACT.

4.6D For more information, see *How to lodge a valid application for authorisation* above

< At the end of paragraph 4.8, add the following sentence: >

However, the ACCC will endeavour to also consider these applications within six months.

< Replace paragraph 4.10 with the following: >

4.10 The six-month period begins on the date the ACCC receives the valid application for authorisation.

4.10A The six-month period is based on calendar days. This period is counted inclusive of the date of lodgement.



4.10B As the six-month period is based on calendar days, it is possible for it to expire on a weekend or public holiday. In these cases, the ACCC will endeavour to release its final decision on the application by the end of the last business day in the ACT before the conclusion of the six month period.

< At the end of paragraph 4.17, add the following sentence: >

In such circumstances, applicants may withdraw their application and submit a revised application, which would restart the six-month time period for assessment.

< In paragraph 4.19, replace the last sentence 'For the majority of matters, the ACCC will be working to a tighter timetable' with: >

For less complex matters, the ACCC will endeavour to complete its assessment within a shorter period.

< Replace paragraph 4.24 with the following: >

4.24 In practice, applicants should include in their supporting submission a list of persons they consider could be interested parties. The ACCC is likely to add to this list. Typically the ACCC will seek to identify all parties likely to be directly affected by the conduct including major competitors, suppliers and customers, along with relevant industry associations or peak bodies, consumer groups, State and Commonwealth Government Departments and relevant regulatory bodies.

4.24A Where conduct is likely to impact large numbers of people (eg consumers), the ACCC will seek to identify appropriate representative bodies (such as consumer groups). The application and related submissions as well as any draft determinations or decisions will all be available from the ACCC's public register on its website and any interested person is able to make submissions.

< In paragraph 4.25, replace the first two sentences with the following: >

The ACCC writes or emails, usually within the first week of receiving an application, to all parties it is aware of that may be interested, inviting written submissions. Generally, the ACCC's letter:

< Replace paragraph 4.40 with the following: >

4.40 If a conference is not called by the date specified by the ACCC, the Act allows it to proceed to issue a final determination.<sup>4</sup> The ACCC will take account of all submissions made in response to a draft determination and usually allows a period of between two and four weeks for the applicant and interested parties to lodge these submissions (depending on the complexity of the matter).

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<sup>4</sup> Section 90A(5).

< Following paragraph 4.43, insert the following paragraph: >

- 4.43A Conferences are not public hearings and the Act limits the right to attend to interested parties considered appropriate to attend. In some cases, members of the media may wish to attend a conference to report on the proceedings. In these instances, the Commissioner chairing will seek the views of the interested parties on whether the attendance of media representatives would restrict them from freely expressing their views. If objections are raised, the Commissioner may ask the members of the media not to attend or to leave the conference.

< Following paragraph 4.48, insert the following paragraph: >

- 4.48A The conference is not recorded, and no transcript of the conference is produced. Interested parties will not be permitted to make a recording of the conference and any person found to be making a recording of the conference through any recording device (such as an ipod, mobile telephone or dictaphone) may be requested to leave.

< Following paragraph 4.56, insert the following paragraph: >

- 4.56A The ACCC endeavours to make all documents placed on the public register available on its website ([www.accc.gov.au](http://www.accc.gov.au)). The authorisations register on the website is divided into applications that are under consideration, final ACCC decisions on applications by year (from 1999), and withdrawn applications. Each application has a short description with the public register documents available grouped into broad categories such as submissions and ACCC correspondence. These documents can be obtained from the website free of charge.

< Delete the section entitled 'ACCC website' (paragraphs 4.58 to 4.59). >

< In paragraph 4.60, following the words 'excluded from the relevant public register', add the following words: >

except for information contained in an application form. Information contained in an application form will not be considered confidential and will be placed on the public register.

< Following paragraph 4.62, insert the following paragraph: >

- 4.62A Additionally, parties may also seek to place further confidentiality restrictions on the ACCC's use of the relevant material. Whilst the ACCC will assess whether information is confidential on a case by case basis, the ACCC will only accept confidential information on the following basis:
1. There is no restriction on the internal use, including future use, the ACCC may make of the information consistent with its statutory functions.

2. Information provided to the ACCC on a confidential basis may be viewed by the ACCC's external consultants (for example legal, economic and industry advisers) on the condition that each such consultant will be informed of the obligation to treat the information as confidential.
3. The ACCC will not disclose confidential information to any third parties (other than its external consultants) unless otherwise compelled to do so by law or in accordance with s. 155AAA of the Act.

< Replace paragraph 4.80 with the following: >

4.80 Applicants for authorisation, minor variation, revocation or revocation and substitution can request the ACCC to provide them with a copy of all documents that tend to establish the applicant's case (other than documents prepared by an officer or professional adviser of the ACCC).<sup>5</sup> The ACCC may not disclose contents of documents if the disclosure would prejudice any person—such as where information has been excluded from the public register under section 89 of the Act due to confidentiality. A fee of \$1 per page applies.<sup>6</sup>

## When will the ACCC grant authorisation?

< Replace paragraph 5.2, with the following: >

- 5.2 The Act contains different tests for authorising different types of conduct. The tests are as follows:
- **First test:** The ACCC may not grant authorisation for the making or giving effect to proposed or existing contracts, arrangements or understandings that would or might contain a cartel provision or substantially lessen competition or involve exclusive dealing (other than third line forcing) unless it is satisfied in all the circumstances that the agreement or conduct:
    - would result or be likely to result in a public benefit that outweighs the likely public detriment constituted by any lessening of competition.<sup>7</sup>
  - **Second test:** The ACCC may not grant authorisation to proposed exclusionary provisions (primary boycotts), secondary boycotts, third line forcing or resale price maintenance unless it is satisfied in all the circumstances that the proposed provision or proposed conduct:
    - would result or be likely to result in such a benefit to the public that the provision should be permitted to be made or the conduct should be allowed to take place.<sup>8</sup>

<sup>5</sup> Section 157(1).

<sup>6</sup> Regulation 28(1). An additional \$10 is payable for a copy certified to be a true copy by an officer so authorised by the ACCC; regulation. 28(2).

<sup>7</sup> Sections 90(5A), 90(5B), 90(6) and 90(7). This test also applies to applications for authorisation of proposed covenants that substantially lessen competition. The test for granting applications for authorisation for existing agreements also requires that public benefit and public detriment that has resulted from the agreement be taken into account.

<sup>8</sup> Sections 90(8)(a), 90(8)(b) and 90(9). The test for granting applications for authorisation for existing exclusionary provisions is the same except that public benefit that has resulted from the agreement is also taken into account—see, e.g., s. 90(8)(b).

< Delete paragraph 5.4. >

< Following paragraph 5.20, insert the following heading and paragraph: >

### **Applications for authorisation with international aspects**

- 5.20A The assessment of benefits and detriments is undertaken having regard to the objects of the Act and the effects of the proposed conduct on the promotion of competition and the enhancement of welfare in Australia. Accordingly, when lodging an application for an arrangement with international aspects, the parties should identify, provide support for, and, where possible, quantify those benefits and detriments (or portions thereof) that will be experienced in Australia.

**Role of the ACCC—discretionary power to authorise**—(replaces heading—Role of the ACCC on p.38)

< Replace paragraphs 5.90 to 5.103 with the following new section: >

- 5.90 When assessing an application for authorisation, the ACCC considers the arrangements put before it. The ACCC must consider the benefits and detriments flowing from all the essential aspects of a set of arrangements in order to determine whether to grant authorisation. That is, the ACCC will not separately consider the benefits and detriments of components that are necessary to the overall operation of proposed arrangements.

- 5.91 As mentioned above, the power of the ACCC to grant authorisation is discretionary. Typically, in accordance with the relevant public benefit test in section 90 of the Act, where the likely benefits of proposed arrangements outweigh the likely detriments, the ACCC will grant authorisation. However, the ACCC may refuse to grant authorisation even in cases where the relevant public benefit test is satisfied. This flows from the wording of the Act, which was discussed by the Tribunal in *Medicines Australia*. The Tribunal stated that:

The opening words of s. 88(1) are: Subject to this Part, the Commission may, upon application by or on behalf of a corporation, grant an authorisation to the corporation.

Similar words are used elsewhere in s. 88. The requirement that the exercise of the discretion be “subject to this Part” means that necessary conditions prescribed by s. 90 must be met. But they are necessary conditions only. Their satisfaction does not require that the ACCC grant authorisation. There is a discretion to refuse authorisation even where the relevant public benefit test is satisfied. That follows, not only from the discretionary language of section 88, but also from the way in which s. 90 is framed beginning, as it does, with the words “The Commission shall not make a determination granting an authorisation ... unless it is satisfied ...” (emphasis added).<sup>9</sup>

- 5.92 The Tribunal discussed two situations in which the ACCC may deny authorisation even in cases where the relevant public benefit test is satisfied:

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<sup>9</sup> Re Application by *Medicines Australia Inc* [2007] ACompT 4 at [106].

1. where, notwithstanding a high level of public benefit, the substantial anti-competitive detriment from engaging in the proposed conduct is unacceptable;<sup>10</sup>
  2. where proposed conduct involves a very small anti-competitive detriment and a weak public benefit case, but the ACCC does not wish to give its sanction to conduct which generates a sufficient yet weak public benefit.<sup>11</sup>
- 5.93 The Tribunal did not attempt to define the outer limits of the ACCC's discretion to grant or deny authorisation. Rather, the Tribunal indicated that the discretion is not narrowly confined, but is limited by the subject matter, scope and purpose of the Act, and the statutory context in which it appears.<sup>12</sup>
- 5.94 The discretion to grant authorisation is linked to the ACCC's ability to impose conditions upon authorisation.

### Imposing conditions

- 5.95 The Act permits the ACCC to grant authorisation subject to conditions.<sup>13</sup> While there is no express limit on the types of conditions which may be imposed on the grant of an authorisation, the Tribunal has stated that the power to impose conditions is constrained by the subject matter, scope and purpose of the Act.<sup>14</sup>

#### *Types of conditions*

- 5.96 In *Medicines Australia*, the Tribunal stated that the phrase "subject to" in s91(3) of the Act suggests that, for a conditional authorisation, the authorisation will not be effective unless the condition is satisfied.<sup>15</sup> The Tribunal went on to suggest two types of conditions which have this effect:

1. A condition that requires something to be done before the authorisation comes into effect (a condition precedent)<sup>16</sup>; and
2. A condition that requires something to be done for the authorisation to continue (a continuing condition)<sup>17</sup>.

An example of a condition precedent is a condition that requires the terms of a proposed arrangement to be varied. Once the variation is effected, the authorisation can take effect.<sup>18</sup>

An example of a continuing condition is a condition that requires a party to do certain things, either continuously or periodically, during the term of the authorisation.<sup>19</sup>

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<sup>10</sup> *ibid.* at [127].

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*, at [126].

<sup>13</sup> Section 91(3).

<sup>14</sup> *Re Application by Medicines Australia Inc [2007] ACompT 4* at [129].

<sup>15</sup> *ibid.* at [131].

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*, at [132].

<sup>19</sup> *ibid.*

The ACCC may grant authorisation subject to a condition precedent, a continuing condition, or both.<sup>20</sup>

#### *Circumstances in which the ACCC may impose conditions*

5.97 In Medicines Australia, the Tribunal considered the circumstances in which conditions may be imposed upon the grant of authorisation. In summary, the Tribunal suggested that the ACCC may impose conditions in situations where:

1. there is no or insufficient public benefit and a condition is imposed to increase the benefit or reduce the detriment, thereby generating a sufficient net public benefit<sup>21</sup>
2. there is, theoretically, a sufficient public benefit and a condition is imposed to raise the likelihood that the benefit will result<sup>22</sup>
3. the relevant public benefit test appears to be satisfied but a condition is imposed without which the ACCC would not be prepared to exercise its discretion in favour of authorisation (e.g., because there is a high level of anti-competitive detriment or because the public benefit case is weak).<sup>23</sup>

#### **Situations 1 and 2**

5.98 Generally, the ACCC will only impose conditions to ensure that the authorisation test is met or continues to be met over the period of the authorisation. The application for authorisation lodged by the Royal Australasian College of Surgeons provides an example of a matter where the ACCC imposed conditions to ensure that the relevant authorisation test was met. In that matter, the ACCC concluded that the college's training and assessment processes were likely to generate significant public benefits, particularly in maintaining high surgical standards but also because the college provides certain services on a pro bono basis. However, the ACCC was also concerned that the college's training and assessment processes potentially generated significant public detriment, arising from their potential to inappropriately restrict entry into the surgical profession. The ACCC granted authorisation subject to a range of conditions aimed at increasing external involvement in, and the transparency of, the college's processes.<sup>24</sup>

#### **Situation 3**

5.99 If the relevant public benefit test appears to be satisfied, a condition may be imposed without which the ACCC or the Tribunal would not be prepared to exercise their discretion in favour of authorisation.

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<sup>20</sup> *ibid.*

<sup>21</sup> Re Application by Medicines Australia Inc [2007] ACompT 4, at [133].

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*

<sup>24</sup> Royal Australasian College of Surgeons (A90765), final determination, 30 June 2003.

5.100 The Tribunal's decision in *Medicines Australia* provides an example of this.<sup>25</sup> Medicines Australia is the national association representing the prescription medicines industry in Australia. In 2005, Medicines Australia sought authorisation for Edition 15 of its Code of Conduct, which regulates certain activities of pharmaceutical companies, including the provision of information about prescription medicines, and the provision of benefits to healthcare professionals. The Tribunal concluded that the public benefit to be derived from the Code outweighed the anti-competitive detriment. Nevertheless, the Tribunal decided to grant authorisation subject to a condition requiring members of Medicines Australia to publicly disclose the benefits they provide to healthcare professionals.

5.101 In making its decision, the Tribunal stated that:

The Tribunal is satisfied that the public benefit derived from the Code allowing for its identified deficiencies and weaknesses, outweighs the low level of anti-competitive detriment, if any, flowing from the Code. ... The question remains whether [a] condition should be imposed as an incident of the Tribunal's discretion to authorise or refuse authorisation notwithstanding that the public benefit tests are satisfied. ...

The Tribunal considers that this is a case in which it is appropriate, if the authorisations are to be granted, to impose conditions to provide an incentive to compliance with the Code provisions relating to the conferring of benefits on doctors. ...

Authorisation without the proposed condition could all too readily be viewed as an official approval given to a less than rigorous approach to enforcement in this important area.<sup>26</sup>

#### *Non-compliance with conditions*

5.102 The ACCC may initiate the process for revoking an authorisation if a condition is not complied with (see paragraph 7.29). In some cases, failure to comply with a condition of authorisation may also mean that the conduct being engaged in falls outside the terms of the authorisation and therefore is not covered by the immunity provided by the authorisation.

#### *Amending applications for authorisation to avoid the imposition of conditions*

5.103 Where substantial concerns with proposed conduct are identified, the ACCC can address them through imposing conditions. Applicants may consider it preferable however to amend their applications to address any concerns before a final determination is issued so such conditions are not imposed.

#### *Codes of conduct and the imposition of conditions*

5.103A While the ACCC is able to grant authorisation subject to conditions, it is not able to use this power in order to substantially redraft an applicant's code of conduct. As the Tribunal stated in *Medicines Australia*:

it is not for the ACCC or the Tribunal to use the conditioning power and its discretion in order to construct and impose its ideal or preferred system of self-regulation. The imposition of a condition designed to enhance or increase the likelihood of benefits said to flow from a voluntary code is a far cry from redrafting the Code.<sup>27</sup>

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25 Re Application by Medicines Australia Inc [2007] ACompT 4.

26 *ibid.*, at [359]–[360] and [365].

27 *ibid.*, at [134].

< In paragraph 5.107, following the sentence ending 'to generate a net public benefit', insert the following sentence: >

The ACCC is likely to be more inclined to grant authorisation for longer periods of time if parties seek reauthorisation of conduct, particularly where there is evidence that the arrangements delivered the anticipated benefits and affected parties support the arrangements.

### **Process for assessing applications for interim authorisation**

< In paragraph 6.12, replace '30 days' with '28 days'. >

### **Amending, revoking and substituting authorisations**

< Following paragraph 7.11, insert the following paragraph: >

7.11A The application for minor variation will be published on the ACCC's website and will be available on the ACCC's public register.<sup>28</sup>

< In paragraph 7.19, following the sentence 'No Lodgement fee is payable', insert the sentence: >

The application for minor variation will be published on the ACCC's website and a copy kept on the ACCC's public register.<sup>29</sup>

< In paragraph 7.22 following the sentence ending '...revoking it in certain circumstances', insert the following sentence: >

If an authorisation is revoked, the conduct previously authorised no longer has immunity under the Act.

< Replace the first sentence in paragraph 7.24 with the following: >

On receiving an application for revocation, the ACCC will publish the application for revocation on the ACCC's website and public register.<sup>30</sup> The ACCC will also write to all parties it considers to be interested in the matter:

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<sup>28</sup> Section 89(3)(b).

<sup>29</sup> Section 89(3)(b).

<sup>30</sup> Section 89(3)(c).



< Following paragraph 7.40, insert the following paragraph: >

7.40A Parties seeking reauthorisation of arrangements are expected to provide relevant factual information in support of their claims. Given the arrangements for which authorisation is sought may have already been in place for a number of years, the public benefits and detriments of the arrangements may be more apparent than they were when authorisation was originally sought. The ACCC expects that parties seeking reauthorisation of arrangements will be able to provide evidence to support, and perhaps quantify, the benefits and anti-competitive detriments that have resulted from the authorised conduct.

< Replace the first sentence in paragraph 7.41 with the following sentences: >

On receiving an application for revocation and substitution, the ACCC will publish the application for revocation and substitution on the ACCC's website and public register.<sup>31</sup>  
The ACCC will also write to all parties it considers to be interested in the matter:

< Replace paragraph 7.56 with the following paragraph: >

7.56 The ACCC generally prefers to obtain information through cooperation. However, section 155 of the Act specifically empowers the ACCC to require the provision of information and documents relating to revocation and revocation and substitution decisions.

## Reviewing ACCC authorisation decisions

< Replace paragraph 9.22 with the following paragraph: >

9.22 A person who wants the Tribunal to reconsider an authorisation application must apply to the Tribunal. This is done by lodging a Form I with one of the Federal Court's registry offices. This application form must be lodged within 21 (calendar) days, beginning from (but exclusive of) the date of the ACCC's determination.<sup>32</sup>

## Addresses (p.71)

Sydney Office—New Address

Level 20, 175 Pitt Street  
Sydney NSW 2000

GPO Box 3648  
Sydney NSW 2001

Tel: (02) 9230 9133  
Fax: (02) 9223 1092

Brisbane Office—New Address

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<sup>31</sup> Section 89(3)(d).

<sup>32</sup> Regulations 20(1)(a) and 20(1)(b).

Level 24, 400 George Street  
Brisbane Qld 4000

PO Box 12241  
George Street Post Shop  
Brisbane Qld 4003

Tel: (07) 3835 4666

Fax: (07) 3835 4653