

25 August 2009

**By email:** Sarah.Sheppard@accc.gov.au;

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Dear Sarah

## **CBH Access Undertaking: Further submission in relation to dispute resolution process**

This submission addresses the ACCC's comments in Parts 8.4.7, and 8.4.8 of its draft decision (**Draft Decision**) regarding dispute resolution.

CBH intends to amend its undertaking to address the comments and recommendations in the above referred Parts of the Draft Decision.

### **1 Proposed application and negotiation clause**

- 1.1 CBH proposes to replace section 8 of its undertaking with the new clause 8 **annexed** to this letter.
- 1.2 CBH proposes to make the following related amendments to its Undertaking:
  - (i) Clause 7 of the Undertaking will be amended to remove the pre-condition to dispute resolution<sup>1</sup>;
  - (ii) The definition of Dispute no longer includes "bona fide";
  - (iii) Disputes are now referred to the ACCC in the first instance for arbitration under Part IIIA, and a private arbitration process is only used if the ACCC declines to arbitrate;
  - (iv) A private arbitrator must keep the ACCC informed of progress; and
  - (v) The ACCC may make submissions to a private arbitrator.

### **2 Reasons for amendments**

- 2.1 CBH is proposing the above amendments to address the concerns raised by the ACCC, and specifically to:
  - (i) add certainty regarding the availability of the dispute resolution process;

<sup>1</sup> We refer to the submission dated 24 August 2009 on this issue

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- (ii) provide for a greater role for the ACCC, while enabling the parties to choose alternative means of dispute resolution by agreement;
- (iii) remove "pre-conditions" for the referral of negotiation disputes to the arbitrator; and
- (iv) remove ambiguity and reiteration, and limiting CBH's discretion in relation to the negotiation process generally.

We would be grateful if you would advise whether this proposed draft form of dispute resolution clause would be acceptable to the ACCC.

Yours sincerely



**Bill Keane**  
Partner