

Email

23 March 2020

Mr Daniel McCracken-Hewson
General Manager, Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601
adjudication@acc.gov.au

Dear Mr McCracken-Hewson

Medical Technology Association of Australia: urgent application for interim authorisation

We act for the Medical Technology Association of Australia Limited (**MTAA**).

The MTAA is the national association representing companies in the medical technology industry. MTAA represents manufacturers and suppliers of medical technology used in the diagnosis, prevention, treatment and management of disease and disability. The range of medical technology is diverse with products ranging from familiar items such as syringes and wound dressings, through to high-technology implanted devices such as pacemakers, defibrillators, hip and other orthopaedic implants. Products also include hospital and diagnostic imaging equipment such as ultrasounds and magnetic resonance imaging machines.

MTAA members distribute the majority of the non-pharmaceutical products used in the diagnosis and treatment of disease and disability in Australia. MTAA member companies also play a vital role in providing healthcare professionals with essential education and training to ensure safe and effective use of medical technology.

We are instructed that the Federal Government has advised MTAA that, due to the impact of COVID-19, it is seeking to secure adequate supply of medical equipment necessary for the treatment of COVID-19 patients. The Federal Government's immediate priorities are the supply of ICU ventilators, COVID-19 testing kits and personal protective equipment, however it is expected that increased supply will be required for other medical equipment used in the treatment of intensive care patients. As COVID-19 increasingly impacts on Australia's health system and global supply chains, and with the majority of medical equipment imported into Australia, it is expected that the ongoing supply of all medical equipment will be severely constrained.

The Federal Government Department of Health has requested that the MTAA coordinate with its member medical equipment suppliers and other manufacturers to identify sources of supply and also to provide advice regarding any constraints or obstacles to securing supply. In addition, the Federal Government has requested MTAA provide advice as to any emerging issues that may constrain the supply of medical equipment.

In order to respond to the Federal Government's requests, the MTAA needs to coordinate with MTAA members and non-members to identify current stocks, likely quantities that can be obtained through existing supply channels, new sources of supply and potential quantities, and opportunities to increase domestic manufacturing and sharing of resources.

The MTAA seeks an urgent authorisation on behalf of itself, its members (**MTAA Members**) and relevant non-members in the medical technology industry (**Non-Members**) to make and effect the arrangements described below in order to implement a coordinated strategy in relation to the supply of medical equipment and supplies in response to the current COVID-19 crisis (**Proposed Conduct**). In light of the current demands on the health system, and in order to provide timely responses and assistance to

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relevant government bodies, the MTAA further seeks urgent interim authorisation for the Proposed Conduct in the period before the ACCC delivers its decision on MTAA's authorisation application.

Further details in relation to the Proposed Conduct and to assist the ACCC's review of MTAA's authorisation application are set out in **Schedule 1**.

We will arrange the payment of the prescribed filing fees as soon as practicable.

Please let us know if you have any questions.

Yours sincerely



Michael Corrigan, Partner



Justin Chen, Lawyer



Our ref 187/21208

Schedule 1 - Further information regarding authorisation application

The Applicants

1. The MTAA is the national association representing more than 100 companies across the medical technology industry. MTAA members include manufacturers and suppliers of medical technology used in the diagnosis, prevention, treatment and management of disease and disability.
2. The MTAA's objective is to ensure the benefits of modern, innovative and reliable medical technology are delivered effectively to provide better health outcomes to the Australian community.
3. Further details about the Applicant is set out below:

Name	Medical Technology Association of Australia Limited
ACN	129 334 354
Registered Office	Level 12, 54 Miller Street North Sydney, NSW 2060
Telephone	+612 9900 0600
Contact person(s)	<p>Ian Burgess, Chief Executive Officer</p> <p>Phone: [REDACTED]</p> <p>Email address: [REDACTED]</p> <p>Peter Tustin, Director - Business Operations</p> <p>Phone: [REDACTED]</p> <p>Email address: [REDACTED]</p> <p>with a copy to:</p> <p>Michael Corrigan, Partner</p> <p>Clayton Utz</p> <p>Phone: [REDACTED]</p> <p>Email address: [REDACTED]</p>
Email address for service	Michael Corrigan, [REDACTED]

4. Further information about the MTAA, its members and its operations can be found on its website: <https://www.mtaa.org.au/>.
5. The list of MTAA Members and Non-Members who are currently expected to be party to the Proposed Conduct is set out in **Schedule 2**.
6. Authorisation is requested on behalf of the MTAA and all named persons and entities in Schedule 2 together with all other persons and entities concerned in the supply of medical supplies who agree to participate in the conduct described below for which authorisation is sought and whose identity will be provided to the ACCC.
7. The MTAA anticipates that new MTAA Members or Non-Members will be added to the list in Schedule 2 by notice to the ACCC, as the Federal Government's response to the crisis evolves and the supply of other medical equipment or products become prioritised. The MTAA will promptly notify the ACCC of any new MTAA Members or Non-Members that are, or are expected to become, involved in the Proposed Conduct.

Proposed conduct to be authorised

8. The Proposed Conduct includes making and giving effect to agreements and arrangements, and exchanging information between the MTAA, MTAA Members and Non-Members for the purposes of:
 - (a) sharing information regarding:
 - (i) available stock and inventory levels;
 - (ii) likely quantities that can be obtained through existing supply channels,
 - (iii) new sources of supply and potential quantities; and
 - (iv) opportunities to increase domestic manufacturing,for a range of medical equipment and supplies, being:
 - (v) initially, ICU ventilators, COVID-19 testing kits and Personal Protective Equipment; and
 - (vi) the full range of medical equipment and technology used in the treatment of intensive care patients; and
 - (vii) other medical equipment that is required to address the increased demands on the health system arising from the COVID-19 crisis in respect of which there are actual or potential supply constraints because of domestic or global supply shortages or the impact of freight and logistics;
 - (b) coordinating and allocating the fulfilment of orders and supply requests between suppliers;
 - (c) prioritising certain requests for supply as nominated by the Federal Government, State and Territory Governments and relevant health authorities;

- (d) working together to respond to tenders or requests for supply (including sharing information or joint tenders).
9. At this stage, the MTAA anticipates that in the short term, the Proposed Conduct will only include the conduct set out in paragraph 8(a) above.
 10. The MTAA anticipates that State and Federal health authorities will determine the manner in which they require supplies of necessary medical equipment to be made by the MTAA Members and Non Members rather than those matters being determined or agreed among the applicants. However given the fluidity and uncertainty of the current situation and the need to implement any further measures quickly, the MTAA is also seeking authorisation for the conduct set out in paragraphs 8(b) to 8(d) above, to allow for arrangements to be made between MTAA Members and Non Members to the extent they become necessary in order to respond to the demands of the Australian health system.
 11. Authorisation for the conduct described in paragraphs 8(b) to 8(d) above is requested on the condition that the MTAA will provide notice to the ACCC if the scope of the Proposed Conduct expands to include any of that conduct.
 12. The MTAA seeks authorisation for the Proposed Conduct for a period of 12 months. At this stage it is difficult to predict the duration or extent of the COVID-19 crisis and therefore the period in which authorisation for the Proposed Conduct may need to be extended.
 13. The relevant provisions of the CCA which may apply to the Proposed Conduct include:
 - (a) making and or giving effect to a contract arrangement or understanding that may include a cartel provision (Division 1 of Part IV);
 - (b) making and or giving effect to a contract arrangement or understanding that have a purpose or effect, or likely effect, of substantially lessening competition (section 45(1)(a) and(b)); and
 - (c) engaging in concerted practices that have a purpose or effect or likely effect of substantially lessening competition (section 45(1)(c)).

Interim authorisation

14. The COVID-19 crisis has been declared a pandemic by the World Health Organisation and the Australian health system is already suffering from a shortage of essential medical supplies and equipment which is hampering the response to this unprecedented public health crisis.
15. In light of the current crisis and projected increase in the spread of the COVID-19 virus, the Applicants request the ACCC grant interim authorisation for the Proposed Conduct on an urgent basis so that the Applicants can start working together to address supply shortages for critical medical supplies and equipment, and provide information and advice to the Federal Government, State and Territory Governments and relevant health agencies in relation to supply of medical equipment, including areas of current or anticipated shortage and supply constraints.

Public benefits significant outweigh any competitive detriments

16. As noted in paragraphs 14 and 15 above, the Australian health system is currently suffering from shortages in medical supplies which, if not addressed, is likely to significantly hamper the response to the COVID-19 crisis. An insufficient supply of medical equipment would result in

increased and accelerated COVID-19 infection rates and higher death rates in the Australian community.

17. The Proposed Conduct will allow the MTAA, MTAA Members and Non-Members to coordinate their manufacturing and supply activities and exchange information so that areas of supply shortage and constraint can be addressed more quickly and effectively to assist State and Federal Governments to respond more effectively to the COVID-19 crisis.
18. The Proposed Conduct will also allow the MTAA to more effectively advise the Federal Government, State and Territory Governments and relevant health agencies in relation to the supply of medical equipment, which is essential to ensuring a coordinated and effective response to this unprecedented international public health crisis.
19. The MTAA submits that the public benefits of the Proposed Conduct will significantly outweigh any competitive detriments. While the Proposed Conduct would include the exchanging of information around pricing and quantities, and the coordination of supply, it does not extend to setting or agreeing prices (which will remain the discretion of each supplier). Accordingly it is submitted that there are not any significant public detriments associated with the Proposed Conduct.

Schedule 2 - List of MTAA Members and Non-Members

MTAA Members

3D-Matrix Medical Technology Pty Ltd
3DMEDiTech
3DMorphic Pty Ltd
3M Australia Pty Ltd
Abbott [Vascular] Australasia
Abbott Medical Australia Pty Ltd
Alcon Laboratories (Australia) Pty Ltd
Allergan Australia Pty Ltd
AlphaXRT Ltd
Amplifon Australia
Analytica Pty Ltd
APNE Surgical Pty Ltd
Australasian Medical & Scientific Ltd
Australian Dermatology Equipment
Avanos Medical Australia Pty Ltd
B Braun Australia Pty Ltd
Bard Australia Pty Ltd
Bausch & Lomb (Australia) Pty Limited
Baxter Healthcare Pty Ltd
Biotronik Australia Pty Ltd
Boston Scientific Pty Ltd
Brainlab Australia Pty Ltd
ConMed Australia
Cook Australia Pty Ltd
Corin (Australia) Pty Ltd
Culpan Medical Australia Pty Ltd
Device Technologies Australia Pty Ltd
Edwards Lifesciences Pty Ltd
Elekta Pty Ltd
Exactech Australia
Fresenius Kabi Australia Pty Ltd
Fresenius Medical Care Australia Pty Ltd
Gamma Gurus
Gel Works Pty Ltd
Getz Healthcare Pty Ltd
Grey Innovation

Hemideina
Hillrom PTY LTD
Hologic (Australia) Pty Ltd
Horten Medical
Johnson & Johnson Medical Pty Ltd
KLS Martin Australia Pty Ltd
Laminar Air Flow Pty Ltd
LifeHealthcare Pty Ltd
LivaNova Australia Pty Ltd
Materialise Australia Pty Ltd
Medacta Australia Pty Ltd
MED-EL Implant Systems Australasia Pty Ltd
Medical Specialties Australia Pty Ltd
Medigroup Australia Pty Ltd
Medi Press
Medtronic Australasia Pty Ltd
MicroPort CRM Pty Ltd
Molnlycke Healthcare
NeedleCalm Pty Ltd
Nevro Medical Pty Ltd
NL-Tec Pty Ltd
Olympus Australia Pty Ltd
Paragon Therapeutic Technologies
Prism Surgical Designs Pty Ltd
Roche Diabetes Care Australia Pty Ltd
Smith & Nephew Pty Ltd
Smiths Medical Australasia Pty Ltd
Spectrum Surgical Pty Ltd
Stryker Australia Pty Ltd
Teleflex Medical Australia Pty Ltd
Terumo Australia Pty Ltd
Tomi Australia Pty Ltd
Tunstall Australasia Pty Ltd
Varian Medical Systems Australasia Pty Ltd
Vision RT Australia Pty Ltd
W. L. Gore and Associates (Aust) Pty Ltd
Wright Medical Australia
Zimmer Biomet

Non-Members

ResMed Pty Ltd

Draeger Australia Pty Ltd

GE Healthcare Australia Pty Limited

Philips Healthcare Australia

Members of Pathology Technology Australia as at 23 March 2020 (who are not MTAA Members), being:

MP Biomedicals Australasia Pty Ltd
Paragon Therapeutic Technologies Pty Ltd
Pro-Health Asia Pacific Pty Ltd
SJ Alder Pty Ltd
SpeeDx Pty Ltd
Astral Scientific Pty Ltd
Agilent Technologies Australia Pty Ltd
Illumina Australia Pty Ltd
Integrated Sciences Pty Ltd
Merck Millipore Australia Pty Ltd
PerkinElmer Pty Ltd
Sysmex Australia Pty Ltd
Tecan Australia Pty Ltd
Cepheid Holdings Pty Ltd
ESL Biosciences Australia (2012) Pty Ltd
Werfen Australia Pty Ltd
QIAGEN Pty Ltd
Becton Dickinson Pty Ltd
bioMérieux Australia Pty Ltd
Bio-Rad Laboratories Pty Ltd
Grifols Australia Pty Ltd
ThermoFisher Scientific Australia Pty Ltd
Abbott Australasia Pty Ltd
Roche Diagnostics Australia Pty Ltd
Siemens Healthcare Pty Ltd
Ascencia Pty Ltd
Trajan Scientific Australia Pty Ltd
Lumos Diagnostics Holdings Pty Ltd
Life Bioscience Pty Ltd
Radiometer Pacific Pty Ltd
Binding Site Pty Ltd
Diagnostica Stago Pty Ltd
Abacus dx Pty Ltd

New MTAA Members or Non-Members

MTAA anticipates that the list of MTAA Members and Non-Members may be expanded and new MTAA Members or Non-Members may be added as the Federal Government's response to the crisis evolves and information relating to new medical equipment or products are required.

MTAA will notify the ACCC of any new MTAA Members or Non-Members to be covered by the terms of the authorisation.

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Chief Executive Officer

Office held

(Print) Name of authorised person

Ian Burgess

This 23rd day of March, 2020

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.