

4 June 2004

Dear Sir/Madam

Applications (A40090, A40091, and A40092) for authorisation of REMCo Retail Market Rules

I am writing to inform you that on 2 June 2004 the Commission made a *Draft Determination* proposing to grant authorisation for the above applications. The authorisation period proposed is for five years and will remain in force until 31 May 2009, unless revoked before that date.

A copy of the Draft Determination is available from the ACCC's website
<http://www.accc.gov.au/authAndNotif/authorise/authapp.html>.

Pursuant to section 90(A) of the Trade Practices Act, the ACCC invites interested parties to notify it within 14 days of the date of this letter, whether they wish the ACCC to hold a conference in relation to this *Draft Determination*.¹

If any interested party notifies the ACCC in writing within the time period that they wish the ACCC to hold a conference, the ACCC will appoint a date, time and place for the conference and give notice to all interested parties.

The ACCC is also inviting interested parties to provide written submissions commenting on this *Draft Determination*. Submissions should be provided to the ACCC by no later than 25 June 2004.

Unless confidentiality is requested, submissions will be publicly available and placed on the Commission's Public Register.

If you wish to include information in a submission which is of a confidential nature, it should be clearly marked as such and a claim for confidentiality for the material should also be submitted. You will be informed of the outcome of that claim and, if it is refused, the relevant material will be returned to you if you wish.

Material for which confidentiality is granted will not be publicly available, but may be taken into account by the Commission in considering whether to authorise the Retail Market Rules.

Guidelines for seeking confidentiality are attached.

¹ For the purposes of the pre-decision conference, an interested person is a person who has notified the ACCC in writing that the person, or a specified unincorporated association of which the person is a member, claims to have an interest in the application and the ACCC is of the opinion that the interest is real and substantial.

All submissions should be addressed to:

Mr David Hatfield
Director
Regulatory Affairs – Gas
Australian Competition and Consumer Commission
PO Box 1199
Dickson ACT 2602
Fax: (02) 6243 1266

All submissions must be in writing and should also be supplied in electronic form (compatible with Microsoft Word 2002 for Windows). They may be e-mailed to gas@accc.gov.au.

Please contact Fessehaie Abraham on (02) 6243 1232 if you have any queries in relation to this matter.

Yours sincerely

Mr David Hatfield
Director
Regulatory Affairs – Gas
Australian Competition and Consumer Commission

Att: Guidelines for Confidentiality Claims

GUIDELINES FOR CONFIDENTIALITY CLAIMS
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The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications.

Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words “**Restriction of Publication Claimed**” should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words “**Restriction of Publication of Part Claimed**” should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.