



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: C2003/938  
Contact Officer: Susan Philp  
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12 October 2005

Dear

**Australian Direct Marketing Association – application for revocation of authorisation  
A40077 and replacement by substitute authorisation A90876  
Draft Determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the application for revocation of authorisation A40077 and replacement by substitute authorisation A90876 lodged by the Australian Direct Marketing Association (ADMA).

ADMA has sought authorisation in respect of its Direct Marketing Code of Practice (the Code). The Code has been reviewed by ADMA on a number of occasions since lodging its application for substitute authorisation, most recently in September 2005.

The draft determination issued by the ACCC and enclosed for your information and comment is in relation to the September 2005 Code. Please note, the September 2005 Code is at Attachment 1 of this draft determination.

**Summary of ACCC considerations**

In assessing the ADMA application, the ACCC is required to determine whether the likely benefits to the public of the Code would outweigh the Code's potential anti-competitive effect.



In considering the possible anti-competitive effect of the Code, the ACCC has noted the following:

- the loss of/ or inability to obtain ADMA membership is unlikely to significantly impede a direct marketers' ability to enter the market or to compete within the industry;
- the level of anti-competitive detriment likely to flow from the existence and enforcement of the ADMA Code is significantly lessened due to the current legislative obligations which exist regardless of the Code; and
- it is not likely that burdens placed on organisations to comply with the ADMA Code would result in any significant anti-competitive detriment.

Overall, the ACCC has concluded that the anti-competitive effect of the Code is likely to be minimal.

In considering the extent to which the ADMA Code enhances public benefit, the ACCC has concluded that some features of the Code, being those provisions which provide consumers with rights and avenues additional to those that are granted at law and provide consumers with recourse to a resolution mechanism where they have complaints regarding the conduct of an ADMA member, are likely to result in some public benefits.

It should be noted that the ACCC considers that an industry code responding to and appropriately addressing concerns about direct marketing has the potential to result in significant benefits to the public. While ADMA has made a number of key improvements to the Code, the ACCC nonetheless considers that further improvements in a number of key areas would improve the effectiveness of the ADMA Code and would be likely to result in *greater* benefits to the public than currently arise.

On balance, however, the ACCC considers that the ADMA Code is likely to result in a small net benefit to the public. The ACCC therefore proposes to grant ADMA's application for revocation of A40077 and its substitution by A90876 for a period of three years.

#### **Next steps**

Once the ACCC issues a draft determination, ADMA or any interested party may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **cob 28 October 2005**. Please note, conferences are conducted informally, without the participation of legal or other professional advisers.

Alternatively, you are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by **cob 4 November 2005** at the following address:

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by e-mail to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on 02 6243 1211.

Any submission you make will be placed on the ACCC's Public Register. You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the ACCC when reaching its decision. Guidelines for seeking confidentiality are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to ADMA's application.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter please do not hesitate to contact Susan Philp on (02) 6243 1354 or Kerry Leigh Taylor on (02) 6243 1175.

Yours sincerely

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