



**Australian
Competition &
Consumer
Commission**

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

Our Ref: C2003/938
Contact Officer: Kerry Leigh Taylor
Contact Phone: 02 6243 1175

28 October 2005

Dear

**Australian Direct Marketing Association – Application for revocation of authorisation
A 40077 and replacement by substitute authorisation A 90876**

Consultation in respect of the ACCC's Draft Determination

I refer to the Australian Competition and Consumer Commission's (ACCC) letter of 12 October 2005 enclosing the draft determination in respect of the application for revocation of authorisation of A40077 and replacement by substitute authorisation A90876 lodged by the Australian Direct Marketing Association (ADMA).

Consultation with interested parties – pre-determination conference

As noted by the ACCC's previous correspondence, an interested party may request the ACCC to convene a pre-determination conference in relation its draft determination. The purpose of this letter is to advise you that the ACCC has received a request for a conference and to provide you with updated details of consultation in respect of the draft determination.

By way of background, the *Trade Practices Act 1974* provides that, once requested, a pre-determination conference must be convened no later than 30 days following the expiration of the initial 14 day period in which a conference may be requested.



In accordance with the statutory timeframes, the ACCC will be holding a conference in relation to its ADMA draft determination on **14 November 2005**. The conference will be held at

ACCC Sydney Office
Level 7, Angel Place
123 Pitt Street
(between Hunter Street and Martin Place)
Sydney NSW

Please note, video conferencing facilities may be made available in other capital cities upon request. Parties wishing to attend the conference by way of video should notify the ACCC so that arrangements can be made

Conference registration will be from 9:45am and the conference will commence at 10:00am. Commissioner Jennifer McNeill will chair the conference.

Under the *Trade Practices Act 1974*, the conference may be attended by the applicant and other interested parties. If you wish to attend, you must notify the ACCC of your intention by **cob Tuesday, 8 November 2005** and briefly indicate why you or your company or organisation has an interest in the matter. Notifications must be in writing and addressed to:

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

You can also notify the ACCC by e-mail to: adjudication@acc.gov.au or by facsimile on 02 6243 1211.

You should provide details of a contact name, telephone number, mailing address and, if possible, a facsimile number or e-mail address so that you can be notified of any late changes to conference arrangements.

If you represent a company or organisation you should also provide a list of attendees and their position titles, and indicate who will be the chief spokesperson.

I would also note that, while conference participants may bring outside legal or other professional advisers to assist them, the *Trade Practices Act* prohibits these advisers from participating in conference discussions.

Attached for your information are procedures usually followed at pre-determination conferences.

Consultation with interested parties - extension of time for written submissions

Following discussions with interested parties the ACCC has decided to extend the period for written submission in respect of its draft determination. Accordingly, written submissions in respect of the ACCC's draft determination should now be provided by **16 December 2005**.

Written submissions should be addressed to the General Manager and posted to the above postal address. Submissions can also be lodged by email on the above email address or by facsimile on (02) 6243 1211.

Please note, 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.

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

Scott Gregson
General Manager
Adjudication Branch

AN OUTLINE OF THE PROCEDURES
USUALLY FOLLOWED AT PRE-DETERMINATION CONFERENCES

The Australian Competition and Consumer Commission (the ACCC) tries to conduct such conferences as informally, flexibly and speedily as possible. Where necessary a conference may be adjourned and reconvened at a later time.

An interested party attending a conference may have the assistance of outside legal or other professional advisers. Although such persons may attend the conference to assist; they are not entitled to participate in the discussion.

The conference will serve a useful purpose in that it gives the ACCC and all interested parties the opportunity to meet face-to-face to discuss the operation and effect of the applicant's conduct and the ACCC's draft determination. The applicant and/or interested persons has/have the opportunity to persuade the ACCC to accept their view. The ACCC benefits from direct contact with the parties, and its perceptions of public benefit and competition are tested in a forum of interested parties where points are often quickly and forcefully made.

1. Preliminary procedures

- (a) When you arrive at the conference you will find that a seating plan may be available. You should identify yourself to the ACCC staff before the conference begins and indicate clearly if you expect messages to be left for you during the conference. Further, please complete the attendance book when arriving at the conference. This assists ACCC staff to identify attendees for the purpose of recording the discussion.
- (b) The Chair (a Commissioner) will open the conference by welcoming those present and outlining the requirements of the Trade Practices Act and the manner in which the conference will be conducted. An agenda may be circulated.
- (c) If you intend to present a written comment (and you are encouraged to do so), it is helpful if the ACCC receives it before the conference date. It can then be copied and distributed at the conference. In this way, both the ACCC and other parties present are assisted, and your submission also forms part of the conference record. If you cannot complete the written submission earlier, it is helpful if you come to the conference with extra copies which can be distributed.
- (d) If you intend to present a submission at the conference and you wish it (or certain details in it) to remain confidential, you should make your confidentiality request to the Chair at the time of presenting the document, and you should state in general terms the reason for your request. The Chair may request other parties present to leave the conference for a short period, so that you may be given the opportunity, if necessary to expand on your reasons.

If your request for the document (or parts of it) to remain confidential is denied you may ask for the document (or parts of it) to be returned to you. Any material returned to you will ordinarily not be taken into consideration by the ACCC in making its final decision (unless, of course, it was supplied from another source).

Any document you present without making any request for confidentiality will be placed on the ACCC's public register, and the information it contains may be used by the ACCC in making its decision. Where confidentiality is granted, the confidential information may also be taken into account, although such material will not be placed on the public register.

2. General procedures

- (a) The conference has been convened to discuss the draft determination, to canvass points of view and to assist the ACCC's weighing of issues and its interpretation of the information given to it.
- (b) The procedure is discretionary. The Chair controls the order of discussion, and may take particular topics separately, so that all the discussion, on any given topic may be heard at the one time.
- (c) The conference is not a court, and there is no right of cross-examination. You may request the Chair to ask questions of other parties present, but the Chair retains the discretion as to whether your questions will be put. The Chair, of course, may also directly question the parties at the conference, and they have discretion whether or not to answer.
- (d) ACCC staff present will make a record of the discussion. This will be in minute form, not a verbatim record. The conference record is placed on the public register, and all who attend the conference will receive a copy.
- (e) When the Chair believes that all present have been given a reasonable opportunity to express their views, he/she may terminate the conference.
- (f) The Chair (and any other Commissioner at the conference) cannot give a final decision at the close of the conference. Each Commissioner is only a representative of the ACCC and is required to report back to the ACCC, which will make the final decision.

3. Other matters

- (a) Following the pre-determination conference, the ACCC will review its draft determination in the light of discussion and further submissions made at the conference (or within a set period of time after the conference), and will publish its final determination as soon as possible thereafter.
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Ms Jodie Sangster
Director – Regulatory and Legal Affairs
Australian Direct Marketing Association
Level 6,
50 Carrington Street
SYDNEY NSW 2000

Ms Anna Stewart
Principal Solicitor
Consumer Law Centre Victoria
Level 9, 91 William Street
MELBOURNE VIC 3000

Mr Peter Kell
Chief Executive Officer
Australian Consumers' Association
57 Carrington Road
MARRICKVILLE NSW 2204

Ms Karen Cox
Coordinator
Consumer Credit Legal Centre (NSW) Inc
PO Box 538
SURRY HILLS NSW 2010

Ms Karen Curtis
Privacy Commissioner
Office of the Federal Privacy Commission
GPO Box 5218
SYDNEY NSW 2001

Ms Carolyn Bond
Chair
Consumers Federation of Australia
C/- Consumer Law Centre of Victoria
Level 9, 91 William Street
MELBOURNE VIC 3000

Mr David O'Connor, AM
Commissioner for Fair Trading
Office of Fair Trading
NSW Consumer Protection Agency
PO Box 972
PARRAMATTA NSW 2124

Mr Robin Whittle
First Principles
11 Miller Street
HEIDELBERG HEIGHTS VIC 3081

Mr Brett Phillips
Executive Director and Commissioner for Fair Trading
Policy and Regulatory Division,
ACT Department of Justice & Community Safety
GPO Box 158
CANBERRA ACT 2601

Dr David Cousins
Executive Director
Consumer Affairs Victoria
Department of Justice
PO Box 123A
MELBOURNE VIC 3000

Mr Tony Steven
Chief Executive Officer
Council of Small Business Organisations of Australia
Ltd
PO Box 6336
KINGSTON ACT 2604

Mr Chris Connolly
Director
Financial Services Consumer Policy Centre
Law Faculty
Room 1212 Mathews Building
UNIVERSITY OF NSW 2052

Ms Julie Kinross
Commissioner for Fair Trading
Department of Tourism, Racing and Fair Trading
Queensland Government
GPO Box 3111
BRISBANE QLD 4001

Mr Mark Bodycoat
Commissioner for Consumer Affairs
Office of Consumer and Business Affairs – SA
GPO Box 1719
ADELAIDE SA 5001

Mr Graham Greenleaf
Co-Director
Baker & McKenzie Cyberspace Law and Policy
Centre, UNSW
Rooms 1205-1206 Mathews Building, Upper Campus
UNIVERSITY OF NSW 2052

Mr Richard O'Sullivan
Commissioner of Consumer Affairs
Department of Justice – NT
GPO Box 1722
DARWIN NT 0801

Mr Roy Ormerod
Director
Office of Consumer Affairs and Fair Trading
GPO Box 1244
HOBART TAS 7001

Mr Jeffery Lucy AM
Chairman
Australian Securities and Investment Commission
GPO Box 9827
CANBERRA ACT 2600

Mr Greame John
Managing Director
Australia Post
GPO Box 1777
MELBOURNE VIC 3001

Mr Richard Gilbert
Chief Executive Officer
The Investments and Financial Services Association
Ltd
Level 24, 44 Market Street
SYDNEY NSW 2000

Ms Sue-Anne Wallace
Chief Executive Officer
Fundraising Institute – Australia Ltd
PO Box 642
CHATSWOOD NSW 2057

Ms Anna Johnston
Chair
Australian Privacy Foundation
GPO Box 1196
SYDNEY NSW 2001

Ms Elizabeth Beal
Principal Solicitor
Communications Law Centre
PO Box 14428
MELBOURNE VIC 8001

Ms Joan Sheedy
Assistant Secretary
Information Law Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Mr Patrick Walker
Executive Director
Department of Consumer and Employment Protection
Locked Bag 14
CLOISTERS SQUARE WA 6850

Mr David Bell
Chief Executive
Australian Bankers Association
Level 3, 56 Pitt Street
SYDNEY NSW 2000

Ms Vivienne Atkinson
Executive Director
Australian Retailers Association
Level 2, 104 Franklin Street
MELBOURNE VIC 3000

Mr Mark Crowe
Chief Executive Officer
Australian Marketing Institute
Level 7, 84 Pitt Street
SYDNEY NSW 2000

Mr Peter Hendy
Chief Executive
Australian Chamber of Commerce and Industry
PO Box 6005
KINGSTON ACT 2604

Mr Roger Clarke
Xamax Consulting
78 Sidaway Street
CHAPMAN ACT 2611

Mr Steve French
General Manager
Competition and Consumer Policy Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600

Ms Irene Graham
Executive Director
Electronic Frontiers Australia Inc
PO Box 382
NORTH ADELAIDE SA 5006

Mr Michael Meredith
Executive Director
Australian Teleservices Association
PO Box 129
ST LEONARDS NSW 2065

Mr Bernard Holt
Managing Director
Commercial Economic Advisory Service of Australia
PO Box 104
ST LEONARDS NSW 2065

Ms Elissa Molloy
Executive Director
Market Research Society of Australia
Level 1, 3 Queen Street
GLEBE NSW 2037