



Our Ref: C2005/1970  
Contact Officer: Tim Scott  
Contact Phone: 02 6243 1221

**Australian  
Competition &  
Consumer  
Commission**

28 April 2006

Mr Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 60 Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

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

Dear Mr Poddar

**Re: Nestlé Australia Ltd Notification (N31488): Pre-decision Conference  
on 11 May 2006**

I refer to the request from Nestlé Australia Ltd (Nestlé Australia) for a pre-decision conference in relation to the draft notice to revoke issued by the Australian Competition & Consumer Commission (ACCC) on 3 April 2006 in respect of the above notification.

The pre-decision conference will commence at 9.00am on Thursday, 11 May 2006 in the Sydney offices of the ACCC. A period of two hours has been allowed for the conference, which may therefore conclude at any time up to 11am. The conference will be conducted by Jennifer McNeill, representing the ACCC.

Under the Act, 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 **co**b Monday, 8 May 2006. 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](mailto: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. 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 Act provides that these advisers are not entitled to participate in conference discussions.



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

A copy of this letter will be placed on the public register, and made available on the ACCC's website at: [www.accc.gov.au](http://www.accc.gov.au). If you wish to discuss any aspect of this matter, please do not hesitate to contact Tim Scott on (02) 6243 1221.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a long horizontal flourish extending to the right.

Scott Gregson  
General Manager  
Adjudication Branch

CC: Ms Jacki Cremer  
Solicitor  
Mallesons Stephen Jaques

**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 notice to revoke. 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 notice to revoke, 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 notice to revoke 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 notice to revoke as soon as possible thereafter.