



Australian
Competition &
Consumer
Commission

Our Ref: C2001/390-04
Contact Officer: Nadia Cooke
Contact Phone: (03) 9290 1478

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

16 June 2006

Mr Don Knapp
Chief Executive
Australian Baseball Federation
PO Box 10468
SOUTHPORT BC QLD 4215

Dear Mr Knapp

**Re: Notification N90853 lodged by the Australian Baseball Federation Inc. (ABF)
- draft notice to revoke**

As you are aware, the Australian Competition and Consumer Commission (ACCC) has been conducting a review of third line forcing notification N90853 lodged by the ABF on 20 March 2001.

For the reasons set out in its draft notice, the ACCC is proposing to revoke notification N90853. A copy of the draft notice is attached.

Once the ACCC issues a draft notice to revoke, the notifying party or any interested party who may be dissatisfied with the ACCC's draft notice may request that the ACCC convene a conference in relation to the draft notice. Such a conference provides the opportunity for interested parties to make oral submissions in relation to the draft notice. Conferences are conducted informally, without the participation of legal or other professional advisers.

If you wish the ACCC to hold a decision conference in relation to the draft notice, you must notify the ACCC in writing by **Friday 30 June 2006**. Please note that the *Trade Practices Act 1974* does not allow the ACCC to extend this deadline.

You are also invited to make a written submission in response to the ACCC's draft notice. Written submissions should be lodged by **Friday 7 July 2006** 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 email to adjudication@accc.gov.au or by facsimile to (02) 6243 1211.

Submissions will be placed on the ACCC's public register and website. 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 conference in relation to the draft notice be called, in deciding whether or not to issue a final notice revoking the ABF's notification.

This letter has been placed on the ACCC's public register and website. If you wish to discuss any aspect of this matter, please contact Nadia Cooke on (03) 9290 1478 or via email at Nadia.Cooke@accc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping loop at the end.

Scott Gregson
General Manager
Adjudication Branch



Australian
Competition &
Consumer
Commission

GUIDELINES FOR CONFIDENTIALITY CLAIMS

for authorisation and notification processes

Public process

The Australian Competition and Consumer Commission is responsible for assessing authorisation and notification applications. Successful applicants are protected from legal action under specific competition provisions of the *Trade Practices Act 1974*. The provision of such legal protection is not taken lightly. The ACCC's assessment of authorisation and notification applications is therefore conducted openly and transparently with extensive consultation.

Under the Trade Practices Act the ACCC must maintain public registers of information provided in authorisation and notification processes. The ACCC may place information from its public registers on the ACCC website.

Can information be excluded from the public registers?

The Trade Practices Act allows for applicants and interested parties providing information in relation to an authorisation or notification application to ask that the information, or parts of it, be excluded from the relevant public register.

Under the Trade Practices Act, when a claim for confidentiality is made, the ACCC must exclude information from the public registers if the information contains the details of:

- a secret formula or process
- the cash consideration offered for the acquisition of shares or assets
- the current manufacturing, producing or marketing costs of goods or services.

The ACCC also has the discretion, under the Trade Practices Act, to exclude material from the public registers if it is satisfied that it is desirable to do so, either because of the confidential nature of the material or for other reasons, such as the ACCC deciding there may be certain sensitivities.

How to claim confidentiality

The Trade Practices Regulations outline what parties need to do if they want information provided to be treated confidentially.

The regulations state that if a request for confidentiality is made for a whole document or parts of a document, the words 'Restriction of Publication Claimed' should appear in red writing near the top of each page. If a request is made for confidentiality for part of the document the regulations state that the words 'Restriction of Publication of Part claimed' should appear in red near the top of the first page and the part of the document for which confidentiality is claimed should also be clearly marked in red. If the confidentiality claim is for a document longer than five pages, a description of the whereabouts of the parts for which confidentiality is claimed should be provided.

The ACCC asks that you provide a confidential copy of the document, and a non-confidential version with confidential material omitted.

You should remove headers claiming 'confidential communication' from documents (for example, emails and facsimiles) unless they contain information that you want excluded from the public register. If confidentiality is not requested and the header cannot be removed, parties should clearly state at the beginning of correspondence provided to the ACCC that confidentiality is not requested.

Applicants and interested parties requesting confidentiality must do so when they submit the information to the ACCC. Reasons must be provided in support of the request for confidentiality.

How does the ACCC assess confidentiality claims?

Information for which confidentiality is claimed will be excluded from the public register while the ACCC assesses the request.

The ACCC will try to respond to confidentiality claims within three to five business days. The ACCC is generally able to respond much faster if confidentiality claims are limited to information that is genuinely confidential, if confidential information is clearly marked and if claims are accompanied by a detailed explanation of why confidentiality is being sought.

When the ACCC grants a request for confidentiality the information will be excluded from the relevant public register. Although information for which confidentiality is granted will not be placed on the public register, it may still be used by the ACCC under its powers under the Trade Practices Act. Information withheld from the public register may still be accessed through other legal processes such as under the *Freedom of Information Act 1982*.

If the ACCC denies a confidentiality request because the claim is not accompanied by sufficient justification or because it considers that the information is not confidential in nature, the ACCC will inform the party making the claim of its decision. If the ACCC denies a confidentiality request, the information for which confidentiality was claimed will be considered as withdrawn from the ACCC's consideration—unless the party advises the ACCC that it wishes to withdraw or amend the confidentiality claim. As a general rule, the ACCC will allow the party one to two business days to respond.

If a party chooses to withdraw the information subject to a confidentiality claim, the ACCC will not use the information in its decision-making processes.

Applicants should be aware that the ACCC will not accept confidentiality claims from applicants for information that is necessary to identify the conduct or arrangements for which protection is sought.

Checklist for confidentiality claims

- ☐ Have you identified the specific sections of the document to which the claim relates?
- ☐ Have you outlined reasons for requesting confidentiality?
- ☐ Have you provided a copy of the whole document with the confidential sections identified?
- ☐ Have you provided a non-confidential version of the document with the confidential information omitted?
- ☐ Are you aware that the confidentiality claim must be submitted at the time the information is provided to the ACCC?