



Australian  
Competition &  
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Our reference: C2006/1395

17 August 2006

«Address\_»

Dear «Salutation\_»

**Review of authorisation A90351 granted to the Retail Liquor Store Owners' Association (RLSOA)**

I refer to the above authorisation granted to the Retail Liquor Store Owners' Association (RLSOA) by the Trade Practices Commission (the TPC) in 1982. As you may be aware, the TPC is now known as the Australian Competition and Consumer Commission (the ACCC).

In particular, the ACCC is considering whether it should revoke authorisation A90351. The RLSOA was granted authorisation to prepare and distribute an *Easiprice schedule* which was designed to assist members to calculate a retail price for bottled wines and spirits.

**What is an authorisation?**

By way of background, the ACCC is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business. This results in greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an 'authorisation'. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.



### **Revoking an authorisation**

Under section 91B of the Act the ACCC may consider whether it should revoke an authorisation at any time after it has been granted if it considers that, amongst other things, there has been a material change of circumstances since the authorisation was granted.

Specifically, to initiate the consideration of the revocation of an authorisation the ACCC is required to inform interested parties by Notice in writing that it is considering revoking the authorisation, indicate the basis on which the consideration to revoke is being proposed and invite submissions on the matter from those interested parties.

After considering any submissions received from interested parties and after making an assessment as to whether the authorisation remains in the public interest, the ACCC may make a determination in writing revoking the authorisation or deciding not to revoke the authorisation.

### **Review of authorisation A90351**

The ACCC considers that a material change of circumstances appears to have occurred since granting authorisation A90351 to the RLSEA. Accordingly, the ACCC proposes to initiate a review of this authorisation and a Notice to this effect is enclosed for your information.

The reasons why the ACCC considers there has been a material change of circumstances are detailed in the Notice.

Please note that the issue of this Notice is only the first step in the review process, as required by the Act to initiate consultation with interested parties. The ACCC has not formed a view as to whether it will decide to revoke, or decide not to revoke, the authorisation.

### **Your views are sought**

The ACCC invites you to make a written submission regarding the proposed revocation of authorisation A90351. If you wish to make a submission, please address it to:

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

Alternatively, submissions may be lodged by fax on (02) 6243 1211 or via e-mail at [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

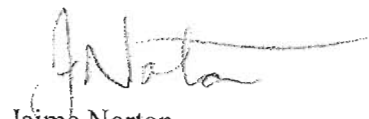
The ACCC requests that you lodge any submission you wish to make by **close of business, 1 September 2006**.

As the authorisation process is a public and transparent one, submissions will be placed on the ACCC's Public Register. Persons lodging a submission with the ACCC may request that confidential information included in the submission be excluded from the public register. If excluded from the public register the ACCC may take that information into account, even though it is not publicly available. Guidelines for making such a request are attached.

A copy of this letter, and the enclosed Notice, will be placed on the ACCC's Public Register.

If you have any questions about this matter please contact me on (03) 9290 1477 or at [jaime.norton@acc.gov.au](mailto:jaime.norton@acc.gov.au).

Yours sincerely



Jaime Norton  
A/g Director  
Adjudication Branch



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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?

**RETAIL LIQUOR STORE OWNERS' ASSOCIATION AUTHORISATION – A90351**

The notice issued by the Australian Competition and Consumer Commission pursuant to section 91B(3) of the Trade Practices Act 1974 was sent to the following interested parties:

<b>No.</b>	<b>Company</b>
1.	Australian Liquor Stores Association
2.	Australian Retailers Association
3.	Master Grocers Australia
4.	Liquor Stores Association of Victoria
5.	Queensland Retail Traders and Shopkeepers Association
6.	Liquor Stores Association NT
7.	Liquor Stores Association SA
8.	Liquor Stores Association WA
9.	National Association of Retail Grocers of Australia
10.	Independent Liquor Stores Association