



Trade Practices Act 1974

Notice pursuant to section 91B(3)

in relation to authorisation A6058 granted to
the South Australian Mixed Business Association (SAMBA)

1 Introduction

- 1.1 The Australian Competition and Consumer Commission (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 a greater choice for consumers with regard to price, quality and service.
- 1.2 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'.
- 1.3 Broadly, the ACCC may 'authorise' parties to engage in anti-competitive conduct where it is satisfied that the public benefit flowing from the conduct outweighs any public detriment from any lessening of competition.

Revocation of authorisation

- 1.4 Section 91B(3) of the Act provides that the ACCC may initiate consideration of the revocation of an authorisation if it appears to the ACCC that:
 - the authorisation was granted on the basis of evidence or information that was false or misleading
 - a condition of the authorisation has not been complied with or
 - there has been a material change of circumstances since authorisation was granted.
- 1.5 To initiate consideration of the revocation of an authorisation the ACCC is required to write to interested parties advising them of its intention to consider the revocation of the authorisation, the basis on which revocation is being proposed and invite submissions in respect of the revocation.
- 1.6 This document is a **notice pursuant to section 91B(3)** of the Act, informing interested parties that it appears to the ACCC that there have been material changes of

circumstances in relation to authorisation A6058 since authorisation was granted. Accordingly, the ACCC is considering whether or not to revoke authorisation A6058.

- 1.7 After considering any submissions received from interested parties in relation to the proposed revocation, the ACCC is required to issue a written determination either revoking or not revoking the authorisation.

2 Authorisation A6058

- 2.1 The ACCC's predecessor, the Trade Practices Commission (the TPC), granted authorisation A6058 to the South Australian Mixed Business Association (SAMBA) on 9 April 1979.
- 2.2 The SAMBA was granted authorisation by the TPC to publish and circulate a Price Guide for members. A copy of the TPC's determination is available for download from the ACCC's website at: www.accc.gov.au.
- 2.3 Since 1979, the SAMBA has been succeeded by the State Retailers Association of South Australia (the Association). The Association has informed the ACCC that it still engages in conduct in reliance of the authorisation granted to SAMBA. The Association has provided the ACCC with its most recent Price Guide.
- 2.4 The ACCC has conducted a preliminary review of the SAMBA's authorisation and arrangements. The ACCC is of the view that since authorisation A6058 was issued changes have occurred such that the circumstances of the authorisation are likely to be materially changed from the circumstances in which the authorisation was granted.

3 Material changes of circumstance identified by the ACCC

- 3.1 On the basis of its preliminary review, the ACCC is of the view that a number of material changes have occurred since authorisation was granted to the SAMBA in 1979. These material changes are outlined below.

Increased access to information as a result of advances in technology

- 3.2 At the time of granting the authorisation in 1979 the TPC acknowledged that storekeepers and managers were likely to experience some difficulty in accessing price information (other than manufacturer recommended retail prices) to assist them in determining their own retail prices for stock. The TPC considered the price lists provided some assistance to the efficiency of very small businesses by providing a general guide to prices and pricing policy to, often inexperienced, small business operators who do not have substantial time or resources.
- 3.3 The ACCC considers that advances in information and technology are likely to have significantly increased the availability of data and information from which storekeepers and managers can obtain information to facilitate their pricing decisions. Therefore, the need for Association members to devote extensive resources to obtain pricing information, as was considered to have been the case in 1979, is likely to have been reduced as a result of technological developments.

- 3.4 The ACCC considers that increased access to information as a result of advances in technology is likely to constitute a material change of circumstances.

Changes to the composition of small business and membership of the Association

- 3.5 At the time of granting the authorisation the TPC noted that SAMBA's membership (of approximately 1270 registered members) and the retail grocery/convenience store sector generally consisted of family operated businesses with sometimes casual workers during busy periods.
- 3.6 The Association has not provided up to date membership information. However, it has advised that while in the past it did limit its membership to retailers that had less than 20 employees, it has since changed this policy and it now no longer enquires about the staffing levels of members. The Association has further noted that its membership now includes 100% of the Foodland/IGA network.
- 3.7 On balance, the ACCC believes the nature of the businesses represented by the Association is likely to have changed since authorisation was granted by the TPC in 1979. The ACCC is of the view that this is likely to constitute a material change of circumstances.

Changes to the regulatory environment

Changes to retail trading hours

- 3.8 A key aspect of the TPC's analysis was that recommended prices were likely to assist the viability and efficiency of SAMBA's small business members so that they could provide retail services in 'pockets' of the market and after normal trading hours.
- 3.9 The ACCC notes that since the grant of authorisation there have been a number of regulatory changes to laws governing retail trading hours in South Australia.
- 3.10 For example the *Shop Trading Hours Act 1977 (SA)* which governs retail trading hours for retail shops in South Australia for designated 'shopping districts' has undergone a number of changes since authorisation was granted to SAMBA. As a result of amendments to this legislation, the trading hours for large retail grocery have increased incrementally since authorisation was granted.
- 3.11 The ACCC considers the changes to retail trading hours to constitute a material change of circumstances.

Changes to the Trade Practices Act (the Act)

- 3.12 The ACCC notes the 1995 amendments to the Act, which extended the operation of the competition provisions to individuals and non-incorporated entities. These

changes are likely to have had a significant impact upon businesses traditionally operating in the local retail/grocery convenience sector.

- 3.13 At the time of authorisation the SAMBA submitted that over 99% of its membership consisted of single traders and partnerships. As such, the vast majority were not corporate bodies and were potentially not subject to the competition provisions of the Act.
- 3.14 The ACCC considers the changes to the Act since the grant of authorisation to be a material change of circumstances.

4.0 Notice

- 4.1 It appears to the ACCC that the matters outlined above constitute a material change in circumstance since authorisation A6058 was granted. Accordingly, pursuant to section 91B of the Act, the ACCC is considering the revocation of authorisation A6058.
- 4.2 Interested parties are invited to make submissions on these matters. Any submission should be lodged by **close of business 29 September 2006**.
- 4.3 Submissions should be in writing and addressed to:

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

Submissions may also be lodged by e-mail to adjudication@acc.gov.au or by facsimile to (02) 6243 1211.

Interested parties may choose to address any or all of the following issues:

- changes to the authorised conduct
- changes to public benefit and detriment flowing from the authorisation since it was granted and
- any other issues that may be relevant to the ACCC's consideration of this matter.

Submissions will be placed on the ACCC's Public Register.