

Our Ref: A30244 & A30245
Contact Officer: Margaret Abou-Rizk
Contact Phone: (03) 9290 1484

[Date]

[Name]
[Position Title]
[Company]
[Address]

Dear [Salutation]

**The Municipal Association of Victoria application for authorisation
[A30244 & A30245] - Interested Party Consultation**

Introduction

The Australian Competition and Consumer Commission (the ACCC) is currently conducting an interested party consultation process in relation to an application for authorisation made by the Municipal Association of Victoria (MAV) on behalf of certain Melbourne Councils. As a possible interested party you are invited to comment on the issues outlined in this letter.

MAV has sought authorisation on behalf of its member Councils that do not currently have an exclusive installation and maintenance contract for bus shelters, to participate in a tender process conducted by the Director of Public Transport (Director). The tender is for the provision of bus shelter installation and maintenance services on the Melbourne Metropolitan Bus Network. It is proposed that those Councils wanting to participate in this tender process would agree to do so by execution of a Memorandum of Understanding (MoU) with the Director. Under the proposed arrangement, the Director will be solely responsible for conducting the tender process and will issue an exclusive advertising licence in relation to the bus shelters to the successful tenderer.

MAV also seeks interim authorisation for the proposed conduct. The ACCC seeks your comments on the request for interim authorisation by **Wednesday 18 October 2006**. Comments can be provided by email or fax to the contacts shown at the end of this letter. The request for interim authorisation is discussed further on page 3 of this letter.

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 arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a 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 businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. 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.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following an initial consultation process, the ACCC will issue a draft decision for comment. Further information regarding the authorisation process is available from the ACCC website (www.accc.gov.au).

Application for authorisation by the Municipal Association of Victoria

On 29 September 2006, the ACCC received an application for authorisation from MAV, on behalf of its member Councils that do not have an exclusive installation and maintenance contract for bus shelters, to allow those Councils to voluntarily enter into a MoU with the Director of Public Transport transferring their powers relating to bus shelter procurement and maintenance to the Director. The effect of the MoU would mean that Councils would not be allowed to:

- (i) procure or install bus shelters in their municipality; or
- (ii) issue any tender for the supply, installation or maintenance of bus shelters within their municipality; or
- (iii) permit advertising on bus shelters in their municipality;

by any person other than the successful tenderer for the contract for the supply, installation and maintenance of metropolitan bus shelters.

The successful tenderer would be offered an exclusive licence to place advertising on any bus shelters that it has installed or is maintaining under the awarded contract on which advertising is permitted for a licence fee of a fixed amount payable to the Director.

MAV advises that the tender is unlikely to be let before March 2007. The proposed term of the contract is 10 years, extendable to 16 years. As such, MAV seeks authorisation for 10 years with an option period of a further 6 years.

For details on the public benefits and detriments that MAV claims are likely to result from the proposed arrangements, please see the attached submission.

A full copy of the application for authorisation is also available on the ACCC website www.accc.gov.au (by following the Public Registers & Authorisations links).

Request for submissions

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register. If the information is excluded, the ACCC may take it into account, even though it is not publicly available. Guidelines for seeking exclusion from the public register are attached.

If you wish to lodge a submission, please address your submission to:

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

Submissions can also be lodged by email to adjudication@acc.gov.au or by facsimile on 02 6243 1211.

If you intend to provide a submission in relation to the MAV's application for authorisation, please do so by **3 November 2006**.

Call for submissions on request for interim authorisation

As previously mentioned, MAV has sought interim authorisation so that Councils can enter into discussions between themselves and through MAV, concerning the terms of the MoU with the Director and their decision to sign the MoU.

Interim authorisation would allow this arrangement to operate as if it had full authorisation while the substantive application is being considered by the ACCC.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefit and anti-competitive detriment likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors including harm to the applicant and other parties if interim is or is not granted, possible benefit and anti-competitive detriment to the public, the urgency of the matter and whether the market would be able to return to substantially to its pre-interim state if the ACCC should later deny authorisation.

The MAV considers that an interim authorisation to begin negotiating the MoU is necessary and urgent to ensure that a deadline for the commencement of the contract in March 2007 is met.

Further details of the MAV's request for interim authorisation are in Section 14 of its supporting submission.

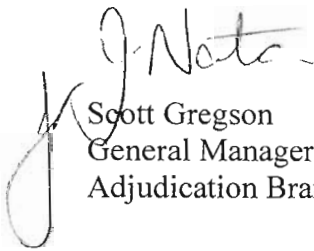
The ACCC would also appreciate your views in relation to the request for interim authorisation. To facilitate this, you may wish to provide your views in writing to adjudication@acc.gov.au; by faxing your comments to the Adjudication General Manager on (02) 6243 1211; or by calling the officers responsible for this matter, Ms Jaime Norton or Ms Margaret Abou-Rizk (contact details provided below), by **18 October 2006**.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of these applications at the draft and final determination stages. You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding this application.

In providing a submission or if you wish to be informed of progress in this matter, could you please provide an email address so that future communications can be conducted electronically.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Ms Jaime Norton on (03) 9290 1477 or at jaimenorton@acc.gov.au or Ms Margaret Abou-Rizk (03) 9290 1484 or at margaret.abou-rizk@acc.gov.au.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch

**The Municipal Association of Victoria-Application for Authorisation
[A30244-A30245]**

Interested Parties

- Adshel Street Furniture
- APN News & Media Limited
- Eye Group
- J.C Decaux Australia
- Octopus Media
- Network Outdoor
- Independent Outdoor Melbourne
- Jamco Sign Services
- Media Puzzle
- Australian Association of National Advertisers
- Advertising Federation of Australia
- Media Federation of Australia
- Outdoor Media Association
- Public Transport Users Association
- Bus Association Victoria
- Boroondara City Council
- Cardinia Shire Council
- Casey City Council
- Glen Eira City Council
- Hobsons Bay City Council
- Hume City Council
- Maribyrnong City Council
- Maroondah City Council
- Mornington Peninsula Shire Council
- Whitehorse City Council
- Whittlesea City Council
- Wyndham City Council
- Yarra City Council
- Clemenger BBDO
- George Patterson Y&R
- Publicis Mojo
- McCann Erickson
- Singleton, Oglivy & Mather
- M&C Saatchi
- TMP Worldwide
- DDB Australia & New Zealand
- Adcorp
- Monash City Council
- Port Philip City Council
- Banyule City Council
- Moreland City Council
- Manningham City Council
- Moonee Valley City Council
- Greater Dandenong City Council
- Public Transport Division