



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: A30244-A30245  
Contact Officer: Margaret Abou-Rizk  
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24 October 2006

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*By facsimile: 02 9283 4144*

Dear Mr Holm

**The Municipal Association of Victoria (MAV)-Applications for Authorisation  
[A30244-A30245] – request for interim authorisation**

I refer to the above applications for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 29 September 2006, to the ACCC's letter of 6 October 2006 and to your letter in response of 17 October 2006 (received on 20 October 2006).

**Background**

Municipal Association Victoria (MAV) has lodged applications under s88(1) of the *Trade Practices Act 1974* (the Act) for authorisation:

- (i) to make and give effect to an arrangement which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of s45 of the Act; and
- (ii) to make and give effect to a contract, arrangement or understanding, a provision of which may be an exclusionary provision.



## **Interim authorisation**

MAV lodged a request for interim authorisation to allow participating councils to enter into a Memorandum of Understanding (MoU) with the Department of Infrastructure (DoI) in relation to the procurement of bus shelters and related services.

In particular, under the proposed MoU, councils would agree not to:

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

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

Should interim authorisation be granted by the ACCC it would provide immunity for councils to enter into the MoU while the merits of the substantive application are being considered. On 19 October 2006, you advised that granting interim authorisation to councils to enter into the MoU would allow the DoI to put out a request for tender in early November 2006.

However, in your letter of 17 October 2006 you advise that:

*The tender process will proceed regardless of the decisions made by the Commission, but the terms of the tender will change depending on whether interim authorisation is granted.*

1. Can you please advise on what basis MAV proposes to proceed with the tender process if interim authorisation allowing the MoU is not granted by the ACCC.

On 6 October 2006, the ACCC wrote seeking confirmation that the awarding of the tender was subject to receiving final authorisation from the ACCC.

In your response of 17 October 2006, you state that:

*The tender will also be subject to the condition that exclusivity may be revoked if the authorisation is not ultimately granted.*

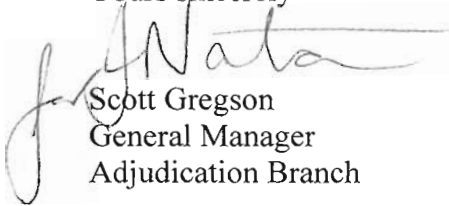
2. Can you please clarify whether the reference to exclusivity relates to the exclusive advertising rights or the exclusive right to supply bus shelters or both.
3. Please explain the extent to which the DoI proposes to complete the tender process prior to the ACCC issuing a final authorisation decision in relation to the substantive application for authorisation. For example, will the Director make an internal decision regarding the successful tenderer, will the Director offer a contract to the successful tenderer or will the parties sign the contract.

## Conclusion

The ACCC seeks responses to the issues raised in this letter as a matter of urgency to allow a fully informed decision to be made in relation to interim authorisation. Could you please provide a response to this letter by **cob Thursday, 26 October 2006**.

This letter has been placed on the ACCC's public register. Should you have any queries in relation to this matter, please do not hesitate to contact Ms Margaret Abou-Rizk on 03 9290 1484 or [margaret.abou-rizk@acc.gov.au](mailto:margaret.abou-rizk@acc.gov.au) or Ms Jaime Norton on 03 9290 1477 or [jaime.norton@acc.gov.au](mailto:jaime.norton@acc.gov.au).

Yours sincerely



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Adjudication Branch