

Our ref: PRH 04045926/003 SYK
Your ref: A30244 - A30245



27 October 2006

Ms Margaret Abou-Rizk
Adjudication Branch
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
MELBOURNE VIC 3000

201 Elizabeth Street
Sydney NSW 2000
Australia
DX 107 Sydney
Tel +61 2 9286 8000
Fax +61 2 9283 4144
www.phillipsfox.com

Adelaide
Brisbane
Canberra
Melbourne
Perth
Sydney
Auckland
Wellington
Hanoi
Ho Chi Minh City

By email: Margaret.Abou-Rizk@accc.gov.au

Dear Ms Abou-Rizk

The Municipal Association of Victoria - Application for Authorisation

We refer to your letter dated 24 October 2006 and your request for clarification of certain issues. Our response follows below. For ease of reference we set out your questions and our response.

Please note that all capitalised terms not defined in this letter take the meaning they have in the submissions.

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.*

1.1 We confirm that the Director (DoI), and **not** the Municipal Association of Victoria (MAV), is the person who intends to issue a request for tender (RFT) for the supply, installation and maintenance of bus shelters in metropolitan Melbourne, with or without an interim authorisation to MAV. MAV is coordinating the entry by Councils into the proposed MoU.

1.2 The scope and details of advertising exclusivity offered under the Director's tender will depend on whether interim authorisation is granted. The Director's tender process is however separate to the Memorandum of Understanding (MoU), that the Director would seek to make with Councils if an authorisation (final and interim) is received from the ACCC. A tender process by the Director will proceed regardless, as the PTC Agreement expires in July 2007 and new arrangements need to be in place to meet the Director's ongoing requirements in relation to its existing bus shelters.

1.3 If interim authorisation is not granted, Councils will not be invited to enter into a MoU as proposed. In those circumstances the Director's tender would be limited to the 1600 or so bus shelters that are owned by the State of Victoria (see paragraph 3.13.1 of the application), and any other

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new bus shelters that the Director seeks to install. The scope of advertising exclusivity would be for the 755 or so specific advertising shelters. There would not be any particular council municipalities. There would be no certainty as to the future opportunities of additional advertising bus shelters that a successful tenderer may be able to establish.

- 1.4 If interim authorisation is not granted MAV and the Councils would not have any involvement in the Director's tender and would not enter a MOU. Councils would not be bound to use any Contractor selected by the Director in relation to shelters they own or install. Councils would be in a position where they could issue tenders for the supply and installation of bus shelters and grant advertising rights on bus shelters (other than those owned by the State) within their municipality.
- 1.5 Councils would have the continued option of seeking the Director's assistance in arranging installation and maintenance of bus shelters in their municipal areas. The Director would use the Contractor to install and maintain such shelters in response to the requested assistance from a Council and the shelters may be advertising or non advertising, or not provided at all. The outcome will, among other things, be influenced by the possible separate council shelter contracts that may constrain supply and/or exclusivity.
- 1.6 The Director may offer exclusivity in relation to the shelters the State owns. However this would not have the value that might otherwise be ascribed to the exclusivity, as a Council could install bus shelters (probably at a higher cost per shelter) and separately licence the advertising space thereby created.
- 1.7 In brief, if the interim authorisation is not granted, MAV and/or the relevant Councils would not be engaging in any conduct that is the subject of the application for authorisation, and the identified public benefits of this conduct would not accrue.

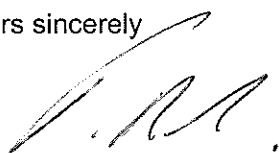
2 *Can you please clarify whether the reference to exclusivity relates to the exclusive advertising rights or the exclusive right to supply bus shelters or both.*

- 2.1 In relation to your request for clarification whether the reference to exclusivity relates to either exclusive advertising rights or the exclusive right to supply, install and maintain shelters or both, we are instructed that any reference to exclusivity in the Director's RFT will be a reference to exclusive advertising rights only. The RFT for the supply, installation and maintenance of bus shelters is now likely to be on a non-exclusive basis.
- 2.2 However, the Councils who sign the MoU will grant both exclusive advertising and installation rights to the Director for bus shelters within their municipalities.

- 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.*
- 3.1 Subject to any delay, the Director proposes to issue a request for tender in the first two weeks of November 2006. If delayed, the request for tender will be issued in early December 2006. The closing date for tenders is planned to be sometime in January 2007. The Director will then evaluate tender responses and select a Contractor in about March 2007. The proposed commencement date for any Contract awarded as a result of tender is July 2007. The Director considers this timeline to be appropriate and reasonable for this particular tender.
- 3.2 Until July 2007 there is a contract (the PTC Agreement) with Adshel for the manufacture, supply, installation and maintenance of bus shelters in metropolitan Melbourne (see 2.2 of the submission). The PTC Agreement cannot be extended beyond July 2007.
- 3.3 The Director seeks to support growth in bus shelter numbers and to compliment the State's improvements to bus services.
- 3.4 Prior to the Commission's decision whether to grant a final authorisation, the Director may make a decision concerning the selection of a Contractor and may enter into discussions with the selected Contractor concerning a contract. However, we confirm that it will be a condition of the RFT that no binding contracts granting exclusive advertising rights in particular municipalities to a Contractor will be entered into unless and until authorisation is granted.
- 3.5 Without interim authorisation, the request for tender will not include reference to exclusivity of advertising in particular municipalities and therefore the public benefits described in paragraphs 10 and 11 of the submission will not be realised.

Please let us know if you require any further information.

Yours sincerely



Paul Holm

Partner

Direct +61 2 9286 8035

Email paul.holm@phillipsfox.com