



**Australian
Competition &
Consumer
Commission**

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Level 35 The Tower
360 Elizabeth Street
Melbourne VIC 3000
ph (03) 9290 1800
fax (03) 9663 3699
www.accc.gov.au

Our Ref: C2006/1814
Contact Officer: Louise Hird
Contact Phone: 03 9290 1484

21 December 2006

[address]

Dear

**Re: Municipal Association of Victoria – Applications for Authorisation –
A320244 –A30245 - draft determination**

The Australian Competition and Consumer Commission (ACCC) has issued a draft determination in respect of the application for authorisation lodged by Municipal Association of Victoria (MAV) on 21 December 2006.

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.

On 1 November 2006, the ACCC granted interim authorisation allowing Councils to give effect to the proposed MoU and participate in the tender process, but not extending to the awarding of the final tender. Interim authorisation will continue to protect the proposed arrangements from action under the *Trade Practices Act 1974 (TPA)* until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Summary of ACCC considerations

The ACCC considers that the proposed arrangements generate a small level of public detriment. The proposed arrangements prevent participating Councils from procuring or installing bus shelters, organising maintenance of bus shelters or permitting advertising on



bus shelters in their municipality by any person other than the successful tenderer (the Contractor). However, given the proportion of the market for the supply and maintenance of street furniture potentially affected by the proposed arrangements, the exclusive right to service this section of the market for the duration of the contract is unlikely to increase concentration or otherwise restrict competition for the supply of these services more generally.

While the proposed arrangements will prevent participating Councils from acquiring bus shelters or having them maintained other than by the successful tenderer, the Contractor will still be subject to competitive constraints both in the initial tender process and for the life of the contract. Specifically, decisions of Councils not party to the arrangements initially to join the arrangements through the life of the contract will be significantly influenced by the level of service provided to those Councils who enter into the arrangements initially. Similarly, given the public nature of the services the subject of the arrangements, the decision of other potential customers to engage the successful tenderer will also be significantly influenced by the level of service provided to existing customers.

In respect of the right to exclusively supplying advertising space on bus shelters, the proportion of available advertising time and space affected by the arrangements is not substantial and the Contractor will be constrained by competition in the market more generally.

Public benefit

The ACCC considers that the proposed arrangements are likely to result in some benefit to the public. The proposed collective tender, by allowing arrangements in respect of the supply and maintenance of bus shelters to a number of Councils to be negotiated and provided through a single process may enable the successful tenderer to provide these services at a lower cost than would otherwise be the case. Any such savings are likely to be reflected in the terms of Bus Shelter Agreement entered into. Similarly, the proposed arrangements are also likely to result in transaction cost savings for Councils in negotiating with prospective street furniture suppliers. These cost savings are likely to be reflected in lower rates and/or improved quality of services for ratepayers.

ACCC Draft Decision

Therefore, after considering all the information before it, the ACCC is of the view that the public benefits flowing from the proposed arrangements are likely to outweigh the anti-competitive detriments and the ACCC proposes to grant authorisation.

A copy of the draft determination providing full details of the ACCC's reasons for its draft decision can be found at www.accc.gov.au.

Next steps

Once the ACCC issues a draft determination, the Applicants or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the *Trade Practices Act 1974*, the ACCC must set a date within 14 days of which any pre-decision conference must be requested. Accordingly, if you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **cob 19 January 2007**. Conferences are conducted informally, without the participation of legal or other professional advisers.

Alternatively, you are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by **cob 19 January 2006** at the following address:

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

Submissions can also be lodged by e-mail to adjudication@accc.gov.au or by facsimile on 02 6243 1211.

Any submission you make will be placed on the ACCC's Public Register. You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the ACCC when reaching its decision. Guidelines for seeking confidentiality are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to these applications.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter or would like to receive a copy of the draft determination, please do not hesitate to contact Louise Hird on (03) 9290 1484 or alternatively louise.hird@accc.gov.au.

Yours sincerely



for Gavin Jones
Director
Adjudication Branch



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A copy of the ACCC's draft determination is attached. For the reasons set out in its draft determination, the ACCC proposes to grant the authorisation 10 years.

Interim authorisation

On 1 November 2006, the ACCC granted interim authorisation allowing Councils to give effect to the proposed MoU and participate in the tender process, but not extending to the awarding of the final tender. Interim authorisation will continue to protect the proposed arrangements from action under the *Trade Practices Act 1974 (TPA)* until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

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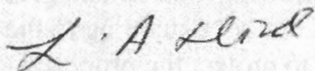
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A copy of the draft determination is attached to this letter.

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Yours sincerely



 Gavin Jones
Director
Adjudication Branch

Interested Parties
Adshel Street Furniture
APN News & Media Limited
J.C Decaux Australia
Independent Outdoor Melbourne
Australian Association of National Advertisers
Advertising Federation of Australia
Media Federation of Australia
Outdoor Media 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
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