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17 January 2007

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

By email: adjudication@accc.gov.au

Dear Mr Gregson

Submission in relation to draft determination pursuant to the applications for authorisation lodged by the Municipal Association of Victoria

- 1 We refer to the draft determination issued by the Commission on 21 December 2006 and the initial decision of the Commission to limit the authorisation period to 10 years, rather than the 16 years sought by the MAV.
- 2 We have been instructed by MAV to submit that the authorisation period should be 16 years from the date that the Bus Shelter Agreement is likely to take effect, based on advice received from the Department of Infrastructure. While we understand the rationale behind the Commission's general policy of setting a time limit on the length of authorisations, it is our submission that sufficient reasons exist in the application for the authorisation period to be the 16 years as sought in the application.
- 3 The basis for this submission is that:
 - 3.1 The 10 year period presently proposed by the ACCC as the length of the authorisation only covers the initial contract period. This means that tenderers would ascribe little or no commercial value to the option to extend the contract, as the

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exercise of the option would be contingent upon a decision of the Commission, which is not a party to the contract. As our clients' experience is that prospective tenderers seek the potential for longer term contracts for the construction of such infrastructure, the shorter period devalues the total worth of the contract to the Contractor and therefore may reduce the value proposition of any contract offer made to the State and Councils. We submit that this would lessen the public benefit of the arrangements.

- 3.2 We submit that the existence of an option to extend the contract also provides a public benefit, in that it maintains a consistent incentive for the performance of the contractual obligations to the end of the initial ten year contractual period. This benefit would be negated if the extension was itself dependant upon re-authorisation of the conduct concerned.
- 3.3 Furthermore, the option would make it possible for the Director to align the timing for the re-tendering of this contract with other shelter contracts. If the option is not available, it is likely that the bus shelter re-tender at the end of the proposed 10 year period would only be for that option period. This requires the Director to expend additional funds for another tender process as well as the payment of costs for another authorisation application for that interim period, so that the proportion of costs borne by taxpayers for the re-tender process for the bus shelter to the return over that 6 year period would be much greater and the value for money proposition for the State would be much less. In particular, a shortened period may also affect the price at which Contractors would offer services based on the perceived rate of return over the period and the recoupment of their investment.
- 3.4 We also agree with the Commission's comments in 6.66 of the draft determination concerning the need for the contract to cover maintenance for the life of the shelters. While the life of the shelters has been estimated to be approximately 10 to 15 years, expert consultants for the Department have recently estimated that such assets may have a useful life of up to 20 to 25 years. It is our submission that the authorisation period should, at a minimum, match the maximum contract period in the tender, given the range of estimates.
- 3.5 While it is accepted that some expenditure on legal compliance is necessary, we submit that imposition of additional compliance costs, such as an effective obligation to seek re-authorisation of this conduct, should be subjected to a cost-benefit analysis. In our view, the benefit of the Commission being able to reassess its determination in the light of the market environment 10 years hence does not justify the time and expense involved in resubmitting the conduct for further authorisation as a pre-condition to the Director exercising its option to extend the existing contract for the further 6 years.

- 4 We therefore submit that the Commission's proposed determination on the length of the authorisation would result in an inappropriate regulatory outcome, due to its



lessening of the acknowledged public benefit of the arrangements and the unjustifiable additional costs it would impose.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Holm'.

Paul Holm

Partner

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