

Kott Gunning
LAWYERS



17 July 2008

Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Our Ref: MWF:lm:PEP-CS:71071

MWF:695034_1

Your Ref: Job Futures Ltd

Partner: Mark Farharly

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Attention: David Hatfield, Director
Adjudication Branch

By Email: adjudication@accg.gov.au

Dear Sirs

**JOB FUTURES LTD – APPLICATIONS FOR AUTHORISATION (A91084-A91085)
SUBMISSIONS IN RESPONSE TO DRAFT FINAL DETERMINATION**

We refer to the draft determination sent to us on 26 June 2008. As you are aware, we act on behalf of PEP Community Services Inc (“PEP”) and Community First Inc (“CFI”) - which is in the process of conversion to Community First International Ltd).

By the draft determination, it is proposed to grant authorisation to Job Futures to collectively tender on behalf of its members for government employment services contracts, however, the ACCC proposes not to grant authorisation to Job Futures for its current “non-compete” arrangements.

In our submission:

The grant of authorisation to Job Futures to collectively tender on behalf of its members for government employment services contracts is reasonable in light of potential public benefits versus public detriment specified in the draft final determination.

The refusal to grant authorisation to Job Futures for its current “non-compete” arrangements is also reasonable and appropriate for the reasons specified in the draft determination. As is stated at paragraphs 2.50 and 4.6 of the draft determination, our clients are seeking declarations that clause 22.3 of the subcontract agreement (described at paragraph 2.31 of the draft determination) is a restraint of trade and unlawful at common law and pursuant to the *Trade Practices Act*. It is believed that the non-compete arrangements are unnecessarily restrictive and anticompetitive.

The length of time of the authorisation should only be for such period necessary to enable the preparation for the tender (due to be lodged in or about October 2008) through to the end of the contract period. As the contracts proposed to be tendered for

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by Job Futures and its members would operate (assuming success) for the 3 year period from 1 July 2009 until 30 June 2012, any further tenders beyond that period or any extension of the contract period should, we respectfully submit, be the subject of separate authorisation applications at which time the appropriateness of any further authorisation may be reconsidered. Accordingly, we submit that 5 years is too long, not reflective of the anticipated contractual period and the period of the authorisation should expire no later than 30 June 2012.

To avoid any uncertainty in relation to the authorisation, it is suggested that it be made clear in the final determination that no authorisation is given by which Job Futures would be allowed to terminate a subcontract with a member in relation to an existing Employment Contract where that member has proposed or intends to tender directly on its own behalf for a future Employment Contract. This is consistent with the interim authorisation decision at paragraph 7.14 of the draft final determination.

By way of further information, the legal proceedings referred to at paragraph 2.50 of the draft determination between our clients and Job Futures have recently been transferred to the Federal Court of Australia due to the proceedings involving issues arising under the *Trade Practices Act* which are classed as "special federal matters". The proceedings are currently not listed for hearing, and trial dates for hearing in the Supreme Court of Western Australia were vacated at the time of transfer.

If you require clarification of any matters, please do not hesitate to contact us.

Yours faithfully
KOTT GUNNING

