

# Form A

Commonwealth of Australia

*Trade Practices Act 1974 — subsections 88 (1A) and (1)*

## EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION



To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

### 1. Applicant

(a) **Name of Applicant:**

A91183 Medicines Australia Limited.

(b) **Description of business carried on by applicant:**

Industry body representing prescription pharmaceutical suppliers in Australia.

(c) **Address in Australia for service of documents on the applicant:**

c/o Fiona Crosbie, Allens Arthur Robinson, GPO Box 50, Sydney NSW 2001

### 2. Contract, arrangement or understanding

(a) **Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

Revocation and substitution of authorisation is sought in respect of Edition 16 of the Medicines Australia Code of Conduct, a voluntary industry code of conduct for the prescription medicines industry in Australia. A copy of the Code is attached to the Submission filed on 30 June 2009.

Specifically, consistently with the authorisations sought in relation to Edition 15 of the Medicines Australia Code of Conduct, the following authorisations are sought in relation to Edition 16:

- An application under s88(1) of the *Trade Practices Act 1974* for an authorisation under that subsection:
  - to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
  - to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.

For more details please refer to the Submission filed on 30 June 2009.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:**

See the response to 2(a) above.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Please refer to the Submission filed on 30 June 2009.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

The authorisations are sought for a term of five years, consistent with the term of the authorisations granted in relation to Edition 15.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

Please see the names and addresses of Medicines Australia's members at p35 of the Submission filed on 30 June 2009.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

Not applicable.

### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:**

Please see the Submission filed on 30 June 2009.

**(b) Facts and evidence relied upon in support of these claims:**

Please see the Submission filed on 30 June 2009.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

The relevant market is the market for prescription medicines in Australia.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

There are no public detriments that would result from the substitute authorisation. For more details please refer to the Submission filed on 30 June 2009.

**(b) Facts and evidence relevant to these detriments:**

Please refer to the Submission filed on 30 June 2009.

**7. Contracts, arrangements or understandings in similar terms**

**This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:**

**(a) Is this application to be so expressed?**

No.

**(b) If so, the following information is to be furnished:**

**(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Not applicable.

**(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:**

Not applicable.

**(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:**

Not applicable.

**8. Joint Ventures**

**(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?**

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

**9. Further information**

(a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Fiona Crosbie, Allens Arthur Robinson, GPO Box 50, Sydney NSW 2001.

Dated..... 12.08.09 .....

Signed by/on behalf of the applicant

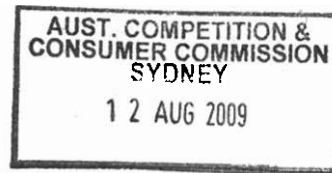
*F Crosbie*

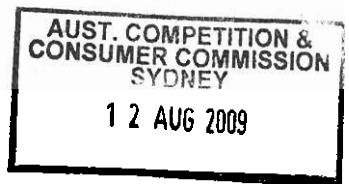
.....  
(Signature)

Fiona Crosbie  
(Full Name)

Allens Arthur Robinson  
(Organisation)

Partner  
(Position in organisation)





## Form B

Commonwealth of Australia

*Trade Practices Act 1974 — subsections 88 (1A) and (1)*

### **AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

#### **1. Applicant**

**(a) Name of Applicant:**

A91184 Medicines Australia Limited.

**(b) Description of business carried on by applicant:**

Industry body representing prescription pharmaceutical suppliers in Australia.

**(c) Address in Australia for service of documents on the applicant:**

c/o Fiona Crosbie, Allens Arthur Robinson, GPO Box 50, Sydney NSW 2001

#### **2. Contract, arrangement or understanding**

**(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

Revocation and substitution of authorisation is sought in respect of Edition 16 of the Medicines Australia Code of Conduct, a voluntary industry code of conduct for the prescription medicines industry in Australia. A copy of the Code is attached to the Submission filed on 30 June 2009.

Specifically, consistently with the authorisations sought in relation to Edition 15 of the Medicines Australia Code of Conduct, the following authorisations are sought in relation to Edition 16:

- An application under s88(1) of the *Trade Practices Act 1974* for an authorisation under that subsection:
  - to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
  - to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- An application under s88(1) of the *Trade Practices Act 1974* for an authorisation under that subsection:
  - to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect of substantially lessening competition within the meaning of section 45 of that Act.
  - to give effect to a provision of a contract, arrangement or understanding where the provision has the purpose, or has or may have the effect of substantially lessening competition within the meaning of section 45 of that Act.

For more details please refer to the Submission filed on 30 June 2009.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:**

See the response to 2(a) above.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Please refer to the Submission filed on 30 June 2009.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

The authorisations are sought for a term of five years, consistent with the term of the authorisations granted in relation to Edition 15.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

Please see the names and addresses of Medicines Australia's members at p35 of the Submission filed on 30 June 2009.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

Not applicable.

### **4. Public benefit claims**

- (a) Arguments in support of authorisation:**

Please see the Submission filed on 30 June 2009.

- (b) Facts and evidence relied upon in support of these claims:**

Please see the Submission filed on 30 June 2009.

### **5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

The relevant market is the market for prescription medicines in Australia.

### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

There are no public detriments that would result from the substitute authorisation. For more details please refer to the Submission filed on 30 June 2009.

- (b) Facts and evidence relevant to these detriments:**

Please refer to the Submission filed on 30 June 2009.

### **7. Contract, arrangements or understandings in similar terms**

**This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.**

- (a) Is this application to be so expressed?**

No.

- (b) If so, the following information is to be furnished:**

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

**8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

**9. Further information**

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Fiona Crosbie, Allens Arthur Robinson, GPO Box 50, Sydney NSW 2001.

Dated..... 12.08.09 .....

Signed by/on behalf of the applicant

*F Crosbie*

.....  
(Signature)

Fiona Crosbie  
(Full Name)

Partner  
(Position in Organisation)

