



**Australian  
Competition &  
Consumer  
Commission**

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**Via email: [ntebbey@sneddenhall.com.au](mailto:ntebbey@sneddenhall.com.au)**

Dear Mr Tebbey

**Re: Australian Tyre Industry Council applications for authorisation  
A91336-A91337 – request for further information**

I refer to the above mentioned applications for authorisation and the pre-decision conference held in Canberra on 12 February 2013 in response to the Australian Competition and Consumer Commission's (ACCC) draft determination.

Also, thank you for the Australian Tyre Industry Council's (ATIC) submission of 18 February 2013 in response to issues raised at the pre-decision conference. In particular, ATIC highlighted that in regards to the discussion of the composition of the Board of Tyre Stewardship Australia (TSA), clause 4.1 of the *Guidelines for the Tyre Product Stewardship Scheme* (the Guidelines) states that the TSA may 'establish advisory committees to include representatives of the broader community, including government, consumers and environmental specialists.'

In its letter, ATIC also noted that it didn't wish to make any further substantive submissions at that time.

**Request for further information – issues raised at the pre-decision conference**

As you are aware, the ACCC's draft determination proposed to grant authorisation to the national Tyre Stewardship Scheme (Scheme) for five years. In its draft decision, the ACCC highlighted that the success of the proposed Scheme, and the delivery of a net public benefit, will depend on effective administration of the Scheme.

In particular, the ACCC noted that in making its assessment of the likely public benefits and detriments of the Scheme it had placed weight on the annual reporting proposed to be conducted by TSA under the Scheme, which should help to ensure a level of transparency and accountability in the Scheme's operation. In this regard, the ACCC listed minimum criteria that it expected to be included in any public annual reporting.

The ACCC's draft determination also noted the importance of an independent review of the Scheme (after an initial period of operation) in ensuring its effective and transparent administration.

The ACCC considers a number of significant issues were raised at the pre-decision conference about which the ACCC seeks further information and/or clarity from ATIC. These issues are outlined below.

#### *Composition of the Board*

1. It was suggested at the conference that key participants across the entire tyre supply chain, as well as representatives from environmental peak bodies and/or government, are not currently proposed to be included on the Board of TSA. The ACCC considers that appropriate representation by key stakeholders is a critical issue in the proposed Scheme's administration.
  - a) Please confirm the *current* proposed composition of the Board of TSA, including the number of representatives from each sector.
  - b) Do you see merit in including representation on the Board by collectors, consumer representatives, environmental bodies or government, as well as increasing the number of recyclers represented on the Board? In your response, please outline any commitments that ATIC is willing to make in this regard, including whether it is necessary to amend clause 4.1 of the Guidelines concerning the composition of the Board of TSA.
  - c) Regarding the potential establishment of specialist advisory committees, please outline any work that has been carried out to date in establishing such committees, including the nature of such committees.

#### *Proposed review of the Scheme after two years*

2. It was generally noted at the conference that there is currently a lack of detail concerning the proposed review of the Scheme after an initial period of operation.
  - a) Please provide further detail about the proposed review process including whether it will be independent, when it will occur, the process for the review (including terms of reference and timeframes) and how the outcomes of the review will be reported.

#### *Data collection and annual reporting*

3. It was generally noted at the conference that there is currently a lack of clarity surrounding how data will be collected and reported in relation to the operation of the Scheme.
  - a) Please outline in detail what data will be collected under the proposed Scheme and the processes involved in collecting this data.
  - b) Please clarify what data will be publicly reported, how it will be made available and how regularly reports will be published.

As noted, the ACCC considers the above mentioned issues are central to its consideration of whether the Scheme is likely to generate a net public benefit. In the absence of further clarification or resolution of these issues, the *Competition and Consumer Act 2010* (the Act)

allows for the ACCC to impose conditions of authorisation to ensure that the net public benefit test is met or continues to be met over the proposed period of authorisation.

The ACCC also seeks further information in relation to the following issues:

4. Given the incentive for under-reporting, please outline any processes that TSA proposes to follow in order to detect non-reporting or improper reporting by members of the Scheme? What are the implications, if any, of such conduct?
5. Please outline any budgetary commitments that have been made at this stage in relation to the proportion of funds to be allocated by TSA on research and development under the proposed Scheme.
6. There was some discussion at the conference about the possibility of moving from 'equivalent passenger units' to tyre weight as the preferred unit for costing and reporting.
  - a) Can you please provide further background information on this issue, including why 'equivalent passenger units' was selected for the Scheme and the likelihood of the adoption of 'weight' as an appropriate measure.
7. In regards to reporting and data collection, ATIC stated at the conference that much of this data is already available from Customs and the Australian Bureau of Statistics (ABS).
  - a) To the extent that it is not already addressed in your response to question 3, please detail what ABS and Customs data is already available to assist TSA measure the performance of the Scheme.

### **Next steps**

Please provide a response to this letter by **cob Friday, 8 March 2013**. In your response, please also outline whether ATIC considers it necessary to amend the Guidelines for which authorisation is sought to address any of the issues raised at the conference.

Finally, as you would recall interested parties were invited at the conference to make any additional written submissions in response to the ACCC's draft determination and issues raised at the pre-decision conference by **1 March 2013**.

The ACCC will arrange for you to receive a copy of all public submissions received from interested parties and will invite your response to any of the issues raised in those submissions.

All publicly submissions will also be available from the ACCC's website.

A copy of this letter has been placed on the ACCC's public register. If you require any further information about the issues raised in this letter, please contact Jaime Martin on (03) 9290 1477 (or at [jaimemartin@acc.gov.au](mailto:jaimemartin@acc.gov.au)) or myself on (02) 6243 1266 (or at [david.hatfield@acc.gov.au](mailto:david.hatfield@acc.gov.au)).

Yours sincerely

A handwritten signature in blue ink that reads "David Hatfield". The signature is written in a cursive style with a blue highlight effect.

David Hatfield  
Director  
Adjudication Branch