



Australian
Competition &
Consumer
Commission

Draft Determination

Applications for authorisation

lodged by

Clean Energy Council Limited

in respect of

a voluntary code of conduct for solar PV (photovoltaic) retailers

Date: 4 July 2013

Authorisation numbers: A91365 & A91366

Commissioners: Sims
Schaper
Rickard
Cifuentes
Court
Dimasi
Walker

Summary

The Australian Competition and Consumer Commission (ACCC) proposes to grant authorisation to the Clean Energy Council Limited (CEC) for its voluntary code of conduct for businesses which sell solar photovoltaic (PV) systems (the Code) for five years.

The proposed Code imposes standards upon retail businesses selling PV systems that are in addition to their existing obligations under consumer protection legislation. The ACCC considers that the Code is likely to improve consumer confidence and consumer protection in the PV retail sector, improve PV retailer standards and compliance in the PV sector, and reduce risk and cost for other stakeholders operating in the market.

The ACCC will now seek further submissions in relation to this draft determination before making its final decision.

The application for authorisation

1. On 4 April 2013, the Clean Energy Council Limited (CEC) lodged two applications for authorisation with the ACCC (A91365 & A91366) under sections 88(1) and 88(1A) of the *Competition and Consumer Act 2010* (the Act). The CEC lodged an amended Code on 29 May 2013 to address recommendations made by interested parties and the ACCC.
2. The CEC seeks authorisation of a voluntary code of conduct for solar photovoltaic (PV) retail businesses (the Code) for matters relating to the marketing and sale of solar PV systems. Authorisation has been sought for five years.
3. In broad terms the ACCC can authorise arrangements that may breach the competition provisions of the Act if it is satisfied that the likely public benefits from the arrangements will outweigh the likely public detriment constituted by any lessening of competition.¹ Further details regarding the CEC's application for authorisation can be found on the ACCC's Public Register.²

Rationale for the Code

4. The CEC submits that the purpose of the Code is to provide a mechanism for the self-regulation of retailers of solar PV systems to ensure that retailers maintain a standard that will benefit consumers and the industry (see section 1.1 of the Code).
5. The primary entities involved in the sale and installation of solar PV systems are the installer, designer and retailer. These roles can be fulfilled by one or a number of different entities. The CEC submits that it is likely that medium to larger PV retailers will subcontract the design and installation of solar PV systems.

¹ The ACCC's *Guide to Authorisation* (available from the ACCC website) has more details regarding the ACCC's authorisation process.

² <http://transition.accc.gov.au/content/index.phtml/itemId/1108396/fromItemId/278039>.

6. The CEC is the body responsible for the accreditation of PV designers and installers and is able to penalise any accredited installer that fails to install a PV system to the relevant Australian Standard. However, where a retailer sub-contracts the installation of the system the retailer is not covered by a standard other than existing consumer protection legislation.
7. CEC submits that the growth in the number of PV retailers³ operating in the market and the number of residential PV installations has led to concerns regarding the accountability of retailers in the sale and post-sale activities of solar PV systems which has prompted the development of the Code.
8. In particular, the CEC is concerned that these changes in the industry have decreased consumer confidence in the sector and have contributed to an increase in the number of consumer complaints to ombudsmen and regulators. The Energy and Water Ombudsman of Victoria (EWOV) submits that it has received 9508 solar related complaints in 2011 – 2012.
9. The retail purchase of PV solar systems is generally a once off purchase, may be relatively complicated for consumers, and may involve a number of different parties. Typically, consumers purchase a solar PV system from a retailer who will then contract with a system designer and installer.
10. Due to the varying types of PV systems and billing options available (including government incentives), consumers may be unable to assess the suitability, performance and billing arrangements of the system in a fully informed manner and may need to rely on the information provided to them by PV retailers. This may lead to retailers encouraging consumers to make purchasing decisions that are in the retailer's rather than the consumer's best interests.
11. Further, given the complexity of PV systems and the number of parties involved in the installation, it can be difficult for consumers to identify which party is accountable in the event of system performance concerns.

The Code

12. To address these and other concerns, the Code sets best practice standards for retail businesses that sell PV systems.

Consumer protection

13. The Code seeks to enhance consumer protection by requiring signatories to among other things:
 - a. not engage in misleading or deceptive conduct in relation to the price, value or quality of goods and services including making statements with promises, predictions or opinions that are known to be untrue or incorrect, or there are no reasonable grounds for making them (section 2.1.1 (f) (ii))
 - b. adhere to ethical sales and quoting practices during all steps of the process including but not limited to avoiding high pressure sales tactics that induce consumers to make quick or uninformed decisions

³ In 2011, there were 3,946 companies listed with accredited installers.

about the product and technologies that they are selecting (section 2.1.2 (a))

- c. in addition to the statutory guarantees under consumer law, provide a minimum retailer's warranty period of five years on the operation and performance of the whole PV system including workmanship and products (section 2.2.10), and
 - d. comply with all local, state and federal legislation, CEC Accreditation Guidelines and regulations including but not limited to Schedule 2 of the Act (section 2.4.1).⁴
14. The Code requires retailers to provide consumers with information relevant to their potential purchase⁵ and advice on how to locate the CEC's consumer guide to buying household solar panels.

Monitoring and enforcement

15. The Code is to be administered by the CEC Accreditation Team (Code Administrator) with independent oversight and monitoring by the Code Review Panel (sections 3.1 and 3.2).
16. The Code Administrator will prepare quarterly compliance reports that will be published on the CEC website and the Code Review Panel will prepare annual reports on the Code's operation including Code compliance.
17. Breaches of the Code are to be investigated by the Code Administrator. Breaches have been assigned a severity rating (section 3.6) which corresponds to relevant sanctions (section 3.6).
18. Sanctions range from the appointment of an auditor, publication of the breach on the CEC's website and termination of signatories in certain circumstances. Appeals may be heard by the independent Code Review Panel (section 3.7).

Clean Energy Council (CEC)

19. The CEC was formed in 2007 and is an incorporated not-for-profit association principally funded by membership fees, with additional income generated by events and its industry accreditation program for PV designers and installers.
20. The CEC is the body responsible for the accreditation of PV designers and installers. Consumers wanting to take advantage of the Federal Government financial incentives available under the Small Scale Renewable Energy Scheme (SRES) are required to use a CEC accredited installer and designer. This requirement is in accordance with the *Renewable Energy (Electricity) (Cth) Regulations 2001*.

⁴ Section 1.2 of the Code provides that "signatories' obligations under consumer protection legislation are not replaced or restricted by the Code". The "Code applies to the extent that it is consistent with all existing State and Federal legislation and regulation. Where the Code is found to be inconsistent with any existing legislation or regulation, that regulatory obligation will take precedence to the extent of the inconsistency."

⁵ Pursuant to all existing state and federal legislation and regulations, including the Australian Consumer Laws.

21. The CEC describes itself as the peak body representing Australia's renewable energy and energy efficiency industries. The CEC has more than 500 members including solar PV system manufacturers and retailers in addition to a diverse range of representatives from many other industries who have an interest in energy generation and/or consumption.⁶ The CEC advised that 172 of its members include solar 'retailer' as one of the services provided.⁷

Public Consultation

22. On 9 April 2013, the ACCC invited submissions on the application from 150 potentially interested parties, including energy retailers, consumer groups and all state energy and water ombudsmen.

23. The ACCC received submissions from:⁸

- a. Energy and Water Ombudsman Victoria Ltd (EWOV), and
- b. Energy Australia Pty Ltd (Energy Australia).

24. Both parties supported the application, although EWOV provided some recommendations to further clarify the provisions of the Code for consumers.

25. The CEC provided a further submission clarifying aspects of the Code which included minor amendments to the Code in response to suggestions made by interested parties and the ACCC.

ACCC evaluation

26. The ACCC's evaluation of the Code is in accordance with the relevant net public benefit tests contained in the Act.⁹ In broad terms, under the relevant tests the ACCC shall not grant authorisation unless it is satisfied that the likely benefit to the public would outweigh the detriment to the public, including the detriment constituted by any lessening of competition that would be likely to result.

27. In its evaluation of this application, the ACCC has taken into account:

- a. Information available from the ACCC's consideration of previous relevant Codes of Conduct.¹⁰
- b. Information received from the CEC and interested party submissions, including that the two submissions received supported the application for authorisation.
- c. The likely future without the conduct the subject of the authorisation.¹¹ The CEC submits that not implementing the proposed Code may lead to

⁶ A list of CEC's members is available from the CEC website:

<http://www.cleanenergycouncil.org.au/aboutus/membership/currentmembers/sponsoring.html>.

⁷ CEC email to ACCC 7 June 2013.

⁸ All submissions can be viewed on the ACCC's Public Register, including a list of parties consulted:

<http://transition.accc.gov.au/content/index.phtml/itemId/1108396/fromItemId/278039>.

⁹ Subsections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the Act. The relevant tests are set out in Attachment A.

¹⁰ Energy Assured Limited - Minor Variation - A91258 & A91259 (2013) and Energy Assured Limited - Authorisations - A91258 & A91259 (2011).

an increase in solar PV system related complaints by consumers compared to the likely future with the Code. The ACCC notes that existing consumer protection legislation regulates the conduct of businesses, including PV retailers. However, the ACCC accepts that the Code may assist in improving PV retailer's compliance with consumer protection legislation, and therefore may reduce the number of consumer complaints.

- d. The relevant areas of competition likely to be affected by the Code. The CEC submits that the Code relates to the retail sale and purchase of solar PV systems and that the Code may also affect the sale and purchase of:
 - a. components of solar PV systems
 - b. design services of PV systems, and
 - c. installation services of PV systems.

For the purpose of assessing these applications, the ACCC considers the relevant areas of competition likely to be affected by the proposed conduct are those identified by CEC. However, the ACCC considers that a precise market definition is not required in these circumstances.

- e. The five year authorisation period requested.

Public benefits

28. The CEC submits that the proposed Code will lead to the following public benefits:¹²

- a. Improved standards in the PV sector, increased consumer confidence and consumer protection.
- b. Education of consumers to enable them to make more informed choices.
- c. Provision of nationally uniform practices and addressing jurisdictional challenges.
- d. Reduced regulatory cost.
- e. Reduced risk and cost for other stakeholders operating in the market.
- f. Economic efficiency and environmental benefits.

29. The ACCC's assessment of the likely public benefits from the proposed conduct follows.

Improved consumer confidence and enhanced consumer protection

30. The ACCC considers that the Code is likely to result in better informed consumers as a result of the obligations on signatories to educate potential consumers and to provide relevant information including the CEC's consumer guide to buying household solar panels (sections 2.1.4 and

¹¹ For more discussion see paragraphs 5.38-5.40 of the ACCC's *Guide to Authorisation*.

¹² The complete CEC supporting submission can be viewed on the ACCC's Public Register at <http://transition.accc.gov.au/content/index.phtml/itemId/1108396/fromItemId/278039>.

section 2.3). Detailed information about the system will be set out in a written contract which includes among other things the price, specifications, system performance estimates (based on data) obtained from the CEC, and after sales service inclusions regarding the PV system (section 2.2.5 and section 2.3).

31. Where consumers are able to make better and more informed purchasing decisions about the service that best meets their needs there may also be some efficiency improvements.
32. The ACCC also considers that consumer confidence in the PV retail sector may also improve as the Code assists consumers to be better informed about their rights and obligations under the Code and the Australian Consumer Law (ACL). For example, section 2.1.4 of the Code requires signatories to give consumers a flyer describing the Code and the process for providing feedback and lodging consumer complaints.

Improved PV retailer standards and compliance in the PV sector

33. The ACCC considers that the Code is likely to improve PV retailer standards by providing specific guidance on the obligations of industry participants under existing laws including the ACL as well as enhancing these obligations through mechanisms which include requiring signatories to adopt complaints handling and dispute resolution procedures (section 2.4.4) and requiring signatories to keep and provide records and data for auditing and monitoring purposes (section 2.4.11).
34. The ACCC considers that the range of sanctions to be applied by the independent Code Review Panel¹³ in the event of Code breaches (section 3.5) creates additional incentives for PV retailers to comply with the Code and therefore improve standards.

Reduced risk and cost for other stakeholders operating in the market

35. The CEC submits that ethical behaviour standards and the minimum five year warranty requirement under the Code should promote appropriate care and attention to the choice of product, choice of installers, and volume of work allocated to installers, leading to increased safety for installers and consumers.
36. The CEC also submits that the record keeping and compliance requirements placed on retailers under the Code may also reduce the incidence of fraud for example claiming for the installation of second hand systems or systems that have not been installed. Therefore the Code may provide Renewable Energy Certificate (REC) agents with confidence in the trade of certificates issued by the Clean Energy Regulator under the Small-scale Renewable Energy Scheme (SRES).
37. The ACCC considers that the Code is likely to reduce the risk and cost for stakeholders including installers and potentially for REC agents and

¹³ CEC submits that the Code Review Panel will consist of at least three participants that are non-signatories to the Code, including: (i) a consumer representative (ii) a solar PV representative, and (iii) a Chair with relevant experience and knowledge in regulatory or government administration of consumer law. The Chair will not be employed in the PV industry.

government stakeholders responsible for administering incentive schemes. As signatories are required to warrant the overall system performance including installation workmanship, they are likely to have a greater interest in ensuring that work undertaken by the designers/installers is not unsafe and is of high quality.

Reduced cost of compliance

38. The CEC has submitted that the Code will facilitate regulatory compliance and will reduce costs to consumer affairs bodies, ombudsmen and government bodies by reducing the quantity of complaints and the administration and enforcement required to address solar complaints.
39. Existing consumer legislation, including the ACL and fair trading legislation, must be complied with regardless of the Code. To the extent that the Code facilitates increased compliance with the law and leads to public benefits by improving PV retailer standards and compliance, these benefits have been considered and accepted by the ACCC (see paragraphs 33 - 34).
40. Further, to the extent that the Code improves consumer awareness and reduces consumer complaints, these issues have been considered and accepted as providing public benefits under improved standards and consumer protection (see paragraphs 30 - 32).

Economic efficiency and environmental benefits

41. The CEC submits that the additional take-up of efficient solar PV systems by consumers in response to the Code may lower greenhouse emissions.
42. As set out in paragraph 29, the ACCC accepts that the Code is likely to improve the efficiency of consumer purchasing decisions. However, the ACCC considers that any additional take up of PV systems and resulting reduction in greenhouse gas emissions as a result of the Code is unlikely to be significant.

ACCC conclusion on public benefits

43. The ACCC accepts that the Code is likely to result in public benefits by:
- a. improving consumer confidence and consumer protection in the PV retail sector as PV retailers will provide consumers with information to assist in purchasing decisions,
 - b. improving PV retailer standards and compliance in the PV sector, and
 - c. reducing risk and cost for other stakeholders operating in the market.
44. The ACCC considers that to the extent that the other public benefits claimed by the CEC arise, they have been considered under the categories listed above or are unlikely to be significant.

Public detriments

45. The CEC notes the following possible public detriments in relation to the Code:
- a. Exclusionary conduct by restricting membership to retailers that employ or contract with accredited designers or installers.
 - b. Sanctioning of PV retailers.
 - c. The potential to reduce a competitive dynamic where the Code specifies minimum standards such as a five year warranty for system performance and workmanship of installers.
 - d. Increased costs to signatories from membership fees and higher standards which are likely to be recovered in the form of higher prices to consumers.¹⁴
46. For the reasons outlined below, CEC submits these public detriments are unlikely to arise and will have minimal, if any, impact on competition as:
- a. The Code will be open to all PV retailers.
 - b. There will be no relationship to an applicant's membership with the CEC in the determination of their eligibility to become a Code signatory. All prospective signatories will be eligible to become a signatory so long as they comply with the relevant rules and standards outlined in the Code.
 - c. All signatories to the Code are to be treated equally in regards to their requirement to comply with the Code and all Code compliance procedures, including penalties and sanctions, will be fully transparent and independently monitored.¹⁵
 - d. The CEC claims that the fee structure has been tiered according to the number of PV installations a company completes per year.¹⁶
 - e. A range of supporting documentation to assist Code signatories in digesting and adhering to the scheme will be developed by the CEC to ensure consistency and reduce compliance costs.
47. The ACCC's assessment of the likely public detriment from the proposed conduct follows.

Exclusionary conduct

48. The ACCC accepts that restricting membership of the Code to retailers that utilise the services of accredited installers is important in ensuring that the anticipated benefits of the Code are realised.
49. The ACCC also notes the CEC's submission that the detriments are likely to be minimal given that consumers that wish to take advantage of the

¹⁴ The complete CEC supporting submission can be viewed on the ACCC's Public Register at <http://transition.accc.gov.au/content/index.phtml/itemId/1108396/fromItemId/278039>.

¹⁵ Independently overseen by the Code Review Panel (CRP).

¹⁶ CEC claims that this will ensure that the smaller companies are on equal footing with larger companies in the requirement for payment of an annual Code fee.

government incentives available through the SRES are already required to use a CEC accredited installer and designer.

50. The ACCC therefore considers that these provisions are unlikely to lead to more than minimal public detriment.

Sanctions applied to PV retailers

51. The ACCC considers that the ability to sanction PV retailers for non-compliance is important in providing retailers with incentives to comply with the Code. These sanctions vary depending on the severity of the breach and include publically naming the retailer on the CEC website and suspension or cancellation if a signatory has engaged in systemic breaches or cannot provide evidence that they have rectified a breach in a reasonable timeframe (sections 3.5 and 3.6).

52. The ACCC does not consider that the ability to impose sanctions, including expulsion from the Code would generate a public detriment provided sanctions are applied in an open, transparent and consistent manner,¹⁷ applied by an independent agency and only in accordance with standards required by the scheme.¹⁸

Minimum warranty period

53. The Code requires signatories to provide a minimum retailer's warranty period of five years on the service component of installation and all products (inverters, panels, electrical components etc) (section 2.2.10).¹⁹ To the extent that competitors compete with each other on the duration and coverage of their warranty, the Code may reduce such competition between signatories by making specific reference to a minimum five year warranty. This may have the potential effect that this period would become the default warranty period.

54. However, the ACCC notes that the specified warranty is for a *minimum* period and the Code also makes clear that consumers may continue to have warranty rights beyond this time period, particularly in respect of certain parts of the solar PV system, such as panels and inverters (section 2.2.10). The Code also makes clear that this minimum warranty does not substitute any rights a consumer may have under the statutory guarantees. The ACCC therefore considers that these provisions are unlikely to lead to more than minimal public detriment.

Increased costs

55. The CEC notes that a possible detriment of the Code is that there may be a small average increase in the cost of PV installations supplied by signatories due to the additional consumer support required by the Code.

¹⁷ The breaches and corresponding sanction are clearly set out in section 3.5.3.

¹⁸ CEC submits that the Code Review Panel will consist of at least three participants that are non-signatories to the Code including: (i) a consumer representative (ii) a solar PV representative, and (iii) a Chair with relevant experience and knowledge in regulatory or government administration of consumer law. The Chair will not be employed in the PV industry.

¹⁹ CEC notes that certain products including panels and inverters may have a warranty that exceeds five years.

The CEC also notes that the compliance and reporting requirements of the Code may be a burden for signatories or potential signatories.

56. The ACCC considers that any cost increases arising from the additional support supplied to consumers or the installation of higher quality solar PV systems are likely to reflect a corresponding increase in the quality of the goods and services supplied, for example as a result of the minimum warranty provision. In relation to the compliance costs for signatories directly resulting from the Code's implementation, the ACCC considers that these are likely to be minimal and that the compliance requirements imposed are necessary in order for the Code to be effective.
57. The ACCC is therefore of the view that there will be minimal public detriment arising from increased costs and prices associated with the Code.

ACCC conclusion on public detriments

58. The ACCC is of the view that the Code is likely to result in minimal public detriments. The ACCC notes that the Code is a voluntary code and will be available to all solar PV retailers, regardless of CEC membership, who are willing to comply with the requirements of the Code, in a market that appears to be competitive.
59. The ACCC notes that the Code provides that signatories' obligations under consumer protection legislation are not replaced or restricted by the Code, particularly in respect of retailer's warranty periods, and that the Code applies to the extent that it is consistent with all existing State and Federal legislation and regulation.
60. The ACCC is also of the view that sanctions to be imposed on retailers and public reporting mechanisms will promote compliance by PV retailers and are not likely to result in public detriment.

Balance of benefits and detriments

61. The ACCC considers that the public benefits from the conduct are likely to outweigh any public detriment that may arise from the conduct.
62. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Length of authorisation

63. The ACCC grants authorisation for the time requested, that is five years.
64. The ACCC notes that it may review an authorisation prior to its expiry if there has been a material change in circumstances since the authorisation was granted.
65. The proposed authorisation is in respect of the Code as it currently stands (as at Attachment 1). Any changes or variations to the Code during the term of the proposed authorisation would not be covered by the proposed authorisation.

Draft determination

The application

66. On 4 April 2013, the Clean Energy Council Limited (CEC) lodged two applications for authorisation with the ACCC (A91365 & A91366) under sections 88(1) and 88(1A) of the *Competition and Consumer Act 2010* (the Act). The CEC lodged an amended Code on 29 May 2013 (the Code).
67. The CEC seeks authorisation to make and give effect to the Code which may be regarded a contract, arrangement or understanding that:
- a. 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
 - b. 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)
 - c. would have the purpose, or would have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
68. Section 90A (1) of the Act requires that before determining an application for authorisation the ACCC shall issue a draft determination.

Draft determination

69. For the reasons set out in this draft determination, the ACCC is satisfied that in all the circumstances the Code for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct. Further, the ACCC is satisfied that the Code for which authorisation is sought is likely to result in such a benefit to the public that the conduct should be allowed to take place.
70. Accordingly the ACCC is satisfied that the tests in sections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the Act are met.²⁰
71. The ACCC proposes to grant authorisations A91365 & A91366 to Clean Energy Council Ltd to make and give effect to the voluntary code of conduct for solar photovoltaic (PV) retail business (the Code). The ACCC proposes to grant authorisation for five years.

Further submissions

72. The ACCC will now seek further submissions from interested parties. In addition, CEC or any other interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

²⁰ See Attachment A.

Attachment A

Competition and Consumer Act 2010

Section 90—Determination of applications for authorisations

Section 90 (5A) states that the Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a proposed contract, arrangement or understanding that would be, or might be, a cartel provision, unless the Commission is satisfied in all the circumstances:

- (a) that the provision would result, or be likely to result, in a benefit to the public; and
- (b) that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:
 - (i) the proposed contract or arrangement were made, or the proposed understanding were arrived at; and
 - (ii) the provision were given effect to.

Section 90 (5B) states that the Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a contract, arrangement or understanding that is or may be a cartel provision, unless the Commission is satisfied in all the circumstances:

- (a) that the provision has resulted, or is likely to result, in a benefit to the public; and
- (b) that the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision.

Sections 90(6) and 90(7) state that the Commission shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of section 90(6) would result, or be likely to result, or in the case of section 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of section 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of section 90(7) has resulted or is likely to result from giving effect to the provision.

Subsection 90(8) states that the ACCC shall not:

- make a determination granting:

- i. an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
- ii. an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
- iii. an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
- iv. an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.