



**Australian
Competition &
Consumer
Commission**

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Dear Madam/ Sir

**Job Futures Ltd re-authorisation applications A91493 and A91494 –
process following pre-decision conference**

The purpose of this letter is to:

- provide you with a copy of the minutes from the recent pre-decision conference that was held in relation to the application for re-authorisation (applications for revocation and substitution) lodged by Job Futures Ltd
- outline the anticipated process leading to the ACCC's final determination
- clarify the effect of the interim authorisation that currently applies in this matter and the effect of authorisation more generally.

On 31 July 2015, the ACCC issued a draft determination proposing to grant re-authorisation, for 10 years, for Job Futures Ltd to bid on behalf of members for tenders and to conclude agreements with members containing non-compete restrictions.

A pre-decision conference was called by Job Futures' members, Bridging the Gap and Marillac, and was held on 11 September 2015. The minutes of the conference are attached to this letter.

Process

During the conference, Job Futures advised that it is carrying out further consultation with members about the proposed changes to certain clauses of its Membership Charter, as it has become apparent that some members would not support these changes. To facilitate this it had set up a member committee to consider the changes. As these changes are the subject of the applications for re-authorisation, there was discussion at the conference as to whether it would be preferable for the ACCC to defer making a final decision on the re-authorisation applications until this is resolved by Job Futures and its members.

Subsequent to the conference, Job Futures has formally requested that the ACCC defer consideration of its final decision until after Job Futures has put proposed changes to its members at a meeting in May 2016. This timeframe would allow the member committee to work through the proposed changes with consultation with the wider membership and then for members to vote on the changes at a scheduled face to face event. Depending on the outcome of these further member deliberations, Job Futures may seek to amend its application for re-authorisation.

The ACCC has given careful consideration to this request. On the basis of the information provided by Job Futures as to why the delay is desirable, and noting that there is no statutory deadline for the ACCC to make a final decision on this matter, because it is an application for revocation and substitution of an authorisation, the ACCC agrees to defer its final decision. An updated indicative timetable for the assessment of this matter is set out below.

Indicative date	Stage in assessment process
31 July 2015	Draft determination
11 September 2015	Pre-decision conference
May 2016	Job Futures advises on outcome of meeting with members
June 2016	ACCC further consultation (if necessary)
July/August 2016	Final determination

Interim authorisation

On 28 May 2015, the ACCC granted interim authorisation to Job Futures in respect of the applications for re-authorisation. Interim authorisation has effect until it is revoked or the date the ACCC's final determination comes into effect. With the final determination to be delayed until July/August next year, interim authorisation will remain in place until then (unless it is revoked by the ACCC).

The ACCC granted interim authorisation covering the conduct applied for with two differences:

- Interim authorisation was not given to cover the proposed removal of the current prohibition in Job Futures' membership charter against Job Futures tendering for new services in a location where that tender is likely to damage the pre-existing business of a member in that location. That is, interim authorisation was granted to terms consistent with the existing provisions.
- Interim authorisation was not given to cover changes in the restriction on an exiting member's access to information, from being expressed as information 'other than that required for the member to deliver its contracted services' to information 'other than that considered by Job Futures Ltd to be necessary for that organisation to deliver its contracted service'.

In its decision on interim authorisation, the ACCC noted (under the heading 'Consultation') that 'Job Futures has said it will not undertake tendering for new services before the ACCC finalises its assessment of the application for authorisation'. At the time of the interim authorisation decision, the ACCC understood that Job Futures did not have a need for

interim authorisation to cover the collective tendering aspects of the application, because there were no known major tenders due in the coming six months.

The ACCC did not exclude participation by Job Futures in collective tendering as part of the interim authorisation decision. The general statements from Job Futures to the ACCC were not an undertaking from it to not engage in tenders pending the ACCC's final determination. Therefore, Job Futures and its members have statutory protection for collective tendering conduct in the period before the ACCC makes its final determination.

Effect of authorisation generally

Authorisation provides statutory protection against legal action for conduct that may breach the competition provisions of the *Competition and Consumer Act 2010 (Cth)*. The ACCC may authorise the conduct if it is satisfied that the likely public benefit from the conduct outweighs the likely public detriment, including any lessening of competition.

The ACCC is only able to consider the application for authorisation currently before it and either authorise the conduct, decide not to authorise the conduct, or authorise the conduct subject to conditions. It cannot substitute an alternative authorisation. So, in the case of the Job Futures application, it is not an option for the ACCC to substitute the previous authorisations for those that are currently before it for consideration.

Authorisation does not compel Job Futures to engage in the authorised conduct. As noted it provides protection from legal action under the relevant provisions of the Act *if* the conduct is engaged in. Therefore the authorisation does not prevent Job Futures from tendering for new services in a location where a member has a pre-existing business. Whether this results in Job Futures breaching its membership charter is a question for its members.

Some participants at the pre-decision conference alleged that Job Futures had breached its authorisation, but it is not possible to 'breach' an authorisation. In some cases, an authorisation may be granted subject to specific conditions, which the party is required to abide by. However, there were no conditions attached to Job Futures previous authorisations or the interim authorisation.

A copy of the application, interim determination, draft determination and minutes of the pre-decision conference can be found on the ACCC's website <www.accc.gov.au/AuthorisationsRegister>.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss this matter, please contact John Rouw on (03) 9290 1402 or Lyn Camilleri on (03) 9290 1973.

Yours sincerely



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General Manager
Adjudication