

# Australian Competition Tribunal

## Practice Direction

1. This Practice Direction replaces all previous Practice Directions issued by the Australian Competition Tribunal (**Tribunal**), with immediate effect.
2. All references to statutory provisions contained in this Practice Direction shall be taken to be references to provisions of the *Competition and Consumer Act 2010* (Cth) (**Act**) and the *Competition and Consumer Regulations 2010* (Cth) (**Regulations**).
3. Practitioners and parties are encouraged to contact the Tribunal if they have any queries in respect of the matters set out in this Practice Direction or in respect of the practice of the Tribunal more generally. The Tribunal can be contacted by email ([registry@competitiontribunal.gov.au](mailto:registry@competitiontribunal.gov.au)) or by telephone (03 8600 3333).

### Filing Documents

4. A document (including a document which commences an application) may be filed with the Tribunal by:
  - (a) emailing the document to [registry@competitiontribunal.gov.au](mailto:registry@competitiontribunal.gov.au);
  - (b) lodging the document on a USB stick (or similar device) at a Registry of the Tribunal;  
or
  - (c) lodging the document in hard copy at a Registry of the Tribunal.

The Tribunal's security firewall may cause a delay in the delivery of an email. It will also block emails with attachments of more than 10MB in size. For these reasons, if you seek to file a document by email urgently, please call the Tribunal to confirm that it has been received.

5. The Tribunal is also able to receive documents (including very large documents) by the provision of an emailed link to the documents on a cloud storage facility such as Dropbox, OneDrive or Google Drive. However, this can only be done by way of prior arrangement with the Tribunal. If you are intending to file documents by this means, please first call the Tribunal to confirm such arrangement.
6. The Tribunal maintains its files in electronic form, and accordingly it prefers to receive documents in that form. Subject to any direction from the Tribunal, if a document is provided in electronic form, then it shall not be necessary to provide a hard copy. However, if a

document is filed in hard copy, a copy in electronic form must also be provided. The balance of this Practice Direction assumes that documents are provided in electronic form.

7. Wherever possible, documents should be filed in native PDF (Portable Document Format) or Word format, rather than scanned PDF. Documents produced in native PDF (or Word) are substantially smaller in size than those produced in scanned PDF. If it is necessary to file a document produced in scanned PDF, then it must be subjected to an Optical Character Recognition (**OCR**) process before filing. The OCR process will enable text searches to be conducted.
8. All documents over 20 pages in length must be bookmarked and/or hyperlinked. Similarly, all exhibits, annexures and attachments must be bookmarked and/or hyperlinked.
9. An electronic signature may be used on any document other than an affidavit or a statutory declaration.
10. When a document is accepted for filing, either:
  - (a) the seal of the Tribunal will be affixed to the first page of the document; or
  - (b) a cover page bearing the seal of the Tribunal will be attached to the document.

In either case, the date of filing will be endorsed on the document. In the case of a document which commences an application, this date will stand as the date on which the application for review was filed (**Commencement Date**) for the purposes of calculation of time.

## **Confidentiality**

11. Parties should assume that unless a claim of confidentiality is made, any document filed with the Tribunal will:
  - (a) be added to one or more of its registers;
  - (b) be uploaded to the Tribunal's website; and
  - (c) be made available for download and inspection without restriction.
12. If a party wishes to make a claim of confidentiality in respect of the *whole* of a document, then the file name must commence with the words "Confidential Version", and the first page of the document must be endorsed with the words "Confidential Restriction on Publication Claimed". The document must be accompanied by a submission which sets out the basis of the claim of confidentiality.

13. If a party wishes to make a claim of confidentiality in respect of *part* of a document, then two copies of the document must be filed as follows:
- (a) A confidential version. The file name must commence with the words “Confidential Version”, and the first page of the document must be endorsed with the words “Confidential Restriction on Publication Claimed”. The confidential parts of the document must be highlighted.
  - (b) A public version. The file name must commence with the words “Public Version”. The confidential parts of the document must be redacted.

The document must be accompanied by a submission which sets out the basis of the claim of confidentiality.

14. If a claim of confidentiality is made in respect of a document, then until the claim is determined by the Tribunal, the document will be treated as confidential and will not be disclosed to any person (other than the Australian Competition and Consumer Commission (**Commission**) – see paragraph [15] below) before that request is determined. However, if a public version is provided, then it should be assumed that the public version will be uploaded to the Tribunal’s website and made available for download and inspection without restriction.
15. Any request to withhold information from the Commission must also be made in writing and supported by a submission. As the Tribunal relies upon the assistance of the Commission, requests to withhold confidential information from it will be acceded to only in exceptional circumstances.
16. The Tribunal will endeavour to determine claims of confidentiality as quickly as possible. If a claim is refused, then the party making the request will be given the opportunity to withdraw the document, either in whole or in part.
17. It should be assumed that, unless good reason is shown not to do so, the Tribunal will make the following order at the initial case management hearing:

Subject to further order specifically varying the operation of this order, all orders as to confidentiality, and all claims as to confidentiality made by a party or other interested person, shall be taken to expire 5 years after the commencement of this proceeding.

### **Initial Case Management Hearing – All Matters**

18. All matters will be listed for an initial case management hearing before the President of the Tribunal. If the President of the Tribunal is unavailable, the initial case management hearing will be listed before a Deputy President.

19. At the initial case management hearing the applicant and any other interested party should be prepared to address the Tribunal on the following matters:
- (a) possible dates for any public hearing of the application;
  - (b) the expected duration of the hearing;
  - (c) the location of the hearing;
  - (d) whether any part of the hearing should be held in closed session;
  - (e) any issues of confidentiality;
  - (f) the involvement of any third parties; and
  - (g) any impediment to the determination of the application within any timeframe mandated by statute.

These matters are in addition to the matters particular to certain kinds of applications referred to below.

### **Merger Authorisation Applications**

20. Sections 95AV(1), 95AZL(2) and 95AZM(2) provide that a valid application must:
- (a) be in a form prescribed by the Regulations and contain the information required by the form;
  - (b) be accompanied by such other information or documents as are prescribed by the Regulations; and
  - (c) be accompanied by the fee (if any) prescribed by the Regulations.

It should be noted that the relevant forms (Forms S, T and U) each require the applicant to undertake to the Commission pursuant to s 87B that it will not make the acquisition whilst the application is being considered by the Tribunal.

21. The Tribunal will assess the application against the Act and Regulations. Applications must accord with the relevant form and contain all of the required information. The Tribunal expects that the particulars provided will be comprehensive and in substance include the entirety of the applicant's submissions as to why the application should be granted.
22. Application Forms S to W (Schedule 1 to the Regulations) require the provision of a range of facts and contentions. The Tribunal expects that these will be verified by way of signed

statements from persons able and qualified to verify each relevant fact or contention. For example, paragraphs 1, 2, 3 and 4 of Form S might be verified by the company secretary of the applicant or by its CEO. Paragraphs 5, 10, 13 and 14 might be verified by a qualified consulting or academic economist. These examples should not be taken as exhaustive or exclusive. The Tribunal anticipates that there will probably be numerous statements from both employees of the applicant and external consultants which will verify the totality of the facts and contentions contained in any application and accompanying documentation.

23. If the Tribunal determines that the purported application is not a valid application, the applicant will be notified within 5 business days of the Commencement Date. The applicant will be provided with a written notice stating that the applicant has not made a valid application and setting out the reasons why the application does not comply with the relevant provisions of the Act and the Regulations.
24. At the initial case management hearing, the applicant, the Commission and any other interested party should be prepared to address the Tribunal on the following matters in addition to the general matters set out at paragraph [19] above:
  - (a) the provision of further information by the applicant to the Tribunal (the Tribunal may at any time provide the applicant with a written notice pursuant to s 95AZC requesting the applicant to provide the Tribunal with additional information relevant to making its determination on the application);
  - (b) whether there is any need for the Tribunal to seek information or have consultations, for the purpose of clarifying the information provided by the applicant; and
  - (c) the Commission's report to the Tribunal pursuant to s 95AZE of the Act.
25. Unless otherwise ordered, a third party must file submissions in relation to the application within 8 days after the initial case management hearing.
26. The Commission must provide the Tribunal with its issues paper within 22 days after the Commencement Date.
27. The applicant, the Commission and any third party should be prepared to attend a second case management conference within 26 days of the Commencement Date. Additional information requested from any of the parties by the Tribunal pursuant to s 95AZD(1) must be provided to the Tribunal within 5 days after the second case management conference.
28. The Commission must provide to the Tribunal the report prepared pursuant to s 95AZE within 45 days after the Commencement Date.
29. The applicant, the Commission and any third party should be prepared to attend a hearing of the application at the expiration of 55 days from the Commencement Date. Unless otherwise

specified by the Tribunal, the hearing of an application will not exceed 5 days. A third case management conference will be held 5 days before the final hearing to determine preliminary issues, including third party rights and any outstanding confidentiality issues.

### **Clearance Review Applications**

30. An applicant for review under s 111 should have regard to s 116, which sets out the information that may be considered by the Tribunal for the purpose of the review, and the material that must accompany Form W. The particulars and statement of issues must be comprehensive and, in substance, include the entirety of the applicant's submissions as to why it should obtain the relief sought.
31. In accordance with s 113, the Commission must give to the Tribunal all the information that it took into account in connection with the making of the determination under review. The Commission should also provide the Tribunal and the applicant with an index to that material. If any of the information referred to in the index is subject to a claim of confidentiality, that must be noted in the index.
32. At the initial case management hearing, the applicant, the Commission and any other interested party should be prepared to address the Tribunal on the following matters in addition to the general matters set out at paragraph [19] above:
  - (a) any issue as to the identification of the information given to the Commission in connection with the making of the determination;
  - (b) any issue as to other information that was referred to in the Commission's reasons for making the determination;
  - (c) whether the Tribunal needs to seek further information or have consultations for the purposes of clarifying the information given to the Commission in connection with the making of the determination.
33. Subject to any contrary direction, the Commission will be expected to file and serve a written response to the application within 10 business days of the Commencement Date.
34. The applicant, the Commission and any third party should be available to attend a hearing of the application within 15 business days of the Commencement Date.

JOHN MIDDLETON

President

23 September 2016