

AUSTRALIAN COMPETITION TRIBUNAL

PRACTICE DIRECTION No 1

Application for Authorisation, Variation, Revocation or Revocation and Substitution of an Authorisation pursuant to ss 95AU, 95AZL(1) or 95AZM(1) of the *Trade Practices Act 1974* (Cth)

Applications

1. An applicant for a determination in relation to an application pursuant to ss 95AU, 95AZL(1) or 95AZM(1) of the *Trade Practices Act 1974* (Cth) (“the Act”) must file with the Tribunal:
 - (a) the original and six (6) hard copies of the application and any accompanying documents; and
 - (b) one (1) electronic copy of the application and any accompanying documents – the electronic copy must be provided in pdf format on a CD-Rom with each electronic document clearly marked and an electronic index of all documents contained on the CD-Rom.

2. For the purposes of paragraph 1, the application, accompanying documents and CD-Rom may be filed by:
 - (a) presenting them to any Registry of the Tribunal; or
 - (b) sending them by post to the Registry of the Tribunal at Melbourne, Level 7, 305 William Street, Melbourne, Victoria, 3000 or Sydney, Level 16, Law Courts Building, Queens Square, Sydney, NSW, 2000.Only initiating documents may be filed by post, all other documents must be filed at a Registry of the Tribunal.

3. When making an application pursuant to ss 95AU, 95AZL(1) or 95AZM(1) of the Act, an applicant should have regard to ss 95AV(1), 95AZL(2) and 95AZM(2) of the Act respectively which set out the requirements for a valid application (see Practice Direction No 5).

4. If the Tribunal determines that a purported application is not a valid application, the applicant who made the purported application will be notified in writing of the

Tribunal's determination, including reasons why the purported application does not comply with ss 95AV(1), 95AZL(2) or 95AZM(2), as the case may be, within five (5) business days of the day on which the purported application was received by the Tribunal.

5. Subject to any request for confidentiality, the Tribunal will place each valid application, supporting documents and any other related documents on the Tribunal's *Merger's Authorisation Register* ("the Register") on the day or the business day immediately following the day on which the Tribunal completes its consideration whether the application is an invalid application. If a request for confidentiality has been made with the application, those parts of the application and supporting documents in respect of which confidentiality is claimed will not be placed on the Register until the Tribunal has made a determination in respect of that request.

Requests by an applicant for confidentiality (also see Practice Direction No 3)

6. An applicant making a request for confidentiality pursuant to s 95AZA of the Act in respect of all or any part of an application and accompanying documents must file a document setting out the request and submissions in support of it with the Registry of the Tribunal at the same time as the application and accompanying documents are filed with the Registry.
7. If a request for confidentiality is received, the Tribunal will provide the Australian Competition and Consumer Commission ("the Commission") with a copy of the confidentiality request and the supporting submissions at the same time as the application is provided to the Commission. The Commission must file and serve (electronically if it wishes) on the applicant any submissions in relation to the request for confidentiality no later than 5.00pm on the next business day after the day on which the request is provided to the Commission.
8. Unless otherwise ordered or directed, a request for confidentiality will be determined on the basis of the confidentiality request and the supporting submissions provided by the applicant and any submission received from the Commission. The Tribunal will determine each request for confidentiality as soon

as practicable after the request is received and before the application to which the request relates is assessed for validity.

9. The Tribunal will inform the applicant and the Commission of the determination of a confidentiality request as soon as practicable after such a determination is made.
10. If the Tribunal makes a determination refusing a confidentiality request in relation to a document or any part of a document the applicant may withdraw that document or that part of the document and require the Tribunal to return it to the applicant. Unless the applicant notifies the Tribunal within one business day after the Tribunal informs the applicant of such determination that it withdraws such request for confidentiality, the Tribunal will treat the document or that part of the document as withdrawn and return it to the applicant. Where the withdrawal of the document or the part of the document renders the application invalid, the Tribunal will notify the applicant and the Commission of such invalidity within five (5) business days of the application being filed (see paragraphs 3 and 4).

Consideration of authorisation applications

11. At the first case management conference, the applicant, the Commission and any other interested party should be prepared to address the Tribunal on any of the following matters:
 - (a) any issues in relation to the application;
 - (b) the further involvement of third parties;
 - (c) 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);
 - (d) 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;
 - (e) the Commission's report to the Tribunal pursuant to s 95AZE of the Act;
 - (f) a date for any public hearing of the application;

- (g) the expected duration of any public hearing;
 - (h) whether any part of the hearing should be held in closed session;
 - (i) whether the determination can be made within three (3) months of the day on which the application was filed with the Tribunal; and
 - (j) any other matter which the Presidential member, the applicant, the Commission or any third party may consider relevant for the efficient disposition and resolution of the application.
12. A third party to an application must file submissions in relation to the application within eight (8) days after the date on which the first case management conference is held unless otherwise ordered.
13. The Commission must provide the Tribunal with its issues paper within twenty-two (22) days of the date on which the application was received by the Tribunal.
14. The applicant, the Commission and any third party should be prepared to attend a second case management conference within twenty-six (26) days of the date on which the application was received by the Tribunal. Additional information requested from any of the parties by the Tribunal pursuant to s 95AZD(1) of the Act at the second case management conference must be provided to the Tribunal no later than five (5) days after the second case management conference.
15. The Commission must provide the report prepared by it pursuant to s 95AZE of the Act to the Tribunal within forty-five (45) days after the date the application was received by the Tribunal.
16. The applicant, the Commission and any third party should be prepared to attend a hearing of the application at the expiration of fifty-five (55) days from the date on which the application was received by the Tribunal. Unless otherwise specified by the Tribunal, the hearing of an application will not exceed five (5) days. A third case management conference will be held five (5) days before the Tribunal hearing is scheduled to determine preliminary issues relating to the hearing, including third party rights and any outstanding confidentiality issues.

A handwritten signature in black ink, appearing to read "Alan H. Goldberg". The signature is fluid and cursive, with the first name "Alan" being particularly prominent.

ALAN H GOLDBERG
President

5 January 2007