

# AUSTRALIAN COMPETITION TRIBUNAL

## PRACTICE DIRECTION No 2

### **Application for review of a clearance, a minor variation of a clearance, a revocation of a clearance or revocation of a clearance and substitution of another clearance pursuant to s 111 of the *Trade Practices Act 1974* (Cth)**

1. An applicant for a review of a clearance, or of a minor variation of a clearance, or a revocation of a clearance, or a revocation of a clearance and substitution of another clearance pursuant to s 111 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 for review under s 111 of the Act, an applicant should have regard to s 116 of the Act which sets out the information that may be considered by the Tribunal for the purpose of the review, and the information and documents that must accompany Form W (the prescribed form of *Application to the Tribunal for Review of a Merger Clearance*) in Schedule 1 to the Trade Practices Regulations 1974.

4. The particulars and statement of issues that are provided as attachments to the application for review must be comprehensive and, in substance, include the entirety of the applicant's submissions as to why the applicant should obtain the relief sought.
5. If an applicant for review wishes to refer to, or rely upon, any information that was referred to in the Australian Competition and Consumer Commission's ("the Commission") reasons for making the determination but was not information given to the Commission in connection with the making of the determination, the applicant must specify that information in an attachment to the application for review.
6. The Commission, when providing documents to the Tribunal in accordance with s 113 of the Act, must both electronically and in hard copy, provide:
  - (a) to the Tribunal a table or index, in general terms, of the documents provided to the Tribunal; and
  - (b) a copy of the table or index (subject to any existing confidentiality claim or protection granted by the Commission in respect of any documents in the table or index) to the applicant for review at the same time as the table or index is provided to the Tribunal.
7. If the applicant for review considers that the table or index referred to in paragraph 6 does not contain all of the information that was given to the Commission in connection with the making of the determination to which the review relates, the applicant must notify the Tribunal and the Commission of the nature of the missing information within two (2) business days of receiving the table or index.
8. The first case management conference may be convened by a Presidential member of the Tribunal within five (5) business days of the filing of an application for review. The applicant, the Commission and any other third party should be prepared to attend such a conference on short notice.

9. At the first case management conference the applicant, the Commission and any other third party should be prepared to address the Tribunal on any of the following matters:
- (a) a date for any public hearing of the application for review;
  - (b) any issues of confidentiality which have arisen or may arise;
  - (c) any issue as to the identification of the information given to the Commission in connection with the making of the determination;
  - (d) any issue as to any other information that was referred to in the Commission's reasons for making the determination;
  - (e) whether the decision on the review can be made within thirty (30) business days after the filing of the application for review;
  - (f) 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;
  - (g) the expected duration of any public hearing;
  - (h) whether any part of the hearing should be held in closed session;
  - (i) any other matter which the Presidential member may consider relevant for the efficient disposition and resolution of the application for review.
10. Subject to any contrary direction which may be given at the first case management conference, the Commission will be expected to file and serve a written response to the application within ten (10) business days of the filing of the application.
11. The applicant, the Commission and any other third party should be available to attend a Tribunal hearing of the application for review within fifteen (15) business days of the date on which the application for review was filed.



ALAN H GOLDBERG  
President

5 January 2007