



AUSTRALIAN COMPETITION TRIBUNAL

Practice Direction No 3

Review of Acquisition Determinations

Div 1B of Part IX of the Competition and Consumer Act 2010 (Cth)

1. Introduction

- 1.1. This Practice Direction concerns applications made to the Australian Competition Tribunal under Division 1B of Part IX of the *Competition and Consumer Act 2010* (Cth) (**Act**) to review an acquisition determination made by the Australian Competition and Consumer Commission (**Commission**) in relation to a notified acquisition.
- 1.2. The review of an acquisition determination under Division 1B of Part IX of the Act is subject to statutory timelines. The purpose of this Practice Direction is to facilitate the efficient conduct of the review in accordance with the statutory timelines.
- 1.3. This Practice Direction supplements:
 - (a) any requirements specified by legislative instrument made under ss 100C(2) and 100D(2) of the Act; and
 - (b) the directions contained in the General Practice Direction.
- 1.4. In this Practice Direction:
 - (a) terms defined in the Act have the same meaning; and
 - (b) a reference to the participants in the review includes:
 - (i) the applicant for review;
 - (ii) if the applicant is not the notifying party of the notified acquisition, the notifying party; and
 - (iii) any person who has been granted leave to intervene in the review by the Tribunal.

2. Applications for review

- 2.1. The application for review must:
 - (a) be made in accordance with regulations 17 and 18 of the *Competition and Consumer Regulations 2010* (Cth) and Form H;
 - (b) specify whether the applicant seeks the review of:
 - (i) an acquisition determination made by the Commission under subsection 51ABZE(1) of the Act; or
 - (ii) an acquisition determination made by the Commission under subsection

51ABZW(1) of the Act;

or both, and clearly identify the acquisition determination(s) and the date on which the statement of the Commission's reasons for making the determination was included on the acquisitions register;

- (c) specify whether the applicant is the notifying party of the notified acquisition;
- (d) if the applicant is not the notifying party of the notified acquisition, include a statement of the applicant's interest in the notified acquisition; and
- (e) be filed with the Tribunal by sending a copy of the application to a Registrar of the Tribunal by email, with a copy of the email to be sent to the Executive Officer of the Tribunal and the chambers of the President of the Tribunal.

2.2. The applicant must give a copy of the application for review to:

- (a) the Commission; and
- (b) if the applicant is not the notifying party of the notified acquisition, the notifying party.

3. First directions hearing

3.1. The Tribunal will seek to conduct the first directions hearing within 7 days of the filing of the application for review.

3.2. The Tribunal will notify:

- (a) the applicant;
- (b) if the applicant is not the notifying party, the notifying party; and
- (c) the Commission,

of the time, date and location of the first directions hearing for the application.

3.3. At the first directions hearing, the participants and the Commission will be required to address the following matters:

- (a) if the applicant is not the notifying party, whether the Tribunal should allow the applicant to apply to the Tribunal for review pursuant to s 100C(3) of the Act;
- (b) if an application has been made by a person to intervene in the proceeding, whether the Tribunal should permit the person to intervene pursuant to s 109(2) of the Act;
- (c) whether the participants or the Commission are aware that any other persons wish to intervene in the proceeding, and the date by which any applications for intervention are to be made;
- (d) whether the applicant has given to the Tribunal the additional information or documents required under s 100D(1) of the Act and, if not, the likely date on which that will occur;
- (e) whether the review period should be extended by the Tribunal pursuant to s

100P(3) or (5) of the Act;

- (f) the provision by the Commission to the participants of:
 - (i) the information that was referred to in the Commission's reasons for making the determination to which the review relates; and
 - (ii) any other information furnished, documents produced or evidence given to the Commission in connection with the making of the decision by the Commission to which the review relates;
- (g) any application to allow a person to provide new information, documents or evidence to the Tribunal pursuant to s 100S(2) of the Act, or the date by which any such application is to be made;
- (h) a proposed timetable to prepare the proceeding for hearing, including the earliest date the participants seek a hearing;
- (i) the requested duration of the hearing; and
- (j) directions for the protection of confidential information of the participants and third parties.

3.4. Model directions for the first directions hearing are set out in the Appendix to this Practice Direction.

4. Issues for determination on the review

4.1. On a review of an acquisition determination, the Tribunal must decide whether to affirm, set aside or vary the determination of the Commission, having regard only to the information, documents and evidence described in s 100T of the Act. In order to conduct the review fairly and efficiently, the Tribunal will require the participants to identify the material findings of fact, economics and law that are in dispute on the review. Although the Tribunal's task is to review the Commission's determination and not the Commission's reasons for determination, the latter will usually provide a convenient reference point for defining the matters that are truly in dispute on the review: see *Re Herald & Weekly Times Ltd* (1978) 17 ALR 281 at 296.

4.2. At the first directions hearing, the Tribunal will give directions for the sequential filing and service of a concise statement of contentions from the applicant, each other participant and the Commission.

4.3. In accordance with s 7-22 of the *Competition and Consumer (Notification of Acquisitions) Determination 2025* (Cth) (made under s 100D(2) of the Act), the concise statement of contentions from the applicant is to identify:

- (a) the principal contentions of fact, economics and law advanced by the applicant in support of the application; and
- (b) the material findings of fact, economics and law made by the Commission in its statement of reasons for making the acquisition determination with which the applicant disagrees.

- 4.4. The concise statement of contentions from each participant other than the applicant is to identify:
- (a) those contentions advanced by the applicant which are contested by the participant;
 - (b) the principal contentions of fact, economics and law advanced by the participant in support of its position on the review; and
 - (c) any material findings of fact, economics or law made by the Commission in its statement of reasons for making the acquisition determination with which the participant disagrees.
- 4.5. The purpose of the concise statement of contentions from the Commission is to identify, for the assistance of the Tribunal:
- (a) the material findings of fact, economics and law made by the Commission in its statement of reasons for making the acquisition determination which are relevant to the issues raised by the applicant in its concise statement; and
 - (b) any information furnished, documents produced or evidence given to the Commission in connection with the making of its determination which is not referred to in the Commission's statement of reasons for making the determination but which the Commission considers may assist the Tribunal in considering the material findings of fact, economics or law that are in dispute.
- 4.6. At the first directions hearing, the Tribunal will also give directions for the participants to confer and file a joint document identifying all material findings of fact, economics and law set out in the Commission's statement of its reasons for determination that are not contested by any participant on the review.

5. Role of the Commission

- 5.1. In accordance with longstanding practice, the Tribunal expects that the Commission will appear in applications for review to provide assistance to the Tribunal in conducting the review: see *Re Herald & Weekly Times Ltd* (1978) 17 ALR 281 at 300.
- 5.2. The role of the Commission on the review will depend on whether there is a participant in the review to act as contradictor. Where there is no contradictor on an issue in the proceeding, the Tribunal may request the Commission to act as contradictor in order to assist the Tribunal. Where there is a contradictor on an issue, the Tribunal expects that the Commission will avoid any duplication.

Justice Michael O'Bryan
President
1 July 2025

APPENDIX

MODEL DIRECTIONS

Participants and service of documents

1. Pursuant to s 109(2) of the *Competition and Consumer Act 2010* (Cth) (**Act**), the following persons be permitted to intervene in this proceeding: *[to be inserted]*.
2. Unless otherwise specified and subject to further order, any document required to be served by these orders must be served on:
 - (a) the applicant;
 - (b) *[if the applicant is not the notifying party, the notifying party]*; and
 - (c) any person who has been granted permission to intervene in this proceeding,(the **participants**) and the Australian Competition and Consumer Commission (**Commission**).

Extended review period

3. For the purpose of [s 100P(3)/(5)] of the Act, the period within which the Tribunal must make its determination on the review as specified in s 100P(2) is extended by a period of *[insert number]* days.

Confidentiality

4. The confidentiality regime set out in the Annexure to these directions (**Confidentiality Regime**) is to apply until further direction.
5. Subject to any further direction, the Confidentiality Regime will apply to all documents filed and/or served by a participant or the Commission in this proceeding that are identified as being subject to a claim for confidentiality.
6. Within 2 business days of these directions, each participant is to serve on each other participant and the Commission the names of each external solicitor retained by the participant and each internal solicitor employed by the participant whom the participant proposes be permitted to have unrestricted access to confidential information in accordance with paragraph 3(a) of the Confidentiality Regime (**proposed permitted recipients**).
7. Within 4 business days of these directions, the Commission is to notify each non-participant who provided information, documents or evidence to the Commission on a confidential basis:
 - (a) of the terms of the Confidentiality Regime and the names of each proposed permitted recipient for the purposes of paragraph 3(a) of the Confidentiality Regime; and
 - (b) that the non-participant may apply to the Tribunal for further directions to be made with respect to the non-participant's confidential information by filing a written application with the Tribunal on or before *[the date that is 9 business*

after the date of the directions] identifying:

- (i) the confidential information to which the application relates; and
 - (ii) the further directions sought by the non-participant.
8. Within 9 business days of these directions, a participant may apply to the Tribunal for further directions to be made with respect to that participant's confidential information by filing a written application with the Tribunal identifying:
- (a) the confidential information to which the application relates; and
 - (b) the further directions sought by the participant.
9. If an application is filed by a non-participant with the Tribunal in accordance with paragraph 7(b) or by a participant in accordance with paragraph 8:
- (a) the Tribunal will notify the non-participant (if applicable), each participant and the Commission of the time and date for the hearing of the application;
 - (b) no later than 2 business days prior to the hearing date, the confidentiality applicant or participant (as applicable) seeking further directions must file and serve an outline submission of no more than 3 pages in support of the application; and
 - (c) no later than 1 business day prior to the hearing date, each participant opposing the further directions must file and serve an outline submission of no more than 2 pages in response.

Provision of documents by the Commission

10. Within 5 business days of these directions, the Commission is to file and serve a single chronological index (**Documentary Index**) of the following material, which identifies for each document whether any part of the document is subject to a claim for confidentiality and, if so, the person claiming confidentiality:
- (a) the information that was referred to in the Commission's reasons for making the determination; and
 - (b) any other information furnished, documents produced or evidence given to the Commission in connection with the making of the Commission's determination.
11. Within 5 business days of these directions, the Commission is to serve on each participant an electronic bundle of the documents referred to in the Documentary Index that are not identified as being subject to a claim for confidentiality.
12. Within 11 business days of these directions, the Commission is to serve on each participant an electronic bundle of the documents referred to in the Documentary Index that are identified as being subject to a claim for confidentiality and which are not the subject of an application for further directions under paragraphs 7(b) or 8. For the avoidance of doubt, the Confidentiality Regime will apply to those documents.
13. The Commission is to serve on each participant an electronic bundle of the documents

referred to in the Documentary Index that are identified as being subject to a claim for confidentiality and which are the subject of an application for further directions under paragraphs 7(b) or 8 in accordance with such directions as are made by the Tribunal upon the determination of the application for further directions.

Concise statements of contention

14. The concise statement required to be given to the Tribunal by the applicant pursuant to s 7-22 of the *Competition and Consumer (Notification of Acquisitions) Determination 2025* (Cth) must:
 - (a) not exceed [20 pages]; and
 - (b) be served on each other participant and the Commission.
15. Within [10 business days] of being served with the applicant's concise statement, each other participant is to file and serve a concise statement of contentions limited to [20 pages].
16. Within [20 business days] of being served with the applicant's concise statement, the Commission is to file and serve a concise statement of contentions limited to [20 pages].

Findings of fact and economics that are not contested

17. Within [25 business days] of being served with the applicant's concise statement, the participants are to confer and file a joint document identifying all material findings of fact, economics and law set out in the Commission's statement of its reasons for determination that are not contested by any participant on the review.

Hearing

18. The proceeding is listed for hearing on an estimate of [insert number] days commencing on a date to be determined by the Tribunal.

Hearing Book

19. By no later than [25 business days] prior to the hearing, the applicant is to serve a draft index to a hearing book listing all documents proposed to be relied upon at the hearing.
20. By no later than [20 business days] prior to the hearing, each other participant and the Commission are to serve on the applicant a list of any documents to be included in the hearing book that are additional to the applicant's list.
21. By no later than [18 business days] prior to the hearing, the participants and the Commission are to confer and agree upon the form and content of the hearing book
22. By no later than [15 business days] prior to the hearing, the applicant must file and serve a copy of the hearing book in electronic form which:
 - (a) is produced in a text-recognised PDF format;
 - (b) is paginated sequentially throughout;
 - (c) is divided into separate volumes of documents such that each volume comprises a single PDF file and the file name of each PDF file is the volume

number; and

- (d) each volume of documents (being a PDF file) contains electronic bookmarks to each document in that volume.

Submissions

- 23. By no later than [*15 business days*] prior to the hearing, the applicant must file and serve an outline submission limited to [*insert number*] pages.
- 24. By no later than [*10 business days*] prior to the hearing, each participant other than the applicant must file and serve an outline submission limited to [*insert number*] pages.
- 25. By no later than [*5 business days*] prior to the hearing, the Commission must file and serve an outline submission limited to [*insert number*] pages.

Annexure to the Model Directions
Confidentiality Regime

1. The following defined terms apply for the purposes of this Confidentiality Regime:
 - (a) **ACCC** means the Australian Competition and Consumer Commission
 - (b) **Act** means the *Competition and Consumer Act 2010* (Cth);
 - (c) **Confidential Information** means all information filed with the Tribunal, served or otherwise produced in the proceeding:
 - (i) in respect of which a claim of confidentiality has been made and has not been refused by the Tribunal;
 - (ii) which has been marked 'Confidential'; and
 - (iii) which is not in the public domain or is only in the public domain by reason of a breach by any person of a confidentiality undertaking in the proceeding;
 - (d) **Determination** means the determination made by the Commission which is the subject of this proceeding for review;
 - (e) **Directions** means the directions made by the Tribunal on *[insert date]* to which this Confidentiality Regime is attached;
 - (f) **Participant** means:
 - (i) the applicant for review;
 - (ii) *[if the applicant is not the notifying party, the notifying party]*; and
 - (iii) any person who has been granted permission to intervene in this proceeding;
 - (g) **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, graduates, paralegals, IT staff, print room staff and staff of external printing or technology vendors based in Australia;
 - (h) **Third Party** means a person, other than a Participant, who provided information, documents or evidence to the Commission in connection with the Determination on a confidential basis;
 - (i) **Tribunal** means the Australian Competition Tribunal.
2. The following persons have unrestricted access to the Confidential Information, provided that such persons keep that material confidential and in accordance with this Confidentiality Regime:
 - (a) the Tribunal, Tribunal staff and any other person assisting the Tribunal;
 - (b) the ACCC, ACCC staff and any other person assisting the ACCC in relation to the proceeding including the ACCC's barristers and external solicitors; and

- (c) Support Staff of the persons listed in paragraphs 2(a)-(b) and paragraphs 3(a)-(d) of this Confidentiality Regime.
- 3. The following persons have unrestricted access to the Confidential Information, provided that such persons have signed the Confidentiality Undertaking in the form attached before receiving the Confidential Information and the Confidential Information is only used for the purpose of this proceeding:
 - (a) external solicitors retained by a Participant and internal solicitors employed by a Participant who are directly involved in the proceeding provided that:
 - (i) the name of the solicitor was notified to the other Participants and the Commission in accordance with the Directions; and
 - (ii) no objection was made by any Participant or Third Party in accordance with the Directions to the solicitor having access to the Confidential Information under this Confidentiality Regime, or any objection was dismissed by the Tribunal;
 - (b) barristers retained by a Participant who are directly involved in the proceeding;
 - (c) independent experts retained for the purposes of the proceeding on behalf of a Participant;
 - (d) independent experts and external consultants engaged for the purposes of the proceeding by the ACCC (but such experts and external consultants are only required to sign the confidentiality undertaking in the form attached and marked “Confidentiality Undertaking” to access Confidential Information not in their control prior to the commencement of the proceeding); and
 - (e) any other external solicitor retained by a Participant who is directly involved in the proceeding provided that:
 - (i) the name of the person is first notified to each Participant or Third Party whose Confidential Information is proposed to be accessed by the person; and
 - (ii) the notified Participant or Third Party does not object in writing within 4 business days of receiving notification;
 - (f) any other person with the prior written consent of each Participant or Third Party whose Confidential Information is proposed to be accessed by the person.
- 4. If a Participant or Third Party objects to access in accordance with paragraph 3(e)(ii), the Participant seeking access may apply in writing to the Tribunal to have the access dispute determined.
- 5. The Participants and the ACCC are each to keep a register of the persons within their organisation, or retained by their organisation, who have signed Confidentiality Undertakings pursuant to paragraph 3 above, and of the external printing or technology vendors based in Australia who have been provided with any Confidential Information,

which register can be inspected on 3 business days' notice.

6. The Confidential Information must not be referred to orally during the hearing of the proceeding unless the Tribunal has directed that the hearing is to take place in private pursuant to s 106(2) of the Act.
7. Until further order of the Tribunal, Confidential Information is not to appear in any transcript of the proceeding before the Tribunal other than in a confidential copy of the transcript, which shall only be made available to the persons referenced in paragraphs 2 and 3 of this Confidentiality Regime and otherwise as permitted by this Confidentiality Regime.
8. For the avoidance of doubt, nothing in this regime prevents:
 - (a) one or more of the Participants and the ACCC from having access to or otherwise dealing with their own Confidential Information;
 - (b) the ACCC having access to or otherwise dealing with Confidential Information of any Participant that was in its control prior to the commencement of the proceeding.

Attachment to Confidentiality Regime
Confidentiality Undertaking

I, [name], [occupation], of [address], on [date] hereby undertake as follows:

1. In this undertaking:
 - (a) **ACCC** means the Australian Competition and Consumer Commission;
 - (b) **Confidential Information** means all information filed with the Tribunal, served or otherwise produced in the proceeding:
 - (i) in respect of which a claim of confidentiality has been made and has not been refused by the Tribunal;
 - (ii) which has been marked 'Confidential'; and
 - (iii) which is not in the public domain or is only in the public domain by reason of a breach by any person of a confidentiality undertaking in the proceeding;
 - (c) **Confidentiality Regime** means the confidentiality regime annexed to the directions of the Tribunal made in this proceeding on [*insert date*];
 - (d) **proceeding** means [*to be inserted*] (including any appeals from a decision of the Tribunal in the proceeding);
 - (e) **Support Staff** means persons providing administrative assistance and includes secretaries, administrative assistants, graduates, paralegals, IT staff, print room staff and staff of external printing or technology vendors based in Australia.
 - (f) **Tribunal** means the Australian Competition Tribunal; and
2. I will not use the Confidential Information for any purpose other than my work in respect of the proceeding.
3. I will keep the Confidential Information confidential and will not disclose the Confidential Information directly or indirectly to any person, other than persons who have signed this undertaking, or any other persons permitted to access such information pursuant to the Confidentiality Regime or any directions of the Tribunal in the proceedings related to confidentiality.
4. To the extent that I possess the Confidential Information, I will:
 - (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
 - (b) keep the Confidential Information under my effective control; and
 - (c) immediately notify the ACCC and the party who made the claim of confidentiality in writing of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information, of which I become aware.

5. To the extent that I cause, or permit, any Support Staff to have access to the Confidential Information:
 - (a) that will occur on the basis that the Confidential Information is treated in accordance with clause 4 above; and
 - (b) I will ensure that any access given to external printing or technology vendors based in Australia is on the basis that those vendors do not retain any of the Confidential Information after completion of their services.
6. Following the final determination of the proceeding, subject to any professional obligations I have to retain any of the Confidential Information, I will:
 - (a) use reasonable efforts to destroy the Confidential Information in my possession, custody or control; or
 - (b) otherwise, in respect of any Confidential Information under my effective control and not destroyed in accordance with paragraph (a), deal with it only in accordance with this undertaking.
7. I acknowledge that my obligations in this undertaking will continue after the final determination of the proceeding (or such other period as the Tribunal determines is appropriate) and the destruction of the Confidential Information.
8. I acknowledge that damages may not be an adequate remedy for the breach of my obligations in this undertaking and that the person who made a claim of confidentiality in respect of that information may be entitled to equitable relief (including, without limitation, injunctive relief) in respect of any threatened or actual breach of my obligations in this undertaking.
9. Nothing in this undertaking shall impose an obligation upon me in respect of information:
 - (a) which is in the public domain; or
 - (b) which has been obtained by me otherwise than in relation to the proceeding, provided that the information is not in the public domain and/or has not been obtained by me by reason of, or in circumstances which involve, any breach of confidentiality undertaking or a breach of any other obligation of confidence in favour of a person who made a claim of confidentiality in respect of that information or by any other unlawful means, of which I am aware.
10. I irrevocably submit to the jurisdiction of the Tribunal for the purposes of enforcing the terms of this undertaking.

SIGNED by [*insert name*] in the presence of: