



# Trade Practices Regulations 1974

**Statutory Rules 1974 No. 170 as amended**

made under the

*Trade Practices Act 1974*

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## Part I Preliminary

### 1 Name of regulations [see Note 1]

These Regulations are the *Trade Practices Regulations 1974*.

### 2 Interpretation

- (1) In these Regulations:

*Act* means the *Trade Practices Act 1974*.

*AEMO* has the same meaning as in the *Renewable Energy (Electricity) Act 2000*.

*Competition Code* has the same meaning as in Part XIA of the Act.

*proprietary company* has the same meaning as in subsection 45A (1) of the Corporations Law.

- (2) In these Regulations, a reference to a Form by a letter, or letters, is a reference to the Form so lettered in Schedule 1.
- (3) In these Regulations (including any form provided for by these Regulations), unless the contrary intention appears (from section 150C of the Act or otherwise):
- (a) a reference to the Act, or to the Act and these Regulations, includes a reference to the Competition Code; and
  - (b) a reference to a provision of the Act (including a reference to a Part, Division or Subdivision of the Act) includes a reference to that provision having effect as a provision of the Competition Code; and
  - (c) a reference to a provision of these Regulations (including a reference to a Part of these Regulations) includes a reference to that provision having effect as a provision of the Competition Code.

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**3 Computation of time**

- (1) Where a period of time dating from a given day, act or event is prescribed by or allowed under these Regulations for doing an act or taking a proceeding, the time shall be reckoned exclusive of the day, or of the day of the act or event, from which the time dates.
- (2) Where the time prescribed by or allowed under these Regulations for doing an act or taking a proceeding expires on a Saturday or Sunday or on a day on which the office of the Registrar is closed, the act may be done or the proceeding may be taken on the first day following that is not a Saturday, Sunday or day on which that office is closed.

**4 Directions in Forms**

A person completing any document that is required to be in accordance with a Form in Schedule 1 or Schedule 3 shall complete that document in accordance with any directions contained in the Form, including any directions with regard to the furnishing of other documents.

## Part 2                      General

### 4A            Registrar of the Tribunal

In this Part, unless the contrary intention appears:

**Registrar** means the Registrar of the Tribunal and, except in subregulation 15 (3), includes a Deputy Registrar.

### 5             Seal of the Commission

- (1) The seal of the Commission shall be of a design approved by the Chairperson and shall include:
  - (a) the Commonwealth Arms, that is to say, the Armorial Ensigns and Supporters granted and assigned for the Commonwealth of Australia by Royal Warrant dated 19 September 1912; and
  - (b) the words “Australian Competition and Consumer Commission”.
- (3) The seal of the Commission shall be affixed by or with the authority of the person performing the duties of Secretary to the Commission to such documents as are required by these Regulations or by a direction of a member of the Commission to be sealed with the seal of the Commission.

### 6             Offices of Commission

- (1) The Commission shall maintain an office at each of the following places, namely, Canberra, Sydney, Melbourne, Brisbane, Adelaide, Perth, Hobart and Darwin, and shall maintain offices at such other places as it determines.
- (2) The Commission shall notify in the *Gazette* the address of each of its offices and any change in such an address.

### 6AA          Federal Court orders about energy laws

- (1) For paragraph 44AAG (2) (e) of the Act, the following kinds of orders are prescribed:

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- (a) an order that includes a direction that the loads of the person to whom the order applies be disconnected in accordance with the rules;
- (b) an order that includes a direction that the person to whom the order applies be suspended from, as the case requires, purchasing or supplying electricity through the wholesale exchange operated and administered by AEMO.

*Note* The Commonwealth, State and Territory co-operative scheme is set out in legislation. The *National Electricity (South Australia) Act 1996* of South Australia is the lead legislation, and has been applied by the other participants in the scheme as a law of their jurisdictions.

AEMO is the operator of the electricity wholesale exchange.

- (2) In subregulation (1):

**rules** means rules mentioned in paragraph (c) of the definition of *South Australian Electricity Legislation* in subsection 4 (1) of the Act, to the extent that they apply as part of:

- (a) a uniform energy law that is applied as a law of the Commonwealth; or
- (b) a State/Territory energy law.

*Note* **Uniform energy law** and **State/Territory energy law** are defined in subsection 4 (1) of the Act.

**6A Application to Council for declaration recommendation**

An application to the Council under subsection 44F (1) of the Act for a declaration recommendation in respect of a particular service must include the following information:

- (a) the applicant's name and, if the applicant is the designated Minister or an organisation, the name and contact details of a contact officer for the Minister or organisation;
- (b) the applicant's address for the delivery of documents, including the notification of any decision of the designated Minister or the Council, relating to the application or the declaration recommendation;
- (c) a description of the service and of the facility used to provide the service;

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- (d) the name of the provider, or of each provider, of the service and, if a provider does not own the facility, the name of the owner, or of each owner, of the facility, as the case requires;
- (e) the reason for seeking access (or increased access) to the service;
- (f) a brief description:
  - (i) of how access (or increased access) would promote competition in at least one market (whether or not in Australia), other than the market for the service; and
  - (ii) of the market, or of each of the markets, in which competition would be so promoted;
- (g) the reason why the applicant believes that it would be uneconomical for anyone to develop another facility to provide the service;
- (h) the reason why the facility is of national significance, having regard to the matters set out in paragraph 44G (2) (c) of the Act;
- (j) a description of one or more methods by which access to the service can be provided and details of any risk to human health or safety caused by that method or those methods;
- (k) if the service is already the subject of a regime for access to the service (including an access undertaking):
  - (i) particulars of the regime including details, if any, about when the regime is to end; and
  - (ii) reasons why the regime is not an effective access regime;
- (l) a description of efforts, if any, that have been made to negotiate access to the service.

**6B Application to the Council for a recommendation on the effectiveness of an access regime**

An application to the Council under subsection 44M (2) of the Act for a recommendation on the effectiveness of a regime for access to a service must include the following information:

- (a) the name of the State or Territory on whose behalf the application is made;

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- (b) the name and designation of the responsible Minister for the State or Territory;
- (c) the name and contact details of a contact officer for the State or Territory;
- (d) the responsible Minister's address for the delivery of documents, including the notification of any decision of the Commonwealth Minister or the Council, relating to the application or the recommendation;
- (e) a description of the access regime (including a copy of any relevant legislation);
- (f) a description of the service;
- (g) grounds in support of the application.

**6C Notification of access dispute**

- (1) A notification under section 44S of the Act of an access dispute in relation to a declared service must include the following information:
  - (a) the name of the person notifying the dispute (in this regulation called *the notifier*) and, if the notifier is not an individual, the name and contact details of a contact person for the notifier;
  - (b) the notifier's address for the delivery of documents relating to matters arising out of the notification;
  - (c) whether the notifier is the provider or the third party and:
    - (i) if the notifier is the provider — the name and other particulars of the third party; or
    - (ii) if the notifier is the third party — the name and other particulars of the provider, or of each provider, of the service and, if the provider does not own the facility, the name of the owner, or of each owner, of the facility, as the case requires;
  - (d) a short description of the business (existing and anticipated) of the notifier;
  - (e) a description of the service and of the facility used to provide the service;

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**Regulation 6C**

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- (f) a description of the access dispute, including:
  - (i) whether the dispute is about the varying of existing access arrangements and, if so, a description of those arrangements; and
  - (ii) each aspect of the access to the service on which the parties to the dispute are able to agree; and
  - (iii) each aspect of the access to the service on which the parties to the dispute are not able to agree;
- (g) a description of efforts, if any, to resolve the dispute;
- (h) to the best of the notifier's knowledge, particulars of:
  - (i) any existing user of the service, including a brief description of how, if at all, access would affect the user; and
  - (ii) any person having a right (contractual or otherwise) to require the provider to provide the service to that person, including a description of how, if at all, access would affect that right;
- (j) whether access would involve extending the facility;
- (k) to the best of the notifier's knowledge, an estimate or description of the direct costs of providing access to the service to the third party, indicating who will bear those costs;
- (l) whether access will involve the third party becoming the owner (or one of the owners) of any part of the facility, or of extensions of the facility, and, if so:
  - (i) a short description of the circumstances by which the third party's ownership would arise; and
  - (ii) whether the provider consents, or will consent, to the third party becoming an owner;
- (m) a description of one or more methods by which access to the service can be provided and details of any risk to human health or safety caused by that method or those methods;
- (n) if the notifier is the third party — a short description of the benefits from allowing access to the service, or increased access to the service, as the case requires.

**Regulation 6D**

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- (2) The notifier must pay to the Commission, in respect of a notification, a fee of \$2,750.
- (3) A fee under subregulation (2) is payable at the time of giving the notification.

**6D Withdrawal of notification**

- (1) A withdrawal of a notification, under section 44T of the Act:
  - (a) must be by notice in writing to the Commission; and
  - (b) must include the following information:
    - (i) the name of the person withdrawing the notification;
    - (ii) whether the person withdrawing the notification is the provider or the third party;
    - (iii) a short description of the access dispute to which the notification relates;
    - (iv) a reference to the relevant paragraph or subparagraph of subsection 44T (1) of the Act under which the person withdrawing the notification claims to be authorised to do so.
- (2) At the time of giving a notice of withdrawal to the Commission under subregulation (1), the person withdrawing the notification must give a copy of the notice to:
  - (a) the provider or the third party, as the case requires, who is not withdrawing the notification; and
  - (b) any other person to whom the Commission has given notice in writing under subsection 44S (2) of the Act.
- (3) A notice of withdrawal takes effect when it is received by the Commission.

**6E Summons to witness — access arbitration**

- (1) A summons under subsection 44ZH (2) of the Act must be in accordance with Form AA.
- (2) For the purposes of section 44ZI of the Act, a summons must be served on a person by:
  - (a) delivering a copy of the summons to the person personally; and



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- (b) showing the original of the summons to the person at the time at which the copy is delivered to the person.

**6F Costs of an access arbitration**

- (1) This regulation is made for the purposes of section 44ZN of the Act.
- (1A) The amount of a fee mentioned in subregulation (2) is the GST inclusive market value of the consideration for the supply of the service of conducting an arbitration of an access dispute.
- (2) The Commission may charge, for its costs in conducting an arbitration of an access dispute:
  - (a) a pre-hearing fee of:
    - (i) if the access dispute is in respect of a variation of an existing determination relating to access by the third party — \$2 170; or
    - (ii) in any other case — \$10 850; and
  - (b) a hearing fee of \$4 340 for each day, or part of a day, of the arbitration hearing.
- (3) A pre-hearing fee charged under paragraph (2) (a) is payable by the person who notified the access dispute on or before the commencement of the arbitration hearing.
- (4) A hearing fee charged under paragraph (2) (b) for a day, or part of a day, of the arbitration hearing:
  - (a) must be apportioned by the Commission between the parties appearing at the hearing on that day; and
  - (b) is payable by those parties accordingly.
- (5) Nothing in this regulation enables the Tribunal to charge for its costs in conducting a review of a determination.

**6FA Approval of competitive tender process for construction and operation of a facility — content of application**

- (1) For paragraph 44PA (2) (b) of the Act, this regulation sets out requirements for an application for approval of a tender process, for the construction and operation of a facility that is

**Regulation 6FB**

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to be owned by the Commonwealth, State or Territory, as a competitive tender process.

- (2) The application must state:
  - (a) the contact details of the Commonwealth Minister, or the responsible Minister of a State or Territory, who is the applicant; and
  - (b) details of the proposed facility, including its nature and proposed location; and
  - (c) details of the proposed tender process, including:
    - (i) the minimum requirements which a tender will be required to meet before being considered under the tender process; and
    - (ii) the selection criteria that will be used to select the successful tenderer; and
    - (iii) the date for the calling for tenders; and
    - (iv) the closing date for the submission of tenders; and
    - (v) the date by which the successful tenderer is to be selected; and
    - (vi) the date by which the contract or arrangement resulting from the tender process will be entered into; and
  - (d) the reasons why the tender process satisfies the requirements specified in subsection 44PA (4) of the Act.

**6FB      Approval of competitive tender process for construction and operation of a facility — requirements for tender process**

- (1) For paragraph 44PA (4) (b) of the Act, this regulation sets out requirements which a tender process must meet before being approved as a competitive tender process.
- (2) The tender process must relate to a proposed facility.
- (3) The tender process must set out the arrangements (including procedures and rules) that are to be followed for the conduct of the tender process, including:
  - (a) the selection criteria that will be used to select the successful tenderer; and

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**Regulation 6FB**

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- (b) the requirement for a tenderer to include in its tender the terms and conditions on which the tenderer will provide access to the service or services proposed to be provided by means of the facility, as specified in accordance with paragraph 44PA (2) (a) of the Act; and
- (c) the minimum requirements which a tender will be required to meet before being considered.

*Examples for paragraph (b) of things to be addressed in the proposed terms and conditions*

- 1 A price or pricing methodology.
  - 2 An obligation that the tenderer will not hinder access to the service.
  - 3 An obligation that the tenderer will implement a particular business structure.
  - 4 Procedures for determining terms and conditions of access to the service.
  - 5 How the terms and conditions of access to the service will be administered.
- (4) The tender process must set out the arrangements (including procedures and rules) that are to be followed to ensure that the successful tenderer would not limit, or attempt to limit:
    - (a) the services to which access may be sought; or
    - (b) the construction or operation of other infrastructure which could provide the same services to the same market as the infrastructure proposed in the tender.
  - (5) The tender process must ensure that a request for tender under the process would not limit, or attempt to limit:
    - (a) the configuration of the infrastructure proposed in the tender; or
    - (b) any other technical specification of the facility;  
unless the Commission is satisfied that it would be appropriate for the request for tender to do so.
  - (6) The tender process must:
    - (a) be designed in a way that makes it appropriate, in its circumstances, for ensuring reasonable terms and conditions of access to the service; and
    - (b) be capable of being used in a way that makes it appropriate, in its circumstances, for ensuring reasonable terms and conditions of access to the service.

**Regulation 6FB**

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- (7) For subregulation (6), when the Commission considers the approval of the tender process it must have regard to:
  - (a) the persons who are likely to be competitors for the construction and operation of the facility; and
  - (b) the persons who are likely to be competitors for the provision of the services.
- (8) Subregulation (7) does not limit the matters to which the Commission may have regard when it considers the approval of the tender process.
- (9) The tender process must set out proposed selection criteria that will ensure that a tender will be selected principally on the basis that the tender will lead to the provision of the service or services proposed to be provided by means of the facility, as specified in accordance with paragraph 44PA (2) (a) of the Act:
  - (a) at the lowest sustainable access price or prices; or
  - (b) on terms and conditions that are otherwise most likely to promote the objects of Part IIIA of the Act.

*Note* Although a tender is to be selected principally on the basis that it offers the most favourable access terms, as described in paragraphs (9) (a) and (b), an applicant's tender may address additional objectives to be taken into account in the selection process, such as community service obligations and environmental objectives.
- (10) The tender process must set out proposed selection criteria that will ensure that a tender will not be selected unless the terms and conditions of access to the service or services proposed to be provided by means of the facility, as specified in accordance with paragraph 44PA (2) (a) of the Act, are reasonable, having regard to:
  - (a) the objects of Part IIIA of the Act; and
  - (b) the legitimate interests of the provider of the service; and
  - (c) the legitimate interests of the owner of the facility; and
  - (d) the public interest, including the public interest in having competition in markets (whether or not the markets are in Australia); and
  - (e) the interests of persons who may wish to have access to the service; and
  - (f) the objectives of procedural probity and fair dealing.

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**Regulation 6G**

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**6FC Report on conduct of tender process**

- (1) For subsection 44PB (2) of the Act, this regulation sets out requirements for a report on the conduct of a tender process.
- (2) The report must include:
  - (a) details of the successful tenderer; and
  - (b) the terms and conditions of access to the service or services proposed to be provided by means of the facility, as specified in accordance with paragraph 44PA (2) (a) of the Act; and
  - (c) evidence showing that:
    - (i) the tender process was conducted in accordance with the competitive tender process approved by the Commission; and
    - (ii) the successful tenderer was selected in accordance with the selection criteria specified in the competitive tender process approved by the Commission.

**6G Application for registration of a contract for access**

- (1) An application under section 44ZW of the Act for registration of a contract that provides for access to a declared service:
  - (a) must be in writing; and
  - (b) must include the following information:
    - (i) the names of the parties to the contract and, if a party is not an individual, the name and contact details of a contact person for that party;
    - (ii) each party's address for the delivery of documents in relation to the application;
    - (iii) a description of the service to which the contract relates;
    - (iv) a description of the contract, including the date on which the contract was made;
    - (v) a description of the impact of the contract on the level of competition in relevant markets;

**Regulation 6H**

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- (vi) a description of the impact of the contract on other users of the service, including particulars of those users.
- (2) A fee of \$5 425 is payable to the Commission in respect of an application referred to in subregulation (1), at the time of making the application.
- (3) The amount of the fee payable under subregulation (2) is the GST inclusive market value of the consideration for the supply of the service of registration of a contract that provides for access to a declared service.

**6H Inspection of Part IIIA registers and copies of documents**

- (1) In this regulation and in regulation 6I, *Part IIIA register* means:
  - (a) the public register of decisions and declarations kept under section 44Q of the Act; or
  - (b) the public register of registered contracts kept under section 44ZW of the Act; or
  - (c) the public register of access undertakings kept under section 44ZZC of the Act; or
  - (d) the public register of determinations kept under section 44ZZL of the Act.
- (2) A person may:
  - (a) inspect any Part IIIA register upon request made in accordance with subregulation (3); and
  - (b) obtain a copy of any document on a Part IIIA register (including, where the person so requests, a copy certified to be a true copy by a person authorised by the Commission to certify copies of that kind):
    - (i) on request made in accordance with subregulation (4); and
    - (ii) on payment of the fee prescribed by regulation 28.
- (3) A request to inspect a Part IIIA register must be made in person at the office of the Commission where that register is kept.

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**Regulation 6J**

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- (4) A request to obtain a copy of a document contained in a Part IIIA register must be made:
  - (a) in person at the office of the Commission where that register is kept; or
  - (b) in writing to the Commission at that office.

**6I Evidence of Part IIIA register documents**

- (1) A copy of a document contained in a Part IIIA register, certified to be a true copy by a person authorised by the Commission to certify copies of documents of that kind, is to be received in all courts and tribunals as evidence of the document.
- (2) A document purporting to be a copy of a document contained in a Part IIIA register and to be certified to be a true copy in accordance with subregulation (1), is to be taken to be a true copy of the document and to be so certified, unless the contrary is established.

**6J Access Codes prepared by industry bodies  
(Act, section 44ZZAA)**

- (1) For the purposes of paragraph 44ZZAA (3) (e) of the Act, the following matters are, where relevant, matters which the Commission must have regard in considering whether to accept an access code:
  - (a) government legislation and policies relating to ecologically sustainable development; and
  - (b) social welfare and equity considerations, including community service obligations; and
  - (c) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity; and
  - (d) economic and regional development, including employment and investment growth; and
  - (e) the interests of consumers generally or of a class of consumers; and
  - (f) the competitiveness of Australian businesses; and
  - (g) the efficient allocation of resources.

## Regulation 7

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- (2) For the purposes of subsection 44ZZAA (8) of the Act, the National Electricity Code Administrator Limited (“NECA”), Australian Company Number 073 942 775, is a prescribed industry body.
- (3) For subsection 44ZZAA (8) of the Act, the Australian Energy Market Commission is a prescribed industry body.

*Note* The Australian Energy Market Commission (also known as *AEMC*) is established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* of South Australia, and defined in section 4 of the Trade Practices Act.

## 7 Australian Energy Regulator may disclose information to prescribed persons and bodies (Act paragraph 44AAF (3) (e))

For paragraph 44AAF (3) (e) of the Act, the bodies set out in the following table are prescribed bodies.

Item	Prescribed body
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### Commonwealth

- 1.1 National Competition Council, established by section 29A of the Act
- 1.2 Tribunal constituted by subsection 30 (1) of the Act

### New South Wales

- 2.1 Independent Pricing and Regulatory Tribunal of New South Wales established by subsection 5 (1) of the *Independent Pricing and Regulatory Tribunal Act 1992* of New South Wales
- 2.2 Energy and Water Ombudsman (NSW) Limited (ACN 079 718 915)

### Victoria

- 3.2 Essential Services Commission established by subsection 7 (1) of the **Essential Services Commission Act 2001** of Victoria
- 3.3 Energy and Water Ombudsman (Victoria) Limited (ACN 070 516 175)

### Queensland

- 4.1 Queensland Competition Authority established by section 7 of the *Queensland Competition Authority Act 1997* of Queensland



**Regulation 7A****Item Prescribed body**

- 4.2 Energy Ombudsman established by section 10 of the *Energy Ombudsman Act 2006* of Queensland

**Western Australia**

- 5.1 Economic Regulation Authority established by section 4 of the *Economic Regulation Authority Act 2003* of Western Australia

**South Australia**

- 6.1 Essential Services Commission established by subsection 4 (1) of the *Essential Services Commission Act 2002* of South Australia
- 6.3 Energy Industry Ombudsman (SA) Limited (ACN 089 791 604)

**Tasmania**

- 7.1 Office of the Regulator established by subsection 5 (1) of the *Electricity Supply Industry Act 1995* of Tasmania
- 7.2 Ombudsman within the meaning of the *Energy Ombudsman Act 1998* of Tasmania

**Australian Capital Territory**

- 8.1 Independent Competition and Regulatory Commission for the Australian Capital Territory established by subsection 5 (1) of the *Independent Competition and Regulatory Commission Act 1997* of the Australian Capital Territory
- 8.2 Essential Service and Consumer Council established by section 169 of the *Utilities Act 2000* of the Australian Capital Territory

**7A Prescribed energy laws (Act subparagraph 4 (1) (c) (ii))**

For subparagraph (c) (ii) of the definition of *State/Territory energy law* in subsection 4 (1) of the Act, the laws set out in the following table are prescribed.

**Item Prescribed laws****Victoria**

- 3.1 Parts 3 and 4 of the **Gas Industry Act 2001** of Victoria

**Regulation 7B**

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Item	Prescribed laws
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**Western Australia**

- |     |   |
|-----|---|
| 5.1 | Section 15 of the <i>Gas Pipelines Access (Western Australia) Act 1998</i> of Western Australia |
|-----|---|

**Tasmania**

- |     |   |
|-----|---|
| 7.1 | Division 7 of Part 2 of the <i>Tasmanian Electricity Supply Industry Act 1995</i> of Tasmania |
|-----|---|
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**7B Merits review by Tribunal (Act subsection 44ZZR (2))**

For subsection 44ZZR (2) of the Act, the following provisions of these Regulations apply to a merits review conducted by the Tribunal:

- (a) regulations 17, 18, 19 and 21;
- (b) paragraphs 22 (1) (a) and (aa);
- (c) subregulation 22 (2);
- (d) regulations 22A, 23 and 25;
- (e) subregulation 26 (1A);
- (f) paragraph 28M (1) (c);
- (g) subregulations 28M (2), (3) and (4);
- (h) regulation 28P.

**7C Register of applications for review under State/Territory energy law (Act subsection 44ZZR (2))**

- (1) For subsection 44ZZR (2) of the Act, the Tribunal must keep a register of applications for review under a State/Territory energy law.
- (2) The register must include:
  - (a) any document given to the Tribunal in relation to an application referred to in subregulation (1); and
  - (b) particulars of any oral submission made to the Tribunal in relation to such an application; and

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**Regulation 7D**

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- (c) the determination of the Tribunal on such an application and the statement of the reasons given by the Tribunal for that determination;

unless regulation 7D requires the exclusion of the document, particulars or determination.

**7D Confidentiality claims etc (Act subsection 44ZZR (2))***Requests for confidential treatment*

- (1) If a person gives information to the Tribunal in relation to an application referred to in subregulation 7C (1), the person may, at the time of giving the information, request that the information be excluded from the register and the Commission's website because of its confidential nature.

*Confidentiality claims to be determined first*

- (2) If a request is made under subregulation (1), the information must be excluded from the register and the Commission's website until the Tribunal has made a determination on the request.

*When Tribunal must exclude information*

- (3) If a request is made under subregulation (1), the Tribunal must exclude the information from the register and the Commission's website if the information contains particulars of:
  - (a) the amount of electricity or gas a person has used or has a right to obtain; or
  - (b) the cost of gas or electricity services to the person.

*When Tribunal may exclude information*

- (4) If a request is made under subregulation (1), the Tribunal may exclude the information from the register and the Commission's website if it is satisfied that it is desirable to do so because of the confidential nature of the information.

**Regulation 8**

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*If request refused, document may be withdrawn*

- (5) The Tribunal must return the document or part of the document to the person:
  - (a) if the Tribunal refuses a request made under subregulation (1) and the information is contained in the document; or
  - (b) if the person who gave the document to the Tribunal so requires.
- (6) If paragraph (5) (a) or (b) applies, the Tribunal must exclude the document or the part of the document (as the case requires) from the register and the Commission's website.

*If request refused, oral submission may be withdrawn*

- (7) The person who made the submission may withdraw all or part of the submission if:
  - (a) the Tribunal refuses a request made under subregulation (1); and
  - (b) the information was given by way of oral submission.
- (8) If subregulation (7) applies, the Tribunal must exclude the submission or part of the submission (as the case requires) from the register and the Commission's website.

*Tribunal may exclude information for other reasons*

- (9) The Tribunal may exclude information from the register and the Commission's website if it is satisfied that it is desirable to do so for any reason other than the confidential nature of the information.

**8 Prescribed association or body for purposes of paragraph 51 (2) (c) of the Act**

For the purposes of paragraph 51 (2) (c) of the Act, the Australian Gas Association, a company limited by guarantee within the meaning of the *Companies Act 1961* of the State of Victoria, as in force at the date of commencement of this regulation, is a prescribed association or body.

**Regulation 8A****8A Prescribed schemes**

(1) For paragraph 87AB (2) (a) of the Act, a scheme in the following table is prescribed.

<b>Item</b>	<b>Scheme</b>	<b>Date prescribed</b>
1	The ACS Limited Liability (NSW) Scheme, published in the New South Wales Government Gazette No. 51, 18 December 2009	8 June 2010
2	The Australian Valuers Institute (NSW) Scheme, published in the New South Wales Government Gazette No. 83, 29 June 2007	5 October 2007
3	The CPA Australia Limited (Northern Territory) Scheme, published in the Northern Territory Government Gazette No. G12, 26 March 2008	13 June 2009
4	The CPA Australia Limited (South Australia) Scheme, published in the South Australian Government Gazette No. 9, 14 February 2008	13 June 2009
5	The CPA Australia Ltd (ACT) Scheme, approved on 17 January 2008	13 June 2009
6	The CPA Australia Ltd (NSW) Scheme, published in the New South Wales Government Gazette No. 139, 5 October 2007	25 October 2007
7	The CPA Australia Ltd (Queensland) Scheme, published in the Queensland Government Gazette No. 15, 25 January 2008	13 June 2009
8	The CPA Australia Ltd (Victoria) Scheme, published in the Victoria Government Gazette No. G 8, 21 February 2008	13 June 2009
9	The CPA Australia Ltd (Western Australia) Scheme, published in the Western Australian Government Gazette No. 17, 1 February 2008	13 June 2009
10	The Engineers Australia (ACT) Scheme, approved on 17 December 2008	13 June 2009
11	The Engineers Australia (NSW) Scheme: (a) published in the New South Wales Government Gazette No. 32, 16 February 2007; and	13 June 2009

**Regulation 8A**

<b>Item</b>	<b>Scheme</b>	<b>Date prescribed</b>
	(b) amended by instrument published in the New South Wales Government Gazette No. 157, 12 December 2008	
12	The Engineers Australia South Australia Scheme, published in the South Australian Government Gazette No. 59, 20 August 2009	8 June 2010
13	The Engineers Australia Tasmania Scheme, published in the Tasmanian Government Gazette No. 20 929, 1 April 2009	8 June 2010
14	The Engineers Australia (Victoria) Scheme, published in the Victorian Government Gazette No. G 47, 19 November 2009	8 June 2010
15	The Engineers Australia Western Australia Scheme, published in the Western Australian Government Gazette No. 207, 9 December 2008	13 June 2009
16	The Institute of Chartered Accountants in Australia (ACT) Scheme, approved on 17 January 2008	13 June 2009
17	The Institute of Chartered Accountants in Australia (NSW) Scheme, published in the New South Wales Government Gazette No. 139, 5 October 2007	25 October 2007
18	The Institute of Chartered Accountants in Australia (Northern Territory) Scheme, published in the Northern Territory Government Gazette No. G45, 7 November 2007	13 June 2009
19	The Institute of Chartered Accountants in Australia (Qld) Scheme, published in the Queensland Government Gazette No. 15, 25 January 2008	13 June 2009
20	The Institute of Chartered Accountants in Australia (South Australia) Scheme, published in the South Australian Government Gazette No. 88, 20 December 2007	13 June 2009
21	The Institute of Chartered Accountants in Australia (Victoria) Scheme, published in the Victoria Government Gazette No. G 1, 3 January 2008	13 June 2009

**Regulation 8A**

<b>Item</b>	<b>Scheme</b>	<b>Date prescribed</b>
22	The Institute of Chartered Accountants in Australia (Western Australia) Scheme, published in the Western Australian Government Gazette No. 204, 28 September 2007	25 October 2007
23	The Institution of Engineers Australia Scheme, published in the Northern Territory Government Gazette No. G50, 17 December 2008	13 June 2009
24	The Institution of Engineers Australia (Queensland) Scheme, published in the Queensland Government Gazette No. 111, 19 December 2008	13 June 2009
25	The Investigative and Remedial Engineers NSW Scheme, published in the New South Wales Government Gazette No. 139, 17 November 2006	5 July 2007
27	The Law Society of NSW (NSW) Scheme, published in the New South Wales Government Gazette No. 1, 10 November 2006	5 July 2007
28	The New South Wales Bar Association Scheme, published in the New South Wales Government Gazette No. 183, 19 November 2004	11 May 2006
29	The Professional Surveyors' Occupational Association Scheme:	13 June 2009
	(a) published in the New South Wales Government Gazette No. 160, 2 November 2007; and	
	(b) amended by instrument published in the New South Wales Government Gazette No. 51, 18 December 2009	
30	The Victorian Bar Incorporated Scheme:	13 June 2009
	(a) published in the Victoria Government Gazette No. G 17, 24 April 2008; and	
	(b) amended by instrument published in the Victoria Government Gazette No. G 10, 11 March 2010	

- (2) Items 3 to 5, 7 to 11, 15, 16, 18 to 21, 23, 24, 29 and 30 of the table in subregulation (1) cease to have effect on 13 June 2011.
- (3) Items 1 and 12 to 14 of the table in subregulation (1) cease to have effect on 8 June 2012.

**Regulation 9**

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**9 Notification of exclusive dealing**

- (1) A notice under subsection 93 (1) of the Act shall be in accordance with Form G.
- (2) For the purposes of subsection 93 (7A) of the Act, the prescribed period, in relation to a notice referred to in that subsection, is:
  - (a) if the notice is given on or before 30 June 1996 — 21 days; or
  - (b) if the notice is given after 30 June 1996 — 14 days.

**11 Service of documents on the Commission**

- (1) A document to which this regulation applies may be made or given to, lodged with, or served on, the Commission by delivering it, or causing it to be delivered (whether by post or otherwise), at any office of the Commission.
- (2) A reference in this regulation to a document to which this regulation applies shall be read as a reference to:
  - (a) an application under the Act or these Regulations to be made to the Commission;
  - (b) a notice under the Act or these Regulations to be given to, or lodged with, the Commission; or
  - (c) any other document to be given to, lodged with or served on, the Commission.

**12 Service of documents on persons other than the Commission**

- (1) A person who has in a document lodged with the Commission stated an address for service may, at any time, lodge with the Commission a notice in writing stating a new address for service.
- (2) A reference in these Regulations to an address for service shall, in relation to a person who has notified two or more addresses for service, be read as a reference to the later or latest of those addresses.



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**Regulation 12**

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- (3) Subject to these Regulations, a document or notice that is required or permitted by or under the Act or these Regulations to be served on, or given to, a person in connexion with any proceeding or matter before the Commission may be served on, or given to, that person:
- (a) where the person has, in a document or notice lodged with the Commission, stated an address for service — by delivering the document to the person personally or by delivering the document at, or by sending the document by registered post addressed to the person at, that address; or
  - (b) in any other case:
    - (i) where the person is a body corporate — by delivering the document personally to the manager or secretary of the body corporate or, if the body corporate has a registered office in Australia, by leaving it at that office or by sending it by registered post addressed to the body corporate at that office, or if the body corporate does not have a registered office in Australia, by sending it by registered post addressed to the body corporate at its principal place of business in Australia; or
    - (ii) where the person is not a body corporate — by delivering the document to the person or by sending the document by registered post addressed to the person at the last known address of the person.
- (4) Notice by the Commission under subsection 90A (2) or 93A (2) of the Act shall be sent to a person by sending the notice by pre-paid post to that person at:
- (a) where the person has, in a document or notice lodged with the Commission, stated an address for service — that address; and
  - (b) in any other case:
    - (i) where the person is a body corporate which has a registered office in Australia — that registered office;
    - (ii) where the person is a body corporate which does not have a registered office in Australia but which has a place of business in Australia — its principal, or only, place of business in Australia;

**Regulation 13**

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- (iii) where the person is a body corporate which does not have a registered office or a place of business in Australia — the registered office of that body corporate; or
- (iv) where the person is not a body corporate — the last known address of the person.

**13 Recording of date of receipt of applications or notices**

The Commission shall cause the date on which an application under Division 1 or 3 of Part VII of the Act or a notice under subsection 93 (1) or section 93AB of the Act is received in one of its offices to be recorded on the application or notice, as the case may be.

**14 Evidence in respect of receipt etc of documents**

- (1) In any proceedings under the Act, a certificate under the seal of the Commission certifying that any specified fact in relation to the lodgment or receipt or non-lodgment or non-receipt of a document, or of a document of a kind, described in the certificate appears from the records kept by the Commission is *prima facie* evidence of that fact.
- (2) In any proceedings under the Act, a certificate under the seal of the Commission certifying that it appears from the records kept by the Commission that a document, or a document of a kind, described in the certificate has not been received at any of the offices of the Commission is *prima facie* evidence of that fact.

**15 Seal of the Tribunal**

- (1) The seal of the Tribunal shall be of a design approved by the President and shall include:
  - (a) the Commonwealth Arms, that is to say, the Armorial Ensigns and Supporters granted and assigned for the Commonwealth of Australia by Royal Warrant dated 19 September 1912; and
  - (b) the words “Australian Competition Tribunal”.

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**Regulation 18**

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- (3) The seal of the Tribunal shall be affixed by or with the authority of the Registrar to such documents as are required by these Regulations or by a direction of a presidential member to be sealed with the seal of the Tribunal.

**16 Hours of Registrar's office**

The office of the Registrar shall be open for business on every day, other than a Saturday, a Sunday or a day that is observed as a holiday in the Australian Public Service by virtue of section 76 of the *Public Service Act 1922-1973* in the place where the office is situated, from 10 o'clock in the morning until 1 o'clock in the afternoon and from 2 o'clock to 4 o'clock in the afternoon.

**17 Title of proceedings before the Tribunal**

- (1) An application to the Tribunal under the Act and any other document filed with the Registrar, or issued out of the office of the Registrar, in relation to proceedings before the Tribunal shall be intitled in accordance with Form H.
- (2) The Registrar may, at the request of a person proposing to institute proceedings or of his own motion after any proceedings before the Tribunal are instituted, determine the description of the matter that is to form part of the title of the proceedings and, unless the Tribunal otherwise orders, the description so determined shall form part of the title of the proceedings for the purposes of all documents in the proceedings after that determination.

**18 Filing or lodging of documents with the Registrar**

- (1) The making of an application to the Tribunal under the Act and the filing of any other document with the Registrar shall be effected by lodging it at the office of the Registrar at a time when that office is open for business.
- (2) The Registrar shall cause the date on which a document was lodged at his office to be recorded on the document.

**Regulation 19**

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- (3) Subregulation (2) applies in relation to a document that is lodged with the Registrar or at his office whether or not it is, or is required to be, filed.

**19 File number of proceedings**

- (1) The Registrar shall cause a file number to be allotted to each proceeding before the Tribunal.
- (2) The one file number may be allotted to all proceedings that, in the opinion of the Registrar, are related to each other.

**20 Applications for review**

- (1) An application under subsection 101 (1) of the Act for a review of a determination by the Commission:
  - (a) shall be in accordance with Form I; and
  - (b) shall be made within a period of 21 days after the date of the determination.
- (2) An application under section 101A of the Act for a review of the giving of a notice by the Commission under subsection 93 (3) or (3A) or subsection 93AC (1) or (2) of the Act shall be made:
  - (a) in accordance with Form J; and
  - (b) within a period of 21 days after the date of the notice.
- (3) The person making an application referred to in subregulation (1) or (2) shall cause a copy of the application to be served on the Commission and, if that person is not the person who made the application to the Commission for the authorization or the corporation to which notice was given under subsection 93 (3) or (3A) or subsection 93AC (1) or (2) of the Act, on the person who made the application to the Commission for the authorization or on the corporation to which notice was given under subsection 93 (3) or (3A) or subsection 93AC (1) or (2) of the Act, as the case requires.
- (4) An application under section 151CI of the Act must be in accordance with Form JAA.

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**Regulation 21**

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- (5) A person making an application mentioned in subregulation (4) must give a copy of the application to the Commission.

**20A Applications for review of certain access decisions**

- (1) An application to the Tribunal:
- (a) under subsection 44K (1) of the Act for review of a declaration of a service;
  - (b) under subsection 44K (2) of the Act for review of a decision not to declare a service;
  - (c) under subsection 44L (1) of the Act for review of a decision not to revoke a declaration of a service;
- must be in accordance with Form JA.
- (2) An application to the Tribunal under subsection 44O (1) of the Act for review of a decision of the Commonwealth Minister on the effectiveness of an access regime must be in accordance with Form JB.
- (3) An application to the Tribunal under subsection 44ZX (1) of the Act for review of a decision of the Commission not to register a contract must be in accordance with Form JC.
- (4) An application under section 152AV of the Act must be in accordance with Form JD.
- (5) An application under section 152CE of the Act must be in accordance with Form JE.

**21 Address for service in proceedings before Tribunal**

- (1) Subject to any direction of the Tribunal, a person is not entitled to take any step in, or be heard at the hearing of, proceedings before the Tribunal unless he has filed with the Registrar a notice stating an address in Australia at which documents may be served on him for the purposes of those proceedings and has served a copy of that notice on any person appearing in the proceedings.

**Regulation 22**

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- (2) A person who has filed a notice of an address for service under this regulation may, at any time, file a notice stating a new address for service.
- (3) Where a person files a notice stating a new address for service under subregulation (2), he shall forthwith serve a copy of the notice on any person appearing in the proceedings.
- (4) A reference in these Regulations to an address for service shall, in relation to a person who has stated two or more addresses for service, be read as a reference to the later or latest of those addresses.

**22 Directions by the Tribunal as to certain matters**

- (1) Without limiting the generality of the powers of the Tribunal under the Act or these Regulations, the Tribunal may, in any proceedings before the Tribunal, give directions:
  - (a) for securing, by means of preliminary statements of facts and contentions, and by the production of documents, that all material facts and considerations are brought before the Tribunal by all persons participating in any proceedings before the Tribunal; and
  - (aa) with respect to evidence in proceedings before the Tribunal, including the appointment of persons to assist the Tribunal by giving evidence (whether personally or by means of a written report); and
  - (b) with respect to the representation in any such proceedings of persons having a common interest in the proceedings.
- (2) The powers of the Tribunal to give directions under subregulation (1) may be exercised by the Tribunal constituted by a presidential member.

**22A Evidence of persons not attending the Tribunal**

- (1) Subject to subregulation (2), the Tribunal may permit a person, other than a person appearing as a witness before the Tribunal, to give evidence in proceedings before the Tribunal by tendering a written statement.

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**Regulation 22B**

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- (2) The Tribunal must not give permission under subregulation (1) in respect of a statement, unless:
  - (a) the parties to the proceedings consent to the permission being given; and
  - (b) the statement is accompanied by a statutory declaration by the person, verifying the information contained in the statement.
- (3) A statement tendered with the permission of the Tribunal must be filed with the Registrar.

**22B Participation in review of certain access decisions**

- (1) In a review under section 44K of the Act of a declaration of a service, the person who applied for the declaration recommendation may participate in the review, in addition to the provider.
- (2) In a review under section 44K of the Act of a decision not to declare a service, the provider may participate in the review, in addition to the person who applied for the declaration recommendation.
- (3) In a review under section 44L of the Act of a decision not to revoke a declaration of a service, the person who applied for the declaration recommendation may participate in the review, in addition to the provider.
- (4) In a review under section 44ZX of the Act of a decision not to register a contract, any other party to the contract may participate in the review, in addition to the party who applied for review.
- (5) In a review under section 152AV of the Act of a decision under subsection 152AT (3) of the Act, a person whose interests are affected by the decision may participate in the review, in addition to the person who applied for the review.
- (6) In a review under section 152CE of the Act of a decision under subsection 152BU (2) or 152BY (3), a person whose interests are affected by the decision may participate in the review, in addition to the person who applied for the review.

**Regulation 23**

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**23 Orders and determinations of Tribunal**

- (1) Each order and determination of the Tribunal and the date on which it was made shall be recorded by the Registrar in a document signed by him.
- (2) The original of each document referred to in subregulation (1) shall be filed by the Registrar in the records of the Tribunal.

**24 Confidentiality**

- (1) This regulation applies to a request to the Commission or the Tribunal under a provision mentioned in an item in the table that a document, or a part of a document, be excluded from the register kept under the corresponding provision mentioned in the item.

Item	Provision of the Act for the making of a request	Corresponding provision in the Act for keeping of register
1	subsection 89 (5)	subsection 89 (3)
2	subsection 95 (2)	subsection 95 (1)
3	subsection 95AI (1)	section 95AH
4	subsection 95AZA (1)	section 95AZ

- (1A) A request to which subregulation (1) applies shall be made:
  - (a) where the request is that a document be excluded — by writing in red near the top of each page of the document the words “Restriction of Publication Claimed”; and
  - (b) where the request is that part of a document be excluded — by writing in red near the top of the first page of the document the words “Restriction of Publication of Part Claimed” (and, where the document consists of more than 5 pages, a description of where in the document that part of the document is to be found) and by clearly marking in red that part of the document.
- (2) Where a person proposes to apply, at the hearing of proceedings before the Tribunal, for a direction by the Tribunal under paragraph 106 (2) (b) of the Act prohibiting or restricting, by reason of the confidential nature of any evidence or matter or for any other reason, the publication of matters



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**Regulation 24**

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contained in a document filed or lodged with the Registrar, received in evidence by the Tribunal or placed in the records of the Tribunal, the person may mark in red:

- (a) near the top of the first page of the document, the words “Restriction of Publication Claimed” (and, where the document consists of more than 5 pages, a description of where in the document those matters are contained); and
  - (b) those matters.
- (4) For the purposes of subsection 165 (3) of the Act, a person may claim that a document furnished to the Tribunal contains matter of a confidential nature by writing in red near the top of each page of the document the words “Restriction of Publication Claimed”.
- (5) Where the Commission has given a direction under paragraph 22 (1) (b) or under subsection 89 (5) or 95 (2) of the Act as in force immediately before 1 July 1977 in respect of a document and that document is subsequently filed or lodged with the Registrar, received in evidence by the Tribunal, placed in the records of the Tribunal or otherwise furnished to the Tribunal, that direction shall be deemed to be:
- (a) a request by the person on whose application the Commission’s direction was given for a direction by the Tribunal under paragraph 106 (2) (b) of the Act prohibiting or restricting the publication of matters contained in the document; and
  - (b) a claim by the person on whose application the Commission’s direction was given for a direction by the Tribunal under subsection 165 (3) of the Act that the document contains matter of a confidential nature.
- (6) This subregulation applies if the Commission or the Tribunal has excluded, under a provision mentioned in an item in the table, a document, or a part of a document, from the register kept under the corresponding provision mentioned in the item.

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<b>Item</b>	<b>Provision of the Act for excluding a document or part of a document</b>	<b>Corresponding provision in the Act for keeping of register</b>
1	subsection 89 (5A) subsection 89 (5D)	subsection 89 (3)
2	subsection 95 (3) subsection 95 (7)	subsection 95 (1)
3	subsection 95AI (2) subsection 95AI (3) subsection 95AI (4)	section 95AH
4	subsection 95AZA (2) subsection 95AZA (3) subsection 95AZA (4)	section 95AZ

- (7) If subregulation (6) applies in relation to a document, or part of a document, excluded by the Commission or the Tribunal, that exclusion shall be deemed to be:
- (a) a request by the person by whom the document was furnished for a direction by the Tribunal under paragraph 106 (2) (b) of the Act prohibiting or restricting the publication of matters contained in that document; and
  - (b) a claim by that person under subsection 165 (3) of the Act that the document contains matter of a confidential nature.

**25 Summons to witness**

- (2) A summons under subsection 105 (2) of the Act shall be in accordance with Form K.
- (3) A summons under subsection 105 (2) of the Act shall be served on a person by:
  - (a) delivering a copy of the summons to the person personally; and
  - (b) showing the original of the summons to the person at the time at which the copy is delivered to him.

**Regulation 26****26 Continuance of proceedings and matters notwithstanding non-compliance with Regulations or direction**

- (1) Subject to subsection 172 (3) of the Act and to these Regulations, the failure by a person in or in relation to a proceeding or matter before the Commission to comply with a provision of these Regulations does not, unless the Commission otherwise directs, prevent the proceeding or matter being dealt with as if the person had complied with the provision.
- (1A) Subject to subsection 172 (3) of the Act and to these Regulations, the failure by a person in or in relation to a proceeding or matter before the Tribunal to comply with a provision of these Regulations or with a direction of the Tribunal under these Regulations does not, unless the Tribunal otherwise directs, prevent the proceeding or matter being dealt with as if the person has complied with the provision or direction.
- (2) Subregulation (1) does not apply in relation to:
- (a) the requirement in regulation 20 that an application under subsection 101 (1), or under section 101A, of the Act for a review of a determination be made within a period of 21 days after the date of the determination; and
  - (ab) the requirement in regulation 74 that an application under subsection 111 (1) of the Act for a review of a determination be made within a period of 14 days after the date of the determination; and
  - (b) the requirement that the applicant or person giving the notice shall state an address in Australia at which documents under the Act or these Regulations may be served, in the appropriate place on any of the following Forms:
 

Form A;	Form FA;	Form JA;	Form LA;	Form T
Form B;	Form FB;	Form JAA;	Form N;	Form U;
Form C;	Form FC	Form JB;	Form O;	Form V;
Form D;	Form G;	Form JC;	Form P;	Form W.
Form DA;	Form GA;	Form JD;	Form Q;	
Form E;	Form I;	Form JE;	Form R;	
Form EA;	Form J;	Form L;	Form S;	

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**27 Inspection of, and furnishing of copies of, documents**

- (1) Subject to this regulation, an application by a person to inspect a document referred to in paragraph 165 (1) (a) or 165 (2) (a) of the Act shall be made personally:
  - (a) in the case of a document referred to in paragraph 165 (1) (a) of the Act — at the office of the Commission where the relevant register is kept; and
  - (b) in the case of a document referred to in paragraph 165 (2) (a) of the Act — at the office of the Registrar.
- (2) Subject to subregulation (3), an application by a person to obtain a copy referred to in paragraph 165 (1) (b) or 165 (2) (b) of the Act shall be made:
  - (a) in the case of a copy referred to in paragraph 165 (1) (b) of the Act — personally at any office of the Commission or by post addressed to the Commission at any of its offices; or
  - (b) in the case of a copy referred to in paragraph 165 (2) (b) of the Act — personally at the office of the Registrar or by post addressed to the Registrar.
- (3) An application under subsection 165 (2) of the Act in relation to a document on which the words “Restriction of Publication Claimed” have been written in accordance with regulation 24 shall be made to the Tribunal constituted by a presidential member.

**28 Fees**

- (1) For the purposes of:
  - (a) subsections 157 (1), 157AA (1) and 165 (1) and (2) of the Act; and
  - (b) regulation 6H;the prescribed fee for obtaining a copy of a document is \$1.00 for each page of the copy.
- (2) For the purposes of:
  - (a) subsections 157AA (1) and 165 (1) and (2) of the Act; and

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- (b) regulation 6H;  
the prescribed fee for obtaining a certified copy of a document is the fee calculated in accordance with subregulation (1) plus \$10.
  - (2A) For subsections 151AR (4), 151BH (5), 151BR (4), 152AQ (4), 152BR (3), 152CC (3), 152CJ (3), 152EA (3) and 152ED (7) of the Act, the following fees for making a copy of a Register are specified:
    - (a) if the copy is certified — \$10 plus \$1 for each page of the copy; or
    - (b) in any other case — \$1 for each page of the copy.
  - (2B) For paragraph 151AT (c) of the Act, the fee for an application for an exemption order is \$7,500.
  - (2C) For subsection 151BQ (3) of the Act, the fee for a copy of tariff information is:
    - (a) if the copy is certified — \$10 plus \$1 for each page of the copy; or
    - (b) in any other case — \$1 for each page of the copy.
  - (3) In spite of subregulations (1), (2) and (2A), a person appearing in a proceeding or matter before the Commission or Tribunal is entitled, without payment of a fee, to receive one certified copy of a document relating to the proceeding or matter.
  - (4) No fee is payable to the Commission or Tribunal for an application or notice specified in Schedule 1A.
  - (5) If Schedule 1A does not apply to a matter specified in column 2 of an item in Schedule 1B, the fee payable to the Commission or Tribunal for the matter is:
    - (a) the fee specified in column 3 of the item; or
    - (b) if a concessional fee is payable for the matter under subregulation (6), the concessional fee specified in column 4 of the item.
- Note* Some other regulations impose fees for particular things.
- (6) Subject to subregulation (6A), a concessional fee is payable to the Commission for an additional application or an additional notice if:

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- (a) there are reasonable grounds for the Commission to believe that the first application or the first notice and the additional application or additional notice relate to conduct in the same market (or closely related markets); and
  - (b) each additional application or additional notice is:
    - (i) lodged with the Commission within 14 days of the date of lodgment of the first application or the first notice; and
    - (ii) endorsed by the Commission with reference to the first application or the first notice.
- (6A) A concessional fee is payable to the Commission for an additional notice mentioned in paragraph (c) of the definition of ***additional notice*** in subregulation (7), if:
- (a) until the end of 31 December 2008:
    - (i) there are reasonable grounds for the Commission to believe that the first notice and the additional notice relate to conduct in the same market (or closely related markets); and
    - (ii) the additional notice is lodged with the Commission within 28 days of the date of lodgment of the first notice; and
    - (iii) the additional notice is endorsed by the Commission with reference to the first notice; or
  - (b) after 31 December 2008:
    - (i) there are reasonable grounds for the Commission to believe that the first notice and the additional notice relate to conduct in the same market (or closely related markets); and
    - (ii) the additional notice is lodged with the Commission within 14 days of the date of lodgment of the first notice; and
    - (iii) the additional notice is endorsed by the Commission with reference to the first notice.

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(7) In this regulation:

***additional application*** means an application, made by any person after a first application, that relates to the subject of the first application.

***additional notice*** means:

- (a) a notice given, after a person's first notice under subsection 93 (1) of the Act, about conduct of a kind mentioned in:
  - (i) subsection 47 (2), (3), (4) or (5) of the Act; or
  - (ii) paragraph 47 (8) (a) or (b) of the Act; or
  - (iii) paragraph 47 (9) (a), (b) or (c) of the Act; or
- (b) if a person is not an individual or a proprietary company, a notice given, after the person's first notice under subsection 93 (1) of the Act, about conduct of a kind mentioned in:
  - (i) subsection 47 (6) or (7) of the Act; or
  - (ii) paragraph 47 (8) (c) of the Act; or
  - (iii) paragraph 47 (9) (d) of the Act; or
- (c) a notice given under subsection 93AB (1A) or (1) after a corporation's first notice under that subsection.

***first application*** means the first application made by a person under subsection 88 (1A), (1), (5), (7), (7A), (8) or (8A) of the Act in relation to a matter.

**28A Services and activities for which the Commission may charge**

- (1) For the purposes of paragraph 171A (1) (b) of the Act, the following activities are prescribed:
  - (a) conducting workshops and seminars;
  - (b) conducting training.
- (2) For the purposes of subsection 171A (3) of the Act, the following acts done by the Commission are prescribed:
  - (a) providing a speaker or information for:
    - (i) a workshop, seminar, training session or other activity not arranged by or on behalf of the Commission; or

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- (ii) use in training materials, including videotapes, not produced by or on behalf of the Commission;
- (b) providing information relating to trade practices for use in material published by a person other than the Commission;
- (c) developing industry codes of conduct to encourage compliance with the Act.

**28AA Protection of persons appearing on another person's behalf**

- (1) A barrister, solicitor or other person appearing on behalf of another person at an inquiry held in accordance with Part VIIA of the Act has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (2) A barrister, solicitor or other person engaged by the Commission to appear at an inquiry held in accordance with Part VIIA of the Act:
  - (a) has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court; and
  - (b) may inspect a document:
    - (i) given to the Commission for the purposes of the exercise of its powers or the performance of its functions under that Part; or
    - (ii) produced at an inquiry held in accordance with that Part; and
  - (c) may make copies of, or take extracts from, that document.



## Part 2A                      Review by Tribunal of access determinations

### 28B        Definitions for Part 2A

In this Part:

*determination* means a determination made by the Commission under section 44V or 152CP of the Act.

*review* means a review by the Tribunal of a determination, under section 44ZP or 152DO of the Act.

### 28C        Applications for review

- (1) An application for a review of a determination under section 44ZP of the Act must be in accordance with Form L.
- (1A) An application under section 152DO of the Act must be in accordance with Form LA.
- (2) The applicant must cause a copy of the application to be served on each other party to the determination.

### 28D        Notice about participation in a review

- (1) Within 7 days after the service on a party of a copy of an application for review, that party may file with the Registrar a notice stating:
  - (a) whether the party wishes to participate in the review; and
  - (b) if so, particulars of the facts and contentions on which the party intends to rely and the issues as that party sees them.
- (2) Subject to any direction of the Tribunal, a party is not entitled to take any step in, or be heard at the hearing of, the review unless the party has complied with subregulation (1).

### 28E        Participants in a review

- (1) Subject to regulation 28D, all the parties to a determination are entitled to participate in a review of the determination.

**Regulation 28F**

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- (2) The Tribunal may, upon such conditions it thinks fit, permit a person to intervene in a review.
- (3) The parties to a review are:
  - (a) any party to the determination who participates in the review; and
  - (b) any person permitted to intervene in the review.

**28F Constitution of the Tribunal for conduct of a review**

For the purposes of a particular review, the Tribunal is to be constituted by a Division of the Tribunal consisting of 2 or more members of the Tribunal nominated by the President.

**28G Member of Tribunal presiding**

- (1) Subject to subregulation (2), the President must nominate a member of a Division of the Tribunal constituted under regulation 28F to preside at a review.
- (2) If a presidential member of the Tribunal is a member of the Division, that presidential member is to preside at the review.

**28H Reconstitution of Tribunal**

- (1) This regulation applies if a member of the Tribunal who is one of the members who constitute a Division of the Tribunal for the purposes of a particular review:
  - (a) ceases to be a member of the Tribunal; or
  - (b) for any reason, is not available for the purpose of the review.
- (2) The President must either:
  - (a) direct that the Tribunal is to be constituted for the purposes of finishing the review by the remaining member or members; or
  - (b) direct that the Tribunal is to be constituted for that purpose by the remaining member or members together with one or more other members of the Tribunal.

**Regulation 28J**

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- (3) If a direction under subregulation (2) is given, the Tribunal as constituted in accordance with the direction must continue and finish the review and, for that purpose, may have regard to any record of the proceedings of the review made by the Tribunal as previously constituted.

**28I Determination of question**

If the Tribunal is constituted for a review by 2 or more members of the Tribunal, any question before the Tribunal is to be decided:

- (a) unless paragraph (b) applies — according to the opinion of the majority of those members; or
- (b) if the members are evenly divided on the question — according to the opinion of the member who is presiding.

**28J Disclosure of interests by members of Tribunal**

- (1) If a member of the Tribunal is, or is to be, one of the members who constitute the Tribunal for the purposes of a particular review and the member has, or acquires, any pecuniary interest that could conflict with the proper performance of his or her functions in relation to the review:
- (a) the member must disclose the interest to the President; and
  - (b) the member must not take part, or continue to take part, in the review if:
    - (i) the President gives a direction under paragraph (2) (a) in relation to the review; or
    - (ii) any party to the review objects to the member taking part in the review.
- (2) If the President becomes aware that a member of the Tribunal is, or is to be, one of the members who constitute the Tribunal for the purposes of a particular review and that the member has, in relation to the review, an interest of a kind referred to in subregulation (1):
- (a) if the President considers that the member should not take part, or should not continue to take part, in the review — the President must give a direction to the member accordingly; or

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- (b) in any other case — the President must cause the interest of the member to be disclosed to the parties to the review.

**28K Hearing to be in private**

- (1) Subject to subregulation (2), a review hearing is to be in private.
- (2) If the parties to the review agree, a review hearing or part of a review hearing may be conducted in public.
- (3) The member of the Tribunal who is presiding at a review hearing that is conducted in private may give written directions as to the persons who may be present.
- (4) In giving directions under subregulation (3), the member presiding must have regard to the wishes of the parties and the need for commercial confidentiality.

**28L Representation at a review hearing**

At a review hearing:

- (a) an individual may appear in person; and
- (b) any person may be represented by:
  - (i) a barrister or solicitor of the Supreme Court of a State or Territory or of the High Court; or
  - (ii) another person (being an individual) approved by the Tribunal.

**28M Procedure of Tribunal**

- (1) In a review hearing of the determination in an access dispute, the Tribunal:
  - (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) must act as speedily as a proper consideration of the dispute allows, having regard to the need to inquire into and investigate, carefully and quickly, the dispute and all matters affecting the merits, and fair settlement, of the dispute; and

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**Regulation 28P**

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- (c) may inform itself of any matter relevant to the dispute in any way that it thinks appropriate.
- (2) The Tribunal may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of parties to a review, and may require that the cases be presented within those periods.
- (3) The Tribunal may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.
- (4) The Tribunal may determine that a review hearing is to be conducted by:
  - (a) telephone; or
  - (b) closed circuit television; or
  - (c) any other means of communication.

**28N Summons to witness — review hearing**

- (1) A summons for the purposes of a review hearing must be in accordance with Form K.
- (2) A summons must be served on a person by:
  - (a) delivering a copy of the summons to the person personally; and
  - (b) showing the original of the summons to the person at the time at which the copy is delivered to the person.

**28P Taking of evidence by a single member**

- (1) The Tribunal as constituted for the purposes of a particular review may authorise the member presiding at the review to take evidence for the purposes of the review on its behalf, with such limitations (if any) as the Tribunal so constituted directs.
- (2) If an authority is given to a member:
  - (a) that member may take evidence accordingly; and
  - (b) in relation to the taking of evidence in accordance with the authority, that member is taken, for the purposes of the Act and these Regulations, to constitute the Tribunal.

**Regulation 28Q**

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**28Q Application of regulations**

- (1) Subject to subregulation (2), a provision of these Regulations that applies to a proceeding before the Tribunal applies to a review.
- (2) Regulations 22 and 22A do not apply to a review.

## Part 2B                      Telecommunications access regime

### Division 1                      Definitions for Part 2B

#### 28R                      Definitions

In this Part:

- (a) an *access dispute* is a dispute mentioned in section 152CM of the Act; and
- (b) the following words and expressions have the meanings given in Part XIC of the Act:
  - (i) access;
  - (ii) access provider;
  - (iii) access seeker;
  - (iv) active declared service;
  - (v) carrier;
  - (vi) declared service;
  - (vii) determination;
  - (viii) facility;
  - (ix) party;
  - (x) price-related terms and conditions;
  - (xi) service provider.

*Note 1* For each of the following words and expressions, see the related provision of the Act:

*access* — section 152AF

*access provider* — subsection 152AR (2)

*access seeker* — section 152AG

*active declared service* — subsection 152AR (2)

*declared service* — subsection 152AL (2)

*determination* — section 152CL

*party* — section 152CL

*price-related terms and conditions* — subsection 152CH (3).

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*Note 2* Section 152AC of the Act provides that each of the following words, and the following expression, has the same meaning as in the *Telecommunications Act 1997*:

*carrier*

*facility*

*service provider.*

**Division 2                      Access generally**

**28S                      Billing information**

- (1) This regulation is made for subsection 152AR (7) of the Act.
- (2) This regulation applies to billing information that is not available to the service provider from the signals used to deliver calls, or other processes agreed between the access and service providers.
- (3) Billing information must be given:
  - (a) at times agreed by the access and service providers; and
  - (b) in a manner and form agreed by the access and service providers, including whether the information is to be given in electronic or paper form.
- (4) For supply of an active declared service used for making a call using a relevant carriage service, billing information must, unless the access and service providers agree otherwise, include the following particulars:
  - (a) if the access provider knows the unique customer account number of the customer who originated the call — the number;
  - (b) if:
    - (i) the public number from which the call was made is not the same as the public number used for billing purposes; and
    - (ii) the access provider knows the public number used for billing purposes;the public number used for billing purposes;
  - (c) the public number to which the call was made;



- (d) the time the call started;
  - (e) the duration of the call;
  - (f) if the service provider asks about a call to which subregulation (5) applies and the access provider knows the information — the name and billing address of the customer;
  - (g) if the service provider asks for other information reasonably required by the service provider to bill the customer — the information;
  - (h) for a call made using an active declared service mentioned in paragraph (b) of the definition of **relevant carriage service** in subregulation (7) — the geographic region where the call originated or terminated.
- (5) For paragraph (4) (f), this subregulation applies to a call if:
- (a) the service provider chosen for the call is not the service provider that the customer pre-selected in accordance with arrangements under a determination that is in force under section 349 of the *Telecommunications Act 1997*; and
  - (b) the customer became a customer of the service provider because the customer selected the service provider by dialling a particular over-ride dial code.
- (6) For supply of an active declared service other than for making a call using a relevant carriage service, billing information must include a level of itemisation agreed by the access and service providers.
- (7) In this regulation:
- billing address** means the address to which bills are normally sent by the service provider pre-selected by the customer.
- public mobile telecommunications service** has the same meaning as in the *Telecommunications Act 1997*.
- public number** means a number specified in the numbering plan made under section 455 of the *Telecommunications Act 1997*.
- relevant carriage service** means:
- (a) a standard telephone service; or

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- (b) a public mobile telecommunications service for which the price-related terms and conditions of supply are determined wholly or partly by where a call originates or terminates.

*standard telephone service* has the same meaning as in the *Telecommunications Act 1997*.

## **Division 3                      Disputes about access**

### **28T                      Notification of access disputes**

- (1) A notification under section 152CM of the Act of an access dispute in relation to a declared service must include the following information:
  - (a) the name of the person notifying the dispute (the *notifier*) and, if the notifier is not an individual, the name and contact details of a contact person for the notifier;
  - (b) the notifier's address for delivery of documents;
  - (c) whether the notifier is the carrier or provider, or access seeker and:
    - (i) if the notifier is the carrier or provider — the name and other particulars of the access seeker; or
    - (ii) if the notifier is the access seeker — the name and other particulars of the carrier or provider, or of each carrier or provider, of the declared service and, if the carrier or provider does not own the facility used to supply the declared service, the name of the owner, or of each owner, of the facility (if known to the access seeker);
  - (d) details of the declared service, and any standard access obligation that applies to the carrier or provider under section 152AR of the Act, to which the dispute relates;
  - (e) whether the notification relates to an access dispute under subsection 152CM (1) or (2);
  - (f) a description of the access dispute, including:
    - (i) whether the dispute is about varying existing access arrangements and, if it is, a description of those arrangements; and

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- (ii) each aspect of the access to the service on which the parties to the dispute agree; and
  - (iii) each aspect of the access to the service on which the parties do not agree;
- (g) a description of any effort to resolve the dispute.
- (2) The notifier must pay to the Commission, for a notification, a fee of \$2,750.
- (3) A fee under subregulation (2) is payable at the time of notification.

**28U Withdrawal of notification**

- (1) A withdrawal of a notification, under section 152CN of the Act must:
  - (a) be in writing to the Commission; and
  - (b) include the following information:
    - (i) the name of the person withdrawing the notification;
    - (ii) whether the person is the carrier or provider, or the access seeker;
    - (iii) a short description of the access dispute to which the notification relates;
    - (iv) a reference to the relevant paragraph or subparagraph of subsection 152CN (1) of the Act under which the person is withdrawing the notification.
- (2) The person withdrawing the notification must give a copy of the notice to the carrier or provider, or access seeker, who is not withdrawing the notification.
- (3) Notice of withdrawal takes effect when it is received by the Commission.
- (4) The Commission must give a copy of the notice to another person (except the person who gave notice of the withdrawal) to whom the Commission has given notice under subsection 152CM (6) of the Act of the access dispute to which the withdrawal relates.

**Regulation 28V**

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**28V        Summons to witnesses — arbitration**

- (1) A summons under subsection 152DD (2) of the Act must be in accordance with Form M.
- (2) For section 152DE of the Act, a summons must be served on a person by:
  - (a) delivering a copy of the summons to the person personally; and
  - (b) showing the original of the summons to the person when the copy is delivered.

**28W        Cost of arbitration**

- (1) This regulation is made for section 152DM of the Act.
- (1A) The amount of a fee mentioned in subregulation (2) is the GST inclusive market value of the consideration for the supply of the service of conducting an arbitration of an access dispute.
- (2) The Commission may charge, for its costs in conducting an arbitration of an access dispute:
  - (a) a pre-hearing fee of:
    - (i) if the access dispute is about a variation of an existing determination about access by the access seeker — \$2 170; or
    - (ii) in any other case — \$10 850; and
  - (b) a hearing fee of \$4 340 for each day, or part of a day, of the arbitration hearing.
- (3) A pre-hearing fee is payable by the person who notified the access dispute not later than the beginning of the arbitration hearing.
- (4) A hearing fee for each day, or part of a day, of an arbitration hearing is payable by the parties in portions determined by the Commission.
- (5) The Tribunal must not charge for its costs of conducting a review of a determination.

**28X Applications for registration of agreements for access**

- (1) An application under section 152ED of the Act for registration or deregistration of an agreement that provides for access to a declared service must:
  - (a) be in writing; and
  - (b) include the following information:
    - (i) the names of the parties to the agreement and, if a party is not an individual, the name and contact details of a contact person for that party;
    - (ii) each party's address for the delivery of documents;
    - (iii) a description of the declared service to which the agreement relates;
    - (iv) a description of the agreement, including the date when it was made.
- (2) An application for registration of an agreement must also:
  - (a) describe the impact of the agreement on:
    - (i) the level of competition in relevant markets; and
    - (ii) persons who have rights to use the declared service; and
  - (b) give particulars of those persons.
- (3) A fee of \$5 425 for an application for registration is payable to the Commission when the application is made.
- (4) A fee is not payable for an application for deregistration.
- (5) The amount of the fee payable under subregulation (3) is the GST inclusive market value of the consideration for the supply of the service of registration of an agreement that provides for access to a declared service.

## **Division 4                      Documents**

### **28Y            Definition**

In this Division:

***Part XIB or XIC register*** means:

- (a) the register of competition notices kept under section 151AR of the Act; or
- (b) the register of exemption orders kept under section 151BH of the Act; or
- (c) the register of tariff filing directions kept under section 151BR of the Act; or
- (d) the register of declared services kept under section 152AQ of the Act; or
- (e) the register of telecommunications access codes kept under section 152BR of the Act; or
- (f) the register of access undertakings kept under section 152CC of the Act; or
- (g) the register of Ministerial pricing determinations kept under section 152CJ of the Act; or
- (h) the register of access determinations kept under section 152EA of the Act; or
- (i) the register of agreements kept under section 152ED of the Act.

### **28Z            Copies of documents in Part XIB or Part XIC register**

- (1) A person may request a copy of a document in a Part XIB or XIC register that is certified by a person, who is authorised by the Commission to certify copies of documents of that kind, to be a true copy of the document.
- (2) A request must be made:
  - (a) in person at the office of the Commission where the register is kept; or
  - (b) in writing to the Commission at that office.

*Note* See subregulation 28 (2A) for fees.

## Part 3                      International liner cargo shipping

### 29                      Interpretation

- (1) In this Part, unless the contrary intention appears:  
*Registrar* means the Registrar of Liner Shipping.  
*trade area*, in relation to a conference agreement, means the geographical area to which the agreement relates.
- (2) An expression used in this Part has the same meaning as in Part X of the Act.

### 30                      Office of the Registrar

The Registrar must notify in the *Gazette* any change in the address of the office of the Registrar.

### 31                      Fees

The fee specified in column 2 of an item in Schedule 2 is prescribed in respect of the matter specified in column 1 of that item.

### 32                      Register of conference agreements: prescribed particulars

The following particulars are prescribed in relation to an entry in the register of conference agreements, as well as any particulars required by the Act to be entered in the register:

- (a) the name of the agreement;
- (b) the parties to the agreement;
- (c) the trade area covered by the agreement;
- (d) the identification number of the conference agreement file kept by the Registrar under section 10.12 of the Act;

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- (e) the date of the agreement;
- (f) whether the agreement is for a fixed period and, if so, the period;
- (g) details of any provisions for renewal or termination of the agreement;
- (h) the date on which the agreement was provisionally registered;
- (i) the date on which the agreement was finally registered;
- (j) a summary of the agreement;
- (k) the names of the designated shipper bodies with which the parties to the agreement are required to negotiate under section 10.29 and 10.41 of the Act;
- (l) where the parties to the agreement have notified the Registrar under subsection 10.29 (2), that fact;
- (m) whether agreement has been reached in the negotiations under section 10.29 of the Act;
- (n) whether the Registrar has directed that any part of the agreement is not to be open to public inspection and, if so, which part;
- (o) whether another conference agreement that varies the agreement has been made or arrived at and, if so, the name of that other agreement;
- (p) the date of any notifications given to the Registrar under subsection 10.40 and 10.43 of the Act in connection with the operation of the agreement;
- (q) whether the agreement is an outwards conference agreement or an inwards conference agreement.

**33 Register of designated shipper bodies: prescribed particulars**

The following particulars are prescribed in relation to an entry in the register of designated shipper bodies, as well as any particulars required by the Act to be entered in the Register:

- (a) the name and kind of the designated shipper body;
- (b) the date on which the shipper body was designated by the Minister under section 10.03 of the Act;



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- (c) in the case of a designated secondary shipper body:
  - (i) the date on which the Registrar nominated the shipper body;
  - (ii) the name of the conference agreement to which the nomination relates;
  - (iii) the provision of the Act under which the nomination was made;
- (d) the address of each member of the shipper body;
- (e) the telephone and fax numbers, postal address and e-mail address (if any), of the shipper body;
- (f) the name of a contact person for the shipper body.

**34 Register of non-conference ocean carriers with substantial market power: prescribed particulars**

The following particulars are prescribed in relation to an entry in the register of non-conference ocean carriers with substantial market power, as well as any particulars required by the Act to be entered in the register:

- (a) the name of the ocean carrier;
- (b) the date on which the ocean carrier was registered under section 10.51 of the Act as a non-conference ocean carrier with substantial market power;
- (c) whether the market power of the ocean carrier was determined by the Commission under section 10.50 or by the Minister by agreement with the ocean carrier;
- (d) if the market power of the ocean carrier was determined by the Commission, the date and title of the Commission's report;
- (e) the name of each designated shipper body with which the ocean carrier is to negotiate under subsection 10.52 (1);
- (f) the trade route on which the ocean carrier has been determined to have substantial market power.

**35 Register of obligations concerning unfair pricing practices: prescribed particulars**

The following particulars are prescribed in relation to an entry in the register of obligations concerning unfair pricing

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practices, as well as any particulars required by the act to be entered in the register:

- (a) the name of the ocean carrier to whom the obligation relates;
- (b) whether the obligation was incurred as the result of an order under subsection 10.61 (1) of the Act or an undertaking under subsection 10.64 (1) of the Act;
- (c) the trade route to which the obligation relates;
- (d) the date on which the order or undertaking took effect;
- (e) a summary of the order or undertaking;
- (f) if the obligation was incurred as the result of an order under subsection 10.61 (1) of the Act, the title and date of the report of the Commission under section 10.63 of the Act.

**36 Register of ocean carrier agents: prescribed particulars**

The following particulars are prescribed in relation to an entry in the register of ocean carrier agents, as well as any particulars required by the Act to be entered in the register:

- (a) the telephone and fax numbers, and e-mail address (if any), of the agent;
- (b) the date of the agent's appointment.

**37 Loyalty agreements: notifications relating to exemptions: prescribed particulars**

- (1) A notification under section 10.21 of the Act must include:
  - (a) the name and address of the shipper giving the notification;
  - (b) the name and address of each other party to the loyalty agreement;
  - (c) where a copy of the loyalty agreement is not included with the notification — a summary of the agreement;
  - (d) the date from which the agreement took effect;
  - (e) the date on which the agreement would, but for the notice, come to an end;

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- (f) the date, being a date not earlier than 30 days after the date of the notice, from which the shipper no longer wishes the exemptions referred to in section 10.20 of the Act to apply;
- (g) in the case of a notification to an ocean carrier — a copy of the notification to the Commission under section 10.21 of the Act;
- (h) in the case of a notification to the Commission — a copy of the notification to the ocean carrier.

**38 Application for provisional registration of conference agreement**

- (1) An application under section 10.25 of the Act for the provisional registration of a conference agreement must:
  - (a) be in accordance with Form 1 in Schedule 3; and
  - (b) be accompanied by a copy of the agreement; and
  - (c) be accompanied by the prescribed fee.
- (2) Where the agreement is partly or wholly oral, the application shall be accompanied by a written memorandum setting out all the provisions of the agreement that are oral.
- (3) The following particulars are specified for the purposes of Form 1:
  - (a) the names of the parties to the agreement;
  - (b) a summary of the agreement, not longer than 100 words;
  - (c) the date of the agreement;
  - (d) the period of the agreement;
  - (e) the trade area covered by the agreement;
  - (f) if the agreement includes a provision of the kind described in paragraph 10.08 (1) (a) or (b) of the Act that does not deal only with the matters specified in paragraph 10.08 (1) (c) of the Act — the reasons why the provision is necessary for the effective operation of the agreement and is of overall benefit:
    - (i) for an outwards conference agreement, to Australian exporters; or

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- (ii) for an inwards conference agreement, to Australian importers;
- (g) whether there have been:
  - (i) any variations to the agreement that have not been registered or are not being registered; or
  - (ii) any happening of affecting events (as described in section 10.40 of the Act) that have not been notified to the Registrar;and, if so, details of the variations or happenings;
- (h) for an outwards conference agreement — a statement that the agreement provides for the application of Australian law, as specified in subsection 10.06 (1) or, where that is not the case, a copy of the Minister's agreement referred to in that subsection.

**38A Special circumstances for inwards conference agreement**

For paragraph 10.28 (1) (ba) of the Act, there are taken to be special circumstances if the inwards conference agreement has provisions that make the agreement substantially incompatible with the principal objects of Part X of the Act.

**39 Notice about negotiations**

- (1) For subsection 10.29 (1B) of the Act, a notice must be in writing and include:
  - (a) the title of the conference agreement; and
  - (b) the date on which the shipper bodies notified, or propose to notify, the parties to the agreement that they wish to negotiate.
- (2) For subsection 10.29 (2) of the Act, a notice must be in writing and include:
  - (a) the title of the conference agreement; and
  - (b) the date on which the shipper bodies notified, or propose to notify, the parties to the agreement that they do not wish to negotiate; and
  - (c) the reasons why the shipper bodies do not wish to negotiate.

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**40 Application for final registration of a conference agreement**

- (1) An application under section 10.30 of the Act for the final registration of a conference agreement must:
  - (a) be in accordance with Form 2 in Schedule 3; and
  - (b) be accompanied by a copy of the agreement; and
  - (c) be accompanied by the prescribed fee.
- (2) Where the agreement is partly or wholly oral, the application shall be accompanied by a written memorandum setting out all the provisions of the agreement that are oral.
- (3) The following particulars are specified for the purposes of Form 2:
  - (a) the names of the parties to the agreement;
  - (b) a summary of the agreement, not longer than 100 words;
  - (c) the date of the agreement;
  - (d) the period of the agreement;
  - (e) the trade area covered by the agreement;
  - (f) the names of the designated shipper bodies with which the parties to the agreement are required to negotiate under section 10.29 of the Act;
  - (g) whether agreement was reached as a result of the negotiations under section 10.29 of the Act and details of minimum service levels to be provided under the agreement;
  - (h) if the agreement includes a provision of the kind described in paragraph 10.08 (1) (a) or (b) of the Act that does not deal only with the matters specified in paragraph 10.08 (1) (c) of the Act — the reasons why the provision is necessary for the effective operation of the agreement and is of overall benefit:
    - (i) for an outwards conference agreement, to Australian exporters; or
    - (ii) for an inwards conference agreement, to Australian importers;

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- (i) whether there have been:
  - (i) any variations to the agreement that have not been registered or are not being registered; or
  - (ii) any happening of affecting events (as described in section 10.40 of the Act) that have not been notified to the Registrar;and, if so, details of the variations or happenings;
- (j) for an outwards conference agreement — a statement that the agreement provides for the application of Australian law, as specified in subsection 10.06 (1) of the Act or, where this not the case, a copy of the Minister's agreement referred to in that subsection.

**41 Form of abstract**

For the purposes of subsection 10.35 (2) of the Act, an abstract must be in accordance with Form 3 in Schedule 3.

**42 Notice of the happening of an affecting event**

- (1) A notice under section 10.40 or 10.43 of the Act of the happening of an affecting event must:
  - (a) be in accordance with Form 4 in Schedule 3; and
  - (b) in the case of a notice under section 10.40 of the Act — be given to the Registrar as soon as practicable after a party to the conference becomes aware of the event; and
  - (c) in the case of a notice under section 10.43 of the Act — be given to the Registrar within 30 days after a party to the conference agreement becomes aware of the event.
- (2) The following particulars are specified for the purposes of Form 4:
  - (a) the date of the happening of the event;
  - (b) whether subparagraph 10.40 (1) (b) (i) or (ii) applies to the event;
  - (c) details of the happening of the event;
  - (d) the effect of the event on the operation of the agreement;

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- (e) for an outwards conference agreement — the effect of the event on the provision of outwards liner cargo shipping services;
- (f) for an inwards conference agreement — the effect of the event on the provision of inwards liner cargo shipping services.

**43 Undertakings**

- (1) An offer to give an undertaking under section 10.49, 10.59 or 10.64 of the Act must be in accordance with Form 5 in Schedule 3.
- (2) The following particulars are specified for the purposes of Form 5:
  - (a) a brief description of the terms of the undertaking;
  - (b) the trade area or trade route to which the undertaking will relate;
  - (c) the date from which it is proposed the undertaking will operate;
  - (d) the names of the parties to whom the undertaking will apply;
  - (e) in the case of an offer under section 10.49:
    - (i) the name of the registered conference agreement;
    - (ii) the date of final registration of the agreement;
  - (f) in the case of an offer under section 10.49 or 10.59 of the Act:
    - (i) the date and title of the Commission's report under section 10.46, 10.47, 10.48, 10.56, 10.57 or 10.58 of the Act that led to the offer to give the undertaking; or
    - (ii) the date of the reference to the Commission under section 10.46, 10.47 or 10.56 of the Act or the application to the Commission under section 10.48 or 10.58 of the Act;
  - (g) in the case of an offer under section 10.64 of the Act:
    - (i) the date of the reference to the Commission, and the report, under section 10.63 of the Act; and

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- (ii) a statement that if the offer is accepted the ocean carrier will, if asked by the Registrar, give such information as is necessary to show that the ocean carrier is complying with the terms of the offer.

**44 Application by ocean carrier for registration of agent**

- (1) An application under section 10.70 of the Act for the registration of an agent must be in accordance with Form 6 in Schedule 3 and be accompanied by:
  - (a) a copy of the instrument appointing the agent; and
  - (b) the prescribed fee.
- (2) The following particulars are specified for the purposes of Form 6:
  - (a) the name of the ocean carrier;
  - (b) the address of the head office of the ocean carrier;
  - (c) the date from which the appointment is to take effect;
  - (d) the name of the proposed agent;
  - (e) the residential address of the proposed agent;
  - (f) a business address of the proposed agent that may be used as an address for service of the ocean carrier.

**45 Notice of change of agent etc**

- (1) A notice under subsection 10.72 (1) of the Act must be in accordance with Form 7 of Schedule 3 and be accompanied by a copy of the instrument appointing the agent.
- (2) The following particulars are prescribed for the purposes of Form 7:
  - (a) the address of the head office of the ocean carrier;
  - (b) in the case of notice of the revocation of appointment of an agent:
    - (i) the date from which the revocation is to take effect;
    - (ii) the address of the agent;
  - (c) in the case of the appointment of a new agent:
    - (i) the date from which the appointment is to take effect;



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- (ii) the name of the new agent;
- (iii) the residential address of the new agent;
- (iv) a business address of the new agent that may be used as an address for service of the ocean carrier;
- (d) in the case of a notice under paragraph 10.72 (1) (c) requesting a variation of particulars relating to the ocean carrier — details of the particulars to be varied.

**46 Manner of making applications and giving notices**

An application may be made, or a notice given, to the Registrar:

- (a) by leaving the application or notice with a person in attendance at the Registrar's office; or
- (b) by sending the application or notice by registered post or e-mail to the Registrar.

**47 Verification of documents**

- (1) An application required to be made, or a notice to be given, to the Registrar, other than an application under section 10.70 of the Act or a notice under subregulation 45 (1), must be verified by statutory declaration.
- (2) The statutory declaration must be made by:
  - (a) the person furnishing the particulars in the application or notice; or
  - (b) a person authorised in writing by that person.
- (3) In the case of a varying conference agreement lodged for registration in consolidated form, the person lodging it must declare that the parties to the agreement have agreed to the terms of the varying conference agreement in consolidated form.

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## **Part 4                      Price exploitation in relation to A New Tax System**

### **48            Tobacco excise**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the following changes are prescribed:

- (a) the change in the tobacco excise duty, as provided for in Excise Tariff Proposal No. 2 (1999);
- (b) the change in the tobacco customs duty, as provided for in Customs Tariff Proposal No. 6 (1999).

### **49            Luxury car tax**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the following changes are prescribed:

- (a) the change in the retail tax on luxury cars, as provided for in the *A New Tax System (Luxury Car Tax Imposition — Customs) Act 1999*;
- (b) the change in the retail tax on luxury cars, as provided for in the *A New Tax System (Luxury Car Tax Imposition — Excise) Act 1999*;
- (c) the change in the retail tax on luxury cars, as provided for in the *A New Tax System (Luxury Car Tax) Act 1999*;
- (d) the change in the retail tax on luxury cars, as provided for in the *A New Tax System (Luxury Car Tax Imposition — General) Act 1999*.

### **50            Wine equalisation tax**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the introduction and imposition of the wine equalisation tax under the following Acts is a prescribed change:

- (a) *A New Tax System (Wine Equalisation Tax) Act 1999*;

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- (b) *A New Tax System (Wine Equalisation Tax Imposition — Customs) Act 1999;*
- (c) *A New Tax System (Wine Equalisation Tax Imposition — Excise) Act 1999;*
- (d) *A New Tax System (Wine Equalisation Tax Imposition — General) Act 1999.*

**51 Accommodation levy**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the abolition of the accommodation levy in New South Wales, as provided for in Schedule 1 to the *State Revenue Legislation Further Amendment Act 1999* is a prescribed change.

**52 Alcohol excise**

- (1) For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the following changes are prescribed:
  - (a) the change in the alcohol excise under the Customs Tariff Proposal No. 2 (2000);
  - (b) the change in the alcohol excise under the Excise Tariff Proposal No. 2 (2000).
- (2) For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the following changes are prescribed:
  - (a) the change in the alcohol customs duty under the Customs Tariff Proposal No. 3 (2001);
  - (b) the change in the alcohol excise duty under the Excise Tariff Proposal No. 4 (2001).

**53 Petroleum products excise**

- (1) For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the following changes are prescribed:
  - (a) the change in the petroleum products excise under the Customs Tariff Proposal No. 4 (2000);

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- (b) the change in the petroleum products excise under the Excise Tariff Proposal No. 3 (2000).
- (2) For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the following changes are prescribed:
  - (a) the change in the petroleum products excise under the Customs Tariff Proposal No. 2 (2001);
  - (b) the change in the petroleum products excise under the Excise Tariff Proposal No. 3 (2001).

**54 Diesel fuel rebate scheme**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the following changes are prescribed:

- (a) the change in the rate of the diesel fuel rebate made in the Notice of Declared Rate in respect of Diesel Fuel Rebate, Notice No. 2 (2000), made under subsection 164 (5A) of the *Customs Act 1901*;
- (b) the change in the rate of the diesel fuel rebate made in the Notice of Declared Rate in respect of Diesel Fuel Rebate, Notice No. 2 (2000), made under subsection 78A (5A) of the *Excise Act 1901*;
- (c) the change in the rate of the diesel fuel rebate made in the Notice of Declared Rate in respect of Diesel Fuel Rebate, Notice No. 1 (2000) under subsection 164 (5AAC), made under the *Customs Act 1901*;
- (d) the change in the rate of the diesel fuel rebate made in the Notice of Declared Rate in respect of Diesel Fuel Rebate, Notice No. 1 (2000) under subsection 78A (5AAC), made under the *Excise Act 1901*.

**55 Diesel and alternative fuels grants scheme**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the introduction of the diesel and alternative fuels grants scheme under the *Diesel and Alternative Fuels Grants Scheme Act 1999* is a prescribed change.

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**56 Fuel sales grants scheme**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the introduction of the fuel sales grants scheme under the *Fuel Sales Grants Act 2000* is a prescribed change.

**57 Wholesale sales tax equivalency payments**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the abolition of the liability of State and Territory government business enterprises to wholesale sales tax equivalency payments is a prescribed change.

**58 Tourism marketing duty**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the abolition of the tourism marketing duty in the Northern Territory, as provided for in Part 2 of the *Financial Relations Agreement (Consequential Provisions) Act* is a prescribed change.

**59 Financial institutions duty**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the abolition of the liability to pay financial institutions duty, under the following laws, is a prescribed change:

- (a) Schedule 10 to the *Intergovernmental Agreement Implementation (GST) Act 2000* of New South Wales;
- (b) Part 5 of the **National Taxation Reform (Consequential Provisions) Act 2000** of Victoria;
- (c) Part 2 of the *Financial Relations Agreement (Consequential Provisions) Act 1999* of Western Australia;
- (d) Part 5 of the *National Tax Reform (State Provisions) Act 2000* of South Australia;
- (e) Part 5 of the *National Taxation Reform (Commonwealth-State Relations) Act 1999* of Tasmania;

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- (f) Part 3 of the *Financial Relations Agreement Consequential Amendments Act 2000* of the Australian Capital Territory;
- (g) Part 5 of the *Financial Relations Agreement (Consequential Provisions) Act 2000* of the Northern Territory.

**60 Stamp duty on quoted marketable securities**

For paragraph (d) of the definition of *New Tax System changes* in section 75AT of the Act, the abolition of the liability to pay stamp duty on quoted marketable securities, under the following laws, is a prescribed change:

- (a) Schedule 2 to the *Intergovernmental Agreement Implementation (GST) Act 2000* of New South Wales;
- (b) Part 7 of the **National Taxation Reform (Consequential Provisions) Act 2000** of Victoria;
- (c) Part 5 of the *GST and Related Matters Act 2000* of Queensland;
- (d) Part 5 of the *Financial Relations Agreement (Consequential Provisions) Act 1999* of Western Australia;
- (e) Part 8 of the *National Tax Reform (State Provisions) Act 2000* of South Australia;
- (f) Part 2 of the *Financial Relations Agreement Consequential Amendments Act 2000* of the Australian Capital Territory;
- (g) Part 6 of the *Financial Relations Agreement (Consequential Provisions) Act 2000* of the Northern Territory.

## Part 5 Authorisations, notifications and clearances in respect of restrictive trade practices — prescribed matters

### 70 Forms for non-merger authorisations and related matters

A form in Part 2 of Schedule 1 mentioned in an item in the table is prescribed for the provision of the Act and the purpose mentioned in the item.

Item	Form in Part 2 of Schedule 1	Provision	Purpose
1	Form A	subsection 89 (1)	Exclusionary provisions and associated cartel provisions: application for authorisation
2	Form B	subsection 89 (1)	Agreements affecting competition or incorporating related cartel provisions: application for authorisation
3	Form C	subsection 89 (1)	Covenants affecting competition: application for authorization
4	Form D	subsection 89 (1)	Secondary boycotts: application for authorisation

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<b>Item</b>	<b>Form in Part 2 of Schedule 1</b>	<b>Provision</b>	<b>Purpose</b>
5	Form DA	subsection 89 (1)	Boycott agreements: application for authorization
6	Form E	subsection 89 (1)	Exclusive dealing: application for authorization
7	Form EA	subsection 89 (1)	Resale price maintenance: application for authorisation
8	Form FA	subsection 89 (1)	Application for minor variation of non-merger authorisation
9	Form FB	subsection 89 (1)	Application for revocation of non-merger authorisation
10	Form FC	subsection 89 (1)	Application for revocation of non-merger authorisation and substitution of new application

*Note for item 10* — this item does not apply to a revocation and substitution initiated by the Commission.

## **71 Forms for collective bargaining and exclusive dealing notifications**

A form in Part 3 of Schedule 1 mentioned in an item in the table is prescribed for the provision of the Act and the purpose mentioned in the item.

<b>Item</b>	<b>Form in Part 3 of Schedule 1</b>	<b>Provision</b>	<b>Purpose</b>
1	Form G	subsection 93 (1A)	Notification of exclusive dealing



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Item	Form in Part 3 of Schedule 1	Provision	Purpose
2	Form GA	subsection 93AB (6)	Notification of collective bargaining

**71A Collective bargaining contracts — motor vehicle fuel for retail sale**

- (1) For subsection 93AB (4) of the Act, the amount of \$15 000 000 is prescribed for a collective bargain for the purchase of motor vehicle fuel for the purpose of sale to the public.
- (2) Subregulation (1) does not apply to the purchase or sale of other products by convenience stores, repair shops or other business activities that are associated with, or form part of the business of, a motor vehicle fuel retailer.

**71B Collective bargaining contracts — motor vehicles for retail sale**

For subsection 93AB (4) of the Act, the amount of \$20 000 000 is prescribed for a collective bargain for the purchase of new motor vehicles for the purpose of sale to the public.

**71C Collective bargaining contracts — farm machinery for retail sale**

For subsection 93AB (4) of the Act, the amount of \$10 000 000 is prescribed for a collective bargain for the purchase of farm machinery for the purpose of sale to the public.

**71D Collective bargaining contracts — primary production**

- (1) For subsection 93AB (4) of the Act, the amount of \$5 000 000 is prescribed for a collective bargain of primary producers for:
  - (a) the sale of primary products; or
  - (b) the purchase of inputs used for the production of primary products.

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- (2) In this regulation, ***primary product*** means:
- (a) crops, whether on or attached to the land or not; or
  - (b) animals (whether dead or alive); or
  - (c) the bodily produce (including natural increase) of animals; or
  - (d) fruit, vegetables, herbs, edible fungi or nuts.

**72 When collective bargaining notice comes into force and ceases to be in force**

For paragraph 93AD (1) (a) of the Act, for a collective bargaining notice given after the commencement of this regulation and before 1 January 2009, the period is 28 days.

**73 Forms for merger authorisation and related matters**

- (1) A form in Part 5 of Schedule 1 mentioned in an item in the table is prescribed for the provision of the Act and the purpose mentioned in the item.

Item	Form in Part 5 of Schedule 1	Provision	Purpose
1	Form N	subsection 88 (9)	Application for authorisation of section 50A merger
2	Form O	paragraph 95AE (1) (a)	Application for merger clearance
3	Form P	paragraph 95AR (2) (a)	Application for minor variation of merger clearance
4	Form Q	paragraph 95AS (2) (a)	Application for revocation of merger clearance
5	Form R	paragraph 95AS (2) (a)	Application for revocation of clearance and substitution of new clearance

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<b>Item</b>	<b>Form in Part 5 of Schedule 1</b>	<b>Provision</b>	<b>Purpose</b>
6	Form S	paragraph 95AV (1) (a)	Application for merger authorisation
7	Form T	paragraph 95AZL (2) (a)	Application for minor variation of merger authorisation
8	Form U	paragraph 95AZM (2) (a)	Application for revocation of merger authorisation
9	Form V	paragraph 95AZM (2) (a)	Application for revocation of merger authorisation and substitution of new authorisation
10	Form W	section 111	Application for review a merger clearance

*Note for items 2, 3, 4, 5, 6, 7, 8 and 9* the forms mentioned in these items contain a requirement that the applicant make an undertaking under section 87B of the Act that the applicant will not make the acquisition while the application is being considered by the Commission or the Tribunal, in accordance with the respective provisions of the Act as follows:

<b>Form</b>	<b>Provision of the Act</b>
Form O	subsection 95AE (2)
Form P	subsection 95AP (2)
Form Q	subsection 95AS (2A)
Form R	subsection 95AS (2A)
Form S	subsection 95AV (2)
Form T	subsection 95AZL (2A)
Form U	subsection 95AZM (2A)
Form V	subsection 95AZM (2A)
Form W	subsection 111 (2A)

**Regulation 74**

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*Note for items 4 and 5* — these forms are not required in relation to a revocation and substitution proposed by the Commission under subsection 95AS (5).

*Note for items 8 and 9* — these forms are not required in relation to a revocation and substitution proposed by the Commission under subsection 95AZM (6).

- (2) A requirement in a form mentioned in an item in the table in subregulation (1) that an applicant will not make an acquisition while the application is being considered by the Commission or the Tribunal, is prescribed or made for the provision of the Act mentioned in the item.

**74 Application for review of Commission's determination on merger clearance — time-limit**

- (1) For subsection 111 (1) of the Act, the time allowed for applying to the Tribunal for a review of a determination is 14 days.
- (2) For subsection 111 (2) of the Act, the time allowed for applying to the Tribunal for a review of a determination is 14 days.

**75 Waiver of fee for application relating to non-merger authorisation**

For subsection 172 (2A) of the Act, the circumstance is that the Commission is satisfied that imposition of the entire fee would impose an unduly onerous burden on an applicant.

**76 Search and Seizure — identity card for inspectors**

For paragraph 154C (2) (a) of the Act, an identity card must contain the following information:

- (a) a recent photograph of the inspector to whom the card was issued;
- (b) the name of the inspector;
- (c) the date of issue of the card;
- (d) the Commission corporate logo and the Australian coat of arms;

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**Regulation 76**

(e) the following text:

“The person whose name and photograph appear on this card is an inspector of the Commission who:

- (a) has been appointed by the Chairperson of the Commission as an Inspector pursuant to section 154B of the *Trade Practices Act 1974*; and
- (b) has been issued with this identity card by the Chairperson of the Commission pursuant to section 154C of the *Trade Practices Act 1974*.”

## Schedule 1      Forms — General

(subregulation 2 (2))

## Part 1 Forms — General

**Form AA     Summons to witness: Australian  
Competition and Consumer Commission**

(regulation 6E)

Commonwealth of Australia

## Trade Practices Act 1974

Summons to witness: Australian Competition and Consumer Commission

(Title of matter)

To (full name and address of witness)

You are summoned to attend before the Australian Competition and Consumer Commission, for an arbitration hearing in this matter, on *(date)*, at *(time)*, and then from day to day until the hearing is completed or until you are released from further attendance.

2. You are required to attend before the Commission for the purpose of giving evidence at the hearing.

\* 3. You are required to bring with you and produce the following documents:  
(specify the documents required).

Dated 19 .

Chairperson (*or* Deputy  
Chairperson *or* Member) of the  
Australian Competition and Consumer Commission

*\*Insert if applicable*

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**Part 2      Forms — non-merger authorisation,  
minor variation, revocation, and  
revocation and substitution**

**Form A      Exclusionary provisions and associated  
cartel provisions: application for  
authorisation**  
(regulation 70)

**Form A**

Commonwealth of Australia

*Trade Practices Act 1974 — subsections 88 (1A) and (1)*

**EXCLUSIONARY PROVISIONS AND  
ASSOCIATED CARTEL PROVISIONS:  
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the  
*Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

- (a) Name of Applicant:  
*(Refer to direction 2)*

.....  
.....  
.....  
.....

- (b) Description of business carried on by applicant:  
*(Refer to direction 3)*

.....  
.....  
.....  
.....

- (c) Address in Australia for service of documents on the applicant:

.....  
.....  
.....  
.....



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**2. Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)

.....  
.....  
.....  
.....

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:  
(Refer to direction 4)

.....  
.....  
.....  
.....

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

.....  
.....  
.....  
.....

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

.....  
.....  
.....  
.....

**3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

.....  
.....  
.....  
.....

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

*(Refer to direction 5)*

.....  
.....  
.....  
.....

**4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
*(Refer to direction 6)*

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- (b) Facts and evidence relied upon in support of these claims:

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**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 7)

.....  
.....  
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.....  
.....

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:  
(Refer to direction 8)

.....  
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- (b) Facts and evidence relevant to these detriments:

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**7. Contracts, arrangements or understandings in similar terms**

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

.....

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

*(Refer to direction 9)*

.....  
.....  
.....  
.....

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

*(Refer to direction 10)*

.....  
.....  
.....  
.....

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

.....  
.....  
.....  
.....  
.....

## 8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....  
.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....  
.....

## 9. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

.....  
.....  
.....  
.....

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Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in organisation)

## **DIRECTIONS**

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.

- 
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
  4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

**Form B      Agreements affecting competition or  
incorporating related cartel provisions:  
application for authorisation**  
(regulation 70)

**Form B**

Commonwealth of Australia

*Trade Practices Act 1974 — subsections 88 (1A) and (1)*

**AGREEMENTS AFFECTING COMPETITION OR  
INCORPORATING RELATED CARTEL PROVISIONS:  
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).



- 
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
  - to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
  - to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

- (a) Name of Applicant:  
*(Refer to direction 2)*

.....  
.....  
.....

- (b) Short description of business carried on by applicant:  
*(Refer to direction 3)*

.....  
.....  
.....  
.....

- (c) Address in Australia for service of documents on the applicant:

.....

.....

.....

.....

**2. Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)

.....

.....

.....

.....

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:  
(Refer to direction 4)

.....

.....

.....

.....

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

.....

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.....

.....

- 
- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

.....  
.....  
.....  
.....

**3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

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.....  
.....

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

*(Refer to direction 5)*

.....  
.....  
.....  
.....

**4. Public benefit claims**

- (a) Arguments in support of authorisation:  
*(Refer to direction 6)*

.....  
.....  
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- (b) Facts and evidence relied upon in support of these claims:

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**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

.....

.....

.....

.....

.....

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

.....

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- 
- (b) Facts and evidence relevant to these detriments:

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.....  
.....

**7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

.....

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

*(Refer to direction 9)*

.....  
.....  
.....  
.....  
.....

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

.....  
.....  
.....  
.....  
.....

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

.....  
.....  
.....  
.....  
.....

**8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....  
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.....  
.....  
.....

- 
- (c) If so, by whom or on whose behalf are those other applications being made?

.....  
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.....

**9. Further information**

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

.....  
.....  
.....  
.....  
.....

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Position in Organisation)

## DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
- (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.



- 
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
  8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

**Form C      Covenants affecting competition:  
application for authorisation**  
(regulation 70)

**Form C**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (5)*

**COVENANTS AFFECTING COMPETITION:  
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (5) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to require the giving of, or to give, a covenant where the proposed covenant would have the purpose, or would have or might have the effect, of substantially lessening competition.
- to enforce the terms of a covenant.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      Applicant**

- (a)      Name of Applicant:  
*(Refer to direction 2)*

.....  
.....  
.....  
.....

- 
- (b) Description of business carried on by applicant:  
(*Refer to direction 3*)

.....  
.....  
.....  
.....  
.....

- (c) Address in Australia for service of documents on the applicant:

.....  
.....  
.....  
.....

**2. Covenant**

- (a) Description of the covenant and, where already given, its date:  
(*Refer to direction 4*)

.....  
.....  
.....  
.....  
.....

- (b) Names and addresses of persons who are, or are to be, entitled  
to the benefit of the covenant:

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.....  
.....  
.....

- (c) Names and addresses of persons who are, or are to be bound by the covenant:

.....  
.....  
.....  
.....

- (d) The term for which authorisation of the covenant is being sought and grounds supporting this period of authorisation:

.....  
.....  
.....  
.....

**3. Parties to the proposed covenant**

- (a) Where those parties are known - names, addresses and descriptions of business carried on by those other parties on whose behalf the application is made:  
(Refer to direction 5)

.....  
.....  
.....  
.....  
.....

**4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
(Refer to direction 6)

.....  
.....  
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- 
- (b) Facts and evidence relied upon in support of these claims:

.....  
.....  
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.....

**5. Market definition**

Provide a description of the market(s) in which the covenant is to take effect having regard to goods or services supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

.....  
.....  
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.....  
.....

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the proposed covenant for which authorisation is sought, in particular the likely effect of the covenant on the prices of the goods or services and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

.....  
.....  
.....  
.....  
.....

- (b) Facts and evidence relevant to these detriments:

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.....

**7. Covenants or proposed covenants in similar terms**

This application for authorisation may also be expressed to be made in relation to other covenants or proposed covenants that are or will be in similar terms to the abovementioned covenant.

- (a) Is this application to be so expressed?

.....

- (b) If so, the following information is to be furnished:  
(Refer to direction 9)

- (i) Where the applicant is entitled to the benefit of other covenants, the names of the persons who are bound by each of the other covenants:

.....

.....

.....

.....

.....

- (ii) Where the applicant is to be entitled to the benefit of the other proposed covenants, the names of the persons who are to be bound by each of the other proposed covenants which names are known at the date of this application:

.....

.....

.....

.....

- (iii) Where the applicant is bound by the other covenants, the names of the persons who are entitled to the benefit of each of the other covenants:

.....  
.....  
.....  
.....

- (iv) Where the applicant is to be bound by the other proposed covenants, the names of the persons who are to be entitled to the benefit of each of the other proposed covenants which names are known at the date of the application:

.....  
.....  
.....  
.....  
.....

## 8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....  
.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....  
.....  
.....  
.....

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## 9. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

.....  
.....  
.....  
.....

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.



- 
3. Describe that part of the applicant's business relating to the subject matter of the covenant in respect of which authorisation is sought.
  4. Provide details of the covenant affecting competition in respect of which the authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the proposed covenant including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be effected by the covenant, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed covenant. Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other covenants which are or will be in similar terms to the covenant referred to in item 2, furnish with the application details of the manner in which those covenants vary in their terms from the covenant referred to in item 2.

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**Form D      Secondary boycotts: application for  
authorisation**

(regulation 70)

**Form D**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (7)*

**SECONDARY BOYCOTTS:  
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (7) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to engage, in concert with other persons, in conduct that hinders or prevents, or may hinder or prevent, a third person supplying goods to services to, or acquiring goods or services from, a fourth person
- to engage, in concert with other persons, in conduct that prevents or substantially hinders, or may prevent or substantially hinder, a third person from engaging in trade or commerce involving the movement of goods between Australia and places outside Australia.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      Applicant**

- (a)    Name of Applicant:  
*(Refer to direction 2)*

.....  
.....  
.....  
.....

- 
- (b) Description of business, activity or occupation carried on by applicant:  
(Refer to direction 3)

.....  
.....  
.....  
.....

- (c) Address in Australia for service of documents on the applicant:

.....  
.....  
.....

**2. Conduct**

- (a) Description of the conduct proposed to be engaged in, for which authorisation is sought:  
(Refer to direction 4)

.....  
.....  
.....  
.....

- (b) Number of persons proposing to engage, in concert, in the conduct:

.....

- (i) Where number of persons stated in item 2 (b) is less than 50, their names and addresses:

.....  
.....  
.....

- (c) Description of the goods or services to which the conduct (whether proposed or actual) relate:

.....  
.....  
.....  
.....

- (d) The term for which authorisation of the provision of the conduct is being sought and grounds supporting this period of authorisation:

.....  
.....  
.....  
.....

**3. Parties**

- (a) Name and address of the third person whose supply or acquisition of goods or services, or whose trade or commerce involving the movement of goods overseas, is to be, or may be, hindered or prevented by the conduct:

.....  
.....  
.....  
.....

- (b) Name and address of person to or from whom, or the place to or from which, supply or acquisition of goods or services is to be, or may be, hindered or prevented by the conduct:

.....  
.....  
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.....

- 
- (c) Names and addresses of persons on whose behalf application is made:

.....  
.....  
.....  
.....

**4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
(Refer to direction 5)

.....  
.....  
.....  
.....

- (b) Facts and evidence relied upon in support of these claims

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.....  
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**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 6)

.....  
.....  
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.....

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**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the conduct for which authorisation is sought, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (c) above and the prices of goods or services in other affected markets:  
(Refer to direction 7)

.....

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- (b) Facts and evidence relevant to these detriments:

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**7. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*):

.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....

.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....

.....

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## 8. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

.....  
.....  
.....  
.....

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the applicant's business relating to the conduct in respect of which authorisation is sought.
4. Provide details of the conduct in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
6. Provide details of the market(s) likely to be effected by the conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
7. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed conduct. Provide quantification of those detriments where possible.



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**Form DA    Boycott agreements: application for  
authorisation**

(regulation 70)

**Form DA**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (7A)*

**BOYCOTT AGREEMENTS:  
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (7A) of the *Trade Practices Act 1974* for an authorisation under that subsection for a person (the *first* person):

- to make a contract or arrangement, or arrive at an understanding, with an organisation of employees or an officer of such an organisation, being a contract, arrangement, or understanding that contains a provision that is, or may be, included for the purpose of preventing or hindering the first person supplying goods or services to, or acquiring goods or services from, another person.
- to give effect to a provision of a contract, arrangement or understanding with an organisation of employees or an officer of such an organisation that has, or may have, been included for the purpose of preventing or hindering the first person supplying goods or services to, or acquiring goods or services from, another person.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      Applicant**

- (a)      Name of Applicant:  
          *(Refer to direction 2)*

.....  
.....  
.....  
.....

- (b)      Description of business, activity or occupation carried on by  
          applicant:  
          *(Refer to direction 3)*

.....  
.....  
.....  
.....

- (c)      Address in Australia for service of documents on the applicant:

.....  
.....  
.....

**2.      Conduct**

- (a)      Description of the contract, arrangement or understanding for  
          which authorisation is sought:  
          *(Refer to direction 4)*

.....  
.....  
.....  
.....

- (b) Description of those provisions of the contract, arrangement or understanding that have, or may have, the purpose of preventing or hindering the first person supplying goods or services to, or acquiring goods or services from, another person:

*(Refer to direction 4)*

.....  
.....  
.....  
.....

- (c) Description of the goods or services to which the conduct (whether proposed or actual) relate:

.....  
.....  
.....  
.....

- (d) The term for which authorisation of the provision of the conduct is being sought and grounds supporting this period of authorisation:

.....  
.....  
.....  
.....

### 3. Parties

- (a) Name and address of person to or from whom supply or acquisition of goods or services, is to be, or may be, hindered or prevented by the contract, arrangement or understanding:

.....  
.....  
.....  
.....

- 
- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
(Refer to direction 5)

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**4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
(Refer to direction 6)

.....

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- (b) Facts and evidence relied upon in support of these claims:

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**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 7)

.....

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.....  
.....

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the conduct for which authorisation is sought, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (c) above and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

.....  
.....  
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.....

- (b) Facts and evidence relevant to these detriments:

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.....  
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.....

**7. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....  
.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....  
.....

#### 8. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

.....  
.....  
.....  
.....

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

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## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the conduct in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding between the first person and the organisation of employees or the officer of such an organisation. Provide details of the provision that is, or may, prevent or hinder the first person supplying goods or services to, or acquiring goods or services from, another person.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.

7. Provide details of the market(s) likely to be effected by the conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed conduct. Provide quantification of those detriments where possible.

**Form E      Exclusive dealing: application for authorisation**  
(regulation 70)

**Form E**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (8)*

**EXCLUSIVE DEALING:  
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (8) of the *Trade Practices Act 1974* for an authorisation under that subsection to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      Applicant**

- (a)      Name of applicant:  
(Refer to direction 2)

.....  
.....  
.....  
.....



- 
- (b) Short description of business carried on by applicant:  
(*Refer to direction 3*)

.....  
.....  
.....  
.....

- (c) Address in Australia for service of documents on the applicant:

.....  
.....  
.....  
.....

**2. Contract, arrangement or understanding**

- (a) Description of the conduct that would or may constitute the  
practice of exclusive dealing:  
(*Refer to direction 4*)

.....  
.....  
.....  
.....

- (b) Description of the goods or services in relation to the supply or  
acquisition of which this application relates:

.....  
.....  
.....  
.....

- 
- (c) The term for which authorisation of the conduct is being sought  
and grounds for supporting this period of authorisation:

.....  
.....  
.....  
.....

**3. Parties to the proposed arrangement**

- (a) Class or classes of persons to which the conduct relates:  
(*Refer to direction 5*)

.....  
.....  
.....  
.....  
.....  
.....

- (b) Number of those persons:

- (i) At present time:

.....

- (ii) Estimated within the next year:  
(*Refer to direction 6*)

.....

- (c) Where number of persons stated in item 3 (b) (i) is less than 50,  
their names and addresses:

.....  
.....  
.....  
.....  
.....

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**4. Public benefit claims**

- (a) Arguments in support of authorisation:  
(Refer to direction 6)

.....  
.....  
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.....

- (b) Facts and evidence relied upon in support of these claims:

.....  
.....  
.....  
.....

**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 7)

.....  
.....  
.....  
.....

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:  
(Refer to direction 8)

.....  
.....  
.....  
.....

- (b) Facts and evidence relevant to these detriments:

.....  
.....  
.....  
.....

**7. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....  
.....

**8. Further Information**

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

.....  
.....

Dated.....

---

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business in the course of which the conduct is engaged in.
4. Provide details of the conduct (whether proposed or actual) which may constitute the practice of exclusive dealing in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
- (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.

5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be effected by the conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
8. Provide details of the detriments to the public which may result from the conduct including quantification of those detriments where possible.

## **Form EA    Resale price maintenance: application for authorisation**

(regulation 70)

### **Form EA**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (8A)*

### **RESALE PRICE MAINTENANCE: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (8A) of the *Trade Practices Act 1974* for an authorisation under that subsection to engage in conduct that constitutes (or may constitute) the practice of resale price maintenance.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

---

**1. Applicant**

- (a) Name of Applicant:  
(Refer to direction 2)

.....  
.....  
.....  
.....

- (b) Description of business carried on by applicant:  
(Refer to direction 3)

.....  
.....  
.....  
.....

- (c) Address in Australia for service of documents on the applicant:

.....  
.....  
.....  
.....

**2. Conduct**

- (a) Description of the conduct that would or may constitute the  
practice of resale price maintenance:  
(Refer to direction 4)

.....  
.....  
.....  
.....

- 
- (b) Description of the goods or services in relation to the supply of which this application relates:

.....  
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.....  
.....

- (c) The term for which authorisation of the provision of the conduct (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

.....  
.....  
.....  
.....

**3. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
(*Refer to direction 5*)

.....  
.....  
.....  
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- (b) Facts and evidence relied upon in support of these claims:

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**4. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers;



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substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 6)*

.....  
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## 5. Public detriments

- (a) Detriments to the public resulting or likely to result from the conduct for which authorisation is sought, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

*(Refer to direction 7)*

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.....  
.....  
.....  
.....

- (b) Facts and evidence relevant to these detriments:

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.....  
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## 6. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

.....

- 
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....  
.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....  
.....

**7. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

.....  
.....  
.....  
.....

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

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## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the conduct in respect of which authorisation is sought.
4. Provide details of the conduct (whether proposed or actual) which may constitute the practice of resale price maintenance in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
  6. Provide details of the market(s) likely to be effected by the conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  7. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed conduct. Provide quantification of those detriments where possible.

**Form FA     Application for minor variation of  
non-merger authorisation**  
(regulation 70)

**Form FA**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 91A (1)*

**APPLICATION FOR MINOR VARIATION OF A  
NON-MERGER AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Trade Practices Act 1974* for the a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.     Applicant**

- (a)     Name of applicant:  
(*Refer to direction 2*)

.....  
.....

- (b)     Description of business carried on by applicant:  
(*Refer to direction 3*)

.....  
.....

- (c)     Address in Australia for service of documents on the applicant:

.....  
.....

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**2. Minor variation of authorisation**

- (a) Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):

.....  
.....

- (b) Provide a description of the goods or services that relate to the authorisation for which variation is sought:

.....  
.....

- (c) Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:  
(Refer to direction 4)

.....  
.....

- (d) Facts and evidence relied upon in support of the claim that the variation is a minor variation:

.....  
.....

**3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought**

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

.....  
.....

.....  
.....

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
*(Refer to direction 5)*

.....  
.....  
.....

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

.....  
.....  
.....

#### **4. Public benefit claims**

- (a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:

.....  
.....  
*(See Direction 6 of this Form)*

- (b) Facts and evidence relied upon in support of these claims:

.....  
.....

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**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

.....

.....

*(See Direction 7 of this Form)*

**6. Public detriments**

- (a) Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

.....

.....

*(See Direction 8 of this Form)*

- (b) Facts and evidence relied upon in support of these claims:

.....

.....

**7. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant to provide additional information in relation to this application:

.....

.....

Dated.....

---

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

## **DIRECTIONS**

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which minor variation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
- (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and



- 
- (c) If minor variation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where minor variation of an authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of the likely effect of the minor variation upon those public benefits considered to result or to be likely to result from the original authorisation, including quantification of those effects where possible.
  7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  8. Provide details of the likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition, which may result from the original authorisation. Provide quantification of these effects where possible.

**Form FB      Application for revocation of non-merger  
authorisation**

(regulation 70)

**Form FB**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 91B (1)*

**APPLICATION FOR REVOCATION OF A  
NON-MERGER AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91B (1) of the *Trade  
Practices Act 1974* for the revocation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      Applicant**

(a)      Name of applicant:

.....  
.....  
(*See Direction 2 of this Form*)

(b)      Description of business carried on by applicant:

.....  
.....  
(*See Direction 3 of this Form*)

(c)      Address in Australia for service of documents on the applicant:

.....  
.....

---

**2. Revocation of authorisation**

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

.....  
.....  
(See Direction 4 of this Form)

- (b) Provide details of the basis upon which revocation is sought:

.....  
.....

**3. Other parties to the contract, arrangement or understanding, or relevant conduct, for which revocation of authorisation is sought**

- (a) Where those parties are known — names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

.....  
.....

- (b) Where those parties are not known — description of the class of business carried on by those parties to the contract, arrangement or understanding, or the relevant conduct:

.....  
.....

**4. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant to provide additional information in relation to this application:

.....  
.....

---

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

### **DIRECTIONS**

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which revocation of the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding, or the relevant conduct, in respect of which revocation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and

- (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
- (c) If revocation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.

**Form FC Application for revocation of non-merger authorisation and substitution of new authorisation**  
(regulation 70)

**Form FC**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 91C (1)*

**APPLICATION FOR REVOCATION OF A  
NON-MERGER AUTHORISATION AND  
SUBSTITUTION OF A NEW AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Trade Practices Act 1974* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

- (a) Name of applicant:  
(Refer to direction 2)

.....  
.....

- (b) Description of business carried on by applicant:  
(*Refer to direction 3*)

.....  
.....

- (c) Address in Australia for service of documents on the applicant:

.....  
.....

**2. Revocation of authorisation**

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

.....  
.....

- (b) Provide details of the basis upon which revocation is sought:

.....  
.....

**3. Substitution of authorisation**

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:  
(*Refer to direction 4*)

.....  
.....  
.....  
.....

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

- .....
- .....
- .....
- .....
- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

.....

.....

.....

**4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought**

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

.....

.....

.....

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

*(Refer to direction 5)*

.....

.....

.....

.....

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

.....

.....

.....

.....

## 5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:

.....

.....

*(See Direction 6 of this Form)*

- (b) Facts and evidence relied upon in support of these claims:

.....

.....

## 6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

.....

.....

*(See Direction 7 of this Form)*

## 7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b)



above and the prices of goods or services in other affected  
markets:

.....  
.....

*(See Direction 8 of this Form)*

- (b) Facts and evidence relevant to these detriments:

.....  
.....

**8. Contracts, arrangements or understandings in similar terms**

This application for substitute authorisation may also be  
expressed to be made in relation to other contracts,  
arrangements or understandings (whether proposed or actual)  
that are, or will be, in similar terms to the abovementioned  
contract, arrangement or understanding

- (a) Is this application to be so expressed?

.....  
.....

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement  
or understanding for which substitute authorisation has been  
sought and those contracts, arrangements or understandings  
that are stated to be in similar terms:

.....  
.....

*(See Direction 9 of this Form)*

- (ii) Where the parties to the similar term contract, arrangement or  
understanding(s) are known - names, addresses and description  
of business carried on by those other parties:

.....  
.....

*(See Direction 5 of this Form)*

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

.....  
.....

## 9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

.....  
.....

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

.....  
.....

- (c) If so, by whom or on whose behalf are those other applications being made?

.....  
.....

## 10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

.....  
.....

---

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

### **DIRECTIONS**

- 1 Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
- 2 Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
- 3 In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
- 4 In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
  - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and

- (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

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**Part 3      Forms — exclusive dealing and  
collective bargaining**

**Form G      Notification of exclusive dealing**  
(regulation 71)

**Form G**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 93 (1)*

**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      Applicant**

- (a)      Name of person giving notice:  
(Refer to direction 2)

.....  
.....  
.....  
.....

- (b)      Short description of business carried on by that person:  
(Refer to direction 3)

.....  
.....  
.....  
.....

- (c) Address in Australia for service of documents on that person:

.....  
.....  
.....  
.....

**2. Notified arrangement**

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

.....  
.....  
.....  
.....

- (b) Description of the conduct or proposed conduct:

.....  
.....  
.....  
.....  
.....  
.....

*(Refer to direction 4)*

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:  
*(Refer to direction 5)*

.....  
.....  
.....  
.....  
.....  
.....

---

(b) Number of those persons:

(i) At present time:

.....

(ii) Estimated within the next year:

*(Refer to direction 6)*

.....

(c) Where number of persons stated in item 3 (b) (i) is less than 50,  
their names and addresses:

.....

.....

.....

.....

.....

.....

**4. Public benefit claims**

(a) Arguments in support of notification:

*(Refer to direction 7)*

.....

.....

.....

.....

(b) Facts and evidence relied upon in support of these claims:

.....

.....

.....

.....

**5.      Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
*(Refer to direction 8)*

.....  
.....  
.....  
.....

**6.      Public detriments**

- (a)    Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:  
*(Refer to direction 9)*

.....  
.....  
.....  
.....

- (b)    Facts and evidence relevant to these detriments:

.....  
.....  
.....  
.....



---

**7. Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

.....  
.....  
.....  
.....

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

**DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible

---

**Form GA Notification of collective bargaining**  
(regulation 71)

**Form GA**

Commonwealth of Australia

*Trade Practices Act 1974 — section 93AB*

**NOTIFICATION OF COLLECTIVE BARGAINING**

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:  
Notice is hereby given under section 93AB of the *Trade Practices Act 1974* of intention:

- to make, or to propose to make, a contract containing a provision of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to make, or to propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2) (a) of that Act.

- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2) (b) of that Act.  
(*Strike out if not applicable*)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

## Section A – general information

### 1. Applicant

- (a) Name of the applicant:  
(*refer to Direction 1*)

.....  
.....  
.....

- (b) Description of business carried on by the applicant:  
(*refer to Direction 2*)

.....  
.....  
.....

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?  
(*refer to Direction 3*)

.....  
.....  
.....

- (d) Address in Australia for service of documents on the applicant:

.....  
.....  
.....

---

**2. Lodged on behalf of**

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:

*(refer to Direction 4)*

.....  
.....  
.....

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:

*(refer to Direction 5)*

.....  
.....  
.....

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

.....  
.....  
.....

- (ii) details of the first-mentioned notification, including but not limited to:

- (A) the name of the applicant; and  
(B) the date the notification was said to be lodged; and  
(C) if known or applicable — the registration number allocated to that collective bargaining notification.

.....  
.....  
.....

## Section B – collective bargaining arrangements

### 3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:

*(refer to direction 6)*

.....  
.....  
.....

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

.....  
.....  
.....

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?

*(refer to direction 7)*

.....  
.....  
.....

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

.....  
.....  
.....

- 
- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?  
(refer to direction 8)
- .....
- .....
- .....
- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):
- .....
- .....
- .....
- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and
- (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and
- (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and
- (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and
- (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and

- (vi) details of proposed commencement and duration of contracts to be negotiated with the target:  
(refer to direction 9)

.....  
.....  
.....

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

.....  
.....  
.....

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and

- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:

- (A) details of the events that would trigger any such activity; and  
(B) details of the process that would be followed in undertaking any such activity; and  
(C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and  
(D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

(refer to direction 10)

.....  
.....  
.....



---

## Section C – public detriments

### 4. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(refer to direction 11)

.....  
.....  
.....

### 5. Public detriments

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

.....  
.....  
.....

- (b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

.....  
.....  
.....

## Section D – public benefits

### 6. Public benefit claims

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

.....  
.....  
.....

## Section E - authority

### 7. Contact details

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

.....  
.....  
.....

*(refer to direction 12)*

Dated.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Organisation)

.....  
(Position in Organisation)

---

## DIRECTIONS

1. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.

10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.



4. The determination that I am seeking from the Tribunal is as follows:
5. Particulars of the facts and contentions upon which I intend to rely in support of the application for review, and a statement of the issues as I see them, are attached.
6. My address for service for the purpose of regulation 21 of the Trade Practices Regulations is (here insert address in Australia at which documents may be served for the purpose of proceedings).

Dated this                      day of                      19 .

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Where applicant is a corporation, state position occupied in corporation by person signing). (If signed by solicitor for applicant this fact should be stated).

## **Form J      Application to tribunal for review**

(subregulation 20 (2))

Application to tribunal for review

(Title)

1. I (here insert name and address of applicant — where the applicant is a corporation, the corporation's name should be inserted here, not the name of an officer of the corporation) hereby apply to the Australian Competition Tribunal pursuant to section 101A of the *Trade Practices Act 1974* for a review of the giving of notice under subsection 93 (3)/ subsection 93 (3A)/ subsection 93AC (1)/ subsection 93AC (2) (here delete whichever is not applicable) of that Act to (here state name of corporation to which, or person to whom, notice was given) by the Australian Competition and Consumer Commission on the day of 19 (Commission file no. ).
2. (a) That notice was/was not (here delete whichever not applicable) given to the person making this application.

- (b) (To be completed if applicant for review was not corporation to which, or person to whom, that notice was given). My interest in the determination is as follows:

(Here set out particulars of the matters by reason of which the applicant will seek to satisfy the Tribunal that, for the purposes of section 101A of the Act, he has a sufficient interest).

3. I am dissatisfied with the giving of the notice by the Commission because:
4. Particulars of the facts and contentions upon which I intend to rely in support of the application for review, and a statement of the issues as I see them, are attached.
5. My address for service for the purpose of regulation 21 of the Trade Practices Regulations is (here insert address in Australia at which documents may be served for the purpose of proceedings).

Dated this                      day of                      19                      .

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
(Full Name)

.....  
(Where applicant is a corporation, state position occupied in corporation by person signing). (If signed by solicitor for applicant this fact should be stated).

## **Form JA      Application to tribunal for review**

(subregulation 20A (1))

Application to tribunal for review

*(Title)*

Name of applicant:

Address of applicant:

*(If the Applicant is a corporation, give the corporation's name and address, not the name and address of an officer of the corporation).*

1. I apply to the Australian Competition Tribunal

- \* under subsection 44K (1) of the *Trade Practices Act 1974*, for a review of the declaration of a service by the designated Minister, (*full name and designation of the designated Minister*), under subsection 44H (1) of the Act;
- \* under subsection 44K (2) of the *Trade Practices Act 1974*, for a review of the decision by the designated Minister, (*full name and designation of the designated Minister*), under subsection 44H (1) of the Act, not to declare a service;
- \* under subsection 44L (1) of the *Trade Practices Act 1974*, for a review of the decision by the designated Minister, (*full name and designation of the designated Minister*), under subsection 44J (3) of the Act, not to revoke the declaration of a service;

being the service described below.

2. I am

- \* the provider.
- \* the person who applied for the declaration recommendation.

3. Brief description of the service:

4. Facts and contentions on which I intend to rely:

5. Issues as I see them:

6. Address for service of documents:

(*An address for service must comply with regulation 21 of the Trade Practices Regulations*).

Dated:

19

Signed by/on behalf of the applicant

(*Signature*)

.....

(*Full Name*)

.....

(*If applicant is a corporation, state position occupied in corporation by person signing. If signed by a solicitor for applicant this fact should be stated*).

\*Delete if not applicable.



---

## Form JAA Application for review by Australian Competition Tribunal

(subregulation 20 (4))

Commonwealth of Australia

*Trade Practices Act 1974*

Application for review by Australian Competition Tribunal

*(Title of matter)*

Name of applicant: *(insert full name of applicant)*

Address of applicant: *(insert address of applicant)*

*(If the applicant is a corporation, the corporation's name should be inserted here, not the name and address of an officer of the corporation.)*

1. Application is made to the Australian Competition Tribunal under section 151CI of the *Trade Practices Act 1974* for review of a decision of the Australian Competition and Consumer Commission under section 151BA of that Act to refuse to make an exemption order relating to conduct of the applicant, being the decision, order and conduct described below.

2. The decision of the Commission is dated *(insert date of decision)* and the number of the Commission file for the matter is *(insert file no.)*.

3. The Commission refused to make an exemption order having the following effect:

*(state the effect briefly).*

4. The conduct was as follows:

*(state the conduct briefly).*

5. The following features of the Commission decision are unsatisfactory:

*(state the features briefly).*

6. The facts and contentions on which this application relies are as follows:

*(state the facts and contentions briefly).*

7. Address for service of documents:

*(insert address for service)*

*(An address for service must comply with regulation 21 of the Trade Practices Regulations).*

Dated .

Signed by or on behalf of the applicant

(signature)

(insert full name)

*(If the applicant is a corporation, state position occupied by the signatory in the corporation. If the signatory is a solicitor for the applicant, state that fact.)*

## **Form JB      Application to tribunal for review**

(subregulation 20A (2))

Application to tribunal for review

*(Title)*

Full name of applicant Minister:

Designation of Minister:

State or Territory:

Address:

1. I apply to the Australian Competition Tribunal under subsection 44O (1) of the *Trade Practices Act 1974* for a review of the decision of the Commonwealth Minister that the regime for access to the service described below *\*is/\*is not* an effective access regime for the service.

2. I am the Minister who asked the National Competition Council for a recommendation under section 44M of the Act in respect of the service.

3. Brief description of the service:

4. Facts and contentions on which I intend to rely:

5. Issues as I see them:

6. Address for service of documents:

*(An address for service must comply with regulation 21 of the Trade Practices Regulations).*

Dated:

19

Signed:

*(Signature)*

*\*Delete if not applicable*

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## Form JC      Application to tribunal for review

(subregulation 20A (3))

Application to tribunal for review

*(Title)*

Name of applicant:

Address of applicant:

*(If the applicant is a corporation, give the corporation's name and address, not the name and address of an officer of the corporation).*

1. I apply to the Australian Competition Tribunal under subsection 44ZX (1) of the *Trade Practices Act 1974* for a review of the decision of the Australian Competition and Consumer Commission not to register a contract dated *(date)* between *(names of parties)*, relating to the service described below.

2. Brief description of the service:

3. Facts and contentions on which I intend to rely:

4. Issues as I see them:

5. Address for service of documents:

*(An address for service must comply with regulation 21 of the Trade Practices Regulations).*

Dated:                      19

Signed by/on behalf of the applicant

*(Signature)*

*(Full Name)*

.....  
*(If applicant is a corporation, state position occupied in corporation by person signing. If signed by a solicitor for applicant this fact should be stated).*

*\*Delete if not applicable.*

## **Form JD      Application for review by Australian Competition Tribunal**

(subregulation 20A (4))

Commonwealth of Australia

*Trade Practices Act 1974*

Application for review by Australian Competition Tribunal

*(Title of matter)*

Name of applicant: *(insert full name of applicant)*

Address of applicant: *(insert address of applicant)*

*(If the applicant is a corporation, give the corporation's name and address, not the name and address of an officer of the corporation.)*

1. Application is made to the Australian Competition Tribunal under subsection 152AV (1) of the *Trade Practices Act 1974* for review of a decision of the Australian Competition and Consumer Commission under section 152AT of that Act to grant, or refuse to grant, an exemption order to *(insert name of applicant for the order)* from an obligation, or obligations, under section 152AR of the Act.

2. The declared service to which the application for the exemption order relates is:

*(describe the service briefly).*

3. The standard access obligations to which the application for the exemption order relates are:

*(state the obligations briefly).*

4. Particulars of the effect of the Commission decision on the interests of the applicant for the review are as follows:

*(state the particulars briefly).*

5. The facts and contentions on which this application relies are as follows:

*(state the facts and contentions briefly).*

6. The issues in reliance on which this application is made are as follows:

*(state the issues briefly).*

7. Address for service of documents:

*(insert address for service)*

---

*(An address for service must comply with regulation 21 of the Trade Practices Regulations).*

Dated: .

Signed by or on behalf of the applicant:

*(signature)*

*(insert full name)*

*(If the applicant is a corporation, state the position occupied by the signatory in the corporation. If the signatory is a solicitor for the applicant, state that fact.)*

## **Form JE      Application for review by Australian Competition Tribunal**

(subregulation 20A (5))

Commonwealth of Australia

*Trade Practices Act 1974*

Application for review by Australian Competition Tribunal

*(Title of matter)*

Name of applicant: *(insert name of applicant)*

Address of applicant: *(insert address of applicant)*

*(If the applicant is a corporation, the corporation's name and address should be inserted here, not the name and address of an officer of the corporation.)*

1. Application is made to the Australian Competition Tribunal under subsection 152CE (1) of the *Trade Practices Act 1974* for review of a decision of the Australian Competition and Consumer Commission *(include appropriate description of decision for review)*

[to accept\*/reject\* an access undertaking under subsection 152BU (2) of that Act]\*

[to accept\*/reject\* a variation of an access undertaking under subsection 152BY (3) of that Act]\*.

2. The carrier or carriage service provider whose access undertaking\*/variation\* was accepted\*/rejected\* is *(insert name of carrier or carriage service provider)*.

3. The declared service to which the access undertaking relates is:  
*(describe the service briefly)*.

4. Particulars of the effect of the Commission decision on the interests of the applicant for the review are as follows:  
*(state the particulars briefly)*.

5. The facts and contentions on which this application relies are as follows:  
*(state the facts and contentions briefly)*.

6. The issues in reliance on which this application is made are as follows:  
*(state the issues briefly)*.

7. Address for service of documents:  
*(insert address for service)*

*(An address for service must comply with regulation 21 of the Trade Practices Regulations).*

Dated .

Signed by or on behalf of the applicant:

*(signature)*

*(insert full name)*

*(If the applicant is a corporation, state the position occupied by the signatory in the corporation. If the signatory is a solicitor for the applicant, state that fact.)*

*\*Omit if inapplicable*

---

## **Form K      Summons to witness: Australian Competition Tribunal**

(regulations 25 and 28N)

Commonwealth of Australia

*Trade Practices Act 1974*

Summons to witness: Australian Competition Tribunal

(Title)

To (full name and address of witness)

You are hereby summoned to attend before the Australian Competition Tribunal at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and thereafter from day to day until the hearing of proceedings in relation to the above-mentioned matter is completed or until you are released from further attendance.

2. You are required to attend before the Tribunal for the purpose of giving evidence in the proceedings.

\* 3. You are required to bring with you and produce the following documents:  
(Here set out the documents required).

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
President (or Deputy President  
or Member) of the  
Australian Competition Tribunal.

\*Insert if applicable.

---

## Form L      Application to tribunal for review

(subregulation 28C (1))

Application to tribunal for review

*(Title)*

Name of applicant:

Address of applicant:

*(If the applicant is a corporation, give the corporation's name and address, not the name and address of an officer of the corporation).*

1. I apply to the Australian Competition Tribunal under subsection 44 ZP (1) of the *Trade Practices Act 1974* for a review of a determination of the Australian Competition and Consumer Commission on access to the service described below.

2. I am

\*the provider.

\*the third party.

\*a party to the determination, other than the provider or the third party.

3. Brief description of the service:

4. Facts and contentions on which I intend to rely:

5. Issues as I see them:

6. Address for service of documents:

*(An address for service must comply with regulation 21 of the Trade Practices Regulations).*

Dated:

19

Signed by/on behalf of the applicant

(Signature)

(Full name)

.....  
*(If the applicant is a corporation, state position occupied in corporation by person signing. If signed by a solicitor for applicant, this fact should be stated).*

*\*Delete if not applicable.*



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## Form LA    Application for review by Australian Competition Tribunal

(subregulation 28C (1A))

Commonwealth of Australia

*Trade Practices Act 1974*

Application for review by Australian Competition Tribunal

*(Title of matter)*

Name of applicant: *(insert full name of applicant)*

Address of applicant: *(insert address of applicant)*

*(If the applicant is a corporation, give the corporation's name and address, not the name and address of an officer of the corporation.)*

1. Application is made to the Australian Competition Tribunal under subsection 152DO (1) of the *Trade Practices Act 1974* for review of a determination of the Australian Competition and Consumer Commission about access to the declared service described below.

2. This application is made by [the access provider]\* [the access seeker]\* [a party to the determination who is not the access provider or seeker]\*.

3. The declared service to which the access undertaking relates is:  
*(describe the service briefly).*

4. The facts and contentions on which this application relies are as follows:  
*(state the facts and contentions briefly).*

5. The issues in reliance on which this application is made are as follows:  
*(state the issues briefly).*

6. Address for service of documents:  
*(insert address for service)*

*(An address for service must comply with regulation 21 of the Trade Practices Regulations).*

Dated

Signed by or on behalf of the applicant:  
*(signature)*

*(insert full name)*

*(If the applicant is a corporation, state the position occupied by the signatory in the corporation. If the signatory is a solicitor for the applicant, state that fact.)*

*\*Omit if inapplicable*

---

## Form M      Summons

(subregulation 28V (1))

Commonwealth of Australia

*Trade Practices Act 1974*

Summons

*(Title of matter)*

To

Name of witness: *(insert full name of witness)*

Address of witness: *(insert address of witness)*

1. You are summoned to attend the Australian Competition and Consumer Commission, *(insert address)*, for an arbitration hearing in this matter on *(insert date)* at *(insert time)* and then from day to day until the hearing is completed or until you are released from further attendance.

2. You are required to attend the Commission to give evidence at the hearing.

\* 3. You are required to bring with you and produce the following documents:  
*(specify the documents required).*

Dated

Presiding Member

Australian Competition and Consumer Commission

\* *Omit if inapplicable.*

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**Part 5      Forms — merger authorisation,  
clearance and review**

**Form N      Application for authorisation of section  
50A merger**  
(regulation 73)

**Form N**

Commonwealth of Australia

*Trade Practices Act 1974 — Section 88 (9)*

**SECTION 50A MERGERS: APPLICATION FOR  
AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (9) of the *Trade Practices Act 1974* (the Act) for an authorisation under that subsection to acquire a controlling interest in a body corporate within the meaning of section 50A of the Act.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      The Applicant**

- (a)      Name and registered office (where applicable) of the Applicant including the ACN (or overseas equivalent) and place of incorporation (where applicable)

.....

- (b)      Describe the business or businesses carried on by the Applicant including a description of the products and services the Applicant supplies

.....

*(See Direction 3 of this Form)*

- (c) Provide details of all related bodies corporate of the Applicant including the ACN (or overseas equivalent)

.....  
(See Direction 4 of this Form)

- (d) Address in Australia for service of documents on the Applicant

.....

- (e) Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held

.....

**2. Bodies corporate in which the Applicant will have a controlling interest**

- (a) Provide details of any bodies corporate in which the Applicant will acquire a first controlling interest within the meaning of subsection 50A (1) of the Act, including:

- (i) Name of the body corporate including the ACN (or overseas equivalent) where applicable

.....

- (ii) Place of incorporation of the body corporate

.....

- (iii) Registered office of the body corporate (where applicable)

.....

- (iv) Describe the business or businesses carried on by the body corporate including the products and services the body corporate supplies

.....

(See Direction 5 of this Form)

- (b) In the case of a body corporate whose shares are to be acquired, provide details of:

- (i) the issued capital of the body corporate;

- (ii) the holders of such issued capital.

.....

- (c) Provide details of all corporations in which, by reason of the acquisition described below, the Applicant will obtain a second controlling interest within the meaning of subsection 50A (1), including:

- (i) Name of the body corporate including the ACN (or overseas equivalent)

.....

- (ii) Place of incorporation of the body corporate

.....

- (iii) Registered office of the body corporate (where applicable)

.....

- (iv) Describe the business or businesses carried on by the body corporate including the products and services the body corporate supplies

.....

### 3. The acquisition

- (a) Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document

.....

*(See Direction 6 of this Form)*

- (b) Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those affects

.....

#### **4. Background information**

- (a) Describe the industry sector(s) to which the acquisition relates

.....  
(See Direction 7 of this Form)

- (b) Describe the area(s) of overlap in the operations of the Applicant and its existing related bodies corporate (collectively, the Acquirer) and any bodies corporate in which the Applicant will have a controlling interest as a result of the proposed acquisition (collectively, the Target)

.....  
(See Direction 8 of this Form)

- (c) Provide details of any acquisitions made by the Acquirer or Target (collectively, the Merger Parties) and any other acquisitions made in the industry sector(s) during the past five years

.....

- (d) Provide details of any existing vertical or horizontal relationships between the Target and Acquirer in, or affecting, Australia

.....

- (e) Describe any other joint ventures or cooperative agreements, with one or more competitors, to which the Acquirer or Target is a party in, or affecting, Australia

.....  
(See Direction 9 of this Form)

#### **5. Market definition**

Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition – this includes markets for the supply of goods or services and markets for the acquisition of goods or services (the Relevant Market(s))

.....  
(See Direction 10 of this Form)

---

**6. Suppliers**

- (a) Describe the inputs into the production of goods or services by each of the Merger Parties in the Relevant Market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes

.....

- (b) Provide the names and contact details of a representative selection of suppliers of inputs to each of the Merger Parties in the Relevant Market(s)

.....

*(See Direction 11 of this Form)*

- (c) Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....

**7. Competitors**

- (a) Provide details of alternative suppliers of products now or shortly to be competitive with, or otherwise substitutable for, goods or services produced by each of the Merger Parties in the Relevant Market(s)

.....

*(See Direction 12 of this Form)*

- (b) If the suppliers identified above do not produce goods or services which are substantially the same as those goods or services produced by the Merger Parties in the Relevant Market(s), explain why it is considered that these goods or services are viable alternatives

.....

**8. Customers**

- (a) Provide the names and contact details of a representative selection of the customers of each of the Acquirer and the Target in the Relevant Market(s)

.....  
(See Direction 13 of this Form)

- (b) Describe the distribution channels available to the Merger Parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers in the Relevant Market(s) identified above

.....

- (c) Describe the existing supply arrangements that the Merger Parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....  
(See Direction 14 of this Form)

**9. Market concentration**

Provide estimates of current and post-acquisition market shares for the Merger Parties and existing alternative suppliers or purchasers in the Relevant Market(s) identified above

.....  
(See Direction 15 of this Form)

**10. Constraints on the exercise of market power**

- (a) Provide details of the extent to which the Merger Parties are likely to be constrained post-acquisition in the Relevant Market(s) by:

- (i) input suppliers

.....



(ii) competitors

.....

(iii) customers

.....

(iv) others

.....

*(See Direction 16 of this Form)*

## 11. Imports

(a) Provide details of the actual and potential level of imports in the Relevant Market(s) and details of the importers and their suppliers

.....

*(See Direction 17 of this Form)*

(b) Describe any barriers to importation in the Relevant Market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation

.....

(c) Describe facilities and distribution arrangements necessary for importation in the Relevant Market(s), their capacity and who has ownership or control of these facilities and arrangements

.....

(d) Provide details of the price of imports as opposed to domestic production in the Relevant Market(s) and explain any divergence in these prices

.....

- (e) Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the Merger Parties in the Relevant Market(s) post-acquisition

.....  
(See Direction 18 of this Form)

## **12. Exports**

- (a) Provide details of the actual and potential level of exports in the Relevant Market(s)

.....  
(See Direction 19 of this Form)

- (b) Describe the export barriers faced by suppliers of inputs to the Merger Parties in the Relevant Market(s)

- (c) Provide details of the sale price of exports as opposed to domestic sales in the Relevant Market(s) and explain any divergence in these prices

- (d) Describe whether the suppliers of inputs to the Merger Parties are or would be able to export such inputs post-acquisition and, if so, describe the extent of constraint this would be likely to provide on the Merger Parties post-acquisition

.....  
(See Direction 20 of this Form)

## **13. Barriers to entry and expansion**

- (a) Provide details of any barriers to entry and expansion in the Relevant Market(s)

.....  
(See Direction 21 of this Form)

- (b) Provide details of any firms not currently supplying or acquiring goods or services in the Relevant Market(s) but which could enter the Relevant Market(s) quickly and provide an effective competitive constraint in the Relevant Market(s) to the merged entity
- .....

**14. Dynamic characteristics**

Provide details of the dynamic characteristics of the Relevant Market(s)

.....

*(See Direction 22 of this Form)*

**15. Vigorous and effective competitor**

Indicate whether the Target or any other participant in the Relevant Market(s) could be described as a vigorous and effective competitor to the Acquirer or to any other market participants and to what extent

.....

*(See Direction 23 of this Form)*

**16. Vertical integration**

- (a) Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the Relevant Market(s)
- .....

*(See Direction 24 of this Form)*

- (b) Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels
- .....

**17. Prices and profit margins**

- (a) Provide details of recent and current levels of pricing in the Relevant Market(s) including the use of rebates and discounts  
.....
- (b) Provide details of supply costs of goods and services supplied by the Merger Parties including manufacturing, marketing and distribution costs in the Relevant Market(s)  
.....
- (c) Describe the competitive constraints, if any, which would, or would be likely to, prevent the Merger Parties, post-acquisition, from being able to significantly and sustainably increase the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the Relevant Market(s)  
.....
- (d) Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the Relevant Market(s) post-acquisition  
.....  
(See Direction 25 of this Form)
- (e) Describe the likely impact of the acquisition on the profit margins of the Merger Parties post-acquisition and the expected cause of any change  
.....

**18. Related markets**

- (a) Describe the extent of complementarity between products supplied by the Acquirer and the Target  
.....  
(See Direction 26 of this Form)

- (b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying

.....  
(See Direction 27 of this Form)

- (c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the competitors of the Merger Parties to compete, post-acquisition, including foreclosure of access to distribution by the competitors of the Merger Parties

.....

**19. Detriment from a lessening of competition**

Having regard to the information provided above, and any other relevant information, describe any detriment which would or would be likely to flow from a lessening of competition in the Relevant Market(s) as a result of the acquisition

.....

**20. Other public detriment**

Describe the detriment to the public in Australia, if any, resulting or likely to result from acquisition for which authorisation is sought not already discussed above

.....

**21. Public benefit claims**

- (a) Describe any public benefit in the form of increased efficiencies (for example, economies of scale or scope) which would or would be likely to result from the acquisition and how that public benefit relates to Australia

.....

- (b) Describe whether the acquisition would or would be likely to result in a significant increase in the real value of exports from Australia

.....

- (c) Describe whether the acquisition would or would be likely to result in significant substitution of domestic products for imported goods

.....

- (d) Detail any public benefit claims relating to the international competitiveness of any Australian industry

.....

- (e) Detail any other public benefit claims and how that public benefit relates to Australia

.....

**22. The counterfactual**

Describe the likely state of the Relevant Market(s) in the future if the proposed acquisition does not take place, giving reasons

.....

**23. Joint ventures**

- (a) Does this application for authorisation deal with a matter relating to a joint venture (see section 4J of the Act)

.....

- (i) If so, are there any other applications for clearance or authorisation under Part VII of the Act being made simultaneously with this application in relation to the joint venture

.....

- (ii) If so, describe the nature of the applications and who is making those other applications

.....

**24. International**

Provide details of competition authorities in jurisdictions other than Australia to which the proposed acquisition has been or is intended to be notified and the timing of such notifications

.....

**25. Period of authorisation**

Outline the period for which authorisation is sought, detailing reasons why authorisation should be granted for the requested period

.....

**26. Further information**

Name, postal address, telephone, facsimile and email contact details of person authorised by the notifying parties to provide additional information in relation to this application

.....

**27. Information provided in relation to the Target**

Where the Target has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target, an authorised representative of the Target must indicate here that information relating to the Target is complete and accurate

Dated.....

Signed by/on behalf of the Target

.....

(Signature)

.....

(Full Name)

*Note* If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Target, this fact must be stated.

## **28. Declaration**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of section 95AZN of the *Trade Practices Act 1974*.

.....  
Signature of authorised person      Signature of authorised person

.....  
Office held      Office held

.....  
(Print) Name of authorised person      (Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.



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## DIRECTIONS

1. Where there is insufficient space on this Form to furnish the required information, the information must be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. In all cases, evidence must be provided to support the contentions made in responding to the questions on this Form.
3. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Applicant. The response must also include a copy of the Applicant's most recent annual report.
4. The following definitions apply in relation to questions 1 (c) and 2 (c):
  - related body corporate*** means:
    - (a) a holding company of another body corporate; or
    - (b) a subsidiary of another body corporate; or
    - (c) subsidiary of a holding company of another body corporate.
  - subsidiary***, in relation to a body corporate (***first body***) means a first body that is controlled by another body (***other body***), because:
    - (a) the other body:
      - (i) controls the composition of the first body's board; or
      - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first body corporate; or
      - (iii) holds more than one half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
    - (b) the first body is a subsidiary of a subsidiary of the other body.
  - holding company***, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.
5. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Target. The response must also include a copy of the Target's most recent annual report.

6. The response must include the date on which the contract, arrangement, understanding or proposal was, or is intended to be, concluded, the date on which the public bid was made or is intended to be made, the intended date on which the acquisition will be consummated and the consideration exchanged in relation to the acquisition. Where available, a copy of the contract, arrangement, understanding or proposal between the Applicant and the Target and the public offer document must be provided with this Form.
7. The response must include background information in relation to the industry sector(s) and a description of the role of the Merger Parties in the industry sector(s) including a description of the goods or services supplied both in Australia and worldwide.
8. Product and geographic areas of overlap must be specified and the response must include the whereabouts of all major production, supply or distribution facilities of the Merger Parties .
9. Such agreements may include but are not limited to arrangements or alliances relating to distribution, supply, purchasing, joint development, or research and development. The response must include the type of agreement(s), the subject matter, the parties to the agreement(s) and the duration of the agreement(s), and whether the agreement(s) will continue following consummation of the acquisition.
10. In order to determine the likely impact of a particular acquisition on competition, an assessment of the Relevant Market(s) is required. Section 4E of the Act provides that:

*Note* For the purposes of this Act, unless a contrary contention appears, ‘market’ means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first mentioned goods or services.

The response must address the relevant product, functional, geographic and time dimensions of the market(s). The product dimension of the market must address sources and potential sources of substitutes for the goods or services produced by the Merger Parties. Both supply and demand side substitutability must be addressed. The functional dimension of the market must address the vertical stages of production and distribution which comprise the relevant arena of competition (for example, wholesale or retail

---

distribution). The geographic dimension of the market must identify the area or areas over which the Merger Parties and their competitors currently supply or could supply the relevant product(s) and to which customers could practically turn. The time dimension of the market must address the period over which substitution possibilities must be considered.

11. The response must provide details of at least ten suppliers (or all suppliers if there are less than ten), comprising a cross-section of entities including large, medium and small suppliers. The response must include a description of the goods and services supplied by each of these suppliers and an estimation of the value of the goods or services supplied.
12. The response must include the location of each of the suppliers identified and the areas to which each of the identified entities supplies.
13. The response must provide details of at least ten customers (or all customers if there are less than ten), comprised of a cross-section of entities including large, medium and small customers. The response must include a description of the goods or services and the value of the goods or services purchased by these customers.
14. The response must describe the duration of contracts, the nature and extent of exclusivity, rebates and discounts and identify any customers with contracts which are due to expire within the next two years and indicate the supply volumes associated with such contracts.
15. The market shares of each of the suppliers or purchasers identified, and the Merger Parties in the Relevant Market(s), must be provided. In the case of supply markets, market shares must be given on the basis of productive capacity, sales and revenue and must be provided for each of the past five years. In the case of acquisition markets, market shares must be given on the basis of volume and value of inputs purchased and, again, must be provided for each of the past five years. The total size of the domestic market must be provided. The source(s) of the data relied upon in estimating market shares and total market sizes must be provided.

16. The response must address the ability of suppliers to switch from supplying inputs to the Merger Parties to other avenues, the ability of competitors in the Relevant Market(s) to increase supply, the ease with which customers could change suppliers including any switching costs that they would incur, whether goods and services produced in the Relevant Market(s) should be considered homogeneous or whether there are variations in price or quality and whether the Relevant Market(s) is characterised by brand loyalty. The response must discuss whether the Relevant Market(s) are characterised by countervailing power, the market participants who are said to have such power and the extent to which such power would be likely to constrain the Merger Parties post-acquisition.
17. The response must cover whether it is viable for customers to import substitutes and the origin of imports, and address issues including but not limited to: options for the transportation of imports (for example, air, sea or rail); transport costs; whether the product is a high or low value product; whether the product is high or low density; and whether the product is durable enough to be transported without damage or deterioration in quality. The response must also give details of historical import levels for the past five years and the source of the information provided. The response must include the outcomes of any anti-dumping investigations concluded in the past five years.
18. The response must provide details of the price of actual or potential imports (including, additional costs such as freight and customs duties), whether existing import suppliers can accommodate a significant expansion in capacity without the need for significant investment and whether import competition would provide a constraint on the merged firm via a downstream market. The response must also include contact details of existing importers and their customers.
19. The response must cover whether it is viable for suppliers to export to alternative purchasers and the likely export markets, and address issues including, but not limited to, the following:
  - options for the transportation of exports (for example, air, sea or rail);
  - transport costs;
  - whether the product is a high or low value product;
  - whether the product is high or low density;

- whether the product is durable enough to be transported without damage or deterioration in quality.

The response must also give details of historical export levels for the past five years and the source of the information provided.

20. The response must include contact details of existing exporters.

21. The response must include reference to:

- both the nature and height of barriers to entry and expansion; and
- entry and expansion in the Relevant Market(s) in the previous five years; and
- any incentives or disincentives for new entry; and
- how long it would take for a new entrant to establish itself as a vigorous and effective competitor.

Barriers which must be addressed include, but are not limited to, the following:

- sunk costs in production capacity;
- accessing shelf space;
- advertising and promotion;
- regulatory restrictions;
- requirements for scarce inputs;
- brand loyalty;
- minimum efficient scales of operation;
- goodwill;
- access to intellectual property;
- the potential response of incumbents to new entry.

22. The response must include references including, but not limited to, the following:

- growth;
- levels of innovation;
- technological change;
- product and service differentiation, in the Relevant Market(s).

23. The response must refer to current and historical pricing and purchasing behaviour, its record of innovation, its growth relative to the growth of the Relevant Market(s), and its history of independent behaviour.

24. The response must indicate the extent to which the Applicant buys from or sells to the Target or controlling interest raw materials, supplies, services, capital or finished products for resale.
25. The response must discuss factors conducive to coordination in a market including, but not limited to, the following:
  - the number of participants in the Relevant Market(s);
  - transparency;
  - homogeneity of product;
  - homogeneity of firms;
  - the size and frequency of purchases;
  - the presence of the same firms in more than one market.
26. The response must address the complementarity that occurs where there is significant commonality of customers products and whether the strength of demand for one product is positively correlated with the strength of demand for another, either because the products form part of a range that distributors need to carry or because they must be consumed together for technical reasons.
27. The response must address the circumstances where two or more products are or could be supplied only as a bundle (pure bundling) or, if supplied individually, are also offered as a bundle at a price that is lower than the price charged if sold individually (mixed bundling). The response must also address circumstances where customers seeking to acquire one product are required also to purchase a second product, or carry amounts of the second product (tying).

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**Form O      Application for merger clearance**  
(regulation 73)

**Form O**

Commonwealth of Australia

*Trade Practices Act 1974 — section 95AD*

**APPLICATION FOR MERGER CLEARANCE**

To the Australian Competition and Consumer Commission:

Application is hereby made under section 95AD of the *Trade Practices Act 1974* for a clearance under section 95AD to acquire shares in the capital of a body corporate, or to acquire assets of the person (including a body corporate), named in Item 2 below.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      The Applicant (the Acquirer)**

- (a)    Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and place of incorporation (where applicable)

.....

- (b)    Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies

.....

*(See Direction 3 of this Form)*

- (c)    Provide details of all related bodies corporate of the Applicant including the ACN

.....

*(See Direction 4 of this Form)*

- (d)    Address in Australia for service of documents on the Applicant

.....

- (e) Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held

.....

## **2. The Target**

- (a) In the case of a body corporate whose shares or assets are to be acquired:

- (i) Name of the body corporate including the ACN where applicable

.....

- (ii) Place of incorporation of the body corporate

.....

- (iii) Registered office of the body corporate

.....

- (iv) Describe the business or businesses carried on by the body corporate including the products and services the Target supplies

.....

*(See Direction 5 of this Form)*

- (v) Number and type of shares or description of assets to be acquired

.....

- (b) In the case of a body corporate whose shares are to be acquired, provide details of:

- (i) the issued capital of the body corporate;

- (ii) the holders of such issued capital.

.....



- (c) Provide details of all related bodies corporate of the body corporate whose shares or assets are to be acquired by the Applicant

.....  
(See Direction 4 of this Form)

- (d) In the case of a person (other than a body corporate) whose assets are to be acquired

- (i) Name and address of the person

.....

- (ii) Describe the business or businesses carried on by the person including the products and services the person supplies

.....

- (iii) Describe the assets to be acquired

.....

### 3. The acquisition

- (a) Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document

.....  
(See Direction 6 of this Form)

- (b) Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those effects

.....

- (c) Indicate whether the acquisition involves proposed ancillary arrangements and describe the proposed arrangements

.....

**4. Background information**

- (a) Describe the industry sector(s) to which the acquisition relates  
.....  
(See Direction 7 of this Form)
- (b) Describe the area(s) of overlap in the operations of the Applicant and Target and any related bodies corporate (the merger parties)  
.....  
(See Direction 8 of this Form)
- (c) Provide details of any acquisitions made by the merger parties and any other acquisitions made in the industry sector(s) during the past five years  
.....
- (d) Provide details of any existing vertical or horizontal relationships between the merger parties  
.....
- (e) Describe any other cooperative agreements to which any of the merger parties is a party  
.....  
(See Direction 9 of this Form)

**5. Market definition**

Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition — this includes markets for the supply of goods or services and markets for the acquisition of goods or services (the relevant market(s))

.....  
(See Direction 10 of this Form)

---

**6. Suppliers**

- (a) Describe the inputs into the production of goods or services by each of the merger parties in the relevant market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes

.....

- (b) Provide the names and contact details of a representative selection of suppliers of inputs to each of the merger parties in the relevant market(s)

.....

*(See Direction 11 of this Form)*

- (c) Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....

**7. Competitors**

- (a) Provide details of alternative suppliers of products now or shortly to be competitive with, or otherwise substitutable for, goods or services produced by each of the merger parties in the relevant market(s)

.....

*(See Direction 12 of this Form)*

- (b) If the suppliers identified above do not produce goods or services which are substantially the same as those goods or services produced by the merger parties in the relevant market(s), explain why it is considered that these goods or services are viable alternatives

.....

**8. Customers**

- (a) Provide the names and contact details of a representative selection of the customers of each of the merger parties in the relevant market(s)

.....  
(See Direction 13 of this Form)

- (b) Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above

.....

- (c) Describe the existing supply arrangements that the merger parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....  
(See Direction 14 of this Form)

**9. Market concentration**

Provide estimates of current and post-acquisition market shares for the merger parties and existing alternative suppliers or purchasers in the relevant market(s) identified above

.....  
(See Direction 15 of this Form)

**10. Constraints on the exercise of market power**

- (a) Provide details of the extent to which the merger parties are likely to be constrained post-acquisition from raising prices and profit margins and/or reducing the quality of goods and/or services by:

- (i) input suppliers

.....

- (ii) competitors in the relevant market(s)

.....

- (iii) customers in the relevant market(s)

.....

- (iv) others

.....

*(See Direction 16 of this Form)*

## 11. Imports

- (a) Provide details of the actual and potential level of imports in the relevant market(s) and details of the importers and their suppliers

.....

*(See Direction 17 of this Form)*

- (b) Describe any barriers to importation in the relevant market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation

.....

- (c) Describe facilities and distribution arrangements necessary for importation in the relevant market(s), their capacity and who has ownership or control of these facilities and arrangements

.....

- (d) Provide details of the price of imports as opposed to domestic production in the relevant market(s) and explain any divergence in these prices

.....

- (e) Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the merger parties in the relevant market(s) post-acquisition

.....

*(See Direction 18 of this Form)*

## **12. Exports**

- (a) Provide details of the actual and potential level of exports in the relevant market(s)

.....  
(See Direction 19 of this Form)

- (b) Describe the export barriers faced by suppliers of inputs to the merger parties in the relevant market(s)

.....

- (c) Provide details of the sale price of exports as opposed to domestic sales in the relevant market(s) and explain any divergence in these prices

.....

- (d) Describe whether the suppliers of inputs to the merger parties are or would be likely to be able to export such inputs post-acquisition and, if so, describe the extent of constraint this would be likely to provide on the merger parties post-acquisition

.....  
(See Direction 20 of this Form)

## **13. Barriers to entry and expansion**

- (a) Provide details of any barriers to entry and expansion in the relevant market(s)

.....  
(See Direction 21 of this Form)

- (b) Provide details of any firms not currently supplying or acquiring goods or services in the Relevant Market(s) but which could enter the Relevant Market(s) quickly and provide an effective competitive constraint in the Relevant Market(s) to the merged entity

.....

- (c) Provide details of any firms which have recently tried and failed to enter the relevant market(s), including the reasons (if known) for their failure
- .....

**14. Dynamic characteristics**

Provide details of the dynamic characteristics of the relevant market(s)

.....

*(See Direction 22 of this Form)*

**15. Vigorous and effective competitor**

Indicate whether the Target or any other participant in the relevant market(s) could be described as a vigorous and effective competitor to the Applicant or to any other market participants and to what extent, and why

.....

*(See Direction 23 of this Form)*

**16. Vertical integration**

- (a) Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the relevant market(s)
- .....

*(See Direction 24 of this Form)*

- (b) Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels
- .....

**17. Prices and profit margins**

- (a) Provide details of recent and current levels of pricing in the relevant market(s) including the use of rebates and discounts  
.....
- (b) Provide details of supply costs of goods and services supplied by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s)  
.....
- (c) Describe the competitive constraints, if any, which would, or would be likely to, prevent the merger parties from being able to significantly and sustainably increase the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the relevant market(s)  
.....
- (d) Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market(s) post-acquisition  
.....  
(See Direction 25 of this Form)
- (e) Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change  
.....

**18. Related markets**

- (a) Describe the extent of complementarity between products supplied by the merger parties  
.....  
(See Direction 26 of this Form)



- (b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying

.....  
(See Direction 27 of this Form)

- (c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors

.....

**19. Other grounds for grant of clearance**

Outline any grounds for the granting by the Commission of a clearance not already addressed above

.....

**20. The counterfactual**

Describe the likely state of the relevant market(s) in the future if the proposed acquisition does not take place, giving reasons

.....

**21. Joint ventures**

- (a) Does this application for clearance deal with a matter relating to a joint venture? (See section 4J of the Act)

.....

- (i) If so, are there any other applications for clearance or authorisation under Part VII of the Act being made simultaneously with this application in relation to the joint venture?

.....

- (ii) If so, describe the nature of the applications and who is making those other applications

.....

**22. International**

- (a) Does the acquisition involve:

- (i) A company operating in Australia that has a foreign parent?

.....

- (ii) Australian businesses or consumers affected by conduct occurring overseas?

.....

- (iii) Foreign consumers affected by conduct occurring in Australia?

.....

- (iv) Conduct occurring across international boundaries?

.....

- (b) Provide details of competition authorities in jurisdictions other than Australia to which the proposed acquisition has been, or is intended to be, notified and the timing of such notifications

.....

**23. Period of clearance**

Outline the period for which clearance is sought, detailing reasons why clearance should be granted for the requested period

.....

**24. Undertaking**

Consistent with subsection 95AE (2) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for clearance

is being considered by the Commission. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

**25. Further information**

Name, postal address, telephone, facsimile and email contact details of person authorised by the Applicant to provide additional information in relation to this application

.....

**26. Information provided in relation to the Target**

Where the Target has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target, an authorised representative of the Target must indicate here that information relating to the Target is complete and accurate.

Dated.....

Signed by/on behalf of the Target

.....  
(Signature)

.....  
(Full Name)

*Note* If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Target, this fact must be stated.

**27. Declaration**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of section 95AZN of the *Trade Practices Act 1974*.

.....  
Signature of authorised person      Signature of authorised person

.....  
Office held      Office held

.....  
(Print) Name of authorised person      (Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer  
Commission given for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the *Trade Practices Act 1974* (the *Act*).
2. [Company name] has made an application for a merger clearance pursuant to section 95AD of the Act.

- 
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Commission.
  4. This Undertaking comes into effect when:
    - (a) the Undertaking is executed by [company name]; and
    - (b) the Commission accepts the Undertaking so executed.
  5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Office Held

.....  
Office Held

.....  
(Print) Name of Authorised Person

.....  
(Print) Name of Authorised Person

This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION 87B OF THE ACT**

.....  
Commission Chairperson

## DIRECTIONS

1. Where there is insufficient space on this Form to furnish the required information, the information must be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. In all cases, evidence must be provided to support the contentions made in responding to the questions on this Form.
3. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Applicant. The response must also include a copy of the Applicant's most recent annual report.
4. The following definitions apply in relation questions 1 (c) and 2 (c):  
***related body corporate*** means:
  - (a) a holding company of another body corporate; or
  - (b) a subsidiary of another body corporate; or
  - (c) subsidiary of a holding company of another body corporate.***subsidiary***, in relation to a body corporate (***first body***) means a first body that is controlled by another body (***other body***), because:
  - (a) the other body:
    - (i) controls the composition of the first body's board; or
    - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first body corporate; or
    - (iii) holds more than one half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
  - (b) the first body is a subsidiary of a subsidiary of the other body.***holding company***, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.
5. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Target. The response must also include a copy of the Target's most recent annual report.

- 
6. The response must include the date on which the contract, arrangement, understanding or proposal was, or is intended to be, concluded, the date on which the public bid was or is intended to be made, the intended date on which the acquisition will be consummated and the consideration exchanged in relation to the acquisition. Where available, a copy of the contract, arrangement, understanding or proposal between the Applicant and the Target and the public offer document must be provided with this Form.
  7. The response must include background information in relation to the industry sector(s), a description of the role of the Applicant and the Target in the industry sector(s) including a description of the goods or services supplied both in Australia and internationally.
  8. Product and geographic areas of overlap must be specified and the response must include the whereabouts of all major production, supply or distribution facilities of the Applicant and the Target.
  9. Such agreements may include but are not limited to arrangements or alliances relating to distribution, supply, purchasing, joint development, or research and development. The response must include the type of agreement(s), the subject matter, the parties to the agreement(s) and the duration of the agreement(s), and whether the agreement(s) will continue following consummation of the acquisition.
  10. In order to determine whether a particular acquisition breaches section 50 of the Act, an assessment of the relevant market(s) is required. Section 4E of the Act provides that:

**4E      Market**

For the purposes of this Act, unless a contrary contention appears, 'market' means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first mentioned goods or services.

The response must address the relevant product, functional, geographic and time dimensions of the market(s). The product dimension of the market must address sources and potential sources of substitutes for the goods or services produced by the merger parties. Both supply and demand side substitutability must be addressed. The functional dimension of the market must address the

vertical stages of production and distribution which comprise the relevant arena of competition (for example, wholesale or retail distribution). The geographic dimension of the market must identify the area(s) over which the merger parties and their competitors currently supply, or could supply, the relevant product(s) and to which customers could practically turn. The time dimension of the market must address the period over which substitution possibilities must be considered.

11. The response must provide details of at least five suppliers (or all suppliers if there are less than five), comprised of a cross-section of entities including large, medium and small suppliers. The response must include a description of the goods and services supplied by each of these suppliers and an estimation of the value of the goods or services supplied.
12. The response must include the location of each of the suppliers identified and the areas to which each of the identified entities supplies.
13. The response must provide details of at least five customers (or all customers if there are less than five), comprised of a cross-section of entities including large, medium and small customers. The response must include a description of the goods or services and the value of the goods or services purchased by these customers.
14. The response must describe the duration of contracts, the nature and extent of exclusivity, rebates and discounts and identify any customers with contracts which are due to expire within the next two years and indicate the supply volumes associated with such contracts.
15. The market shares of each of the suppliers or purchasers identified, the Applicant and the Target in the relevant market(s) must be provided. In the case of supply markets, market shares must be given on the basis of productive capacity, sales and revenue and must be provided for each of the past five years. In the case of acquisition markets, market shares must be given on the basis of volume and value of inputs purchased and, again, must be provided for each of the past five years. The total size of the domestic market must be provided. The source(s) of the data relied upon in estimating market shares and total market sizes must be provided.



- 
16. The response must address the ability of suppliers to switch from supplying inputs to the merger parties to other avenues, the ability of competitors in the relevant market(s) to increase supply, the ease with which customers could change suppliers including any switching costs that they would incur, whether goods and services produced in the relevant market(s) should be considered homogeneous or whether there are variations in price or quality and whether the relevant market(s) are characterised by brand loyalty. The response must also discuss whether the relevant market(s) are characterised by countervailing power, the market participants who are said to have such power and the extent that such power would be likely to constrain the merger parties post-acquisition.
  17. The response must cover whether it is viable for customers to import substitutes and the origin of imports, and address issues including but not limited to: options for the transportation of imports (for example, air, sea or rail); transport costs; whether the product is a high or low value product; whether the product is high or low density; and whether the product is durable enough to be transported without damage or deterioration in quality. The response must also give details of historical import levels for the past five years and the source of the information provided. The response must include the outcomes of any anti-dumping investigations concluded in the past five years.
  18. The response must provide details of the price of actual or potential imports (including, additional costs such as freight and customs duties), whether existing import suppliers can accommodate a significant expansion in capacity without the need for significant investment and whether import competition would provide a constraint on the merged firm via a downstream market. The response must also include contact details of existing importers and their customers.
  19. The response must cover whether it is viable for suppliers to export to alternative purchasers and the likely export markets, and address issues including but not limited to the following:
    - options for the transportation of exports (for example, air, sea or rail);
    - transport costs;
    - whether the product is a high or low value product;
    - whether the product is high or low density;

- whether the product is durable enough to be transported without damage or deterioration in quality.

The response must also give details of historical export levels for the past five years and the source of the information provided.

20. The response must include contact details of existing exporters.

21. The response must include reference to the following:

- both the nature and height of barriers to entry and expansion;
- details of exit;
- entry and expansion in the relevant market(s) in the previous five years;
- any incentives or disincentives for new entry;
- how long it would take for a new entrant to establish itself as a vigorous and effective competitor.

Barriers which must be addressed include, but are not limited to, the following:

- sunk costs in production capacity;
- accessing shelf space;
- advertising and promotion;
- regulatory restrictions;
- requirements for scarce inputs;
- brand loyalty;
- minimum efficient scales of operation;
- goodwill;
- access to intellectual property;
- the potential response of incumbents to new entry.

22. The response must include references including, but not limited to, the following:

- growth;
- levels of innovation;
- technological change;
- product and service differentiation in the relevant market(s).

- 
23. The response must refer to current and historical pricing and purchasing behaviour, its record of innovation, its growth relative to the growth of the relevant market(s), and its history of independent behaviour.
  24. The response must indicate the extent to which the Applicant buys from or sells to the Target raw materials, supplies, services, capital or finished products for resale.
  25. The response must discuss factors conducive to coordination in a market including, but not limited to, the following:
    - the number of participants in the relevant market(s);
    - transparency;
    - homogeneity of product;
    - homogeneity of firms;
    - the size and frequency of purchases;
    - the presence of the same firms in more than one market.
  26. The response must address the complementarity that occurs where there is significant commonality of customers' products and whether the strength of demand for one product is positively correlated with the strength of demand for another, either because the products form part of a range that distributors need to carry or because they must be consumed together for technical reasons.
  27. The response must address the circumstances where two or more products are, or could be, supplied only as a bundle (pure bundling) or, if supplied individually, are also offered as a bundle at a price that is lower than the price charged if sold individually (mixed bundling). The response must also address circumstances where customers seeking to acquire one product are required also to purchase a second product, or carry amounts of the second product (tying).

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**Form P      Application for minor variation of merger clearance**

(regulation 73)

**Form P**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 95AR (1)*

**APPLICATION FOR MINOR VARIATION OF A  
MERGER CLEARANCE**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 95AR (1) of the *Trade Practices Act 1974* for the minor variation of a clearance.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      The Applicant (the Acquirer)**

- (a)    Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and place of incorporation (where applicable)

.....  
(See Direction 3 of this Form)

- (b)    Describe the business or businesses carried on by the Applicant including the products and/or services the Applicant supplies

.....

- (c)    Address in Australia for service of documents on the Applicant

.....

**PART A – Original clearance**

**2.      Clearance particulars**

Description of acquisition for which clearance was granted, including, but not limited to, the registration number assigned to that clearance

.....

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## **PART B – Minor variation of the original clearance**

### **3. Minor variation sought**

- (a) Provide details of the minor variation for which clearance is sought, including but not limited to identification of differences between the contract, arrangement, understanding or proposal for the acquisition that was originally granted clearance and the contract, arrangement, understanding or proposal for the acquisition for which a minor variation of clearance is sought

.....  
(See Direction 4 of this Form)

- (b) Explain why the variation described above is, in fact, a minor variation which does not materially change the effect of the clearance

.....

### **4. Substantial lessening of competition**

- (a) Describe the lessening of competition which would result, or would be likely to result, from the acquisition for which the minor variation of the clearance is sought in all of the relevant market(s)

.....  
(See Direction 5 of this Form)

- (b) Provide submissions regarding the effect of the minor variation on the Commission's assessment of the lessening of competition in the relevant market(s) in the original clearance determination

.....  
(See Direction 6 of this Form)

### **5. Updating information**

Provide details of any material change to the information provided by the Applicant in support of the original clearance application and the effect of any such changes on the claims

made by the Applicant in relation to the original clearance and the effect on competition of the proposed acquisition

.....

**6. Undertaking**

Consistent with subsection 95AR (2A) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for minor variation of a clearance is being considered by the Commission. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

**7. Further information**

Name, postal address, telephone, facsimile and email contact details of the person authorised by the Applicant to provide additional information in relation to this application

.....

**8. Information provided in relation to the Target**

Where the Target has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target, an authorised representative of the Target must indicate here that the information relating to the Target is complete and accurate.

Dated.....

Signed by/on behalf of the target

.....  
(Signature)

.....  
(Full Name)

*Note* If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Target, this fact must be stated.

---

**9. Declaration**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of section 95AZN of the *Trade Practices Act 1974*.

.....  
Signature of authorised person      Signature of authorised person

.....  
Office held      Office held

.....  
(Print) Name of authorised person      (Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer  
Commission given for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the *Trade Practices Act 1974* (the *Act*).
2. [Company name] has made an application for minor variation of a clearance pursuant to section 95AR of the Act.
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Commission.
4. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by [company name]; and
  - (b) the Commission accepts the Undertaking so executed.
5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.



---

.....  
Signature of Authorised Person      Signature of Authorised Person

.....  
Office Held      Office Held

.....  
(Print) Name of Authorised Person      (Print) Name of Authorised Person  
This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION  
87B OF THE ACT**

.....  
Commission Chairperson

**DIRECTIONS**

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. In all cases, facts and evidence must be provided to support the contentions made in response to the questions on this Form.
3. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so. The Applicant for a minor variation of a clearance must be the same person as the person to whom the original clearance was granted.
4. Address any changes to the contract, arrangement, understanding or proposal for the acquisition including but not limited to: the number and type of shares being acquired; the date on which the contract, arrangement, understanding or proposal was or is intended to be concluded; the date on which the public bid was or is intended to be made; the intended date on which the acquisition will be

consummated; and the consideration exchanged in relation to the acquisition. Where possible, and where it has not already been provided to the Commission, a copy of the contract, arrangement, understanding or proposal and the public offer document must be provided.

5. The response must include details of the market(s) likely to be affected by the contract, arrangement, understanding or proposal for the acquisition, including both the markets for the supply and acquisition of goods or services, in particular having regard to goods or services that may be regarded as substitutes. The response must also address existing alternative suppliers, market concentration information, whether there would be any constraint on the exercise of market power including those imposed by suppliers, competitors, customers and the existence of import or export possibilities, barriers to entry and expansion, vertical integration in the market and any related markets.
6. Details must be provided in relation to the likely effect of the minor variation on the extent to which the acquisition will lessen competition in the relevant market(s) as compared to the lessening of competition found by the Commission in relation to the original clearance.

## **Form Q      Application for revocation of merger clearance**

(regulation 73)

### **Form Q**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 95AS (1)*

### **APPLICATION FOR REVOCATION OF A MERGER CLEARANCE**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 95AS (1) of the *Trade Practices Act 1974* for the revocation of a clearance.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

---

**1. The Applicant (the Acquirer)**

- (a) Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and the place of incorporation (where applicable)

.....  
(See Direction 2 of this Form)

- (b) Description of business or businesses carried on by the Applicant including the products or services the Applicant supplies

.....

- (c) Address in Australia for service of documents on the Applicant

.....

**2. Revocation of clearance**

- (a) Description of the acquisition that is the subject of the clearance for which revocation is sought including but not limited to the registration number assigned to the clearance

.....

- (b) Provide details of the grounds upon which revocation of the clearance is sought

.....

**3. Undertaking**

Consistent with subsection 95AS (2A) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for revocation of a clearance is being considered by the Commission. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

**4. Further information**

Name, postal address, telephone, facsimile and email contact details of the person authorised by the Applicant to provide additional information in relation to this application

.....

Dated.....

Signed by/on behalf of the Applicant

.....  
(Signature)

.....  
(Full Name)

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer  
Commission given for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the *Trade Practices Act 1974* (the *Act*).
2. [Company name] has made an application for revocation of a clearance pursuant to section 95AS of the Act.
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Commission.

4. This Undertaking comes into effect when:

- (a) the Undertaking is executed by [company name]; and
- (b) the Commission accepts the Undertaking so executed.

5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Office Held

.....  
Office Held

.....  
(Print) Name of Authorised Person    (Print) Name of Authorised Person  
This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION  
87B OF THE ACT**

.....  
Commission Chairperson

#### **DIRECTIONS**

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so. The Applicant for revocation of the clearance must be the same person as the person to whom the original clearance was granted.

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**Form R      Application for revocation of merger  
clearance and substitution of new  
merger clearance**

(regulation 73)

**Form R**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 95AS (1)*

**MERGERS: APPLICATION FOR REVOCATION OF A  
CLEARANCE AND SUBSTITUTION OF A NEW  
CLEARANCE**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 95AS (1) of the *Trade Practices Act 1974* for the revocation of a clearance and the substitution of a new clearance for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      The Applicant (the Acquirer)**

- (a)    Name of the Applicant and registered office (where applicable) including the ACN (where applicable) and place of incorporation (where applicable)

.....  
(See Direction 3 of this Form)

- (b)    Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies

.....  
(See Direction 4 of this Form)

- (c)    Provide details of all related bodies corporate of the Applicant including the ACN

.....  
(See Direction 5 of this Form)

- (d) Address in Australia for service of documents on the Applicant

.....

- (e) Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held

.....

## **PART A – Revocation**

### **2. Revocation of clearance**

- (a) Describe the acquisition that is the subject of the clearance for which revocation is sought including but not limited to the registration number assigned to the clearance

.....

- (b) Provide details of the grounds upon which revocation of the clearance and substitution of a new clearance is sought

.....

## **PART B – Substitution of a new clearance**

### **3. The Target**

- (a) In the case of a body corporate whose shares or assets are to be acquired:

- (i) Name of the body corporate including the ACN where applicable

.....

- (ii) Place of incorporation of the body corporate

.....

- (iii) Registered office of the body corporate

.....

- (iv) Describe the business or businesses carried on by the body corporate including the products and services the Target supplies

.....  
(See Direction 6 of this Form)

- (v) Number and type of shares or description of assets to be acquired

.....

- (b) In the case of a body corporate whose shares are to be acquired, provide details of:

- (i) the issued capital of the body corporate  
(ii) the holders of such issued capital

.....

- (c) Provide details of all related bodies corporate of the body corporate whose shares or assets are to be acquired by the Applicant

.....  
(See Direction 5 of this Form)

- (d) In the case of a person (other than a body corporate) whose assets are to be acquired

- (i) Name and address of the person

.....

.....

.....

- (ii) Describe the business or businesses carried on by the person including the products and services the person supplies

.....

- (iii) Describe the assets to be acquired

.....



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**4. The acquisition**

- (a) Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document

.....  
(See Direction 7 of this Form)

- (b) Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those affects

.....

- (c) Indicate whether the acquisition involves proposed ancillary arrangements and describe the proposed arrangements

.....

**5. Background information**

- (a) Describe the industry sector(s) to which the acquisition relates

.....  
(See Direction 8 of this Form)

- (b) Describe the area(s) of overlap in the operations of the Applicant and Target and any related bodies corporate (the merger parties)

.....  
(See Direction 9 of this Form)

- (c) Provide details of any acquisitions made by the merger parties and any other acquisitions made in the industry sector(s) during the past five years

.....

- (d) Provide details of any existing vertical or horizontal relationships between the merger parties

.....

- (e) Describe any other cooperative agreements to which any of the merger parties is a party

.....

*(See Direction 10 of this Form)*

## **6. Market definition**

Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition – this includes markets for the supply of goods or services and markets for the acquisition of goods or services (the relevant market(s))

.....

*(See Direction 11 of this Form)*

## **7. Suppliers**

- (a) Describe the inputs into the production of goods or services by each of the merger parties in the relevant market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes

.....

- (b) Provide the names and contact details of a representative selection of suppliers of inputs to each of the merger parties in the relevant market(s)

.....

*(See Direction 12 of this Form)*

- (c) Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....

---

**8. Competitors**

- (a) Provide details of alternative suppliers of products now or shortly to be competitive with, or otherwise substitutable for, goods or services produced by each of the merger parties in the relevant market(s)

.....  
(See Direction 13 of this Form)

- (b) If the suppliers identified above do not produce goods or services which are substantially the same as those goods or services produced by the merger parties in the relevant market(s), explain why it is considered that these goods or services are viable alternatives

.....

**9. Customers**

- (a) Provide the names and contact details of a representative selection of the customers of each of the merger parties in the relevant market(s)

.....  
(See Direction 14 of this Form)

- (b) Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above

.....

- (c) Describe the existing supply arrangements that the merger parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....  
(See Direction 15 of this Form)

**10. Market concentration**

Provide estimates of current and post-acquisition market shares for the merger parties and existing alternative suppliers or purchasers in the relevant market(s) identified above

.....  
(See Direction 16 of this Form)

**11. Constraints on the exercise of market power**

- (a) Provide details of the extent to which the merger parties are likely to be constrained post-acquisition from raising prices and profit margins and/or reducing the quality of goods and/or services by:

- (i) input suppliers

.....

- (ii) competitors in the relevant market(s)

.....

- (iii) customers in the relevant market(s)

.....

- (iv) others

.....

(See Direction 17 of this Form)

**12. Imports**

- (a) Provide details of the actual and potential level of imports in the relevant market(s) and details of the importers and their suppliers

.....

(See Direction 18 of this Form)

- 
- (b) Describe any barriers to importation in the relevant market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation  
.....
- (c) Describe facilities and distribution arrangements necessary for importation in the relevant market(s), their capacity and who has ownership or control of these facilities and arrangements  
.....
- (d) Provide details of the price of imports as opposed to domestic production in the relevant market(s) and explain any divergence in these prices  
.....
- (e) Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the merger parties in the relevant market(s) post-acquisition  
.....  
(See Direction 19 of this Form)

**13. Exports**

- (a) Provide details of the actual and potential level of exports in the relevant market(s)  
.....  
(See Direction 20 of this Form)
- (b) Describe the export barriers faced by suppliers of inputs to the merger parties in the relevant market(s)  
.....
- (c) Provide details of the sale price of exports as opposed to domestic sales in the relevant market(s) and explain any divergence in these prices  
.....

- (d) Describe whether the suppliers of inputs to the merger parties are or would be likely to be able to export such inputs post-acquisition and, if so, describe the extent of constraint this would be likely to provide on the merger parties post-acquisition

.....  
(See Direction 21 of this Form)

**14. Barriers to entry and expansion**

- (a) Provide details of any barriers to entry and expansion in the relevant market(s)

.....  
(See Direction 22 of this Form)

- (b) Provide details of any firms not currently supplying or acquiring goods or services in the Relevant Market(s) but which could enter the Relevant Market(s) quickly and provide an effective competitive constraint in the Relevant Market(s) to the merged entity

.....

- (c) Provide details of any firms which have recently tried and failed to enter the relevant market(s), including the reasons (if known) for their failure

.....

**15. Dynamic characteristics**

Provide details of the dynamic characteristics of the relevant market(s)

.....  
(See Direction 23 of this Form)

---

**16. Vigorous and effective competitor**

Indicate whether the Target or any other participant in the relevant market(s) could be described as a vigorous and effective competitor to the Applicant or to any other market participants and to what extent, and why

.....  
(See Direction 24 of this Form)

**17. Vertical integration**

- (a) Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the relevant market(s)

.....  
(See Direction 25 of this Form)

- (b) Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels

.....

**18. Prices and profit margins**

- (a) Provide details of recent and current levels of pricing in the relevant market(s) including the use of rebates and discounts

.....

- (b) Provide details of supply costs of goods and services supplied by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s)

.....

- (c) Describe the competitive constraints, if any, which would, or would be likely to, prevent the merger parties from being able to significantly and sustainably increase the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the relevant market(s)
- .....

- (d) Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market(s) post-acquisition
- .....

*(See Direction 26 of this Form)*

- (e) Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change
- .....

#### **19. Related markets**

- (a) Describe the extent of complementarity between products supplied by the merger parties
- .....

*(See Direction 27 of this Form)*

- (b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying
- .....

*(See Direction 28 of this Form)*

- (c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors
- .....



---

**20. Other grounds for grant of clearance**

Outline any grounds for the granting by the Commission of a clearance not already addressed above

.....

**21. The counterfactual**

Describe the likely state of the relevant market(s) in the future if the proposed acquisition does not take place, giving reasons

.....

**22. Joint ventures**

Does this application for clearance deal with a matter relating to a joint venture (see section 4J of the Act)

.....

- (i) If so, are there any other applications for clearance or authorisation under Part VII of the Act being made simultaneously with this application in relation to the joint venture

.....

- (ii) If so, describe the nature of the applications and who is making those other applications

.....

**23. International**

- (a) Does the acquisition involve

- (i) A company operating in Australia that has a foreign parent

.....

- (ii) Australian businesses or consumers affected by conduct occurring overseas

.....

(iii) Foreign consumers affected by conduct occurring in Australia

.....

(iv) Conduct occurring across international boundaries

.....

(b) Provide details of competition authorities in jurisdictions other than Australia to which the proposed acquisition has been or is intended to be notified and the timing of such notifications

.....

**24. Period of clearance**

Outline the period for which clearance is sought, detailing reasons why clearance should be granted for the requested period

.....

**25. Undertaking**

Consistent with subsection 95AS (2A) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for revocation of a clearance and substitution of a new clearance is being considered by the Commission. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

**26. Further information**

Name, postal address, telephone, facsimile and email contact details of the person authorised by the notifying parties to provide additional information in relation to this application.

.....

**27. Information in relation to the Target**

Where the Target has been consulted during the preparation of information provided in response to the questions contained in

this Form relating to the Target, an authorised representative of the Target must indicate here that information relating to the Target is complete and accurate.

Dated.....

Signed by/on behalf of the Target

.....  
(Signature)

.....  
(Full Name)

*Note* If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Target, this fact must be stated.

## 28. Declaration

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of section 95AZN of the *Trade Practices Act 1974*.

.....  
Signature of authorised person      Signature of authorised person

.....  
Office held      Office held

.....  
(Print) Name of authorised person      (Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer  
Commission given for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the *Trade Practices Act 1974* (the *Act*).
2. [Company name] has made an application for revocation of a clearance and substitution of a new clearance pursuant to section 95AS of the Act.
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Commission.
4. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by [company name]; and
  - (a) the Commission accepts the Undertaking so executed.
5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

---

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.

.....  
Signature of Authorised Person      Signature of Authorised Person

.....  
Office Held      Office Held

.....  
(Print) Name of Authorised Person      (Print) Name of Authorised Person

This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION 87B OF THE ACT**

.....  
Commission Chairperson

**DIRECTIONS**

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. In all cases, evidence must be provided to support the contentions made in responding to the questions on this Form.
3. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so. The Applicant for revocation and substitution of a new clearance must be the same person as the person to whom the original clearance was granted.

4. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Applicant. The response must also include a copy of the Applicant's most recent annual report.
5. The following definitions apply in relation questions 1 (c) and 3 (c):  
***related body corporate*** means:
  - (a) a holding company of another body corporate; or
  - (b) a subsidiary of another body corporate; or
  - (c) subsidiary of a holding company of another body corporate.***subsidiary***, in relation to a body corporate (***first body***) means a first body that is controlled by another body (***other body***), because:
  - (a) the other body:
    - (i) controls the composition of the first body's board; or
    - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first body corporate; or
    - (iii) holds more than one half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
  - (b) the first body is a subsidiary of a subsidiary of the other body.***holding company***, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.
6. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Target. The response must also include a copy of the Target's most recent annual report.
7. The response must include the date on which the contract, arrangement, understanding or proposal was, or is intended to be, concluded, the date on which the public bid was or is intended to be made, the intended date on which the acquisition will be consummated and the consideration exchanged in relation to the acquisition. Where available, a copy of the contract, arrangement, understanding or proposal between the Applicant and the Target and the public offer document must be provided with this Form.

- 
8. The response must include background information in relation to the industry sector(s), and a description of the role of the Applicant and the Target in the industry sector(s) including a description of the goods or services supplied both in Australia and internationally.
  9. Product and geographic areas of overlap must be specified and the response must include the whereabouts of all major production, supply or distribution facilities of the Applicant and the Target.
  10. Such agreements may include but are not limited to arrangements or alliances relating to distribution, supply, purchasing, joint development, or research and development. The response must include the type of agreement(s), the subject matter, the parties to the agreement(s) and the duration of the agreement(s), and whether the agreement(s) will continue following consummation of the acquisition.
  11. In order to determine whether a particular acquisition breaches section 50 of the Act, an assessment of the relevant market(s) is required. Section 4E of the Act provides that:

**4E Market**

For the purposes of this Act, unless a contrary contention appears, 'market' means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first mentioned goods or services.

The response must address the relevant product, functional, geographic and time dimensions of the market(s). The product dimension of the market must address sources and potential sources of substitutes for the goods or services produced by the merger parties. Both supply and demand side substitutability must be addressed. The functional dimension of the market must address the vertical stages of production and distribution which comprise the relevant arena of competition (for example, wholesale or retail distribution). The geographic dimension of the market must identify the area or areas over which the merger parties and their competitors currently supply or could supply the relevant product(s) and to which customers could practically turn. The time dimension of the market must address the period over which substitution possibilities must be considered.

12. The response must provide details of at least ten suppliers (or all suppliers if there are less than ten), comprised of a cross-section of entities including large, medium and small suppliers. The response must include a description of the goods and services supplied by each of these suppliers and an estimation of the value of the goods or services supplied.
13. The response must include the location of each of the suppliers identified and the areas to which each of the identified entities supplies.
14. The response must provide details of at least ten customers (or all customers if there are less than ten), comprised of a cross-section of entities including large, medium and small customers. The response must include a description of the goods or services and the value of the goods or services purchased by these customers.
15. The response must describe the duration of contracts, the nature and extent of exclusivity, rebates and discounts and identify any customers with contracts which are due to expire within the next two years and indicate the supply volumes associated with such contracts.
16. The market shares of each of the suppliers or purchasers identified, the Applicant and the Target in the relevant market(s) must be provided. In the case of supply markets, market shares must be given on the basis of productive capacity, sales and revenue and must be provided for each of the past five years. In the case of acquisition markets, market shares must be given on the basis of volume and value of inputs purchased and, again, must be provided for each of the past five years. The total size of the domestic market must be provided. The source(s) of the data relied upon in estimating market shares and total market sizes must be provided.
17. The response must address the ability of suppliers to switch from supplying inputs to the merger parties to other avenues, the ability of competitors in the relevant market(s) to increase supply, the ease with which customers could change suppliers including any switching costs that they would incur, whether goods and services produced in the relevant market(s) should be considered homogeneous or whether there are variations in price or quality and whether the relevant market(s) is characterised by brand loyalty. The response must also discuss whether the relevant market(s) are characterised by countervailing power, the market participants who are said to have



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such power and the extent that such power would be likely to constrain the merger parties post-acquisition.

18. The response must cover whether it is viable for customers to import substitutes and the origin of imports, and address issues including but not limited to options for the transportation of imports (for example, air, sea or rail); transport costs; whether the product is a high or low value product; whether the product is high or low density; and whether the product is durable enough to be transported without damage or deterioration in quality. The response must also give details of historical import levels for the past five years and the source of the information provided. The response must include the outcomes of any anti-dumping investigations concluded in the past five years.
19. The response must provide details of the price of actual or potential imports (including additional costs such as freight and customs duties), whether existing import suppliers can accommodate a significant expansion in capacity without the need for significant investment and whether import competition would provide a constraint on the merged firm via a downstream market. The response must also include contact details of existing importers and their customers.
20. The response must cover whether it is viable for suppliers to export to alternative purchasers and the likely export markets, and address issues including but not limited to, the following:
  - options for the transportation of exports (for example, air, sea or rail);
  - transport costs;
  - whether the product is a high or low value product;
  - whether the product is high or low density;
  - whether the product is durable enough to be transported without damage or deterioration in quality.

The response must also give details of historical export levels for the past five years and the source of the information provided.

21. The response must include contact details of existing exporters.

22. The response must include reference to the following:

- both the nature and height of barriers to entry and expansion;
- details of exit, entry and expansion in the relevant market(s) in the previous five years;
- any incentives or disincentives for new entry;
- how long it would take for a new entrant to establish itself as a vigorous and effective competitor.

Barriers which must be addressed include but are not limited to the following:

- sunk costs in production capacity;
- accessing shelf space;
- advertising and promotion;
- regulatory restrictions;
- requirements for scarce inputs;
- brand loyalty;
- minimum efficient scales of operation;
- goodwill;
- access to intellectual property;
- the potential response of incumbents to new entry.

23. The response must include references including, but not limited to, the following:

- growth;
- levels of innovation;
- technological change; and
- product and service differentiation in the relevant market(s).

24. The response must refer to current and historical pricing and purchasing behaviour, its record of innovation, its growth relative to the growth of the relevant market(s), and its history of independent behaviour.

25. The response must indicate the extent to which the Applicant buys from or sells to the Target raw materials, supplies, services, capital or finished products for resale.

- 
26. The response must discuss factors conducive to coordination in a market including, but not limited to, the following:
- the number of participants in the relevant market(s);
  - transparency;
  - homogeneity of product;
  - homogeneity of firms;
  - the size and frequency of purchases; and
  - the presence of the same firms in more than one market.
27. The response must address the complementarity that occurs where there is significant commonality of customers' products and whether the strength of demand for one product is positively correlated with the strength of demand for another, either because the products form part of a range that distributors need to carry or because they must be consumed together for technical reasons.
28. The response must address the circumstances where two or more products are or could be supplied only as a bundle (pure bundling) or, if supplied individually, are also offered as a bundle at a price that is lower than the price charged if sold individually (mixed bundling). The response must also address circumstances where customers seeking to acquire one product are required also to purchase a second product, or carry amounts of the second product (tying).

**Form S      Application for merger authorisation**  
(regulation 73)

**Form S**

Commonwealth of Australia

*Trade Practices Act 1974 — section 95AU*

**APPLICATION FOR MERGER AUTHORISATION**

To the Australian Competition Tribunal:

Application is hereby made under section 95AU of the *Trade Practices Act 1974* for an authorisation under subsection 95AT(1) to acquire shares in the capital of a body corporate or to acquire assets of another person.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      The Applicant (the Acquirer)**

- (a)      Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and place of incorporation (where applicable)

.....

- (b)      Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies

.....

*(See Direction 3 of this Form)*

- (c)      Provide details of all related bodies corporate of the Applicant including the ACN

.....

*(See Direction 4 of this Form)*

- (d)      Address in Australia for service of documents on the Applicant

.....

- (e)      Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held

.....

**2.      The Target**

- (a)      In the case of a body corporate whose shares or assets are to be acquired:

- (i)      Name of the body corporate including the ACN where applicable

.....

- (ii)      Place of incorporation of the body corporate

.....

- (iii)      Registered office of the body corporate

.....

- (iv) Describe the business or businesses carried on by the body corporate including the products and services the Target supplies

.....  
(See Direction 5 of this Form)

- (v) Number and type of shares or description of assets to be acquired

.....

- (b) In the case of a body corporate whose shares are to be acquired, provide details of:

- (i) the issued capital of the body corporate;  
(ii) the holders of such issued capital.

.....

- (c) Provide details of all related bodies corporate of the body corporate whose shares or assets are to be acquired by the Applicant

.....  
(See Direction 4 of this Form)

- (d) In the case of a person (other than a body corporate) whose assets are to be acquired

- (i) Name and address of the person

.....

- (ii) Describe the business or businesses carried on by the person including the products and services the person supplies

.....

- (iii) Describe the assets to be acquired

.....

### **3.      The acquisition**

- (a)      Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document.

.....  
(See Direction 6 of this Form)

- (b)      Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those effects

.....

- (c)      Indicate whether the acquisition involves proposed ancillary arrangements and describe the proposed arrangements

.....

### **4.      Background information**

- (a)      Describe the industry sector(s) to which the acquisition relates

.....  
(See Direction 7 of this Form)

- (b)      Describe the area(s) of overlap in the operations of the Applicant and Target and any related bodies corporate (the merger parties)

.....  
(See Direction 8 of this Form)

- (c)      Provide details of any acquisitions made by the merger parties and any other acquisitions made in the industry sector(s) during the past five years

.....

- (d) Provide details of any existing vertical or horizontal relationships between the merger parties and related bodies corporate

.....

- (e) Describe any other cooperative agreements to which any of the merger parties is a party

.....

*(See Direction 9 of this Form)*

## 5. Market definition

Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition – this includes markets for the supply of goods or services and markets for the acquisition of goods or services (the relevant market(s))

.....

*(See Direction 10 of this Form)*

## 6. Suppliers

- (a) Describe the inputs into the production of goods or services by each of the merger parties in the relevant market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes

.....

- (b) Provide the names and contact details of a representative selection of suppliers of inputs to each of the merger parties in the relevant market(s)

.....

*(See Direction 11 of this Form)*

- (c) Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition
- .....

**7. Competitors**

- (a) Provide details of alternative suppliers of products now, or shortly to be, competitive with, or otherwise substitutable for, goods or services produced by each of the merger parties in the relevant market(s)
- .....

- (b) If the suppliers identified above do not produce goods or services which are substantially the same as those goods or services produced by the merger parties in the relevant market(s), explain why it is considered that these goods or services are viable alternatives
- .....

**8. Customers**

- (a) Provide the names and contact details of a representative selection of the customers of each of the Applicant and the Target in the relevant market(s)
- .....

*(See Direction 12 of this Form)*

- (b) Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above
- .....



- (c) Describe the existing supply arrangements that the merger parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....  
(See Direction 13 of this Form)

**9. Market concentration**

Provide estimates of current and post-acquisition market shares for the merger parties and existing alternative suppliers or purchasers in the relevant market(s) identified above

.....  
(See Direction 14 of this Form)

**10. Constraints on the exercise of market power**

Provide details of the extent to which the merger parties are likely to be constrained post-acquisition from raising prices and profit margins and/or reducing the quality of good and/or services by:

- (i) input suppliers

.....

- (ii) competitors in the relevant market(s)

.....

- (iii) customers in the relevant market(s)

.....

- (iv) others

.....

(See Direction 15 of this Form)

## **11. Imports**

- (a) Provide details of the actual and potential level of imports in the relevant market(s) and details of the importers and their suppliers

.....  
(See Direction 16 of this Form)

- (b) Describe any barriers to importation in the relevant market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation

.....

- (c) Describe facilities and distribution arrangements necessary for importation in the relevant market(s), their capacity and who has ownership or control of these facilities and arrangements

.....

- (d) Provide details of the price of imports as opposed to domestic production in the relevant market(s) and explain any divergence in these prices

.....

- (e) Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the merger parties in the relevant market(s) post-acquisition

.....  
(See Direction 17 of this Form)

## **12. Exports**

- (a) Provide details of the actual and potential level of exports in the relevant market(s)

.....  
(See Direction 18 of this Form)

- (b) Describe the export barriers faced by suppliers of inputs to the merger parties in the relevant market(s)

.....

- (c) Provide details of the sale price of exports as opposed to domestic sales in the relevant market(s) and explain any divergence in these prices

.....

- (d) Describe whether the suppliers of inputs to the merger parties are or would be able to export such inputs post-acquisition and, if so, describe the extent of constraint this would be likely to provide on the merger parties post-acquisition

.....

*(See Direction 19 of this Form)*

**13. Barriers to entry and expansion**

- (a) Provide details of any barriers to entry and expansion in the relevant market(s)

.....

*(See Direction 20 of this Form)*

- (b) Provide details of any firms not currently supplying or acquiring goods or services in the Relevant Market(s) but which could enter the Relevant Market(s) quickly and provide an effective competitive constraint in the Relevant Market(s) to the merged entity

.....

- (c) Provide details of any firms which have recently tried and failed to enter the relevant market(s), including the reasons (if known) for their failure

.....

**14.    Dynamic characteristics**

Provide details of the dynamic characteristics of the relevant market(s)

.....  
(See Direction 21 of this Form)

**15.    Vigorous and effective competitor**

Indicate whether the Target or any other participant in the relevant market(s) could be described as a vigorous and effective competitor to the Applicant or other market participants to any and to what extent, and why

.....  
(See Direction 22 of this Form)

**16.    Vertical integration**

- (a)    Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the relevant market(s)

.....  
(See Direction 23 of this Form)

- (b)    Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels

.....

**17.    Prices and profit margins**

- (a)    Provide details of recent and current levels of pricing in the relevant market(s) including the use of rebates and discounts

.....

- (b) Provide details of supply costs of goods and services supplied by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s)

.....

- (c) Describe the competitive constraints, if any, which would, or would be likely to, prevent the merger parties from being able to significantly and sustainably increase the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the relevant market(s)

.....

- (d) Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market(s) post-acquisition

.....

*(See Direction 24 of this Form)*

- (e) Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change

.....

## **18. Related markets**

- (a) Describe the extent of complementarity between products supplied by the merger parties

.....

*(See Direction 25 of this Form)*

- (b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying

.....

*(See Direction 26 of this Form)*

- (c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors
- .....

**19. Detriment from a lessening of competition**

Having regard to the information provided above, and any other relevant information, describe any detriment which would or would be likely to flow from a lessening of competition as a result of the acquisition

.....

**20. Other public detriment**

Describe any public detriment likely to result from the proposed acquisition that has not already been described above

.....

**21. Public benefit claims**

- (a) Describe any public benefit in the form of increased efficiencies (for example, economies of scale or scope) which would, or would be likely to, result from the acquisition
- .....
- (b) Describe whether the acquisition would, or would be likely to, result in a significant increase in the real value of exports
- .....
- (c) Describe whether the acquisition would, or would be likely to, result in significant substitution of domestic products for imported goods
- .....

- (d) Detail any public benefit claims relating to the international competitiveness of any Australian industry arising from the acquisition

.....

- (e) Detail any other public benefit claims

.....

**22. The counterfactual**

Describe the likely state of the relevant market(s) in the future if the proposed acquisition does not take place, giving reasons

.....

**23. Joint ventures**

- (a) Does this application for authorisation deal with a matter relating to a joint venture (see section 4J of the Act)

.....

- (i) If so, are there any other applications for clearance or authorisation under Part VII of the Act being made simultaneously with this application in relation to the joint venture

.....

- (ii) If so, describe the nature of the applications and who is making those other applications

.....

**24. International**

- (a) Does the acquisition involve:

- (i) A company operating in Australia that has a foreign parent

.....

- (ii) Australian businesses or consumers affected by conduct occurring overseas

.....

- (iii) Foreign consumers affected by conduct occurring in Australia

.....

- (iv) Conduct occurring across international boundaries

.....

- (b) Provide details of competition authorities in jurisdictions other than Australia to which the proposed acquisition has been, or is intended to be, notified and the timing of such notifications

.....

**25. Period of authorisation**

Outline the period for which authorisation is sought, detailing reasons why authorisation should be granted for the requested period

.....

**26. Undertaking**

Consistent with subsection 95AV (2) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for authorisation is being considered by the Tribunal. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

**27. Further information**

Name, postal address, telephone, facsimile and email contact details of person authorised by the notifying parties to provide additional information in relation to this application

.....



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**28. Information provided in relation to the Target**

Where the Target has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target, an authorised representative of the Target must indicate here that information relating to the Target is complete and accurate.

Dated.....

Signed by/on behalf of the Target

.....  
(Signature)

.....  
(Full Name)

*Note* If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Target, this fact must be stated.

**29. Declaration**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of section 95AZN of the *Trade Practices Act 1974*.

.....      .....

Signature of authorised person

Signature of authorised person

.....      .....

Office held

Office held

.....      .....

(Print) Name of authorised person

(Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer  
Commission given for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the *Trade Practices Act 1974* (the *Act*).
2. [Company name] has made an application for authorisation in respect of an acquisition pursuant to section 95AU of the Act.
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Australian Competition Tribunal.
4. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by [company name]; and
  - (b) the Commission accepts the Undertaking so executed.
5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.

---

.....  
Signature of Authorised Person      Signature of Authorised Person

.....  
Office Held      Office Held

.....  
(Print) Name of Authorised Person      (Print) Name of Authorised Person  
This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION  
87B OF THE ACT**

.....  
Commission Chairperson

#### **DIRECTIONS**

1. Where there is insufficient space on this Form to furnish the required information, the information must be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. The facts and contentions set out in the application must be verified by a person able and qualified to give such verification (see relevant practice direction published by the Australian Competition Tribunal).
3. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Applicant. The response must also include a copy of the Applicant's most recent annual report.
4. The following definitions apply in relation questions 1 (c) and 2 (c):  
***related body corporate*** means:
  - (a) a holding company of another body corporate; or
  - (b) a subsidiary of another body corporate; or
  - (c) subsidiary of a holding company of another body corporate.

**subsidiary**, in relation to a body corporate (**first body**) means a first body that is controlled by another body (**other body**), because:

- (a) the other body:
  - (i) controls the composition of the first body's board; or
  - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first body corporate; or
  - (iii) holds more than one half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first body is a subsidiary of a subsidiary of the other body.

**holding company**, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

5. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Target. The response must also include a copy of the Target's most recent annual report.
6. The response must include the date on which the contract, arrangement, understanding or proposal was, or is intended to be, concluded, the date on which the public bid was or is intended to be made, the intended date on which the acquisition will be consummated and the consideration exchanged in relation to the acquisition. Where available, a copy of the contract, arrangement, understanding or proposal between the Applicant and the Target and the public offer document must be provided with this Form.
7. The response must include background information in relation to the industry sector(s), and a description of the role of the Applicant and the Target in the industry sector(s), including a description of the goods or services supplied both in Australia and internationally.
8. Product and geographic areas of overlap must be specified and the response must include the whereabouts of all major production, supply or distribution facilities of the Applicant and the Target.

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9. Such agreements may include, but are not limited to, arrangements or alliances relating to distribution, supply, purchasing, joint development, or research and development. The response must include the type of agreement(s), the subject matter, the parties to the agreement(s) and the duration of the agreement(s), and whether the agreement(s) will continue following consummation of the acquisition.
  10. In order to determine whether a particular acquisition breaches section 50 of the Act, an assessment of the relevant market(s) is required. Section 4E of the Act provides that:

**4E Market**

For the purposes of this Act, unless a contrary contention appears, 'market' means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first mentioned goods or services.

The response must address the relevant product, functional, geographic and time dimensions of the market(s). The product dimension of the market must address sources and potential sources of substitutes for the goods or services produced by the merger parties. Both supply and demand side substitutability must be addressed. The functional dimension of the market must address the vertical stages of production and distribution which comprise the relevant arena of competition (for example, wholesale or retail distribution). The geographic dimension of the market must identify the area or areas over which the merger parties and their competitors currently supply or could supply the relevant product(s) and to which customers could practically turn. The time dimension of the market must address the period over which substitution possibilities must be considered.

11. The response must provide details of at least ten suppliers (or all suppliers if there are less than ten), comprised of a cross-section of entities including large, medium and small suppliers. The response must include a description of the goods and services supplied by each of these suppliers and an estimation of the value of the goods or services supplied.

The response must include the location of each of the suppliers identified and the areas to which each of the identified entities supplies.

12. The response must provide details of at least ten customers (or all customers if there are less than ten), comprised of a cross-section of entities including large, medium and small customers. The response must include a description of the goods or services and the value of the goods or services purchased by these customers.
13. The response must describe the duration of contracts, the nature and extent of exclusivity, rebates and discounts and identify any customers with contracts which are due to expire within the next two years and indicate the supply volumes associated with such contracts.
14. The market shares of each of the suppliers or purchasers identified, the Applicant and the Target in the relevant market(s) must be provided. In the case of supply markets, market shares must be given on the basis of productive capacity, sales and revenue and must be provided for each of the past five years. In the case of acquisition markets, market shares must be given on the basis of volume and value of inputs purchased and, again, must be provided for each of the past five years. The total size of the domestic market must be provided. The source(s) of the data relied upon in estimating market shares and total market sizes must be provided.
15. The response must address the ability of suppliers to switch from supplying inputs to the merger parties to other avenues, the ability of competitors in the relevant market(s) to increase supply, the ease with which customers could change suppliers including any switching costs that they would incur, whether goods and services produced in the relevant market(s) should be considered homogeneous or whether there are variations in price or quality and whether the relevant market(s) are characterised by brand loyalty. The response must also discuss whether the relevant market(s) are characterised by countervailing power, the market participants who are said to have such power and the extent that such power would be likely to constrain the merger parties post-acquisition.

- 
16. The response must cover whether it is viable for customers to import substitutes and the origin of imports, and address issues including but not limited to: options for the transportation of imports (for example, air, sea or rail); transport costs; whether the product is a high or low value product; whether the product is high or low density; and whether the product is durable enough to be transported without damage or deterioration in quality. The response must also give details of historical import levels for the past five years and the source of the information provided. The response must include the outcomes of any anti-dumping investigations concluded in the past five years.
17. The response must provide details of the price of actual or potential imports (including additional costs such as freight and customs duties), whether existing import suppliers can accommodate a significant expansion in capacity without the need for significant investment and whether import competition would provide a constraint on the merged firm via a downstream market. The response must also include contact details of existing importers and their customers.
18. The response must cover whether it is viable for suppliers to export to alternative purchasers and the likely export markets, and address issues including, but not limited to, the following:
- options for the transportation of exports (for example, air, sea or rail);
  - transport costs;
  - whether the product is a high or low value product;
  - whether the product is high or low density; and
  - whether the product is durable enough to be transported without damage or deterioration in quality.
- The response must also give details of historical export levels for the past five years and the source of the information provided.
19. The response must include contact details of existing exporters.
20. (1) The response must include reference to the following:
- (a) both the nature and height of barriers to entry and expansion;
  - (b) details of exit;

- (c) entry and expansion in the relevant market(s) in the previous five years;
  - (d) any incentives or disincentives for new entry;
  - (e) how long it would take for a new entrant to establish itself as a vigorous and effective competitor.
- (2) Barriers which must be addressed include, but are not limited to, the following:
  - (a) sunk costs in production capacity;
  - (b) accessing shelf space;
  - (c) advertising and promotion;
  - (d) regulatory restrictions;
  - (e) requirements for scarce inputs;
  - (f) brand loyalty;
  - (g) minimum efficient scales of operation;
  - (h) goodwill;
  - (i) access to intellectual property; and
  - (j) the potential response of incumbents to new entry.
- 21. The response must include references including, but not limited to, the following:
  - (a) growth;
  - (b) levels of innovation;
  - (c) technological change;
  - (d) product and service differentiation in the relevant market(s).
- 22. The response must refer to current and historical pricing and purchasing behaviour, its record of innovation, its growth relative to the growth of the relevant market(s), and its history of independent behaviour.
- 23. The response must indicate the extent to which the Applicant buys from, or sells to, the Target raw materials, supplies, services, capital or finished products for resale.
- 24. The response must discuss factors conducive to coordination in a market including, but not limited to, the following:
  - (a) the number of participants in the relevant market(s);
  - (b) transparency;



- (c) homogeneity of product;
  - (d) homogeneity of firms;
  - (e) the size and frequency of purchases;
  - (f) the presence of the same firms in more than one market.
25. The response must address the complementarity that occurs where there is significant commonality of customers' products and whether the strength of demand for one product is positively correlated with the strength of demand for another, either because the products form part of a range that distributors need to carry or because they must be consumed together for technical reasons.
26. The response must address the circumstances where two or more products are or could be supplied only as a bundle (pure bundling) or, if supplied individually, are also offered as a bundle at a price that is lower than the price charged if sold individually (mixed bundling). The response must also address circumstances where customers seeking to acquire one product are required also to purchase a second product, or carry amounts of the second product (tying).

## **Form T      Application for minor variation of merger authorisation**

(regulation 73)

### **Form T**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 95AZL (1)*

### **APPLICATION FOR MINOR VARIATION OF A MERGER AUTHORISATION**

To the Australian Competition Tribunal:

Application is hereby made under subsection 95AZL (1) of the *Trade Practices Act 1974* for the minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1.      The Applicant (the Acquirer)**

- (a)    Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and place of incorporation (where applicable)

.....  
(See Direction 3 of this Form)

- (b)    Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies

.....

- (c)    Address in Australia for service of documents on the Applicant

.....

**PART A – Original authorisation**

**2.      Authorisation particulars**

Description of acquisition for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation

.....

**PART B – Minor variation of the original authorisation**

**3.      Minor variation sought**

- (a)    Provide details of the minor variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement, understanding or proposal for the acquisition that was originally authorised and the contract, arrangement, understanding or proposal for the acquisition for which minor variation is sought

.....  
(See Direction 4 of this Form)

- (b)    Explain why the variation described above is in fact a minor variation which does not materially change the effect of the authorisation

.....

---

**4. Public detriments**

- (a) Describe any detriments to the public resulting, or likely to result, from the acquisition for which the minor variation of the authorisation is sought, in particular the likely effect of the acquisition for which the minor variation for authorisation is sought on the competitive environment in the relevant market(s)

.....  
(See Direction 5 of this Form)

- (b) Provide submissions regarding the effect of the minor variation upon any detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the acquisition on the prices of the goods or services supplied by the merger parties and their competitors in the relevant market(s)

.....  
(See Direction 6 of this Form)

**5. Public benefit claims**

Provide submissions regarding the effect of the minor variation upon any public benefits resulting or likely to result from the original authorisation

.....  
(See Direction 7 of this Form)

**6. Updating information**

Provide details of any material change to the information provided by the Applicant in support of the original authorisation application and the effect of any such changes on the claims made by the Applicant in relation to the original authorisation and the effect on competition of the proposed acquisition and public benefit likely to flow from the proposed acquisition

.....

**7. Undertaking**

Consistent with subsection 95AZL (2A) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for minor variation of an authorisation is being considered by the Tribunal. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

**8. Further information**

Name, postal address, telephone, facsimile and email contact details of the person authorised by the Applicant to provide additional information in relation to this application

.....

**9. Information provided in relation to the Target**

Where the Target has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target, an authorised representative of the Target must indicate here that the information relating to the Target is complete and accurate.

Dated.....

Signed by/on behalf of the Target

.....  
(Signature)

.....  
(Full Name)

*Note* If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Target, this fact must be stated.

**10. Declaration**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that

all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of section 95AZN of the *Trade Practices Act 1974*.

.....  
Signature of authorised person      Signature of authorised person

.....  
Office held      Office held

.....  
(Print) Name of authorised person      (Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer  
Commission given for the purposes of section 87B  
by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the *Trade Practices Act 1974* (the *Act*).
2. [Company name] has made an application for minor variation of an authorisation in respect of an acquisition pursuant to section 95AZL of the Act.

3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Australian Competition Tribunal.
4. This Undertaking comes into effect when:
- (a) the Undertaking is executed by [company name]; and
  - (b) the Commission accepts the Undertaking so executed.
5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.

.....  
Signature of Authorised Person      Signature of Authorised Person

.....  
Office Held      Office Held

.....  
(Print) Name of Authorised Person      (Print) Name of Authorised Person  
This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION 87B OF THE ACT**

.....  
Commission Chairperson

---

## DIRECTIONS

1. Where there is insufficient space on this Form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.
2. The facts and contentions set out in the application must be verified by a person able and qualified to give such verification (see relevant practice direction published by the Australian Competition Tribunal).
3. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so. The Applicant for a minor variation of an authorisation must be the same person as the person to whom the original authorisation was granted.
4. Address any changes to the contract, arrangement, understanding or proposal for the acquisition including but not limited to: the number and type of shares being acquired; the date on which the contract, arrangement, understanding or proposal was or is intended to be concluded; the date on which the public bid was or is intended to be made; the intended date on which the acquisition will be consummated and the consideration exchanged in relation to the acquisition.
5. The response must include details of the market(s) likely to be affected by the contract, arrangement, understanding or proposal for the acquisition, including both the markets for the supply and acquisition of goods or services, in particular having regard to goods or services that may be regarded as substitutes. The response must also address existing alternative suppliers, market concentration information, whether there would be any constraint on the exercise of market power including those imposed by suppliers, competitors, customers and the existence of import or export possibilities, barriers to entry and expansion, vertical integration in the market and any related markets. The response must include detriment arising from both a lessening of competition and any other detriment to the public.

6. Details must be provided in relation to the likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition and other detriments to the public, claimed to result or be likely to result from the acquisition which was the subject of the original authorisation. The response must also indicate the likely effect of the minor variation upon those detriments to the public that the Tribunal found in its determination on the original authorisation.
7. Specific reference must be made to any public benefit which would or would be likely to arise from a significant increase in the real value of exports, significant substitution of domestic products for imported goods, increased international competitiveness or increased efficiency. Provide details of the likely effect of the minor variation upon those public benefits claimed to result or to be likely to result from the original authorisation. The response must also indicate the likely effect of the minor variation upon those detriments to the public that the Tribunal found in its determination on the original authorisation.

## **Form U      Application for revocation of merger authorisation**

(regulation 73)

### **Form U**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 95AZM (1)*

### **APPLICATION FOR REVOCATION OF A MERGER AUTHORISATION**

To the Australian Competition Tribunal:

Application is hereby made under subsection 95AZM (1) of the *Trade Practices Act 1974* for the revocation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM



---

**1. The Applicant (the Acquirer)**

- (a) Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and the place of incorporation (where applicable)

.....

*(See Direction 2 of this Form)*

- (b) Description of business or businesses carried on by the Applicant including the products and services the Applicant supplies

.....

- (c) Address in Australia for service of documents on the Applicant

.....

**2. Revocation of authorisation**

- (a) Description of the authorisation that is the subject of the application for which revocation is sought including but not limited to the registration number assigned to the authorisation

.....

- (b) Provide details of the grounds upon which revocation of the authorisation is sought.

.....

**3. Undertaking**

Consistent with subsection 95AZM (2A) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for revocation of an authorisation is being considered by the Tribunal. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

**4. Further information**

Name, postal address, telephone, facsimile and email contact details of the person authorised by the Applicant to provide additional information in relation to this revocation application

.....

Dated.....

Signed by/on behalf of the Applicant

.....  
(Signature)

.....  
(Full Name)

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the Trade Practices Act 1974 (the Act).
2. [Company name] has made an application for revocation of an authorisation in respect of an acquisition pursuant to section 95AZM of the Act.

- 
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Australian Competition Tribunal.
4. This Undertaking comes into effect when:
- (a) the Undertaking is executed by [company name]; and
  - (b) the Commission accepts the Undertaking so executed.
5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.

..... Signature of Authorised Person	..... Signature of Authorised Person
---	---

..... Office Held	..... Office Held
----------------------	----------------------

..... (Print) Name of Authorised Person	..... (Print) Name of Authorised Person
--	--

This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION  
87B OF THE ACT**

.....  
Commission Chairperson

## **DIRECTIONS**

1. Where there is insufficient space on this Form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the Applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so. The Applicant for revocation of the authorisation must be the same person as the person to whom the original authorisation was granted.

### **Form V      Application for revocation of merger authorisation and substitution of new authorisation**

(regulation 73)

## **Form V**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 95AZM (1)*

## **APPLICATION FOR REVOCATION OF A MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION**

To the Australian Competition Tribunal:

Application is hereby made under subsection 95AZM (1) of the *Trade Practices Act 1974* for the revocation of an authorisation and the substitution of a new authorisation under that subsection to acquire shares in the capital of a body corporate or to acquire assets of another person.

**PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM**

---

**1. The Applicant (the Acquirer)**

- (a) Name and registered office (where applicable) of the Applicant including the ACN (where applicable) and place of incorporation (where applicable).

.....  
(See Direction 3 of this Form)

- (b) Describe the business or businesses carried on by the Applicant including the products and services the Applicant supplies

.....  
(See Direction 4 of this Form)

- (c) Provide details of all related bodies corporate of the Applicant including the ACN

.....  
(See Direction 5 of this Form)

- (d) Address in Australia for service of documents on the Applicant

.....

- (e) Name and address of any person for whose benefit or on whose behalf the shares or assets to be acquired will be held

.....

**PART A – Revocation**

**2. Revocation of authorisation**

- (a) Describe the acquisition that is the subject of the authorisation for which revocation is sought including but not limited to the registration number assigned to the authorisation

.....

- (b) Provide details of the grounds upon which revocation of the authorisation and substitution of a new authorisation is sought.

.....

## **PART B – Substitution of a new authorisation**

### **3. The Target**

- (a) In the case of a body corporate whose shares or assets are to be acquired:
- (i) Name of the body corporate including the ACN where applicable
- .....
- (ii) Place of incorporation of the body corporate
- .....
- (iii) Registered office of the body corporate
- .....
- (iv) Describe the business or businesses carried on by the body corporate including the products and services the Target supplies
- .....
- (See Direction 6 of this Form)*
- (v) Number and type of shares or description of assets to be acquired
- .....
- (b) In the case of a body corporate whose shares are to be acquired, provide details of:
- (i) the issued capital of the body corporate;
- (ii) the holders of such issued capital.
- .....
- (c) Provide details of all related bodies corporate of the body corporate whose shares or assets are to be acquired by the Applicant
- .....
- (See Direction 5 of this Form)*

- (d) In the case of a person (other than a body corporate) whose assets are to be acquired

- (i) Name and address of the person

.....

- (ii) Describe the business or businesses carried on by the person including the products and services the person supplies

.....

- (iii) Describe the assets to be acquired

.....

#### **4. The acquisition**

- (a) Outline the nature and details of the contract, arrangement, understanding or proposal for the acquisition and, if applicable, the public offer document, and provide a copy of any relevant contract, document or public offer document.

.....

*(See Direction 7 of this Form)*

- (b) Provide details of the commercial rationale for the acquisition and copies of all documents that were prepared specifically for the purpose of evaluating the proposed acquisition with respect to the market(s) affected and the nature of those affects.

.....

- (c) Indicate whether the acquisition involves proposed ancillary arrangements and describe the proposed arrangements

.....

#### **5. Background information**

- (a) Describe the industry sector(s) to which the acquisition relates

.....

*(See Direction 8 of this Form)*

- (b) Describe the area(s) of overlap in the operations of the Applicant and Target and any related bodies corporate (the merger parties)

.....  
(See Direction 9 of this Form)

- (c) Provide details of any acquisitions made by the merger parties and any other acquisitions made in the industry sector(s) during the past five years

.....

- (d) Provide details of any existing vertical or horizontal relationships between the merger parties

.....

- (e) Describe any other cooperative agreements to which any of the merger parties is a party

.....  
(See Direction 10 of this Form)

## 6. Market definition

Describe the market(s) (product, functional, geographic and time) relevant to the assessment of the acquisition's effect on competition – this includes markets for the supply of goods or services and markets for the acquisition of goods or services

.....  
(See Direction 11 of this Form)

## 7. Suppliers

- (a) Describe the inputs into the production of goods or services by each of the merger parties in the relevant market(s) and indicate the value of those inputs as a proportion of total production. Where alternative inputs are available, provide a list of substitutes

.....



- (b) Provide the names and contact details of a representative selection of suppliers of inputs to each of the merger parties in the relevant market(s)

.....  
(See Direction 12 of this Form)

- (c) Describe any purchasing arrangements in place with each of the suppliers identified above and outline whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....

## 8. Competitors

- (a) Provide details of alternative suppliers of products now or shortly to be competitive with, or otherwise substitutable for, goods or services produced by each of the merger parties in the relevant market(s)

.....  
(See Direction 13 of this Form)

- (b) If the suppliers identified above do not produce goods or services which are substantially the same as those goods or services produced by the merger parties in the relevant market(s), explain why it is considered that these goods or services are viable alternatives

.....

## 9. Customers

- (a) Provide the names and contact details of a representative selection of the customers of each of the Applicant and the Target in the relevant market(s)

.....  
(See Direction 14 of this Form)

- (b) Describe the distribution channels available to the merger parties in supplying goods and services to customers and identify the relevant distribution channels in respect of each of the customers identified above

.....

- (c) Describe the existing supply arrangements that the merger parties have in place with the customers identified above and whether it is expected or anticipated that these arrangements will continue or be varied in any way post-acquisition

.....

*(See Direction 15 of this Form)*

#### **10. Market concentration**

Provide estimates of current and post-acquisition market shares for the merger parties and existing alternative suppliers or purchasers in the relevant market(s) identified above

.....

*(See Direction 16 of this Form)*

#### **11. Constraints on the exercise of market power**

- (a) Provide details of the extent to which the merger parties are likely to be constrained post-acquisition from raising prices and profit margins and/or reducing the quality of good and/or services by:

- (i) input suppliers

.....

- (ii) competitors in the relevant market(s)

.....

- (iii) customers in the relevant market(s)

.....

*(See Direction 17 of this Form)*

---

## 12. Imports

- (a) Provide details of the actual and potential level of imports in the relevant market(s) and details of the importers and their suppliers

.....  
(See Direction 18 of this Form)

- (b) Describe any barriers to importation in the relevant market(s) including whether significant investment in facilities or in distribution arrangements is needed to facilitate importation

.....

- (c) Describe facilities and distribution arrangements necessary for importation in the relevant market(s), their capacity and who has ownership or control of these facilities and arrangements

.....

- (d) Provide details of the price of imports as opposed to domestic production in the relevant market(s) and explain any divergence in these prices

.....

- (e) Provide details as to the extent of constraint which would be likely to be provided by imports on domestic suppliers including the merger parties in the relevant market(s) post-acquisition

.....  
(See Direction 19 of this Form)

## 13. Exports

- (a) Provide details of the actual and potential level of exports in the relevant market(s)

.....  
(See Direction 20 of this Form)

- (b) Describe the export barriers faced by suppliers of inputs to the merger parties in the relevant market(s)

.....

- (c) Provide details of the sale price of exports as opposed to domestic sales in the relevant market(s) and explain any divergence in these prices

.....

- (d) Describe whether the suppliers of inputs to the merger parties are or would be able to export such inputs post-acquisition and, if so, describe the extent of constraint this would be likely to provide on the merger parties post-acquisition

.....

*(See Direction 21 of this Form)*

**14. Barriers to entry and expansion**

- (a) Provide details of any barriers to entry and expansion in the relevant market(s)

.....

*(See Direction 22 of this Form)*

- (b) Provide details of any firms not currently supplying or acquiring goods or services in the Relevant Market(s) but which could enter the Relevant Market(s) quickly and provide an effective competitive constraint in the Relevant Market(s) to the merged entity

.....

- (c) Provide details of any firms which have recently tried and failed to enter the relevant market(s), including the reasons (if known) for their failure

.....

---

**15. Dynamic characteristics**

Provide details of the dynamic characteristics of the relevant market(s)

.....  
(See Direction 23 of this Form)

**16. Vigorous and effective competitor**

Indicate whether the Target or any other participant in the relevant market(s) could be described as a vigorous and effective competitor to the Applicant or to any other market participants and to what extent, and why

.....  
(See Direction 24 of this Form)

**17. Vertical integration**

- (a) Describe whether the acquisition would, or would be likely to, result in increased vertical integration between firms involved at different functional levels in the relevant market(s)

.....  
(See Direction 25 of this Form)

- (b) Describe whether the acquisition would, or would be likely to, increase the risk of limiting the supply of inputs or access to distribution such that downstream or upstream rivals face higher costs post-acquisition or full or partial foreclosure of key inputs or distribution channels

.....

**18. Prices and profit margins**

- (a) Provide details of recent and current levels of pricing in the relevant market(s) including the use of rebates and discounts

.....

- (b) Provide details of supply costs of goods and services supplied by the merger parties including manufacturing, marketing and distribution costs in the relevant market(s)

.....

- (c) Describe the competitive constraints, if any, which would, or would be likely to, prevent the merger parties from being able to significantly and sustainably increase the prices paid by their customers, or lower the prices paid to their suppliers, post-acquisition in the relevant market(s)

.....

- (d) Describe the impact of the acquisition on the potential for coordinated conduct between remaining competitors in the relevant market(s) post-acquisition

.....

*(See Direction 26 of this Form)*

- (e) Describe the likely impact of the acquisition on the profit margins of the merger parties post-acquisition and the expected cause of any change

.....

## **19. Related markets**

- (a) Describe the extent of complementarity between products supplied by the merger parties

.....

*(See Direction 27 of this Form)*

- (b) Describe the extent to which the products identified above are, or could be, offered to customers as a product range through bundling or tying

.....

*(See Direction 28 of this Form)*

- (c) Describe the competitive constraints that would, or would be likely to, prevent such bundling or tying from significantly foreclosing the ability of the merged entity's competitors to compete, including foreclosure of access to distribution by the merged entity's competitors
- .....

**20. Detriment from a lessening of competition**

Having regard to the information provided above, and any other relevant information, describe any detriment which would or would be likely to flow from a lessening of competition as a result of the acquisition

.....

**21. Other public detriment**

Describe any public detriment likely to result from the proposed acquisition that has not already been described above

.....

**22. Public benefit claims**

- (a) Describe any public benefit in the form of increased efficiencies (for example, economies of scale or scope) which would or would be likely to result from the acquisition
- .....
- (b) Describe whether the acquisition would or would be likely to result in a significant increase in the real value of exports
- .....
- (c) Describe whether the acquisition would or would be likely to result in significant substitution of domestic products for imported goods
- .....

- (d) Detail any public benefit claims relating to the international competitiveness of any Australian industry

.....

- (e) Detail any other public benefit claims

.....

**23. The counterfactual**

Describe the likely state of the relevant market(s) in the future if the proposed acquisition does not take place, giving reasons

.....

**24. Joint ventures**

- (a) Does this application for revocation and substitution of a new authorisation deal with a matter relating to a joint venture (see section 4J of the Act)

.....

- (i) If so, are there any other applications for clearance or authorisation under Part VII of the Act being made simultaneously with this application in relation to the joint venture

.....

- (ii) If so, describe the nature of the applications and who is making those other applications

.....

**25. International**

- (a) Does the acquisition involve:

- (i) A company operating in Australia that has a foreign parent

.....



- (ii) Australian businesses or consumers affected by conduct occurring overseas  
.....
- (iii) Foreign consumers affected by conduct occurring in Australia  
.....
- (iv) Conduct occurring across international boundaries  
.....
- (b) Provide details of competition authorities in jurisdictions other than Australia to which the proposed acquisition has been, or is intended to be, notified and the timing of such notifications  
.....

**26. Period of authorisation**

Outline the period for which authorisation is sought, detailing reasons why authorisation should be granted for the requested period  
.....

**27. Undertaking**

Consistent with subsection 95AZM (2A) of the Act, the Applicant is required, pursuant to the regulations, to give an undertaking to the Commission under section 87B of the Act that the acquisition will not be made while the application for revocation of an authorisation and substitution of a new authorisation is being considered by the Tribunal. An undertaking which is in a form that must be offered to the Commission is attached to this Form.

**28. Further information**

Name, postal address, telephone, facsimile and email contact details of person authorised by the notifying parties to provide additional information in relation to this application  
.....

**29. Information provided in relation to the Target**

Where the Target has been consulted during the preparation of information provided in response to the questions contained in this Form relating to the Target, an authorised representative of the Target must indicate here that information relating to the Target is complete and accurate.

Dated.....

Signed by/on behalf of the Target

.....  
(Signature)

.....  
(Full Name)

*Note* If the Target is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Target, this fact must be stated.

**30. Declaration**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of section 95AZN of the *Trade Practices Act 1974*.

.....  
Signature of authorised person

.....  
Signature of authorised person

.....  
Office held

.....  
Office held

.....  
(Print) Name of authorised person

.....  
(Print) Name of authorised person

This [insert day] day of [insert month] [insert year]

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer  
Commission given for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the Trade Practices Act 1974 (the Act).
2. [Company name] has made an application for revocation of an authorisation and substitution of a new authorisation in respect of an acquisition pursuant to section 95AZM of the Act.
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Australian Competition Tribunal.

4. This Undertaking comes into effect when:

- (a) the Undertaking is executed by [company name]; and
- (b) the Commission accepts the Undertaking so executed.

5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.

..... Signature of Authorised Person	..... Signature of Authorised Person
---	---

..... Office Held	..... Office Held
----------------------	----------------------

..... (Print) Name of Authorised Person	..... (Print) Name of Authorised Person
--	--

This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION 87B OF THE ACT**

.....  
Commission Chairperson

## **DIRECTIONS**

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by, or on behalf of, the Applicant.

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2. The facts and contentions set out in the application must be verified by a person able and qualified to give such verification (see relevant practice direction published by the Australian Competition Tribunal).
  3. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in Item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so. The Applicant for revocation and substitution of an authorisation must be the same person as the person to whom the original authorisation was granted.
  4. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Applicant. The response must also include a copy of the Applicant's most recent annual report.
  5. The following definitions apply in relation questions 1 (c) and 3 (c):  
***related body corporate*** means:
    - (a) a holding company of another body corporate; or
    - (b) a subsidiary of another body corporate; or
    - (c) subsidiary of a holding company of another body corporate.***subsidiary***, in relation to a body corporate (***first body***) means a first body that is controlled by another body (***other body***), because:
    - (a) the other body:
      - (i) controls the composition of the first body's board; or
      - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first body corporate; or
      - (iii) holds more than one half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
    - (b) the first body is a subsidiary of a subsidiary of the other body.***holding company***, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

6. The response must include details of the ownership structure (including a list of shareholders with a greater than five per cent shareholding) and interests of the Target. The response must also include a copy of the Target's most recent annual report.
7. The response must include the date on which the contract, arrangement, understanding or proposal was, or is intended to be, concluded, the date on which the public bid was or is intended to be made, the intended date on which the acquisition will be consummated and the consideration exchanged in relation to the acquisition. Where available, a copy of the contract, arrangement, understanding or proposal between the Applicant and the Target and the public offer document must be provided with this Form.
8. The response must include background information in relation to the industry sector(s), and a description of the role of the Applicant and the Target in the industry sector(s), including a description of the goods or services supplied both in Australia and internationally.
9. Product and geographic areas of overlap must be specified and the response must include the whereabouts of all major production, supply or distribution facilities of the Applicant and the Target.
10. Such agreements may include, but are not limited to, arrangements or alliances relating to distribution, supply, purchasing, joint development, or research and development. The response must include the type of agreement(s), the subject matter, the parties to the agreement(s) and the duration of the agreement(s), and whether the agreement(s) will continue following consummation of the acquisition.
11. In order to determine whether a particular acquisition breaches section 50 of the Act, an assessment of the relevant market(s) is required. Section 4E of the Act provides that:

**4E    Market**

For the purposes of this Act, unless a contrary contention appears, 'market' means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first mentioned goods or services.

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The response must address the relevant product, functional, geographic and time dimensions of the market(s). The product dimension of the market must address sources and potential sources of substitutes for the goods or services produced by the merger parties. Both supply and demand side substitutability must be addressed. The functional dimension of the market must address the vertical stages of production and distribution which comprise the relevant arena of competition (for example, wholesale or retail distribution). The geographic dimension of the market must identify the area or areas over which the merger parties and their competitors currently supply or could supply the relevant product(s) and to which customers could practically turn. The time dimension of the market must address the period over which substitution possibilities must be considered.

12. The response must provide details of at least ten suppliers (or all suppliers if there are less than ten), comprised of a cross-section of entities including large, medium and small suppliers. The response must include a description of the goods and services supplied by each of these suppliers and an estimation of the value of the goods or services supplied.
13. The response must include the location of each of the suppliers identified and the areas to which each of the identified entities supplies.
14. The response must provide details of at least ten customers (or all customers if there are less than ten), comprised of a cross-section of entities including large, medium and small customers. The response must include a description of the goods or services and the value of the goods or services purchased by these customers.
15. The response must describe the duration of contracts, the nature and extent of exclusivity, rebates and discounts and identify any customers with contracts which are due to expire within the next two years and indicate the supply volumes associated with such contracts.
16. The market shares of each of the suppliers or purchasers identified, the Applicant and the Target in the relevant market(s) must be provided. In the case of supply markets, market shares must be given on the basis of productive capacity, sales and revenue and must be provided for each of the past five years. In the case of acquisition markets, market shares must be given on the basis of volume and

value of inputs purchased and, again, must be provided for each of the past five years. The total size of the domestic market must be provided. The source(s) of the data relied upon in estimating market shares and total market sizes must be provided.

17. The response must address the ability of suppliers to switch from supplying inputs to the merger parties to other avenues, the ability of competitors in the relevant market(s) to increase supply, the ease with which customers could change suppliers including any switching costs that they would incur, whether goods and services produced in the relevant market(s) should be considered homogeneous or whether there are variations in price or quality and whether the relevant market(s) are characterised by brand loyalty. The response must also discuss whether the relevant market(s) are characterised by countervailing power, the market participants who are said to have such power and the extent that such power would be likely to constrain the merger parties post-acquisition.
18. The response must cover whether it is viable for customers to import substitutes and the origin of imports, and address issues including but not limited to: options for the transportation of imports (for example, air, sea or rail); transport costs; whether the product is a high or low value product; whether the product is high or low density; and whether the product is durable enough to be transported without damage or deterioration in quality. The response must also give details of historical import levels for the past five years and the source of the information provided. The response must include the outcomes of any anti-dumping investigations concluded in the past five years.
19. The response must provide details of the price of actual or potential imports (including additional costs such as freight and customs duties), whether existing import suppliers can accommodate a significant expansion in capacity without the need for significant investment and whether import competition would provide a constraint on the merged firm via a downstream market. The response must also include contact details of existing importers and their customers.



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20. The response must cover whether it is viable for suppliers to export to alternative purchasers and the likely export markets, and address issues including, but not limited to, the following:

- options for the transportation of exports (for example, air, sea or rail);
- transport costs;
- whether the product is a high or low value product;
- whether the product is high or low density;
- whether the product is durable enough to be transported without damage or deterioration in quality.

The response must also give details of historical export levels for the past five years and the source of the information provided.

21. The response must include contact details of existing exporters.

22. The response must include reference to the following:

- both the nature and height of barriers to entry and expansion;
- details of exit, entry and expansion in the relevant market(s) in the previous five years;
- any incentives or disincentives for new entry;
- how long it would take for a new entrant to establish itself as a vigorous and effective competitor.

Barriers which must be addressed include, but are not limited to, the following:

- sunk costs in production capacity;
- accessing shelf space;
- advertising and promotion;
- regulatory restrictions;
- requirements for scarce inputs;
- brand loyalty;
- minimum efficient scales of operation;
- goodwill;
- access to intellectual property; and
- the potential response of incumbents to new entry.

23. The response must include references including, but not limited to, the following:
- growth;
  - levels of innovation;
  - technological change; and
  - product and service differentiation, in the relevant market(s).
24. The response must refer to current and historical pricing and purchasing behaviour, its record of innovation, its growth relative to the growth of the relevant market(s), and its history of independent behaviour.
25. The response must indicate the extent to which the Applicant buys from, or sells to, the Target raw materials, supplies, services, capital or finished products for resale.
26. The response must discuss factors conducive to coordination in a market including, but not limited to, the following:
- the number of participants in the relevant market(s);
  - transparency;
  - homogeneity of product;
  - homogeneity of firms;
  - the size and frequency of purchases;
  - the presence of the same firms in more than one market.
27. The response must address the complementarity that occurs where there is significant commonality of customers' products and whether the strength of demand for one product is positively correlated with the strength of demand for another, either because the products form part of a range that distributors need to carry or because they must be consumed together for technical reasons.
28. The response must address the circumstances where two or more products are or could be supplied only as a bundle (pure bundling) or, if supplied individually, are also offered as a bundle at a price that is lower than the price charged if sold individually (mixed bundling). The response must also address circumstances where customers seeking to acquire one product are required also to purchase a second product, or carry amounts of the second product (tying).

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**Form W      Application for review of merger  
clearance**  
(regulation 73)

**Form W**

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 111 (1)*

**APPLICATION TO THE TRIBUNAL FOR REVIEW OF  
A MERGER CLEARANCE**

PLEASE FOLLOW DIRECTIONS TO THIS FORM

1. I (here insert the name and address of applicant – where the applicant is a corporation, the corporation's name must be inserted here, not the name of an officer of the corporation) hereby apply to the Australian Competition Tribunal pursuant to section 111 of the *Trade Practices Act 1974* for a review of the determination of the Australian Competition and Consumer Commission dated  
  
the ..... day of ..... 20..... (Commission file No.....).
2. I am the applicant for the clearance to which the determination relates. The determination was in respect of (here delete whichever is not applicable):
  - (a) an application for clearance under section 95AC; or
  - (b) an application for minor variation of a clearance under section 95AR; or
  - (c) an application for revocation of a clearance under subsection 95AS (1); or
  - (d) an application for revocation of a clearance and a substitution of another clearance under subsection 95AS (1); or
  - (e) the revocation of a clearance under subsection 95AS (5); or
  - (f) the revocation and substitution of a clearance under subsection 95AS (5).

3. I am dissatisfied with the determination of the Commission in the following respects:

.....  
.....  
.....  
(See Direction 1 of this Form)

4. The determination I am seeking from the Tribunal is as follows:

.....  
.....  
.....

5. Attachments are as follows (See Directions 2 and 3 of this Form):

- (a) a copy of the Commission's determination;
- (b) particulars of the facts upon which I intend to rely in support of the application for review;
- (c) particulars of the contentions and grounds upon which I intend to rely in support of the application for review;
- (d) a statement of the issues as I see them;
- (e) a list of any information that was referred to in the Commission's reasons for making the determination which was not information given to the Commission in connection with the making of the determination;
- (f) a signed undertaking to the Commission under section 87B of the Act to not make the acquisition while the application for review of a clearance is being considered by the Tribunal.

6. My address for service of documents is (here insert address in Australia at which documents may be served for the purpose of proceedings):

.....  
.....  
.....

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Dated this ..... day of ..... 20.....

Signed by/on behalf of the Applicant

.....  
(Signature)

.....  
(Full Name)

*Note* If the Applicant is a corporation, state position occupied in the corporation by person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

## **DIRECTIONS**

1. In completing this part, the applicant must include references to particular paragraphs and pages in the determination for which review is sought.
2. If the applicant wishes to rely upon or refer to:
  - (a) information or documents given to the Commission in connection with the making of the determination; or
  - (b) information or documents referred to in the Commission's reasons for making the determination which was not given to the Commission in connection with the making of the determination;

such information and the passages in the documents to which reference is proposed to be made by the applicant must be specifically identified and, if necessary, reference to page and paragraph numbers must be given.

3. If, to the best of the applicant's knowledge, any document that is referred to or relied upon by the applicant in support of this application was not in the possession of the Commission at the time of making the determination for which review is sought, this fact must be stated.

*Trade Practices Act 1974*

**Undertaking to the Australian Competition and Consumer  
Commission given for the purposes of section 87B**

**by**

**[Insert name of company] (ACN [Insert ACN])**

1. This undertaking (the Undertaking) is given to the Australian Competition and Consumer Commission (the Commission) by [company name, company ACN] of [company address] under section 87B of the *Trade Practices Act 1974* (the *Act*).
2. [Company name] has made an application pursuant to section 111 of the Act for review of a merger clearance.
3. [Company name] hereby undertakes that it will not make the acquisition the subject of the application referred to in paragraph 2 while the application is being considered by the Australian Competition Tribunal.
4. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by [company name]; and
  - (b) the Commission accepts the Undertaking so executed.
5. [Company name] acknowledges that the Commission will make this Undertaking available for public inspection.

**EXECUTED BY** [Company name and ACN] pursuant to section 127 (1) of the *Corporations Act 2001*.

.....  
Signature of Authorised Person

.....  
Signature of Authorised Person

.....  
Office Held

.....  
Office Held

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.....  
(Print) Name of Authorised Person      (Print) Name of Authorised Person

This [insert day] day of [insert month] [insert year].

**ACCEPTED BY THE COMMISSION PURSUANT TO SECTION  
87B OF THE ACT**

.....  
Commission Chairperson

## Schedule 1A      **Matters for which no fee is payable**

(subregulation 28 (4))

1. An application (a ***new application***) made for the purposes of the Act if:
  - (a) the person making the new application has, at the same time or previously, made an application for the purposes of the Competition Code; and
  - (b) the applications relate to the same conduct or matter in the same market (or closely related markets); and
  - (c) the new application is made not later than 14 days after the previous application (or the last of the previous applications).
2. An application (a ***new application***) made for the purposes of the Competition Code if:
  - (a) the person making the new application has, at the same time or previously, made an application for the purposes of the Act; and
  - (b) the applications relate to the same conduct or matter in the same market (or closely related markets); and
  - (c) the new application is made not later than 14 days after the previous application (or the last of the previous applications).
3. A notice (a ***new notice***) given for the purposes of the Act if:
  - (a) the person giving the new notice has, at the same time or previously, given a notice for the purposes of the Competition Code; and
  - (b) the notices relate to the same conduct in the same market (or closely related markets); and
  - (c) the new notice is given not later than 14 days after the previous notice (or the last of the previous notices).



4. A notice (a ***new notice***) given for the purposes of the Competition Code if:
- (a) the person giving the new notice has previously given a notice for the purposes of the Act; and
  - (b) the notices relate to the same conduct in the same market (or closely related markets); and
  - (c) the new notice is given not later than 14 days after the previous notice (or the last of the previous notices).

## Schedule 1B Fees payable to Commission or Tribunal for applications and notices

(subregulation 28 (5))

Item	Application or notice	Fee (\$)	Concessional fee (\$)
1	Application for an authorisation under subsection 88 (1A) or (1) of the Act	7 500	1 500
2	Application for an authorisation under subsection 88 (5) of the Act	7 500	1 500
3	Application for an authorisation under subsection 88 (7) of the Act	7 500	1 500
4	Application for an authorisation under subsection 88 (7A) of the Act	7 500	1 500
5	Application for an authorisation under subsection 88 (8) of the Act	7 500	1 500
6	Application for authorisation under subsection 88 (8A) of the Act	7 500	1 500
7	Application for an authorisation under subsection 88 (9) of the Act	\$25 000	No concessional fee
7AA	Application for revocation of an authorisation granted under subsection 88 (9) of the Act and substitution of a new authorisation under section 91C of the Act	\$25 000	No concessional fee
7A	Application for revocation of non-merger authorisation and substitution of a non-merger authorisation under section 91C of the Act	\$2 500	0
8	Any notice under subsection 93 (1) of the Act about conduct of a kind mentioned in:	2 500	500

Item	Application or notice	Fee (\$)	Concessional fee (\$)
	(a) subsection 47 (2), (3), (4) or (5) of the Act; or		
	(b) paragraph 47 (8) (a) or (b) of the Act; or		
	(c) paragraph 47 (9) (a), (b) or (c) of the Act		
9	Notice, given under subsection 93 (1) of the Act about conduct of a kind mentioned in: (a) subsection 47 (6) or (7) of the Act; or (b) paragraph 47 (8) (c) of the Act; or (c) paragraph 47 (9) (d) of the Act	100	100
10	Notice of collective bargaining under section 93AB of the Act	\$1 000	0
11	Application for merger clearance under section 95AD of the Act	\$25 000	No concessional fee
12	Application for revocation of merger clearance and substitution of new merger clearance under subsection 95AS (1) of the Act	\$25 000	No concessional fee
13	Application for merger authorisation under section 95AU of the Act	\$25 000	No concessional fee
14	Application for revocation of merger authorisation and substitution of new merger authorisation under subsection 95AZM (1) of the Act	\$25 000	No concessional fee

*Note for item 7A* — this item does not apply to a revocation and substitution of a non-merger authorisation initiated by the Commission under section 91C.

*Note for item 12* — this item does not apply to a revocation and substitution proposed by the Commission under subsection 95AS (5).

*Note for item 14* — this item does not apply to a revocation and substitution proposed by the Commission under subsection 95AZM (6).

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## Schedule 2      Fees — registration of conference agreements

(regulation 31)

Column 1 Matter	Column 2 Fee
	\$
1.      Application for a copy of a part of an entry in a register or a part of a conference agreement file	30
2.      Application for a copy of the whole of an entry in a register or the whole of a conference agreement file	60
3.      Application for provisional registration of a conference agreement	360
4.      Application for final registration of a conference agreement	210
5.      Application for registration of ocean carrier's agent	100

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## **Schedule 3      Forms — registration of conference agreements**

### **Form 1      Application for provisional registration of a conference agreement**

(regulation 38)

*Trade Practices Act 1974*

Application for provisional registration of a conference agreement

Name of applicant(s):

Address of applicant(s):

[Here insert particulars specified in regulation 38]

Signature of applicant(s):

Date:

### **Form 2      Application for final registration of a conference agreement**

(regulation 40)

*Trade Practices Act 1974*

Application for final registration of a conference agreement

Name of applicant(s):

Address of applicant(s):

[Here insert particulars specified in regulation 40]

Signature of applicant(s):

Date:

**Form 3      Abstract of confidential parts of  
agreement**

(regulation 41)

*Trade Practices Act 1974*

Abstract of confidential parts of agreement

Name of party making request:

Title of conference:

[Here describe material covered by confidential parts of agreement]

Signature of applicant:

Date:

**Form 4      Notice of the happening of an affecting  
event**

(regulation 42)

*Trade Practices Act 1974*

Notice of the happening of an affecting event

Name of party giving notice:

Title of conference agreement:

[Here insert particulars specified in regulation 42]

Signature of party giving notice:

Date:

**Form 5      Offer to give undertaking**

(regulation 43)

*Trade Practices Act 1974*

Offer to give undertaking

Provision of the Act under which offer made:

Names of      \*parties to agreement:

\*ocean carrier:

[Here insert particulars specified in regulation 43]

Signatures of parties:

Date:

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**Form 6      Application by ocean carrier for  
registration of agent**

(regulation 44)

*Trade Practices Act 1974*  
(section 10.70)

Application by ocean carrier for registration of agent

Names of applicant:

[Here insert particulars specified in regulation 44]

Signatures of applicant:

Date:

**Form 7      Notice to change of agent, change of  
address or change of particulars**

(regulation 45)

*Trade Practices Act 1974*  
(section 10.72)

Notice to change of agent, change of address or change of particulars

Name of ocean carrier:

[Here insert particulars specified in regulation 45]

Signature of ocean carrier:

Date:

**Table of Instruments****Notes to the *Trade Practices Regulations 1974*****Note 1**

The *Trade Practices Regulations 1974* (in force under the *Trade Practices Act 1974*) as shown in this compilation comprise Statutory Rules 1974 No. 170 amended as indicated in the Tables below.

**Table of Instruments**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i> or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
1974 No. 170	25 Sept 1974	25 Sept 1974	
1974 No. 175	1 Oct 1974	1 Oct 1974	—
1974 No. 247	23 Dec 1974	23 Dec 1974	—
1975 No. 13	11 Feb 1975	11 Feb 1975	—
1978 No. 212	7 Nov 1978	7 Nov 1978	—
1979 No. 1	17 Jan 1979	17 Jan 1979	—
1979 No. 87	14 June 1979	14 June 1979	—
1980 No. 39	11 Mar 1980	11 Mar 1980	—
1982 No. 68	19 Mar 1982	19 Mar 1982	—
1989 No. 199	31 July 1989	1 Aug 1989	—
1992 No. 71	19 Mar 1992	1 Apr 1992	—
1992 No. 92	14 Apr 1992	14 Apr 1992	—
1993 No. 21	11 Feb 1993	11 Feb 1993	—
1995 No. 248	16 Aug 1995	17 Aug 1995 (see r. 1)	—
1995 No. 330	3 Nov 1995	6 Nov 1995 (see r. 1 and <i>Gazette</i> 1995, No. S423)	—
1996 No. 20	31 Jan 1996	31 Jan 1996	—
1997 No. 53	12 Mar 1997	12 Mar 1997	—
1997 No. 86	16 Apr 1997	16 Apr 1997	—
1997 No. 322	27 Nov 1997	27 Nov 1997	—
1998 No. 365	22 Dec 1998	22 Dec 1998	—
1999 No. 251	27 Oct 1999	27 Oct 1999	—
2000 No. 163	28 June 2000	1 July 2000	—
2000 No. 164	28 June 2000	1 July 2000	—
2000 No. 186	12 July 2000	12 July 2000	—
2001 No. 40	2 Mar 2001	2 Mar 2001	—
2001 No. 57	29 Mar 2001	29 Mar 2001	—



**Table of Instruments**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i> or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
2001 No. 74	5 Apr 2001	5 Apr 2001	—
2001 No. 149	20 June 2001	20 June 2001	—
2001 No. 226	5 Sept 2001	5 Sept 2001	—
2002 No. 22	21 Feb 2002	21 Feb 2002	—
2005 No. 118	9 June 2005 (see F2005L01374)	10 June 2005	—
2005 No. 145	17 June 2005 (see F2005L01372)	18 June 2005	—
2006 No. 98	10 May 2006 (see F2006L01445)	11 May 2006	—
2006 No. 370	14 Dec 2006 (see F2006L04027)	1 Jan 2007 (see r. 2)	—
2007 No. 45	26 Mar 2007 (see F2007L00708)	27 Mar 2007	—
2007 No. 78	30 Mar 2007 (see F2007L00836)	7 Apr 2007	—
2007 No. 205	29 June 2007 (see F2007L01961)	5 July 2007	—
2007 No. 228	24 July 2007 (see F2007L02257)	25 July 2007	—
2007 No. 332	28 Sept 2007 (see F2007L03796)	5 Oct 2007	—
2007 No. 359	19 Oct 2007 (see F2007L04134)	25 Oct 2007	—
2008 No. 16	6 Mar 2008 (see F2008L00671)	7 Mar 2008	—
2008 No. 96	3 June 2008 (see F2008L01956)	12 June 2008	—
2008 No. 137	26 June 2008 (see F2008L02295)	Rr. 1–3 and Schedule 1: 27 June 2008 R. 4 and Schedule 2: 1 July 2008 (see r. 2 (b))	—
2009 No. 87	15 May 2009 (see F2009L01832)	13 June 2009	—
2009 No. 159	25 June 2009 (see F2009L02501)	1 July 2009 (see r. 2 and F2009L02489)	—
2009 No. 178	10 July 2009 (see F2009L02697)	24 July 2009 (see r. 2)	—
2010 No. 123	7 June 2010 (see F2010L01521)	Rr. 1–3 and Schedule 1: 8 June 2010 R. 4 and Schedule 2: (see r. 2 (b) and Note 2)	—

## Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
2010 No. 124	7 June 2010 (see F2010L01520)	8 June 2010	—

**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
Heading to Part 1 .....	ad. 1989 No. 199
R. 1 .....	rs. 1998 No. 365
R. 2 .....	am. 1979 No. 1; 1989 No. 199; 1995 No. 248; 1997 No. 322; 1998 No. 365; 2008 No. 137; 2009 No. 159
R. 4 .....	am. 1995 No. 330
<b>Part 2</b>	
Heading to Part 2 .....	ad. 1989 No. 199
R. 4A .....	ad. 1989 No. 199
R. 5 .....	am. 1979 No. 1; 1995 No. 330
R. 6AA .....	ad. 2005 No. 118 am. 2008 No. 137; 2009 No. 159
Note to r. 6AA .....	am. 2008 No. 137; 2009 No. 159
R. 6A .....	ad. 1995 No. 330
R. 6B .....	ad. 1995 No. 330
R. 6C .....	ad. 1996 No. 20
R. 6D .....	ad. 1996 No. 20
R. 6E .....	ad. 1996 No. 20
R. 6F .....	ad. 1996 No. 20 am. 2000 No. 163
R. 6FA .....	ad. 2010 No. 124
R. 6FB .....	ad. 2010 No. 124
R. 6FC .....	ad. 2010 No. 124
R. 6G .....	ad. 1996 No. 20 am. 2000 No. 163
R. 6H .....	ad. 1996 No. 20
R. 6I .....	ad. 1996 No. 20
R. 6J .....	ad. 1997 No. 86 am. 2005 No. 145
R. 7 .....	am. 1979 No. 1 rs. 1980 No. 39 am. 1995 No. 248; 1997 No. 53 rep. 2006 No. 370 ad. 2008 No. 137 am. 2009 No. 159
R. 7A .....	ad. 2008 No. 137 rs. 2008 No. 137 am. 2009 No. 159
R. 7B .....	ad. 2008 No. 137

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 7C.....	ad. 2008 No. 137
R. 7D.....	ad. 2008 No. 137
R. 8 .....	ad. 1978 No. 212 rep. 1979 No. 1 ad. 1980 No. 39
R. 8A.....	ad. 2006 No. 98 am. 2007 Nos. 78, 205, 332 and 359 rs. 2008 No. 96; 2009 No. 87; 2010 No. 123
R. 9 .....	am. 1979 No. 1 rs. 1980 No. 39 am. 1995 No. 248
R. 10 .....	rep. 1979 No. 1
R. 12 .....	am. 1979 No. 1
R. 13 .....	am. 1979 No. 1; 2006 No. 370
R. 15 .....	am. 1979 No. 1; 1995 No. 330
R. 17 .....	am. 1979 No. 1; 1996 No. 20
R. 18 .....	am. 1979 No. 1; 1996 No. 20
R. 20 .....	am. 1979 No. 1; 1995 No. 248; 1997 No. 322; 2006 No. 370
R. 20A.....	ad. 1996 No. 20 am. 1997 No. 322
R. 22 .....	am. 1996 No. 20
R. 22A.....	ad. 1996 No. 20
R. 22B.....	ad. 1996 No. 20 am. 1997 No. 322
R. 24 .....	am. 1979 No. 1; 2006 No. 370
R. 25 .....	am. 1979 No. 1
R. 26 .....	am. 1979 No. 1; 2006 No. 370
R. 28 .....	am. 1979 No. 1 rs. 1992 No. 92 am. 1993 No. 21; 1995 No. 248; 1996 No. 20; 1997 No. 322; 1998 No. 365; 2001 No. 226; 2006 No. 370; 2007 No. 45; 2008 No. 16; 2009 No. 178
Note to r. 28.....	ad. 1997 No. 322
R. 28A.....	ad. 1974 No. 175 am. 1974 No. 247; 1975 No. 13 rep. 1979 No. 87 ad. 1992 No. 92
R. 28AA .....	ad. 2000 No. 164 rep. 2002 No. 22 ad. 2007 No. 228
<b>Part 2A</b>	
Part 2A.....	ad. 1996 No. 20

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 28B.....	ad. 1996 No. 20 am. 1997 No. 322
R. 28C.....	ad. 1996 No. 20 am. 1997 No. 322
R. 28D.....	ad. 1996 No. 20
R. 28E.....	ad. 1996 No. 20
R. 28F.....	ad. 1996 No. 20
R. 28G.....	ad. 1996 No. 20
R. 28H.....	ad. 1996 No. 20
R. 28I.....	ad. 1996 No. 20
R. 28J.....	ad. 1996 No. 20
R. 28K.....	ad. 1996 No. 20
R. 28L.....	ad. 1996 No. 20
R. 28M.....	ad. 1996 No. 20
R. 28N.....	ad. 1996 No. 20
R. 28P.....	ad. 1996 No. 20
R. 28Q.....	ad. 1996 No. 20
<b>Part 2B</b>	
Part 2B.....	ad. 1997 No. 322
<b>Division 1</b>	
R. 28R.....	ad. 1997 No. 322
<b>Division 2</b>	
R. 28S.....	ad. 1997 No. 322
<b>Division 3</b>	
R. 28T.....	ad. 1997 No. 322
R. 28U.....	ad. 1997 No. 322
R. 28V.....	ad. 1997 No. 322
R. 28W.....	ad. 1997 No. 322 am. 2000 No. 163
R. 28X.....	ad. 1997 No. 322 am. 2000 No. 163
<b>Division 4</b>	
R. 28Y.....	ad. 1997 No. 322
R. 28Z.....	ad. 1997 No. 322
<b>Part 3</b>	
Heading to Part 3.....	ad. 1989 No. 199
R. 29.....	rs. 1989 No. 199
R. 30.....	rs. 1989 No. 199; 2001 No. 57
R. 31.....	rs. 1989 No. 199

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 32 .....	rs. 1989 No. 199 am. 2001 No. 57
Heading to r. 33 .....	rs. 2001 No. 57
R. 33 .....	rs. 1989 No. 199 am. 2001 No. 57
R. 34 .....	rs. 1989 No. 199 am. 2001 No. 57
R. 35 .....	ad. 1989 No. 199 am. 2001 No. 57
R. 36 .....	ad. 1989 No. 199 am. 2001 No. 57
R. 37 .....	ad. 1989 No. 199 am. 1995 No. 330
R. 38 .....	ad. 1989 No. 199 am. 1992 No. 71; 1995 No. 330; 2001 No. 57
R. 38A .....	ad. 2001 No. 57
R. 39 .....	ad. 1989 No. 199 rs. 2001 No. 57
R. 40 .....	ad. 1989 No. 199 am. 1992 No. 71; 2001 No. 57
R. 41 .....	ad. 1989 No. 199
R. 42 .....	ad. 1989 No. 199 am. 1992 No. 71; 2001 No. 57
R. 43 .....	ad. 1989 No. 199 am. 2001 No. 57
R. 44 .....	ad. 1989 No. 199 am. 1992 No. 71
R. 45 .....	ad. 1989 No. 199 am. 1992 No. 71; 2001 No. 57
R. 46 .....	ad. 1989 No. 199 am. 1995 No. 330; 2001 No. 57
R. 47 .....	ad. 1989 No. 199 am. 1992 No. 71
<b>Part 4</b>	
Part 4 .....	ad. 1999 No. 251
R. 48 .....	ad. 1999 No. 251
R. 49 .....	ad. 1999 No. 251 am. 2000 No. 163
R. 50 .....	ad. 2000 No. 163
R. 51 .....	ad. 2000 No. 163
R. 52 .....	ad. 2000 No. 163 am. 2001 No. 74

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 53 .....	ad. 2000 No. 163 am. 2001 No. 40
R. 54 .....	ad. 2000 No. 163 am. 2000 No. 186
R. 55 .....	ad. 2000 No. 163
R. 56 .....	ad. 2000 No. 163
R. 57 .....	ad. 2000 No. 163
R. 58 .....	ad. 2000 No. 186
R. 59 .....	ad. 2001 No. 149
R. 60 .....	ad. 2001 No. 149
<b>Part 5</b>	
Part 5 .....	ad. 2006 No. 370
R. 70 .....	ad. 2006 No. 370 am. 2009 No. 178
R. 71 .....	ad. 2006 No. 370
R. 71A .....	ad. 2007 No. 45
R. 71B .....	ad. 2007 No. 45
R. 71C .....	ad. 2007 No. 45
R. 71D .....	ad. 2007 No. 45
R. 72 .....	ad. 2006 No. 370 rs. 2008 No. 16
R. 73 .....	ad. 2006 No. 370
R. 74 .....	ad. 2006 No. 370
R. 75 .....	ad. 2006 No. 370
R. 76 .....	ad. 2006 No. 370
<b>Schedule 1</b>	
Heading to Schedule .....	rep. 1995 No. 248
Heading to Schedule 1 .....	ad. 1995 No. 248
Schedule .....	rs. 1979 No. 1 am. 1982 No. 68
Schedule 1 .....	am. 1995 Nos. 248 and 330; 1996 No. 20; 1997 Nos. 53 and 322
Forms 1–10 .....	1974 No. 170 rep. 1979 No. 1
<b>Part 1</b>	
Heading to Part 1 .....	ad. 2006 No. 370
Form AA .....	ad. 1996 No. 20
<b>Part 2</b>	
Heading to Part 2 .....	ad. 2006 No. 370

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
Heading to Form A.....	rs. 2009 No. 178
Form A .....	ad. 1979 No. 1 am. 1995 Nos. 248 and 330; 1997 No. 53 rs. 2006 No. 370 am. 2007 No. 178
Heading to Form B.....	rs. 2009 No. 178
Form B .....	ad. 1979 No. 1 am. 1995 No. 330 rs. 2006 No. 370 am. 2009 No. 178
Form C .....	ad. 1979 No. 1 am. 1995 Nos. 248 and 330 rs. 2006 No. 370
Form D .....	ad. 1979 No. 1 am. 1995 Nos. 248 and 330 rs. 1997 No. 53; 2006 No. 370
Form DA.....	ad. 1997 No. 53 rs. 2006 No. 370
Form E .....	ad. 1979 No. 1 am. 1995 No. 330 rs. 2006 No. 370
Form EA.....	ad. 1995 No. 248 am. 1995 No. 330; 1997 No. 53 rs. 2006 No. 370
Form F .....	ad. 1979 No. 1 am. 1995 Nos. 248 and 330 rep. 2006 No. 370
Form FA .....	ad. 2006 No. 370
Form FB .....	ad. 2006 No. 370
Form FC.....	ad. 2006 No. 370
<b>Part 3</b>	
Heading to Part 3.....	ad. 2006 No. 370
Form G.....	ad. 1979 No. 1 am. 1982 No. 68; 1995 Nos. 248 and 330 rs. 2006 No. 370
Form GA .....	ad. 2006 No. 370 am. 2009 No. 178
<b>Part 4</b>	
Heading to Part 4.....	ad. 2006 No. 370
Form H.....	ad. 1979 No. 1 am. 1995 No. 330
Form I.....	ad. 1979 No. 1 am. 1995 No. 330; 1996 No. 20



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
Form J.....	ad. 1979 No. 1 am. 1995 Nos. 248 and 330; 1996 No. 20; 2006 No. 370
Form JA .....	ad. 1996 No. 20
Form JAA .....	ad. 1997 No. 322
Form JB .....	ad. 1996 No. 20
Form JC .....	ad. 1996 No. 20
Form JD .....	ad. 1997 No. 322
Form JE .....	ad. 1997 No. 322
Form K .....	ad. 1979 No. 1 am. 1995 No. 330; 1996 No. 20
Form L.....	ad. 1996 No. 20
Form LA .....	ad. 1997 No. 322
Form M.....	ad. 1997 No. 322
<b>Part 5</b>	
Heading to Part 5.....	ad. 2006 No. 370
Form N.....	ad. 2006 No. 370 am. 2007 No. 45
Form O.....	ad. 2006 No. 370 am. 2007 No. 45
Form P .....	ad. 2006 No. 370
Form Q.....	ad. 2006 No. 370
Form R .....	ad. 2006 No. 370 am. 2007 No. 45
Form S .....	ad. 2006 No. 370 am. 2007 No. 45
Form T .....	ad. 2006 No. 370
Form U.....	ad. 2006 No. 370
Form V .....	ad. 2006 No. 370 am. 2007 No. 45
Form W .....	ad. 2006 No. 370 am. 2007 No. 45
<b>Schedule 1A</b>	
Heading to Schedule 1A .....	rs. 1998 No. 365; 2001 No. 226
Schedule 1A .....	ad. 1993 No. 21 am. 1995 No. 248; 1998 No. 365 rs. 2001 No. 226
<b>Schedule 1B</b>	
Heading to Schedule 1B .....	rs. 1998 No. 365; 2001 No. 226; 2007 No. 45
Schedule 1B .....	ad. 1993 No. 21 am. 1995 No. 248; 1998 No. 365 rs. 2001 No. 226 am. 2006 No. 370; 2007 No. 45; 2009 No. 178

**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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**Provision affected****How affected****Schedule 2**

Heading to Schedule 2..... am. 1995 No. 248

Schedule 2..... ad. 1989 No. 199  
rs. 1992 No. 71  
am. 2001 No. 57

**Schedule 3**

Heading to Schedule 3..... am. 1995 No. 248

Schedule 3..... ad. 1989 No. 199

Form 1..... ad. 1989 No. 199

Form 2..... ad. 1989 No. 199

Form 3..... ad. 1989 No. 199

Form 4..... ad. 1989 No. 199

Form 5..... ad. 1989 No. 199

Form 6..... ad. 1989 No. 199

Form 7..... ad. 1989 No. 199

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**Note 2**

*Trade Practices Amendment Regulations 2010 (No. 1)* (2010 No. 123)

The following amendments commence on 1 July 2010:

**Schedule 2****[1] Subregulation 8A (1), table, after item 25**

*insert*

- |    |   |             |
|----|---|-------------|
| 26 | The Law Institute of Victoria Scheme, published in the Victorian Government Gazette No. G 10, 11 March 2010 | 1 July 2010 |
|----|---|-------------|

**[2] After subregulation 8A (3)**

*insert*

- (4) Item 26 of the table in subregulation (1) ceases to have effect on 1 July 2012.

As at 8 June 2010 the amendments are not incorporated in this compilation.