



Our ref: 62113
Contact officer: David Hatfield
Contact phone: (02) 6243 1266

23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
tel: (02) 6243 1111
www.accc.gov.au

23 November 2017

Mark McCowan
Partner
Corrs Chambers Westgarth

By email

Dear Mr McCowan

**BP Australia Pty Ltd & Ors applications for authorisation A91580, A91581 & A91582—
exclusion of certain interested party submissions from the public register**

I refer to your submission dated 30 October 2017 in regard to the applications for authorisation lodged by BP Australia Pty Ltd & Ors, and our phone conversation of 10 November 2017.

At page 4 of the Applicants' public submission dated 30 October 2017 you requested that the ACCC confirm its position in relation to the confidential submission received before the draft determination, and in relation to any confidential submissions received after the draft determination.

As you are aware, the ACCC is generally required under section 89 of the *Competition and Consumer Act 2010* (Cth) (**the Act**) to place documents provided to it in relation to an application for authorisation on the ACCC's public register. This requirement is subject to certain exceptions outlined in section 89.

Under section 89(5A)(a) of the Act, if it is requested to do so the ACCC is required to exclude information if it contains a secret formula or process; the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or the current costs of manufacturing, producing or marketing goods or services.

Under section 89(5A)(b) of the Act, if it is requested to do so the ACCC may, if it is satisfied that it is desirable to do so by reason of the confidential nature of the matters contained in a document or part thereof, exclude a document or part thereof from the public register.

Finally, under section 89(5D), the ACCC has broad discretion to exclude a document or oral submission from the public register where it is satisfied that it is desirable to do so for any reason other than the confidential nature of matters contained in a document or oral submission.

As you are aware, the ACCC received one confidential submission prior to the draft determination.

I also confirm that following the draft determination the ACCC received three submissions on a confidential basis, which have been excluded from the public register.

As a person authorised to make a decision for and on behalf of the ACCC in relation a request to exclude information from the public register under section 89 of the Act, I assessed the requests referred to above and was satisfied that the relevant statutory tests were met for excluding the material from the public register.

As you would be aware, the ACCC seeks to have as much information as possible available on the public register for all interested parties to review and respond to.

We also advise parties that seek to have material excluded from the public register that the ACCC may place less weight on their submissions if the ACCC is unable to test the information with market participants.

The ACCC also seeks to provide the Applicants and interested parties with an opportunity to respond to issues raised in submissions excluded from the public register where possible by de-identifying the information and asking for feedback or a response.

The relevant issues raised in the confidential submission received prior to the draft determination were included in our draft determination, thereby providing the Applicants and others with an opportunity to respond.

In relation to the submissions received after the draft determination and excluded from the public register, some of the issues raised have also been raised in public submissions. All other relevant issues raised in these excluded submissions have been put to the Applicants directly by the ACCC in meetings, calls, or letters.

I am satisfied that this has afforded the Applicants (or interested parties as applicable) with an opportunity to respond to those issues.

In the event that the ACCC receives and excludes from the public register any further submissions from interested parties, we will similarly bring to the Applicants' attention any outstanding key issues arising from such submissions.

This letter will be placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact me on (02) 6243 1393 or David Hatfield on (02) 6243 1266.

Yours sincerely



David Jones
General Manager
Adjudication