

MinterEllison

1 December 2023

Mr Tony Hilton
Director | Competition Exemptions
Australian Competition and Consumer Commission
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Dear Mr Hilton

Application for minor variation of authorisation A40062 – A40070 and authorisation A91205 - A91207

1. We refer to the application made on 20 July 2023 under subsection 91A(1) of the Competition and Consumer Act 2010 (Cth) (**CCA**) for a minor variation to authorisation no. A40062 – A40070 dated 3 March 1994 (**1994 Authorisation**) and authorisation no. A91205 – A91207 dated 2 June 2010 (**2010 Authorisation**).
2. On 29 November 2023, the ACCC requested further information about the extent to which the applicants are seeking to vary the 1994 Authorisation and the 2010 Authorisation in respect of the different proposed amendments to the OMA.
3. We have set out in the two tables in the **Annexure** to this letter the proposed amendments to the OMA that involve proposed variations to the 1994 Authorisation and to the 2010 Authorisation.
4. When identifying whether an amendment involves a proposed variation to the 1994 Authorisation or the 2010 Authorisation, we have sought to adopt an approach consistent with that suggested by the ACCC in its email of 29 November 2023 as follows.
 - (a) In the body of the OMA:
 - (i) where a variation to a sub-clause has been authorised in 2010 and/or the sub-clause has been minorly varied in 2015, we have classified the current amendments to those sub-clauses as proposed variations to the 2010 Authorisation (i.e. we have made this assessment at the clause level 3.10, rather than 3 or 3.10(a)(i)); and
 - (ii) where a new sub-clause has been inserted, we have classified this current amendment as a proposed variation to the 2010 Authorisation;
 - (iii) where a sub-clause has not been amended since 1994, we have classified the current amendments to those sub-clauses as a proposed variations to the 1994 Authorisation.
 - (b) For the schedules to the OMA:
 - (i) with the exception of the current amendment to clause 8.2 in Schedule 4, where a schedule has previously been amended in 2010 and/or 2015, we have classified the current amendments to those schedules as proposed variations to the 2010 Authorisation;



- (ii) for the amendment to clause 8.2 in Schedule 4, while variations to Schedule 4 were authorised in 2010 (e.g. clause 9.5 was amended in 2010), we have adopted the approach suggested by the ACCC that it is a proposed variation to the 1994 Authorisation because clause 8.2 itself has not been amended since 1994.
 - (c) For the definitions:
 - (i) where a definition has been either amended itself in 2010 or 2015, or used in a clause that was amended in 2010 or 2015, we have classified the current amendment to that definition (either an amendment, insertion or deletion) as a proposed variation to the 2010 Authorisation;
 - (ii) where a definition has not been amended in 2010 or 2015, or used in a clause that was amended in 2010 or 2015, we have classified the amendment (either an amendment, insertion or deletion) as a proposed variation to the 1994 Authorisation;
 - (iii) where a definition has been inserted into the OMA as a consequence of a new clause, which has been classified as a variation to the 1994 Authorisation, we have also classified the insertion of that definition as a variation to the 1994 Authorisation.
5. Please let us know if the ACCC has any concerns about the approach taken to classifying the amendments as either proposed variations to the 2010 Authorisation or the 1994 Authorisation, or would prefer a different approach be adopted.
6. The Applicants request that the Annexure to this letter be excluded from the public register on the basis that the information contained therein is confidential. The Applicants submit that the information in the Annexure over which confidentiality is claimed is commercially sensitive and its release may give the Applicants' domestic and/or international competitors a commercial advantage. We are instructed that the information over which confidentiality is claimed is not otherwise in the public domain.

If you have any questions or require further information, please do not hesitate to contact us.

Yours faithfully
MinterEllison



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OUR REF: 1408793



