



**Australian
Competition &
Consumer
Commission**

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Our Ref: C2006/1518-19
Contact Officer: Joanne Palisi
Contact Phone: 02 6243 1323

30 July 2008

Regulatory Burdens Review
Productivity Commission
GPO Box 1428
Canberra ACT 2601

By Facsimile: 02 6240 3311

Dear Commissioner

Re: Annual Review of Regulatory Burdens on Business

I refer to the Productivity Commission's draft report 'Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades'. In particular, I refer to the concerns raised by Medicines Australia regarding the reporting requirements imposed as a condition of authorisation of its Code of Conduct and the recommendation by the Productivity Commission that 'the ACCC should work with Medicines Australia to ensure that the specific details that must be disclosed, reporting formats and frequency of reporting impose the least compliance burden'.

I wish to provide further information about the ACCC's role in the authorisation process under the *Trade Practices Act 1974* (the Act) and the disclosure requirements imposed by the Australian Competition Tribunal (the Tribunal) as a condition of authorisation of Medicines Australia's Code of Conduct.

By way of background the ACCC is the independent Australian Government agency responsible for administering the Act. A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC, and the Tribunal on review, to grant protection from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain protection is to apply to the ACCC for what is known as an 'authorisation'.

The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.

On 30 November 2005 Medicines Australia sought authorisation of its Code of Conduct from the ACCC because without authorisation certain provisions of its Code of Conduct may breach the Act.

Following a public and transparent assessment process, the ACCC granted conditional authorisation of the Code of Conduct on 26 July 2006 for three years. Medicines Australia subsequently sought a review of this decision by the Tribunal. While a version of the reporting condition was imposed as a condition of authorisation by the ACCC the Tribunal subsequently imposed a similar requirement as a condition of its authorisation granted on 27 June 2007. Consequently the current authorisation of Medicines Australia's Code has been granted by the Tribunal and the ACCC is not able to vary or amend this authorisation and its conditions.

The reporting condition imposed by the Tribunal requires Medicines Australia to make publicly available on its website completed tables containing information on all education events held by member companies and the type and cost of the hospitality provided.

The Tribunal considered that it was appropriate to impose conditions requiring reporting by the members of Medicines Australia and public disclosure of hospitality benefits conferred by members on healthcare professionals to:

increase the likelihood that the public benefit claimed for the Code is realised in respect of the provisions dealing with the conferral of such benefits on doctors.¹

Further, the Tribunal made the following statement concerning the cost of compliance:

The costs associated with the imposition of a condition such as that proposed by the ACCC have not been quantified. We are satisfied that there would be some administrative cost involved in the companies preparing records of the kind proposed by the ACCC, we are, however, prepared to take notice that such records could be produced, at least in part, as an incident of ordinary budgeting, accounting and internal corporate reporting practices. We do not consider that such burdens are unreasonable having regard to the benefit likely to be derived from the condition.²

If Medicines Australia seeks to have its Code of Conduct authorised after the current Tribunal authorisation expires, or if it wishes to amend its Code of Conduct and retain the protection provided by authorisation, the ACCC would assess the proposed Code of Conduct to determine whether it delivers a net public benefit to justify authorisation. As with any consideration of the appropriateness of imposing conditions of authorisation, the ACCC would have regard to the costs of complying with proposed conditions when assessing future applications by Medicines Australia.

If you have any questions regarding this matter please contact me on 02 6243 1132 or Joanne Palisi on 02 6243 1323.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'R-'. The signature is written in a cursive style with a long horizontal stroke extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch

¹ *Application by Medicines Australia Inc [2007] ACompT4*, paragraph 8.
Application by Medicines Australia Inc [2007] ACompT4, paragraph 363.