

Neilan, Ron

From: Jones, David
Sent: Tuesday, 5 September 2017 5:33 PM
To: Neilan, Ron
Subject: FW: Internal review of disclosure of confidential information [DLM=For-Official-Use-Only]
Attachments: ss 47E(d) & 47C - Internal note reviewing Woolworths disclosure - 21 12 2016.DOCX; ss 47E(d) & 47C Internal note reviewing Woolworths disclosure - 21 12 2016.DOCX.tr5

Security Classification:
For Official Use Only

David Jones
General Manager | Adjudication
T: +61 2 6243 1393 | M: 0466 531 284

From: Camilleri, Lyn
Sent: Wednesday, 21 December 2016 3:43 PM
To: Jones, David
Cc: Mullen, Baethan; Macrae, Tess; Wu, Fei; Neilan, Ron
Subject: Internal review of disclosure of confidential information [DLM=For-Official-Use-Only]

David, attached is a note setting out what we can say about how it came that we published the confidential information. In summary, it seems to be the result of a number of factors:

- Initially including confidential information in staff papers which formed the basis for the DD
- Numerous instances of glitches and crashing in the Word program, in which formatting would change and highlighting would be lost
- Keeping all changes tracked for Commissioners' ease of review, which included the deleted confidential information. This particular sentence somehow lost the tracking and was inadvertently accepted. We cannot determine how this actually happened.
- Substantial last minute changes to the DD and a hard deadline to publish did not allow adequate time to fully proof the document.

We have also set out some preliminary thoughts on changes to practices in this document.

Lyn

Lyn Camilleri
Director | Adjudication
Australian Competition & Consumer Commission
Level 35 | 360 Elizabeth Street Melbourne VIC 3000 | <http://www.accc.gov.au>
T: +61 3 9290 1973 | F: +61 3 9663 3699

(Office hours: I leave the office at 3pm on Thursdays and Fridays)

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1. Review of events

ss 47E(d) & 47G

In our first issues paper to AC (9 Sep),¹ we attached a section of the DD that set out the consultation process to date, which included information that was highlighted as confidential. In the case of Woolworths' submissions, there were six references – of those two were shaded, but four were not – including the sentence that was published. The second issues paper (11 Oct)² also attached draft sections of the DD with confidential information highlighted. All Woolworths references were shaded.

As the document became longer and more complex, Word glitches would occasionally change the formatting and remove the confidential highlighting. At that point, we discussed removing the references to confidential information in the draft determination and extracting them in a separate document.

The references to Woolworths and ss 47E(d) & 47G were deleted on 11 November. For Woolworths, the word 'Woolworths' was searched for and also parts of that word (e.g. 'woolw') in the DD and, at the time, the team was sure that all references to Woolworths had been removed.

The document was heavily marked-up with other changes at this time and also crashing fairly frequently, which led to a new DD being saved on 14 November. This new document still had one of the references (the one that was published) to Woolworths' confidential submission without the confidential highlighting and marked up deletion, which did apply for other references.

We cannot determine at which exact point this reference got back into the document, but possibly a team member tried to delete the paragraph in track changes, which caused the document to freeze and not process the command, or possibly a team member may have used undo to reverse a command that caused Word to freeze, which inadvertently undid one of the deletions.

We did not pick up this reference to Woolworths in subsequent reviews of the DD and the reference to Woolworths was published on 29 November.

2. Next steps

We immediately took down the DD from the public register when we realised the disclosure had occurred. We also discussed with Nerilee Telford of Woolworths whether she would like us to contact third parties who have accessed a copy of the DD with the confidential reference to Woolworths and her preliminary response was that she did not.

We will send a letter to Woolworths from Rami Greiss apologising for the error and outlining the steps taken.

3. Future safeguards

Preventing disclosures

We could consider avoiding the use of confidential information in draft public documents and instead always only include confidential information in separate staff papers.

¹ ADJ16/699.

² ADJ16/836.

This is what we did in our last two staff papers to AC and to the Commission, which both attached public versions of the draft determination and provided any confidential information separately.

Keeping track of confidential information

In complex matters or where there are multiple pieces of confidential information, we could allocate a team member to maintain a continuously updated list of confidential information, including:

- all confidential (whole or part) submissions from interested parties
- confidential file notes of calls and meetings
- all confidential information from the Applicants

This summary could include the content of the confidential information as extracted from the exclusion assessment minutes. See e.g. [ADJ16/1090](#).

Pre-publication review

We may want to set aside at least 30 minutes immediately before publication to conduct a check for the names of parties who have provided confidential information in the document before publication.

A check for names could take less than 30 minutes if we have an up-to-date summary of the parties who have provided confidential information. However, this will not be enough if there are parties who have supplied both public and confidential information, which is often the case. Checking for this will take longer. A more substantive check for confidential information could be expedited with a document summarising the confidential information received.