

PCA Case No. 2012-12

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE AGREEMENT
BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF
AUSTRALIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS,
SIGNED 15 SEPTEMBER 1993 (THE “TREATY”)**

- and -

**THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW RULES
OF ARBITRATION 2010 (“UNCITRAL RULES”)**

-between-

PHILIP MORRIS ASIA LIMITED

(“Claimant”)

-and-

THE COMMONWEALTH OF AUSTRALIA

(“Respondent”, and together with the Claimant, the “Parties”)

**PROCEDURAL ORDER NO. 7
Regarding Amendments to the Timetable**

Date: 31 December 2012

Arbitral Tribunal

Professor Karl-Heinz Böckstiegel (President)
Professor Gabrielle Kaufmann-Kohler
Professor Donald M. McRae

Registry

Permanent Court of Arbitration

WHEREAS in Procedural Order No. 4 dated 26 October 2012, the Tribunal postponed its decision on the Respondent's application for a bifurcated procedure and set out a timetable for, *inter alia*, the submission of the Statement of Claim and the Statement of Defence, up to a hearing on bifurcation (the "**Timetable**");

WHEREAS by letter dated 3 December 2013, the Claimant notified the Tribunal, the Registry, and the Respondent of its having retained new legal counsel in these proceedings and requested that all correspondence should henceforth be directed to the addressees listed in its letter, in accordance with Section 1.9 of Procedural Order No. 6 dated 30 November 2012;

WHEREAS by letter of the same date, the Claimant requested a change of date for the hearing on bifurcation set for 25 and 26 September 2013 due to the unavailability of its new lead counsel, and an extension to submit its Statement of Claim on 28 March 2013, agreeing at the same time to a corresponding change in the Respondent's deadline for filing its Statement of Defence;

WHEREAS by letter dated 12 December 2012, the Respondent submitted its comments on the Claimant's application, noting that, if the Claimant's request for an extension were granted, it would in turn request to submit its Statement of Defence on 23 October 2013;

WHEREAS by letter dated 14 December 2012, the Claimant noted that the Respondent did not object to its application, requested that the Tribunal set 26 November 2013 as the due date for the Claimant's submission on aspects of bifurcation not covered in previous submissions, and suggested possible dates for the hearing on bifurcation;

WHEREAS by letter dated 17 December 2012, the Tribunal informed the Parties that it was "in principle open to granting the requested extensions in view of the consent of both Parties" but noted that in light of the limited availability of its members, such an extension would delay the hearing on bifurcation until any two days between 19 and 25 February 2014 or 4 and 5 March 2014;

WHEREAS the Tribunal accordingly invited the Parties "to re-consider whether their interests would be accommodated without changing the hearing dates presently set for 25 and 26 September 2013" and that, while it preferred an in-person hearing, to discuss the option of proceeding with a hearing via videoconference;

WHEREAS by letter dated 21 December 2012, the Respondent informed the Tribunal that it remained available to proceed based on the Timetable fixed in Procedural Order No. 4 but indicated that the Parties were not able to identify any mutually acceptable alternative to a hearing in February or March 2014;

WHEREAS in the same letter, the Respondent also noted that it was firmly of the view that the hearing on bifurcation should take place in person rather than via videoconference and that it remained open to an earlier hearing date if the venue were in Europe or elsewhere, if the chosen dates were convenient to the Respondent;

WHEREAS by letter dated 21 December 2012, the Claimant maintained its request for an extension to submit its Statement of Claim;

WHEREAS in the same letter, the Claimant informed the Tribunal that it was amenable to holding the hearing on bifurcation on any date between 19 and 25 February 2014, with a preference for the 24 and 25 February 2014;

WHEREAS the Claimant also indicated its openness to hold the hearing in Europe, whether scheduled for February 2014 or earlier, and that, while it considered an in-person hearing preferable, it would be willing to consider the option of proceeding with a hearing via videoconference if such an arrangement provided the Tribunal with greater flexibility to schedule an earlier hearing;

NOW, THEREFORE, THE TRIBUNAL DECIDES AND ORDERS AS FOLLOWS:

Section VI.3 of Procedural Order No. 4 is AMENDED and the following TIMETABLE is set for the further procedure:

3.1 By 28 March 2013, the Claimant shall file its Statement of Claim on all aspects of the dispute together with all evidence (documents, witness statements, expert statements) it wishes to rely on.

3.2 By 23 October 2013, the Respondent shall file its Statement of Defence on all aspects of the dispute together with all evidence (documents, witness statements, expert statements) it wishes to rely on. The Respondent shall also address any aspects of bifurcation not covered in the already completed two rounds on that subject and propose timetables for the two following scenarios:

- a) bifurcation between a first phase on jurisdiction and, should jurisdiction be accepted by the Tribunal, a second phase on the merits, and**
- b) no bifurcation.**

- 3.3 By 26 November 2013, the Claimant shall file a submission on aspects of bifurcation not covered in the already completed two rounds on that subject, in response to the Respondent's preceding submission, and propose timetables for the two scenarios outlined in Paragraph 3.2 above.**
- 3.4 Shortly thereafter, the Tribunal will consult the Parties as to the details of the hearing, either by a telephone conference or by e-mail communication, as considered more appropriate by the Tribunal.**
- 3.5 On 20 February 2014, a hearing on bifurcation and the resulting timetable will be held in Singapore, possibly to be extended to 21 February 2014 if considered appropriate by the Tribunal after consultation with the Parties.**

Dated 31 December 2012



On behalf of the Tribunal

**Karl-Heinz Böckstiegel
President of the Tribunal**