

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
ON 15 SEPTEMBER 1993 (THE “TREATY”)**

- and-

**THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW RULES OF
ARBITRATION AS REVISED 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. 1

Date: 7 June 2012

Arbitral Tribunal

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

Registry

Permanent Court of Arbitration

1. The Parties to the Arbitration:

The Claimant	Solicitors for the Claimant
<p>Philip Morris Asia Limited Level 28 Three Pacific Place 1 Queen's Road East Hong Kong</p>	<p>Mr. Peter O'Donahoo Ms. Sarah Matheson Allens 101 Collins Street Melbourne VIC 3000 Australia Telephone: +61 3 9613 8742 +61 3 9613 8579 Facsimile: +61 3 9614 4661 E-mail: peter.o'donahoo@allens.com.au sarah.matheson@allens.com.au</p> <hr/> <p>Counsel for the Claimant</p> <p>Mr. Joe Smouha QC Essex Court Chambers 24 Lincoln's Inn Fields London WC2A 3EG United Kingdom Telephone: +44 20 7813 8000 Facsimile: +44 20 7813 8080 E-mail: jsmouha@essexcourt.net</p> <p>Mr. David A. R. Williams QC Mr. Simon W. B. Foote Bankside Chambers Level 22, Lumley Centre 88 Shortland Street Auckland 1140 New Zealand Telephone: +64 9 367 6896 +64 9 307 8784 Facsimile: +64 9 367 6895 E-mail: david.williams@darwilliams.co.nz swbf@simonfoote.co.nz</p>
The Respondent	Solicitors for the Respondent
<p>The Commonwealth of Australia</p>	<p>Mr. Simon Daley Australian Government Solicitor Level 42, MLC Centre 19 Martin Place Sydney NSW 2000 Australia Telephone: +61 2 9581 7490 +61 2 6253 7405 Facsimile: +61 2 9581 7778 E-mail: simon.daley@ags.gov.au</p> <p>Ms. Irene Sekler Australian Government Solicitor Lionel Murphy Building 50 Blackall Street</p>

	<p>Barton ACT 2600 Australia Telephone: +61 2 6253 7155 Facsimile: +61 2 6253 7383 E-mail: irene.sekler@ags.gov.au</p>
	<p>Counsel for the Respondent</p> <p>Mr. Stephen Gageler SC Solicitor-General of Australia Attorney-General's Department 3-5 National Circuit Barton ACT 2600 Australia Telephone: +61 2 6141 4145 Facsimile: +61 2 6141 4099 E-mail: stephen.gageler@ag.gov.au</p> <p>Mr. Anthony Payne SC Sixth Floor Selborne Wentworth Chambers 6/174 Phillip Street Sydney NSW 2000 Australia Telephone: +61 2 9221 3609 Facsimile: +61 2 9233 3902 E-mail: ajpayne@sixthfloor.com.au</p> <p>Mr. Jeremy Kirk SC Mr. James Hutton Eleven Wentworth Chambers 11/174 Phillip Street Sydney NSW 2000 Australia Telephone: +61 2 9223 9477 Facsimile: +61 2 8028 6060 E-mail: kirk@wentworthchambers.com.au jhutton@wentworthchambers.com.au</p> <p>Mr. Samuel Wordsworth Essex Court Chambers 24 Lincoln's Inn Fields London WC2A 3EG United Kingdom Telephone: +44 20 7813 8000 Facsimile: +44 20 7813 8080 E-mail: swordsworth@essexcourt.net</p> <p>Dr. Chester Brown 7 Selborne Chambers 7/174 Phillip Street Sydney NSW 2000 Australia Telephone: +61 2 9351 0466 Facsimile: +61 2 9351 0200 E-mail: cbrown@essexcourt.net</p>

	Mr. Mark Jennings Office of International Law Attorney-General's Department 3-5 National Circuit Barton ACT 2600 Australia Telephone: +61 2 6141 3368 Facsimile: +61 2 6141 3486 E-mail: mark.jennings@ag.gov.au
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2. Dispute and Commencement of Arbitration

- 2.1 Pursuant to Article 10 of the Treaty, the Claimant served the Respondent with a Notification of Claim dated 22 June 2011.
- 2.2 Pursuant to Article 10 of the Treaty and Article 3 of the UNCITRAL Rules, the Claimant served the Respondent with a Notice of Arbitration dated 21 November 2011.
- 2.3 Pursuant to Article 4 of the UNCITRAL Rules, the Respondent served the Claimant with a Response to the Notice of Arbitration dated 21 December 2011.

3. Appointment of the Tribunal

- 3.1 In the Notice of Arbitration, the Claimant notified the Respondent of its appointment of Professor Gabrielle Kaufmann-Kohler as co-arbitrator. Professor Kaufmann-Kohler's contact details are as follows:

Professor Gabrielle Kaufmann-Kohler
Lévy Kaufmann-Kohler
3-5, rue du Conseil-Général
P.O. Box 552
CH-1211 Geneva 4
Switzerland
Tel.: +41 22 809 6200
Fax: +41 22 809 6201
E-mail: gabrielle.kaufmann-kohler@lk-k.com

- 3.2 In the Response to the Notice of Arbitration, the Respondent appointed Professor Donald M. McRae as co-arbitrator. Professor McRae's contact details are as follows:

Professor Donald M. McRae
57 Louis Pasteur St, Room 340
Ottawa, Ontario K1N 6N5
Canada
Tel.: +1 613 562 5800 (Ext. 3304)
Fax: +1 613 562 5124
E-mail: donald.mcrae@uottawa.ca

- 3.3 On 15 May 2012, in accordance with Article 9 of the UNCITRAL Rules, the Secretary-General of the Permanent Court of Arbitration (the "PCA") appointed

Professor Karl-Heinz Böckstiegel as the presiding arbitrator. Professor Böckstiegel's contact details are as follows:

Professor Karl-Heinz Böckstiegel
Parkstraße 38
D-51427 Bergisch Gladbach
Germany
Tel.: +49(0)2204 66268
Fax: +49(0)2204 21812
E-mail: kh@khboeckstiegel.com

- 3.4 The Tribunal notes that the Parties have confirmed that the Tribunal has been validly appointed in accordance with the Treaty and the UNCITRAL Rules.
- 3.5 The members of the Tribunal confirm that they are and shall remain impartial and independent of the Parties. Each of the members of the Tribunal confirms that he or she has disclosed, to the best of his or her knowledge, all circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence and that he or she will promptly disclose any such circumstances that may arise in the future.
- 3.6 The Tribunal notes that the Parties have confirmed that they have no objection to the appointment of any member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to the Parties as at the date of their comments on the draft of this Procedural Order.

4. Applicable Procedural Rules

- 4.1 Pursuant to Article 10 of the Treaty, the Parties have agreed that the arbitration be conducted in accordance with the 2010 UNCITRAL Arbitration Rules, as reflected in Paragraph 9.1(a) of the Claimant's Notice of Arbitration and Paragraph 63 of the Respondent's Response to the Notice of Arbitration.
- 4.2 By agreement of the Parties, the Secretary-General of the PCA acts as the appointing authority in this matter.
- 4.3 For procedural matters not addressed by the UNCITRAL Rules, pursuant to Article 17 of these Rules, the Tribunal shall decide as it deems appropriate in the circumstances after consultation with the Parties, subject to any agreement of the Parties as to such procedural matters, such agreement to be formalized by way of Procedural Order.
- 4.4 The Tribunal is empowered to issue Procedural Orders, after consulting with the Parties, on specific procedural issues if and when needed. These Procedural Orders may be signed solely by the presiding arbitrator after consultation with the co-arbitrators.

5. Tribunal's Fees and Expenses

- 5.1 Members of the Tribunal shall be remunerated at the rate of EUR 500 per hour for all time spent on the arbitration, such as choice of the presiding arbitrator, interlocutory

or other hearings, reading documents, correspondence, drafting any award, travelling, meetings, etc.

- 5.2 Members of the Tribunal will be entitled to a fee in respect of any hearing for which they are asked to reserve more than one (1) day, calculated as follows:

Cancellation or postponement within three (3) months before the first day of such hearing, a booking fee shall be payable amounting to 25% of the daily sitting rate (equivalent to eight hours) multiplied by the number of days reserved.

Cancellation or postponement within one (1) month of such hearing, a further 25% shall be calculated as above.

- 5.3 Members of the Tribunal shall be reimbursed for all disbursements and charges reasonably incurred in connection with the arbitration (including but not limited to travel expenses, telephone, fax, delivery, printing, and Value Added Tax if due).
- 5.4 Members of the Tribunal may bill for reimbursement of disbursements and charges as and when they are incurred, and may submit periodic bills at no less than quarterly intervals in respect of fees.
- 5.5 All payments to the Tribunal shall be made from the deposit referred to in Section 6.

6. Deposits to Secure the Tribunal's Fees and Expenses, and Case Administration Charges

- 6.1 In accordance with Article 43(1) of the UNCITRAL Rules and in order to assure sufficient funds for the Tribunal's fees and expenses, the Parties shall establish by 21 June 2012 an initial deposit of EUR 200,000 (EUR 100,000 from each side) in the following account:

Bank:	ING Bank N.V. Schenkkade 65 2595 AS The Hague The Netherlands
Account number:	68.55.45.369
IBAN:	NL71 INGB 0685 5453 69
BIC and SWIFT:	INGBNL2A
Name of beneficiary:	Permanent Court of Arbitration
Reference:	PMA-AU

- 6.2 The Tribunal will review the adequacy of the deposit from time to time and may request the Parties to make supplementary deposits in accordance with Article 43(2) of the UNCITRAL Rules.
- 6.3 The unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Tribunal.

7. Case Administration

The International Bureau of the PCA shall act as registry ("Registry") in the arbitration on the following terms:

- 7.1 The Registry shall maintain an archive of filings and correspondence and handle Party deposits and disbursements. If needed, the Registry will make its hearing and meeting rooms in The Hague, Singapore, or other venues, available to the Parties and the Tribunal at no charge; costs of catering, court reporter, or other technical support associated with hearings or meetings shall be borne by the Parties.
- 7.2 PCA expenses (such as air courier costs and bank transfer fees) shall be paid in the same manner as Tribunal fees and expenses (see Section 5).
- 7.3 The Tribunal may appoint a member of the Registry to act as Administrative Secretary. The Administrative Secretary shall carry out administrative tasks on behalf of the Tribunal, and shall bill his or her time in accordance with the PCA Schedule of Fees. The primary purpose of such an appointment would be to reduce the costs that would otherwise be incurred in the Tribunal carrying out purely administrative tasks.
- 7.4 The contact details of the Registry are as follows:

Permanent Court of Arbitration
Attn: Mr. Dirk Pulkowski
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands
Tel.: +31 70 302 4260
Fax.: +31 70 302 4167
E-mail: dpulkowski@pca-cpa.org
bureau@pca-cpa.org

8. Language of the Arbitration

Pursuant to the agreement of the Parties, recorded at Paragraph 9.1(a) of the Notice of Arbitration and Paragraph 63 of the Response to the Notice of Arbitration, the language to be used in the proceedings is English.

9. Place of Arbitration

After consultation with the Parties at the Procedural Meeting, the Tribunal shall determine the place of arbitration in accordance with Article 18(1) of the UNCITRAL Rules.

10. Tribunal's Immunity

- 10.1 The Parties shall not seek to make the Tribunal or any of its members liable in respect of any act or omission in connection with any matter related to the arbitration.
- 10.2 The Parties shall not require any member of the Tribunal to be a party or witness in any judicial or other proceedings arising out of or in connection with this arbitration.

11. Further Details of Procedure

Further details of the procedure and in particular a timetable for submissions shall be discussed and agreed as much as possible at the Procedural Meeting, the results of which shall be included in a further Procedural Order of the Tribunal.

Dated: 7 June 2012

A handwritten signature in black ink, appearing to read 'Böckstiegel', is written above a horizontal line.

**On behalf of the Tribunal
Professor Karl-Heinz Böckstiegel
Presiding Arbitrator**