

**FORM 3.-COVENANTS AFFECTING COMPETITION-**

**To the Fiji Commerce Commission:**

**Application is made under sub-section 129A(2) of the Decree for an authorization under that sub-section**

**\*to require the giving of, or to give, a covenant where the proposed covenant would have the purpose, or would have or might have the effect, of substantially lessening competition.**

**\*to enforce the terms of a covenant.**

**\*(Strike out whichever is not applicable)**

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**(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)**

**1. (a) Name of applicant-**

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**(See Direction 2 on the back of this Form)**

**(b) Short description of business carried on by applicant-**

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**(c) Address in Fiji for service of documents on the applicant-**

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**2. (a) Brief description of covenant and, where already given, its date-**

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**(a) Names and addresses of persons who are, or are to be, entitled to the benefit of the covenant**

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(See Direction 4 on the back of this Form)

- (a) Names and addresses of persons who are, or are to be, bound by the covenant

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(See Direction 4 on the back of this Form)

3. Names and addresses (where known) of persons on whose behalf application is made-

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4. (a) Grounds for grant of authorization-

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(b) Facts and contentions relied upon in support of those grounds

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5. This application for authorization may be expressed to be made also in relation for other covenant proposed covenants that are or will be in similar terms to the above mentioned covenant-

- (a) Is this application to be so expressed?

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- (b) If so, the following information is to be furnished:

- (i) where the applicant is entitled to the benefit of the other covenants the names of the persons who are bound by each of the other covenants -

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(i) where the applicant is to be entitled to the benefit of each of the other proposed covenants which names are known at the date of the application.

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(see Direction 5 and Notice 2 on the back of this Form)

6. Name and address of person authorized by the applicant to provide additional information in relation to this application

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Date..... 20..... Signed by/on behalf of the applicant

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(Signature)

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(Full Name)

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(Description)

**DIRECTIONS**

- 1. Where there is insufficient space on this form to furnish the required information the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.**
- 2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorized by the corporation to do so.**
- 3. In item 1(b), describe that part of the applicant's business relating to the subject matter of the covenant in respect of which the application is made.**
- 4. Furnish with the application particulars of the covenant in respect of which the authorization is sought. Those particulars shall be furnished –**
  - (a) in so far as the particulars or any of them have been reduced to writing – by lodging a true copy of the writing; and**
  - (b) in so far as the particulars of any of them have not been reduced to writing – by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.**
- 5. Where the application is made also in respect of other covenants, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those covenants vary in their terms from the covenant referred to in item 2.**

**NOTICES**

- 6. In relation to item 4, your attention is drawn to sub-sections 129C(5) and (6) of Decree which provides as follows:**

**“(5) The Commission shall not make a determination granting an authorisation under sub-section 129A (1) , (2) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that benefit would outweigh the detriment to the public constituted by any lessening or competition that would result or be likely to result, if –**

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
  - (b) the proposed covenant were given, and were complied with; or
  - (c) the proposed conduct were engaged in,
- as the case may be.

**“(6) The commission shall not make a determination granting an authorization under sub-section 129A(1) or (2) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.”.**

**If an authorization is granted in respect of a proposed covenant and the names of the other persons to be bound by, or entitled to the benefit of, the covenant are not known at the date of application, the authorization shall, by sub-section 129A(3) of the Fair Trading Amendment Act 1998, be deemed to be expressed to be subject to a condition that any of the persons bound by, or entitled to the benefit of, the covenant will, when so required by the Commission, furnish to the Commission the names of all the persons**