

10 June 2014

Competition Policy Review
The Treasury
Langton Crescent
Parkes ACT 2600

Executive summary of AFPFA submission

The Australian Forest Products Association (AFPFA) welcomes the opportunity to provide comment on the Competition Policy Review.

AFPFA is the peak national body for Australia's forest, wood and paper products industry. We represent the industry's interests to governments, the general public and other stakeholders on matters relating to the sustainable development and use of Australia's forest, wood and paper products.

AFPFA supports the principles of fair and transparent competition in the Australian economy to promote long term economic growth and innovation amongst industries and businesses.

Secondary boycotts

However, AFPFA is concerned that there are a significant loopholes in the provisions of the *Competition and Consumer Act 2010 (CCA)* that are leading to adverse competition outcomes for some parts of the Australian forest, wood and paper products industry.

Over recent years the native forest wood and paper products sector has experienced a growth in the direct market interference activities by increasingly sophisticated environmental activist groups and individuals. Their activities take advantage of a loophole in the secondary boycott provisions. These provisions prohibit secondary boycotts, which involve action by two or more parties acting in concert, which hinder or prevent a third party such as a potential customer or supplier, from

dealing or doing business with a target (sections 45D-45DB). However, section 45DD provides an unqualified exemption for people from the secondary boycott provisions if the *'Dominant purpose of conduct relates to environmental protection or consumer protection.'* This loophole is inconsistent with the intention of the CCA and is open to abuse and unethical behaviour by some environmental activist groups and individuals that are undertaking secondary boycotts with suppliers, customers and/or financiers to the domestic native forest wood and paper products industry.

AFPA recommends that the CCA be amended to prohibit secondary boycotts by environmental activist groups and subject such groups to the same level of social standards and accountability expected of companies with regard to boycotts and the use of false and misleading information.

Food and grocery prescribed code of conduct

The Australian forest products industry is a diverse industry, producing many products such as timber and engineered wood panels, as well as paper and tissue products used for our daily hygiene and other needs. In this regard, AFPA notes the high level of market concentration and power in the Australian food and grocery retail sector, with Coles and Woolworths representing around 78% of the market. By exercising their market power, excessive risk and unexpected costs can be experienced by suppliers. AFPA is concerned that this can have an adverse effect on suppliers' ability to invest and innovate, undermining viability and reducing choice to consumers and competition in the market.

AFPA therefore supports the recent initiative by Coles and Woolworths and the Australian Food and Grocery Council (AFGC) to establish a prescribed code of conduct under the CCA. As a prescribed industry code under the CCA, it would be binding on those members who are signatories to the code. AFPA considers this a positive step forward in addressing some underlying issues in the food and grocery sector consistent with the objectives of the CCA.

Further queries about this submission can be directed to AFPA on (02) 6285 3833.

Yours sincerely



Ross Hampton
Chief Executive Officer



SUBMISSION ON THE COMPETITION POLICY REVIEW

10 June 2014

Introduction

The Australian Forest Products Association (AFPA) welcomes the opportunity to provide comment on the Competition Policy Review.

AFPA is the peak national body for Australia's forest, wood and paper products industry. We represent the industry's interests to governments, the general public and other stakeholders on matters relating to the sustainable development and use of Australia's forest, wood and paper products. The forest industries support around 200 000 direct and indirect jobs nationally with a gross value of turnover of around \$22 billion.

AFPA supports the principles of fair and transparent competition within the Australian economy in order to promote long term economic growth and innovation amongst industries and businesses.

Secondary boycotts

However, AFPA is concerned that there are significant loopholes in the provisions of the *Competition and Consumer Act 2010* (CCA) that are leading to material damage and adverse competition outcomes for some parts of the Australian forest, wood and paper products industry.

Over recent years the native forest wood and paper products sector has experienced growing market interference by increasingly sophisticated environmental activist groups and individuals. These activities are taking advantage of a loophole in the secondary boycott provisions. These provisions essentially prohibit secondary boycotts, which involve action by two or more parties acting in concert, which hinder or prevent a third party such as a potential customer or supplier, from dealing or doing business with a target (sections 45D-45DB). However, section 45DD

provides an unqualified exemption for certain people from the secondary boycott provisions such as if the *'Dominant purpose of conduct relates to environmental protection or consumer protection.'*

This loophole is inconsistent with the intention of the CCA and is open to abuse and unethical behaviour by some environmental activist groups and individuals that are undertaking secondary boycotts with suppliers, customers and/or financiers to the domestic native forest wood and paper products industry.

The forest, wood and paper products industry in Australia recognises the positive role that many environmental non-government organisations (ENGOS) play in promoting good environmental outcomes, such as curbing trade in illegally logged imported products. However the industry has been concerned about the long standing behaviour of some environmental activist groups with regard to the promulgation of false and misleading information about the domestic native forest wood products industry. Some environmental activist groups continue to release factually misleading information that is then used as part of secondary boycotts which deliberately causes substantial loss or damage to Australian businesses.

The forest products industry is highly regulated with Australian sustainable forest management practices recognised as world's best standard. The comprehensiveness of environmental management laws and voluntary certification policies for sustainable forest management that apply to both public and private forest land in Australia is well documented¹.

However, actions by some environmental activist groups continue to directly undermine both specific companies and the markets for native forest wood and paper products by the dissemination of misleading information through both social and mainstream media and direct contact with customers both domestically and overseas.

Industry remains concerned, and the public should be equally concerned, about the regulatory framework for ethical standards of public disclosure and market activity by some environmental activist groups. Furthermore, these groups are often the beneficiaries of tax free, charitable status as conferred by government. With such status should come the important expectation to behave in a responsible manner that

¹ Montreal Process Implementation Group for Australia (2014). Criterion 7: Legal, institutional and economic framework for forest conservation and sustainable forest management. *Australia's State of the Forests Report 2013, five yearly report*, Canberra.

does not undermine public trust and confidence in businesses with high standards of social and environmental responsibility.

The availability of digital and social media allows the message of environmental activist groups to propagate widely before a business has any meaningful chance to respond to or address the concerns raised (whether true or not). At this point it is often too late for the business to undo the damage caused by the secondary boycott, resulting in an overall weakening of the market.

In addition to the unavailability of a cause of action for the secondary boycott, businesses face a difficult hurdle to show that the actions of environmental activist groups satisfy the trade and commerce requirement necessary to establish a breach of section 18 of the CCA by engaging in misleading or deceptive conduct. This combination of factors leads to a lack of recourse for business and allows some environmental activist groups to operate with impunity.

These important reforms could be achieved by repealing the special exemption for secondary boycotts for environmental protection (section 45DD).

An alternative approach would be to remove the overarching exemption and then allow for case by case applications for exemptions. This procedure already works well in the context of exclusive dealing and would be well suited to striking a balance between legitimate protest mechanisms and competition aims. The Australian Competition and Consumer Commission (ACCC) could assess the bona fides and merits of the application for an exemption and assess this against the potential damage to the market and competition.

Importantly, requiring applications for exemptions would not place an undue burden on environmental activist groups. This is because in the current context, secondary boycotts are used as a coordinated tactic by highly sophisticated environmental activist groups with complex legal and commercial structures.

Food and grocery prescribed code of conduct

The Australian forest products industry is a diverse industry, producing many products such as timber and engineered wood panels, as well as paper and tissue products used for our daily hygiene and other needs. In this regard, AFPA notes the high level of market concentration and power in the Australian food and grocery retail sector, with Coles and Woolworths representing around 78% of the market. By exercising their market power, excessive risk and unexpected costs can be experienced by suppliers. AFPA is concerned that this can have an adverse effect on suppliers' ability to invest and innovate, undermining viability and reducing choice to consumers and competition in the market.

AFPA therefore supports the recent initiative by Coles and Woolworths and the Australian Food and Grocery Council (AFGC) to establish a prescribed code of conduct under the CCA. The objectives of the Code² are to:

- regulate standards of business conduct in the food and grocery supply chain and to build and sustain trust and co-operation;
- aid industry participants to act fairly, honestly and reasonably in their commercial dealings;
- support the rights of suppliers and retailers to freely negotiate terms and conditions of supply contracts;
- ensure transparency and certainty in commercial transactions; and
- regulate behaviour and deliver a cultural change in a manner which will allow for long term consumer benefit in terms of both grocery prices and choice.

As a prescribed industry code under the CCA, it would bind those members who are signatories to the code. AFPA considers this a positive step forward in addressing some of the underlying issues in the food and grocery sector consistent with the objectives of the CCA.

² Australian Food and Grocery Council (2014). Food and Grocery Prescribed Code of Conduct. Frequently Asked Questions. Viewed at: www.afgc.org.au

Conclusion

AFPA supports the principles of fair and transparent competition within the Australian economy in order to promote long term economic growth and innovation amongst industries and businesses.

In summary, AFPA has provided comment on two aspects of national competition policy:

- the exemption of environmental activist groups from the secondary boycott provisions; and
- the food and grocery code of conduct as a prescribed code under the CCA.

Secondary boycotts

AFPA argues there are significant flaws or loopholes in the provisions of the CCA that are leading to material damage and adverse competition outcomes for some parts of the Australian forest, wood and paper products industry.

This loophole is inconsistent with the intention of the CCA and is open to abuse and unethical behaviour by some environmental activist groups and individuals that are undertaking secondary boycotts with suppliers, customers and/or financiers to the domestic native forest wood and paper products industry.

AFPA recommends that the CCA be amended to remove the exemption for environmental purposes with the effect that secondary boycotts for environmental causes receive the same treatment as for all secondary boycotts. Such environmental activist groups and individuals which seek to influence commercial arrangements in the manner outlined above, should be subjected to the same level of social standards and accountability expected of companies with regard to boycotts and the use of false and misleading information.

Food and grocery prescribed code of conduct

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