



20 June 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

Re: Competition Policy Review

Please accept the attached submission in response to the Competition Policy Review Issues Paper. The Plastics and Chemicals Industries Association (PACIA), as the peak industry association representing the business of chemistry is eager work with the Review Panel to deliver greater productivity and efficiency throughout our industry and the Australian economy more broadly.

Should you have any questions in relation to the content of this submission, please feel free to contact me.

Yours sincerely

Ben Stapley

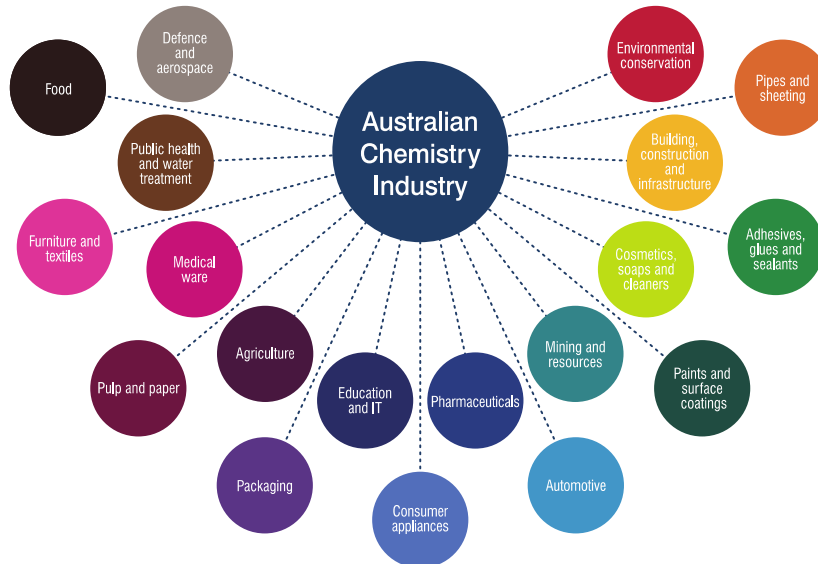
Director, Regulatory Policy

Introduction

The Plastics and Chemicals Industries Association (PACIA) welcomes the opportunity to provide input to the Government's review of the National Competition Policy. PACIA, as the peak industry association representing the business of chemistry (and Australia's second largest manufacturing sector) engages with regulators at all levels of government. Australia's National Competition Policy to date has been a critical driver of reform and productivity since the Hilmer Review in 1992. A re-energisation and re-examination of how the current competition principles apply to the modern Australian economy offers the opportunity to identify a new wave of reforms to underpin continued productivity growth.

The chemistry industry – comprising the chemicals and plastics sectors - is the second largest manufacturing sector in Australia:

- supplies 109 of Australia's 111 industries – about 805 of the sector's outputs are inputs to other sectors of the economy;
- contributes \$11.6 billion to Australia's gross domestic product;
- comprises 5,500 small medium and large businesses nationally; and
- directly employs more than 60,000 people.



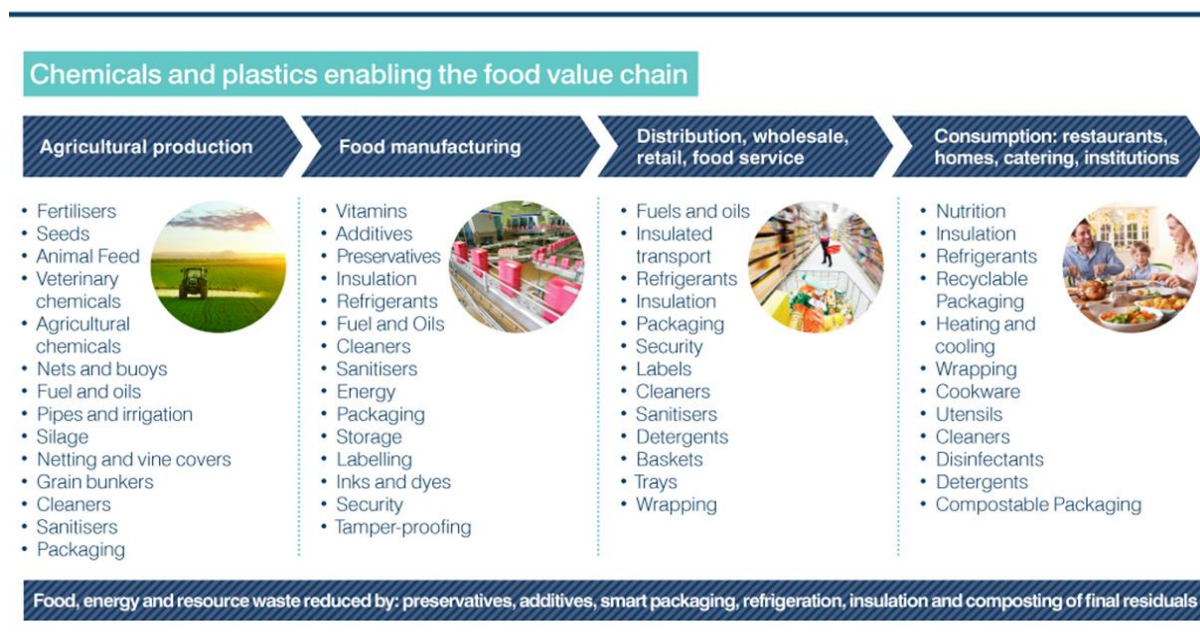
Despite this, burdens imposed by regulators represent a significant and growing impediment to investment and innovation in Australia. Ensuring that regulators are effective and efficient in their dealings with the industry is critical to minimising that burden.

Chemicals and plastics are essential for our continued health, safety and quality of life. Fresh, safely packaged food from productive farmland, safe drinking water, disease and infection control, medical equipment and pharmaceuticals have all been delivered through innovative developments of modern chemistry.

As growing populations (both within Australia and globally) seek higher living standards from limited resources, chemistry will continue to be integral to delivering sustainable solutions. These solutions include more productive and nutritious crops, modern building and insulation materials, renewable energy technologies and lightweight vehicles that reduce reliance on fossil fuels.

Effective competition policy can assist the industry meet its potential. This submission discusses those areas where effective application of the existing competition policy principles can result in significant improvements current chemicals regulatory arrangements. Targeted, specific reforms that unleash the potential of the industry will enable chemical and plastics manufacturers provide the products and tools for Australia to maximise the advantages provided by its proximity to the growth markets of south and east Asia.

These opportunities are not limited to the chemicals and plastics sector, our role as a key supplier across entire supply chains means provides enormous strategic capacity to improve productivity in all sectors of the economy. For example, in the food value chain:



Competition Policy Principles

PACIA supports the fundamental elements of Australia’s competition policy. Competition policy through limiting the anti-competitive conduct of firms, and reforming government monopolies to facilitate competition have greatly benefited the Australian economy.

However, legislation to control access, availability, transport, storage, handling, use and disposal of chemicals has imposed significant anti-competitive restriction on the industry. PACIA notes that one of the key elements of national competition policy is that:

2. Legislation should not restrict competition unless it can be demonstrated that:
 - a. The benefits of the restriction to the community as a whole outweigh the costs; and
 - b. The objectives of the legislation can only be achieved by restricting competition.¹

Regulation of industrial chemicals seeks to:

¹ The Australian Government Competition Policy Review: Issues Paper p11.

“(Aid) in the protection of the Australian people and the environment by finding out the risks to occupational health and safety, to public health and to the environment that could be associated with the importation, manufacture or use of the chemicals”²

For agricultural and veterinary chemicals the corresponding legislation recognises:

“that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products”³

Clearly, the Australian community has a reasonable expectation that chemicals used in Australia are appropriately controlled and regulated to minimise any unacceptable risks to users, consumers or the environment. Less well recognised is the significant, ongoing benefits that accrue to all sectors of the Australian economy from the responsible use of chemicals and their products. Regulatory schemes need to balance these competing interests in a manner that facilitates access to new technologies while maintaining community expectations regarding their safety. Currently this balance is achieved by imposing a regulatory scheme on the Australian chemicals market that restricts new entrants to chemicals that have been risk assessed by government authorities to assess their risks. Further, management of chemicals throughout their life cycle is strictly controlled through myriad legislative schemes that variously relate to licensing, reporting, transport, storage, handling, use, disposal and destruction.

PACIA remains concerned that current legislative measures have become unbalanced, with an over-emphasis on identifying and managing increasingly small risks, resulting in increasing costs that discourage investment in new products and innovations. The challenge for governments, the community and industry is to consider how Australia can continue to maintain world-leading regulatory standards at a cost that is affordable and sustainable. Applying competition policy principles provides the opportunity for re-examine aspects of the current regulatory scheme to identify areas where greater efficiency and lower costs may be achieved.

Role of Governments in Chemicals and Plastics Regulation

Government is heavily involved in managing and controlling almost all aspects of chemical use. Such a significant, pervasive and expensive legislative scheme has particular impacts on the chemicals and plastics industry in Australia:

- It results in a particularly expensive compliance costs for industry participants that must navigate various, detailed and often inconsistent rules and requirements, minimising the resources available to introduce newer, safer and more innovative technologies; and
- It imposes a relatively greater burden on small and medium enterprises that cannot dedicate the sorts of resources required to develop innovative niche products to take advantage of particular opportunities for new markets.

Prior to being available for sale and use in Australia, new chemicals and products are subject to a risk assessment. This activity is only conducted by Australian Government regulators that are also responsible for setting the standards that introducers of chemicals must meet. Further, these risk assessment activities (at least in the case of the APVMA and NICNAS) are conducted on a cost-recovery basis that diminishes the incentive for governments to investigate administrative efficiencies.

Additionally, industry remains concerned that the costs from legislative intervention in the chemicals market do significantly exceed corresponding benefits to the point that innovative new chemistry is precluded from Australia largely because of the anti-competitive impact and cost of the current regulatory regime. Developments in industry stewardship and life cycle management of chemicals by

² Industrial Chemicals (Notification and Assessment) Act 1989 s3(a)(i).

³ Agricultural and Veterinary Chemicals Act 1994 *preamble*.

industry may diminish the value of the benefits identified through the gradual development of the regulatory system. Many interventions in the regulatory system may either:

- Deliver benefits that outweigh the costs to the government, community and industry; nor
- Be only able to be achieved through legislative or regulatory measures.

PACIA recommends that the priorities for competition reform should include an examination regulatory services provided by governments for their consistency with the existing National Competition Policy. Specifically, the risk assessment services provided by governments for new chemicals and products results in the provision of these services under monopoly conditions that are not conducive to efficient resource use.

Regulatory Impediments to Competition

Excessive regulatory burden

A balanced regulatory environment is essential to protect workers, public health, the community and the environment while delivering a business operating environment that stimulates growth innovation and trade.

An appropriately balanced environment delivers economic social and environmental benefits whereas an unbalanced system may not achieve its intended outcomes, imposes unnecessary costs and can reduce the economy's adaptive capacity. Unbalanced and excessive regulation can deliver perverse outcomes by delaying or discouraging introduction of newer, safer and softer chemicals and technologies to protect workers.

In the chemicals and plastics industry, regulatory burdens have been recognised as inconsistent, complex and costly and is causing businesses to assess investments in Australia.

Legislative measures that are having significant detrimental impacts upon the competitiveness of Australia's chemical and plastics industry include:

- Expensive and extensive pre-market approvals required by the Industrial Chemicals (Notification and Assessment) Act 1989 (ICNA Act) and the Agricultural and Veterinary Chemicals Code Act (Agvet Code);
- Complex, inconsistent, duplicative and burdensome rules controlling handling, storage, transport, management, labelling, classification, access, use disposal and destruction of chemicals; and
- Inconsistent and ineffective compliance and enforcement.

Market interventions by the chemicals and plastics regulatory system takes a number of forms, including:

- Prohibitions on import and manufacture of new industrial chemicals prior to notification and assessment by the National Industrial Chemicals Notification Assessment Scheme (NICNAS) or approval and registration by the Australian Pesticides and Veterinary Medicines Authority (APVMA);
- Standards for classification, labelling, storage, handling, use and disposal of chemicals, products and their associated wastes.
- Licensing for access, storage and use of certain chemicals.

Inconsistency and duplication

Many of the benefits associated with the various aspects of chemical and plastics regulation overlap a number of regulatory regimes. As such, the benefits associated with a particular regulatory intervention may be 'accounted for' by successful implementation of another regulatory regime. Such

duplication has the tendency to over-estimate the magnitude of benefits associated with market interventions. Successive, cumulative regulatory interventions that duplicate existing controls may ultimately result in the costs of a regulatory system that significantly outweigh any objective assessment of net benefit.

For example, all agricultural chemical products are subjected to a risk assessment that includes an assessment of their workplace risk. The outcome of this assessment results in clear label instructions that must be followed by users to manage their workplace risk. Additionally, the Model Work Health and Safety laws also require hazard and precautionary statements to be included on agricultural chemical products to allow workplaces to manage the risk associated with the use of that product. Individually, each regulation can claim to improve workplace health and safety through improving risk management procedures. When taken together, conflicting labelling requirements can create confusion for users, and diminish their capacity to observe appropriate risk management precautions.

Individuals and businesses that trade and operate across state and territory borders regularly face costs through inconsistent rules and regulations relating to storage transport and use of chemicals and chemical products. While the challenges posed by different approaches in state and territory regulatory approaches are not unique to one area of regulation, their impacts are potentially most significant where inconsistency and cost result in poorer management practices and undermine compliance.

For example inconsistency in way that the Model Work Health and Safety Law has been implemented in several jurisdictions has preserved some existing inconsistencies and created new barriers to trade within Australia. To date, the Model Work Health and Safety Law has not been implemented in Victoria. Further, those elements of the Model Work Health and Safety Law that relate to chemicals management have not been implemented in the ACT.

Such differences create uncertainty and additional costs across the entire economy as businesses need to consider specific requirements for their chemicals and products that may be used in any Australian jurisdiction.

PACIA supports consistent interstate regulations to control the handling and use of chemicals and products. Meaningful reform to harmonise state and territory rules will result in lower business costs and deliver a business operating environment that stimulates growth, innovation and trade. Rather than model legislation, PACIA recommends that the most effective and efficient way to deliver consistent outcomes is for government to use template/applied law.

Impact

The detrimental impact that complex and burdensome chemicals regulation is having on Australian industry has been recognised through several reviews, task forces and enquiries. Importantly, the Productivity Commission's 2008 Research Report on Plastics and Chemicals Regulation identified that while chemical regulation is broadly effective in most policy areas (with some exceptions), it was not efficient with significant opportunity for reform.⁴

Complex and burdensome regulatory measures have a disproportionate impact upon small and medium enterprises (SMEs). For SME's that seek to introduce new products and technologies, the costs of pre-market approvals represent a significant investment in both financial and technical resources. This limits the capacity of smaller companies to develop innovative products for niche markets with small, but still significant and potentially growing returns.

Inconsistencies, excessive regulatory burdens and duplicative arrangements are currently having significant detrimental impacts on the competitiveness of Australia's chemicals and plastics industry. In addition to frustrating compliance, current approaches hamper the introduction of newer, better and

⁴ Productivity Commission Research Report on Chemicals and Plastics Regulation (2008) pxxiv.

safer chemicals. This results in a perverse outcome where regulatory intervention in the market results in poorer health, safety and environmental outcomes by delaying or preventing innovative new technologies. In comparison to our major trading partners, Australian industry is therefore relatively less competitive in relation to our major trading partners.

Currently, Australia's chemicals and plastics industry supplies 109 of Australia's 11 industries. As much as 80% of the industry's outputs are inputs to another business. An uncompetitive chemicals and plastics sector that cannot meet the needs of Australian diminishes the flexibility, vibrancy and capacity of all Australian businesses to grow and innovate.

Specific examples where importers and manufacturers have decided not to introduce new chemicals due to the regulatory burden imposed in Australia are provided at [Attachment A](#).

Government-Provided Goods and Services and Competitive Neutrality

In Australia, new chemicals and plastics are subjected to a pre-market risk assessment conducted in accordance with the ICNA Act or the Agvet Code. The risk assessment process is rigorous, science based and consistent with practices in comparable economies. However, the assessment function is exclusively provided by assessment units located within Federal Government departments.

Allowing these services to be provided by private risk assessors is likely to:

- Reduce the cost of providing these functions by government;
- Reduce the cost to notifiers, registrants and applicants of the risk assessment function;
- Allow timely and more predictable risk assessment decisions to be made; and
- Significantly open the pool of potential risk assessors that could provide assessment services.

Under this model, pre-market regulators would continue to set appropriate health, safety and environmental standards for new chemicals, plastics and products. Assessment against these standards could then be provided by independent, professional risk assessors. Such a model should not preclude the potential for Government to continue to provide these services where they can do so efficiently and at market-competitive cost. Indeed, separation of the standards setting and risk assessment functions of government was a key recommendation of the Productivity Commission's Research Report on Chemicals and Plastics Regulation.⁵ While the Productivity Commission recommended that the assessment function continue to be provided by Government, there is little justification for this activity to not be subject to competition principles.

Current approaches that rely exclusively on Government risk assessments result in several detrimental aspects as:

- Private sector risk assessment service providers are precluded from competing for this work from regulators;
- Costs are tied to public service cost structures that may not represent best value for money; and
- Opportunities to address failures to meet expected performance standards of time, quality or cost are significantly minimised.

Critically, risk assessment activities are funded from fees and levies imposed by the regulator on industry participants. PACIA supports cost recovery as an efficient tool to recover the costs of providing regulatory services. However, care needs to be taken to ensure that the availability of cost recovery does not unduly stifle competition or result in a gradual expansion of functions undertaken by regulators and unduly increase costs recovered from the regulated community.

⁵ *Research Report on Chemicals and Plastics Regulation* Productivity Commission (2008) pxxiv.

Regulators have an important role in providing technical advice to governments, but the provision of this advice is not directly related or integral to the provision of products or services and should not be cost recovered.

PACIA noted that key points of cost recovery policy state that cost recovery should not be applied where it would stifle competition or industry innovation and nor should cost recovery be applied to some policy and parliamentary servicing functions.⁶

Unlike comparable overseas regulators, Australia's industrial chemicals regulatory scheme is fully cost recovered from importers and notifiers and relatively speaking places Australian industry at a significant competitive disadvantage. For example, in the US a pre-manufacture notification (broadly equivalent to a NICNAS Assessment Certificate) costs AUD\$2750, in comparison to between AUD\$6000 and AUD\$18000 in Australia. Fees for New Substance Notifications in Canada range between AUD\$2580 and AUD\$3450.

⁶ Department of Finance and Administration Circular 2005/09 p2.

Potential Reforms in Other Sectors

Natural Gas Market

Australia's chemical and plastics industry is a significant user of natural gas. Gas is used as an energy source to generate steam and electricity for commercial operations, but is also a critical feedstock that is transformed into useable products. Fully 10% of Australia's domestic gas consumption is used by the chemistry industry to support key parts of the economy⁷. Critically, the high technology nature of chemicals manufacturing means that gas supplied to the chemistry industry must have very precise supply and quality requirements.

Australia's abundant energy resources, such as gas, should be a major competitive advantage and enable a competitive chemicals and plastics industry to underpin a vibrant, resilient and balanced economy.

With reliable and secure supplies of feedstock at competitive prices, the chemicals and plastics sector will enable Australian industry to take full advantage of the manufacturing opportunities from our proximity to growing markets in south and east Asia.

Incomplete application of Australia's national competition policy has resulted in a natural gas market that is fundamentally uncompetitive, and reduces the competitiveness of key Australian industries in a global market. This lack of competitiveness in the gas market has been well recognized through several government and industry reports over many years. Indeed, the 2002 Parer report⁸ made 11 recommendations to improve the competitiveness of the gas market. These recommendations for:

- Better pipeline regulation;
- Encouraging competition;
- Promoting competition in acreage management regimes; and
- Reviewing industry principles for access to upstream facilities.

To date, many of these recommendations are yet to be implemented. Without a truly competitive market for the supply of natural gas, domestic users remain locked into an uncompetitive market with little choice, minimal capacity for negotiation and consequently almost no market power.

Impact of gas export growth

Growth in Australia's natural gas production has largely been driven by increasing demand from Asian export markets that are now linking to Australia's domestic distribution networks. This new and increasing demand is increasing prices for natural gas for domestic users and confounding the capacity for consumers to negotiate and secure new long-term contracts.

The Australian Government's Eastern Australian Domestic Gas Market Study notes that these unprecedented changes have resulted from large-scale exports of natural gas⁹. The study also noted that the significant price increases observed by industry are likely as a result of this activity and noted that Australia is the first country to try and meet LNG export capacity from coal seam gas wells.

The lack of a competitive supply market, and the consequent tightness of domestic supply means that all domestic consumers (including the chemicals and plastics industry users) are likely to be subject to significant increases in price – if long-term supply contracts can be negotiated at all. The extent of the impact on domestic use is demonstrated by the NSW Independent Pricing and Regulatory Tribunal (IPART) decision to raise domestic and residential gas prices by 17.8%.

⁷ *Elements in Everything* Plastics and Chemicals Industries Association, 2013

⁸ *Towards a truly national and efficient energy market*, Chapter 7, COAG Energy Market Review 2002

⁹ *Eastern Australian Gas Market Study*, Australian Government Department of Industry 2014

The practical impacts of an uncompetitive gas market are reflected in the recent experiences of PACIA member companies. Many long term gas supply contracts require renewal in 2014-16, and companies have observed:

- That they are unable to secure contract offers,
- That where offers are made, they are at a significantly higher price, and
- Contracts are for much shorter terms – increasing business risk.

The Eastern Australian Domestic Gas Market Study noted that the key purpose of market reform is “to promote efficient gas markets in the long term interests of consumers in accordance with the National Gas Objective (which covers residential, commercial and industrial users, including making LNG)”. The Study identified 14 principles for market reform that were necessary improve the competitiveness and efficiency of the Gas market. Key principles related to the operation of the gas market include that:

- Market participation should incur transaction and compliance costs that are as low as possible;
- The market should aid price discovery for both long term contracts and short term trades;
- The market (or regulatory processes where natural monopolies exist) should encourage the utilization of and investment in infrastructure, including pipelines, processing and storage, and discourage strategic and rent-seeking behavior;
- Regulators should be independent and empowered by evidence to make informed decisions;
- The market should be able to respond to new circumstances through transparent and rigorous institutional market development and rule change processes. Policy and regulatory process should also be clear and well informed; and
- There should be closer links between market and upstream regulatory approaches, information sources, issues and institutions.¹⁰

While only a subset of the reform principles identified, a reform program underpinned by these principles would be valuable in delivering a more competitive gas market in Australia.

The need for reform

Reform of the market to provide greater clarity of supply, short- and long-term price discovery and efficiency of the market remains an urgent priority. Critically these principles recognise the detrimental impacts from inefficient investment in infrastructure, and strategic and rent-seeking behavior. These objectives for gas market reform remain consistent with the objectives of Australia’s National Competition Policy. Rather than reform of the policy, full implementation of existing competition policy principles may address many of the challenges, and mitigate many of the risks, associated with Australia’s gas markets during its current transition.

In 2013, PACIA released its Strategic Industry Roadmap with a series of 19 actions for industry and government to work towards to ensure a sustainable chemical industry is able to continue underpinning the national economy. Of the eight fundamental needs identified by the industry, access to gas for feedstock and energy is the highest priority.¹¹ PACIA recommends targeted reforms to improve market competition for gas supply in Australia, including:

- Full implementation of the Standing Committee on Energy and Resources actions regarding the competitiveness, transparency and liquidity of the Australian domestic gas market;
- Reviewing the Australian Competition and Consumer Act 2010 to allow the Australian Competition and Consumer Commission to examine joint gas marketing arrangements and develop options for improving upstream competition and supply; and
- Promote competition in gas markets when awarding exploration leases and examine the use or non-use of existing exploration and production leases.

¹⁰ *Eastern Australian Gas Market Study*, Australian Government Department of Industry 2014 p95

¹¹ *Adding Value: A Strategic Roadmap for the chemicals and plastics industry* Plastics and Chemicals Industries Association, 2013 p5

Importantly, both producers and consumers agree with respect to many of the reforms necessary to deliver a truly efficient and effective gas market in Australia and support urgent reform to deliver a truly national, efficient and competitive gas market that benefits both producers and consumers. This outcome would enable the chemicals and plastics industry to sustainably support Australian industry into the future.

Conclusions

Competition policy has worked well and delivered significant benefits to governments, community and industries. However the job is incomplete and there remain opportunities for additional competition based reforms where Government remains a key provider of chemical risk assessment services and where markets are operating inefficiently and distorting other industry sectors.

Market testing the role of governments when providing new chemical risk assessment services, increasing regulatory harmonisation between different states and territories as well as greater consistency and coordination between regulatory schemes will significantly reduce the administrative cost of doing business in Australia. Greater harmonisation will lower costs, improve compliance by industry and release the handbrake on innovation and investment that an excessive and unbalanced regulatory environment imposes.

Most importantly, re-balancing the regulatory system will facilitate the introduction of newer, safer and more sustainable chemical technologies and products that will assist all Australian industry take advantage of opportunities within emerging economies within our region.

Finally, Australia's abundant energy resources, such as natural gas should be a competitive advantage to underpin Australia's economy and allow it to sustainably grow and deliver economic, health and environmental benefits to Australia and our trading partners. Comprehensive implementation of National Competition Policy principles in Australia will assist in delivering this outcome.

Attachment A: Outcomes of impediments to introduction of new chemistry and technologies – company examples

The following examples form a small subset of examples where an unbalanced regulatory regime has resulted in commercial decisions to not invest and innovate in Australia to the detriment of Australian productivity.

Company A: In the past 18 months we had the opportunity to submit 6 notifications in Australia. None proceeded due to the high cost involved.

Company B: For new products that have more than one new chemical not on the inventory. Regardless of whether the product will be more sustainable and have less of a negative impact on the environment in comparison with similar products, it is not cost effective to proceed with new chemical notifications. This also restricts business growth and opportunities.

Company C: Each year, we have at least 3 or 4 polymers which have potential application in Australia and are already sold in Europe or USA, but which we can't import into Australia as they are not listed on AICS. In Europe/USA, non-hazardous polymers are usually exempt, so there is minimal testing performed. In Australia, if the polymer does not meet the NICNAS PLC requirements then additional testing must be performed. We have been advised by our European suppliers that the cost to generate the additional data is about Eur 35,000. In most cases, this additional cost cannot be justified and the project does not go ahead.

Company D: Difficulty to complete new chemical notification for chemicals that we have had assessed overseas, due to differing data submission expectations.

Company E: A raw material manufactured in Europe is used as a flame retardant in the manufacturer of industrial products in Europe. It is classified as non-hazardous and non-dangerous according to EEC regulations. A standard submission was sent to NICNAS so that it could be imported into Australia. The application was in rubber conveyor belts so the risk to the environment was small as the product would be encapsulated in the rubber belt. NICNAS said that due to the potential for the product to be persistent in the environment, further environmental testing would be required (additional to that already submitted for the standard assessment). We got a quote for the testing which would have to be conducted in the UK as we could not find anyone who could do the testing in Australia and the cost would have been over AUD 100,000.

This ended the project as this additional cost could not be justified.

Company F: For new chemicals that fall under the Standard Notification category, if we do not have the full data package it is not cost effective to proceed with a new chemical notification as the costs of data generation cannot be justified in this small market.

Company G: Applications under the Approved Foreign Scheme Provisions can be made for a chemical that was notified and assessed in Canada as a new chemical under a comparable to a Standard (STD), Limited (LTD) or Polymer of Low Concern (PLC) notification in Australia. We have a new chemical notification submitted as a Schedule 10 for Canada, which is comparable to Australia's Limited notification. However in Australia, this chemical does not meet the criteria for a Limited notification and falls under the criteria of a Standard notification. Therefore by proceeding with the Standard notification we will require further study tests.