CDPP

Australia's Federal Prosecution Service

Commonwealth Director
of Public Prosecutions

GPO Box 21
Melbourne VIC 3001
Level 16 460 Lonsdale Street
Melbourne VIC 3000
DX. 446
Telephone **03 9605 4333**
Facsimile 03 9670 4295
www.cdpp.gov.au

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Competition Policy Review Secretariat,

The Treasury,

Langton Crescent,

PARKES ACT 2600

Competition Policy Review – Draft Report – September 2014

The purpose of this letter is to respond to some comments in the September 2014 Draft Report in relation to the Competition Policy Review (the "Draft Report"), primarily those comments in Part 17.1 with respect to the drafting of the cartel provisions in Division 1 of Part IV of the *Competition and Consumer Act 2010* (**CCA**) and the scope of the joint venture exception in s44ZZRO.

I note that two principal concerns have been raised, as follows:

- *"the provisions are unnecessarily complex, making the law difficult to understand and comply with; and*
- *the provisions have been framed too broadly and criminalise commercial conduct that ought not be characterised as cartel conduct, including joint venture activity and vertical arrangements between suppliers and their customers."*

Complexity and Uncertainty

The Draft Report (on page 222) states that the Review Panel (comprising the Review Chair, Professor Ian Harper, and Peter Anderson, Michael O'Bryan QC and Su McCluskey) *"considers that the cartel provisions in their current form are overly complex and do not provide businesses with sufficient clarity and certainty"*. I note that the Draft Report also refers to the ACCC submission that:

> *"The process of prescribing the cartel offences with the necessary degree of specificity required of a criminal offence has resulted in drafting that is complex and which may not provide adequate certainty."*

The CDPP is of the view that the perceived complexity of the cartel provisions is primarily attributable to the following factors:

(i) that the requirements in ss 44ZZRD(2), 44ZZRD(3) and 44ZZRD(4) were modelled on the pre-existing civil cartel regime in the *Trade Practices Act 1974* (**TPA**);

(ii) that in light of the fact that the scope of the cartel provisions in Division 1 of Part IV of the CCA is limited by the heads of Commonwealth legislative power in the Constitution there was perceived to be a need to ensure that the extended application provisions in s6 of the CCA could apply to the provisions of ss 44ZZRD(2), 44ZZRD(3) and 44ZZRD(4) so as to maximise the Constitutional scope of the cartel provisions. In this regard, the CDPP notes the following comments in paragraphs 1.55 and 1.63 of the Explanatory Memorandum for the Amendment Act:

> *"155. Part IV is currently predicated on the assumption that the corporations power in section 51(xx) of the Constitution provides the primary power for the Commonwealth Government to make such laws. However, current subsection 6(2) of the TP Act provides alternative sources of Commonwealth power, should the corporations power be found to provide an insufficient source of power for a particular provision. This is consistent with the view that the Parliament intended the TP Act to have the widest application possible, consistent with the limitations on the Commonwealth's constitutional powers.*
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> ...
>
> *163. Reflecting the view that the Parliament intended the TP Act to have the widest application possible subject to Constitutional limitations, amendments provide for alternative Constitutional sources of power in relation to conduct identified in the cartel provision definition in section 44ZZRD and in the offences and civil prohibitions."*

With respect to the point made in paragraph (i) above, the CDPP notes that the following comments in paragraphs 1.11, 1.12 and 1.26 of the Explanatory Memorandum for the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* (**Amendment Act**) make clear that the requirements of ss 44ZZRD(2), 44ZZRD(3) and 44ZZRD(4) were specifically tailored to reflect the tests in the pre-existing civil cartel regime in the TPA:

> *"1.11 ... The term 'cartel provision' contains various tests that, when met, define the parameters of 'serious cartel conduct' (in combination with the elements of the criminal offences and civil prohibitions).*
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> *1.12 For a provision of a contract, arrangement or understanding to be a 'cartel provision', it must satisfy one of two alternative tests (the purpose/effect condition or the purpose condition) as well as threshold requirements regarding the requisite level of competition.* ***These tests reflect existing tests that apply under the current Part IV prohibitions.***
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> ...
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> *1.26 The wording of the purpose/effect condition largely uses the wording from current section 45A of the TP Act."* [Emphasis added.]

Furthermore, the following comments in paragraph 2.12 of the Explanatory Memorandum for the Amendment Act would seem to indicate that 'clarity and simplicity' were regarded as important considerations when the cartel offence provisions were formulated:

"***Clarity and simplicity are important. The criminal sanctions (while modelled on the relevant existing civil prohibitions in the TP Act) remove redundant language that was included in the existing civil prohibitions, therefore providing a more targeted set of sanctions in relation to serious cartel conduct.*** *This is an* [sic] *important, because the criminal offences will be indictable offences, to be heard before a jury.*" [Emphasis added.]

The CDPP also notes that the ACCC expressed the following view in paragraph 4.3.1 on page 92 of ACCC Submission 1:

> "*The ACCC considers that the drafting of the CCA could be improved to remove unnecessary complexity,* ***provide greater clarity, flexibility and, potentially, enhanced enforceability of the prohibitions.***" [Emphasis added.]

There is an almost inevitable tension between the laudable goals of clarity and flexibility in the context of legislative drafting. In this regard, the CDPP notes that the usual means of ensuring greater clarity for an offence is to enact more specific offence provisions, which would tend to reduce the scope for judicial interpretation and would potentially make the offence provisions less flexible. Conversely, less specific provisions tend to allow more scope for judicial interpretation, which would potentially make the offence more flexible. In seeking to achieve a policy goal of 'simplification' there is a risk of reducing clarity and certainty.

Contrast to the New Zealand Cartel Bill

The CDPP agrees with the statement on page 222 of the Draft Report that the proposed cartel provisions in the *Commerce (Cartels and Other Matters) Amendment Bill 2014 (NZ)* (**New Zealand Cartel Bill**) "*are similar in many respects to the Australian cartel law, but are in a shorter and simpler form*", which would seem to be the basis for the Panel's view "*that the proposed approach in New Zealand provides a useful illustration of how the law might be simplified in Australia*". However, if the policy goal of 'simplifying' the cartel provisions is more modest, simply to redraft the provisions of ss 44ZZRD(2), 44ZZRD(3) and 44ZZRD(4) of the CCA along similar lines to the equivalent provisions in the New Zealand Cartel Bill, then the CDPP suggests that there is a need to consider whether that more modest goal constitutes sufficient justification for amending the legislation before it has really been tested in court.

The terms used in the actus reus of the cartel offences in the New Zealand Cartel Bill, i.e. s82B(1)(a) "*enters into a contract or arrangement, or arrive at an understanding, that contains a cartel provision*" and s82B(1)(b) "*gives effect to a cartel provision*", are almost identical to the terms used in s44ZZRF(1) and s44ZZRG(1) of the CCA. The only significant differences between the respective offence provisions would seem to be:

(a) that, unlike the 'complex' actus reus in s82B(1)(a)(i) of the New Zealand Cartel Bill, the offence in s44ZZRF(1) has been specifically drafted to indicate that it contains two separate physical elements, i.e. a more basic (less 'complex') conduct element in s44ZZRF(1)(a) and a separate circumstance element in s44ZZRF(1)(b). The CDPP notes that the drafting of s44ZZRF(1) complies with drafting principle 2.2.2 in the current (September 2011) version of the Attorney-General's Department's "*Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*" (**AGD Guide**), which includes the following statements of principle:

"Criminal offences should generally be expressed in a way that enables each physical element of the offence to be clearly distinguished (either expressly or by construction). In particular, the elements of conduct, circumstances and results constituting the offence should be distinguishable from each other.

...

The ability to distinguish physical elements is particularly important where the default fault elements in the *Criminal Code* *are to apply, so that it is clear which fault elements will apply to the physical elements of the offence.*

...

The physical elements of an offence can be distinguished in a number of ways. One of the most common ways to achieve this is by placing each physical element in a separate paragraph. This is the approach that is generally used in the Criminal Code and is the preferred drafting model as it separates out each of the physical elements so it is clear how the Criminal Code will apply."

(b) that s 44ZZRF(2) and s44ZZRG(2) specify 'knowledge or belief' as alternative fault elements for the physical (circumstance) element in s44ZZRF(1)(b) and s44ZZRG(1)(a) respectively, i.e. *"the/a contract, arrangement or understanding contains a cartel provision"*, whereas s82B(1)(a)(ii) and s82B(1)(b)(ii) of the New Zealand Bill specifically provide that the *mens rea* for the actus reus in s82B(1)(a)(i) and s82B(1)(b)(i) is *"intends, at that time, to engage in price fixing, restricting output, or market allocating (as those terms are defined in section 30A)"* and *"intends, at the time the contract, arrangement, or understanding is given effect to, to engage in price fixing, restricting output, or market allocating, (as those terms are defined in section 30A)"* respectively.

The CDPP contends that the requirements of ss 82B(1)(a) and 82B(1)(b) will be no easier to prove than the requirements of ss 44ZZRF(1) and 44ZZRG(1) respectively because the provisions of ss 30A and 30B of the New Zealand Bill, which define the meaning of the term *"cartel provision"* include all, or almost all, of the requirements of the 'purpose/effect condition', the 'purpose condition' and the 'competition condition' in ss 44ZZRD(2), 44ZZRD(3) and 44ZZRD(4) of the CCA, with the exception of the following differences:

(i) the New Zealand Cartel Bill no longer includes bid-rigging as a separate form of *"cartel provision"*, which would seem to require a 'leap of faith' that anti-competitive bid-rigging conduct will come within one of the other three categories of cartel conduct; and

(ii) the output restriction and market allocation provisions of the New Zealand Cartel Bill extend to effects / likely effects, whereas the provisions of s44ZZRD(3)(a) and s44ZZRD(3)(b) of the CCA are cast in terms of purpose.

Although the CDPP acknowledges that the actual provisions of ss 30A and 30B of the New Zealand Cartel Bill are more concise and, therefore, easier to read than the 'purpose/effect condition', the 'purpose condition' and the 'competition condition' in ss 44ZZRD(2), 44ZZRD(3) and 44ZZRD(4) of the CCA, it is suggested that apart from the differences referred to in paragraphs (i) and (ii) above, the former provisions essentially prescribe the same requirements as the latter and, furthermore:

(a) that the provisions of ss 30A(1) and 30A(2) of the New Zealand Cartel Bill seem to have essentially the same scope in relation to price-fixing conduct as s44ZZRD(2) of the CCA;

(b) that the provisions of ss 30A(1) and 30A(3) of the New Zealand Cartel Bill seem to have essentially the same scope in relation to output restriction conduct as s44ZZRD(3)(a) of the CCA;

(c) that the provisions of ss 30A(1) and 30A(4) of the New Zealand Cartel Bill seem to have essentially the same scope in relation to market allocation conduct as s44ZZRD(3)(b) of the CCA;

(d) that s30B(a) of the New Zealand Bill is equivalent to s44ZZRC of the CCA; and

(e) that the provisions of ss 30B(b) and 30B(c) of the New Zealand Cartel Bill are more concise than the 'competition condition' requirements in s44ZZRD(4) primarily because they apply to all three categories of cartel conduct, i.e. price fixing, restricting output and market allocating, whereas the particular provisions of s44ZZRD(4) have been specifically tailored to cater for particular categories of cartel conduct that are specified in the provisions of ss 44ZZRD(2) and 44ZZRD(3).

The CDPP suggests that the following factors would seem to provide a rationale for the drafting differences that are referred to in paragraph (e) above:

(i) that, unlike the equivalent provisions of the New Zealand Cartel Bill, the scope of the cartel provisions in Division 1 of Part IV of the CCA is limited by the heads of Commonwealth legislative power in the Constitution; and

(ii) that in order to maximise the Constitutional scope of the cartel provisions there was perceived to be a need to ensure that the extended application provisions in s6 of the CCA could apply to the provisions of ss 44ZZRD(2), 44ZZRD(3) and 44ZZRD(4).

The CDPP contends that the enactment of amended cartel provisions modelled on the provisions of the New Zealand Cartel Bill will not make it any easier for the CDPP to prosecute a cartel offence, or for a judge to explain the requirements of such an offence to a jury. In determining the elements of the cartel offences to be proved by the prosecution and explained by a judge to a jury, it is necessary to 'read in' the relevant definitions of a 'cartel provision' – ie the purpose/effect or purpose condition and the competition condition. The replacement of a defined term in an offence provision is consistent with judicial decisions, as follows:

(a) an inference from Spigelman CJ's judgement in *R v JS* (2007) 175 A Crim R 108, at 132, paragraph [125], to the effect that the provisions of the original form of the offence in s39 of the *Crimes Act 1914* had to be interpreted as if they incorporated the definition of the term *"judicial proceeding"* in s 31 of that Act;

(b) a pre-trial ruling by Judge Maidment in *CDPP v Aitchison* [2013] VCC 1932 (11 December 2013) to the effect that the term *"border controlled drug"* in the physical (circumstance) element in s307.3(1)(b) of the *Criminal Code* should be replaced by the name of the particular substance specified in the list in s314 (which was repealed from 28 May 2013 by the *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012*) that is most appropriate to the facts of the particular matter; and

(c) the following passage from the dissenting judgment of McHugh J in *Kelly v R*, (2004) 218 CLR 216, at 253, paragraph [103], which passage is cited with apparent approval in paragraph 6.59 on page 247 of the 7th Edition of D C Pearce and R S Geddes, *Statutory Interpretation in Australia* LexisNexis, 2011 and which was also specifically relied upon by Judge Maidment in paragraph 19 of his pre-trial ruling in *CDPP v Aitchison*:

"... the function of a definition is not to enact substantive law. There is, of course, always a question of whether the definition is expressly or impliedly excluded. But once it is clear that the definition applies, the better — I think the only proper — course is to read the words of the definition into the substantive enactment and then construe the substantive enactment — in its extended or confined sense — in its context and bearing in mind its purpose and the mischief that it was designed to overcome."

If one applies the 'more complex' form of element analysis to the cartel offences in the New Zealand Cartel Bill, it is the CDPP view that the New Zealand provisions are not as simple as they first appear, and that the requisite proofs are similar to those in the Australian legislation.

<u>The *Criminal Code* and the Fels, Taylor and Smith submission</u>

The CDPP suggests that if, consistently with the judicial decisions referred to above, the definition provisions that have been proposed in the submission from Professor Allan Fels AO, Nick J Taylor and Prudence J Smith (**Fels, Taylor & Smith submission**) are 'read into' the 'simplified' defined terms in their proposed offence provision, then there would be very little, if any, significant difference between the points of proof of the existing provisions and their 'simplified' cartel offence.

The CDPP further notes that the general principles of criminal responsibility in Chapter 2 of the *Criminal Code* cannot accommodate an aggregation of 'fault elements' such as has been proposed in s45(5) in the Fels, Taylor & Smith submission, i.e. *"In addition to constituting a civil prohibition, conduct in contravention of section 45(2) is also an indictable offence for which the fault element is intention, knowledge, belief or recklessness"*. In this regard, the CDPP suggests that it is apparent from the following comments by Gummow, Hayne, Crennan, Kiefel and Bell JJ in their joint judgement in *R v LK and RK* (2010) 241 CLR 177, Ian Leader-Elliott and Stephen Odgers SC respectively that they are all agreed on one fundamental *Code* principle, i.e. that what might seem to be a 'fault element' can really only be a *"fault element"* for the purposes of ss 5.1(1) or 5.1(2) of the *Criminal Code* if it is a *"fault element **for** a physical element"*:

(i) *"Part 2.2* [of the Code] *makes no provision for the specification of a fault element that is not "**for** a physical element of* [the] *offence""*: per Gummow, Hayne, Crennan, Kiefel and Bell JJ in *R v LK and RK* (2010) 241 CLR 177, at 232, paragraph [132].

(ii) "[There is a] *clear implication in Part 2.2 of Chapter 2* [of the <u>Criminal Code</u>] *that fault elements cannot exist in isolation: a fault element is, necessarily, a fault element **for** a physical element"*: see Ian Leader-Elliott, *The Commonwealth Criminal Code – A Guide for Practitioners*, paragraph 5.6, page 87.

(iii) *"Physical elements can exist in splendid isolation but a fault element can only exist as a fault element 'for' some specified physical element"* see page 14 of *"Chapter 2 of the Criminal Code: Legislative Formulary or Statement of Fundamental Principles?"* [Mr Leader-Elliott reproduced the cited portion of that seminar in another seminar, *"Codification of the General Principles of Commonwealth Criminal Law"*, which he presented to the Law Society of South Australia on 8 June 2005.]

(iv) the *Code* *""makes no provision for" what might be called free-standing fault elements (that is, a fault element that is not "for a physical element of [the] offence")"*: see Stephen Odgers SC, *Conspiracy to commit a Commonwealth offence*, (2010) Crim LJ 240, at page 245. [Mr Odgers SC makes similar comments in paragraph 3.2.120 of *Principles of Federal Criminal Law*, 2nd Edition (2010), at pages 14 and 15.]

For the reasons outlined above, the CDPP suggests that unless one or more of the 'fault elements' that are aggregated together in the proposed s45(5) in the Fels, Taylor & Smith submission is/are *specifically* applied to a particular physical element, i.e. conduct, or a circumstance, the provisions of s3.2(b) of the *Criminal Code* would apply and each of the 'fault elements' in s45(5) would be regarded as alternatives. That would mean that the prosecution would only be required to prove the lowest ranking 'fault element', i.e. recklessness, which would be completely contrary to another fundamental *Criminal Code* principle, i.e. that intention is the most appropriate fault element for a physical (conduct) element. [The CDPP notes that because of that principle ss 5.3, 5.4(1) and 5.4(2) of the *Code* only make provision for knowledge and recklessness to apply to circumstances and results.] In this regard, the CDPP notes that drafting principle 2.2.4 of the AGD Guide includes the following statements of principle:

> *"The default fault elements supplied by section 5.6 of the Criminal Code should apply unless there is a sound reason to depart from them.*
>
> ...
>
> *Where the physical element is conduct, the fault element if no other is specified is 'intention' (subsection 5.6(1)). ...*
>
> *The default fault elements were carefully considered and devised in the process of developing the Criminal Code. Consequently, the default fault elements supplied by the Criminal Code should apply unless there is a sound reason to depart from these.*
>
> ...
>
> *The Criminal Code reflects the common law in providing that the automatic fault element for a conduct element of an offence is intention. The fault elements of knowledge and recklessness should generally not apply to conduct. ..."*

Restricting the cartel offences to an Australian market

The Draft Report indicates (on page 223) that the "*Panel considers there is no reason why the cartel conduct prohibitions should differ from the other competition law prohibitions. As a comparison, the New Zealand Bill proposes to restrict the cartel conduct prohibition to conduct affecting the supply or acquisition of goods or services in New Zealand.*" The apparent the rationale for the Panel's recommendation on page 225, i.e. "*... the provisions should apply to cartel conduct affecting goods or services supplied or acquired in* ***Australian markets***" is that the decision of Gordon J in *Norcast S.ar.L v Bradken Ltd (No. 2)* [2013] FCA 235 (19 March 2013) has revealed how the extended application provisions in s5(1) of the CCA can extend the application of the provisions to alleged cartel conduct where the only connection to Australia is that the defendant corporation 'carries on business' in Australia.

With respect to the Panel's recommendation on page 225 of the Draft Report that "*the provisions should apply to cartel conduct affecting goods or services supplied or acquired in* ***Australian markets***", the CDPP notes that the following comments in paragraph 1.38 of the Explanatory Memorandum for the Amendment Act in relation to the 'purpose condition' for market allocation in s44ZZRD(3)(b) of the CCA indicate the Parliament specifically decided not to include the technical term "*market*" in the provisions of Division 1 of Part IV:

> *"… 'Market' is currently defined term in section 4E, which* [section] *has been overlaid by an extensive body of case law. As a result, determining the relevant market for the purposes of the* <u>TP Act</u> *can be a highly technical exercise. The criminal offences and parallel civil prohibitions focus on the allocation of the constituent parts of a market (that is, customers, suppliers or territories) between competitors, rather than on the definition of a market in particular circumstances."*

The CDPP suggests that if the inclusion of an 'Australian market' requirement in Division 1 of Part IV gives rise to a need for expert 'market' evidence that will mean that there is likely to be conflicting expert witness evidence, which will make the successful prosecution of cartel offences more problematic.

<u>In Competition / Likely Competition</u>

The CDPP notes that the following recommendation on page 223 of the Draft Report also seems to be attributable to Gordon J's decision in *Norcast S.ar.L v Bradken Ltd (No. 2)*:

> *"The Panel considers that the cartel prohibition should only apply to corporations that are in competition with each other or are likely to be in competition with each other, where likelihood is assessed on the balance of probabilities (i.e. more likely than not)."*

The CDPP suggests that if that recommendation by the Panel is implemented it would potentially have implications for any bid-rigging matter along similar lines as that alleged in the Report of the NSW Independent Commission Against Corruption (**ICAC**) in relation to Operation Jasper, where the bid-rigging collusion between Cascade Coal Pty Ltd (**Cascade**) and Loyal Coal Pty Ltd (**Loyal**) only occurred *after* the companies had submitted completely genuine bids:

(a) in January 2009 the NSW Department of Primary Industries (**DPI**) invited certain nominated companies, including Loyal and Cascade, to submit by a specified closing date in February 2009 expressions of interest (**bids**) with respect to the grant of exploration licences for Coal Release Areas, including Mount Penny.

(b) in response to DPI's request for bids Cascade and Loyal submitted completely 'genuine' bids that were prepared and submitted separately at a time when there was no contact, let alone any collusion, between the two companies in relation to the preparation and submission of their bids, or in relation to the EOI process generally.

(c) several months after Cascade and Loyal had submitted their bids and well after the closing date for submitting bids but before DPI had formally announced that Loyal was the successful tenderer, representatives of Loyal entered into negotiations with representatives of Cascade in relation to a 'joint venture' that was contingent upon Cascade being granted an exploration licence for the Mount Penny Coal Release Area.

(d) as a result of the negotiations between the representatives of Cascade and Loyal:

    (i) Cascade entered into a 'joint venture' agreement with Buffalo Resources Pty Ltd (**Buffalo**, which company was incorporated specifically for the purpose of the agreement with Cascade by the same people who owned and controlled Loyal) that was predicated upon Cascade's bid being successful and which would ultimately benefit Buffalo and, thereby, indirectly benefit the people who controlled that company and Loyal.

(ii) Loyal withdrew its bid, which thereby ensured that Cascade's bid would be successful in relation to the exploration licence for the Mount Penny Coal Release Area and, in turn, that Buffalo would benefit from the 'joint venture' agreement with Cascade to develop that Coal Release Area.

The CDPP understands that the application of the cartel provisions to the alleged bid-rigging conduct in relation to ICAC's Operation Jasper investigation will be considered by the Full Federal Court in an appeal by Messrs Moses and Paul Obeid against the decision of Farrell J in *Obeid & Obeid v ACCC* [2014] FCA 839 (8 August 2014).

Broadening the Joint Venture exception

The CDPP suggests that the following recommendation on page 225 of the Draft Report has the potential to make criminal prosecution of alleged cartel conduct more problematic in any matter where a defendant could conceivably 'point to evidence' (including evidence that was adduced by the prosecution: see the decision of the High Court in *R v Khazaal* (2012) 246 CLR 601 in relation to the provisions of ss 13.3(3) and 13.3(6) of the *Criminal Code*) of a purported 'joint venture' between the alleged cartel participants:

> *"The prohibitions against cartel conduct should be simplified and the following specific changes made:*
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> ...
>
> - *a broader exemption should be included for joint ventures and similar forms of business collaboration (whether relating to the supply or acquisition of goods or services), recognising that such conduct will be prohibited by section 45 of the CCA if it has the purpose, or has or is likely to have the effect, of* ***substantially lessening competition****."* [Emphasis added.]

The CDPP suggests that if a 'substantially lessening competition' (**SLC**) requirement is included in the joint venture exceptions in ss 44ZZRO(1), 44ZZRO(1A) and 44ZZRO(1B) it will give rise to a need for expert SLC evidence and will mean that there is likely to be conflicting expert witness evidence in relation to SLC, which will make the successful prosecution of cartel offences more problematic in any matter where a defendant could conceivably 'point to evidence' of a purported 'joint venture' between the alleged cartel participants.

Having regard to the points raised above and the following acknowledgement on page 93 of ACCC Submission 1 the CDPP questions whether it is premature to call for 'simplification' of the cartel offence provisions at this point in time, before the provisions have really been tested in court:

> *"The ACCC has instituted proceedings for civil breaches of the reformulated cartel provisions that were introduced along with criminal sanctions* ***but a criminal prosecution is yet to be commenced****. No contested proceedings under the new provisions have been concluded, although there has been one private action.* ***The interpretation of the new provisions is therefore yet to be fully tested by the courts.****"* [Emphasis added.]

If the Panel felt that it might assist, the CDPP would be prepared to meet with the Panel to discuss the issues outlined above.

Yours faithfully,

Shane Kirne

Deputy Director

Commercial, Financial & Corruption