CEMENT INDUSTRY FEDERATION

Cement Industry Federation

Submission to the

Competition Policy Review

Draft Report

17 November 2014

Adelaide Brighton Cement Ltd | BORAL | CEMENT AUSTRALIA

1. Background

The Cement Industry Federation is the national body representing the Australian cement industry. Our membership is made up of the three major Australian cement producers - Adelaide Brighton Ltd, Boral Cement Ltd and Cement Australia Pty Ltd. Together these companies account for 100 per cent of the integrated production of clinker and cement in Australia.

The Australian cement industry plays a key role in contributing to Gross Domestic Product (GDP) growth and employment opportunities throughout the Australian economy.

CIF member operations are located in every Australian state and territory, and include seven integrated clinker and cement manufacturing sites, five standalone cement mills, eight limestone mines and a national distribution network to move raw materials, as well as our intermediary and finished products. Sales of cementitious materials were 9.4 million tonnes in 2013-14, with an annual industry turnover in excess of $2.3 billion.

Australian cement is a fundamental building material for society's infrastructure. The cement industry is a key employer with over 5,000 directly and indirectly employed in Australia. It is also highly trade exposed as virtually all cement produced in Australia is consumed domestically and its production costs cannot exceed the international cost of production (including shipping costs) to be competitive over time.

Producing cement is also emissions intensive, with Australian cement emissions currently estimated to be approximately 6 million tonnes CO_2-e, around 1 per cent of total Australian emissions. Total global cement emissions are approximately 5 per cent of total global emissions.

2. Competition Policy

The Australian cement manufacturing industry is a strong contributor to the Australian economy as part of its manufacturing sector. The continued future success of our industry is dependent on remaining competitive against key international producers (namely in Asia) and continued strong local demand for cement based products.

The cement industry is currently operating in an increasingly regulatory environment – across a range of areas that have an impact both directly and indirectly on our productivity and competitiveness.

This submission provides comment on specific areas of the Draft Report of interest to our members.

2.1 Coastal Shipping

CIF's submission to the *Competition Policy Review Issues Paper* in June 2014 outlined concerns over the existing coastal trading legislation – *Coastal Trading (Revitalising Australian Shipping) Act 2012* – and the anti-competitive behaviour that has since resulted.

The legislation as it currently stands promotes protectionism of Australian shipping without concern for the negative impacts of the legislation on Australia's manufacturing sector – and in particular those industries, such as cement manufacturing, that have limited options for moving product around the country.

As such, the CIF fully supports the Review Panel's view that "…cabotage restrictions should be removed, unless they can be shown to be in the public interest and there is no other means by which public interest objectives can be achieved."

This should also include the rescindment of relevant parts of the *Fair Work Regulations (2009)* that have been amended and coupled to the Coastal Trading Act 2012 – specifically to enable 'persons insufficiently connected with Australia' to be excluded from the Act.

2.2 Regulatory Restrictions

Since the release of the Competition Policy Issues Paper there has been an improvement in the level of anti-competitive regulation imposed on large manufacturing industries such as cement production – as the Coalition Government delivers on its election promises.

For example, the repeal of the carbon tax (*Clean Energy Act 2011*) and Energy Efficiency Opportunities has removed significant cost and regulatory burden from our member companies, providing welcome relief in a difficult economic environment.

However, there are still a number of specific areas where unnecessary regulation impacts on the competitiveness of our industry. These include the Renewable Energy Target (RET), State-based energy savings schemes, the National Greenhouse and Energy Reporting scheme (NGERS) and regulated energy costs.

2.2.1 Renewable Energy Target

As outlined in our submission to the Issues Paper in June 2004, the RET remains as a government intervention that taxes electricity users in order to provide subsidies to producers of renewable energy – predominantly wind and solar – and thus reducing the competitiveness of large users such as cement manufacturing.

The RET in its current form has been an underlying factor in energy price rises across Australia. Costs to business customers are estimated to increase by around 5 per cent as a consequence of the RET[1], with net costs to Australian cement manufacturers of around $12 million per annum and rising.

This is also not an efficient regulatory scheme for the Australian cement industry to reduce its emissions. Recent estimates (2011)[1] of the overall RET cost of abatement ($/t CO2) are:

- Productivity Commission $42-129 per tonne of CO_2
- Access Economics $87-115 per tonne of CO_2
- Australian Energy Market Commission $185-290 per tonne of CO_2
- Grattan Institute $30-70 per tonne of CO_2.

The administrative burden placed on cement manufacturers as a result of the RET leads to innefficiency.

As such, the CIF supports the cessation of RET both due to the distortionary costs of the scheme to businesses and consumers as well as the relatively high cost of abatement from an emissions perspective.

The RET scheme is also an example of why it is important for rigorous evaluation of new policy initiatives both before and after they are implemented, or significantly altered during their operation.

[1] CCA 2012

The changes to the RET scheme since its introduction – for example separating out the SRES and LRET components in 2010 – have created an increased liability for liable entities[2]. This could have been avoided with a more rigorous evaluation of the potential impacts of the changes so that the unintended consequences may have been avoided.

2.2.2 State-Based Energy Savings Schemes

New South Wales, Victoria and South Australia each have an energy efficiency scheme. While each scheme differs slightly in approach, there are some common elements. Principally the schemes operate by the setting of energy efficiency or greenhouse gas targets that are applied to the energy retailer (normally only electricity and gas).

The retailer must either invest in energy efficiency projects that create certificates (or recognition), or alternatively purchase those certificates. If the certificates are not purchased or created, the retailer must pay a penalty price for having failed to meet the target.

Any costs of the scheme faced by the energy retailers are being recovered from electricity users through a general increase in electricity prices. This means that the cost of funding these schemes is not on the government's balance sheet but on the balance sheet of electricity consumers. Transparency would be better served through a direct subsidy.

The key issue with these schemes is that any cost pass-through will disproportionally burden large electricity users. The CIF questions any need to continue with these schemes in light of the proposed introduction of climate policies such as Direct Action and the Emissions Reduction Fund.

2.2.3 National Greenhouse Energy Reporting Scheme (NGERS)

The Cement Industry Federation has been reporting its emissions on annual basis since the early 1990s. This reporting has continued with the introduction of NGERS.

However, the level of detail required under the current system creates a disproportionate and unnecessary burden on reporters. An example of this is the requirement for our members to determine and report emissions from each and every cement truck, despite the fact that the total emissions are dwarfed by emissions from clinker production.

Therefore it is our view that there remains significant scope to improve the application of this regulation to reduce the reporting burden - without comprising the quality of the data.

2.2.4 Electricity & Gas

Historically Australia has been a source of reliable and competitively priced energy supplies, and our manufacturing base developed and prospered on the back of our vast resources. However, in recent years energy costs have been increasing – from both an electrical and thermal energy perspective.

For example, electricity prices in Australia have been rising at a faster rate than many of our international competitors. This has mainly attributable to a number of key factors such as: electricity network 'gold plating', the carbon price and the Renewable Energy Target (RET).

Domestic gas prices have also been increasing. Western Australian producers have been exposed to higher gas costs for a number of years now, where prices have risen from around

[2] CCA Issues Paper 2012, pp 34)

the $2-3 a gigajoule range to $8-10 per gigajoule on the back of the LNG export market to Asia.

A similar situation is now occurring on the east coast of Australia as large LNG export hubs are scheduled to come online over the next few years, diverting gas from the region. Not only does this situation have ramifications for the supply of gas to domestic markets, but also pricing as the market moves to match the export price.

As an import competing industry, it is difficult for our members to pass on the costs associated with energy-related price increases – be it for electricity, gas or any other fuel - thus significantly affecting our international competitiveness.

The CIF therefore remains fully supportive of reforms that are aimed at putting downward pressure on energy prices and reduce the regulatory burden on business, and welcomes the Review Panel's recommendation for state and territory governments to finalise the energy reform agenda.

3. Competition Law

3.1 Misuse of Market Power – Section 46

The CIF supports the position of the Business Council of Australia in its Supplementary Submission to the Competition Policy Review September 2014 that states (pp1-2):

> 'An efficient and effective competition policy regime is important for setting and administering rules for market conduct that are beneficial to business innovation and the welfare of consumers. However some proposals to the competition policy review risk harming the competitive process and consumer welfare through poor or excessive regulation.
>
> **Effects test**
> The proposal to add an effects test to section 46 and to remove the "taking advantage" element should be rejected on the grounds that:
> - There is no obvious deficiency with the current law and no evidence showing any inappropriate gap in the law;
> - There is a risk that legitimate pro-competitive conduct could be prohibited under these changes;
> - Regulatory uncertainty could lead to business curtailing innovation and price competition, with the effect of harming the competitive process and consumer welfare.
>
> **Market studies**
> While market studies can be a useful tool for assessing the competitiveness of markets, they can also be misdirected, costly and intrusive. As a law enforcement agency, the ACCC should not have the power to self-initiate an inquiry for policy reform purposes. Further, the conferral of a general power on a law enforcement agency to conduct an inquiry into an industry runs counter to well-established principles and protections against such open-ended investigations. The government should determine when it is appropriate to refer a matter to the ACCC for inquiry.
>
> **Price Signalling**
> The price signalling provisions in the Act are poorly conceived and should be repealed. They should certainly not be extended across the economy. The Act already sufficiently captures anti-competitive price signalling behaviour obviating the need for this additional layer of confusing and costly regulation.'

3.2 Secondary Boycotts

Following the recent secondary boycott activity impacting on the Australian cement industry, the CIF clearly does not believe that current enforcement capability in Australia is sufficient – see Draft Competition Policy Review Report (2014, pp.49-50).

The CIF advocates a reinstated Australian Building & Construction Commission (ABCC) should share jurisdiction with the ACCC to enforce secondary boycott laws as proposed by CIF member company, Boral Ltd.

4. Institutions & Governance

4.1 National Competition Body (ACCP)

The CIF supports the establishment of a new national competition body – the Australian Council for Competition Policy (ACCP) – to replace the National Competition Council (NCC). The proposed intergovernmental agreement and oversight by a specific Ministerial council is also supported.

The CIF suggests that the functions and role of the ACCP should be determined by the Ministerial Council, taking into account advice provided within the National Competition Policy Final Draft Report. The CIF also believes that incentives for competition reform, not penalties, should be considered as a preferable option when it can be clearly demonstrated it is in the Australian public interest for reform.

4.2 Commitment to reform

Commonwealth, state and territory leaders' commitment to identifying and implementing a package of reforms to remove barriers to competition via a new body and program should include:

- robust processes to prevent new anti-competitive provisions in regulation;
- amendments to align Australia's competition law framework with international best practice principles;
- measures that ensure all the nation's regulators contribute to removing unnecessary barriers to competition and thereby foster national prosperity; and
- reforms to drive competitive neutrality in government service provision

It is clearly the responsibility of all levels of Government to ensure that all new or amended legislation is 'competition policy compliant'. The deficiencies in the policy development process that preceded the introduction of the Federal Coastal Trading legislation into the Australian Parliament in 2012 provides a key example of the need for change to ensure an 'agreed' set of competition policy principles are adhered to.