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 **HarperCollins Publishers**
Australia

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Professor Ian Harper
Chair
Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Professor Harper

COMPETITION POLICY REVIEW DRAFT REPORT RELEASED SEPTEMBER 2014


HarperCollins Publishers Australia welcomes the opportunity to respond to the Competition Policy Review draft report.

We agree that competition, in any market, is vital to ensure consumers' interests are met. We contend that Australian book publishing is a highly competitive industry. We would argue that it is competition itself that has driven the development of the industry to the point today where Australian consumers are offered enormous diversity of content in many different forms, delivered in multiple ways. We also contend that, in the continuum of increasing competition, innovation and investment in the industry has never been stronger, with the advent of online and digital, all to the advantage of Australian consumers who now enjoy one of the widest range of books in the world, at highly competitive prices, with fast availability and ease of access from any market across the world.

It is important to recognise that publishing is a core copyright industry, where intellectual property is married to territorial rights in a complex system, developed across the world over centuries, to protect the rights of authors, creators and publishers. Any change to this complex and sophisticated ecosystem needs to be carefully considered to ensure adverse consequences do not ensue. In particular, it is important that Australian copyright creators are afforded the same protections as copyright creators in the UK and US, so that they are not disadvantaged in both international and domestic markets.

The current copyright law has delivered to Australian readers both a vibrant and dynamic publishing industry, and rich and diverse content, with publishers consistently investing in Australian content, all of which drives the growth of the book market and culture, to the benefit of consumers, authors, booksellers, printers and publishers. Any change must be carefully weighed to measure risk and ensure there are not unintended consequences which disadvantage the Australian public.

Yours sincerely
James Kellow


Chief Executive Officer

HARPERCOLLINS PUBLISHERS AUSTRALIA'S SUBMISSION IN RESPONSE TO THE COMPEITON POLICY REVIEW DRAFT REPORT RELEASED SEPTEMBER 2014

This submission is limited to Draft Recommendations 7, 8, 9 and 26 which we see to be of particular relevance to the book publishing industry.

About HarperCollins Publishers Australia

HarperCollins Publishers Australia is a leading Australian publisher. Established in 1989, with the amalgamation of Harper & Row (USA), William Collins (UK) and Australia's oldest publisher, Angus and Robertson Publishers, HarperCollins Publishers Australia is part of a global network, with affiliates in New Zealand, the United Kingdom, the United States of America, Canada and India. HarperCollins Publishers Australia publishes extensively in all major sections of the book market, publishing approximately 200 new titles per year. HarperCollins Publishers Australia also provides a full range of services to book retailers and markets and distributes books published by local and overseas publishers in Australia and New Zealand.

Draft Recommendation 9 – Parallel imports

Remaining restrictions on parallel imports should be removed unless it can be shown that:

- ***they are in the public interest; and***
- ***the objectives of the restrictions can only be achieved by restricting competition.***

Overview

We support the submissions made by the Australian Publishers Association.

The Australian book publishing industry has undergone a great deal of change since the parallel importation provisions were last examined by the Hilmer Review of 1993 and the Productivity Commission Review of 2009.

The book publishing industry is a highly competitive industry that has, during the last 20 years, and particularly during the last 5 years, continuously improved the availability and range of print and ebooks offered, pushing prices down for Australian consumers. This competition and reduction in price has occurred alongside the current parallel importation provisions which have allowed the Australian book publishing industry to continually invest in Australian content, allowing it to thrive to the Australian consumer's benefit and promote Australian culture overseas, as evidenced by the recent award of the Man Booker Prize to Australian author, Richard Flanagan.

Significantly, there is currently no restriction on individual consumers importing books into Australia for their personal use. The current provisions only apply in a limited circumstance – to commercial quantities of titles where a publisher has invested in rights and made the title

available in Australia within a specified short time. If Australia was to become an open market, the framework on which the successful Australian publishing ecosystem is based will be destabilised – exclusive copyright licences granted to Australian publishers would be undermined and Australian publishers will be less able to invest in rights for books, which will have significant adverse consequences which we outline below and which we believe will ultimately disadvantage consumers.

In our view, the proposed changes to the current parallel importation provisions will not reduce the price of books, improve choice or availability, nor will they create more competition or have any significant benefits for Australian consumers or the industry as a whole.

Significantly, the Australian publishing industry is completely independent and self-funded and not supported by subsidies or tax concessions, which also evidences its success as an industry.

Current state of the market

Due to the highly competitive nature of the industry and the sustained commitment to innovation, investment and improvement by the industry in the last two decades, today Australian consumers enjoy:

- the widest range of title choice yet;
- fastest availability in our history; and
- cheaper prices than ever before.

Availability

In 2011, the Australian Publishers Association and Australian Booksellers Association recognised the need to further improve availability for consumers and worked together to implement an innovative and voluntary Speed to Market Initiative in order to reduce the conditions around parallel importation of books from 30/90 days to 14/14 days. This means that publishers now make all print books published overseas in an English language territory available within 14 days (with the ebook often available simultaneously). The reality however is that the majority of significant releases are now offered on a 0/0 basis, that is, simultaneously with their overseas and ebook editions, to the great benefit of Australian readers.

Developments in digital print technology have also helped improve availability through POD (print-on-demand) and SRDP (short-run-digital-prints). Titles that previously would have needed to be printed overseas and shipped over many weeks, are now available within days here in Australia.

Choice

Choice of titles available to Australian consumers has enormously improved over the last 10 years through the efforts of the publishing industry. Nielsen Bookscan reports that the number of

physical ISBNs (individual titles) sold in Australia in 2003 was 252,000. In 2013, that number had grown to 553,000. In the last 5 years, the explosion of choice has continued as developments in online retail and ebook technology have progressed at a fast pace, meaning that, literally, millions more titles are now available through domestic online and ebook retailers' catalogues. Conservative estimates would indicate a doubling of catalogue size in the last 4 years alone, and it is reasonable to expect that trend to continue.

The continued developments in print technology are also supporting this explosion of choice here in Australia as short quantity printing has become more commercially viable.

Price

The price of books continues to improve in this highly competitive industry. Online retailers have made print books and ebooks increasingly easy for consumers to find and compare prices and make informed choices. This, coupled with an individual consumer's total access to books from overseas for personal use, and high competition across different retailers has placed significant downward pressure on prices to the benefit of Australian consumers. Nielsen Bookscan reports that the average selling price of a book in Australia in 2003 was \$20.02 and, in 2013 was \$16.95, representing a 16% drop, but in reality, considering inflation and currency fluctuations, the average selling price is now a third less that it was a decade ago.

Consequences

We maintain that the public interest will not be best served by the removal of the current parallel importation protections. If they were removed, we believe it would be to the disadvantage of the Australian reader, due to a sequence of adverse and unintended consequences – namely:

- reduced local sales revenue and economies of scale in Australian publishing;
- reduced print runs and lost reprint opportunities;
- collapse of the Australian printing industry;
- increased book prices for Australian consumers;
- reduced stock holding and availability for consumers;
- reduced income for Australian authors, illustrators, editors, designers;
- reduced ability for Australian publishers to foster Australian writers which will lead to less investment in Australian content and diminished opportunities for Australian authors and creators;
- less Australian content being exported overseas;
- less marketing and promotion of Australian authors;
- shrinkage of the rights market in Australia;
- potentially the end of “sale of return” distribution given the much higher level of risk; and
- redundancies.

If Australia became an open market, there would be a reduction in Australian revenue as monies would flow to overseas copyright holders, who would benefit from the expenditure of Australian consumers. It would mean more imports into the Australian market, less tax received and more revenue flowing offshore. In the face of increased risk and uncertainty, the result would be reduced print runs, reducing revenue, putting pressure on the Australian printing industry. Reduced print runs would mean higher print costs inevitably causing higher retail prices for Australian consumers. Publishers and distributors would also hold less stock given the exposure to risk and therefore availability for consumers would be reduced. If the Australian printing industry was to collapse altogether, the recent improvements in choice and availability would dramatically reverse, and availability and choice would suffer substantially. With reduced revenue and increased risk, Australian publishers would reduce their lists and Australian authors would find it more difficult to have their works published. This in turn would jeopardise the ongoing investment in Australian content and ultimately mean fewer Australian titles and a narrower range offered to Australian readers, leading to reduced opportunities for Australian writers in overseas territories. There would be a marked reduction in marketing and advertising spend, less author promotion and significant redundancies. Distribution would also be adversely affected – and the “sale or return” distribution model, which has allowed booksellers to experiment with new authors, would become unsustainable for publishers.

In short, we contend the proposed changes would negatively impact the entire industry, which would ultimately see Australian consumers face higher prices, reduced choice and slower availability. The recent changes in the New Zealand market offer evidence in support of this.

New Zealand

In 1998, New Zealand removed its parallel importation protections. Since then, the New Zealand book publishing industry has significantly changed.

Many publishers, including HarperCollins Publishers New Zealand, closed their New Zealand distribution centres leading to a number of redundancies, presenting fewer opportunities for New Zealand authors and publishers releasing fewer titles, ultimately creating less choice for New Zealand readers. Neilson Bookscan reports that the number of ISBNs published in New Zealand in 2008 was 195,000 and in 2013, had reduced to 145,000, while the average selling price over the same period marginally increased.

This has ultimately pushed up publishing and distribution costs and is having a negative impact on competition in New Zealand, making publishing a less sustainable business.

It is our view that removing the current parallel importation provisions is likely to have similar adverse implications in Australia without creating any benefits or reduction in price for the Australian consumer.

Summary

Australia enjoys an innovative and creative Australian publishing industry, founded on the existing copyright and parallel importation framework. It may well be a complex industry, but it serves consumers well.

In our view, the current parallel importation provisions do not hinder competition but rather facilitate competition, creating a rich and diverse offering to Australians.

The provisions are essential to the growth of the Australian publishing industry and it is imperative that Australia supports authors, creators and the Australian publishing industry and encourages them to continue to contribute to Australian literature and Australian culture. It is also important that Australia offers the same opportunities to its authors as those offered to US and UK authors.

The Australian book publishing industry is independent and successful. In our view, it would be far more expensive for the Government to support Australian authors by alternative mechanisms such as direct subsidy or tax concessions, which is clearly not in the interests of the Australian public.

If the parallel importation provisions were removed, it will have significant implications for Australian consumers generally and the Australian publishing industry in particular. The current parallel importation provisions have been tried and tested over decades – they have triumphed time and time again because they serve sound policy and economic objectives and support the interests of the Australian public.

Draft Recommendation 7 – Intellectual property review

The Panel recommends that an overarching review of intellectual property be undertaken by an independent body, such as the Productivity Commission. The review should focus on competition policy issues in intellectual property arising from new developments in technology and markets.

The review should also assess the principles and processes followed by the Australian Government when establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements.

Trade negotiations should be informed by an independent and transparent analysis of the costs and benefits to Australia of any proposed IP provisions. Such an analysis should be undertaken and published before negotiations are concluded.

We support the submission of the Australian Publishers Association and highlight that there have been a number of reviews of copyright. If another review is to be undertaken, we submit that it should be a holistic review which takes into consideration a variety of factors, including the economic framework, and recent digital developments in technology and markets. In addition, we submit that any further review should be undertaken by a multi-disciplinary panel with expertise in cultural and economic issues to ensure that all matters are fully and properly explored.

Draft Recommendation 8 - Intellectual property Exception

The Panel recommends that subsection 51(3) of the CCA be repealed.

We support the submission of the Australian Publishers Association.

Section 51(3) of the CCA is pro-competitive as it promotes the dissemination of material protected by intellectual property rights. It does this by promoting certainty and by reducing the transaction costs that would otherwise apply. Section 51(3) does not, however, affect the CCA provisions that apply where entities have substantial market power or where they seek to engage in resale price maintenance (sections 46, 46A and 48 are excluded from the scope of section 51(3)).

A repeal of section 51(3) would necessarily be followed by a period of great uncertainty. The very fact of repeal would make it prudent for publishers – who already operate in a high-risk and highly competitive market – to apply for authorisation or approvals, thus leading to a substantial increase in transaction costs which would necessarily need to be recouped in higher prices or absorbed by limiting product range. In neither case would consumers benefit.

Draft Recommendation 26 – Price discrimination

A specific prohibition on price discrimination should not be reintroduced into the CCA. Where price discrimination has an anti-competitive impact on markets, it can be dealt with by the existing provisions of the law (including through recommended revisions to section 46, see Draft Recommendation 25).

Attempts to prohibit international price discrimination should not be introduced into the CCA on account of significant implementation and enforcement complexities and the risk of negative unintended consequences. Instead the Panel supports moves to address international price discrimination through market solutions that empower consumers. These include the removal of restrictions on parallel imports (see Draft Recommendation 9) and ensuring that consumers are able to take legal steps to circumvent attempts to prevent their access to cheaper legitimate goods.

We support this recommendation insofar as it does not recommend the introduction into the CCA of any specific prohibitions on price discrimination. We do not, however, support the comments of the Panel in relation to international price discrimination.

As the Panel would be aware, pricing cannot be looked at in isolation, but must be looked at both in the context of marginal costs and in light of the pro-competitive aims of copyright law (namely, the provision of incentives to publishers who publish books that best satisfy consumer needs).

In relation to these, we note:

- the cost of doing business in Australia is expensive (including as a result of the fact that overseas purchases are not subject to GST and the high costs of local postage in comparison with postage rates available to international companies delivering into Australia); and

- we already price in light of our competitors both globally and in Australia, knowing that if our books are too expensive, consumers will (for example) order from overseas or buy a different book or buy something other than a book.

We would therefore welcome the Panel both:

- addressing the issues that are really having anti-competitive effects (such as the uneven application of GST and postage rates); and
- recognising that the market mechanisms engaged in currently by publishers are more pro-competitive than the legislative changes advocated by the Panel.