



17 November 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Website lodgement: www.competitionpolicyreview.gov.au

Dear Sir/Madam,

Re: Competition Police Review: Draft Report

Please accept this submission in response to the draft report of Australia's competition policy. The Plastics and Chemicals Industries Association (PACIA), as the peak industry association representing the business of chemistry, is eager to work with the Review Panel to deliver recommendations that result in greater, transparency and accountability to Australia's regulatory systems.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read "Ben Stapley". The signature is fluid and cursive, written in a professional style.

Ben Stapley

Director – Policy and Regulation

Introduction

The Plastics and Chemicals Industries Association (PACIA) welcomes the opportunity to provide comment on draft recommendations resulting from a review of Australia's National Competition Policy.

PACIA is the peak industry association representing the business of chemistry in Australia (and Australia's second largest manufacturing sector). PACIA engages with regulators, departments and decision makers at all levels of Government in Australia. PACIA specifically works with regulators that have particular impacts on chemical and plastics manufacturers. Many of these have impacts on competition within the industry that can result in detrimental outcomes for investment and innovation. Providing mechanisms for effective and efficient dealings between regulators and industry is critical to ensuring that the objectives of regulation can be achieved in a manner that has the least impact on business operations.

Chemicals and plastics are essential for our continued health, safety and quality of life. Fresh, safe and nutritious 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. Continued investment and innovation in our sector has the potential to drive further efficiency in Australian industry, meet ongoing challenges in water and food security and to increase prosperity across all Australian industries.

The chemicals and plastics industries role as a supplier of key inputs to the vast majority of other Australian industries results in significant strategic capacity for innovations in our sector to deliver improved productivity in all sectors of the economy.

PACIA has already outlined issues associated with Australia's National Competition Policy in its earlier submission to the Review's discussion paper. That submission is available at www.pacia.org.au. This submission builds upon the discussion outlined in that earlier paper and should be read in conjunction with it. Further, this submission directly discusses those principles and draft recommendations that will have an impact upon the sustainability, growth and profitability of the industry.

Issues

Australia's chemicals regulatory system is characterised by high levels of prescription with significant duplication and inconsistency. This results in:

- Excessive regulatory compliance costs for industry participants. Companies must navigate various, detailed and frequently inconsistent rules and requirements. This minimises the resources available to introduce newer, safer and softer chemical technologies; and
- Proportionately greater burdens on small and medium enterprises that are not able to dedicate resources to research and develop innovative products to take advantage of new and emerging opportunities.

National Competition Policy provides an opportunity to assess the appropriateness of certain elements of Australia's regulatory framework. From a stakeholder perspective, this helps to ensure that particular elements of the regulatory scheme remain appropriately balanced and effective. Aspects of regulation that may not be consistent with national competition principles must subsequently be reviewed for their appropriateness, and if necessary adjusted or repealed. National Competition Policy remains a central policy informing the appropriateness of regulatory measures.

PACIA supports a comprehensive and rigorous adoption of competition policy principles by all levels of government. PACIA's earlier submission noted that there remain some areas where government activities – particularly in the provision of chemicals risk assessment services – may be inconsistent with existing National Competition Policy principles and should be tested against those principles.

Secondly, PACIA notes that there are some key areas in Australia's regulation of energy markets that would similarly benefit from application of Competition Policy principles. As highlighted in PACIA's earlier submission in response to the review issues paper, there remains a lack of completion and transparency in wholesale gas markets.

Response to Panel Recommendations

PACIA supports the Panel's general statements regarding the purpose of competition policy. A clear, concise expression of guiding principles for competition is a critical foundation for recommendations by all governments that have an impact on market competition. PACIA agrees that competition policy should:

- Make markets work in the long-term interests of consumers;
- Foster diversity, choice and responsiveness in government services;
- Encourage innovation, entrepreneurship and the entry of new players;
- Promote efficient investment in and use of infrastructure and natural resources;
- Establish competition laws and regulations that are clear, predictable and reliable; and
- Secure necessary standards of access and equity.

PACIA also notes that the Panel recognises that reforms in some sectors remain incomplete (in particular in gas markets). Targeted efforts by Commonwealth, State and Territory governments is essential to ensuring that the benefits of competition policy spread to all parts of the economy.

PACIA further supports the panel's recommendation that competitive neutrality principles be reviewed and updated against best practice. As PACIA outlined in our submission to the issues paper, there remain areas where the Government's provision of some regulatory risk assessment services may not be fully consistent with current competitive neutrality best practice. PACIA notes that this is consistent with the Panel's views that competition policy should be widened to include the provision of government services more generally. PACIA supports this recommendation. PACIA notes that a number of regulators (including NICNAS and the APVMA) require chemicals and chemical products to be subject to assessments prior to introduction to the Australian market. Despite being required by legislative provisions, these services should be subject to competitive neutrality principles. Assessing these services will ensure that they are being provided at a genuinely competitive cost.

Finally, PACIA does support recommendations to amend section 46 of the Competition and Consumer Act governing the mis-use of market power so that it targets anti-competitive conduct that has the purpose, effect or likely effect of substantially lessening competition. However, there may need to be some careful balancing of reforms to ensure that the legitimate actions of businesses are neither impinged nor impacted nor subject to additional compliance costs.

Response to targeted recommendations

PACIA notes that that the Panel believes that the focus of competition policy should be widened beyond public monopolies to encompass the provision of government services more generally. This expansion of the focus of competition policy is supported.

In addition to expanding the scope of competition policy beyond government monopolies, the panel should consider that entities that benefit from competition policies include companies and individuals that participate in regulated markets. Benefits of competition policy extend beyond individual consumers.

For example, the chemicals and plastics industry is subject to heavy regulation by various commonwealth and state regulators. Some of these regulators are fully cost recovered from the regulated industry and impose costs that put Australian industries at a competitive disadvantage when compared to contemporary international markets. Using cost recovered funds for assessment activities that could be delivered by independent assessors does not encourage regulators to identify and explore options for delivering risk assessment functions in a more efficient, and lower cost manner.

Extending competition policy to expressly cover all users of government regulatory services will ensure that markets work effectively in the interest of regulated entities. As the plastics and chemicals industry is a key supplier to 109 of Australia's 111 industry sectors, ensuring that chemicals regulation occurs as efficiently as possible will help introducers of new chemicals and products deliver improved health, safety and environmental management associated with chemicals while also improving productivity and profitability.

PACIA accepts that there are many instances where regulation remains appropriate for communities and other stakeholders have confidence that chemicals and their products are being appropriately regulated. However, maintaining public and community confidence in the integrity of Australia's regulatory system for chemicals is consistent with ensuring that those systems also impose the least burden on the regulated community.

Regulation review – draft recommendation 11.

PACIA supports recommendations that governments, including local governments should review regulations in their jurisdictions to ensure unnecessary restrictions on competition are removed. This needs to be a fundamental element of any regulatory review to challenge the ongoing requirement for regulation as a necessary tool to deliver public benefits.

As industries, community trends, demographics and technologies change, the need for any specific piece of legislation also changes. It is therefore appropriate that any review of legislation includes an initial assessment of the continuing need for regulation.

Periodic reconsideration of whether regulation represents the only means of achieving policy objectives is appropriate.

Standards Review – draft recommendation 12

PACIA notes that this recommendation requires that non-government mandated standards should be similarly be subject to competition policy. PACIA and its members may be subject to a range of standards, where compliance can demonstrate superior technical, safety or environmental management performance.

PACIA supports applying competition policy laws to non-government standards in principle, provided that additional requirements do not discourage regular, periodic and appropriate reviews of standards to ensure that they remain up-to-date.

Indeed, additional management and administrative impositions on non-government standards may result in some perverse outcomes that undermine the utility of standards generally. Increased costs associated with complying with additional requirements from competition policy may result in some standards allowing to lapse or become outdated. Secondly, should the administrative burden associated with developing and maintaining a new standard be too great, industries may be discouraged from developing new standards.

Perversely, discouraging the use of standards may result in regulators adopting regulatory responses to manage risks that may be more appropriately managed by industry standards. While clearly maintenance of standards are not without cost to industries that they apply to, additional requirements for compliance with competition policy principles should be minimised wherever possible.

Competitive Neutrality Policy – draft recommendation 13

PACIA supports proposed recommendations that all state and territory governments consider their competitive neutrality policies for consistency with current best practice and in the light of the recommendations of the Harper review.

Increased transparency, accountability and effectiveness for competitive neutrality policies is similarly supported.

Electricity, Gas and Water – draft recommendation 16

PACIA's comments in relation to gas markets must be read in conjunction with existing industry statements provided through the Commonwealth Government's energy policy review available on the PACIA website (www.pacia.org.au).

PACIA's interest in Australia's gas markets extends beyond its use as a key source of energy for manufacturing activities, but critically as a non-substitutable input for chemical manufacturing processes

that add significant value. As a result, energy policy, industry policy and competition policy – at least as they relate to Australia’s gas markets – are inextricably linked.

While PACIA supports the reforms identified by the review panel, there are further reforms that should be considered to increase competition at the wholesale gas market level. Current concerns with the gas market include that:

1. *The gas market is not transparent.* There is limited reporting of gas production potential, and limited trading information on the extent of competition in the gas market. There are also some exemptions from competition laws to allow joint marketing. This means that the capacity for exercise of market power is significant, and
2. *There is limited gas supply and price information available.* This limits the capacity of gas users to understand market conditions. Improved trading mechanisms could include further trading hubs and pipeline capacity trading.

Further information on PACIA’s concerns in relation to energy and gas policy is available from the PACIA website.

While PACIA supports the recommendations for states and territories to complete their deregulation of water, gas and electricity markets, there are specific areas where the panel may make observations regarding the value of competition policy. Some additional consideration by the panel in relation to competition in wholesale gas markets would be useful for informing a comprehensive understanding of policy options for governments when considering appropriate policy responses for an industry in transition.

Conclusion

An effective and comprehensive competition policy supports governments, industries and communities deliver effective and efficient policy and regulatory environments. Competition policy to date has served the Australian economy well. However, there remain some areas of the Australian economy where competition policy remains incompletely applied. PACIA is pleased that the Panel recognises this and has proposed draft recommendations that may continue to encourage regulators to complete outstanding competition reforms.

PACIA does note that there are potentially some significant reforms in Australian gas markets that would increase market competition in that sector. PACIA would encourage the panel to consider whether it could make draft recommendations that would highlight the extent to which market transparency, accountability and competitiveness could be improved by a just and sound application of competition policy principles.