COTTON AUSTRALIA
Advancing Australian Cotton

General Manager
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: competition@treasury.gov.au
4-6-2015

Dear Sir/Madam, Re: Harper Review

My apologies for this response failing to meet the May 26 deadline, but I hope that you may be able to consider it.

Cotton Australia is a member of the National Farmers Federation (NFF) and like the NFF is broadly supportive of the overall direction of the Harper Review into Competition. The Harper Review was established to look at competition law in Australia and to make recommendations about how it could be changed to improve competition in markets.

As the Australia cotton industry is overwhelmingly an export orientated industry, many of the recommendations are less relevant to the cotton industry in comparison to other industries represented by the NFF such as dairy, sugar, grains and horticulture where the perishability of products impacts on the market choice available to growers.

Cotton Australia would like to provide comment on the following recommendations:

Recommendation 3 — Road transport

Governments should introduce cost-reflective road pricing with the aid of new technologies, with pricing subject to independent oversight and revenues used for road construction, maintenance and safety.

To avoid imposing higher overall charges on road users, governments should take a cross-jurisdictional approach to road pricing. Indirect charges and taxes on road users should be reduced as direct pricing is introduced. Revenue implications for different levels of government should be managed by adjusting Australian Government grants to the States and Territories.

Cotton Australia notes the NFF's general support for this recommendation and is aware that the Final Report suggests such a move could be beneficial for rural and regional road users on the basis that they typically contribute relatively large amounts in fuel excise and impose only small amounts of damage to the roads.

Cotton Australia can see good reasons for moving towards a more direct, cost-reflective system to more fairly distribute costs amongst all road users. For example the current fuel excise system does not capture any excise revenue from electric or hydrogen fuelled vehicles which will increasingly make up a larger share of the Australian road vehicle fleet.

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In many cases the transport of rural produce, including cotton, covers long distances, and while the level of road damage is relatively minimal, low traffic density could lead to relatively high construction and maintenance cost per vehicle movement within regional Australia.

Further, while the report calls for a cross-jurisdictional approach, rural road users would need absolute assurance that all other road related direct and indirect taxes and charges were removed with the introduction of the proposed new system.

Cotton Australia would be keen to see what new technologies would be used and whether implementation and oversight would lead to significant costs that outweigh the benefits generated through additional revenue from cost reflective pricing. Cotton Australia can foresee a range of technical issues associated with the monitoring of vehicle road use, and payment systems, and these would have to be overcome prior to the system rolling out nationwide. It is anticipated that the introduction of such a system would involve a range of transitional measures.

Given the current level of detail provided within the recommendation Cotton Australia, is not in a position to give its unqualified support, to the suggested changes to road transport pricing without extensive further consultation and modelling that can categorically show that rural and regional Australia will not be worse off.

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Recommendation 9 — Planning and zoning

Further to Recommendation 8, state and territory governments should subject restrictions on competition in planning and zoning rules to the public interest test, such that the rules should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the rules can only be achieved by restricting competition.

The following competition policy considerations should be taken into account:

- Arrangements that explicitly or implicitly favour particular operators are anti-competitive.
- Competition between individual businesses is not in itself a relevant planning consideration.
- Restrictions on the number of a particular type of retail store contained in any local area is not a relevant planning consideration.
- The impact on the viability of existing businesses is not a relevant planning consideration.
- Proximity restrictions on particular types of retail stores are not a relevant planning consideration.
- Business zones should be as broad as possible.
- Development permit processes should be simplified.
- Planning systems should be consistent and transparent to avoid creating incentives for gaming appeals.

An independent body, such as the Australian Council for Competition Policy (see Recommendation 43) should be tasked with reporting on the progress of state and territory governments in assessing planning and zoning rules against the public interest test.

Cotton Australia wishes to express its reservations around the vagueness of this recommendation which potentially could be misconstrued to support development on prime agricultural lands provided benefits outweigh any costs. We would seek clarification that it does not limit Council / State or Federal planning bodies in their ability to protect high quality agricultural land. Cotton Australia does not believe that such a limitation is the intent of the recommendation, but nor would it like it to be an unintended consequence. We would seek clarification around prioritisation of benefits and what rules are defined as restricting competition.

Recommendation 11 — Standards review

Given the unique position of Australian Standards under paragraph 51(2)(c) of the CCA, Australian Standards that are not mandated by government should be subject to periodic review against the public interest test (see Recommendation 8) by Standards Australia.

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Cotton Australia recognises that standards are often established for the purpose of upholding both consumer and supplier health and safety. Cotton Australia supports this recommendation as a way to "reduce red-tape" and regulatory burden, while providing a higher degree of clarity on 'active' standards. To ensure "clarity" of Australian Standards, it is extremely important to be able to clearly identify what is mandatory under legislation, and what is in fact recommended best practice.

We recognise that alignment of Australian Standards with International Standards where possible may reduce requirements for unnecessary product testing / tailoring and prevent these costs from being passed on to consumers. Cotton Australia acknowledges that this could be of significant value in relation to access to heavy machinery and farm equipment.

Recommendation 19 — Electricity and gas

State and territory governments should finalise the energy reform agenda, including through:

- application of the National Energy Retail Law with minimal derogation by all National Electricity Market jurisdictions;
- deregulation of both electricity and gas retail prices; and
- the transfer of responsibility for reliability standards to a national framework administered by the proposed Access and Pricing Regulator (see Recommendation 50) and the Australian Energy Market Commission (AEMC).

The Panel supports moves to include Western Australia and the Northern Territory in the National Electricity Market, noting that this does not require physical connection.

The Australian Government should undertake a detailed review of competition in the gas sector.

It is noted that NSW deregulated electricity pricing on the 1 July 2014, with IPART now responsible for monitoring the electricity market to ensure it remains competitive. In Queensland deregulation of electricity pricing is yet to occur and Cotton Australia remains cautious on providing unequivocal support for such a recommendation without significant modelling of the potential impact on prices in regional and rural communities. Cotton Australia is supportive of the Queensland system, which ensures regulated consumers in regional and rural areas pay no more than consumers serviced in south-east Queensland. We acknowledge that any negative impact might be offset by a transparent Community Service Obligation payment.

Cotton Australia believes that prior to the creation of the proposed Access and Pricing Regulator (APR) the Government must make a strong case for its creation, that can demonstrate true value to consumers and clearly communicate and outline its obligations for regulatory oversight.

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Cotton Australia holds the position that there are significant issues with the current governance and operation of the Australian Energy Market. A review is currently being conducted in to the Governance Arrangements of the Australian Energy Markets which is scheduled to release a final report in September 2015 with a response from the COAG Energy Council in December 2015. We would suggest that the Government wait for the detailed recommendations delivered as part of this review process prior to implementing any significant changes to Energy Governance structures.

Cotton Australia is of the opinion that a single Access and Pricing Regulator will not necessarily provide the solution for reliability standards. As our submission to the Governance Arrangements review indicates we would advocate that the consolidation of all rule setting, rule compliance and economic compliance should fall under the mandate of a single independent regulator. This is opposed to the current separation of responsibilities to the AEMC and AER which Cotton Australia believes distorts the ability of the regulator to implement significant electricity 'rule' reforms that are at the root cause of current electivity pricing issues.

Recommendation 20 — Water

All governments should progress implementation of the principles of the National Water Initiative, with a view to national consistency. Governments should focus on strengthening economic regulation in urban water and creating incentives for increased private participation in the sector through improved pricing practices.

State and territory regulators should collectively develop best-practice pricing guidelines for urban water, with the capacity to reflect necessary jurisdictional differences. To ensure consistency, the Australian Council for Competition Policy (see Recommendation 43) should oversee this work.

State and territory governments should develop clear timelines for fully implementing the National Water Initiative, once pricing guidelines are developed. The Australian Council for Competition Policy should assist States and Territories to do so.

Where water regulation is made national, the responsible body should be the proposed national Access and Pricing Regulator (see Recommendation 50) or a suitably accredited state body.

Cotton Australia welcomes the much clearer distinction between urban and rural water that appears in the final report.

Cotton Australia supports the abolition of the National Water Commission, with responsibility for overseeing the implementation of the National Water Initiative (NWI) passing to the Productivity Commission.

Please refer to our response on the APR as outlined under Recommendation 50.

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Recommendation 30 — Misuse of market power

The primary prohibition in section 46 of the CCA should be re-framed to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct if the proposed conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in that or any other market.

To mitigate concerns about inadvertently capturing pro-competitive conduct, the legislation should direct the court, when determining whether conduct has the purpose, effect or likely effect, of substantially lessening competition in a market, to have regard to:

- the extent to which the conduct has the purpose, effect or likely effect of increasing competition in the market, including by enhancing efficiency, innovation, product quality or price competitiveness; and
- the extent to which the conduct has the purpose, effect or likely effect of lessening competition in the market, including by preventing, restricting or deterring the potential for competitive conduct in the market or new entry into the market.

Such a re-framing would allow the provision to be simplified. Amendments introduced since 2007 would be unnecessary and could be repealed. These include specific provisions prohibiting predatory pricing, and amendments clarifying the meaning of 'take advantage' and how the causal link between the substantial degree of market power and anti-competitive purpose may be determined.

Authorisation should be available in relation to section 46, and the ACCC should issue guidelines regarding its approach to the provision.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Australia cotton industry is serviced by a range of suppliers who provide a wide range of inputs including chemicals, machinery, genetics and bio-technology.

Some of these supplies hold very large market share, and while Cotton Australia does not allege any anti-competitive conduct, it welcomes the protections envisaged in this recommendation.

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Recommendation 50 — Access and Pricing Regulator

The following regulatory functions should be transferred from the ACCC and the NCC and be undertaken within a single national Access and Pricing Regulator:

- the telecommunications access and pricing functions of the ACCC;
- price regulation and related advisory roles of the ACCC under the *Water Act 2007* (Cth);
- the powers given to the ACCC under the National Access Regime;
- the functions undertaken by the Australian Energy Regulator under the National Electricity Law, the National Gas Law and the National Energy Retail Law;
- the powers given to the NCC under the National Access Regime; and
- the powers given to the NCC under the National Gas Law.

Other consumer protection and competition functions should remain with the ACCC. Price monitoring and surveillance functions should also be retained by the ACCC.

The Access and Pricing Regulator should be constituted as a five-member board. The board should comprise two Australian Government-appointed members, two state and territory-nominated members and an Australian Government-appointed Chair. Two members (one Australian Government appointee and one state and territory appointee) should be appointed on a part-time basis.

Decisions of the Access and Pricing Regulator should be subject to review by the Australian Competition Tribunal.

The Access and Pricing Regulator should be established with a view to it gaining further functions if other sectors are transferred to national regimes.

Cotton Australia has and does have concerns around the pricing regulation performance of bodies such as the Australian Energy Regulator (AER) and the Australian Competition and Consumer Commission (ACCC). We appreciate that consolidation of agencies generates efficiencies in delivery of an organisations corporate responsibility and where there are common analytical and economic skillsets. However in the event that the Government was to absorb the AER within the Access and Pricing Regulator, Cotton Australia would recommend that reforms to functions that the AER performs would be required prior to consolidation.

As highlighted earlier within this submission the current Review into Governance Arrangements for Australian Energy Markets, Cotton Australia would advocate for improved regulatory control by the AER. We believe their current position does not provide them with the necessary regulatory power or controls to effect much needed change within Australian energy markets. We are concerned that absorption in to a larger body may further dilute their ability to affect and implement change. For

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example the current regulatory model operates under a propose-response framework, where networks provide an initial proposal for revenue and operating and capital expenditure. Under such a model the AER is required to accept a reasonable proposal unless it can demonstrate that the networks are materially inefficient in their business practices.

Through our interaction with the network determination process we have observed the networks flooding the regulator with documentation. Cotton Australia and indeed the Agricultural Industries Electricity Taskforce believe this is a deliberate strategy adopted by the network companies to make it more difficult for the regulator to respond. We have seen in some cases that this has had the intended impact. In the determination of some capital expenditure items the AER was unable to adjust network overheads due to insufficient evidence to support reduction in forecast expenditure contributing to their decline over time. We would be concerned that the dilution of the AER within a larger body would further restrict their ability to effectively analyse the information presented by the networks.

Cotton Australia wishes to reiterate that the Government must make a strong argument for the creation of the proposed Access and Pricing Regulator (APR) including communication of true value to consumers and the obligations of the APR for regulatory oversight. Cotton Australia would want to see considerable assurances that dilution of financial and human resources would not occur within a single regulation body that would restrict in any way the ability of the regulator to perform its required functions.

For further information please contact Michael Murray – michaelm@cotton.org.au or 0427 707868.

Yours sincerely,

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