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Driving business success for consulting firms in the built and natural environment

13 November 2014

Professor Ian Harper
Chair
C/O- Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Professor Harper,

Thank you for the opportunity to comment on the Draft Report of the Review into Australian Competition Law and Policy. Consult Australia welcomes this draft report, and regards this piece of work as an important development in the evolution of Australian Competition Law, and its impact on the Australian business community. We note that a number of issues of interest to our industry, including those raised in our original submission, have been adopted in this report, and strongly commend the Commission for doing so.

In responding to this draft report, we will recap some of the points made in our original submission, as well as making some additional remarks in response to relevant issues not contained within our original submission.

Professional Licensing and Industry Standards

We note the Panel's observation that the building industry might benefit from a degree of licensing, but that such licensing risks constraining the market's ability to provide services. While our industry is not uniformly licensed per se, and professional standards schemes only cover parts of our industry, a state based registration scheme for engineers has been canvassed periodically across various Australian jurisdictions. As the Draft Report has recommended, we support measures to provide quality assurance for clients, but not in situations where the associated restrictions are burdensome, and limit the ability of businesses to grow or innovate.

Consult Australia has had a long-standing position of support for a nationally harmonised registration scheme for engineers. We do not however support the introduction of unique schemes on a jurisdiction-by-jurisdiction basis, such as is proposed for the Northern Territory and is also currently being explored by the ACT government.

There is a range of benefits to registration, such as being part of a risk management regime that can protect consumer interests. There are however red tape and other significant cost-to-business risks associated with schemes that are independent of each other—as would be the case if Queensland, the ACT and the Northern Territory all implemented unique registration schemes—that must be examined in more depth. In the absence of a harmonised registration scheme, Consult Australia maintains that other, more direct options should be sought to address the quality of professional engineering services.

Infrastructure Markets – Pricing and Finance

Consult Australia welcomes the Review's finding that "reform of road pricing and provision should be a priority." Any reforms that include moves to user charges with revenue hypothecated to infrastructure investment, will lead to the better provision of infrastructure and overcome an inhibitor of competition in Australia.

We have long argued that a comprehensive debate regarding the full application of road user charging, including the development of a national scheme, is long overdue in Australia. Reliance on traditional fuel excise as the key revenue tool to fund infrastructure is internationally recognised as having limited longevity, with diminishing reserves and increased fuel efficiency curtailing revenues. An infrastructure funding regime based on fuel taxes has no sustainable future.

Confusion in public debate about the difference between funding and financing limits governments' ability to make a persuasive case for a funding framework that supports an efficient equitable approach to user charging. Recent debate in South Australia following the announcement last year, of the Productivity Commission's Inquiry into Public Infrastructure is a case in point.^[1]

There is no doubt the implementation of any systemic approach to user charging is a long-term goal, but achieving that goal is reliant on governments considering international experience, understanding the barriers to implementation and developing pilot schemes to support community engagement and understanding.

Government Procurement Policy and Practice

As the Draft Report has recognised, procurement issues impact upon the decisions of firms to tender for work, and hence upon the level of competition. These issues include the quality of scoping documents, risk allocation, achieving value for money (as distinct from lowest cost), and the cost and complexity of the bidding process. They are particularly felt by our industry when dealing with public sector clients.

Consult Australia has consistently argued for better procurement practices, including better addressing of risk by government agencies. Better procurement policy and practice measures will not only help our industry, but also achieve better outcomes for clients in terms of increased competition, reduced prices, and hence better value for money. A range of submissions on this subject is available on our website, and we are currently completing a study of the cost of poor procurement practices, which we would be happy to share with the Review upon its completion early next year.

To this end, we welcome the Review's suggestion that procurement practices should focus on outcomes rather than outputs, as a way of encouraging innovation. We do however qualify this support by asking for further information as to how this would be structured. Already certain projects are put out to tender with a view to seeking innovative solutions, by using a less prescriptive scope, while others justify that less prescriptive scope on the basis that it has worked previously. It is this second example, often characterised as a "one size fits all"

^[1] Consult Australia, *Media Release: Let's get smarter about tolls*, November 2013, consultaustalia.com.au
www.consultaustalia.com.au

approach that has proved problematic in the past. This is especially so for practices related to risk allocation, which is one of the chief deterrents to firms bidding for work in the built environment sector.

In our view, the underlying issue that needs to be addressed is that certain public sector agencies are suffering from a loss of procurement skills, and are part of an extremely risk averse culture that leads them to offload risk rather than manage it. Addressing this issue would in turn allow for positive change in regard to a range of other procurement issues, such as risk management, value for money outcomes, innovation, and ultimately the best outcomes for the client.

Cartel Conduct and Joint Ventures

Consult Australia welcomes the Draft Report's recommendations relating to cartel conduct and joint ventures. As our original submission pointed out, our industry often depends on joint ventures in bidding for work, according to the specialisations of individual firms. Our ongoing concern is that where provisions in the law are unclear (as the Draft Report suggests they might be), they might serve to inhibit legitimate business transactions, rather than preventing uncompetitive behaviour.

Accordingly, we support the Panel's recommendation to simplify the prohibition against cartel conduct. In particular, we endorse the suggestion to create "a broader exemption should be included for joint ventures and similar forms of business collaboration..." while noting that s45 of the *Competition and Consumer Act* still applies where competition is substantially reduced.

Our industry supports the aims of the Competition and Consumer Act, but has reported difficulties in determining what actions they are able to undertake in advance of establishing a joint venture. The simplification of these provisions could assist in rectifying this.

Conclusion

Thank you once again for the opportunity to comment on the Draft Report of this Inquiry. Consult Australia welcomes the continued evolution of Australian competition policy and related laws as a measure to strengthen our economy. We would be happy to further discuss any aspect of this submission, and to provide the Review Panel with a briefing on the findings of our current and future work in this area. To further discuss any aspect of this submission, please contact Robin Schuck, Senior Advisor, Policy & Government Relations on (02) 8252 6707; robin@consultaustalia.com.au.

Yours sincerely,



Megan Motto
Chief Executive Officer