

13 June 2014

Competition Policy Review Secretariat
The Treasury Langton Crescent
PARKES ACT 2600
www.competitionpolicyreview.gov.au



Dear Professor Harper,

Submission to the Competition Policy Review

Please find attached a submission by the Printing Industries Association of Australia (*Printing Industries*) on behalf of the printing and related industries

Our industry is facing significance challenges as the traditional business model adjusts to new technologies and the emergence of the digital economy.

We accept that this review is focussed on the benefits of fostering competition. However, not all industries are the same and some Government intervention may be required to support legitimate areas of need.

We note that Recommendation 32 of the Commission of Audit Report related to industry assistance acknowledged "that limited assistance to areas of genuine market failure and occasional transitional assistance to deal with genuine structural change is justified when the benefit of government intervention outweighs the costs".

Printing industry is currently working with businesses to assist them to understand and respond to a changing marketplace. Our competitive situation is not the same as other industries.

We believe that the review must recognise that there is a need to identify ways to assist industries to deal with the unique competitive circumstances they may be faced with. This is particularly the case where there are a large number of small operators.

This submission focuses on several areas of particular interest to *Printing Industries*.

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**Sustainable
Green Print**

Background to the Printing Industry and the Association

Printing Industries represents some 1400 companies across Australia. It is the peak advocate and support organisation for businesses in the print, packaging and visual communication industries. The industries the organisation represents are predominately small to mid-size operators. They have a presence in every region of Australia making it a truly national body.

Membership covers all imaging and communication sectors. These include print, prepress and design, publishing, distribution, software and hardware, paper and paper board, print consumables, packaging and flexible packaging, paper converting, binding and finishing, communication, mail houses and media services.

Over the last decade the industry has undergone significant change and the number of businesses has declined significantly. Further rationalisation is anticipated as operators come to grips with the role of print in the digital age.

Despite this consolidation, the industry continues to make a significant economic contribution to Australia. The modern printing industry is adapting to the digital economy and moving beyond the manufacturing sector. Its operations now encompass services, information technology, communications and creative.

The printing industry employs over 35,000 people directly and more than 110,000 people indirectly in over 6000 businesses. In fact, if we combine all the sectors that are linked to the products and services produced by this broader industry, it is responsible for supporting and generating almost \$56 billion in revenue; contributes more than \$18 billion to the economy by way of gross value added; provides jobs for more than 184,000 Australians across more than 26,000 businesses; and pays more than \$11 billion in wages and salaries.

Issues for Consideration - Parallel Importing

2.9 Parallel importation may be restricted in some circumstances, for example, the Copyright Act 1968 places restrictions on the parallel importation of books authored by Australians.

Review Question:

Should any current restrictions on parallel importation be removed or altered in order to increase competition?

The reproduction and first sale of books in Australia is governed by the Copyright Act, which aims to provide a balance of incentives between the creation and consumption of creative works, including books. Included within the Act are the parallel importation restrictions (PIR), which establish the rules pertaining to the importation of books into Australia. The PIRs provide protection for holders (generally publishers and authors) of Australian rights to a title from competition by suppliers of foreign editions of that title.

For the PIRs to apply, the Australian territorial rights holder must release the book in Australia within 30 days of its publication elsewhere in the world, and must ensure resupply within 90 days. Exceptions under the 'single-use' provisions apply to consumers who can purchase books directly from overseas and booksellers who can purchase a single copy to fill a specific customer order.

If a book is published in Australia within the 30-day limit, booksellers cannot import and sell stocks of that title from an overseas supplier. This enables rights holders to set a price, and thereby secure a certain level of royalties, in the Australian market with the certainty that they cannot be undercut by commercial quantities of imports of the same titles.

In 2009 the PIRs were reviewed by the Productivity Commission to assess their effects on the community and to determine whether they should be retained, modified or repealed. The commission recommended the removal of the PIRs over an adjustment period of three years before the repeal would be effective; however, the government determined that changing the regulations governing book imports would not be likely to affect the availability of books in Australia, and rejected the commission's recommendation (Productivity Commission 2009).

In 2012 the Government established The Book Industry Strategy Group in recognition that digital technologies are changing the way books, both printed and digital, are being produced and delivered.

This group set the following vision for the Australian book industry:

To ensure that the Australian book industry is innovative, prosperous and sustainable for the long term, develops Australian creators and creative works and encourages investment in new technologies.

Recommendation 4 of the Group's report related to the parallel importation of books and states:

That the Australian book industry (authors, printers, publishers and booksellers) formalise an agreed, industry-wide code of practice that will reduce the timeframe for retention of territorial copyright from 30/90 days to 14/14 days without the need to amend existing legislation. To support this Title Page will provide information to booksellers on the PIR status of individual titles. The code will be reviewed at the end of 12 months and subsequently at determined intervals to assess its effectiveness.

This voluntary arrangement has been in place for just over 12 month and *Printing Industries* believes it should therefore be given additional time before any consideration is given to amending the current parallel importing provisions in the Copyright Law.

The implementation of this code and a range of recommendations have led to significant investment in new printing equipment. This was based on the assumption that the existing regulatory arrangements will be maintained for a reasonable period. (e.g.: one company has invested \$13 million in new equipment)

Matters to be considered in relation to the Parallel Importing of Books

1. Any proposed changes to current arrangements need to take account of the specific needs and history of particular industries.
2. Recommendations must factor in time to enable an appropriate period of industry adjustment.
3. Compensation should be paid to companies who suffer financial loss due to the removal of parallel import restrictions.
4. Any decision must take account of the impact of any changes on the total supply chain

Issue for Consideration - Government Provided Goods and Services and Competitive Neutrality

The interest of the industry in this area primarily relates to the operations of Australia Post (AP). This covers AP (i) having a statutory monopoly in the delivery of reserved services and (ii) maintaining competitive neutrality in the provision of printing and mail related services.

The Australia Post Story

Recommendation 57 of the Commission Of Audit relating to Privatisations states:

Twenty years ago, the Hilmer report highlighted the gains to the community from opening up government enterprises to competition. The Commission considers that Commonwealth bodies that operate in contestable markets should be privatised. The Commission recommends that the following 10 bodies be privatised over the short, medium and long term, in accordance with established practice. One of the Government enterprises that should be privatised in the Medium term is:

a) Australian Postal Corporation.

Printing Industries has a direct interest in the operations of Australia Posts. We believe our experience provides some insights in the key questions asked under Section 3.5 and an overview of some of the areas of concern that impact on the competitiveness and productivity of our industry.

Our interest is because we represent members who:

- (i) are directly involved in the provision of bulk mail services
- (ii) produce printed material associated with mail

- (iii) produce and distribute magazines, catalogues and other material linked to mail
- (iv) provide multi-channel marketing and communication services which rely on cost effective mail access to meet the needs of their customers.

AP has the exclusive right to collect, carry and deliver letters within Australia that (subject to exceptions) weigh not more than 250 grams. These statutory monopoly services, along with the right to issue postage stamps, are termed AP's 'reserved services'.

The reserved letter services are notified services (and AP is a declared person) under the prices surveillance provisions of the Competition and Consumer Act 2010 (the CCA). This means that AP must notify the Australian Competition and Consumer Commission (the ACCC) if it proposes to:

- increase the price of a reserved letter service
- introduce a new service that would fall within the definition of reserved letter services
- provide an existing reserved letter service under terms and conditions that are not the same or substantially similar to the existing terms and conditions of that service.

This scrutiny by the ACCC is intended to promote efficient pricing and consumer protection where there is reduced competition.

Other letter services—used mainly by businesses, government agencies and not-for-profit organisations—have generally been offered at prices lower than those of equivalent ordinary letter services because it was realised that bulk mail processing systems provide efficiencies for AP and warranted a discount.

In 2011 the then Labor Government determined that prices surveillance should only focus on the ordinary letter service (the basic postage rate) and be discontinued for other reserved letter services which are priced below these rates or for which special conditions apply.

This decision has let AP set the prices for bulk mail services without reference to the ACCC since that time. The basic postage rate, remained subject to ACCC scrutiny and remained capped at 60 cents until an application to increase the price to 70 cents was approved in early 2014.

A Discussion Paper circulated at the time of the 2011 review suggested that the rate for ordinary letters would “effectively operate as a ceiling” and other letter services would “generally be priced below the equivalent ordinary letter price”. This assumed that if the rate for other letter services moved beyond the ordinary letter rate then a user would merely cease to use other mail categories and send all mail as ordinary letters.

At that time the Association indicated that this view was unfair because the current discounts for other letter services reflected the efficiencies that are generated by capital investment and improved systems introduced by bulk mail operators. It was suggested that the removal of ACCC surveillance would allow AP to increase price without discounting to take account of the value of these efficiencies.

This is exactly what has occurred. Prices for various other mail reserved services categories have had twice yearly increases well above inflation since 2011. This is at a time when the industry is not in a position to pass on increased costs. For example the cost of a same state, small letter, direct tray mail has risen 25% since 2012.

The ACCC Surveillance Process

Even, prior to the removal of ACCC approval of AP price increases for other bulk mail services there was generally insufficient time for the ACCC to make a fair determination of any proposed price increase.

In the Price Notification for Bulk Letter Services Decision, June 2011 the ACCC and Australia Post agreed that *"the current approach to assessing prices, including the allocation of costs, needs to be re-examined and this needs to occur before another major price notification. (Page 5)*

The ACCC also noted on page 4.

The price notification process provided for in subsection 95ZB(1) of the CCA provides a period of 21 days for the ACCC to form a view in relation to the proposed price increases. This period of time is not sufficient for the ACCC to give proper consideration to the complex issues presented in the assessment of a proposal to increase the prices of a firm with a high degree of market power.

The ACCC has established a process, outlined in its Statement of Regulatory Approach to Assessing Price Notifications, which facilitates the ACCC's consideration of the issues raised in complex matters. This process involves the provision of a draft price notification for the ACCC's consideration prior to submission of a formal price notification under section 95Z of the CCA.

The ACCC takes a consultative approach to its assessment of price notifications. Specifically the ACCC sought the views of industry and consumer stakeholders in relation to Australia Post's draft price notification following both the release of the ACCC's issues paper and its preliminary view.

Prior to the removal of the referral requirement to the ACCC, Australia Post consulted with key stakeholders in the consideration of proposed price increases. *Printing Industries* found that this consultation was constructive and often led to changes in the position of Australia Post on a particular matter. However, consultation on price increases has been minimal since the 2011 decision.

The behaviour of AP since 2011 indicates the absence of ACCC scrutiny has not promoted efficient pricing and protected consumers in relation to other reserved mail services. It remains unclear what the ACCC can do to address this.

Printing Industries believes AP is deliberately misrepresenting the demise in demand for mail services and products and in so doing is denying many Australians access to their preferred means of communication.

AP is a highly successful organisation that made a \$312 million after tax profit in 2013. This was up 10.9 % on the previous year. The success of AP has been built on the infrastructure established to support its mail monopoly over many years.

While the regulated business may have lost \$218 million after a 5.4% decline in mail volumes in 2013, reserved mail made a positive contribution to AP's operations up until 2006.

Also it must be remembered that while AP delivered 1 billion fewer letters than 2008, it is doing this across 1 million additional mail boxes without changing its community service obligation to deliver mail on a daily basis at a capped fee. This leads to maintenance of significant inefficiencies and additional costs.

There should have been adjustment to AP's business model to meet changing conditions after 2006 to ensure the efficient operations of its services and protect its community service obligations.

Australia Post continues to ignore its own evidence that print will remain a key component of the emerging multi-channel communication world. A consumer survey conducted by Australia Post in late 2012 found that:

- 85% of people are reading their mail on the day received;
- 98% of people actually open their mail versus 20-25% for email;
- Bills and statements preferences - 42% mail, 31% email, 25% both mail and email, 2% neither. (Australia Post Consumer Survey Mail Findings, January 2013)

Other research released in 2013 indicates that catalogues and flyers and personalised direct mail outrank email and social media as more effective channels for advertising (Creating connections that matter: How Australians want to hear from brands, 2013).

The success of the mail channel in a multi-channel communication world is heavily dependent on maintaining cost competitiveness with other delivery channels. There is a view in the industry that the full potential of this channel is being stifled because of the cost of current AP arrangements.

While AP has retained a statutory obligation to deliver letters at a fixed rate, this has often occurred with little commitment to driving productivity improvements. It is a classic example of how a monopoly is able to avoid the implementation of more efficient systems and processes that are demanded under market competition.

AP price rises highlight drops in mail volumes without analysing what can be done to address the situation. AP refuses to release costs for reserved services indicating that this is commercial in confidence.

We accept that its current community services obligations restrict some options but it may be time to reconsider things like the need for daily deliveries.

The document Price Notification for Bulk Letter Services Preliminary View prepared by the ACCC in 2011 in response to a referral by AP for a price increase in bulk mail can be used to highlight flaws in how AP determines costs and the benefits of external scrutiny of monopoly providers.

While the ACCC supported a price increase and found that AP was likely to under recover its costs across reserved services its estimate was substantially less than the figure submitted by AP. The report indicated:

Financial information submitted by AP that included additional revenue from the proposed price increases indicates AP would under-recover across reserved services as a whole by \$195 million in 2011-12 and by \$(not provided by AP) million in 2012-13. On the Pre-sort letter services alone, AP submits that it would be making an operating loss of \$33 million in 2011-12 even after the proposed price increases are implemented.

Although the ACCC accepted AP's claim that it would under-recover using current cost allocations, AP's estimates overstated the under-recovery of efficient costs. The ACCC's sensitivity analysis showed that AP's under recovery for reserved services would be closer to \$21 million in 2011-12 and \$(not provided by AP) million in 2012-13 under alternative assumptions regarding the WACC, efficient costs, volume mix between Regular and Off Peak, and price elasticity of demand.

The review therefore indicated that the ACCC found AP overstated its anticipated losses by up to 30%. One assumes that this was not a one off occurrence.

When businesses in a competitive market are faced with a similar situation they are forced to find efficiencies to adjust to rising costs.

The Association believes that AP should be subject to benchmarks that lead to improved productivity, reduce costs, improve efficiency and improve customer focus rather than have an automatic right to recover increased costs.

Other options for consideration could include:

- Breaking up AP into smaller entities – some of which could be privatised.
- Changing mail delivery patterns especially in remote areas
- Outsourcing delivery to private enterprises

The circumstances around which Australia Post was given the exclusive right to collect, carry and deliver letters have changed significantly over recent years. These changes should encourage AP to challenge the view that mail has no place in our emerging digital economy and promote areas that continue to support competition in the mail market.

Matters for Consideration and proposed actions

1. The quantum, frequency and randomness of price increases
2. Inadequate recognition in pricing for the savings provided through systems and capital investment provided by mail houses
3. Inefficiencies in existing Australia Post processes.
4. Restore ACCC surveillance of Australia Post bulk mail price increases
5. Undertake an external review of the operations of Australia Post bulk mail operations to (i) determine the discounts provided through systems and capital investment provided by mail houses (ii) identify inefficiencies in existing Australia Post processes,

Issue for Consideration - Competitive Neutrality

AP is a competitor to many of our members as it has its own printing operations and not simply for its own use. It actively competes for business with our members

AP is expanding its Post Connect service and entering markets where there is already substantial over capacity and where this over capacity is not expected to change in the foreseeable future, if ever. This is exacerbated by concerns that their service is being provided without the same restrictions applying to other competitors. The overcapacity will damage others in the industry and it is doubted that AP will be able to make its printing operations viable in the short term. In the longer term the pricing and over capacity conduct by AP is likely to force others in the market to exit.

In a recent tender process for printing for one of the supermarket majors AP appears to have tendered at below cost price. One of our members, who was the closest other bidder, was told that the AP tender was a certain percentage below that member's tender. That member is of the view that AP tender could only have been below the relevant cost.

Our concern is that AP is using its market and monopoly power to either damage or eliminate others in the market and hence lessen competition in the printing market. Specifically as well AP is engaged in predatory pricing. It may also be cross subsidising from its reserved services to markets where it is open to competition.

In relation to the overcapacity that is not rationale commercial conduct in the current or foreseeable market situation. In relation to the pricing of the tender mentioned above, we can see no other reason to price as low as it did but to damage others. It is also for a sustained period as the price is for a 12 month period and maybe longer. Its pricing has effectively knocked out future tenderers.

The Association requested the ACCC to review this situation to ensure that Australia Post complies with both the letter and the spirit of the CCA. The ACCC found that there was insufficient evidence to suggest that AP had engaged in predatory pricing conduct in contravention of section 46(1AA) of the CCA.

The Association is pursuing the matter of Competitive Neutrality with the Australian Government Competitive Neutrality Complaints officer.

Our experience with Australia Post has raised a number of issues in relation to how a business can use the CCA to protect its interests. Access to justice is expensive, appropriate economic evidence is difficult and expensive to gather and the ACCC seems to reluctant to deal with smaller matters.

Issue for Consideration - Competition Laws

The printing industry is undergoing significant change. Increased competition is leading to industry consolidation; new technology is fostering convergence of the traditional supply chain. The need for efficiencies is leading to improved productivity and increased innovation.

There is increasing recognition that collaboration and industry networks can enhance the capacity of businesses and an industry to remain viable and grow.

We therefore welcome the fact that joint venture arrangements in the CCA are exempted from the cartel provisions and the exclusionary provisions. We also believe that there will be an increasing need for collaborative arrangements, such as tolling and co-production agreements to maximise the capacity for businesses in the industry to respond to a changing marketplace.

Issues for Consideration – Other Matters

Authorisation and Notification Provisions

The cost and time associated with obtaining an authorisation is a disincentive for small business. The notification process has attempted to address this but its application is limited because of procedural issues associated with listing participating businesses and administrative requirements.

Collective bargaining process for small businesses

This can enable small business to share information and provides protections from accusations of collusion by large business. The provision would be enhanced if a stronger boycott provision was in place.

Are there any factors that make it difficult for small businesses to enforce their rights or otherwise take action in relation to competition issues?

The ACCC has limited resources and small business finds it difficult to understand the scope and complexity of the CCA.

There is often a sense of futility in raising issues with the ACCC because of the level of resources required to pursue the issue.

For example many printers retain concerns that paper companies regularly increase prices at the same time by the same amount. Previous referrals to the ACCC have proven fruitless because we have been advised there is insufficient evidence to intervene.

As a representative of small business our organisation would like to see greater clarity and applicability of unfair and unconscionable conduct provisions in commercial dealings

Please contact me if you would like to discuss any of the issues in this submission. I can be contacted on bill@printnet.com.au or 0419627693.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Healey', with a stylized flourish at the end.

Bill Healey
CEO