



23 June 2004

Administrator
National Productivity Commission Inquiry
Review of National Competition Policy Arrangements
Productivity Commission
PO Box 80
Belconnen ACT 2616

**Review of National Competition Policy Arrangements
Additional Matters Submitted by the Association of Consulting Engineers
Australia (ACEA)**

ACEA is the national organisation which represents some 300 firms providing engineering and technology services throughout Australia and internationally. A profile of ACEA and the consulting engineering industry is attached.

ACEA seeks to assist with the Review by providing the following comments:

1 Government organisations subject to the Trade Practices Act

ACEA believes that when Australian Local, State and Federal Government organisations provide competitive commercial services to business and the community, these services should be subject to the provisions of the Trade Practices Act (TPA) in the same way as the equivalent services from private companies are subject to the Act.

Whilst the Trade Practices Act does generally provide for this, there currently exists a loophole whereby the definition of a 'commercial service' can be broadly interpreted to sometimes exclude such services provided by Government agencies. This provides Government agencies with a commercial advantage over competing private business in relation to compliance with service delivery, warranties and anti-competitive aspects of the Act.

An example is where public agencies let tenders for large projects. Although (say) a major road can be described as a 'one off' activity in the public interest (and therefore deemed not to be subject to the TPA), in fact, the agency which lets the project is building roads and letting projects continually to commercial contractors and consultants in a context of commercial contracting and management. ACEA believes that activities which are numerous and are carried out primarily in a commercial contracting environment should be subject to the provisions of the TPA.

This means that smaller private firms working for government in these circumstances would have the benefit of the protection under the TPA from onerous contracts, and also of provisions regulating the behaviour of large organisations with significant market power.

2 Impact of the Trade Practices Act on International Competitiveness

With the advent of international trade agreements such as the US Free Trade Agreement and the China Free Trade Agreement, ACEA believes that a review of national competition policy should also include a review of the way in which the Trade Practices Act impacts on the competitiveness of Australian businesses.

Australian consulting engineering firms are particularly concerned at the implications of Section 52, the deceptive and misleading conduct provisions of the Act. Section 52 is increasingly used by clients in claims against consultants to avoid the complexity of litigation arising from negligence claims. In other words, 'deceptive and misleading conduct' is replacing the need to prove negligence on the part of the consultant.

Such provisions, as far as ACEA is aware, are unique in the international arena, and provide potential disadvantage to Australian firms who are subject to these provisions, compared to overseas firms working in Australia, who are generally not subject to the provisions.

ACEA continues to campaign for changes to the Trade Practices Act which would continue to provide protection for consumers but which would also appropriately classify litigation between commercial entities as falling within the ambit of negligence claims, except where misconduct actions are appropriate.

3 Regulation of State and Local Government Activities

ACEA believes State and Local Governments activities should be subject to the federal regulations of the Trade Practices Act. Council is urged to consider a range of such changes across the range of competitive issues under the TPA, including how the TPA applies to State and Local Government activities.

ACEA trusts that this information will be of value to your Inquiry.

**Therese Charles
Chief Executive**

**The Association of Consulting Engineers Australia (ACEA).
Tel: (02) 9922 4711.**

ASSOCIATION OF CONSULTING ENGINEERS AUSTRALIA

The Voice of the Consulting Engineering Industry



- The Association of Consulting Engineers Australia (ACEA) represents Australian consulting engineering firms which provide technology-based consulting services to government and private sector clients in Australia and 40 countries worldwide. Services are provided in the fields of building, infrastructure, transport, communications and information technology, project management, environmental management, geotechnical, electrical, mining, oil and gas.
- The ACEA is the sole voice of engineering firms in Australia. ACEA members number nearly 300 firms in all states and territories. These members constitute some three-quarters of the consulting engineering firms employing ten or more people in Australia. Most large and medium-sized firms in the industry are ACEA members, along with a substantial number of the smaller firms.
- Engineering consulting revenues of \$3.8 billion in 1999/00 were equal to 0.6 per cent of Australia's GDP of \$629 billion. Industry revenue has risen by 61 per cent since 1992/93 and share of GDP from 0.5 per cent to 0.6 per cent.
- Engineering consulting firms employed 42,000 people in 1999/00, including approximately 30,000 engineering and technical professionals. Employment in the industry has risen by 31 per cent since 1992/93. The increase has been much more rapid than the 17 per cent rise in national employment.
- The total value of projects designed by ACEA firms in 1999/00 was \$11 billion.
- Engineering services accounted for the major share of all service exports related to building and construction – 53 per cent of total building and construction services exports in 1999/00. Engineering consulting exports accounted for 1.3 per cent of Australia's total service exports of \$28.2 billion in 1999/00. Exports of engineering services have grown strongly and fairly steadily from \$141 million in 1992/93 to \$370 million in 1999/00, an average growth rate of nearly 15 per cent a year.
- ACEA is represented on all of the major government and private-sector industry bodies concerned with consulting engineering and building and construction. It is also a member of a number of bodies concerned with more general business and industry issues.
- There are ACEA offices in all capital cities in Australia.
- ACEA is one of the largest members of FIDIC, the international association of engineering, technology and management firms related to the built and natural environment. FIDIC includes some 67 member associations worldwide.
- ACEA firms designed all of the major facilities and infrastructure for the 2000 Olympic Games, including Stadium Australia, the Superdome, the Olympic Village, and the Olympic Flame Lighting Event and Aerial Effects. Large national projects designed by ACEA firms include the Sydney Opera House, Darling Harbour, Star City Casino, Colonial Stadium Melbourne, St Mary's Cathedral Spires Sydney, Sydney Domestic Terminals, the M1 Motorway in Sydney and Citilink in Melbourne. Major international projects designed by ACEA firms include the Hong Kong Airport, the Singapore Exhibition and Convention Centre, the My Thuan Bridge linking Vietnam and Laos, and Wembley Stadium.

The Association of Consulting Engineers, 75 Miller Street, North Sydney NSW 2060

Phone (02) 9922 4711, Fax (02) 9957 2484, e-mail acea@acea.com.au, website: www.acea.com.au