

Cooperative Research Centres Association, Inc.

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Cooperative Research Centres - Delivering Innovation for Australia

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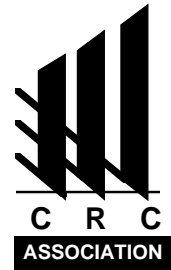
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8th May 2000

Ms Kay Collins
Director
IP & Competition Review Committee Secretariat
Attorney General's Department
Robert Garran Offices
BARTON ACT 2600

Dear Ms Collins,

Intellectual Property & Competition Review Committee – Interim Report.

I write from the perspective of the importance of an efficient, cost-effective and timely system that enhances the protection, the uptake and the use of new knowledge in the innovation process. This becomes increasingly important as the economy moves more to one based on the generation of knowledge and its exploitation.

I re-iterate the concerns expressed earlier by a number of the Cooperative Research Centres and their Association of the need for exclusive licensing; this is but one part of a system that needs to adequately address all stages in the commercialisation of R&D. [1]

I understand that the Committee is recommending that section 51 (3) of the Trade Practices Act and related provisions be repealed and that the exemptions be inserted into each of the relevant IP statutes. It is not clear that the proposed changes will be for the better, for if they create uncertainty as to what qualifies for an exemption, this could cause delays in licensing and increased costs associated with seeking advice on market status and any subsequent authorizations that might be required. This in turn will harm the innovation process and make Australia less attractive for investments in R&D from the international community.

Is the Committee sure that their recommendation on exclusions will cover all aspects related to the protection and use of IP for the benefit of Australia in the international arena? For example what will be the situation with respect to licensing know how (in the pre-patent application phase)? What will be the situation with respect to the subject matter of a patent application? What will be the situation if a patent application is allowed to lapse?

The Committee suggests that the ACCC should issue guidelines to articulate what is meant by behaviours that are unacceptable because they result in a substantial lessening of competition. These would need to be very clear and highly specific in order to provide the certainty that, if they are adhered to, then it would not be necessary in the licensing process to seek external advice and authorizations both of which are costly and time consuming.

It is the lack of certainty, the loss of time and the costs in determining whether it is necessary to seek authorization as well as the authorization process itself, which impacts adversely on the exploitation of IP. This could make licensing of Australian inventions uncompetitive globally particularly for single product markets eg development of novel therapeutic agents. Access to exclusive licensing helps to overcome these hurdles.

The protection of knowledge and its use via licensing, even exclusive licensing, is not anti-competitive *per se*. However, it could be argued that some components of a licence that place restrictions on eg price, quantities could be anti-competitive and thus should not enjoy an exemption.

We believe that further consultations with those involved in the innovation system in Australia would be most beneficial before changes are made. There has been relatively little time to canvass widely the issues raised in the draft document and explore fully the impact of the recommendations.

Yours sincerely,

Dr Anne Campbell
Manager
Cooperative Research Centres Association

[1] Submission by the CRC Association to National Competition Council, 15th Jan. 1999 for their Review of Sections 51 (2) and 51 (3) of the Trade Practices Act 1974 as well as to the Intellectual Property & Competition Review on 11 November 1999