

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/03/2015 3:25:58 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID725/2014
File Title:	Australian Competition and Consumer Commission v Olex Australia Pty Limited and Ors
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 6/03/2015 3:55:13 PM AEDT

A handwritten signature in blue ink, reading "Warwick Soden".

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17
Rule 8.05(1)(a)

Amended Statement of Claim

No. **725** of 2014

Federal Court of Australia
District Registry: Victoria
Division: General

Australian Competition and Consumer Commission

Applicant

Olex Australia Pty Limited (ACN 087 542 863) and others named in the Schedule

Respondents

Parties

1. The applicant (**the ACCC**) is and was at all material times a body corporate established by section 6A of the *Competition and Consumer Act 2010* (Cth) (**CCA**).
2. The first respondent (**Olex**) is and was at all material times:
 - a) a company incorporated according to law;
 - b) carrying on business in Australia;
 - c) a manufacturer of cables that carry electricity and are used in residential and commercial buildings, industrial sites, machines and/or equipment (**electrical cable**);

Particulars

References to electrical cable include, but may not be limited to, low voltage (**LV**) electrical cable, being electrical cable that carries up to 1kV of electricity. Further particulars may be provided following discovery and/or evidence.

References to LV electrical cable mean LV electrical cable only.

Filed on behalf of: Australian Competition and Consumer Commission (the Applicant)
Prepared by: Andrew Christopher and Jennifer Hambleton
Law firm: Webb Henderson
Tel: (02) 8214 3500

Address for service:

Level 18, 420 George St, Sydney NSW 2000
Email: Andrew.Christopher@webbhenderson.com

- d) a supplier of electrical cable to:
 - i. businesses that re-supply electrical cable (**wholesalers**);
 - ii. businesses that install electrical cable (**contractors**); and
 - iii. businesses that acquire electrical cable for their own use (**end-users**); and

Particulars

End-users are predominantly large mining and industrial businesses such as BHP Billiton, BlueScope Steel and Rio Tinto.

- e) a supplier of the service of cutting electrical cable (**cutting services**) to wholesalers, contractors and end-users.

Particulars

Cutting services consists of cutting electrical cable at the request of, and to the length specified by, a customer.

- 3. The second respondent (**Dunstan**):
 - a) was the General Manager – Building and Industrial of Olex from 1 January 2011 until 19 September 2011; and
 - b) has been the General Manager – Sales and Marketing of Olex since 19 September 2011.
- 4. The third respondent (**Prysmian**) is and was at all material times:
 - a) a company incorporated according to law;
 - b) carrying on business in Australia;
 - c) a manufacturer of electrical cable;
 - d) a supplier of electrical cable to wholesalers, contractors and end-users; and
 - e) a supplier of cutting services to wholesalers, contractors and end-users.
- 5. The fourth respondent (**Roberts**):
 - a) was the Managing Director – Oceania of Prysmian at all material times prior to about July 2011; and
 - b) was the Chief Executive Officer – Australia and New Zealand of Prysmian at all material times after about July 2011.
- 6. The fifth respondent (**Rexel**) is and was at all material times:

- a) a company incorporated according to law;
 - b) carrying on business in Australia;
 - c) a supplier of electrical cable to contractors and end-users; and
 - d) a supplier of cutting services to contractors and end-users.
7. The sixth respondent (**ARW**) is and was at all material times:
- a) a company incorporated according to law;
 - b) carrying on business in Australia;
 - c) a supplier of electrical cable to contractors and end-users; and
 - d) a supplier of cutting services to contractors and end-users.
8. Rexel and ARW are referred to in this pleading as the **Rexel respondents**.
9. The seventh respondent (**Picken**) has been:
- a) a director of Rexel since about 18 October 2002; and
 - b) a director of ARW since about 10 July 2006.
10. The eighth respondent (**L&H**) is and was at all material times:
- a) a company incorporated according to law;
 - b) carrying on business in Australia;
 - c) a supplier of electrical cable to contractors and end-users; and
 - d) a supplier of cutting services to contractors and end-users.
11. The ninth respondent (**Norris**) is and was at all material times the Chief Executive Officer of L&H.
12. The tenth respondent (Webb) is and was at all material times the Managing Director of CNW Pty Ltd (CNW), a wholesaler.
13. The eleventh respondent (**Murphy**) is and was at all material times:
- a) the Chief Executive Officer of CNW; and
 - b) a director of Gemcell Pty Limited (**Gemcell**), the company described in paragraph 20 below.
14. The twelfth respondent (**the EWAA**) is and was at all material times:
- a) a company incorporated according to law; and

- b) an association of wholesalers.

15. In this pleading:

- a) Prysmian and Olex are referred to as ***the Manufacturers***; and
- b) the Rexel respondents, L&H and Metal Manufacturers Limited, trading as MM Electrical Merchandising (***MMEM***), are referred to as ***the Wholesalers***.

Competition between the Manufacturers and the Wholesalers

16. During at least 2011:

- a) the Manufacturers were, or were likely to be, in competition with each other in relation to the supply of electrical cable and cutting services to:
 - i. wholesalers;
 - ii. contractors; and
 - iii. end-users;

within the meaning of sections 4D(2) and 44ZZRD(4) of the CCA;
- b) by reason of the matters referred to in paragraph (a), the Manufacturers were, or were likely to be, competitive with each other in relation to the supply of electrical cable and cutting services within the meaning of section 4D(1) of the CCA;
- c) each of the Manufacturers and each of the Wholesalers were, or were likely to be, in competition with each other in relation to the supply of electrical cable and cutting services to:
 - i. contractors; and
 - ii. end-users;

within the meaning of sections 4D(2) and 44ZZRD(4) of the CCA;
- d) by reason of the matters referred to in paragraph (c), each of the Manufacturers and each of the Wholesalers were, or were likely to be, competitive with each other in relation to the supply of electrical cable and cutting services within the meaning of section 4D(1) of the CCA;
- e) each of the Wholesalers were, or were likely to be, in competition with each other in relation to the acquisition of electrical cable from:
 - i. Prysmian, Olex and/or other manufacturers of electrical cable; and
 - ii. importers of electrical cable, including:

- A. Electra Cables (Aust) Pty Ltd (***Electra***), a supplier of electrical cable manufactured in China; and
- B. General Cables Australia Pty Ltd (***General Cables***), a supplier of electrical cable manufactured in, inter alia, Thailand and The Republic of the Philippines;

within the meaning of sections 4D(2) of the CCA; and

- f) by reason of the matters referred to in paragraph (e), each of the Wholesalers were, or were likely to be, competitive with each other in relation to the acquisition of electrical cable within the meaning of section 4D(1) of the CCA.

Particulars

The competition referred to in paragraph 16 is competition throughout Australia.

The other manufacturers referred to in paragraph 16(e)(i) include, but may not be limited to, Austech Wire & Cable Pty Ltd, Advance Cables Pty Ltd, APEC Pty Ltd, Bambach Wires and Cables Pty Ltd, Triangle Cables (Aust) Pty Ltd and Tycab Australia Pty Ltd.

Importers of electrical cable other than Electra and General Cables included, but may not have been limited to, Advance Cables Pty Ltd, Triangle Cables (Aust) Pty Ltd, World Wire Cables (Aust) Pty Ltd and CMI Electrical.

Imported electrical cable

17. Between about 2008 and about 2010:

- a) the total amount of imported ~~low-voltage (LV)~~ electrical cable acquired by wholesalers in Australia increased by approximately 40% (by value);

Particulars

The total value of LV electrical cable that was imported into Australia was approximately € 100 million in 2008 and approximately € 140 million in 2010.

- b) most of the imported LV electrical cable that was acquired by wholesalers in Australia was:
 - i. supplied by Electra and General Cables; and

- ii. supplied at prices that were lower than prices offered by the Manufacturers for equivalent electrical cable;
- c) Olex's share of the sales of electrical cable to wholesalers decreased by approximately 12%; and

Particulars

Olex's share decreased from approximately 36% in 2008 to approximately 24% in 2010.

- d) Prysmian's share of the sales of electrical cable to wholesalers decreased by approximately 5%.

Particulars

Prysmian's share decreased from approximately 28% in 2008 to approximately 23% in 2010.

Direct supply

18. At all material times:

- a) contractors and end-users acquired electrical cable from:
 - i. wholesalers; and/or
 - ii. manufacturers or importers of electrical cable (other than Electra); and
- b) the acquisition by contractors and end-users of electrical cable directly from manufacturers or importers of electrical cable was known as:
 - i. "direct supply";
 - ii. "direct dealing"; and/or
 - iii. "direct sales"

(direct supply).

Particulars

Entities that were aware of the practice referred to in paragraph 18(b) included the Manufacturers and the Wholesalers.

19. As at about February 2011:

- a) approximately 50% of the electrical cable that was supplied to contractors and end-users was supplied by wholesalers; and

- b) approximately 50% of electrical cable that was supplied to contractors and end-users was supplied by way of direct supply.

Gemcell and the EWAA

- 20. Gemcell was at all material times a company:
 - a) whose shareholders were wholesalers; and
 - b) that negotiated on behalf of its shareholders to obtain rebates in relation to electrical cable acquired by its shareholders.
- 21. At all material times, the members of the EWAA were:
 - a) Gemcell;
 - b) the Rexel respondents and/or an associated entity of the Rexel respondents within the meaning of the *Corporations Act 2001* (Cth) (**associated entity**);
 - c) L&H; and
 - d) MEM.
- 22. At all material times from at least 15 February 2011, the directors of the EWAA comprised:
 - a) three representatives of Gemcell, being Murphy, Webb and Mr Anton Middendorp (**Middendorp**);
 - b) three representatives of the Rexel respondents and/or an associated entity of the Rexel respondents, being Picken, Mr Anthony Bombardiere (**Bombardiere**) and Mr Roger Edgar (**Edgar**);
 - c) three representatives of L&H, being Norris, Mr Ian Haddon (**Haddon**) and Mr Stephen Hanlon (**Hanlon**); and
 - d) three representatives of MEM, being Mr Colin Lamond (**Lamond**), Mr Terrence Davis (**Davis**) and Mr Kevin Irwin.

The period from February 2011 to 23 June 2011

- 23. A meeting of the EWAA was held on 3 February 2011.

Particulars

The meeting was held at Level 10, 201 Sussex Street, Sydney and was attended by Norris (L&H), Picken and Bombardiere (Rexel respondents), Davis and Lamond (MEM), Middendorp

and Webb (Gemcell) and Mr Nick Geddes (**Geddes**) (EWAA Secretary). Minutes of and notes taken at the meeting may be inspected by appointment with the ACCC's solicitors.

24. During the meeting:

- a) there was a discussion concerning the objectives that the EWAA should aim to meet;
- b) objectives were ranked according to the benefits that they would provide to the EWAA members and how easily they could be achieved; and
- c) objectives which were referred to as "direct supply", "channel restructure" and "countering direct sellers" were identified among those having the greatest benefits.

Particulars

The individuals that identified "direct supply", "channel restructure" and "countering direct sellers" as among the objectives having the greatest benefits were Norris (L&H), Picken (Rexel respondents), Bombardiere (Rexel respondents), Davis (MMEM), Lamond (MMEM), Middendorp (Gemcell) and/or Webb (Gemcell).

25. Each of the objectives referred to in paragraph 24(c) involved reducing direct supply.

26. During the meeting referred to in paragraph 23 above, the EWAA directors that were present agreed that:

- a) Picken (Rexel respondents) would hold preliminary discussions with the Manufacturers; and
- b) representatives of the Manufacturers would be invited to the next EWAA meeting.

27. Picken (Rexel respondents) invited representatives of the Manufacturers to attend a meeting of the EWAA on 8 March 2011 (**March 2011 meeting**).

Particulars

The invitation to Olex was made orally by Picken (Rexel respondents) to Mr Graeme Moncrieff (**Moncrieff**), Managing Director of Olex on about 7 February 2011 and by email from Picken's assistant, Ms Ruby Faulkner, to Moncrieff on about 15 February 2011.

The invitation to Prysmian was made to Roberts (Prysmian) between 3 February 2011 and about 2 March 2011.

Further particulars may be provided following discovery.

28. Prior to the March 2011 meeting, Roberts (Prysmian) and Moncrieff (Olex) met and agreed that:
- a) during the March 2011 meeting, supply chain restructure should be discussed;
 - b) high-end business should be outside such a restructure; and
 - c) issues with the current supply chain structure included wholesalers stocking cheap sub-standard imports.

Particulars

The meeting was held at the Hilton Hotel in Sydney and was attended by Roberts (Prysmian), Mr David Klarich (Prysmian), Moncrieff (Olex) and Dunstan (Olex).

High-end business meant business that Roberts and Moncrieff considered to be highly profitable.

Minutes of the meeting may be inspected by appointment with the ACCC's solicitors.

Further particulars may be provided following discovery.

29. Roberts (Prysmian), Moncrieff (Olex) and Dunstan (Olex) attended part of the March 2011 meeting.

Particulars

The meeting was held at Level 33, 680 George Street, Sydney. The directors of the EWAA that attended were Webb, Murphy and Middendorp (Gemcell), Picken, Edgar and Bombardiere (Rexel respondents), Lamond and Davis (MMEM), Haddon and Hanlon (L&H), and Geddes (EWAA secretary).

Minutes of and notes taken at the meeting may be inspected by appointment with the ACCC's solicitors.

Further particulars may be provided following discovery.

30. During the March 2011 meeting, but before Roberts (Prysmian), Moncrieff (Olex) and Dunstan (Olex) joined, there was a discussion between the directors of the EWAA in the course of which words to the following effect were said:
- a) the Manufacturers recognise the need for change;
 - b) we are not prepared to support cable manufacturers if they are selling against us;
and
 - c) we need to agree on a cut-off below which they don't go direct – but they need to be competitive and they need some guarantees.

Particulars

Words to the effect alleged in paragraphs 30(a) and 30(b) were said by Webb (Gemcell), Murphy (Gemcell), Middendorp (Gemcell), Picken (Rexel respondents), Edgar (Rexel respondents), Bombardiere (Rexel respondents), Lamond (MMEM), Davis (MMEM), Haddon (L&H) and/or Hanlon (L&H). Words to the effect alleged in paragraph 30(c) were said by Picken.

31. After Roberts (Prysmian), Moncrieff (Olex) and Dunstan (Olex) joined the meeting:
- a) they were asked what they would like from the EWAA members to help the cable industry; and

Particulars

The question was asked by Webb (Gemcell), Murphy (Gemcell), Middendorp (Gemcell), Picken (Rexel respondents), Edgar (Rexel respondents), Bombardiere (Rexel respondents), Lamond (MMEM), Davis (MMEM), Haddon (L&H) and/or Hanlon (L&H).

- b) there was a discussion during the course of which:
 - i. Roberts (Prysmian) said words to the effect that:
 - A. the EWAA members have not acted like true wholesalers and manufacturers have not channelled sales through wholesalers;
and
 - B. the EWAA needs to take the lead and Prysmian would follow, so long as there are some guarantees;

- ii. Middendorp (Gemcell) asked what commitment the Manufacturers wanted from EWAA members;
- iii. Moncrieff (Olex) said words to the effect that the elephant in the room was Chinese imports;
- iv. Moncrieff (Olex) expressed a concern that:
 - A. if the Manufacturers ceased supplying electrical cable to contractors and end-users; and
 - B. as a result, the EWAA members increased sales to contractors and end-users,

then the EWAA members may supply contractors and end-users with electrical cable that they acquire from Electra, rather than the Manufacturers;
- v. Lamond (MMEM) said words to the effect that there should be a series of small steps – for example, the Manufacturers won't do any cutting, and EWAA members can put more business the Manufacturers' way;
- vi. Picken (Rexel respondents) said words to the effect that commercial contractors should be addressed first; and
- vii. Moncrieff (Olex) asked the EWAA to draft small steps for the Manufacturers to consider and said words to the effect that: if we do X, what do we get in return.

32. After Roberts (Prysmian), Moncrieff (Olex) and Dunstan (Olex) left the March 2011 meeting:

- a) Middendorp (Gemcell) said words to the effect that:
 - i. say we offer to do this with 25mm cable, and there be no direct sales and only standard packs; and
 - ii. we give them a commitment to buy say 95% of 25mm cable from them, or we all increase our purchases by 5% of our relative share, in return for no direct dealing; and
- b) it was agreed that:
 - i. Middendorp (Gemcell) would send an email to the EWAA directors with specific measures that could be proposed to the Manufacturers; and
 - ii. the directors would reply with comments on those measures.

Particulars

The agreement was made orally. Webb (Gemcell), Murphy (Gemcell), Middendorp (Gemcell), Picken (Rexel respondents), Edgar (Rexel respondents), Bombardiere (Rexel respondents), Lamond (MEM), Davis (MEM), Haddon (L&H) and/or Hanlon (L&H) spoke.

33. On about 9 March 2011, Middendorp (Gemcell) sent an email to the directors of the EWAA that:
 - a) stated words to the effect that the Wholesalers proposed to become the exclusive channel for all LV electrical cable to contractors;
 - b) set out specific measures that could be proposed to the Manufacturers, including that:
 - i. the Manufacturers each agree to:
 - A. cease supplying LV electrical cable up to and including 25mm in diameter (**25mm LV cable**) to contractors and end-users; and
 - B. cease supplying cutting services in respect of 25mm LV cable;
 - ii. the Wholesalers each agree to:
 - A. ensure that any order that they placed with the Manufacturers for electrical cable was at least \$5,000 (excluding GST) in value; and
 - B. increase the volume and/or value of Australian made electrical cable that it acquired by approximately 5% of the total volume and/or value of electrical cable that it acquired; and
 - c) asked the directors to provide feedback on the proposal.
34. On about 16 March 2011:
 - a) a meeting of Gemcell directors was held; and
 - b) during the meeting, Middendorp or Murphy said words to the effect that:
 - i. the EWAA met recently in Sydney to discuss the cable market;
 - ii. representatives from Olex and Prysmian were in attendance; and
 - iii. the EWAA asked the cable suppliers to convert direct business back to the wholesale channel in exchange for the wholesale channel reducing their support of Chinese imports.

Particulars

The meeting was held at the Sebel Playford Hotel in Adelaide. A copy of the minutes may be inspected by appointment with the ACCC's solicitors.

35. Between about 22 March 2011 and about 29 March 2011:

- a) the EWAA directors provided comments on the proposal referred to in paragraph 33 above; and

Particulars

The directors that provided comments included, but may not be limited to, Picken (Rexel respondents), Murphy (Gemcell), Haddon, Hanlon and Norris (L&H) and Lamond (MMEM).

- b) Middendorp amended the proposal after receiving those comments.

Particulars

Emails from Picken (Rexel respondents) dated 22, 23, 28, and 29 March 2011.

Email from Murphy (Gemcell) dated 23 March 2011.

Email from Haddon (L&H) dated 25 March 2011.

Email from Lamond (MMEM) dated 25 March 2011.

Emails from Middendorp (Gemcell) dated 28 and 29 March 2011.

Copies of the emails may be inspected by appointment with the ACCC's solicitors.

Further particulars may be provided following discovery.

36. On about 5 April 2011, on behalf of the Wholesalers, Geddes (EWAA Secretary) sent an email to Moncrieff (Olex) and Roberts (Prysmian).

37. The email sent by Geddes on behalf of the Wholesalers:

- a) contained the amended proposal referred to in paragraph 35 above;
- b) proposed that:
 - i. the Manufacturers each agree to:
 - A. cease supplying 25mm LV cable to contractors and end-users;
 - and

- B. cease supplying cutting services in respect of 25mm LV cable;
 - ii. the Wholesalers each agree to:
 - A. ensure that any order that they placed with the Manufacturers for electrical cable was at least \$5,000 (excluding GST) in value; and
 - B. increase the volume and/or value of electrical cable that they acquired from Olex and Prysmian by approximately 5% of the total volume and/or value of electrical cable that it acquired; and
 - c) stated words to the effect that:
 - i. each member of the EWAA has reviewed and agreed the proposal; and
 - ii. the EWAA seeks the Manufacturers' feedback on the proposal.
38. Between about 5 April and about 26 May 2011:
- a) Olex developed a draft response to the proposal referred to in paragraph 37 above, which contained proposals that:
 - i. Olex's preferred (but not exclusive) customers for 25mm LV cable would be wholesalers;
 - ii. Olex would cease supplying cutting services in respect of 25mm LV cable, save for a transition period in which it would charge a cutting services fee;
 - iii. Olex would charge minimum order value (**MOV**) fees, being \$250 for orders of electrical cable less than \$5,000 in value and \$150 for orders of electrical cable between \$5,000 and \$10,000 in value; and
 - iv. 75% of EWAA members' acquisitions of 25mm LV cable would be from Australian electrical cable manufacturers; and
 - b) Olex sought feedback on the draft response from the Wholesalers, by emails, in phone calls and in meetings.

Particulars

Meeting between Dunstan (Olex), Hanlon (L&H) and Norris (L&H) at the Park Hyatt in Melbourne on 2 May 2011.

Email from Dunstan (Olex) to Hanlon (L&H) dated 4 May 2011.

Email from Dunstan (Olex) to Middendorp (Gemcell) dated 4 May 2011.

Meeting between Dunstan (Olex), Mr Greg Stack (Olex), Middendorp (Gemcell) and Murphy (Gemcell) at the Windsor Hotel in Melbourne on about 6 May 2011.

Email from Dunstan (Olex) to Middendorp (Gemcell) and Murphy (Gemcell) dated 9 May 2011.

Meeting between Dunstan (Olex) and Hanlon (L&H) at offices of L&H in Heidelberg on about 10 May 2011.

Email from Dunstan (Olex) to Davis (MMEM) dated 11 May 2011.

Phone call between Dunstan (Olex) and Edgar (Rexel respondents) on about 11 May 2011.

Email from Dunstan (Olex) to Edgar (Rexel respondents) dated 11 May 2011.

Meeting between Dunstan (Olex), Webb (Gemcell), Murphy (Gemcell) and others over dinner at Ristorante Tartufo in Brisbane on about 16 May 2011.

Meeting between Moncrieff (Olex), Dunstan (Olex), Picken (Rexel respondents) and Edgar (Rexel respondents) on about 17 May 2011 at Rockpool Bar & Grill in Sydney.

Meeting between Moncrieff (Olex), Dunstan (Olex), Hueber (Olex), Davis (MMEM) and Lamond (MMEM) over breakfast at the Radisson Blu Plaza Hotel in Sydney on about 19 May 2011.

Further particulars may be provided following discovery.

39. By about 24 May 2011, Prysmian had prepared a response to the proposal referred to in paragraph 37 above, which contained proposals that:
- a) the Manufacturers cease supplying cutting services in respect of 25mm LV cable;
 - b) the Manufacturers implement MOV fees; and
 - c) the Wholesalers commit a significant share of the total cable spend to local manufacturers.

Particulars

The response did not define "significant share". A copy of the response may be inspected by appointment with the ACCC's solicitors.

40. Between about 26 May 2011 and about 23 June 2011:

- a) Olex prepared a revised version of the draft response referred to in paragraph 38 above to put to the Wholesalers at a meeting of the EWAA on 23 June 2011, which contained proposals to implement:
 - i. a cutting services fee, being either:
 - A. a flat fee of \$85 per cut for all electrical cable; or
 - B. a fee of \$70 per cut for 25mm LV cable and a fee of \$100 per cut for electrical cable greater than 25mm in diameter; and
 - ii. a MOV fee of \$250 for orders of electrical cable less than \$2,500 in value;
- b) Olex sought comments on the revised response from Murphy (Gemcell) and Hanlon (L&H); and

Particulars

Email from Dunstan (Olex) to Murphy (Gemcell) dated 21 June 2011.

Email from Dunstan (Olex) to Hanlon (L&H) dated 21 June 2011.

- c) Murphy (Gemcell) sent an email to Dunstan (Olex) which stated words to the effect that the revised response was very sensible, gives a form of direction and commitment for the group and is not onerous.

23 June 2011 meeting

41. On about 23 June 2011:

- a) a meeting of EWAA was held (**June 2011 meeting**); and
- b) representatives of the Manufacturers, namely Moncrieff (Olex), Dunstan (Olex) and Roberts (Prysmian), attended the meeting.

Particulars

The meeting was held at the Conrad Treasury Hotel at 130 William Street in Brisbane at 12pm and was attended by Webb and Murphy (Gemcell), Lamond and Davis (MMEM), Picken (Rexel respondents), Norris and Haddon (L&H) and Mr John Lemon (who was responsible for taking minutes during the meeting). Moncrieff (Olex), Dunstan (Olex) and Roberts

(Prysmian) attended part of the meeting. Minutes of the meeting may be inspected by appointment with the ACCC's solicitors.

42. During the June 2011 meeting:

- a) Moncrieff (Olex) tabled the revised response referred to in paragraph 40, which included:
 - i. a proposal to increase Olex's cutting services fees to \$85 per cut; and
 - ii. a proposal to introduce a fee of \$250 for orders of electrical cable less than \$2,500 in value;

Particulars

Tabled means provided a copy of the revised response to the attendees at the meeting and orally explained its contents, including the proposals referred to in paragraphs 42(a)(i) and 42(a)(ii).

- b) Roberts (Prysmian) indicated that if Olex:
 - i. increased its cutting services fee to \$85; and
 - ii. introduced a fee of \$250 for orders of electrical cable less than \$2,500 in value;

Prysmian would do the same;

Particulars

The indication was given orally. Further or alternatively it was partly oral and partly to be inferred from the facts, matters and circumstances referred to in paragraphs 16 to 41 above, and paragraphs 49 to 59 below. Further particulars may be provided following evidence and/or discovery.

- c) Picken (Rexel respondents), Norris and Haddon (L&H), and Lamond and Davis (MMEM) indicated that the Wholesalers would support the Manufacturers by not objecting to the cutting services and MOV fees and maintaining or increasing the volume and/or value of electrical cable that the Wholesalers acquired from the Manufacturers, if the Manufacturers:
 - i. increased their cutting services fees to \$85; and
 - ii. introduced fees of \$250 for orders of electrical cable less than \$2,500 in value.

Particulars

The indication was given orally. Further or alternatively it was partly oral and partly to be inferred from the facts, matters and circumstances referred to in paragraphs 16 to 41 above and paragraphs 49 to 59 below. Further particulars may be provided following evidence and/or discovery.

Contract, arrangement or understanding

43. On or about 23 June 2011, alternatively in the period February to June 2011, the Manufacturers and the Wholesalers made or arrived at a contract, arrangement or understanding containing provisions that:
- a) the Manufacturers would increase their cutting services fees to \$85 per cut for electrical cable, and the Wholesalers would not object to those fees (***cutting fee provision***);
 - b) the Manufacturers would introduce fees of \$250 for orders of electrical cable less than \$2,500 in value, and the Wholesalers would not object to those fees (***MOV provision***); and
 - c) the Wholesalers would maintain or increase the volume and/or value of electrical cable that they acquired from the Manufacturers (***support provision***).

Particulars

The contract, arrangement or understanding was made or arrived at orally, during the course of that part of the June 2011 meeting that was attended by Moncrieff, Dunstan and Roberts. Further or alternatively it is to be inferred from the facts, matters and circumstances referred to in paragraphs 16 to 42 above, and paragraphs 49 to 59 below. Further particulars may be provided following evidence and/or discovery.

44. The cutting fee provision had the purpose or a substantial purpose of directly or indirectly:
- a) preventing, restricting or limiting the supply or likely supply of electrical cable by the Manufacturers to contractors and/or end-users within the meaning of:
 - i. section 4D(1) of the CCA; and
 - ii. section 44ZZRD(3)(a)(iii) of the CCA; and/or

- b) allocating contractors and/or end-users to the Wholesalers within the meaning of section 44ZZRD(3)(b)(i) of the CCA.
- 45. Further or alternatively, the cutting fee provision had the purpose or a substantial purpose and/or the effect or likely effect of directly or indirectly fixing, controlling or maintaining the price of cutting services supplied by the Manufacturers within the meaning of section 44ZZRD(2) of the CCA.
- 46. The MOV provision had the purpose or a substantial purpose of directly or indirectly:
 - a) preventing, restricting or limiting the supply or likely supply of electrical cable by the Manufacturers to contractors and/or end-users within the meaning of:
 - i. section 4D(1) of the CCA; and
 - ii. section 44ZZRD(3)(a)(iii) of the CCA; and/or
 - b) allocating contractors and/or end-users to the Wholesalers within the meaning of section 44ZZRD(3)(b)(i) of the CCA.
- 47. The support provision, together with the cutting fee provision and MOV provision, had the purpose or a substantial purpose of directly or indirectly:
 - a) preventing, restricting or limiting the supply or likely supply of electrical cable by the Manufacturers to contractors and/or end-users within the meaning of:
 - i. section 4D(1) of the CCA; and
 - ii. section 44ZZRD(3)(a)(iii) of the CCA; and/or
 - b) allocating contractors and/or end-users to the Wholesalers within the meaning of section 44ZZRD(3)(b)(i) of the CCA.
- 48. Further or alternatively, the support provision had the purpose or a substantial purpose of preventing, restricting or limiting the acquisition of electrical cable by the Wholesalers from persons other than the Manufacturers within the meaning of section 4D(1) of the CCA.

Giving effect to the contract, arrangement or understanding

Cutting services fees

- 49. On about 24 June 2011, Olex began advising its customers that it would increase its cutting services fee to \$85 (excluding GST), effective from 1 August 2011.

Particulars

Olex began advising its customers that it would increase its cutting services fee in writing, including by an email from Ms Suzie Ilic (Olex) to Hanlon (L&H), Mr Geoff McDonald (L&H), Norris (L&H), Ms Nadine Brochut (Rexel Respondents), Mr Paul Alderson (Rexel Respondents) (**Alderson**), Davis and Lamond (MMEM), Mr John Moore (Electrical Distributors), Bernie O (Gormac Electrical), 'John' (Mekolec), Middendorp and Murphy (Gemcell) and 'John r' (Electrical) dated 24 June 2011.

The cutting services fee was for the supply of cutting services.

50. On about 29 June 2011:

- a) Mr Ian Pannell (L&H) sent an email to persons within L&H which stated words to the effect that:
 - i. a branch bulletin will be published today regarding the changes occurring in the market place relating to the Manufacturers; and
 - ii. please ensure that our branches refrain from attacking the Manufacturers and that they support the Manufacturers in implementing this and future changes;
- b) a "Bulletin" was circulated to L&H branches with the title "Cable Market Changes" that stated words to the effect that:
 - i. we need to make every effort to support the Manufacturers to implement changes throughout the market place; and
 - ii. it is important that we support the local representatives and employees of the Manufacturers through this process and resist any temptation to beat them up.

Particulars

The "changes" referred to in the email and bulletin were the implementation of the cutting fee provision and the MOV provision.

The "support" referred to in the email and bulletin meant acting in accordance with the cutting fee provision, the MOV provision and the support provision.

The references to “attacking” and “beating up” the Manufacturers meant, inter alia, failing to comply with the cutting fee provision, the MOV provision and/or the support provision.

51. On about 1 July 2011, Prysmian began advising its customers that it would increase its cutting services fee to \$85 (excluding GST), effective from 1 August 2011.

Particulars

Prysmian began advising its customers that it would increase its cutting services fee in writing, including by:

- an email from Stephen Haller (Prysmian) to Murphy dated 1 July 2011;
- an email from Kym James (Prysmian) to certain contractors dated 1 July 2011; and
- a letter from Stephen Haller to ‘Valued Customer’ dated 1 July 2011.

The cutting services fee was for the supply of cutting services.

52. On about 4 July 2011, an email was sent on behalf of ~~Mr Paul Alderson~~ (~~Alderson~~) (Rexel respondents) to branch managers of the Rexel respondents which stated words to the effect that:

- a) Prysmian is increasing its cutting services fee to \$85 per cut, which brings it in line with Olex;
- b) the Rexel respondents fully support this initiative;
- c) we can and should pass the increase on to our customers; and
- d) this is one part of a range of commercial changes coming to the cable industry more details of which will be announced when they are to hand.

Particulars

The reference to the Rexel respondents “supporting this initiative” meant that branch managers should comply with the cutting fee provision and the support provision.

53. On about 4 July 2011, Mr Stuart Watson (L&H) sent an email to L&H employees which stated words to the effect that going to a supplier that doesn’t charge for cuts is not the path that I wish for us to walk and please do not consider this as an option.

54. On about 1 August 2011, each of Olex and Prysmian increased their cutting services fee to \$85 (excluding GST).

Particulars

The ACCC does not presently allege that there was an invariable practice of charging the cutting services fee of \$85 (excluding GST).

MOV fees

55. On about 16 August 2011, Prysmian began advising its customers that it would charge a MOV fee of \$250 for orders of electrical cable less than \$2,500 in value (excluding GST), effective from 3 October 2011.

Particulars

Prysmian began advising its customers that it would charge an MOV fee in writing, including by a letter from Stephen Haller of Prysmian dated 16 August 2011.

56. On 19 August 2011:

- a) Mr Darryl Milburn (***Milburn***) (Rexel respondents) sent an email to Alderson (Rexel respondents) in which he stated words to the following effect: do you plan to accept Prysmian's MOV fee; and

Particulars

"Accepting" Prysmian's MOV meant acting in accordance with the MOV provision.

- b) Alderson (Rexel respondents) replied to Milburn's email and stated words to the following effect:
- i. yes we do; and
 - ii. this is only one part of a number of industry reforms that have been driven by the EWAA.

57. On 22 August 2011:

- a) Mr Dale McRae (L&H) sent an email to persons within L&H which stated words to the effect that:
- i. as you are aware, Olex & Prysmian are introducing a MOV fee of \$2,500;
 - ii. as a business we fully support the MOV fees;

- iii. they are receiving some negative and threatening comments from some of our branches;
- iv. please support these changes; and
- v. the short term pain will result in long term gain; and

Particulars

The reference to “support” meant acting in accordance with the MOV provision and the support provision.

- b) Mr Steve Woodiwiss (L&H) sent an email to persons within L&H which stated words to the effect that:
 - i. be nice to Olex and Prysmian; and
 - ii. this will work to our advantage as some smaller customers will be forced to acquire electrical cable from a wholesaler and not Olex or Prysmian.

58. On about 24 August 2011, Olex began advising its customers that it would charge a MOV fee of \$250 for orders of electrical cable less than \$2,500 in value (excluding GST), effective from 3 October 2011.

Particulars

Olex began advising its customers that it would charge an MOV fee in writing, including by a letter from Evan Hudleston of Olex dated 24 August 2011.

59. On about 3 October 2011, each of Prysmian and Olex began charging customers a MOV fee of \$250 for orders of electrical cable less than \$2,500 in value (excluding GST).

Bidding agreement between Rexel and Prysmian

60. On about 13 May 2011, Caltex Refineries (NSW) Pty Ltd (**Caltex**) issued a Request for Proposals for the supply of “11kV Power cable” for an upgrade of the Kurnell Refinery in Botany Bay, New South Wales (**the RFP**).
61. On about 13 May 2011, Alderson (on behalf of Rexel) sent an email to Mr Hamavand Shroff (**Shroff**) (Prysmian) in relation to the RFP which stated:
- a) we would like to work with you on this; and
 - b) once you’ve had a chance to digest the contents perhaps you would give me a call and we can work out the best way of doing so.

62. Between about 13 May 2011 and about 27 May 2011, Rexel and Prysmian made a contract or arrangement or arrived at an understanding in relation to bidding in response to the RFP (***bidding agreement***).

Particulars

The bidding agreement was made or arrived at orally during the course of discussions between Shroff on behalf of Prysmian and Alderson on behalf of Rexel. Further or alternatively it is to be inferred from the facts, matters and circumstances referred to in paragraphs 60 and 61 above, and 65 to 68 below. Further particulars may be provided following discovery.

63. The bidding agreement contained provisions that:
- a) Prysmian would provide a quote to Rexel for supplying to Rexel the cable referred to in the RFP;
 - b) Prysmian and Rexel would both submit bids to Caltex in response to the RFP; and
 - c) Prysmian's quote to Rexel, and Rexel's bid in response to the RFP, would be lower than Prysmian's bid in response to the RFP (***bidding provision***).
64. The purpose of the bidding provision was to directly or indirectly ensure that Rexel's bid in response to the RFP was more likely to be successful than Prysmian's bid, within the meaning of section 44ZZRD(3)(c)(ii) of the CCA.
65. On about 30 May 2011:
- a) Shroff (Prysmian) sent an email to Alderson (Rexel) which:
 - i. attached a quote to Rexel for the cable referred to in the RFP of \$1,093,655.00;
 - ii. stated that Prysmian's bid in response to the RFP would be \$1,251,677.40; and
 - iii. stated make sure your bid is back-to-back; and
 - b) Prysmian submitted its bid to Caltex in response to the RFP, in the amount of \$1,259,842.40.
66. On about 8 June 2011, Caltex issued a clarification in respect of technical aspects of the RFP.

Particulars

Email from Mr Gordon Ristevski (Caltex) to Ms Irene Georgiades (Rexel) dated 8 June 2011. A copy may be inspected by appointment with the ACCC's solicitors.

67. On or before about 17 June 2011, Rexel submitted a bid to Caltex in response to the clarified RFP with a total price of \$1,311,496.80.

Particulars

The price of \$1,311,496.80 was bid for cable manufactured by Prysmian. Rexel bid different prices for cable manufactured by Olex and General Cables. Further particulars may be provided following discovery.

68. On ~~about~~ 17 June 2011:

- a) Prysmian submitted a bid to Caltex in response to the clarified RFP with a total price of \$1,325,830.00;

Particulars

The bid was submitted by email from Shroff (Prysmian) to Gordon Ristevski (Caltex) at 11.35am on 17 June 2011.

- b) Shroff (Prysmian) sent an email to Alderson (Rexel) that:
- i. attached Prysmian's revised bid; and
 - ii. stated "for your eyes only"; and

Particulars

The email was sent at 11.37am on 17 June 2011.

- c) Alderson (Rexel) sent an email to Shroff (Prysmian) that stated "[t]o complete the circle of trust I've attached our price sheet that we submitted to Caltex, similarly for your eyes only".

Particulars

The email was sent at 4.49pm on 17 June 2011.

Cartel and exclusionary provisions

69. By reason of the matters referred to in paragraphs 16 and 44, the cutting fee provision was:

- a) an exclusionary provision for the purpose of section 4D(1) of the CCA; and/or
 - b) a cartel provision for the purpose of section 44ZZRD(1) of the CCA.
70. Further or alternatively, by reason of the matters referred to in paragraphs 16 and 45, the cutting fee provision was a cartel provision for the purpose of section 44ZZRD(1) of the CCA.
71. By reason of the matters referred to in paragraphs 16 and 46, the MOV provision was:
- a) an exclusionary provision for the purpose of section 4D(1) of the CCA; and/or
 - b) a cartel provision for the purpose of section 44ZZRD(1) of the CCA.
72. By reason of the matters referred to in paragraphs 16 and 47, the support provision, together with the cutting fee provision and the MOV provision, was:
- a) an exclusionary provision for the purpose of section 4D(1) of the CCA; and/or
 - b) a cartel provision for the purpose of section 44ZZRD(1) of the CCA.
73. Further or alternatively, by reason of the matters referred to in paragraphs 16 and 48, the support provision was an exclusionary provision for the purpose of section 4D(1) of the CCA.
74. By reason of the matters referred to in paragraphs 16 and 64, the bidding provision was a cartel provision for the purpose of section 44ZZRD(1) of the CCA.

Contraventions

Olex and Dunstan

75. By reason of the matters referred to in paragraphs 16, 43, 69, 71 and 72 above, Olex contravened section 45(2)(a)(i) and/or section 44ZZRJ of the CCA.
76. Further or alternatively, by reason of the matters referred to in paragraphs 16, 43 and 70 above, Olex contravened section 44ZZRJ of the CCA.
77. Further or alternatively, by reason of the matters referred to in paragraphs 16, 43 and 73 above, Olex contravened section 45(2)(a)(i) of the CCA.
78. From about 1 August 2011, Olex gave effect to the cutting fee provision in contravention of section 45(2)(b)(i) and/or section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraphs 49 and 54 above. Further particulars may be provided following discovery.

79. From about 3 October 2011, Olex gave effect to the MOV provision in contravention of section 45(2)(b)(i) and/or section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraphs 58 and 59 above. Further particulars may be provided following discovery.

80. Dunstan aided, abetted, counselled, procured, induced and/or was knowingly concerned in or party to the contraventions by Olex referred to in paragraphs 75 to 79 above within the meaning of section 76(1) of the CCA.

Particulars

The ACCC relies on paragraphs 3, 16, 28, 29, 31, ~~32~~, 38, 40 to 43, 49, 54, 58 ~~and~~, 59 ~~above~~ and 69 to 73 (including the particulars ~~),~~ including Dunstan:

- attending the meeting referred to in paragraph 28;
- attending that part of the March 2011 meeting that is referred to in paragraphs 29 and 31;
- engaging in the conduct referred to in paragraph 38(b);
- engaging in the conduct referred to in paragraph 40;
- attending the June 2011 meeting; and
- engaging in the conduct referred to in paragraph 43.

The ACCC also relies on Dunstan having knowledge of the matters referred to in paragraphs 16, 28, 29, 31, 38, 40 to 43, 49, 54, 58, 59, 69 to 73, 78 and 79 above.

Dunstan's knowledge of the matters referred to in paragraphs 78 and 79 above is to be inferred from the matters referred to in paragraphs 3, 16, 28, 29, 31, 38, 40 to 43, 49, 54, 58, 59 and 69 to 73.

Further particulars may be provided following discovery.

Prysmian and Roberts

81. By reason of the matters referred to in paragraphs 16, 43, 69, 71 and 72 above, Prysmian contravened section 45(2)(a)(i) and/or section 44ZZRJ of the CCA.
82. Further or alternatively, by reason of the matters referred to in paragraphs 16, 43 and 70 above, Prysmian contravened section 44ZZRJ of the CCA.

83. Further or alternatively, by reason of the matters referred to in paragraphs 16, 43 and 73 above, Prysmian contravened section 45(2)(a)(i) of the CCA.
84. From about 1 August 2011, Prysmian gave effect to the cutting fee provision in contravention of section 45(2)(b)(i) and/or section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraphs 51 and 54 above. Further particulars may be provided following discovery.

85. From about 3 October 2011, Prysmian gave effect to the MOV provision in contravention of section 45(2)(b)(i) and/or section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraphs 55 and 59 above. Further particulars may be provided following discovery.

86. Roberts aided, abetted, counselled, procured, induced and/or was knowingly concerned in or party to the contraventions by Prysmian referred to in paragraphs 81 to 85 above within the meaning of section 76(1) of the CCA.

Particulars

The ACCC relies on the matters in paragraphs 5, 16, 27 to 29, 31, 36, 37, 39, 41 to 43, 51, 54, 55 ~~and~~, 59 ~~above~~ and 69 ~~to~~ 73 (including the particulars ~~),~~ including Roberts:

- receiving the invitation referred to in paragraph 27;
- attending the meetings referred to in paragraph 28;
- attending that part of the March 2011 meeting that is referred to in paragraphs 29 and 31 and saying the words referred to in paragraph 31(b)(i);
- receiving the email referred to in paragraphs 36 and 37;
- sending the response referred to in paragraph 39 by email to Mr Geddes on 24 May 2011;
- attending the June 2011 meeting;
- engaging in the conduct referred to in paragraph 42(b); and
- engaging in the conduct referred to in paragraph 43.

The ACCC also relies on Roberts having knowledge of the matters referred to in paragraphs 16, 27 to 29, 31, 36, 37(b), 37(c), 39, 41 to 43, 51, 54, 55, 59, 69 to 73, 84 and 85 above.

Roberts' knowledge of the matters referred to in paragraphs 84 and 85 is to be inferred from the matters referred to in paragraphs 5, 16, 27 to 29, 31, 36, 37(b), 37(c), 39, 41 to 43, 51, 54, 55, 59 and 69 to 73.

Further particulars may be provided following discovery.

87. By reason of the matters referred to in paragraphs 16 and 62 to 64 above, Prysmian contravened section 44ZZRJ of the CCA.
88. Prysmian gave effect to the bidding provision in contravention of section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraph 65 and 68 above. Further particulars may be provided following discovery.

The Rexel respondents and Picken

89. By reason of the matters referred to in paragraphs 16, 43, 69, 71 and 72 above, the Rexel respondents each contravened section 45(2)(a)(i) and/or section 44ZZRJ of the CCA.
90. Further or alternatively, by reason of the matters referred to in paragraphs 16, 43 and 70 above, the Rexel respondents each contravened section 44ZZRJ of the CCA.
91. Further or alternatively, by reason of the matters referred to in paragraphs 16, 43 and 73 above, the Rexel respondents contravened section 45(2)(a)(i) of the CCA.
92. From at least 4 July 2011, the Rexel respondents each gave effect to the cutting fee provision in contravention of section 45(2)(b)(i) and/or section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraph 52 above. Further particulars may be provided following discovery.

93. From at least 19 August 2011, the Rexel respondents each gave effect to the MOV provision in contravention of section 45(2)(b)(i) and/or section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraph 56 above. Further particulars may be provided following discovery.

94. Picken aided, abetted, counselled, procured, induced and/or was knowingly concerned in or party to the contraventions by the Rexel respondents referred to in paragraphs 89 to 93 above within the meaning of section 76(1) of the CCA.

Particulars

The ACCC relies on the matters in paragraphs 9, 16, 22 to 24, 26, 27, ~~30~~29 to 33, 35 to 38 ~~and~~, 41 to 43, 52, 56, 69 to 73 above (including the particulars ~~), including Picken:~~

- attending the meeting referred to in paragraph 23;
- reaching the agreement referred to in paragraph 26;
- making the invitations referred to in paragraph 27 (either himself or by his assistant);
- attending the March 2011 meeting and saying the words referred to in paragraph 31(b)(vi);
- reaching the agreement referred to in paragraph 32(b)(ii);
- receiving the email referred to in paragraph 33;
- providing comments on the proposal referred to in paragraph 35;
- being present when Olex sought the feedback referred to in paragraph 38(b);
- attending the June 2011 meeting;
- engaging in the conduct referred to in paragraph 42(c); and
- engaging in the conduct referred to in paragraph 43.

The ACCC also relies on Picken having knowledge of the matters referred to in paragraphs 16, 22 to 24, 26, 27, 29 to 33, 35, 38(b), 41 to 43, 69 to 73, 92 and 93 above.

Picken's knowledge of the matters referred to in paragraphs 92 and 93 is to be inferred from the matters referred to in paragraphs 9, 16, 22 to 24, 26, 27, 29 to 33, 35, 38(b), 41 to 43 and 69 to 73.

Further particulars may be provided following discovery.

95. By reason of the matters referred to in paragraphs 16 and 62 to 64 above, Rexel contravened section 44ZZRJ of the CCA.
96. Rexel gave effect to the bidding provision in contravention of section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraphs 67 and 68 above. Further particulars may be provided following discovery.

L&H and Norris

97. By reason of the matters referred to in paragraphs 16, 43, 69, 71 and 72 above, L&H contravened section 45(2)(a)(i) and/or section 44ZZRJ of the CCA.
98. Further or alternatively, by reason of the matters referred to in paragraphs 16, 43 and 70 above, L&H contravened section 44ZZRJ of the CCA.
99. Further or alternatively, by reason of the matters referred to in paragraphs 16, 43 and 73 above, L&H contravened section 45(2)(a)(i) of the CCA.
100. From at least 29 June 2011, the L&H gave effect to the cutting fee provision in contravention of section 45(2)(b)(i) and/or section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraph 50 and 53 above. Further particulars may be provided following discovery.

101. From at least 22 August 2011, the L&H gave effect to the MOV provision in contravention of section 45(2)(b)(i) and/or section 44ZZRK of the CCA.

Particulars

The ACCC relies on paragraphs 50 and 57 above. Further particulars may be provided following discovery.

102. Norris aided, abetted, counselled, procured, induced and/or was knowingly concerned in or party to the contraventions by L&H referred to in paragraphs 97 to 101 above within the meaning of section 76(1) of the CCA.

Particulars

The ACCC relies on the matters in paragraphs 11, 16, 22 to 24, 26, 33, 35 to 38 ~~and~~, 41 to 43, 50, 57 and 69 to 73 above (including the particulars ~~),~~ including Norris:

- attending the meeting referred to in paragraph 23;
- reaching the agreement referred to in paragraph 26;
- receiving the email referred to in paragraph 33;
- providing comments on the proposal referred to in paragraph 35;

- being present when Olex sought the feedback referred to in paragraph 38(b);
- attending the June 2011 meeting;
- engaging in the conduct referred to in paragraph 42(c);
- engaging in the conduct referred to in paragraph 43;
- receiving the email referred to in paragraph 50(a); and
- approving the bulletin referred to in paragraph 50(b).

The ACCC also relies on Norris having knowledge of the matters referred to in paragraphs 16, 22 to 24, 26, 33, 35, 38(b), 41 to 43, 50, 69 to 73, 100 and 101 above.

Norris' knowledge of the matters referred to in paragraphs 100 and 101 is to be inferred from the matters referred to in paragraphs 11, 16, 22 to 24, 26, 33, 35, 38(b), 41 to 43 and 69 to 73.

Further particulars may be provided following discovery.

Webb and Murphy

103. Webb aided, abetted, counselled, procured, induced and/or was knowingly concerned in or party to the contraventions referred to in paragraphs 75 to 77, 81 to 83, 89 to 91 and 97 to 99 above within the meaning of section 76(1) of the CCA.

Particulars

The ACCC relies on the matters in paragraphs 12, 16, 22 to 24, 26, 29 to 38 ~~and~~, 41 to 43 and 69 to 73 above (including the particulars ~~), including Webb:~~

- attending the meeting referred to in paragraph 23;
- reaching the agreement referred to in paragraph 26;
- attending the March 2011 meeting;
- receiving the email referred to in paragraph 33;
- being present when Olex sought the feedback referred to in paragraph 38(b); and
- attending the June 2011 meeting.

The ACCC also relies on Webb having knowledge of the matters referred to in paragraphs 16, 22 to 24, 26, 29 to 33, 35, 38(b), 41 to 43 and 69 to 73 above.

Further particulars may be provided following discovery.

104. Murphy aided, abetted, counselled, procured, induced and/or was knowingly concerned in or party to the contraventions referred to in paragraphs 75 to 77, 81 to 83, 89 to 91 and 97 to 99 above within the meaning of section 76(1) of the CCA.

Particulars

The ACCC relies on the matters in paragraphs 13, 16, 22, 29 to 38 ~~and~~, 40 to 43 and 69 to 73 above (including the particulars ~~),~~ including Murphy:

- attending the March 2011 meeting;
- receiving the email referred to in paragraph 33;
- engaging in the conduct referred to in paragraph 34;
- engaging in the conduct referred to in paragraph 35;
- being present when Olex sought the feedback referred to in paragraph 38(b);
- engaging in the conduct referred to in paragraph 40(c); and
- attending the June 2011 meeting.

The ACCC also relies on Murphy having knowledge of the matters referred to in paragraphs 16, 29 to 35, 38(b), 40 to 43 and 69 to 73 above.

Further particulars may be provided following discovery.

EWAA

105. The EWAA aided, abetted and/or was knowingly concerned in the contraventions referred to in paragraphs 76 to 77, 81 to 83, 89 to 91 and 97 to 99 above within the meaning of section 76(1) of the CCA.

Particulars

The ACCC relies on the matters in paragraphs 14, 16, 21 to 38 and 40 to 43 above (including the particulars). Further particulars may be provided following discovery.

Penalties

Olex

106. Olex obtained benefits that are reasonably attributable to the acts referred to in each of:
- a) paragraph 43 above;

- b) paragraph 78 above; and
- c) paragraph 79 above,

within the meaning of section 76(1A) of the CCA.

Particulars

The ACCC relies on the matters in paragraphs 49, 50, 52 to 54 and 56 to 59 above. Further particulars may be provided following discovery.

107. To determine the total value of the benefits obtained by Olex that are reasonably attributable to the acts referred to in:

a) paragraph 43 above, the Court would need to determine, inter alia:

- i. the revenue that Olex earned;
- ii. the costs that Olex incurred;
- iii. the revenue that Olex failed to earn; and
- iv. the costs that Olex failed to incur,

by reason of the acts referred to in paragraph 43 above;

b) paragraph 78 above, the Court would need to determine, inter alia:

- i. the revenue that Olex earned;
- ii. the costs that Olex incurred;
- iii. the revenue that Olex failed to earn; and
- iv. the costs that Olex failed to incur,

by reason of the acts referred to in paragraph 78 above;

c) paragraph 79 above, the Court would need to determine, inter alia:

- i. the revenue that Olex earned;
- ii. the costs that Olex incurred;
- iii. the revenue that Olex failed to earn; and
- iv. the costs that Olex failed to incur,

by reason of the acts referred to in paragraph 79 above.

108. Each of the matters referred to in paragraph 107 is:

- a) inherently speculative; and
 - b) incapable of being determined with reasonable accuracy.
109. By reason of the matters referred to in paragraph 108, the Court cannot determine the total value of the benefits obtained by Olex that are reasonably attributable to the acts referred to in:
- a) paragraph 43 above;
 - b) paragraph 78 above; and
 - c) paragraph 79 above,
- for the purpose of sections 76(1A)(aa)(iii) and 76(1A)(b)(iii) of the CCA.
110. By reason of the matters referred to in paragraph 109 above, the pecuniary penalty payable by Olex in respect of the acts referred to in each of paragraphs 43, 78 and 79 above is the greater of:
- a) \$10,000,000; and
 - b) Olex's annual turnover (within the meaning of sections 44ZZRB and 76(5) of the CCA) for:
 - i. in respect of the acts referred to in paragraph 43, the 12 month period ending on 30 June 2011;
 - ii. in respect of the acts referred to in paragraph 78 above, the 12 month period ending no earlier than 31 August 2011; and
 - iii. in respect of the acts referred to in paragraph 79 above, the 12 month period ending no earlier than 31 October 2011.

Particulars

The ACCC is presently unaware of the relevant turnover of Olex.
Further particulars may be provided following discovery.

Prysmian

111. Prysmian obtained benefits that are reasonably attributable to the acts referred to in each of:
- a) paragraph 43 above;
 - b) paragraph 84 above; and
 - c) paragraph 85 above,

within the meaning of section 76(1A) of the CCA.

Particulars

The ACCC relies on the matters in paragraphs 50 to 57 and 59 above. Further particulars may be provided following discovery.

112. To determine the total value of the benefits obtained by Prysmian that are reasonably attributable to the acts referred to in:

a) paragraph 43 above, the Court would need to determine, inter alia:

- i. the revenue that Prysmian earned;
- ii. the costs that Prysmian incurred;
- iii. the revenue that Prysmian failed to earn; and
- iv. the costs that Prysmian failed to incur,

by reason of the acts referred to in paragraph 43 above;

b) paragraph 84 above, the Court would need to determine, inter alia:

- i. the revenue that Prysmian earned;
- ii. the costs that Prysmian incurred;
- iii. the revenue that Prysmian failed to earn; and
- iv. the costs that Prysmian failed to incur,

by reason of the acts referred to in paragraph 84 above;

c) paragraph 85 above, the Court would need to determine, inter alia:

- i. the revenue that Prysmian earned;
- ii. the costs that Prysmian incurred;
- iii. the revenue that Prysmian failed to earn; and
- iv. the costs that Prysmian failed to incur,

by reason of the acts referred to in paragraph 85 above.

113. Each of the matters referred to in paragraph 112 is:

- a) inherently speculative; and
- b) incapable of being determined with reasonable accuracy.

114. By reason of the matters referred to in paragraph 113, the Court cannot determine the total value of the benefits obtained by Prysmian that are reasonably attributable to the acts referred to in:
- a) paragraph 43 above;
 - b) paragraph 84 above; and
 - c) paragraph 85 above,
- for the purpose of sections 76(1A)(aa)(iii) and 76(1A)(b)(iii) of the CCA.
115. By reason of the matters referred to in paragraph 114 above, the pecuniary penalty payable by Prysmian in respect of the acts referred to in each of paragraphs 43, 84 and 85 above is the greater of:
- a) \$10,000,000; and
 - b) Prysmian's annual turnover (within the meaning of sections 44ZZRB and 76(5) of the CCA) for:
 - i. in respect of the acts referred to in paragraph 43, the 12 month period ending on 30 June 2011;
 - ii. in respect of the acts referred to in paragraph 84 above, the 12 month period ending no earlier than 31 August 2011; and
 - iii. in respect of the acts referred to in paragraph 85 above, the 12 month period ending no earlier than 31 October 2011.

Particulars

The ACCC is presently unaware of the relevant turnover of Prysmian. Further particulars may be provided following discovery.

Rexel respondents

116. The Rexel respondents obtained benefits that are reasonably attributable to the acts referred to in:
- a) paragraph 43 above;
 - b) paragraph 92 above; and
 - c) paragraph 93 above,
- within the meaning of section 76(1A) of the CCA.

Particulars

Particulars of the benefits may be provided following discovery.

117. To determine the total value of the benefits obtained by the Rexel respondents that are reasonably attributable to the acts referred to in:
 - a) paragraph 43 above, the Court would need to determine, inter alia:
 - i. the revenue that Rexel respondents earned;
 - ii. the costs that Rexel respondents incurred;
 - iii. the revenue that Rexel respondents failed to earn; and
 - iv. the costs that Rexel respondents failed to incur,
 by reason of the acts referred to in paragraph 43 above;
 - b) paragraph 92 above, the Court would need to determine, inter alia:
 - i. the revenue that Rexel respondents earned;
 - ii. the costs that Rexel respondents incurred;
 - iii. the revenue that Rexel respondents failed to earn; and
 - iv. the costs that Rexel respondents failed to incur,
 by reason of the acts referred to in paragraph 92 above;
 - c) paragraph 93 above, the Court would need to determine, inter alia:
 - i. the revenue that Rexel respondents earned;
 - ii. the costs that Rexel respondents incurred;
 - iii. the revenue that Rexel respondents failed to earn; and
 - iv. the costs that Rexel respondents failed to incur,
 by reason of the acts referred to in paragraph 93 above.
118. Each of the matters referred to in paragraph 117 is:
 - a) inherently speculative; and
 - b) incapable of being determined with reasonable accuracy.
119. By reason of the matters referred to in paragraph 118 above, the Court cannot determine the total value of the benefits that are reasonably attributable to the acts referred to in:

- a) paragraph 43 above;
- b) paragraph 92 above;
- c) paragraph 93 above,

for the purpose of sections 76(1A)(aa)(iii) and 76(1A)(b)(iii) of the CCA.

120. By reason of the matters referred to in paragraph 119 above, the pecuniary penalty payable by each of the Rexel respondents in respect of the acts referred to in each of paragraphs 43, 92 and 93 above is the greater of:

- a) \$10,000,000; and
- b) their respective annual turnover (within the meaning of sections 44ZZRB and 76(5) of the CCA) for:
 - i. in respect of the acts referred to in paragraph 43, the 12 month period ending on 30 June 2011;
 - ii. in respect of the acts referred to in paragraph 92 above, the 12 month period ending no earlier than 31 July 2011; and
 - iii. in respect of the acts referred to in paragraph 93 above, the 12 month period ending no earlier than 31 August 2011.

Particulars

The ACCC is presently unaware of the relevant turnover of the Rexel respondents. Further particulars may be provided following discovery.

L&H

121. L&H obtained benefits that are reasonably attributable to the acts referred to in:

- a) paragraph 43 above;
- b) paragraph 100 above;
- c) paragraph 101 above,

within the meaning of section 76(1A) of the CCA.

Particulars

Particulars of the benefits may be provided following discovery.

122. To determine the total value of the benefits obtained by L&H that are reasonably attributable to the acts referred to in:

- a) paragraph 43 above, the Court would need to determine, inter alia:
 - i. the revenue that L&H earned;
 - ii. the costs that L&H incurred;
 - iii. the revenue that L&H failed to earn; and
 - iv. the costs that L&H failed to incur,
 by reason of the acts referred to in paragraph 43 above;
 - b) paragraph 100 above, the Court would need to determine, inter alia:
 - i. the revenue that L&H earned;
 - ii. the costs that L&H incurred;
 - iii. the revenue that L&H failed to earn; and
 - iv. the costs that L&H failed to incur,
 by reason of the acts referred to in paragraph 100 above;
 - c) paragraph 101 above, the Court would need to determine, inter alia:
 - i. the revenue that L&H earned;
 - ii. the costs that L&H incurred;
 - iii. the revenue that L&H failed to earn; and
 - iv. the costs that L&H failed to incur,
 by reason of the acts referred to in paragraph 101 above;
123. Each of the matters referred to in paragraph 122 is:
- a) inherently speculative; and
 - b) incapable of being determined with reasonable accuracy.
124. By reason of the matters referred to in paragraph 123 above, the Court cannot determine the total value of the benefits that are reasonably attributable to the acts referred to in:
- a) paragraph 43 above;
 - b) paragraph 100 above; and
 - c) paragraph 101 above,
- for the purpose of sections 76(1A)(aa)(iii) and 76(1A)(b)(iii) of the CCA.

125. By reason of the matters referred to in paragraph 124 above, the pecuniary penalty payable by L&H in respect of the matters referred to in each of paragraphs 43, 100 and 101 above is the greater of:

- a) \$10,000,000; and
- b) its annual turnover (within the meaning of sections 44ZZRB and 76(5) of the CCA) for:
 - i. in respect of the acts referred to in paragraph 43, the 12 month period ending on 30 June 2011;
 - ii. in respect of the acts referred to in paragraph 100 above, the 12 month period ending no earlier than 31 July 2011; and
 - iii. in respect of the acts referred to in paragraph 101 above, the 12 month period ending no earlier than 31 August 2011.

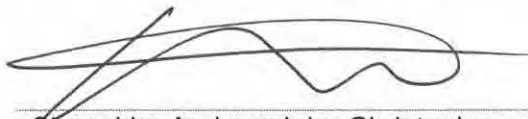
Particulars

The ACCC is presently unaware of the relevant turnover of the L&H. Further particulars may be provided following discovery.

Relief sought

126. The ACCC claims the relief specified in the Application.

Date: ~~3 December 2014~~ 6 March 2015



Signed by Andrew John Christopher
Lawyer for the Applicant

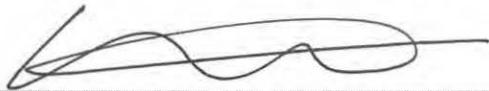
This amended pleading was prepared by Mark Moshinsky QC and Andrew Barraclough.

Certificate of lawyer

I Andrew John Christopher certify to the Court that, in relation to the statement of claim filed on behalf of the ACCC, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~3-December2014~~6 March 2015

A handwritten signature in black ink, appearing to be 'Andrew John Christopher', written over a horizontal line.

Signed by Andrew John Christopher
Lawyer for the Applicant

ScheduleNo: ⁷²⁵ of 2014

Federal Court of Australia
 District Registry: Victoria
 Division: General

Applicant

Australian Competition and Consumer Commission

Respondents

First Respondent:	Olex Australia Pty Limited (ACN 087 542 863)
Second Respondent:	Tony Stewart Dunstan
Third Respondent:	Prysmian Power Cables & Systems Australia Pty Limited (ACN 096 594 080)
Fourth Respondent:	John Llyr Lewis Roberts
Fifth Respondent:	Rexel Electrical Supplies Pty Ltd (ACN 000 437 758)
Sixth Respondent:	Australian Regional Wholesalers Pty Limited (ACN 011 009 064)
Seventh Respondent:	Guy Picken
Eighth Respondent:	Lawrence & Hanson Group Pty Ltd (ACN 080 350 812)
Ninth Respondent:	Robin Norris
Tenth Respondent:	Brian Alexander Webb
Eleventh Respondent:	Laurence Thomas Murphy
Twelfth Respondent:	Electrical Wholesalers Association of Australia Limited (ACN 064 644 300)