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Matter 82377939
By email

Non-confidential submission

Dumping investigation - Case 271 (the Investigation)

We are retained to advise and represent Olex Australia Pty Ltd (**Olex**) in Federal Court Proceeding No. VID725/2014 (**the ACCC Proceeding**). The ACCC Proceeding is discussed in a submission made on 19 May 2015 on behalf of Electra Cables (Australia) Pty Ltd (**Electra**) in the above Investigation (**Electra Submission**). The Electra Submission was uploaded to the public record for the Investigation on 21 May 2015.

We have been asked to address and correct some elements of the Electra Submission which purport to make assertions regarding the significance of the ACCC Proceeding. The ACCC Proceeding, commenced by the Australian Competition and Consumer Commission (**ACCC**) against Olex and other respondents in the Federal Court, is discussed in Section C (pages 7-17) of the Electra Submission.

The Electra Submission contains assertions regarding the ACCC Proceeding that are lacking in foundation, and it presents information in an unfair and biased way. The Anti-Dumping Commission (**ADC**) risks falling into error if it places reliance on matters raised in the Electra Submission.

In relation to the ACCC Proceeding, we make the following points:

- 1 The ADC and ACCC are charged with different tasks.
- 2 The Electra Submission unfairly portrays as fact matters which have the status of allegations only, and misrepresents matters as having the status of "evidence" when no evidence has yet been led in the ACCC Proceeding.
- 3 The Investigation and the ACCC Proceeding deal with different subject matter.

We expand on these matters below.

1 The ADC's role is different to ACCC's role

The Electra Submission fails to recognise the fundamentally different functions which the ACCC and the ADC perform. They are different bodies, conducting different processes according to different criteria, under different legislation, and with reference to different subject matter.

2 The matters alleged in the ACCC Proceeding are unproven

The Electra Submission relies on the Amended Statement of Claim filed by the ACCC in the Federal Court in an unfair and biased way.

Electra has portrayed as fact matters which are merely unproven allegations, and it has misrepresented matters as having the status of "evidence" when no evidence has yet been led in the ACCC Proceeding.

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For example, Electra calls on the ADC '*not to ignore the significance of the evidence described by the ACCC*' (page 9). The ACCC has in fact not yet filed any evidence in the ACCC Proceeding, and is not due to do so until later this year.

In addition to inaccurately labelling matters as "evidence", Electra makes comments regarding the strength of this "evidence". For example, the ACCC's case is described as being based on '*clear and strong evidence it has in its possession*' and '*substantial evidence*' (page 8, Electra Submission). These submissions are wholly inappropriate.

The ACCC Proceeding will proceed to trial later this year. Olex and the other respondents are vigorously defending the ACCC's allegations. Electra's Submission fails to include copies of the respondents' Defences. It is apparent from the Defences that the assertion in the Electra Submission that '*many of the underlying facts have been admitted by the respondents*' is grossly inaccurate. The reality is that the core allegations are all denied.

3 The Investigation and the ACCC Proceeding deal with different subject matter

The Investigation requires the ADC to examine exports to Australia of certain PVC flat electric cable from the People's Republic of China to determine whether dumping has occurred.

The ACCC Proceeding alleges that, during 2011, Olex, Prysmian, Rexel and L&H entered into and gave effect to an arrangement that included provisions with respect to the supply and acquisition of low voltage electrical cable in Australia that are alleged to contravene the Competition and Consumer Act. As discussed above, Olex and the other respondents deny the allegations.

Insofar as the allegations against Olex are concerned, they relate to changes to its cutting service fee and implementation of a minimum order value fee. It is also alleged that Olex is party to an arrangement or understanding whereby wholesalers would increase the volume of low voltage cable they purchase from Olex and Prysmian. Neither the cutting service fee, nor the minimum order value fee are relevant to the sale of 2.5mm² flat building wire (i.e. the product which is the subject of the Investigation) (**the Product**).

Olex supplies the Product in bulk only, i.e. only as a single pallet (comprising 80 x 100 m rolls).

- Olex does not cut the Product. No cutting services fee applies.
- The cost of a pallet is approximately \$6,400 (excl GST). Even accounting for rebates, the cost of a pallet is well in excess of the minimum order value (**MOV**), and no MOV fees are applied by Olex to sales of the Product.

The ACCC's allegations against Olex concerning the cutting service fee and minimum order value fee are not relevant to Olex's sales of the Product in Australia. It is not apparent to us how any findings that may be made in the ACCC Proceeding, even if adverse to Olex, could be relevant in any way to the Investigation.

Further, insofar as the ACCC Proceeding alleges that Olex was party to an arrangement or understanding whereby wholesalers would increase the volume of low voltage cable purchased from Olex and Prysmian, that allegation is also denied by Olex and it does not have any relation to the criteria that will be applied to assess whether product does or does not come within the anti-dumping regime.

4 Action requested

The Electra Submission:

- fails to acknowledge that the ADC's role is different from the role of the ACCC;
- fails to recognise that the allegations in the ACCC Proceeding are unproven and are denied by the respondents;



- misrepresents matters as having the status of “evidence” when no evidence has yet been led in the ACCC Proceeding; and
- proceeds on a wrong foundation, when the subject matter of the ACCC Proceeding is such that it can have no relevance to the matters which the ADC is required to evaluate in the Investigation.

In light of these matters, we request that the ADC disregard the statements in the Electra Submission. Olex reserves its rights in respect of the errors and misrepresentations contained in the Electra Submission.

Olex requests that this letter be kept confidential.

Yours sincerely

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