

## Public File Version

9 July 2014

Chris Vincent  
Manager Operations  
Anti-Dumping Commission  
Customs House  
5 Constitution Avenue  
Canberra ACT 2601

Dear Mr Vincent,

### **POWER TRANSFORMERS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF INDONESIA, THE REPUBLIC OF KOREA, TAIWAN, THAILAND AND THE SOCIALIST REPUBLIC OF VIETNAM**

I refer to your recent email to Pauline Buckland dated 8 May 2014 advising that no record was prepared by the Anti-Dumping Commission (**ADC**) in relation to a meeting that was held on 2 September 2013 with Powercor Network Services Pty Ltd (**PNS**), CitiPower Pty (**CitiPower**) and Powercor Australia Ltd (**Powercor**).

In order to assist the ADC in its investigation into the alleged dumping matter, we have prepared a brief note summarising the position put forward by PNS, CitiPower and Powercor at the 2 September 2013 meeting. A copy of the meeting agenda is attached as Appendix 1.

For simplicity of reference, and unless the context requires otherwise, we have referred to PNS, CitiPower and Powercor collectively as Powercor in this letter. PNS, CitiPower and Powercor are all related bodies corporate within the meaning given to that term in the Corporations Act 2001.

### **Confidentiality**

As discussed at the meeting, we would prefer our submission be kept confidential. As you know we have already agreed on a short note summarising the meeting which has been placed on the public record. If it is appropriate, however, for a version of this letter to be placed on the public record, please let us know and we will provide a redacted version.

### **Company Background**

A brief overview of Powercor's corporate structure was presented to the ADC. The overview included Powercor's ownership structure, corporate structure and management teams. Refer to Appendix 2 for a copy of that presentation.

## **The Goods and Like Goods**

Power transformers used by Powercor in both its regulated distribution business and unregulated electricity business can vary considerably depending on the nature of the application. Each power transformer is essentially manufactured to suit the individual technical requirements of its proposed application. For example, CitiPower's power transformer requirements consist of 10/13MVA's – 22/11-6.6kV, 20/27MVA's – 66/11kV and 55MVA– 66/11kV PT's whilst Powercor's requirements are for 10/13MVA's -66/22kV, 25/33MVA's - 66/22kV - YynOd1 vector group and 25/33MVA's - 66/22kV - Dyn1 vector group.

This is not unique to Powercor, and would equally be the case for other distribution businesses in Australia as well as electricity generators such as wind farm operators.

Given the non-homogeneous nature of power transformers, Powercor submits that both technical and commercial factors require consideration by the ADC in order for a "like for like" comparison to be undertaken between locally and overseas manufactured transformers. Price should not be used as the overall determining factor in deciding whether dumping has occurred.

## **Australian market, material injury and causation**

The manufacturing market in Australia for the type of power transformers under investigation is highly concentrated. The imposition of dumping duties would further reduce potential competition and advantage local manufacturers at the expense of consumers.

Any decrease in competition will ultimately result in higher prices being charged for power transformers. This was evident in the recent ACCC case against local power transformer manufacturers (including Wilson Transformer Company (**WTC**)) for engaging in anti-competitive conduct in the form of cartel behaviour. A case study by the Australian National University concluded that the cartel's behaviour resulted in customers paying an additional \$70 to \$80 million during the period 1994 to 1999. Refer to Appendix 3.

From an electricity distribution perspective, an increase in power transformer costs will result in higher network costs. Higher network costs are ultimately passed on to the consumer in the form of higher electricity charges.

WTC's claim that it has been unsuccessful in the Australian market due to price undercutting by overseas transformer suppliers is not supported based on Powercor's recent experience.

Powercor issued an invitation to tender (**ITT**) for the supply of power transformers in the CitiPower and Powercor distribution areas for the period 2013 to 2015 [REDACTED]. That ITT represents Powercor's largest spend for power transformers for the period and is estimated to be in the vicinity of \$ [REDACTED]. WTC and [REDACTED] were selected as the preferred suppliers with [REDACTED].

Powercor's experience indicates that WTC is price competitive with overseas manufacturers, however, [REDACTED] has resulted in a loss of potential orders.

## Power Transformer Tender and Evaluation Process

Powercor issued 5 ITT's for the supply of power transformers for the period 1 July 2010 to 30 June 2013. The ITT's were limited to a restricted list of tenderers that Powercor assessed as being technically and commercially capable of supplying power transformers that satisfied Powercor's requirements. Each restricted list comprised [redacted] or more tenderers to ensure competitive offers were received. The proposed contract conditions in each ITT were the same for both local and overseas suppliers. Appendix 4 contains copies of supplier recommendations for the supply of power transformers during the relevant period. These were previously provided to John Bracic on 2 September 2013.

Each ITT contains a supplier recommendation which is used to evaluate the ITT response. As is evident from the attached ITT's, various factors are taken into consideration and weightings applied in order to determine the most favourable offer in a holistic sense. For the relevant period, pricing (the "financial proposal") was given a weighting of between [redacted] % to [redacted] %. The remaining [redacted] % to [redacted] % weightings were allocated between [redacted].

In relation to the supplier recommendation for ITT [redacted], WTC's offer was given the [redacted] ranking based on the evaluation criteria and accordingly allocated a [redacted] share of the potential transformer orders over the term of the period contract. [redacted]

Appendix 5 contains copies of [redacted]. These were also previously provided to John Bracic on 2 September 2013.

## Summary

Powercor wishes to emphasise that price is not the sole determinant of supplier selection, and in particular repeats that:

- our tendering processes during the relevant period gave price a [redacted] – [redacted] % weighting; and

- [redacted]

In these circumstances, price should not be used as the overall determining factor in deciding whether dumping or injury has occurred.

Yours faithfully,

Mark Sturgess  
General Manager  
Powercor Network Services Pty Ltd

## Appendix 1



**POWER TRANSFORMERS EXPORTED FROM CHINA, INDONESIA, KOREA,  
TAIWAN, THAILAND AND VIETNAM**

**VERIFICATION VISIT AGENDA**

**Visit details**            **CitiPower Pty and Powercor Australia Ltd**  
*Date:*                    2 September 2013, commencing at 10:30am (tbc)  
*Address:*                40 Market Street, Melbourne  
*ADC attendees:*        John Bracic, Director Operations 1  
                                 Emma Hatcher, Director Strategic Policy

**Introductions**

- Purpose of visit
- Investigation key dates
- Investigation procedures
- Access to the electronic public record

**Company Background**

- Company structure & functions
- Relationships with suppliers

**The Goods and Like Goods**

- Details of types/grades imported (specification sheets would be beneficial)
- The goods and like goods
- Price of imported vs local goods

**Australian market, material injury and causation**

- Current condition of the Australian market
- Competition
- Opinion/comments on whether the goods are being dumped into the Australian market
- Opinion/comments on whether the Australian industry is being injured by imported goods
- Other factors could be influencing the market and/or the Australian industry's performance

**Purchases**

- Outline your purchases during the investigation period (1 July 2010 to 30 June 2013)
  - Particularly, please prepare for discussion of purchases related to tenders that closed in **February 2012** and **August 2012**.
- Outline purchase/tender process
  - Do you purchase the goods outside of a tender process?
  - Do you tender for a specific unit/need, or do you tender for supply over a period of time?
- Discuss key factors considered before awarding a tender
  - Are different considerations considered when comparing locally produced and imported tender bids?
- Outline key terms of contract for supply:
  - Does it include installation and ongoing service?
  - Do you undertake design/production reviews?
  - Do you seek different terms when purchasing from an overseas supplier to those you would seek from a local supplier?
- Outline any current contracts where the goods are yet to be received

*To aid in the discussion of the purchasing process, the Anti-Dumping Commission may request to see documents related to one contract where the tender process occurred and goods were received during the investigation period. The relevant documents could include the initial tender, tender bids received, the contract for supply and relevant invoice (or, where the contract sets out part payments, relevant invoices).*

**Other matters/general discussion**

## **Appendix 2**

Confidential attachments – not for public disclosure

## Appendix 3



Extract from the ACCC website: <http://www.accc.gov.au/business/anti-competitive-behaviour/cartels/cartels-case-studies-legal-cases>

## Market sharing

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### **Power Transformers Cartel**

The major Australian suppliers and manufacturers of both power and distribution transformers were involved in price fixing, bid rigging and market allocation within domestic markets with a combined value of around \$160 million per year. The customers affected by the cartel included some of the largest electricity transmission and distribution utilities across Australia, many of them publicly owned, resulting in Australian consumers paying higher electricity bills. A whistleblower alerted the ACCC to the cartel conduct.

The cartel included the principal manufacturers and suppliers of transformers in Australia and covered virtually 100% of the industry, including the ABB companies, Schneider Electric (Aust), Wilson Transformers, Alstom Australia and AW Tyree. The collusion involved executives at the highest level, and featured secret meetings in hotel rooms, airport lounges and private residences in various locations across Australia. These meetings rigged the outcomes of multimillion dollar contracts, with at least 27 tenders being rigged between 1993 and 1999. Some aspects of the cartel ran from 1989 to 1999. A 2004 study by the Australian National University concluded that the cartel extracted an extra \$70 million to \$80 million from its customers between 1994 and 1999.

The Federal Court imposed penalties of more than \$35 million on the participating companies and some of their executives. The Court was particularly scathing about the fact that the arrangement was coordinated by senior executives, including managing directors. Total penalties imposed on individual executives exceeded one million dollars, with the highest being \$200 000.

## **Appendix 4**

Confidential attachments – not for public disclosure

## **Appendix 5**

Confidential attachments – not for public disclosure