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A-TECH/AKJ SUBMISSION NO. 4

VENTORA — ACTUAL CLASS 2+ COMPETITION, AGWA RELATIONSHIP, COMPETITION-LAW CONCERNS AND INDEPENDENCE OF EVIDENCE

SUBMISSION – In response to Statement of Essential Facts No. 691

Countries Involved: Australia and China

Submitted by

A-Tech Australia Pty Ltd
Guangdong AKJ Façade and Architecture Co., Ltd

LODGEMENT DETAILS

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1. Purpose and scope of this challenge

Ventora Group Pty Ltd is central to the Australian industry case in Investigation 691. A-Tech/AKJ challenges the Commission to establish Ventora's actual competitive overlap not only with A-Tech/AKJ, but with each importer, exporter, façade contractor or manufacturer opposing the application that operates materially in bespoke Class 2+ engineered façade and window packages.

> **Compare the records. Identify the actual competition. Establish the actual loss.**

This submission also raises a separate but connected issue concerning the relationship between Ventora and the Australian Glass and Window Association (AGWA), the independence of evidence advanced through those parties, and whether any cooperation among applicants and supporting industry participants warrants examination under Australian competition law.

2. Actual Class 2+ competitive overlap must be established

The Commission should identify the substantial projects on which Ventora competed directly against A-Tech/AKJ and each opposing participant operating materially in bespoke Class 2+ engineered façade and window work.

> **Project → building class → tender date → package → value → Ventora system → opposing system → technical requirements → respective participation → outcome → reason for award.**

If Ventora and those businesses genuinely occupy the same competitive market, repeated material head-to-head tender activity should be visible in their tender records. If the records instead demonstrate little or no material head-to-head competition for substantial bespoke Class 2+ packages, that fact is directly relevant to market definition, substitutability, price effects, causation and injury.

A-Tech/AKJ is not required to reconstruct Ventora's tender history. Ventora has its tender records. The opposing companies have their records. The Commission has relied on tender evidence and should compare those records before maintaining broad findings of competitive overlap.

3. Each claimed Ventora loss must be tested

For every material Ventora loss attributed to Chinese competition, the Commission should establish whether Ventora actually tendered; the system Ventora offered; whether that system satisfied the project requirements; whether A-Tech/AKJ or another opposing Class 2+ participant actually tendered; whether the scope was equivalent; who won; and why the purchaser made that decision.

> **A project Ventora did not tender is not a Ventora tender lost to Chinese competition.**
>
> **A project for which Ventora did not possess a technically substitutable system cannot be characterised as a price-caused loss without addressing that technical difference.**

4. AGWA and Ventora — relationship and independence of evidence

The Commission's Day 60 material identifies AGWA and Ventora as the applicants in Investigation 691. AGWA is an industry association; Ventora is a commercially interested manufacturer. Those roles must not be conflated.

The Commissioner should establish the nature and extent of the relationship and cooperation between AGWA and Ventora relevant to Investigation 691, including Ventora representation within AGWA governance and committees; technical committee involvement; participation in preparing or

supporting the application; information exchanged between AGWA and Ventora; preparation of industry positions; tender and injury analysis; and public or technical representations concerning Chinese products.

> **Evidence originating from one source does not become independent corroboration merely because it is subsequently presented through an industry association.**

If Ventora supplies information or analysis to AGWA and substantially the same proposition is then advanced separately by Ventora and AGWA, the Commission must identify the common origin and determine the appropriate evidentiary weight.

5. Competition-law issues should be independently examined

A-Tech/AKJ does not ask the Australian Trade Remedies Commission to make findings of contravention under the Competition and Consumer Act 2010. Competition-law enforcement is a matter for the Australian Competition and Consumer Commission (ACCC) and the courts.

However, the relationships and coordination revealed through Investigation 691 may raise questions extending beyond legitimate industry advocacy. A-Tech requests that the relevant conduct be independently examined to determine whether any agreements, arrangements, understandings, information exchanges or coordinated conduct among applicants or supporting industry participants had the purpose, effect or likely effect of restricting competition.

The potentially relevant provisions include section 45 of the Competition and Consumer Act 2010, which prohibits certain contracts, arrangements, understandings and concerted practices that substantially lessen competition; section 45AD, which defines cartel provisions; sections 45AJ and 45AK, which establish civil prohibitions concerning making or giving effect to contracts, arrangements or understandings containing cartel provisions; and section 46, concerning misuse of substantial market power where conduct has the purpose, effect or likely effect of substantially lessening competition.

> **A-Tech/AKJ does not allege that the existence of industry cooperation itself establishes a contravention. It requests investigation of whether the actual conduct went beyond lawful industry advocacy and, if so, whether the statutory competition-law tests are satisfied.**

A-Tech does not have access to confidential agreements, internal communications or information exchanges between these parties. Those are matters for the competent regulator to obtain and examine.

6. Requested referral and preservation of the Investigation 691 record

A-Tech requests that the Australian Trade Remedies Commission consider whether the relationships and conduct identified in this submission have implications for the reliability or independence of evidence, applicant standing or support, injury assessment, causation, or other statutory requirements in Investigation 691.

Where the Commission identifies material capable of raising a competition-law concern, A-Tech requests that the matter be referred or otherwise brought to the attention of the ACCC, as appropriate, without delaying the Commission's obligation to independently test the evidence relied upon in Investigation 691.

The trade-remedies question and the competition-law question are legally distinct, but the same underlying relationships may be relevant to both.

7. Public representations concerning Chinese laboratory testing

AGWA and Ventora have participated in public television coverage in which footage of a Chinese-manufactured sliding door undergoing laboratory testing was presented in the context of Chinese product failure and quality.

The Commission should obtain the complete underlying test record and establish the applicable standard, test sequence, required serviceability and ultimate pressures, actual pressure at the event shown, acceptance criteria, complete laboratory conclusion, unedited footage, and the respective roles of AGWA and Ventora in selecting or characterising the material.

A television image of a product at an extreme stage of structural testing does not, by itself, establish that the product failed the applicable Australian Standard.

The Commission should distinguish advocacy and media presentation from independently verified technical evidence.

8. Required determination

The final analysis should establish Ventora's actual tender overlap with A-Tech/AKJ and the other opposing bespoke Class 2+ participants; the technical comparability of the systems involved; the relationship between Ventora and AGWA; the origin and independence of material evidence presented through AGWA; and whether public technical representations accurately reflect the complete laboratory evidence.

The Commission should also preserve and, where appropriate, refer material relevant to possible competition-law concerns for independent examination by the ACCC.

The Commission has made the findings. It must establish the evidence supporting the findings.

Signed:

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