

17 January 2020

Ms Danielle Staltari
Director - Adjudication
Australian Competition and Consumer Commission

By email adjudication@accc.gov.au

Dear Ms Staltari,

Re: Australian Engineered Stone Advisory Group – AA1000461

Introduction

On 5 December 2019 Cosentino Australia Pty Ltd (Cosentino) was invited as an interested party to comment on an application for authorisation submitted to the ACCC on behalf of the Australian Engineered Stone Advisory Group (AESAG). In particular, Cosentino was invited to comment on the likely public benefits and effect on competition, or any other public detriment, arising from the proposed arrangement.

To the extent that it is able to do so, Cosentino is pleased to assist and makes the following submission.

The Cosentino Group

By way of background, the Cosentino Group is a family-owned business which was founded in Cantoria, Almeria (Spain) in 1979 and produces and distributes high quality, innovative surfaces marketed as Silestone®, Dekton® and Sensa®, as well as natural stone marketed under the banner of Scalea®. The Group currently employs over 4,500 individuals worldwide in locations throughout, among others, Spain, Portugal, France, the United Kingdom, the United States, Canada, Mexico, Brazil, Argentina, Scandinavia, Turkey, South Africa, Malaysia, Australia and New Zealand.

All products manufactured by Cosentino are produced according to very strict quality criteria and comply with all technical requirements of existing regulations. With particular reference to quartz products, Cosentino is proud to say that Silestone® holds ISO 9001 which certifies quality, ISO 14001 which certifies environmental protection, and ISO20400 which certifies sustainably purchase and procurement management.

All manufactured stone products delivered to Australia by Cosentino are appropriately labelled and marked with SMS data which identifies fully, using easily understood pictograms, the hazards associated with working with that product. Delivery notes and invoices of the material supplied to its customers in Australia include a clear reference to the relevant Occupational Health & Safety information.

Cosentino also makes freely available a wide array of publications including a 'Good Practice Guide' and a 'Fabrication Manual' which are designed to assist those workers involved in the ultimate installation of its products. Occupational exposure limits for this, and every other jurisdiction, are published and contact details for Cosentino and its OSH Space (<https://osh.cosentino.com/>) are clearly identified.

In addition, Cosentino sends OSH Newsletters to its customers periodically and worldwide updating the relevant information. The last OSH Newsletter to stonemasons in Australia and New Zealand was sent on December 14th 2019 and reached almost 800 customers.

The AESAG Application

The AESAG Application nominates Cosentino as an actual or potential competitor of its members within a relevant market. Although Cosentino does not currently enjoy predominant market share in Australia, at an international level the Cosentino Group is the largest supplier of engineered stone product throughout the world.

Cosentino is not presently a member of the AESAG. Nevertheless, Cosentino has been a close collaborator with some members of the AESAG over many years and shares the concerns expressed on behalf of the AESAG concerning the welfare of persons engaged in the fabrication and installation of engineered stone products.

Cosentino also joins with the AESAG in noting that:

1. Silicosis dust disease related illnesses present as a significant challenge to be addressed by the engineered stone industry and regulatory bodies;
2. Although the engineered stone products manufactured by Cosentino are not inherently dangerous, unsafe fabrication practices could have contributed to a recent rise in diseases related to high exposures of respirable crystalline silica (RCS);
3. The fabrication of engineered stone is a separate and independent process to the manufacture and supply undertaken by Cosentino and members of the AESAG.

Recently Cosentino made a written submission as part of the 2019 Review of the Dust Diseases Scheme in New South Wales. The AESAG also contributed to the Review. In that context, Cosentino stated that:

1. Silicosis in our industry is 100% preventable. Engineered quartz products are entirely safe when manufactured, fabricated by the stonemasons and installed in each application in a protected and responsible manner;
2. It supports the ongoing efforts of bodies such as SafeWork Australia, SafeWork NSW and Worksafe Qld to assist in the provision of information and guidance for those working with manufactured stone to ensure that risks of RCS related illness are minimised or avoided;
3. The legislative position adopted in Queensland to recognise as unlawful the practice of dry-cutting manufactured stone is a reform that should be implemented nationally;
4. Those reforms correctly identify that exposure to RCS is a risk that can be effectively managed, however as with all risk management schemes, it cannot operate in isolation and needs to be integrated within the broader contextual environment. With particular references to RCS, that environment must necessarily include an acknowledgement that silica dust exposure is a risk associated with naturally occurring substances, as well as activities that are wholly unrelated to manufactured stone;
5. Considering that risks are not inherent to the product but are linked to irresponsible fabrication methods, the greatest prospect of successfully addressing the risk of RCS injury will result from the regulation of those persons who are most exposed to the risk via their respective workplaces and practices. At a practical level, that will continue to involve the mechanisms by which all workplace risks are managed: the provision of appropriate safety equipment and training, and the need to stipulate, monitor and supervise safe work methods and activities, particularly where those persons involved are inexperienced.

Effect on Competition

Any lawful and sustainable contribution which Cosentino can make towards a safer working environment for everyone involved in the fabrication of its products is of utmost importance to it, however Cosentino has to date been conscious of its competing obligations as a market participant and the potential impact on competitors and downstream businesses which may arise from its conduct.

Cosentino agrees with the AESAG position that the steps identified in its Application have the potential to engage Part IV of the *Competition and Consumer Act 2010 (Cth)* (the Act). It

is also mindful of the inability of the ACCC to retrospectively grant authorisation in respect of arrangements or understandings containing anti-competitive provision or other conduct which may have no effect on competition, such as resale price maintenance and cartel conduct.

Generally, any discussion of Pt IV of the Act requires an understanding of the relevant market(s). A detailed analysis of market definition is beyond the scope of this submission, however is it sufficient to address in broad terms the effect on competition at two levels: the market occupied by Cosentino and members of the AESAG as manufacturers and suppliers, and the market occupied by stonemasons and fabricators.

As to the first level, the conduct proposed by the AESAG Application would allow a refusal of supply to fabricators in certain circumstances. Those fabricators would then be faced with the prospect of either complying with the minimum requirements prescribed by the accreditation standards, or attempting to source product from alternative sources. Cosentino appreciates that a refusal to supply through traditional sources may create a secondary supply chain, for example entities other than manufacturers that are able to acquire or stockpile engineered stone product for resupply to fabricators who are willing to work outside of the Model WHS Laws. This derivative market created by the existence of the proposed scheme could potentially introduce another level of competition for businesses such as Cosentino and members of the AESAG.

As to the second level, while not engaged in the process of fabrication itself, Cosentino is sufficiently familiar with the general market to observe that price and delivery timeframes are key factors which impact on the viability of a fabricator's business. Adopting the Model WHS Laws has the potential to increase both of those factors and it is conceivable that fabricators which do not act responsibly may nevertheless be able to secure a greater market share.

Public Benefit

Undoubtedly, there is potential for significant public benefit associated with the AESAG Application, but of course it is important to not lose sight of the fact what is being suggested is, in essence, a WHS proposal.

As noted above, Cosentino and members of the AESAG are not fabricators. They have no real or practical control over the day-to-day work practices of approximately 10,000 stonemasons¹ occurring in geographically diverse and distant circumstances.

¹ For these purposes, Cosentino has adopted the figures contained in paragraph 4.3 of the AESAG Application.

In contrast, fabricators already have an existing statutory obligation to ensure the health and safety of workers and other persons present on worksites, and there already exist state and federal regulatory bodies which have the power and practical ability to audit and assess those workplaces and to enforce mandatory safe work practices.

Ultimately the success of the accreditation scheme will depend on the willingness of the fabricators and stonemasons to embrace the Model WHS Laws and embed them within the culture of their own businesses. That will necessitate an ongoing course of conduct. For example, manuals and safe work methodologies which proscribe the practice of dry-cutting manufactured stone can easily be presented during an audit process, however that does not foreclose the practice occurring at any other time.

With respect, Cosentino is sceptical as to whether a sufficient level of engagement can be effectively policed. Fabricators may subscribe to the Model Laws: whether they in fact comply with those laws is a separate issue. If that correlation cannot be achieved there remains a significant risk the public benefit may be more apparent than real.²

An interesting dynamic also exists in the ability of the supplier under the proposed scheme to elect to supply, even where there has been demonstrated non-compliance with the Model Laws. That discretion will be exercised differently by suppliers, creating some opacity in the operation and potential effectiveness of the scheme.

Public Detriment

One corollary of the discussion above concerning public benefit is the risk that the commendable scheme proposed by AESAG becomes a *defacto* substitute for real change in the WHS practices of stonemasons and fabricators. Cosentino remains of the view it is a matter for employers and regulators to ensure the safety of workers.

It is worth repeating what has already been stated above: Considering that risks are not inherent to engineered stone products, but are linked to irresponsible fabrication methods, the greatest prospect of successfully addressing the risk of RCS injury will result from the regulation of those persons who are most exposed to the risk via their respective workplaces and practices. At a practical level, that will continue to involve the mechanisms by which all workplace risks are managed: the provision of appropriate safety equipment and training, and the need to stipulate, monitor and supervise safe work methods and activities, particularly where those persons involved are inexperienced.

² In making that observation, Cosentino does not seek to derogate from the audit regime currently undertaken by entities such as Greencap Pty Ltd and Prensa Pty Ltd.

Where the fundamental issue appears to be non-compliance with existing, mandatory, WHS laws, Cosentino respectfully queries whether manufacturers and suppliers are best placed to remedy that situation by introducing an additional level of discretionary regulation.

Conclusion

By this submission, Cosentino does not seek to undermine the commendable efforts which have been employed to date by and on behalf of the AESAG in seeking to implement the accreditation scheme. Cosentino will continue to liaise closely with members of the AESAG and monitor closely the implementation of the industry scheme.

The Cosentino Group remains committed to assisting the industry as a whole, as it has done for more than 40 years, and appreciates the opportunity to make this submission.

Yours sincerely

Con Papadakis

Regional Director for Cosentino Oceania