



Australian
Competition &
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Commission

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PRE-DECISION CONFERENCE

Minutes

**Authorisation applications A91336-A91337
lodged by the Australian Tyre Industry Council**

12 February 2013

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

**Pre-Decision Conference: Authorisation applications (A91336-A91337)
lodged by the Australian Tyre Industry Council**

12 February 2013
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

ATTENDEES

Australian Competition and Consumer Commission

1. Dr Jill Walker, Commissioner (conference Chair)
2. Delia Rickard, Deputy Chair
3. Richard Chadwick, General Manager, Adjudication
4. David Hatfield, Director, Adjudication
5. Jaime Martin, Assistant Director, Adjudication
6. David Ball, Principal Lawyer, Competition and Consumer Law Unit

The Applicant and interested parties

1. The Australian Tyre Industry Council
2. Green Distillation Technologies
3. Ecoflex
4. C & R Tyre Recycling
5. Australian Government Department of Sustainability, Environment, Water, Communities and Population
6. Tyre Industry Working Group
7. Impact Recycling Pty Ltd
8. Australian Motor Industry Federation
9. Minerals Council of Australia
10. Customs and Border Protection
11. Recycling Design and Technologies (RDT)
12. The Ngarluma and Yindjibarndi Foundation Ltd
13. STEG Waste Management (via telephone)

The conference commenced at 2.05pm

INTRODUCTION

Commissioner, Dr Jill Walker welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited the party that called the conference, Green Distillation Technologies, to make an opening statement.

Opening statements

Green Distillation Technologies (GDT) stated that it supports the overall objectives of the Tyre Stewardship Scheme (Scheme). However, it notes that the success of the Scheme will rely on the various commitments made by voluntary participants across the entire tyre supply chain. In particular, GDT considers that voluntary participation by recyclers, tyre collectors and governments will be critical.

GDT provided a copy of its opening statement to the ACCC on 14 February 2013. GDT's statement is provided at [Attachment A](#) and forms a part of this record of the conference.

In summary, GDT generally supports the proposed arrangements, but raised the following issues for discussion:

- a) the composition of the proposed Board of Tyre Stewardship Australia (TSA):
 - GDT understands that the Board of TSA is currently proposed to comprise representatives from the tyre industry only. However, it considers that in order to be effective, the Board should also include representatives from key sectors, namely, tyre collectors, recyclers and environment/government (possibly state EPA's on a rotating basis).
- b) performance measures:
 - GDT noted that one of the criteria for measuring the performance of the Scheme, the volume of traffic on TSA's website, is meaningless.
 - Regarding data collection, GDT considers there is an incentive for participants to understate volumes.
 - GDT noted there is currently no performance target for how funds will be allocated by TSA (for example, the proportion allocated to research and development) in order to support the Scheme's goal of increasing the volume of tyres recycled from 16 per cent (currently) to 50 per cent under the Scheme. Also, GDT raised the question of whether the revenue raised by the Scheme will be matched against tyre import volumes?
 - GDT raised the question of who decides what constitutes an 'environmentally sound use' for end of life tyres. In particular, can exporting tyres fall within the definition?
- c) the proposed review process:
 - GDT inquired how the proposed review would be conducted and by whom.
 - GDT noted that any review would need to be independent.
 - GDT asked what the ACCC would do if the two-year review revealed that the Scheme was underperforming and that major changes were needed to the Guidelines governing its operation.
- d) exporting end of life tyres:
 - GDT queried whether the Scheme would allow collectors and recyclers who export end of life tyres to be members.
 - GDT asked the ACCC how it balances the environmental harm caused from increased greenhouse gas emissions from tyres burnt overseas against stockpiling end of life tyres in Australia.
 - GDT queried whether exporting end of life tyres was illegal under the Basel Convention.
- e) dealing with non-members of the Scheme:
 - GDT considers there is a restraint of trade if a member of the Scheme is prevented from dealing with a non-member of the Scheme.

- GDT considers that non-members of the Scheme are only motivated to maximise profits.
- f) annual reporting:
- GDT agrees that annual reporting will be critical in measuring the performance of the Scheme.
 - GDT asked how the data will be collected - for example, on the volume of new tyres entering Australia – and what recourse is there for the ACCC if TSA’s reporting is deficient.
 - GDT considers that transparency in reporting is critical for the Scheme to succeed.

Dr Jill Walker asked *Silvio de Denaro* on behalf of the applicant, the Australian Tyre Industry Council (ATIC), if he would like to address the conference.

In response, *ATIC* stated that it agreed with many of the issues raised by GDT. *ATIC* went on to make the following points:

- Composition of the Board of TSA:
 - *ATIC* noted that it is not proposed to include representatives from the tyre industry only. In particular, the Board is currently envisaged to include a representative from the recycling industry and will be Chaired by an independent party. Further, representation on the Board may be broadened in the future as the Scheme grows.
 - *ATIC* deferred to the *Department of Sustainability, Environment, Water, Population and Communities* (the ‘Department’) regarding the issue of government involvement on the Board of TSA. The Department said it could not comment on the ability of state EPA’s to sit on the Board of TSA.
 - *Gerry Morvell* from the *Tyre Industry Working Group* (TIWG) noted that the proposed Board of TSA is yet to be composed. However, it is intended to include representation from across the tyre supply chain. The TIWG also understands that state EPA’s may not be permitted to sit on the Board of TSA.
- Voluntary nature of the Scheme:
 - *ATIC* agrees that mandatory participation by parties along the tyre supply chain would make it easier. In the absence of this, promoting voluntary participation in the Scheme will be critical to its success.
 - The TIWG highlighted that under the COAG structure, ministers will be closely monitoring the performance of the Scheme.
- Review process:
 - The TIWG confirmed that the process for conducting the two-year review of the Scheme is yet to be determined. However government has indicated that it would like to be involved. The following associations would also like to be involved in this process: *ATIC*, *Australian Tyre Recyclers Association*, and the *Australian Motor Industry Federation*.

- The levy:
 - ATIC noted that in accordance with the terms of the proposed ACCC authorisation, it cannot simply decide to increase the levy. It is currently fixed at \$0.25 per passenger car tyre equivalent (plus CPI adjustments).
- Performance measures:
 - ATIC agrees that the collection of quality data is important to enable the performance of the Scheme to be effectively measured. It understands that certain data is already available from Customs and the ABS. ATIC also highlighted that members of the Scheme will be required to provide certain data to TSA.
 - ATIC agrees that there could be incentives for members to under-report. However, it is confident through its own industry knowledge, that this could be easily detected.
 - ATIC acknowledged that final details about the operation of the Scheme are yet to be determined.
 - ATIC noted GDT's comments regarding the effectiveness of website visits as a measure of the performance of the Scheme.
 - ATIC agreed that total tyre weight was a better unit of measurement than EPU's.
- The Basel Convention:
 - The Department outlined its understanding that under the Basel Convention in relation to hazardous waste exports, there is no blanket inclusion of tyres in the definition of hazardous waste. However, countries may elect to add used tyres to its list of prohibited imports. By way of example, the Department stated that under the Basel convention, China has not nominated used tyres as a hazardous waste and as such, importing used tyres is currently permitted.

Dr Jill Walker opened the conference for further discussion and invited additional questions in relation to the issues raised. The following issues were discussed:

Ecoflex noted that it has been in business for 35 years, being primarily involved in recycling mining tyres. *Ecoflex* noted that there used to be a 'tyre tracking system' in New South Wales for tyres used in civil engineering projects and recyclers used to be licensed. *Ecoflex* is of the view that these systems were successful in keeping track of tyres and reduced illegal dumping. However, these requirements were removed several years ago, which had a detrimental impact on the recycling industry and resulted in an increase in the number of un-licensed businesses.

Ecoflex noted that tyre collectors currently control the market for the disposal of end of life tyres. Therefore participation in the Scheme by collectors will be important in order for the Scheme to succeed.

ATIC and *TIWG* both noted that there are different legislative arrangements concerning end of life tyres between the states and territories. While acknowledging that the proposed Scheme is not perfect, it is government's preference that the

industry develop and implement a voluntary product stewardship scheme to address the problems associated with the disposal of end of life tyres. However, government will continue to monitor the operation of the Scheme, and reconsider this approach if the Scheme fails to achieve its stated objectives.

TIWG noted that the majority of end of life tyres currently get disposed of in domestic landfill, rather than exported. If the Scheme is successful in creating a market for domestic recycling, then a reduction in end of life tyre exports should follow.

TIWG noted that the Minerals' Council of Australia was not involved in the initial stages of the Scheme's development. However, the mining industry is currently responsible for one third of Australia's tyre imports.

TIWG explained that the definition of 'environmentally sound use' does allow for some exports. In particular, a small proportion of used tyre exports go to countries to be used in 'high temperature incineration' (for example, in cement kilns), which does not result in the release of toxic hydrocarbons. Therefore, this export niche is currently recognised within the Scheme. Having said this, *TIWG* noted that high temperature incineration still releases greenhouse gasses.

TIWG stated that large volumes of end of life tyres are being removed from the domestic recycling market because they are being exported to Asia.

C and R Tyre Recycling considers there is not a shortage of supply of end of life tyres in Australia. However, lower cost disposal methods will always 'win out' for businesses.

Dr Jill Walker provided an opportunity for interested parties to make any final comments. No further comments were made. The Chair closed the conference by noting that the ACCC would be providing a further opportunity for parties to make written submissions in respect of its draft determination and that the ACCC would be writing to those who attended the conference to provide details of how such submissions could be made, as well as to provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed: 3.25pm

ACCC Pre-decision Conference briefing note.

Event: 12 February 2013 @ 14:00 in Canberra.

Clause 26. Composition of the Board

The Board and available TSA structure does not have representation from the two stakeholders that will need to deliver a solution, or a Government agency to underpin product stewardship legislation.

- The collectors
- The recyclers
- Government in the context of the Environment Protection Agency (EPA).

The primary need and motivation for the scheme is driven by the environmental issue ELT disposal. The current board representation comprises the manufacturers and sellers – principally the creators of the problem.

Basic proposition for the success of the scheme and facilitate broad representation and transparency in the public interest, is that each stakeholder group is represented at board level.

Collectors

The successful delivery of a sustainable solution will be on the collection network for reasons of;

- Commerciality
- Accreditation - what are they doing with the ELT's
- Reporting transparency and audit.

Impacts

Pricing – who by?

Opting in as accredited members or opting out?

The impact on re-sellers for dealing with un-accredited collectors?

Data collection – will there be transparency of data recording volumes sold by the retailer, transported by the collector, received and processed by the recycler?

Recyclers

A representative from an accredited recycler be appointed or an office holder of the Australian Tyre Recyclers Association.

Government

The Government be represented on the Board level via a senior member of the EPA. The appointment may be made annually on a rotation basis for a State Government representative.

Clause 33. Performance Measures

The measurement of the performance requires transparency.

The measure of "the number of users of TSA's website" is not a meaningful measure in isolation.

What constitutes 'participants'?

- Members in total, some of whom may not report?
- All members and users who meet the reporting requirements?

Data collection – how to accurately determine the incoming volume. There is a motivation from a cost avoidance viewpoint to understate volumes. Will the total TSA income be declared and matched to the tyre volume imported?

The scheme will have a significant budget.

(Based on the data in the draft determination 48 million EPU = 48m x \$0.25 = \$12m if 100% manufacturer participation was achieved.)

There is no performance target mentioned in terms of financial allocations, eg. proportions allocated to administration, compliance checking, research and development (referred to in Clause 93). The latter is particularly important given the targets for an increase from 16% to 50% of volume for an environmentally sound use is 5 years – a 212% increase.

In simple terms, a budget performance target, based on a 30% success rate in securing participation by volume of imports would providing a base revenue of \$4m, would provide a meaningful performance measure and an indication of how the funds are applied.

Who determines "a environmentally sound use"?

Is this to be considered as a local or global definition?

Clause 34 & 90. Review Process

These state a review will be undertaken after "approximately two years".

How is this review proposed to be executed?

What is the ACCC's position if the review

- Is not undertaken
- finds that the scheme has not been appropriately established
- finds that the scheme has seriously under performed ?

If substantial changes are necessary on the basis of the review, does full control reside with the Board of TSA during the period of the ACCC approval period for the scheme? For example, if TSA chose to increase the levy.

Clause 44. Exporting of ELTs

The ATIC and the ACCC acknowledge in the document that a large volume of ELT's are exported. This practice is illegal under the Basel Convention (1992).

Will the scheme, endorsed by the ACCC, allow membership of collectors or recyclers who direct ELT's to export?

If not, how will any commercial disadvantage for compliant members (collectors and recyclers) be overcome?

How does the ACCC determine public interest priority in the context of stockpiling ELT's in Australia versus the pollution generated through global greenhouse gases generated overseas through uncontrolled and inappropriate disposal of ELT's?

Clause 78. Dealing with non-members

The scheme proposes a levy to underpin environmentally sound disposal of ELT's.

Non members will be driven only by their ability to generate a profit. The critical link in the supply chain is the collector, though his ability to access ELT's from the retailer and the revenue he generates from both the retailer and the recipient of the ELT's, either an exporter or a recycler (assuming local dumping and retreading are not options).

There are competing interests from legal and commercial viewpoints for the scheme;

- restraint of trade if a reseller is prevented from dealing with a non accredited collector, and similarly for a collector to a recycler relationship
- the reseller will want to preserve and will be expected by the manufacturer to maximize the revenue derived and retained from charging a disposal fee.

How does the scheme propose to deal with this issue in the absence of a regulated price, (possibly variable by region), for the disposal fee paid by the public?

Clause 87. Reporting.

We agree that the reporting objective identified is a critical component of the scheme and the performance measurement.

How will the data for the total amount of new tyres coming into Australia be collected and audited?

What is the recourse for the ACCC if the reports are not made or are deficient, ie. the clause says "should be broken down into the proportion of end of life tyres being illegally stockpiled, going into landfill and inappropriately exported".

Transparency in the reporting process and the results is central to the public interest and for the member participants in the scheme if a voluntary model is to succeed.