

For Publication

The Director
Operations 1
Anti-Dumping Commission
Customs House
1010 Latrobe Street, Docklands
MELBOURNE VIC

3 July 2014

Attention: Mr Jukka Mäntynen

Dear Sir

Newsprint exported from Korea and France**Seven West Media Injury Submission****1. Introduction**

We act for Seven West Media (**SWM**) in relation to the ongoing investigation by the Anti-Dumping Commission in relation to the alleged dumping of Newsprint exported to Australia from Korea and France.

SWM notes that the ADC has accepted a definition of the goods under consideration (**GUC**) under the following terms:

Newsprint in roll or sheet form having a weight within the range 40 grams per square metre (gsm) to 46 gsm (inclusive) and brightness below a measure of 70 ISO.

As the ADC is aware SWM is an end user of the GUC (so defined above) which is a primary raw material input in the production of newspapers. SWM's consumption of the GUC is centralised to its Western Australian subsidiary, Western Australian Newspapers (**WAN**).

WAN procures the GUC to produce a range of metropolitan and regional publications. WAN has a long history in the Western Australian newspaper industry and controls an unmatched share of the market - over 80% of Western Australians read 'The West Australian' or access the content provided electronically on 'thewest.com.au'.

As the ADC is well aware, WAN manages its supply chain in accordance with a variety of key considerations which relate to production and logistical concerns (quality and functional utility requirements) as well as commerciality concerns (supply risk mitigation, value for money).

WAN's procurement model has, over the course of its operation, sourced the GUC from a variety of manufacturers including the applicant, NSIA, and overseas exporters including those from the countries named in the present investigation.

Based on its commercial interactions with the applicant, and a variety of other suppliers of the GUC in the Australian market, our client strongly disagrees with the applicant's allegations that underlie its application made to the ADC. Namely that, in summary:

a) newsprint exported to Australia from Korea and France has been sold at 'dumped' prices in accordance with the provisions of the *Customs Act 1901* (**Customs Act**); and

b) Australian industry producing the GUC (that is, NSIA) has suffered material injury caused by dumped imports from Korea and France.

2. A Précis of Law

Threshold requirements - Standing

2.1 Section 269TB of the Customs Act specifies the requirements that must be satisfied for a person¹ to have standing to submit an application to the Commissioner requesting that the Minister publish a dumping duty notice in relation to goods exported to Australia.

2.2 269TB sets out 3 criteria that must be satisfied for this purpose, in summary these are:

- (a) a consignment of goods has, is likely to be, or may be imported into Australia;
- (b) there is, or may be established, an Australian industry producing like goods; and
- (c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice in respect of the goods in the consignment

2.3 For the purposes of (b) above (and elsewhere in the Customs Act) 'like goods' is defined under section 153B of the Act to mean goods that are identical in all respects to the goods under consideration **or** that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Substantive requirements

2.4 The requirements of the *General Agreement on Tariffs and Trade 1994* (**GATT**) with respect to the imposition of anti-dumping duties are well known to the ADC. The GATT establishes the guiding principle that anti-dumping duties can only be imposed on imported goods where those goods have been found to have been:

- (a) dumped; and,
- (b) as a result of that dumping have caused, or threaten to cause, material injury.

2.5 The GATT principle is replicated in sections 269TG(1) or (2) of the Customs Act. Those provisions establish that the publication of a dumping notice can only be made in instances in which the Minister is satisfied that the goods for which the notice is published are dumped, and because of that dumping:

"...material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered."

¹ 'person' includes partnerships and unincorporated associations per Section 153B of the Act.

- 2.6 It is clear that Australian law and the GATT are consistent in so far as both demand that the investigating authority must, on consideration of the verified facts available to it, find that both variables – dumping and a causal link to material injury – are sufficiently supported by probative evidence in order for the publication of an anti-dumping notice (**ADN**) with respect to the goods under consideration.
3. **The issue of 'like goods'**
- 3.1 Our client submits that there are significant, discernible production performance differences between the newsprint produced and offered to WAN by NSIA and the newsprint WAN sources from overseas sources when used in their production equipment.
- 3.2 Specifically, WAN submits that the newsprint it imports from overseas mills is produced using recycled material inputs (pulp) whereas the newsprint produced by NSIA is manufactured using virgin pulp fibres sourced directly from plantation forests.
- 3.3 Our client submits that the manipulation of this variable in the manufacturing process not only significantly distinguishes the production process of NSIA from export manufacturers, but also has a significant, material effect upon the functional utility of the finished product.
- 3.4 WAN's internal audit of its production processes has found that recycled product has driven tangible efficiency increases throughout the production line which are clearly reflected in the fact that WAN has been able to significantly reduce the number of overprinted copies produced during each print run. Conversely, the product offered by NSIA, derived from virgin fibres requires a higher number of overprinted copies per print run to satisfy publication orders due to greater problems through the inserting and binding process. These challenges were most prominent in the production of the 192 page 'Weekend West' published each Saturday.
- 3.5 The efficiency differences between the two forms of Newsprint have a material impact on commercial performance demonstrated by [confidential business information].
- 3.6 Our client submits that the ADC must consider the significant commercial differences between the different forms of Newsprint available in the market, with specific attention to the comparability of product derived from recycled fibres and product derived from virgin fibres.
- 3.7 Our client submits that it raised the production issues with Mr Italo Papasergio - product performance manager of the applicant, in 2007 and 2008 - and specifically discussed the production problems of loose cover slippage, keyhole shape, front page curl and consequent efficiency losses as a result of using NSIA's product exclusively. NSIA has, to date, been unable to address these issues and continues to only offer virgin fibre newsprint to WAN.
- 3.8 Our client submits that the efficiency concerns associated with the choice of material input in the production line have become a commercial priority due to the changing dynamics in the newspaper market prior to, and during, the period of investigation.
- 3.9 As will be discussed in greater detail below, the dramatic decline in demand for newspapers in the market has had a significant impact on production throughput and, in turn, revenue and profitability. Cost efficiency at the production line level has become a crucial consideration.
- 3.10 Our client submits that recycled newsprint and virgin fibre have material, significant differences both in terms of the manufacturing process and their commercial utility. So acute are these differences in the 192 page 'Weekend West' that the two forms can neither be said to be identical, nor to share closely resembling performance characteristics when used in the production of newspapers at WAN.
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4. Dumping

4.1 The question as to whether dumping has occurred is a question of fact that can only be tested by investigation of factors relevant to the export and domestic trade (in very general terms – a comparison between export price and the ‘normal value’ of the goods sold for home consumption in the country of export). The investigative processes and consideration requirements that apply to the analysis of dumping are numerous. Discussion of the ADC’s analysis of dumping with respect to our client will not be dealt with in this submission.

5. Injury and causal link

5.1 The investigation and analysis as to whether dumping has caused material injury (for the purposes of an anti-dumping investigation) demands the careful consideration of relevant facts. As the ADC is well aware, injury analysis is a composite process which requires two queries to be tested against the available, verifiable, facts, namely:

- (a) Whether the applicant has suffered material injury; and
- (b) Whether the injury suffered can be attributed to dumped imports such that the injury can be said to have been caused by exportation of goods to Australia from the identified countries at prices deemed to be ‘dumped prices’.

5.2 To test these two elements with the requisite rigour and reliability, in order to make a positive determination under section 269TAE(1) that material injury to Australian industry has been or is being caused or is threatened or would or might have been caused, the analysis must be based upon positive evidence that is objectively verifiable and defensible.

5.3 This is set out under section 269TAE(2AA) of the Act, which clearly states that a determination with respect to injury pursuant to section 269TAE “*must be based on facts and not merely on allegations, conjecture or remote possibilities*”.

6. Establishing the causal link

6.1 The Act and the WTO Anti-Dumping Agreement (**AD Agreement**) prescribe the analysis for satisfaction of the causation test in the context of anti-dumping investigations.

6.2 Article 3.5 of the AD Agreement requires the investigating authority to examine “*any known factors other than the dumped imports which at the same time are injuring the domestic industry*”, and requires that any such injury should not be attributed to the subject imports.

6.3 The requirement to identify ‘other injury factors’ and to ensure that these are not considered in the context of establishing the causal link between dumping and material injury is set out in section 269TAE(2A) of the Act, which states:

*In making a determination... the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor **other than the exportation of those goods** such as:*

- (a) the volume and prices of imported like goods that are not dumped; or*
 - (b) the volume and prices of importations of like goods that are not subsidised; or*
 - (c) contractions in demand or changes in patterns of consumption; or*
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(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry;

and any such injury or hindrance must not be attributed to the exportation of those goods.

6.4 Consideration of the existence of 'other factors' is not only a requirement of the Act in all investigations but, we submit, is particularly relevant in the present investigation given the dynamics of the Australian market under consideration and the significant changes that have occurred in this market over the period under investigation for the purposes of injury analysis.

7. **Summary of the injury submission**

7.1 Our client submits that:

- (a) The applicant's claims regarding injury suffered by its business are unsubstantiated and unfounded. There is no positive evidence of the injury complained of by the applicant aside from assumption and assertion. Additionally, in many instances the claims of injury that have been made for the purposes of initiating the present investigation are at odds with publicly available information regarding the performance of the applicant.
- (b) The applicant's claims regarding the causal link between injury and dumped imports lack credibility and are not supported by verifiable evidence. The applicant has relied upon assertion, assumption and questionable market intelligence to support its claim regarding market competitiveness and price-based injury. The applicant has also attempted to downplay the relevance of other market factors which have fundamentally impacted the Australian market generally, and the dynamics of trade by all participants in the market in recent years.

8. **The current market for Newsprint in Australia**

Demand for Newspapers in Australia

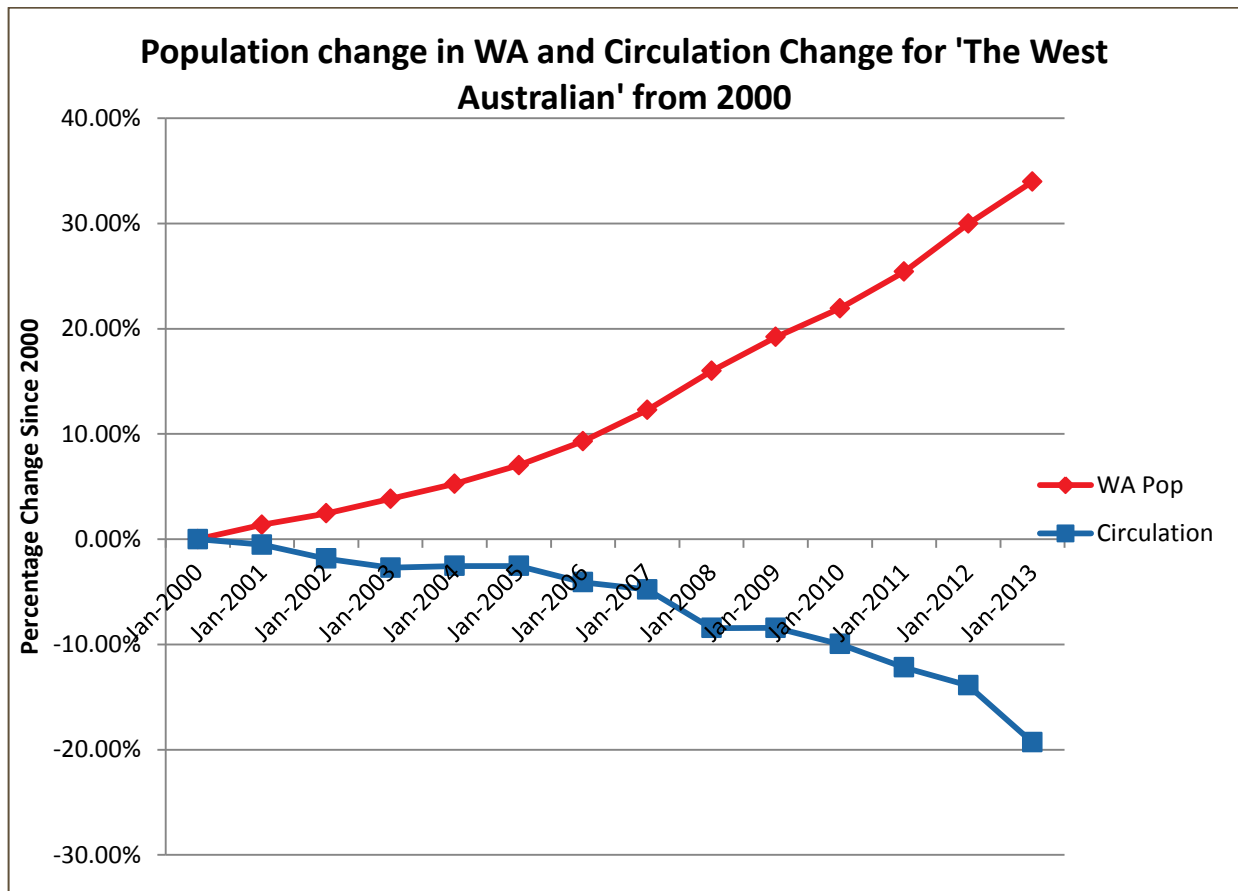
- 8.1 Our client submits that it is critically important for the ADC to understand and appreciate the characteristics of current markets - globally and domestically - before turning its mind to questions of material injury and the factors which may have caused injury allegedly suffered by NSIA.
 - 8.2 The ADC must appreciate that overall demand for newspaper comprises two interrelated variables:
 - (a) circulation - the number of copies of the newspapers purchased in the market; and
 - (b) content - the number of pages per copy sold
 - 8.3 The former variable is linked directly to consumer behaviours and changing preferences in relation to their engagement with media in Australia - the rapid development of a variety of
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electronic platforms for providing news to Australian customers, and the increasing accessibility of online mediums has driven a decrease in the circulation of newspaper copies.

- 8.4 The latter variable is linked to stakeholder investment in the product - that is, purchased space within the pages of each edition for third party advertising and public notices. The attractiveness of third party investment is driven by a number of factors including, most significantly, consumer consumption and market penetration of newspapers within key demographics in comparison to alternative mediums. A decline in third party investment in 'purchased space' will have a direct impact on the number of pages printed in each edition (as well as the revenue of the producer).
- 8.5 Circulation is measured in terms of audited records of copies sold. Total content of copies sold can be measured as the total weight of newsprint consumed.
- 8.6 The below graph tracks the trends in each variable year on year from 2010-13. As the ADC will be able to clearly extrapolate, circulation declined dramatically between 2010-11, in 2011-12 the rate of decline slowed fractionally and then decreased sharply between 2012-13.
- 8.7 [Confidential Graph]

The impact on end users - demand for Newsprint

- 8.8 Reduced demand for newspapers, and reduced third party investment, has dramatically impacted revenue from sales of newspapers, and dramatically reduced profits and profitability in the newspaper sales segment of the market. [Confidential business information and accounting data].
- 8.9 Changes to the patterns of demand in this market are not a new phenomenon. As demonstrated by the table below, to date there is a clear divergence between population increase and newspaper circulation year on year from 2001 onwards.



- 8.10 Demand for newspapers has a directly correlative relationship to demand for newsprint from upstream suppliers. Logically, reduced demand (total circulation and content per unit) has led to dramatically reduced demand for newsprint from upstream suppliers as forecasted supply needs are re-adjusted.
- 8.11 This is supported by the ADC's own analysis of the Australian newsprint market and, in particular, Figure.1 of CON 242 which demonstrates the linear decline of total market size year on year for the period commencing April 2010 and ending March 2014. As the ADC has extrapolated, the size of the market (expressed in total tonnes of newsprint) has reduced by over 40% since 2010/11.
- 8.12 Reduced newspaper demand has also had a significant impact on production schedules and the throughput of production lines. This has resulted in an elevated cost-base per copy printed.
- 8.13 Efficiency and effectiveness are now primary concerns for end users of newsprint globally who must seek to drive internal efficiencies to counteract cost increases associated with declining throughput and reduced sales volumes.
- 8.14 [Confidential business methods to address reduced newspaper demand].

The current market and its prognosis

- 8.15 There is no indication that the newspaper market will return to its former glory. The depressed demand for finished product and reducing demand trends are considered to be the new status quo as electronic mediums become increasingly accessible and preferred by consumers.
- 8.16 WAN submits that all Australian newspaper manufacturers have been looking for mechanisms to offset the depressed demand in the newspaper market - these include the growth of digital channels and internet-based platforms.
- 8.17 Due to the inextricable link between demand for newspapers and demand for newsprint, there is likely to be no change in the trends of demand for the GUC in the Australian market.
- 8.18 This is a commercial reality to which the ADC must give due consideration in its assessment of NSIA's performance and its related assertions that commercial performance issues have been caused by competition with dumped imports in the Australian market and that the application of anti-dumping duties will alleviate the issues experienced across its operations.
- 8.19 WAN submits that the ADC must carefully consider, and understand, the commercial performance of NSIA in the context of the dynamics of the Australian market and give due consideration to its operational models and commercial behaviours in the market.

WAN and NSIA

- 8.20 Our client submits that it will be useful for the ADC to appreciate the history of commercial interaction between WAN and NSIA over the past decade, in the context of the fundamental changes in the Australian newsprint buyer's market, summarised above.
- 8.21 [Confidential contract arrangements].
- 8.22 Our client submits that this practice, whilst no doubt commercially effective for NSIA for many years, has meant that its pricing practices have lost relativity to world prices and has led to NSIA becoming uncompetitive in global terms. Therefore they have not adequately adapted to changing market dynamics and has dramatically impacted NSIA's competitiveness.

9. **The applicant's claims of injury**

- 9.1 NSIA's claims that it has suffered the following material injury caused by dumped imports of newsprint exported from France and Korea. NSIA claims that this injury was suffered in 2013/14 and is reflected in the following indicia:
- a) Lost sales volumes;
 - b) Price undercutting;
 - c) Price depression;
 - d) Price suppression;
 - e) Reduced profit and profitability; and
 - f) Reduced revenues
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- 9.2 Our client submits that the commercial interests of the newsprint industry and the newspaper production industry are inextricably linked given that both depend on consumer interest in newspapers.
- 9.3 Furthermore, whilst there are technical differences in the production processes involved in the production of newsprint and the production of newspaper-utilising newsprint, both are production-line manufacturing processes.
- 9.4 The cost of the production process for both industries is a key concern for both industries in terms of:
- (a) Cost to make (including raw material cost, waste, efficiency etc.)
 - (b) Cost to sell; and
 - (c) Production line throughput
- 9.5 As the ADC will appreciate the commercial performance of any manufacturing line will depend on the relative ratio between the cost to make and sell price achievable in the market for the goods produced.
- 9.6 It is critically important to recognise that the cost to make newsprint and newspapers is both directly impacted by the volume of production - simply put the lower the throughput, the higher the cost of manufacture per unit. Production through-put is driven by demand for the newspaper along the supply chain - both in relation to the finished product (newspaper) and the raw material (newsprint).
- 9.7 Demand also drives market prices in a correlative trend - high demand enables higher unit prices to be achieved, and, conversely, depressed demand results in depressed market prices. These trends are particularly acute in the global newsprint market.
- 9.8 Declining demand in downstream markets has had a sharp, depressive impact upon global market prices for newsprint from 2010/11 onwards. The prices achievable at market have been, and continue to be, well below the price achievable historically when demand was at its peak (pre-2000).
- 9.9 The relationship between demand, production cost and market price has a direct and significant impact on the achievable profit and profitability of operations.
- 9.10 These issues have significantly impacted newspaper publishers and newsprint producers alike. The ADC will appreciate that declining demand in a traditionally buoyant market has a number of consequential impacts on operational activities and the commercial performance of those activities. Our client submits that the decline in demand (reflected in both the reduction in future opportunities and current supply demands) leads to:
- (a) Reduced sales volumes and reduced revenue;
 - (b) Decreased throughput and higher long term inventory holding - as production and supply outstrips demand and operational schedules adjust;
 - (c) Reduced capacity utilisation - as production forecasts are re-adjusted in line with demand;
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- (d) Increased costs - as lower throughput in production increases the operating costs to make and sell allocated per copy;
 - (e) Reduced profits and profitability - as the ratio between cost and price decreases and the proportion of profit relative to total revenue reduces;
- 9.11 Our client submits that the various indicia listed by the applicant to demonstrate 'injury' are symptoms of declining commercial performance that have been suffered by most, if not all, entities operating across the newspaper supply chain in Australia.
- 9.12 The size and shape of the Australian market has experienced a fundamental change that is in step with global trends in the majority of global markets.
- 9.13 NSIA has successfully protected itself from exposure to these market factors over the past decade due to its contracting arrangements. These arrangements have not only secured substantial volume of supply demand, but have also ensured price controllability across the life of the contract.
- 9.14 The mere fact that it has now been forced to face the trends of the current global newsprint market and must re-evaluate its operational models to adapt to the current operational environment cannot be seen to be evidence of 'injury'.
- 9.15 In particular, our client disputes the implied assertion that the fact that NSIA has found itself in a position in which its price negotiation and desired product price points are disassociated with prevailing market prices constitute its prices being 'undercut' and driving price suppression and depression.
10. **Injury and causation - other injurious factors**
- 10.1 Our client also submits that the applicant, in outlining the alleged injury it has suffered during the period and seeking to assert the existence of a causal link between this injury and allegedly dumped import competition, has not adequately engaged with the real issue which is that, performance issues deemed by the applicant to indicate 'material injury' have been caused by factors other than dumped imports.
- 10.2 The principle of non-attribution, and its relevance to the consideration of causation, is well known to the ADC. In simple terms, in considering whether a causal link can be established between the injury suffered by the Australian industry (which is denied) and dumped imports from the identified countries, the ADC must consider other factors which have contributed to the injury factors complained of.
- 10.3 These 'other factors' must not be taken into account in the context of establishing whether a causal link exists between the injury and dumped imports.
- 10.4 As discussed above, our client considers that the performance indicators complained of by the applicant have been inappropriately characterised as factors of 'injury' throughout the investigation.
- 10.5 An understanding of the current newsprint market in Australia, and the performance of all participants in the market during the injury analysis period, will indicate that depressed performance across these indicators is a symptom of market forces which have fundamentally changed the demand for newspapers in Australia and, as a result, the demand for newsprint.
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- 10.6 These changes have, in turn, dramatically impacted the reasonable performance expectations in relation to the manufacture and sale of newsprint in the Australian market and have required all participants along the supply chain to adjust their business models and operational strategies.

Market price

- 10.7 Our client submits that a contracted market characterised by limited volume of demand inhibits the increase of prices such that the benchmark price points of goods will appear 'suppressed' - where price suppression is defined by the inability to increase prices to meet rising costs.
- 10.8 Price 'depression' (the lowering of prevailing market price) is also a symptom of competition in a contracting market, and a natural phenomenon as the market adjusts to new paradigms of supply and demand.
- 10.9 Our client reiterates that the allegations of price suppression and depression must be assessed by looking at the Australian applicant's business model and strategies and its inflexible price strategy dealt with in the section that follows.

Business model

- 10.10 Our client submits the applicant has failed to adjust its business model and commercial behaviours in negotiating supply terms with its customers to the changing dynamics of the Australian market and is out of step with global market price trends.
- 10.11 NSIA has, traditionally, been very successful in negotiating long-term supply contracts with customers which crystallised supply price over the terms of the contract under specific price adjustment provisions.
- 10.12 These practices have ensured supply sustainability (across a significant proportion of total customer demand) and price certainty over a long period of time. They have also sheltered NSIA's operations from the impact of market price fluctuations.
- 10.13 Our client submits the ADC must consider NSIA's commercial strategies in the context of the market environment. The mere fact that NSIA has recently, after a long period of being sheltered by the terms of its contractual arrangements in the Australian market, found that its historical operational models and price positions are no longer viable cannot be regarded as an indicator of 'injury' for the purposes of the investigation.
- 10.14 To this end, the ADC must consider and assess the extent to which NSIA has, in effect, contributed to the alleged injury it has suffered.

Pricing issues

- 10.15 NSIA have applied a strict pricing platform that has not responded to global market trends. Global benchmarks have been shifting for quite some time, commensurate to declining demand.
- 10.16 Our client submits that NSIA has, when domestic demand declined, increased its sales to overseas markets. Our client understands that, as these sales were not made under the terms of long-term supply contracts, NSIA pitched its prices in accordance with the prevailing price benchmarks in the market at the time.
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- 10.17 However, NSIA has not, and will not, discuss the readjustment of its prices in the Australian market on the same terms. Our client submits that these issues have been specifically discussed with NSIA in the context of supply negotiations and NSIA has intimated that it cannot reduce its offered prices for fear of upsetting parties with whom it is under contract at an elevated supply price.
- 10.18 Our client acknowledges that NSIA's pricing policies are a business decision for NSIA. We also appreciate that NSIA would logically prefer to retain its price point at the elevated level it has historically been able to achieve. This desire is, however, not a sufficient basis upon which to allege that NSIA's prices have been 'undercut' by import sources by the mere fact that such prices are no longer achievable in current market conditions.
- 10.19 The issues underlying NSIA's approach to the Australian market were highlighted during market testing undertaken by our client between November 2013 and February 2014. As part of this tender process our client requested, and received, offers from local and overseas suppliers [confidential business and market testing data].
- 10.20 Our client believes that NSIA's unwillingness to adjust to changing paradigms in the market and its inability to provide a supply offering that is in step with reasonable offers in the market have prevented it from remaining competitive with overseas supply sources.

Quality/utility issues

- 10.21 As mentioned above, production efficiency is a crucial consideration for end-users of newsprint in Australia. In a market where margins are becoming increasingly eroded due to declining demand, the utility of a raw material becomes a key consideration in procurement.
- 10.22 Our client has demonstrated that the use of newsprint produced from recycled fibres has been proven to increase efficiency across the production line by reducing overprinting. The cost-saving this achieved is a not-insignificant benefit to its operations.
- 10.23 Our client engaged with NSIA in 2008 (at a time when NSIA was the contracted supplier of 90% of its total newsprint needs and commonly supplied 100%) in relation to the issue of production inefficiencies when utilising the NSIA product. NSIA was unable to reduce the efficiency losses (and resultant production cost increases) suffered by WAN when using the NSIA product.
- 10.24 Product from recycled fibre has also been found to dramatically minimise issues associated with 'key-hole' newspaper bending (which causes commercial inserts and loose leaf material in newspapers to become dislocated and lost during transportation), inserting problems and 'loose front page' (which causes the front pages of the paper to become removed from the body of the paper during production processes and transport).
- 10.25 Our client submits that NSIA failed to appropriately address the concerns of its customer (WAN) in relation to the supply of its product and failed to appreciate the significance that utility considerations have in procurement decisions in the current market.

11. Conclusion

- 11.1 As the ADC is well aware, if no material injury has been suffered during the period of investigation:
- (a) there can be no positive finding of any injurious dumping; and

The Director, Anti-Dumping Commission

3 July 2014

- (b) in the absence of such a finding, dumping notices cannot be published.
- 11.2 The claims made by NSIA rely upon a misinterpretation of market statistics regarding the numerous extraneous variables which have impacted the structure or the market within which they operate, and the performance of their business in the current commercial landscape in Australia.
- 11.3 If the applicant's market performance is used as the indicia of 'material injury', the ADC must carefully examine the link between such injury and the specific conditions of the newsprint market in Australia during the period in question.
- 11.4 Our client submits that the alleged injury which the applicant has complained about is not associated with competition with imported product, dumped or otherwise.

For completeness, we **attach** a confidential presentation - Attachment A - a copy of which was provided to you by our client during your visit on 29 May 2014 in Perth.

If you have any questions concerning this submission please contact me.

Yours sincerely

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