

13 January 2017

Our ref: Competition and Consumer Law Committee/KB

Committee Secretariat  
Senate Standing Committees on Economics  
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Dear Committee Secretariat

### **Competition & Consumer Amendment (Misuse of Market Power) Bill 2016**

The Society is grateful to have the opportunity to comment in relation to the proposed amendments to the *Competition and Consumer Act 2010* (Cth) (Act) as set out in the Competition and Consumer Amendment (Misuse of Market Power) Bill 2016.

The Society has made several submissions in relation to the reform process, and in particular, raised concerns about the revision of section 46 of the Act in its submission to the Exposure Draft of the Competition and Consumer Amendment (Competition Policy Review) Bill 2016 dated 30 September 2016.

Of the two matters raised, the Society is pleased to note that first raised in relation to section 46(1) has been addressed.

The Society notes that the second matter raised in relation to section 46(2) does not appear to be addressed i.e. that the proposed section 46(2) creates the possibility that the expression 'substantially lessening competition in a market' will be interpreted differently in section 46 than in other parts of Part IV of the Act. If the matter is not addressed in the way advocated in our submission of 30 September 2016, the Society believes that there should be included in the legislation a provision similar to subsection (6) of section 46 as it currently stands.

If such a provision is not included, the consequence could be that, notwithstanding that authorisation under sections 45, 45B, 47, 49 or 50 may be in place, the same conduct may be subject to further regulatory scrutiny and potential court action under section 46.

The purpose of having subsection (6) in the current law was to prevent the possibility that, although conduct has been authorised for the purpose of one section, it nonetheless be subject to scrutiny under another section.

The Society believes that the inclusion of a provision similar to subsection (6) is even more important if the new section 46(2) is introduced in its current proposed form given the

possibility that 'substantially lessening competition in the market' may now be interpreted in different ways for the purpose of different sections of the Act as submitted in our 30 September submission.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Kate Brodnik on [k.brodnik@qls.com.au](mailto:k.brodnik@qls.com.au) or 3842 5851.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Christine Smyth".

Christine Smyth  
**President**