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RE: DRAFT GUIDE – SUSTAINABILITY COLLABORATIONS AND AUSTRALIAN COMPETITION LAW

The Australian Industry Group (Ai Group®) welcomes the opportunity to give feedback to the ACCC on draft guide on sustainability collaborations.

About Ai Group

Ai Group is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for 150 years.

Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than one million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the broader economy through national and international supply chains.

Key Comments

The name of the document as a guide relating to sustainability collaborations does not identify the limited scope covered by the document. Ai Group members would highlight that in some cases environmental sustainability is inextricably linked to other facets of sustainability, such as people-based sustainability (i.e. human rights, modern slavery, etc). One such example of a multi-faceted sustainability collaboration is the Palm Oil Transparency Coalitionⁱ, which addresses environmental impacts associated with this commodity's international supply chain as well as labour exploitation. Other jurisdictions internationally, such as New Zealand, acknowledge the intertwined nature of sustainability and address it in their comparable guidanceⁱⁱ. If the ACCC were to retain the limited scope of the guidance document and focus solely on direct environmental sustainability, it should be renamed to explicitly identify the type of sustainable collaborations covered and guidance should be drafted that addresses parallel non-environmental sustainability issues.

Regarding the examples presented in the draft guide, it would be useful to present examples of scenarios that have not been approved in previous applications for authorisation, in addition to the positive case studies presented in the guide.

Likewise further information about the factors considered in the calculation for net public benefit, with good practice case studies, would assist businesses in understanding the metrics the ACCC uses, what evidence they will need to present in an application for authorisation, and what a realistic timeline for the entire application process – from initial conversation and data gathering to final determination – will be. Understanding these factors will enable businesses to make more informed decisions not only about whether they pursue the collaboration but also the financial and time investments involved.

The guidance also fails to clarify what impact third-party traceability schemes have on competition, as while currently voluntary for most sectors, traceability requires a business to only source from certified providers, which narrows the choice of supply-chain partners. This is particularly impactful where there are multiple third-party certifiers for a material/product, and there is no interoperability between certification schemes.

If you have any further questions regarding this submission, please contact our Advisor, Molly Knox (molly.knox@aigroup.com.au).

Sincerely yours,

A handwritten signature in black ink that reads 'Louise McGrath'.

Louise McGrath
Head - Industry Development and Policy
Australian Industry Group

ⁱ Palm Oil Transparency Coalition , <https://www.palmoiltransparency.org/> - accessed 27/07/24

ⁱⁱ Commerce Commission New Zealand, Collaboration and Sustainability Guidelines - 30 November 2023, <https://comcom.govt.nz/business/business-consultations/collaboration-and-sustainability-guidelines#projecttab> – accessed 30/07/24