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The Commissioners  
Compulsory Licensing of Patents  
Productivity Commission  
LB2 Collins Street East  
Melbourne Vic 8003  
28<sup>th</sup> September, 2012

Dear Commissioners

I write on behalf the Australian Fair Trade and Investment Network (AFTINET) to support the submission of the Public Health Association of Australia (PHAA).

AFTINET and PHAA share the belief that Australia's capacity to use compulsory licensing of patents could play a future role in ensuring equitable access to affordable medicines for all Australians.

We are concerned that international trade agreement obligations may constrain the future effective use of compulsory licensing in Australia. The current negotiations for the Trans Pacific Partnership Agreement (TPPA) between Australia, the US, New Zealand, Canada, Mexico, Peru, Chile, Singapore, Malaysia, Brunei and Vietnam has implications for compulsory licensing in Australia, and these should be scrutinised carefully.

We agree that the proposals from the US trade representative for data protection and data exclusivity outlined in the PHAA submission would be an impediment to the potential use of compulsory licensing in order to make medicines available at more affordable prices.

We support the recommendations of the PHAA submission:

- The Productivity Commission should carefully review the implications of the current data protection provisions of S25 of the Therapeutic Goods Act 1989 to ensure that they do not preclude the effective use of compulsory licensing of medicines in Australia.
- The Productivity Commission should also carefully examine the implications of the existing provisions of Chapter 17 of the Australia US Free Trade Agreement (AUSFTA) for the effective use of compulsory licensing in Australia. Consideration should be given to re-negotiating the data protection provision in AUSFTA with a view to removing it to facilitate future use of compulsory licensing in Australia.

- The Productivity Commission should carefully consider the potential implications of the proposed intellectual property provisions of the TPP for the future use of compulsory licensing of medicines in Australia.

Yours sincerely

Dr Patricia Ranald  
Convenor