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Compulsory Licensing of Patents  
Productivity Commission  
LB2 Collins Street East  
Melbourne Vic 8003

BY EMAIL

Dear Sirs

Thank you for the opportunity to make a written submission in relation to the Draft Report 2012 on Compulsory Licensing of Patents.

In Draft Finding 6.3, the Commission states that it sees no reason why section 51(3) of the Competition and Consumer Act 2010 (CCA) should not be repealed, at least in relation to access to patents. CSIRO submits that section 51(3) is a valuable provision in relation to patent licence transactions and that its repeal would be potentially counterproductive to technology commercialisation in Australia.

We understand that it is generally unlikely that a patent licence would substantially lessen competition in a relevant market. Nevertheless, the need to try and characterise the relevant market and to assess the possible impacts on that market, and/or to seek authorisation from the ACCC, would likely increase the cost and time required to complete patent licence transactions. It is particularly difficult to assess the likely market impacts of early stage technology licences since so many of the relevant factors are generally unknown.

CSIRO notes that the prohibitions in the CCA on abuses of market power and resale price maintenance are not exempted by section 51(3), and such conduct is prohibited in relation to patent licence and assignment transactions as it is in relation to other transactions governed by the Act.

Technology commercialisation is already a costly and time consuming activity, and increased compliance costs would be an inefficient and unproductive use of resources that would not improve the prospects of technology commercialisation in Australia.

Accordingly, CSIRO submits that the Commission should not support the repeal of section 51(3). If the Commission has identified particular problems with the operation of the section, CSIRO submits that the Commission should consider proposing suitable amendments, rather than repeal in relation to patents.

Yours faithfully

Richard Aarons  
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