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Australian Institute
for Commercialisation

Working with Australian research institutions and industry to maximise returns from research and development investment.

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The Australian Institute for Commercialisation (AIC) is a national, not-for profit company that delivers programs to improve the commercialisation of Australia's research investment.

The AIC welcomes the opportunity to make a submission entitled "Philanthropic Donations of Intellectual Property to Not-for-profit Institutions". In the following submission the AIC has provided a proposal for a strategy to increase the level of philanthropy by business in Australia. The Submission will directly increase philanthropic support for innovation in industry and business.

The AIC is appreciative of the opportunity to raise the issues discussed in this submission and would be delighted to discuss these further with you.

Rowan Gilmore

Chief Executive Officer
Australian Institute for Commercialisation Ltd

The Australian Institute for Commercialisation (AIC) is a national, not-for-profit company that delivers programs to improve commercialisation of Australia's research investment.

Programs and activities are directed to address key barriers to improved commercialisation outcomes. These barriers relate to the adequacy of co-ordination, skills, and analysis within the commercialisation sector.

SUBMISSION – THE PRIME MINISTER'S COMMUNITY BUSINESS PARTNERSHIP

"Philanthropic Donations of Intellectual Property to Not-for-Profit Institutions"

PHILANTHROPIC DONATIONS OF INTELLECTUAL PROPERTY

AUSTRALIAN INSTITUTE FOR COMMERCIALISATION (AIC)

The Australian Institute for Commercialisation (AIC) is a national, not-for-profit company that delivers programs to improve commercialisation of Australia's research investment.

AIC activities address key impediments to greater success in the commercialisation sector. These barriers relate to fragmentation of the stakeholders, inadequacy of skills, and limited analysis of the commercialisation process.

Corresponding AIC programs include, firstly, the establishment of national and global networks to consolidate existing commercialisation activities. Secondly, the delivery of AIC professional development programs targeted at improving commercialisation management skills. Thirdly, collaborative analysis projects to provide information that facilitates better resource allocation and policy input.

Background:

Most large corporations invent and patent many more technologies than they are able to fully exploit in the marketplace. Reportedly, only a very small fraction of issued patents are ever commercialized, and even more rarely used in a way that realizes their full market potential. For instance, in the US, analysis suggests that "corporate America is wasting a staggering $1 trillion in underutilized patent assets." (Rivette and Kline, *Harvard Business Review,* Jan-Feb 2000, p.59). In any event, corporate-owned patented technologies potentially represent a huge national asset.

Valuable technologies may remain undeveloped or underdeveloped within a large corporation for a variety of legitimate reasons, such as changes in corporate strategies under the current trend for companies to focus resources on narrowly defined core business strengths. Additionally, many technology-based opportunities may simply not meet the million dollar sales revenue thresholds of large corporations, while they still might (a) present attractive market opportunities within the small to medium sized business sector or (b) add substantive value to university research and educational programs.

Although unused large company technologies might be licensed to other companies, many barriers exist for licensing of such technologies to others. Large corporations with licensing organizations primarily focus on licensing to other large corporations in related business sectors. Business opportunities that do not reach financial thresholds of the parent corporation are not likely to be of interest to other large corporations. The latter companies also are likely to be skeptical of any technologies on offer to them from a competitor or potential competitor. Additionally, some

technologies actually employed in a corporation's products may remain under-utilized because non-intuitive applications outside that company's fields of interest will remain unknown to them.

Although significant opportunities might be available for use of large corporate technologies by small businesses, barriers to maximizing these opportunities are inherent in the huge resource, cultural and communication gaps which exist between large companies and small enterprises. Such communication gaps particularly mean non-intuitive applications for patented technologies in the small business sector are likely to remain unidentified. Additionally, "cash-starved" small businesses are relatively unattractive prospective licensees because they cannot afford to pay upfront what a technology might be worth. This means significant additional investments would be required by big companies to identify opportunities and conclude agreements with small businesses, offering little or no prospects for generating short-term returns. Finally, small businesses are seriously disadvantaged in negotiations with large corporations because of resource limitations. This means they are reluctant partners for transactions with large companies, particularly in such complex matters as intellectual property transfers.

With such dim prospects for licensing, the potential economic value of many dormant patents ultimately will be lost to the nation because corporations will abandon them, even though they could be valuable in the hands of others.

The AIC proposes a philanthropy scheme similar to that in effect in the US, whereby corporations can claim a tax deduction for the value of intellectual property they donate to not-for-profit institutions. Such a scheme has resulted in many large organisations donating patents and know-how that are potentially very lucrative to not-for-profit institutions.

Conceptually, donations of dormant or underutilized technologies by large corporations to appropriate not-for-profit institutions represent substantial opportunities to:

(a) Generate an income stream for the recipient organization through licence and equity deals that may result from commercialisation of the donated technology

(b) Meet unmet local (and global) consumer and industrial market needs;

(c) Strengthen the small business sector, particularly by stimulating the creation of new, and growth of existing small, technology-based enterprises;

(d) Strengthen and expand research programs within universities and other institutions; and

(e) Increase contact and cooperation between the private and public sectors, particularly industry and academia.

The AIC anticipates that, some institutions would join with other public sector partners to develop not for profit entities with missions focused on fostering the

commercialization of new technologies, particularly through the creation and growth of small businesses.

Issues and considerations:

Obviously, any program involving tax-deductible donations needs to be carefully structured and monitored to ensure the costs to the Treasury are justified by the national benefits that are actually realized. The US experience has suggested such donations involve very complex matters and much larger values and tax costs than traditional non-cash charitable contributions. Additionally, the existence of tax abuse has been suggested, and this suggests the need for development of a national policy to establish rational guidelines and accountability for technology donations to help ensure the national benefits would justify the national costs.

An additional complexity is to properly determine the value of donated technologies. Valuing technologies is a difficult and complex matter, much akin to establishing enterprise values for venture capital investments. Although many state of the art methodologies are available, these tasks rely more on experienced-based art, than on objective science. The present value of any given technology is highly dependent upon the methodological approach and assumptions used, as well as the risk and monetary factors used to discount future financial projections back to net present values.

Recommendations:

The AIC suggests that a system akin to the US system, with strengthened provisions, to allow business to donate intellectual property to not-for-profit institutions, would have the dual benefits of generating both economic growth (through new business creation) and of ultimately generating cash flows for the not-for-profit institutions.

The strengthened provisions should address:

(a) Qualification of recipients to be eligible to accept tax-deductible, technology donations.

(b) Establishment of guidelines for valuing donated technologies according to realistic projections of intended actual use in the hands of the recipient. This might include valuations based upon realistic times to market via licensing from the recipient institution to commercializing companies, realistic royalty returns and added research funding attracted to the recipient, as well as appropriate discount rates to bring such future recipient revenues to present value.

(c) Establishment of reporting requirements for donor companies and recipient organizations to account for the status and disposition of all concluded tax-deductible, technology donations. This should be done for sufficiently long time periods to enable meaningful assessments of the national economic value versus cost balance of technology donations on an aggregated portfolio bases.

Summary:

In summary, technology donations from large corporations to appropriately qualified not for profit institutions appear to represent a relatively untapped and unstructured opportunity for national gain against a variety of socio-economic measures. It brings benefit to both the donor and recipient organizations, strengthens and grows the economy, and allows not-for-profit organizations to reap economic benefit that would otherwise be beyond their reach.