

3 Structural reform of public monopolies

The protection of some public monopolies from competition, through regulation or other government policies, has allowed structures to develop that do not readily respond to market conditions. Rectifying strategies include removing the relevant legislative restrictions and applying competitive neutrality principles. These strategies, however, will not always be sufficient to establish effective competition. Structural reform may be needed to dismantle an integrated government monopoly business. Such reform involves splitting the monopoly (or parts of it) into smaller entities, including separating the competitive or potentially competitive elements from the monopoly elements.

Structural reform is particularly important where a public monopoly is to be privatised. Privatisation without appropriate structural reform is likely to result in a private monopoly supplanting the public monopoly, with few real gains and potentially considerable risks.

Clause 4 of the Competition Principles Agreement sets out obligations relating to the structural reform of public monopolies. Under this clause, governments agreed to relocate regulatory functions away from a public monopoly before introducing competition to the market served by that monopoly. The aim is to prevent the former monopolist from enjoying a regulatory advantage over existing or potential competitors.

Clause 4 also sets out review obligations aimed at ensuring reform paths lead to competitive outcomes. Before privatising a public monopoly or introducing competition to a sector supplied by a public monopoly, governments have undertaken to review:

- the appropriate commercial objectives of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly from the natural monopoly elements and into independent competing businesses;
- the best way of separating regulatory functions from the monopoly's commercial functions;
- the most effective way of implementing competitive neutrality;
- the merits of any community service obligations provided by the public monopoly, and the best means of funding and delivering any mandated community service obligations;

- price and service regulations to be applied to the relevant industry; and
- the appropriate financial relationship between the owner of the public monopoly and the public monopoly.

In its NCP assessments, the Council has considered each jurisdiction's structural review and reform activity (including the location of industry regulation) where competition is introduced to public monopoly markets or where privatisation is proposed or under way. The Council previously determined that the relevant jurisdictions met their clause 4 obligations in relation to:

- the statutory diary authorities in all States and the ACT;
- the Queensland Sugar Corporation;
- the rail sector in New South Wales, Western Australia and Victoria;
- port authorities in New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania; and
- the Sydney basin airports (a Commonwealth Government matter).

Areas previously determined to be noncompliant with clause 4 obligations are confined to the Commonwealth jurisdiction, namely AWB Limited (see volume 2, chapter 1) and Telstra (see volume 2, chapter 11).

In its 2003 NCP assessment, the Council considered the structural reform of the Western Australian electricity sector (see chapter 7).