The Future of NATIONAL COMPETITION POLICY

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Ladies and Gentlemen,

I am pleased to be able to address you this morning on National Competition Policy – where have we been and where we are going.

It is now five years since all Australian governments agreed to implement the package of wide ranging package of national reforms that we call National Competition Policy.

The signing of the Agreements in 1995 was without doubt one of the most significant bipartisan, multi-jurisdictional agreements this country has ever managed to achieve.

In the five short years of its execution, competition reforms have impacted on nearly every aspect of our daily lives.

Much of the time we don't even realise it and the average man in the street has little notion of the implications of National Competition Policy.

But whether you are a doctor or a lawyer, whether you own shares in a power company, own a bottle shop, work on a wheat farm, ever catch taxis, like to shop on weekends, have gas heating in your home, have sugar in your tea, have milk on your cereal, take public transport, own a mobile phone, post letters, have a flutter at the Casino, water your front lawn, or drive a car, you are benefiting from competition policy reforms.

There is a fundamental philosophy behind National Competition Policy which is as relevant today as it was five years ago.

That is, competition is about choice, giving consumers the means and the freedom to choose between products and suppliers.

When there is a choice between businesses offering similar products, prices tend to fall and quality improves.

The theory is pretty much unarguable.

The interesting thing is: how did this theory evolve into such a massive overarching economic reform package? and how did one federal government, six state governments and two territory governments to agree to it?

Basically the timing was right.

The changing world political environment and increasingly competitive world markets meant that between 1960 and 1992 Australia slipped from being the world's third richest OECD nation to being only the fifteenth.

Our economy was in serious decline.

Major decisions had already been taken in the early 1980's to float the dollar, deregulate the financial markets and systematically reduce trade barriers.

But the protection from competition of large sectors of the economy meant that our businesses had little incentive to reduce costs and prices, produce new innovative products or use their resources as efficiently as possible.

A small export economy like Australia must be internationally competitive and exploit opportunities in world markets to the absolute best of our ability.

WHAT IS NATIONAL COMPETITION POLICY?

I might briefly describe the components of National Competition Policy before moving onto future directions.

In essence, National Competition Policy is about the reform of monopoly arrangements.

Monopolies exist because of legislative or other barriers to entry, or because a single producer within a market has materially lower costs than multiple suppliers.

We classify them as:

- the infrastructure or 'natural' monopolies (many of which are, or have been, government monopolies): reform of these monopolies are addressed by the general National Access Regime in Part IIIA of the Trade Practices Act and by the Related Reform Agreements in the electricity, gas, water and road transport industries;

- the legislated monopolies – those created by specific government legislation restricting competition; and

- monopolistic activities in otherwise competitive markets.

The National Competition Council is mainly involved in the first two whilst the third is the domain of the ACCC.

There are two qualifications to this explanation of National Competition Policy:

- first, the water reform agreements extend beyond the application of competition reform principles to address general pricing issues and environmental considerations; and

- second, the competitive neutrality reforms are designed to ensure fair competition between public and private businesses generally, rather than just in relation to monopolies.

INFRASTRUCTURE MONOPOLIES

Prior to National Competition Policy Australia's 'natural' monopolies included our railway networks, airports, telecommunications cables, electricity grids and gas pipelines.

Typically, an infrastructure natural monopolies is extremely costly to build but is relatively cheap to use once in place.

National Competition Policy introduced the 'national access regime' via Part IIIA of the Trade Practices Act.

The regime provides a legal avenue for companies to gain access to the services provided by another business's monopoly infrastructure and ensures that that access is provided on reasonable terms and conditions, such as a fair price.

This safeguards both the access seeker and the infrastructure owner, who is able to receive a reasonable return on their investment, while introducing competition to activities that rely on the monopoly infrastructure.

INDUSTRY SPECIFIC RELATED REFORM AGREEMENTS

National Competition Policy includes four 'related reform agreements' in the electricity, gas, water and road transport industries. As well as addressing infrastructure monopoly issues in some areas, these agreements also provide for specific reforms of legislation restricting trade, the structure of firms, and pricing and investment arrangements.

In the case of water reform the agreements are a comprehensive package that addresses environmental, economic and social aspects of water use.

Each of these agreements contains reform deadlines and each has been amended to extend these deadlines in some areas since they became part of National Competition Policy reform in 1995.

Most of these reforms will now be completed by 2002, although some water reforms will extend for several years beyond this date.

LEGISLATED MONOPOLIES

The really sensitive area of National Competition Policy is the legislated monopolies.

National Competition Policy requires the review of all monopolies created by separate, specific government legislation.

If the anti-competitive restrictions cannot be proved as being to in the public interest then the legislation must be reformed and competition enabled.

Legislation review has proven to be a mammoth task.

Putting together their review programs, the Commonwealth, States and Territories identified almost 1700 restrictive laws and regulations.

Or to be more specific it included things like:

The Protection of Movable Cultural Heritage Act
The Homing Pigeons Protection Act
The Tobacco Leaf Stabilisation Act
The White Phosphorous Matches Prohibition Act
The Hairdressers Registration Act
The Bread Act
The Driving Instructors Act

On a more serious note, reviews of professional monopolies, statutory marketing arrangements for agricultural industries, taxi-licensing, liquor licensing, import restrictions and shop trading hours are all required.

Not surprisingly the review of the Legal Professions Act has caused more of a outcry that the review of the Homing Pigeons Protection Act.

Not surprising either that Homing Pigeons was one of the first Acts to be reviewed but most of the professions acts are still to be done.

We have reached the business end of the legislation reviews. We really are now digging around in the "too hard basket" and it is critical to remember that pro-competitive reforms have winners and losers and need to be implemented and managed carefully.

By its very nature, competition removes artificial market protection, and those who have benefited from that protection (at the expense of the greater public interest) stand to lose their privileged position.

Any adverse financial effects are felt immediately by a small group, whilst the benefits usually take longer to flow through and are far more dispersed.

Vested interest groups have a habit of being very vocal, very self-righteous, and when they are well funded and well connected they can campaign very successfully against the public interest.

It is very hard for the general public and policy makers to hear both sides of the story.

This is one of the inherent problems of Competition Policy – the millions of people who stand to benefit from the reforms won't march in the streets but the minority who stand to lose, often time honoured privileges, will.

ANTI-COMPETITIVE ACTIVITIES

Part IV of the Trade Practices Act regulates anti-competitive conduct and mergers in otherwise competitive markets. Under the National Competition Policy agreements, Part IV was extended to apply to all businesses in Australia. Previously, constitutional limitations on Commonwealth legislative power meant that some businesses, such as professional partnerships and state government-owned businesses, were exempt.

Now that this area of competition policy reform is fully implemented, the Council's role is to ensure that the necessary amending legislation remains intact and vet specific exemptions from its operation. Otherwise, this area of the Trade Practices Act is the exclusive domain of the ACCC.

THE TIMETABLE

So, we are now five years into the reforms.

The 1995 implementation agreement had some very specific timelines built into it.

The Commonwealth Government undertook to make on-going National Competition Policy payments to each State and Territory over the period 1997-98 to 2005-06. These payments were subject to that State or Territory making satisfactory progress against their National Competition Policy and related reform obligations.

Payments were to be made in three tranches: beginning July 1997, July 1999 and July 2001. Payments would follow a National Competition Council assessment as to whether each State and Territory has met the conditions for the payments to commence.

It was also intended that the legislation reviews be completed by the end of this year.

The Competition Policy Agreements also stated that after the policy had been in operation for five years, its operation and terms would be reviewed by a working party consisting of representatives of the signatories.

THE REVIEWS

In fact, over the last eighteen months National Competition Policy has been the subject of three major reviews.

In September 1999 the Productivity Commission released its report on "The Impact of Competition Policy Reforms on Rural and Regional Australia".

In February 2000 the 'Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy' released its report "Riding the Waves of Change".

And earlier this month, on 3 November, COAG considered the "Review of the National Competition Policy Agreements" which was undertaken by their Senior Officials Working Party.

THE OUTCOMES

All of the reviews recognised that the policy was already delivering those benefits anticipated by Governments when they originally signed up to the Agreements.

The Productivity Commission estimates that National Competition Policy has provided a sustained increase in output from the Australian economy of 2.5% above what would have otherwise occurred in the absence of the reforms.

However, all of the reviews also found significant concern in some community sectors regarding the impact of the policy.

The Commonwealth responded separately to the PC and the Senate Reports and the findings of those reviews were substantially utilised and addressed in the COAG review.

COAG endorsed the importance of National Competition Policy in sustaining the competitiveness and flexibility of the Australian economy and contributing to higher standards of living. It also accepted the working parties proposed fine tuning of the National Competition Policy process and the role of the National Competition Council.

It is very significant that the policy has now been endorsed by our incumbent leaders and their governments.

In my opinion, it is a credit to the politicians who chose to support and continue what can often be a very rocky political path – even if it is in the national interest.

Even though it was only seven years ago, in 1993, that Hilmer presented his report to COAG the Australian political scene has vastly changed since then.

As we all know, with any policy the ownership and advocacy does tend to lie with whichever Party in Government signed up to it.

In 1993 the members of COAG were Prime Minister Paul Keating, NSW Premier John Fahey, Victorian Premier Jeff Kennett, Queensland Premier Wayne Goss, South Australian Premier Lynn Arnold, Tasmanian Premier Ray Groom, Western Australian Premier Richard Court, ACT Chief Minister Rosemary Follett and NT Chief Minister Marshall Perron.

Only Richard Court is still in office and only three out of the nine Governments have the same Party in power.

THE CHANGES

I would now like to run through the changes that were agreed by COAG and to spell out the implications of those changes.

In the main, they relate to intergovernmental process and formalise existing informal arrangements. So you shouldn't expect to see great differences in the implementation of the policy.

COAG stated that the adoption of the changes would:

"establish a practical framework for the ongoing, effective implementation of National Competition Policy, while demonstrating our ongoing commitment to this policy and safeguarding the flow of benefits it is delivering to Australia as a whole."

TRANSPARENCY

The first changes relate to transparency.

- From now on governments will need to document the "public interest" reasons for supporting or not supporting a decision or assessment and make those reasons available to interested parties and the public.

The National Competition Council is particularly pleased about this requirement because we believe it will greatly increase public confidence in the process.

This will have the biggest impact where governments decide not to implement a review's reform recommendations. At the moment they do not need to publicly announce the reasons for their decision nor make the review itself public.

- Governments will also now be required to give consideration to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change.

NCC WORK PROGRAM

In relation to the National Competition Council's work program, a couple of current informal arrangements have been formalised:

- The NCC will determine its forward work program in consultation with governments and will provide them with a six monthly report detailing its draft forward work program and current activities.

- Governments will continue to clarify requirements in relation to the interpretation of reform commitments and assessment benchmarks.

FUTURE ASSESSMENT PROCESSES

In relation to future assessments the Competition Policy Agreement will now be applied using an explicit "reasonable person" test.

This means that in making its assessment as to whether a jurisdiction has met its reform requirements the National Competition Council needs to consider whether:

> *"the conclusion reached in the report is within a range of outcomes that could reasonably be reached based on the information available to a properly constituted review process.*
>
> *Within the range of outcomes that could reasonable be reached, it is a matter for Government to determine what policy is in the public interest".*

- After the third tranche assessment in July 2001, the NCC will make annual assessments of reform progress and make recommendations as to the level of competition payments.

- When assessing the nature and level of any recommended reduction in, or suspension of, payments, the NCC must take into account:

    - the extent of the jurisdiction's overall commitment to National Competition Policy;
    - the effect of one jurisdiction's reform efforts on other jurisdictions;
    - the impact of failure to undertake a particular reform.

- Where the NCC recommends a penalty, a statement of reasons identifying the basis for this penalty is to be published in the NCC's annual assessment.

- Commencing in 2001, the assessments will be provided to the Commonwealth Treasurer and each State and Territory at the same time, but will remain confidential until a decision on the level of competition payments to be received by that jurisdiction.

- The timing of the imposition of any penalty will be discussed on a bilateral basis between the Commonwealth and the affected jurisdiction.

LEGISLATION REVIEW SCHEDULE

- The deadline for legislation reviews to be completed and reform implemented has been extended to 30 June 2002.

- Satisfactory implementation of reforms may include having in place a firm transitional arrangement that may extend beyond the revised deadline.

- There will be no change to the schedule of competition payments.

COMPETITIVE NEUTRALITY – ASSESSMENT

The assessment of compliance with the competitive neutrality requirements will include:

- The adoption of a best endeavours approach to assessment, in those circumstances where a government business is not subject to the executive control of a party. This would require parties, at a minimum, to provide a transparent statement of competitive neutrality obligations to the entity in question.

- The term "full cost attribution" will accommodate a range of costing methodologies, including fully distributed cost, marginal cost, avoidable cost etc. as appropriate in each particular case.

- There will be no requirement for parties to undertake a competitive process for the delivery of Community Service Obligations.

- Governments will be free to determine who should receive a Community Service Obligation payment or subsidy. Those payments should be transparent, appropriately costed and directly funded by government.

REVIEW

The terms and operation will be reviewed before September 2005.

CONCLUSION

To conclude, National Competition Policy has been endorsed by all incumbent governments to continue for a further five years.

The role of the National Competition Council will remain essentially the same for that five year period.

The legislation review process has been extended but needs to be completed, or reform must at least be under way, by June 2002.

Now that a commitment to continuing the policy is in place the National Competition Council will be working extremely hard with the States to reach agreement on remaining reform priorities and assessment benchmarks.

We will also be increasingly focussed on community education and communication.

All of the reviews of National Competition Policy have highlighted the fact that there is a significant lack of understanding, and confusion as to the requirements and consequences the Policy. It is often blamed for economic changes which are due to other factors such as social and technological change or other Government policies. Often also, the benefits of reform or potential benefits of reform are not promoted so the community hears about the downside but never about the good side.

The fact is that there is no point in having reform for the sake of reform or competition for the sake of competition.

You implement reform in order to make a difference and benefit people and the economy.

The NCP reforms could be broadly described as working for lower prices, higher quality and greater choice for consumers, protecting the environment (and in particular managing our water resources for future generations), making our roads safer, our lives easier, our economic future secure.

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