National Competition Policy: The Public Interest

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Good afternoon, ladies and gentleman. I appreciate the opportunity to speak with you today about the role of the public interest test in delivering reforms in the national interest. For this is the very goal of National Competition Policy: to advance the material well-being of all Australians.

But implementation of a comprehensive reform agenda raises many complex issues. Who makes decisions on where the public interest lies? How are these decisions made? How do we deal with transitional issues and adjustment costs? How does society assist people who are adversely affected by change and/or policy reform? What is the appropriate response to the inevitable political pressures and the noise made by privileged vested interests.

Some specific questions have been posed for me to address today and they go to the heart of the issues I've just outlined. But before I address each of these questions, I'd like to provide some contexts to competition policy reform.

The reform context

Australia's economy is undergoing rapid change driven by innovations in communications, financial and information-based technologies. Australian firms now compete against nations that are using technological change to drive down costs and enter markets that were previously sheltered by barriers of information or distance. These changes comes in conjunction with other forces of structural change, including demographic movements, a long term fall in commodity prices and shifts in consumer preferences. Australia's interest rates and currency exchange rate – major influences on the wellbeing of all Australians – are now being shaped by global capital markets and international perceptions of our responsiveness to these changes. Ignoring or seeking to avoid these world-wide changes may be an option, but it would be an extremely costly path; and history has shown that most of the costs of isolationist policies are usually borne by those least able to meet them.

But while it may be difficult, or even futile and counterproductive, to ignore change; it is undoubtedly feasible for the Australian community to decide how it adapts to this change.

One of the most important roles for governments today is to manage these forces of change to achieve the best possible outcomes for the community. Part of this role involves removing impediments that could stop Australia from reaping the benefits of change. Governments recognised this need in the early 1990s with a wide ranging program of microeconomic reforms. A significant achievement was the agreement in 1995 by all governments to introduce a package of measures to achieve a more competitive and efficient economy where this was in the community's interests. While this agreement is commonly referred to as the introduction of National Competition Policy, we need to go back in time some two decades to examine the real inception of this Policy.

The Trade Practices Act – origins of a national competition policy

In 1974, the Federal Government introduced Australia's first serious legislative regulation of anti-competitive behaviour through the Trade Practices Act. In summary, the restrictive trade practices provisions of that Act prohibit anti-competitive behaviour, unless it can be demonstrated to an independent authority (the ACCC or the Australian Competition Tribunal), after a rigorous, objective and transparent review, that there are public benefits outweighing the anti-competitive detriment of the behaviour.

The architects of the Trade Practices Act recognised that, although the Act is primarily designed to improve public welfare and economic efficiency by prohibiting anti-competitive conduct, there may be specific instances in which such conduct may still be in the public interest.

The 1995 competition policy agreements

This philosophy of a presumption that competition serves the interests of the whole community was carried forward into the 1995 inter-governmental agreements that form the framework of NCP. Anti-competitive regulations, structures and behaviour are to be removed from those sectors of the Australian economy not already covered by the Trade Practices Act, unless it can be demonstrated after an independent, rigorous, objective and transparent review that the public interest community benefits outweigh the anti-competitive costs of these regulations, structure and behaviour.

The presumption that competition serves the public interest, as set out in the competition policy agreements and in Trade Practices law generally, reflects the fact that competition tends to make businesses use resources more efficiently and be more responsive to consumer choices. This acts as a spur for better service provision and lower prices. Of course, there are situations where these benefits may be outweighed by associated costs, or where market failure might warrant regulation. The point is that competitive outcomes deliver greater benefits than non-competitive outcomes, in the absence of evidence to the contrary.

The NCP public interest test

Thus, NCP is not about 'competition for competition's sake.' Competition is a means to an end, and that end is community benefit. The NCP benchmark of community benefit is set out in clause 1(3) of the *Competition Principles Agreement* (CPA). The CPA provides that the merits of applying three central NCP reforms – competitive neutrality, the structural reform of public monopolies, and the reform of anti-competitive legislation – should be determined on a case by case basis using a public interest assessment.

The clause 1(3) test allows *all* relevant factors to be considered when deciding whether restrictions on competition are warranted. It provides for consideration of an array of community interest matters, including:

- government legislation and policies relating to ecologically sustainable development;

- social welfare and equity considerations, including community service obligations;

- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

- economic and regional development, including employment and investment growth;

- the interests of consumers generally or of a class of consumers;

- the competitiveness of Australian businesses; and

- the efficient allocation of resources.

The wording of 1(3) is inclusive, allowing governments considerable discretion in determining what factors need to be considered when assessing the merits of a particular reform. Thus, it has always been open to governments to take account of matters not specifically listed in clause 1(3). The CoAG communiqué of November 2000 encourages governments to explicitly identify the impacts of reform on specific industry sectors and communities, including adjustment costs. The Council considers this has always been implicit in 1(3).

For example, a review into the merits of a statutory marketing arrangement would be likely to consider such factors as the impacts of barriers to competition on farmers' incomes, the welfare of Australian consumers, the value of Australian exports, environmental impacts, administrative and regulatory costs, socio-economic implications for regional communities, employment effects, economies of scale in transport and marketing, agricultural productivity and effects on value-adding industries.

Weighing public interest considerations

A challenging task for governments and review bodies is to make judgements on the importance of each factor in a public interest assessment. Certainly – and the Council has made its view on this clear – social and environmental matters are intrinsically as important as financial considerations in determining where the public interest lies

(NCC 1999). In other words, all public interest considerations intrinsically carry equal weighting. This does not mean, of course, that for a particular reform proposal, every identified cost and benefit will be quantitatively or qualitatively equal in value. For instance, consider a reform that would benefit consumers nationally by $100 million while also causing 200 job losses in a particular country town. Matters of judgement arise in weighing these costs and benefits, which must necessarily be done on a case-by-case basis. This process would be easy if a dollar value could be placed on every public interest consideration. Of course that's not always possible, and sometimes it's not appropriate to try. But we should remember that, regardless of whether trade-offs between public interest considerations are made quantitatively or qualitatively, judgements are being made about relative worth to the community, at least implicitly. And we make these judgements when there is no reform, just as we do for reform implementation.

In the example I just cited, for example, governments should consider whether maintaining 200 jobs in a country town is best achieved through a $100 million tax on consumers, or whether there are more effective ways of addressing the socio-economic costs of job losses for the individuals and the community concerned.

The need for transparent analysis and reasons

A related challenge is to focus on outcomes that benefit the *community as a whole*, rather than providing special treatment for certain groups at the expense of others. Most anti-competitive restrictions benefit someone. But where this imposes costs on others (such as forcing consumers to pay higher prices than would otherwise be necessary), it is important that each side of the argument be weighed in an objective and transparent manner.

At the same time, the impacts of reform on the individuals, regions and industries directly exposed to reform must be taken into account. It is also important that any trade-offs between the interests of different groups are made explicit so that governments can objectively consider the case for adjustment assistance to those who bear the costs of reform.

This is an important point, because the costs of reform tend to fall (at times quite swiftly and severely) on a small minority who have traditionally been insulated from competition. Some are well-organised, well-resourced, and cry loudly if their privileges are threatened. Against this, the benefits of reform tend to be dispersed over millions of Australian consumers as well as Australian producers whose input costs are lowered through reform. Given that the benefits to each individual may be

relatively small (and may flow through gradually), we haven't seen many street rallies for pro-competitive change. But the aggregate benefit across all players is significant in terms of real incomes, economic growth and (through benefits to exporters) Australia's external stability. The lessons here are the need to look at both disaggregated as well as aggregated impacts, and to consider both short-run and longer-run effects.

The complexity of these issues – and the likelihood of vested interests – highlights the importance of independent, transparent and rigorous *processes* when considering public interest matters. This is essential to maintain community confidence that public interest considerations have been objectively examined and that it is the public interest that is the dominant consideration, rather than the usually more concentrated and thus better organised, sectoral interests.

The Council's position on this matter has been reflected in the recommendations of a number of NCP reviews conducted by Parliamentary Committees as well as bodies such as the Productivity Commission (Hawker 1997, PC 1999, Senate Select Committee 2000).

Recent amendments to the public interest framework

The importance of transparency has been affirmed by all governments through November 2000 CoAG amendments to the NCP framework. A key amendment requires that governments document and publish the public interest reasons supporting a decision or assessment. Other amendments provide that:

- anti-competitive legislation should be reviewed through a properly constituted review process; and

- the outcome of a review must be within a range of outcomes that could reasonably be reached on the basis of the information available.

It has been suggested that the November amendments give the States more autonomy in determining what policies are in the public interest. Rather I would put it to you that the amendments show that the States are prepared to set rigorous disciplines on themselves in applying the public interest test.

For CoAG has now formally accepted the requirement for a properly constituted review process, and a reform outcome that falls within the reasonable bounds that could be expected from such a process.

However, in relation to the review process, the Council accepts that, in each case, the scope of the review needs to be balanced to some extent against the significance of the issue. The Council is aware that the review of around 1700 pieces of legislation is a resource-intensive process. Because of this, we think it is appropriate that relatively minor matters be reviewed within government, rather than through a full public process.

Conversely, it is not appropriate to *exempt* an area from reform without first conducting a rigorous cost-benefit analysis – to do so would be to invite claims that reform has been suppressed to satisfy vested interests. Similarly, where the net public benefit is unclear, or where there are claims that reform is against the public interest, decisions should be based on an objective assessment of the facts.

In general, the process followed should reflect the significance and complexity of the particular reform or issue (taking into account such matters as the range of affected stakeholders, community sensitivity, and likely regional disparities in the effects of change). As a minimum, however, interested parties should be given the opportunity to participate and should have confidence that their views will be taken into account and given due consideration.

The process for *measuring* costs and benefits requires judgement. The Hawker Committee, for example, accepted the use of both quantitative and qualitative assessments where appropriate. It also noted the need for greater guidance to local governments on the practicalities of conducting public benefit assessments. For example, this problem is now being addressed in Queensland through comprehensive training programs for local government officials. The Council has advocated for many years the use of this kind of assistance (NCC 1999).

The CoAG requirement that the outcome of a review must be within a range of outcomes that could reasonably be reached on the information available to a properly constituted review process, is consistent with the Council's approach. Once public interest considerations have been rigorously assessed in an independent and transparent forum, the best course of action – whether to implement reform or not to do so – should be apparent, and the public interest would be best served by governments adopting the recommendations accordingly. But quite properly, within the range of reasonable outcomes, it is up to governments to decide the policy direction.

A number of State and Territory reviews have recommended that restrictions on competition be retained in the community interest. Where these reviews use transparent, independent and objective processes, the

Council has accepted these outcomes as satisfying the intent of the NCP agreements.

Equity issues

At times a review may find that the community benefits of a reform outweigh identified equity costs. For example, while the Productivity Commission found that most regions had benefited from NCP, Victoria's Latrobe Valley had suffered significant job losses arising from electricity reform. The reforms are contributing to a more productive and efficient Australia, but the socio-economic burden on the Latrobe Valley has been significant.

But while some NCP reforms have aggravated hardship in certain industries or communities, the contributing factors are much wider; for example, changing preferences among people to live near the coast, technological change and the long term decline in commodity prices (PC 1999, Senate Select Committee 2000).

Whether adjustment costs flow from NCP or the wider process of change, social assistance to change must become an integral part of reform. To date, governments have responded poorly to this responsibility.

The necessary response requires both commitment and vision. In particular, adjustment 'assistance' is about much more than money alone. A big cheque is an inadequate response if those affected by change don't know how to apply the proceeds to assist them to adjust. Witness, for example, the mixed response to the dairy adjustment package, despite the significant amount of assistance in dollar terms.

Adjustment assistance should be about helping individuals and communities adapt to change in ways that will make them self-sufficient in the future. Sometimes, money may not be appropriate at all. Managing change involves advice and assistance (personal, business and financial), retraining, reskilling, and access to services, specifically by replacement of lost services with alternatives such as enhanced communications infrastructure.

Taking action on these issues is imperative, not just on moral and equity grounds, but to help people feel more optimistic about their ability to adapt in a world where ongoing change is a part of life, and perhaps most important of all, to ensure that people don't feel that they have been forgotten or discarded by the rest of the community.

Technological progress and engagement in world markets offer very substantial benefits to Australians. Indeed, more than enough benefits to be shared by everyone. Well implemented, competition policy's public interest objective provides the means to deliver improved living standards for the whole community. But governments must go beyond facilitating and implementing reform to also ensure that the benefits are shared equitably. No-one should be regarded as an expendable cost of achieving the benefits of reform.

Thank you.

References

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