Nobody likes monopolies – except monopolists

A presentation by Graeme Samuel
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Setting the scene

On a fateful day early in 1998, the Committee of the Maritime Union of Australia met to consider the issue of whether it would permit qualified but non-union labour on to the waterfront at Melbourne and Sydney docks. The Committee unanimously resolved in the negative.

What ensued was a massive industrial dispute which occupied the front pages of our daily newspapers and the headlines of our electronic media, together with the concentrated attention of several senior Federal Ministers and State Premiers, Opposition spokespersons, lawyers and the courts, over a period of many months. And our media heralded a sense of community outrage at the revelation that waterside workers were earning in excess of $90,000 per annum.

During the very same week, the board of one of our colleges of specialist medical practitioners met to consider whether to admit qualified doctors into the college to enable them to train for the specialty which they desired to practice. The board decided in the negative.

But who did we hear, in our parliaments or in the broader public debate, raise even a whisper about this? Which self-proclaimed representatives of "the workers" were heard pointing out that the half million dollar salaries of existing specialists came at the expense of ordinary people and the Medicare system that their taxes fund? Which supposed defenders of "the battlers" vowed to end this exploitation? And which advocates of social justice pointed to the gross inequities that the specialists' monopolies bring about?

We might like to believe that Australia is colour blind and non-discriminatory. But our willingness to apply the rules against cartels and monopolies certainly does appear to be sensitive to the colour of one's collar!

Indeed, we naturally accept that new and used car retailers, tradesmen and the like, plumbers, electricians, indeed building subcontractors of all kinds, to mention but a few, should be subject to the most rigorous disciplines of competition so that we, the average consumer, can benefit with lower prices and better quality goods and services.

Yet we are constantly subjected to special pleadings from not just medical specialists but virtually all walks of life in the professions, and certain other sectors, urging that, in the public interest, they should be exempt from the normal disciplines of competition that the rest of the public must operate under!

Worse still, we often find that the cause of such special pleadings is amplified by certain politicians who do not hesitate to opportunistically subsume the real interest of the public in favour of a quick scare, a brief media grab and an easy vote in a marginal electorate.

Recent events, particularly during election campaigns, show just how far some public commentators will go to discredit anything to do with competition policy and so help protect the monopoly privileges of favoured interest groups. Indeed, many of the statements made in pursuit of that worthy cause of political opportunism, reflect substantial ignorance at best, and in the some cases downright intellectual dishonesty. For example, there have been misleading claims that the National Competition Policy is not democratic, that it violates State's rights, that it dictates to governments that they must deregulate shopping hours, agricultural marketing cooperatives and the like, and that it has caused the closure of banks or that it requires the withdrawal of services from the bush. At the extreme, National Competition Policy has been linked with a range of woes including social inequality, rural hardship, even loss of the Australian way of life…and suicide!

Some commentators have also resorted to calling it "ideological" and "economic rationalist", which is as sure a sign as calling something "politically correct" or "racist" that you want whatever it is quickly negated — not rigorously and openly debated. Simplistic labels of derision generally reveal more about the vulnerabilities of the speaker than the merits or demerits of the subject.

The debate has also been regrettable because, in many instances, it has placed the views and demands of special interest groups above the broader public interest. As I shall indicate shortly, there is a substantive case for robust competition reform, which includes a sensitive and objective regard for the public interest. And some significant benefits have begun to flow from the reforms implemented so far. Unfortunately, to date these arguments have been lost in a milieu of misinformation about competition policy and it implications.

It is understandable that members of the community will have difficulty gaining a complete understanding of an area like competition policy.

Although some may say it is equally understandable, it is in my view far less defensible when political parties and interest groups foster and then exploit this misunderstanding for their own ends.

Well, I believe that the time for turning a blind eye to these types of distortions and misrepresentations has passed. It's time a spade was called a spade, a monopoly a monopoly, and self-interest, paraded as the public interest, self-interest!

National Competition Policy

Despite its recently acquired high profile, competition policy is not a new phenomenon. The current National Competition Policy is substantially an extension of the policy established in 1974 with the introduction of the Trade Practices Act. That Act prohibited anti-competitive behaviour by business enterprises unless they could demonstrate a public benefit in such behaviour continuing. However, the Trade Practices Act had three important limitations – constitutionally imposed:

- it did not cover government business enterprises;
- it did not cover unincorporated businesses operating within a single State border – for example, professional partnerships; and
- it did not cover anti-competitive behaviour specifically exempted from the disciplines of the Trade Practices Act by State or Territory exempting legislation.

The National Competition Policy is in many respects a logical evolution of the 1974 Trade Practices Act. All governments in Australia (supported by all the major political parties) agreed in 1995 to set aside these three limitations – to subject previously exempted anti-competitive behaviour to the disciplines of the Trade Practices Act unless it could be demonstrated that the public interest warranted such behaviour continuing.

In addition, National Competition Policy imposed a national umbrella over a number of reforms which governments were already in the process of developing or implementing – relating to major utilities such as gas, electricity, road transport, and water, and the way government businesses are structured and run.

I must re-emphasize that both the Trade Practices Act and its evolution under the National Competition Policy have comprised a balancing of economic accountability with social responsibility – through the presence and use of the public interest test. This occurs under the Trade Practices Act through the ACCC's "authorisation" procedure and under National Competition Policy through the application of a "public benefit test" in weighing up the pros and cons of anti-competitive regulation, or structures being disbanded.

Exposing the monopolists

Notwithstanding this, certain interest groups, supported by certain politicians, do not seem particularly keen to have the pros and cons of their anti-competitive arrangements subject to scrutiny under the National Competition Policy processes. They appear to "know"

already that their monopoly — not that they would necessarily describe it in those terms — is in the public interest, so why bother having an independent review?

And let me make it absolutely clear that this is the essence of National Competition Policy – that anti-competitive cartels, monopolies or arrangements, and any special legislative provisions maintaining or protecting them, should be subject to independent review to determine if they can be justified in the public interest.

Now I put it to you – the requirement of an independent review that assesses whether it is in the public interest that an anti-competitive arrangement should be maintained, encompasses all those essential ingredients of economic accountability, social responsibility and equity and fairness that dictate that there should be no exceptions to the review process.

For each exception from a rigorous, objective and transparent testing of the public interest raises the prospect, indeed the near certainty, that the public interest will be sacrificed in favour of private self-interests and generally in the dubious cause of political opportunism or expediency.

Well fortunately most governments in Australia are responding to the challenge thrown up by the Hilmer Report. And despite strong concentrated campaigns by certain self-interest groups, they are subjecting these anti-competitive arrangements to rigorous independent reviews – whether they relate to rules of entry to medical specialist colleges, legal monopolies on conveyancing, ownership restrictions on pharmacies or whatever.

Political interests versus the public interest: the benefits and costs of competition reform

You will however understand why the application of National Competition Policy was never going to be easy. When you seek to change behaviour or to remove protections or exemptions that had been in place for decades, inevitably some sections of the community will pay a cost as a consequence of the change. Some of these people will in effect be "innocent victims" of change. But there will also be those whose protections or exemptions from competition are being directly removed, and they will resist that removal, using the usual processes in the political environment. And those people tend to be highly concentrated in a particular industry, profession or region, and thus have the incentive and means to organise effectively and bring political pressure to bear.

On the other hand, significant benefits will flow through to the wider Australian community as a consequence of these reforms. These benefits are now beginning to be realised. For example, we have seen:

- reductions in electricity prices of up to 30 percent;
- cuts in gas prices a high as 50 percent;
- savings in water usage of 20 percent in Queensland towns;

- dramatic reductions in business licenses;
- efficiency improvements leading to lower prices for the customers of government businesses, while at the same time those businesses have doubled the amount they pay to their owner governments; and
- reductions in rail freight rates of up to 40 percent.

Beyond these specific benefits, there are flow-on benefits throughout the economy. However, these benefits will often be diffusely spread and difficult to track. Few people would make the link between reform to electricity industry in one part of the country, for example, and businesses putting on more workers in country towns located several hundred kilometres away. Nor will people easily recognise the role that National Competition Policy has played to date in helping Australia to avoid the threat of recession posed by the Asian economic melt-down, and the adverse effects on unemployment that such a recession would bring.

So we have a situation where reform will bring concentrated costs to a protected section of the community, but diffuse benefits to all Australians. In this situation, it is not difficult to understand why political interests will at times diverge from what is in the public interest.

Facilitating change

All this highlights the difficult task of governments. Recognising the ultimate benefits of reform to the wider Australian community, how do we deal with:

- the costs of change imposed on some sections of the community; and
- the resistance to change from vested interest groups?

Before answering this, we need to recongise that the change to the way our community and economy is structured has been occurring for many decades and will continue to take place right into the next century. Technological changes, global influences and changes in consumer preferences and behaviour are all impacting on the way we provide the goods and services that the community requires and needs. That in turn has a major impact on the structure of our society and where people want and need to live and work. So change is inevitable. The question is what do we do about it and, in particular, how do we help those affected by it?

Helping the victims of change

National Competition Policy deals with the costs imposed on some sections of the community as a result of change by three processes.

The first is the application of a public interest test. When considering whether a particular reform should go ahead, reviews of anti-competitive restriction are required to weigh up the benefits and costs of reform. "Benefits" and "costs" are widely defined, and include matters such as employment, regional investment, environmental amenity, health and safety, and business viability as well as consumer interests and economic efficiency. One potential cost of a reform is any job losses or social dislocation in a particular area that its implementation may cause, and this would help tip the scales away from implementing the reform. Of course, there may be more that off-setting benefits of proceeding with the reform, such as jobs created elsewhere or cheaper prices for consumers Australia-wide. However, in some instances, the need to avoid or limit social dislocation in a particular area may justify not proceeding with a reform. National Competition Policy is designed to accommodate such outcomes, so it is not competition everywhere, nor for its own sake

I should also point out that National Competition Policy does not require the reduction of services either to the bush or anywhere else. The policy fully contemplates that community services obligations should be made available by governments to satisfy social policy objectives, but with two requirements, one that they be transparent and two that they be targeted.

The second process is the transitional staging of reform. It was not envisaged under National Competition Policy that all reforms would be implemented as overnight "cold turkey" changes. Rather, the program provides scope for phasing anti-competitive restrictions out gradually, or for pre-announcing a reform, to give people affected by it time to prepare and adjust. That said, the reform process is programmed to be complete by the 31 December 2000, unless it can be demonstrated to be in the public interest that reform should be staged beyond that date. It was for this reason that the Council urged governments to review the most important areas of anti-competitive legislation early on in the National Competition Policy program.

The third process is the provision of structural adjustment assistance. Such assistance may take the form of direct monetary payments to people or members of groups deprived of pre-existing property rights as a result of a reform. For example, taxi owners often invest their superannuation or go into great debt to purchase a taxi-plate, anticipating that they will be able to recoup the money through the high fares that the restricted availability of licenses allows taxis to charge, or by reselling the plates. This considerable investment clearly needs to be considered when deciding what path reform should follow. Governments can also provide structural adjustment assistance by funding reskilling or redeployment schemes for people who may lose their jobs as a consequence of change. Under National Competition Policy, the Commonwealth Government is paying the States and Territories some $16 billion over a nine year period to 2006 for implementation of the full National Competition Policy program. This provides the States and Territories with the flexibility to enable structural adjustment assistance to be provided where appropriate.

So National Competition Policy provides these three processes to allow governments to assist what might be termed the "victims" of change – those who incur costs as a result of change and on any basis of equity and social responsibility are deserving of assistance to adapt to change.

Combating privilege

But we need to separate from those who are genuinely aggrieved by change from those who have a vested interest in maintaining the status quo and are simply seeking to maintain their existing privileged protections from competition. These groups have demonstrated that they are adept at mounting concentrated campaigns to protect their privileged positions. Those concentrated campaigns need to be countered with a combination of leadership, information, and communication to the community at large – focussing on the privileges being enjoyed by vested interests and the cost being incurred by the community as a result.

I have already mentioned some of these groups today, but there are plenty others. They need to be uncovered, the inequities and inefficiencies which flow from their monopolies exposed, and the self-interest underlying their arguments about the public interest revealed.

We also need to demand of our political leaders an ongoing commitment to open and honest reform, and to eschew the temptation, and be strong in the face of pressures, to yield to vested interest groups.

Summing up

Let me try to synthesise this material and leave you with a parting brief.

The reason that no-one likes a monopoly like a monopolist should be clear to anyone who has played the board game and finished up spending a night in a motel on Mayfair or Park Lane.

But just how angry people get about a particular monopoly depends largely on whether they know that it exists. Everyone who visits a monopolist has less money in their pocket after the experience. But not everyone realises that they are being fleeced at the time.

Most Australians were understandably angered when the lurks and perks extracted by the sole supplier of labour on the waterfront were revealed by the media last year, even if there was anything but unanimous support for the approach taken to address them.

However, on a person by person basis, these spoils are trivial compared to the monopolistic privileges enjoyed, for example, by practitioners in certain professions.

Yet few Australians are really aware of these inequities or, to the extent that they are, have insufficient incentive on an individual basis to question the "public interest" justifications advanced to support them, or to agitate against them.

National Competition Policy is designed to bring these monopolistic restrictions of all shades to account. It subjects them to an independent public interest test to see whether they are really justified. It recognises that there will be cases in which government regulation to underpin product and service quality, to help inform the consumer, or to deal with other problems not handled well by market forces alone, is necessary. Yet it also focuses a sharp eye on restrictions that exclude people who could provide the required quality of service from competing in the market.

In doing this, National Competition Policy recognises the general sovereignty of the consumer in economic affairs. It focuses on empowering the consumer so that he or she can become better informed and have a greater freedom of choice in selecting the goods and services to be acquired, or, where this is not possible, on providing goods and services of reasonable quality at the lowest cost possible.

And yet in doing this, National Competition Policy does little more that extend the anti-competitive disciplines of the Trade Practices Act, that most of us operate under, to those areas that until now have escaped its scrutiny.

It is not surprising that those who have benefited from these gaps in the past should seek to resist this change. The concentrated costs and diffuse benefits which come from competition reform also help explain why these groups are sometimes able to co-opt the political process.

Nevertheless, as the benefits of reforms already taken show, National Competition Policy proffers not just an improvement in equity with ongoing social responsibility, but also major economic benefits as well.

To ensure that the potential benefits are fully realised, our political leaders need to display strength, vision and, well, leadership.

We also have a role to play. Ours is to support those politicians who show such leadership, to call to account those who solicit the easy vote, and to bring to other people's attention the difference between regulation in the public interest and a private interest monopoly.