

Competition policy review and its implications for the Australian economy

This document is based on discussions at the CEDA Council on Economic Policy (CCEP) meeting held 17 October 2014. It does not necessarily reflect the views or opinions of any individual in attendance unless specifically cited. This summary does not reflect the unanimous views of all participants. Individual views may differ from the statements made in this summary.

CEDA's Council on Economic Policy (CCEP) meeting in November discussed the process, findings and recommendations of the Competition Policy Review and its implications for the Australian economy. Competition Policy Review Panel Chair, Professor Ian Harper, described the draft recommendations contained in the Review's Interim Report and Australian Competition and Consumer Commission (ACCC) former Chairman, Professor Graeme Samuel AC, provided commentary on the necessity of competition policy reforms.

Following these presentations, the CCEP discussed the need to reinvigorate competition policy and talked through key aspects of the proposed recommendations. In particular, the CCEP members expressed a range of views on the appropriate architecture for enforcing competition policy, the challenges for regulating intellectual property and the best way to deal with large corporations that could potentially exploit market power.

The Competition Policy Review Interim Findings

It has been over twenty years since Australia's competition policy was comprehensively reviewed. The original National Competition Policy Review (the Hilmer Review) underpinned the development of the National Competition Policy (NCP), which introduced a range of reforms including financial deregulation, the lowering of tariff and removing other trade restrictions, among others. The NCP also initiated a series of reforms aimed at improving the productivity of the non-traded sector, particularly where government regulations limited competition or where large monopolies existed. These reforms were undertaken by both Commonwealth and state governments.

The NCP reforms exposed many sectors of the economy to increased competition, particularly international competition. The result was a strong improvement in productivity growth as companies were forced to innovate and lower prices in some important consumer product and service markets, and stimulated business innovation. Australia's current prosperity owes a great deal to the productivity gains associated with the NCP reforms, particularly for the productivity improvements that occurred in the 1990s.

It was noted by the CCEP that economists frequently take the benefits of competition for granted, while it can sometimes be viewed negatively in the broader community. Competition is a key source of productivity and efficiency in markets — it can drive more competitive prices, deliver better choices for consumers, and

raise living standards for all Australians. It is the process by which rival businesses strive to better meet customer needs by developing and offering desirable goods and services on the most favourable terms. For the most part, more competitive markets lead to greater efficiencies in the use of scarce resources. Yet sometimes the community reaction is to limit it. It can take concerted political effort to introduce successful reforms.

The Competition Policy Review has the intent of reviewing Australia's competition policies and laws so that they are 'fit for purpose' for the current and emerging economy. In particular, it was noted that the ageing of the Australian population mean that the human services sector, where government remains a dominant provider, should be examined to ensure that the provision of health, education and other human services is innovative, cost efficient and responsive to consumers.

The Review Panel also observed that there have been major international developments that have significant consequences for Australia's competition laws. A global supply chain has emerged since the introduction of the NCP, resulting in over one billion people engaged in the world's labour market, predominately located in emerging markets. This global supply chain is making an increasing number of business activities internationally contestable. Increasing globalisation will expose more parts of the economy to international competition, putting pressure on local firms to be more competitive.

At the time of the Hilmer Review, the World Wide Web was in its infancy; now it is ubiquitous. Telecommunications improvements have changed many aspects of business. Increased adoption of e-commerce by consumers and businesses, and the emergence of innovative digital products, has allowed competition to come from unexpected sources. The consequence is that new products and markets have emerged, often expanding beyond conventional geographic boundaries. This increases the choices of consumers and allows small, agile firms to compete with local incumbents. It also means that producers can more easily control the distribution channels of products to end consumers, facilitating practices that may affect the prices paid by Australian consumers (for example, charging more for software if it is downloaded by Australians).

The discussion on the institutional framework for Australia's competition policy was largely welcomed. However, it was noted that the ACCC needs to be highly independent, which would be very difficult with a board of directors. The only way in which such a board could have the appropriate level of independence would be if they were completely divorced from daily commerce. This would limit contribution to the ACCC's deliberations. The ACCC currently has external accountability to the courts and this occurs on an ongoing and consistent basis.

The majority of changes to the competition law were also seen to be highly positive. In particular, recasting the cartel laws could make it easier to prohibit the worst anti-competitive activity. There was considerable discussion about the proposed changes to intellectual property and the consequences of trying to make it more like other tradeable assets. It was noted that the consequences of international trade agreements on the security of Australia's intellectual property is not fully appreciated.

The CCEP extensively discussed the proposed recommendations on changes to Section 46, the so called 'effects test', of the Competition Law. Part of the issue discussed is that this section appears to be politically inspired as it singles out big business for special treatment and uniquely attempts to restrict its

activities. The proposals have the potential to extend the influence of the section to any activity which might have an anti-competitive purpose or effect.

The challenge for the Competition Policy Review will be to ensure that Section 46 achieves its desired outcomes without creating perverse outcomes. The example discussed was in relation to petrol discounts being provided by major grocery chains. Efforts to limit petrol discounts have resulted in higher prices for consumers and higher profits for industry, which should not be the objective of competition policy. Various potential remedies were discussed by the CCEP.

While there had been a lot of commentary on the Interim Report, it was noted that much of it had focused on a limited number of recommendations, such as for taxis, pharmacies and congestion pricing. In contrast, proposed reforms relating to town planning controls, parallel importing and government service provision in areas of health, education and community services have a lower media profile. While they may or may not directly result in improvements to productivity, many of the reforms focusing on empowering consumer choice can significantly improve the quality of an individual's life. An example was provided of a man with a disability who was given dignity by being able to occasionally use commercial facilities rather than relying on social services for meals.

In contrast to many areas that had not received public attention, others faced significant opposition from strong vested interests. Some of these, such as the taxi industry, are facing digital disruption, rendering anti-competitive regulation increasingly redundant. But in many respects, the uncontested reforms are likely to be far more important economically and use up less political capital. With Australia's terms of trade expected to fall over the next decade, and workforce participation falling as a result of population ageing, Australia faces a decade or more where growth in living standards may stagnate, or even fall, if productivity growth does not improve. It is important to reinvigorate the nation's competitive reform agenda.

1 Attending the CCEP were Professor Percy Allan AM, Mark Cully, the Hon. Dr Craig Emerson, Dr Vince Fitzgerald, Dr David Gruen, Professor Ian Harper, Professor Stephen King, Professor the Hon. Stephen Martin, Su-Lin Ong, Professor Graeme Samuel AC, Professor Greg Smith, Nathan Taylor, Professor Elizabeth Webster.