



ACCI POLICY STATEMENT

COMPETITION POLICY

PRINCIPLES OF COMPETITION POLICY

Competition is the underlying dynamic which drives the market-based commercial and economic system which best serves to create wealth and enhance living standards for the benefit of all.

Conversely, impediments to competition reduce the pace and the dividends of economic development and growth, at a cost to all. Interventions which impede competition in pursuit of political or social objectives often impose greater costs than benefits upon economies and often disadvantage those they purport to help.

Competition policy must work to optimise commercial and economic efficiency, acting as a powerful stimulus to economic development and growth. Where governments seek to achieve some social equity or other re-distributional outcome on the basis of 'public interest' or 'public benefit', these should be pursued through other policy channels, such as taxation and/or public expenditure.

POLICY OBJECTIVES

ACCI's overarching policy objectives include:

- prompt and effective implementation of the agreed national competition policy regime within Australia at all tiers of government; and
- the adoption under the auspices of the World Trade Organisation of effective and transparent competition policies which reinforce trade and investment liberalisation.

Specific and near term policy objectives include:

- ensuring consistent application of competitive neutrality rules, including action to identify and/or obviate inappropriate implementation;
- monitoring the structural reform of government business enterprises, in particular the separation of regulatory, monopoly and competitive functions;
- encouraging access to essential facilities in ways which stimulates competition in otherwise restricted markets;
- promoting legislation/regulation review and reform which delivers a substantial reduction in the burden thereof on commerce and industry; and
- monitoring pricing oversight and reform processes to ensure charges and the like by government agencies and business enterprises are based on competition and efficiency criteria.

THE POLICY FRAMEWORK

An effective national competition policy regime is not a discrete, stand-alone initiative, but an integral part of Australia's essential microeconomic reform imperative.

While sectoral reforms in areas such as aviation, telecommunications, post or electricity are necessary, competition policy embraces a more structural, cross-sectoral approach. Both approaches should be regarded as complementary and reinforcing, rather than as alternatives or mutually exclusive.

Competition policy must expand the nature and breadth of competition, applying extensively across the Australian economy, principally by tackling head-on unnecessary and unjustifiable barriers to effective and efficient competition.

Competition policy must focus on liberalising the domestic business environment to allow 'winners' to self-select and thrive commercially and ensure greater empowerment of consumers in the market place.

Competitive Neutrality

Competition policy should open to existing and potential businesses, new commercial opportunities in areas previously dominated by, or reserved for, government operators. It should also expand competition in previously restricted markets.

Competitive neutrality means ensuring Government Business Enterprises (GBEs) have no net advantage over private sector competitors by reason of their government ownership.

Such advantages have traditionally included tax exemptions or concessions, easier/less costly access to finance, or less stringent corporate compliance and financial reporting obligations.

Implementation of competitive neutrality must include the establishment of consistent, effective, objective and transparent compliance mechanisms, to ensure such reforms are not used by governments or their agencies to exploit monopoly or dominant position(s) in a market place, especially in the delivery of essential and/or infrastructure services.

Commerce and industry encourages governments to implement appropriate competitive neutrality regimes through the corporatisation of larger GBEs and the commercialisation of other significant undertakings, both of which create more discrete operating entities with greater transparency in their commercial conduct. The wider and deeper application of privatisation is encouraged.

Government Business Enterprises

The nature and operations of GBEs have changed markedly over the past decade. Less importance is now being attached to any 'public good' roles, with greater emphasis being given to GBEs operating as efficient business organisations, albeit government-owned.

This trend is most evident in the corporatisation of a sizeable number of GBEs and highlighted in the privatisation of an increasing number of such entities.

Commerce and industry considers it essential GBEs be fully and equally subject to competition policy requirements, ensuring a level-playing field for rules-based competition between private and public sector enterprises.

GBEs must also be subject to appropriate 'structural separation'. That is, separating the GBEs' natural monopoly, competitive and regulatory functions.

In the former instance (separating the monopoly from the competitive functions), commerce and industry considers this is essential to ensure there is no unfair advantage arising or cross-dividends flowing from the monopoly to the competition-exposed activities.

In the latter instance (separating out the regulatory from the operational functions), commerce and industry remains firmly of the view it is totally inappropriate for a GBE to be both 'player and referee' in a marketplace.

Such a dual role contains the inherent risks of the GBE lacking full objectivity in regulatory matters and conferring upon itself unfair competitive advantage through the regulatory regime it designs and administers.

Infrastructure Reform/Access to Essential Facilities

The importance of infrastructure reform is underlined both by its economic significance and its traditional poor performance. Four government-dominated sectors in Australia - energy, transport, communications and water supply - account for 16 per cent (or one dollar in six) of the operating costs of most Australian industries.

These sectors are also major resource users, often in competition with the private sector. They are also important determinants of the efficiency and competitiveness of Australian commerce and industry, in both domestic and international markets.

Similarly, various reports have consistently identified evidence of poor performance, including poor capital and labour productivity, excessive and inefficient use of material inputs, inappropriate pricing practices and poor financial performance.

Competition policy must stimulate infrastructure reform through the access to essential facilities regime and sectoral reform initiatives in key infrastructure areas such as communications, electricity, gas, water and all elements of the transport chain.

A consistent, objective and transparent regime dealing with access to essential facilities, which cannot reasonably be duplicated by actual or potential competitors, is an important element of competition policy.

In determining access arrangements the implementing authorities must be sensitive to the implications of their decisions on access (especially terms and conditions, but also charges) for existing and new investment.

Commerce and industry continues to support the corporatisation of the broadest possible range of government commercial-style activities, with a compelling presumption in favour of privatisation where the activity has a commercial orientation and/or operates in a competitive marketplace.

Legislation, Regulation Review and Reform

Legislation and regulation review and reform are a continuing obligation for governments beyond the liberalisation of competition in the national economy.

Such reviews should examine, inter alia, barriers to competition such as restrictions on who is able to enter a market and how those already in a market are able to conduct themselves. Occupational and professional licensing arrangements are relevant in this regard.

The onus of proof should fall on those advocating the intervention to justify the need and the efficiency/effectiveness of the proposed approach over alternatives in objective, rigorous and transparent public inquiry process.

The thresholds applying under the existing national competition policy regime – interventions should not restrict competition unless the benefits of doing so to the community as a whole outweigh the costs, and the objectives of the intervention can only be achieved by restricting competition – are sound.

Commerce and industry supports additional work to enhance the transparency and identify the net benefits/costs of legislative and regulatory interventions in the business environment through the publication by all jurisdictions of exhaustive compendiums of legislation/regulation applying therein. To ensure robustness of these compendiums, those items of legislation/regulation not included shall be taken to have no effect.

Prices Oversight

The pricing of commodities, products and services plays a significant role in the efficient and effective operation of the market. Any policy actions or interventions which distort prices, weaken business competitiveness and economic efficiency and must be held to an absolute minimum.

Commerce and industry believes the competitive market place is the most efficient and effective form of prices oversight.

Where governments seek to apply formal prices oversight arrangements, this should be done consistently and transparently, in particular to GBEs operating in non-competitive markets. Such prices oversight arrangements should also be independent from the GBE(s) whose pricing arrangements are being assessed.

The pricing arrangements of GBEs should primarily reflect the efficient allocation of resources and their sustainable operating competitiveness in the marketplace. Pricing for infrastructure and/or essential services should be based on economic, ahead of social, considerations.

Where governments impose performance requirements on GBEs (such as rate-of-return objectives), these should not have price-distorting effects. Community service obligations should not be funded by price-based cross-subsidies but from publicly accountable fiscal allocations.

Public Benefit/Public Interest

ACCI believes the primary objective of competition policy is to maximise effective and efficient competition across the Australian economy, commerce and industry in order to promote economic efficiency and growth and underlying international competitiveness.

However, in pursuing these goals, the Chamber acknowledges the guiding National Competition Principles recognise restraints on competition can lead to net public benefit, although these first must be subject to examination in open, transparent, rigorous, public inquiry processes.

ACCI believes the 'public interest' and 'public benefit' tests under the national competition framework are best applied in ways which maximise effective and efficient competition across the Australian economy.

In this regard, the primary considerations are international competitiveness, and economic efficiency and growth.

However, the Chamber notes other considerations identified in the Competition Principles Agreement include: sustainable development; social welfare and equity; industrial relations; regional development; and the interests of consumers.

ACCI further believes the 'public interest' or 'public benefit' should be examined over a long term, not a short term, time horizon, given the tendency for costs to emerge before benefits in most reform processes.

Commerce and industry expects a high degree of consistency in the application of 'public interest' and 'public benefit' tests between jurisdictions, industries and sectors, failure to deliver which can produce uncertainty and distort commercial decision-making.

However, any exceptions or cases for special treatment should be allowed only after an open, transparent, rigorous, public inquiry process with clear reasons being made public for the decision taken, including an evaluation of alternative means for achieving the preferred outcome.

Where governments seek to achieve some social equity or other re-distributional outcomes on the basis of 'public interest' or 'public benefit', these be pursued through other policy channels, such as taxation and/or public expenditure.

Implementation of Competition Policy

Contrary to the implicit nature of competition policy, implementation of prevailing competition regimes in Australia has traditionally been the monopoly responsibility of a single agency: the Australian Competition and Consumer Commission.

Commerce and industry welcomes the division of responsibilities in the management of the national competition policy regime – the National Competition Council to advise on policy and adjudicative issues; and the Australian Competition and Consumer Commission to deal with administrative and enforcement matters.

A strong and effective National Competition Council should continue to provide policy advice to Australian governments at all levels on the development and implementation of the agreed National Competition Policy regime and on the allocation of the identified competition dividend payments.

While commerce and industry accepts the initial rounds of assessments and competition dividend payments needed to give added weight to political considerations, later performance assessments and the quantum of any payments must be based solely on the delivery of meaningful outcomes, rather than demonstrations of reasonable effort.

To underpin continued business and public confidence in the Council, appointments thereto must be based on merit, being relevant and substantive experience in commerce, law and/or management, rather than political affiliation or representation of a sectional interest.

Competition Policy in an International Context

The globalisation of commerce and industry, and the liberalisation of trade, investment and capital means competition policy can no longer be regarded as an exclusively domestic policy issue. The nature and reach of competition per se and of competition policy in different national jurisdictions can have a profound effect on the competitiveness of both Australian exporters and those using imported inputs in their domestic business activities.

The World Trade Organisation (WTO) and many of its national members, including Australia, have recognised the tight linkages between international trade and domestic competition policy liberalisation.

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