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# Forum

## Competition policy reform scorecard

*The following is one chapter of a substantial paper originally prepared as the Treasury's submission to the Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy (NCP) of the 38<sup>th</sup> Parliament. However, the 38<sup>th</sup> Parliament ceased before the paper could be formally received by that Committee as a submission. ACCC Journal publishes the chapter for its value as a succinct summary. The next issue of the Journal will outline the ACCC's submission.*

### Progress in major areas of reform

This section describes the progress that has been made in major areas of reform. The emphasis is on reform within the NCP framework but other related competition reforms are also discussed because they are based upon similar principles to NCP.

Overall, there has been substantial competition reform over the last decade. However, the pace of reform has varied between industries and jurisdictions. Some NCP reforms are still being implemented, while many areas are still to be reviewed.

#### *Telecommunications*

Substantial reforms to the telecommunications industry have taken place over the past decade. These have seen the separation of regulatory functions from service provision, the recognition that previous monopolies for some telecommunications services have been eroded, the graduated entry of new players and the progressive opening of the market to full competition (with a supporting regulatory regime to sustain the competitive process). While the industry began its transition prior to

the implementation of the NCP, the reform principles applied to the industry are broadly consistent with those advocated by NCP.

In 1989 Telecom (now Telstra) was corporatised with an independent board of directors, and an independent telecommunications regulatory body, AUSTEL, was established. Limited competition was permitted for value-added services (i.e. reselling services using Telstra's network) and for installing and maintaining customer premises equipment.

From 1991, competition in all telecommunications services was introduced, with two carriers competing in the fixed services market (Telstra and Optus) and three players contesting the mobile telecommunications market (Telstra, Optus and Vodafone). Service providers could offer basic telecommunications services on the carriers' networks. During this period the pay TV market was opened to limited competition.

The most recent phase in telecommunications reforms began in July 1997 when the market was opened to full competition. There are no longer any limits on the number of carrier licences that may be issued, and a regulatory framework has been enacted that promotes efficient competition in the industry. Regulatory responsibility for competition now rests with the ACCC. General trade practices law now governs the competitive conduct of carriers along with additional powers for the ACCC to respond to instances of anti-competitive conduct. In addition, there is an industry specific access regime which aims to maximise the long term interests of end-users by: promoting competition; ensuring calls originated in one network can be completed in other networks (any-to-any connectivity); and promoting the efficient use of, and investment in, telecommunications infrastructure.

*Postal services*

Australia Post (AP) was corporatised in 1989 and service levels and efficiency have been improving markedly in recent years. A central issue in postal reform has been the need to balance the efficiency gains from introduction of competition with the requirement for AP to maintain its CSOs and provide a standard letter service at a uniform rate for all Australians. Following changes introduced in 1984, approximately 50 per cent of AP's revenue is contestable (mainly parcels and express mail) but AP has an effective monopoly on standard letters because competitors are not permitted to carry standard letters unless they charge at least \$1.80 per item.

On 16 July 1998, the Government announced its postal reform package, following the release of an NCC review report. The NCC reviewed the remaining restrictions on competition in the postal services market as part of the Commonwealth Government's commitment under the CPA's legislation review principles.

A key feature of the Government's package is that the standard letter rate will remain frozen at 45 cents until at least 2003. As well, it provides an undertaking that no regional and rural post offices or mail centres will close as a result of the package and continues subsidies to Licensed Post Offices in country areas. The package also includes increased competition in the postal market from 1 July 2000 through reducing AP's regulated monopoly over letters and allowing open competition in international mail. A review is to be completed by 2003 to assess the effects of these changes and the need for further change. Legislation has not yet been introduced to give effect to these reforms.

*Electricity*

The underlying philosophy in electricity reform has been to move away from an industry characterised by vertically integrated monopoly suppliers in separate State markets. The broad objective has been a more contestable structure involving a national market in eastern and southern Australia with generators competing to supply into the pool and customers able to choose from competing retailers for supply of their needs.

In June 1993, Commonwealth, State and Territory governments agreed to work cooperatively to establish a competitive NEM to commence from July 1995. Governments also agreed to implement other structural reforms which involved most jurisdictions corporatising and separating their vertically integrated utilities into generation, transmission and distribution businesses. At the April 1995 COAG meeting, the reforms were extended and brought within the NCP process. There has been some slippage in meeting the original NEM timetable because of technical problems associated with getting the market underway. The NEM is to evolve in stages, with full implementation of the arrangements now expected to commence in late 1998.

The first stage of the NEM commenced in May 1997. This linked the wholesale markets of New South Wales (NSW), the ACT and Victoria (VIC), allowing trade in electricity between these jurisdictions for the first time.

The new arrangements are based on the separation of industry sectors to allow: competition at the generation and retail levels; a wholesale electricity spot market; non-discriminatory access to the interconnected networks; eligible customers to choose who supplies their electricity; and the availability of financial instruments which will allow market participants to manage their risk exposure to spot prices.

The next stage of the NEM will involve the transfer of responsibilities for operation of the electricity market from the States and Territories to the NEM Management Company which will run a central wholesale electricity market in accordance with the National Electricity Code (NEC). The NEC Administrator will administer the Code and regulate the market and access regime.

South Australia (SA) will become a full participant in the market at the time of full commencement of the NEM. QLD will be an isolated participant in the NEM until an interconnector is completed between QLD and NSW, expected to occur in 2001.

Gas

Until recently, legislation in some States restricted the flow of natural gas within and beyond State boundaries (for example, by requiring approval for the sale of gas in excess of particular amounts). Such restrictions were generally intended to avoid the risk of possible gas shortages, or to ensure that gas was available to underpin industrial development within a State. In addition, market arrangements were characterised by very little competition in the delivery of gas, with a single production joint venture generally providing a State's entire gas needs via a dedicated pipeline to a single gas retailer.

At the COAG meeting in February 1994, jurisdictions resolved to develop a nationally integrated and competitive industry. The reforms had two main [elements] — the removal of legislative and regulatory barriers to the free trade of gas within and across State and Territory boundaries, and the development of a uniform national framework for access to natural gas pipelines. These reforms were brought within the ambit of the NCP process at the April 1995 COAG meeting.

In November 1997, COAG agreed on a national framework for third party access to natural gas pipelines. The National Gas Access Code (the Code) will provide a legally enforceable right for third parties, such as suppliers, retailers and users, to negotiate access to pipelines for haulage services on terms and conditions which are fair and reasonable to both access seekers and owners.

The eventual outcome of the third party access regime is expected to be the development of an integrated national gas market and an interconnected pipeline grid which will allow gas to be freely traded across jurisdictions.

SA has passed 'lead' legislation to apply the Code. All jurisdictions, except WA and Tasmania (TAS), have applied the South Australian legislation. WA will enact legislation to apply the Code directly, with essentially identical effect. TAS has agreed to introduce the gas pipelines access law and Code before approval, or competitive tendering for, any natural gas pipeline in that State.

As with electricity, competition in gas retailing is being increased with the progressive lowering of the consumption thresholds which determine the eligibility of customers to choose their gas supplier. In the new competitive gas market, contestable gas customers will be able to contract directly with a gas supplier of their choice, and contract separately with the pipeline owner for the transportation of gas. Further reforms are being pursued cooperatively by governments and industry to increase competition at all levels of the gas industry.

Water

COAG agreed in February 1994 to a major water reform package to halt the degradation of this natural resource in many parts of Australia. The package includes: pricing reforms based upon consumption, and removal of cross-subsidies; by 1998, the structural separation of service provision from water resource management, urban water tariff reform and new systems of tradeable water entitlements; and by 2001, rural water charges reflecting full cost recovery and achieving, where practicable, positive real rates of return on assets.

In April 1995, governments agreed to bring the water reform agenda within the NCP process. Hence, the second tranche of competition payments to the States and Territories is partly conditional on most of the reforms being implemented. The third tranche is tied to the rural reforms.

Jurisdictions are at different stages in, and taking different approaches to, implementing some of the reforms. NSW and VIC are the furthest advanced. There are many elements still to be put in place and it will be difficult for jurisdictions to meet the timetable. Though difficult and complex, reform is vitally important for the broad community, including environmental sustainability.

*Petroleum products*

On 20 July 1998, the Government announced new comprehensive reform of the petroleum industry, drawing on the recommendations of a 1996 ACCC report.<sup>1</sup> Whilst these reforms are not a direct result of the NCP, the principles of the package are broadly consistent with the NCP. Previously, the industry was subject to wholesale prices oversight and restrictions on the number of petrol stations that refining companies can operate. The new arrangements will:

- relax the controls on the retail activities of the petrol refining companies;
- give new competitors improved access to the existing major oil refineries and access to the system of 'product swapping' under which the owner of a refinery in one part of Australia swaps product with a refinery in another part of Australia;
- introduce procedures for resolving disputes between firms involved in the distribution of petroleum products, including small independent service station operators and firms involved in petroleum production; and
- provide independent monitoring of retail prices.

A draft set of principles for a new *Oilcode* has been developed in consultation with the petroleum industry, including representatives of the service stations, distributors and independent marketers. The code will be underpinned by the TPA and will be linked to the repeal of the *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Retail Marketing Franchise Act 1980*. It is intended that the *Oilcode* will provide protection to small business, while maintaining competitive forces in the industry.

*Airports*

More efficient use of airport infrastructure is a focus of recent reforms to airport pricing and ownership. While the Federal Airports Corporation (FAC) used to operate a uniform network pricing system, there has been a move towards more cost reflective pricing, taking into account location and service specific factors. In

1997-98, the Commonwealth owned airports (except the Sydney basin airports and Essendon) were separated from the network operated by the FAC and then individually privatised. A major review of aeronautical charges was undertaken prior to privatisation and a prices oversight arrangement is in place administered by the ACCC, to ensure that privatised airports do not misuse their market power.

The access provisions of Part IIIA of the TPA were used during 1997 when Australian Cargo Terminal Operators Pty Ltd (ACTO) sought declaration of facilities at Melbourne and Sydney airports to conduct freight handling services. The NCC recommended declaration of most of the facilities nominated by ACTO. The Treasurer agreed with the NCC recommendations and 'declared' the facilities — 'declaration' means that negotiations for access to the facilities can be undertaken with the security of an arbitration process. The FAC has appealed the Treasurer's decision in relation to Sydney Airport. The Australian Competition Tribunal will hear the appeal in December.

*Road transport*

Following agreement at the 1991 Special Premiers' Conference, the National Road Transport Commission (NRTC) was established to develop nationally consistent regulations and charges for heavy vehicles.

At the November 1997 Ministerial Council on Road Transport, Ministers agreed to an NRTC strategic plan covering the years to 2000-01. The plan maps national road transport reform for the next three years, making reform objectives and performance transparent.

Progress in achieving road reform is one of the preconditions for the States and Territories receiving Competition Payments under the NCP reform package. An issue yet to be determined is the criteria or targets to be used in assessing reform progress.

When fully implemented, the National Road Transport Law will provide a simpler and nationally uniform operating environment for road transport operators, replacing nine current regimes.

<sup>1</sup> ACCC, *Inquiry into the Petroleum Products Declaration*, 1996.

## Rail

The NCP agreements do not contain specific provisions in relation to rail services although a number of recent reforms to the industry have reflected competition policy thinking. In particular, in a number of jurisdictions control of the track (recognised as a natural monopoly) has been structurally separated from 'above rail' services and some new entrants have begun competing with incumbent 'above rail' operators. The general provisions of the CPA regarding the structural reform of public monopolies and access to infrastructure facilities have been important in this process.

The Commonwealth Government has sold the businesses (other than interstate track) of the Australian National Railways Commission and has announced its intention to sell the Commonwealth's interest in the National Rail Corporation.

Through agreement between the Commonwealth and the States, the Australian Rail Track Corporation (ARTC) commenced operations on 1 July 1998, taking over management of the Commonwealth and Victorian interstate track, and having the task of negotiating access arrangements to track in NSW and WA. The ARTC is a 'one-stop shop' for interstate operators to negotiate access to the national track system.

In 1996, the NSW Government disaggregated its vertically integrated rail monopoly, the State Rail Authority. A number of smaller businesses were established, including Rail Access Corporation (RAC) which now manages the NSW rail track network. RAC has negotiated access agreements with Government-owned and private operators. The Victorian Government has also structurally separated its vertically integrated rail monopoly. The Victorian Rail Track Corporation was established in 1997 to own and operate the Victorian rail track network, and several 'above rail' service providers have been disaggregated from the Public Transport Corporation to provide independent dedicated freight and passenger services.

Several States have also introduced either rail specific or general access regimes under which third parties are able to gain access to the rail network.

## Ports

Port management in Australia has traditionally been undertaken by State government-owned authorities. Most port authorities have undergone considerable reform. The general pattern of reform has seen the creation of a statutory corporation with a commercial focus, and the separation of the commercial activities from regulatory activities. CN principles have been applied, including the application of income tax equivalent payments and required rates of return or dividend payments. Non-core functions have been divested to the private sector, leaving many port authorities with only a landlord role.

While not all States follow the landlord model, the trend to divest functions has meant that capital city port authorities now provide relatively few direct services to ships. The Victorian Government has privatised several ports and has vertically separated the Port of Melbourne Authority.

Overall, the changes have resulted in increased payments to State Governments, and port authority charges per unit of cargo have fallen by an average 21 per cent for the major ports from 1990-91 to 1996-97.<sup>2</sup>

## ACCC Annual Report 1997-98

The Commission's annual report, tabled on 15 December 1998, identified a major focus on small business and consumer protection, including an increased role in product safety, in 1997-98.

Consumer protection work included action on:

- Australia Post, for alleged misleading and deceptive conduct in relation to a bill-paying

<sup>2</sup> Calculation based on data contained in *Government Trading Enterprises Performance Indicators 1990-91 to 1994-95 and 1992-93 to 1996-97*, Steering Committee on National Performance Monitoring of Government Trading Enterprises, June 1996 and April 1998.