

Public Sector Research Centre

Submission to the

Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy

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Introduction

National Competition Policy (NCP) as a set of intergovernmental agreements has set out broad directions for all tiers of government and established two new national institutions to oversee its implementation. However, it does not specify detailed or precise policies and practical implementation is in the hands of:

- the Federal government;
- State governments;
- local governments;
- the National Competition Council;
- the Australian Competition and Consumer Commission;
- the Australian Competition Tribunal; and
- public and private organisations.

Thus, within the framework of NCP there is a range of interpretations of the key elements of the policy being developed and applied. As a result it is not possible to designate a precise list of policies or applications which are the direct and necessary result of NCP or which are universally being applied in all jurisdictions.

In addition, in some policy areas, such as health policy, most States are only now moving from policy or organisational change, such as dividing purchaser from provider roles in services, to implementation which will affect the delivery of services. As a result, many of the social consequences of NCP have yet to emerge.

The Committee has recognised in its Terms of Reference the importance of the impact of NCP on issues such as:

- unemployment;
- changed working conditions;
- social welfare;
- equity;
- social dislocation; and
- environmental impacts.

The relative effects of NCP on urban, rural and regional communities, and the definition of public interest have also been identified as giving rise to socio-economic consequences. However, granting bodies the

capacity to address these issues is an inadequate policy response. These factors must be addressed systematically and consistently. Various jurisdictions have indicated that they are not interested in competition for its own sake, but rather as a tool for improving economic *and* social outcomes. However, the principles and processes of NCP place emphasis on economic indicators. Equal emphasis must be given to optimising social outcomes in the process. Thus, the issue of the interpretation of NCP is an important one. If social issues may be downgraded or ignored through interpretative tools or the lack of them, then NCP will fail to give rise to a socially optimal outcome.

This submission argues that the current approach to implementing National Competition Policy downgrades issues of social welfare and equity. The focus of the Policy is competition and market based mechanisms for allocating resources. It is argued by proponents of National Competition Policy that these mechanisms are inherently more efficient at allocating resources. However, the assumption is that the economy will benefit overall. Little consideration is given to how benefits will be distributed throughout the economy. This submission initially questions the scope of economic benefits likely to flow from NCP and then discusses in detail some of the potential or actual socio-economic impacts of NCP.

In 1995, the Industry Commission estimated that the economy-wide benefits of NCP were:

- a \$23 billion increase in real GDP; and
- a \$9 billion gain to consumers, equivalent to \$1,500 for each Australian household.

In June 1996, the Productivity Commission (the Industry Commission's successor) stated that:

The [Industry Commission] report recognised limitations in the methodology used and underlying assumptions, and discussed the sensitivity of the results.

However, some of the subsequent criticisms of the modelling have substance. For example, it did not allow for productivity improvements in areas such as telecommunications in the absence of reform. The modelling also assumed that all the cost savings from contracting out came from productivity savings rather than partly from lower wages. (Productivity Commission, 1996: 61)

The Productivity Commission concluded that modelling could be refined but "the estimated gains from microeconomic reform would still be considerable". Others disagree, notably Professor John Quiggin

whose analysis gives a far more modest estimate of economic growth of \$2 billion or 0.48 per cent of GDP (Quiggin, 1996: 214-218). Such modest overall gains increase the potential for some groups to gain at the expense of others. The Productivity Commission alludes to the issue of transfers from one group in the community to another but does not address the issue directly in its modelling exercises. The uncertainty associated with both the quantum and the distribution of the benefits of NCP is of particular concern given the quantifiable costs to some groups associated with microeconomic reform. For example, it is of particular concern when employment losses are justified on the grounds that the general beneficial effects of competition will lead to growth in employment in other areas. Furthermore, the issue of transfers from one group to another, or the creation of winners and losers, is inadequately addressed by NCP.

The broader socio-economic consequences of National Competition Policy

See PIAC
Sections 4.1 &
4.2
International
Perspective &
National
Developments
Pages 6 & 7

National Competition Policy is still in the process of being implemented. Governments have been required to address the issues of competitive neutrality, the application of NCP to local government, access codes, and the review of legislation which may be anti-competitive in nature (NCC, 1998a). A limited number of applications for the declaration of significant services have also been made. Despite significant steps having been made in the implementation of the policy, there is further restructuring on the agenda. As a result, the impacts of NCP in a broader socio-economic sense are difficult to measure because they are either just emerging or will depend on restructuring which is still in the planning stage. Nevertheless, because of the permeation of NCP throughout the economy and the size of potential ramifications, it would be a mistake to address the important issue of socio-economic impacts only after the policy had been fully implemented. This submission takes a case study approach to analysing changes which have already occurred. It also examines the reasoning of the bodies involved in order to pinpoint future policy directions. The examples outlined below deal with transfers between groups, public sector accountability mechanisms, employment levels, and working conditions.

At the outset it is important to note that the impacts of National Competition Policy are difficult to isolate in an environment of ongoing microeconomic reform. In this context, it is appropriate to recognise that NCP is an incremental step in increasing the dominance of market mechanisms for resource allocation, rather than a major policy shift. That is, although NCP is quite radical and almost certainly unique internationally in giving an overall shape or framework for competitive restructuring, it is in some cases merely the documentation and formalising mechanism of restructuring policies which have been in operation for a number of years. For example, the restructuring of state electricity sectors in some cases pre dated or coincided with the development of NCP. Similarly, the adoption of competitive tendering and contracting out policies are in keeping with the direction of NCP. Indeed NCP has been used in some instances to justify policies which have grown alongside, rather than out of, NCP.

Transfers Between Groups

The issue of transfers from one group to another, or the creation of winners and losers, is inadequately addressed by NCP. NCP is focussed

on increasing the size of the national cake, rather than making sure everyone receives a slice. Relying on an unquantifiable trickle down mechanism to correct inequities is an insufficient policy response by government.

References are made in NCP documents to compensation for parties disadvantaged by aspects of the policy. The NCC retained Tasman Asia Pacific to report on third party access in the water industry. The report does not deal with the issue of public interest in detail although it does encourage the NCC "to adopt the broadest possible definition to encompass the welfare of the entire community". The report states that

The costs imposed by access may fall disproportionately on one or more groups in society. In some cases, it may be appropriate for those who gain from access to compensate those who lose out. Equity considerations need not provide grounds to reject a declaration application, but may affect timing or terms and conditions of access. (Tasman Asia Pacific, 1997)

No mechanisms for determining compensation are suggested. The NCC has also indicated that it has no capacity to manipulate the timing of access declarations: "The Council has no power to defer consideration of a valid application" (NCC, 1997: 65). A deadline of 60 days also applies to the designated minister. Furthermore, the terms and conditions of access are negotiated by the owner of the facility and the access seeker. The ACCC will arbitrate if agreement cannot be reached through negotiation. Other parties, such as affected communities or employees, are not involved in this process. Thus, although the recommendations of Tasman Asia Pacific are worthy in principle, there are no mechanisms at present for realising its suggestions. Indeed, the report effectively highlights the inadequacy of the current arrangements for dealing with any issues other than the economic consequences for the parties directly involved in the process.

Competitive Neutrality

See PIAC
Section 5
Utilities
Page 8

As discussed above, the interpretation of NCP provisions by relevant bodies will have a decisive impact on its application. Competitive neutrality for significant government businesses was one of the initial principles required to be implemented by the States. Each State was required to produce a policy statement by June 1996. Although most documents make reference to some of the disadvantages faced by government owned business activities, the underlying assumption of the principle is that government owned business activities experience unfair advantages compared with their private sector counterparts. Indeed, the treatment of advantages and disadvantages of government

ownership differs. For example, the Victorian government requires that "in accounting for competitive advantages due to government ownership ... The value of any material advantages from [exemptions from legislation, regulations or local planning laws] should be estimated" (Victorian Government, 1996: 40-41). On the other hand, when accounting for competitive disadvantages arising from government ownership, such as the costs arising from Freedom of Information requirements and other process costs, the government states that "While the opportunity costs associated with these activities may amount to a competitive disadvantage, again this would have to be substantiated" (Victorian Government, 1996: 41). The difference in emphasis is clear. It will be more difficult to establish that government owned business activities experience disadvantages compared with their private sector counterparts. Yet the "disadvantages" experienced by government agencies are not inconsiderable.

The recent Senate inquiry into contracting out isolated some of the specific responsibilities which attach to public sector ownership - these include accountability mechanisms, administrative law remedies under Ombudsman, Freedom of Information and Judicial Review legislation, and privacy safeguards (Senate Finance and Public Administration References Committee, 1998). Submissions to the Senate inquiry argued that accountability mechanisms are costly, and their absence in the private sector is one of the reasons why private bids may be cheaper than in-house bids for tenders. Governments must appropriately cost these obligations when applying competitive neutrality principles as a "level playing field" cannot be established if they are ignored or undervalued. Furthermore, an emphasis on eliminating disparities between the treatment of the private and public sectors must not lead to the undermining of valuable public sector principles.

There is a presumption in favour of competition inherent in policy documents. For example, when determining the costs and benefits of the policies, jurisdictions such as New South Wales have indicated that "the economic and social benefits of implementing competitive neutrality principles *prima facie* outweigh the costs" (NSW Government, 1996:17). The onus is on the government business to show that the economic and social costs of implementation outweigh the benefits. This exercise may be possible for large business activities, but smaller businesses which are still "significant" may have fewer resources to direct towards such inquiries.

A further “disadvantage” experienced by government businesses includes the requirement to fulfil community service obligations (CSOs). Most of the competitive neutrality documents published by the States recommend budget funding for CSOs (Ranald & Thorowgood, 1997). As discussed below in the context of Australia Post, there are concerns that this method of funding increases the vulnerability of services to general cuts in budget allocations. Given that government businesses often fulfil important social roles, it is important that appropriate note be taken of the costs associated with providing access and equity in service delivery.

Access to Services Provided by Means of Significant Infrastructure Facilities

There have only been a handful of applications for the declaration of services provided by significant infrastructure facilities. In the case of Carpentaria Pty Ltd seeking access to rail services in Queensland, the issue of employment arose. A distinguishing feature of this case is the fact that Carpentaria sought access to “above track” facilities and services, rather than simply seeking access to the rail lines. The NCC recommended the rejection of the application, and the Designated Minister rejected the application in 1997. The failure of the application does no detract from the relevance of the issues explored during the process.

Industrial relations, employment and regional development issues were raised in a number of submissions to the NCC. The Public Transport Union (PTU) stated that:

The employment effects of Carpentaria’s potential access to QR services are currently difficult to gauge. The fact that Carpentaria effectively seeks to use QR’s services in their entirety means that the demands on QR employees will not be reduced. However the reduction in revenue which will be experienced by QR will place further pressure on employment numbers. (PTU, 1997: 22)

The PTU pointed to the significant reduction in employment numbers at Queensland Rail in recent years. The PTU also argued that a number of employers in the system would create complications for industrial relations. The NCC determined that the issue of multiple employers and potentially varied conditions of employment was common in most industries and not against the public interest. With respect to employment impacts the NCC stated:

The public interest includes the interests of rail workers, the interests of regional businesses, consumers and new rail operators and their employees.

Because access is likely to generate benefits to many groups and there is doubt whether it will impose any significant costs on rail workers, the Council feels there is insufficient evidence to conclude that declaration would be contrary to the public interest in terms of these issues. (NCC, 1997b: 70)

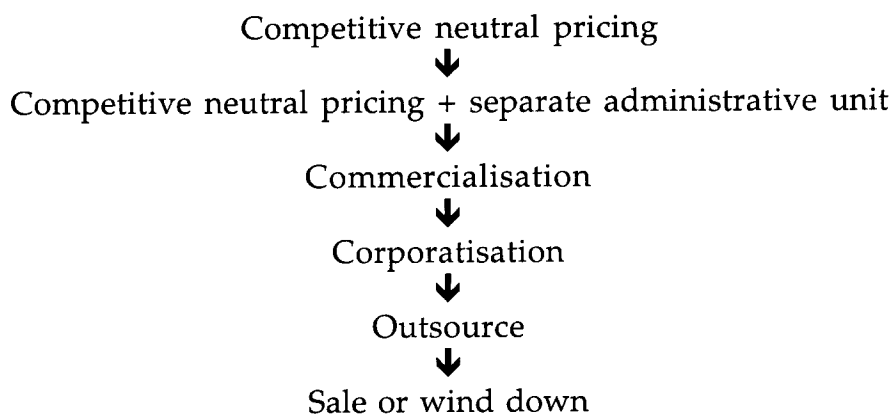
The NCC makes no attempt to isolate the benefits and costs which would arise from access. The rail line serves a limited population and specific industries and therefore there is limited growth potential for demand for goods and services. Thus the benefits which could flow to the local population from more competition for transport services are arguably limited to potential minor cost savings. It is possible that any savings would be retained as profits by companies such as Carpentaria. The NCC argued that there "is doubt whether [access] will impose any significant costs on rail workers" (NCC, 1997b: 70). Similarly, there is doubt whether the people of the region will reap any benefit from access. There is no doubt however that if job losses occur as a result of access, the people of the region will be affected both directly and indirectly. The magnitude of the effect on employment is not easy to gauge. Nevertheless, the issue required closer analysis by the NCC.

Local Government and Competitive Tendering

As discussed above, the concept of interpretation is central to the implementation of National Competition Policy. How costs and benefits of NCP are identified and weighed and the degree to which the concept of competition is embraced as opposed to the practical requirements of NCP, all impact on the interpretation and therefore implementation of NCP. Most jurisdictions emphasise that competition policy is not about the pursuit of competition for its own sake. However, the rhetoric does not reflect the reality in jurisdictions such as Victoria where mechanisms such as compulsory competitive tendering for local government require a rigid proportionality test for competitive tendering and contracting out.

Many parties argue that competitive tendering by local government is not required by National Competition Policy. The Australian Local Government Association (1996) emphasises this point in its submission to the House of Representatives Standing Committee on Financial Institutions and Public Administration Inquiry into aspects of National Competition Policy. The Association states that "NCP requires neither compulsory nor indeed *optional* competitive tendering ...". Nevertheless, the issue of competitive tendering has been addressed by State policy documents on NCP and local council. Some States and territories have indicated that NCP does not require competitive tendering (Queensland, Northern Territory), while others

have implicitly or explicitly linked NCP with competitive tendering (Victoria, South Australia, Western Australia, Tasmania). Victoria describes its progress towards compulsory competitive tendering (CCT) as a pro-active adoption of competition related reforms. The *National Competition Policy and Local Government* statement published by the Victorian Government in 1996 closely links compulsory competitive tendering with National Competition Policy principles, especially competitive neutrality. The Victorian statement establishes a continuum for exposure to market forces:



It is clear that the interpretation given to NCP by the Victorian Government closely links competitive tendering with contracting out. Indeed the purpose of implementing competitive neutrality for government businesses is obscure if it is not anticipated that government businesses will compete with private companies to provide services. The Victorian Government also indicates that competitive neutrality policies apply to non-commercial general government (predominantly tax-funded) activities where competition is being introduced (Department of Premier and Cabinet, 1996: 29).

The impact of competitive tendering and contracting out on employees and communities has been well documented in recent years. Despite its generally favourable treatment of competitive tendering and contracting out, the Industry Commission (1996) recognised that contracting out has a disproportionately negative effect on particular groups of workers such as workers with low skill levels, workers from non-English speaking backgrounds, older workers and women. Reports such as Lyn Fraser's (1997) research, *Impact of Contracting out on Female NESB Workers: Case study of the NSW Government Cleaning Service*, illustrate the potential for work intensification, loss of job security and reductions in working conditions associated with contracting out. Professor John Quiggin has characterised these changes as transfers from one group to another, rather than increases in efficiency (Quiggin, 1995b: 63). The Industry

Commission's own analysis also indicated that workers made redundant through processes including contracting out have difficulty in finding new work. Thus, the extent to which governments may use the concept of NCP as a principle which justifies and indeed, according to some rhetoric, requires competitive tendering and contracting out is of concern as it may undermine the examination of the negative impacts of these policies and a genuine cost benefit analysis.

Conclusion

This section has outlined a number of diverse examples of aspects of NCP being applied in specific jurisdictions. The examples point to NCP and related policies being implemented with little regard for their impacts in areas such as employment, equity, working conditions, and accountability. The bodies responsible for the implementation of NCP, be they governments or agencies such as the NCC, have marginalised these issues, apparently in the belief that a "trickle down" effect resulting from competition led economic growth will benefit the entire community. There is no indication that this effect is being realised. Rather, specific groups, often those who are ill able to cope with additional disadvantages, are being harmed by NCP and related "reforms".

National Competition Policy and Urban, Rural and Regional Communities

The central premise of National Competition Policy is that competition increases the efficiency of services. However, a prerequisite for competition is an adequate level of demand for services. An inadequate level of demand in an unregulated system will mean that a service is either not supplied at all or only one provider will be prepared to provide the service. In both cases there is no competitive market for the service. In the former case, the service will generally not be supplied because the price which would have to be charged to compensate for the low level of demand would be too high for consumers. In the latter case, a provider will have a monopoly on service provision and in the absence of regulation or the threat of competition, a provider will charge the highest price possible.

Postal Services

Obviously regional and rural communities in Australia are most likely to experience inadequate demand for services and goods. These communities have little to gain from National Competition Policy but may potentially lose a great deal. Competition with government business enterprises or access to significant infrastructure will often result in “cream skimming” behaviour by private firms. That is, private firms will be prepared to compete to deliver profitable services but government agencies will be left to deliver services in unprofitable areas. This is a central issue in the current debate around the restructuring of postal services in Australia. If restructuring reduces the capacity of Australia Post to meet its Universal Service Obligations, there will be an increase in pressure to downgrade services in unprofitable areas.

The National Competition Council recommended the retention of “the obligation on Australia Post to provide an Australia-wide letter service, with unprofitable parts of the Universal Service Obligation subjected to community service obligation (CSO) funding from a mix of sources” (NCC, 1998c: 7). The NCC recommended that household letter services remain reserved to Australia Post, while open competition applies to business letter services and all international mail services. The result of this plan would have been the opening up of 94 per cent of Australia Post’s revenue to competition.

The managing director of Australia Post argued that

The NCC hasn't recognised that maintaining an effective, reliable and affordable letter service for everyone, which reaches the great majority of Australians five times a week over vast and often sparsely populated distances is a difficult balancing act.

Under the NCC proposals, new postal service providers would be more concerned with price than quality. We'd be forced to lower our prices to protect our market share and to maintain the economies of scale vital for an affordable service. Inevitably the pressure would be felt in rural areas. (John, 1998)

See PIAC
Section 2
Policy
Environment
Page 5

Community and internal political pressure caused the Federal Government to reject aspects of the NCC's recommendation (Connors & Murphy, 1998; Lewis & Murphy, 1998). As a result, the Federal Government decided not to implement the NCC's recommendations. However, the scheme decided upon still opens a significant proportion of Australia Post's services to competition. Rather than reserving household mail and opening business mail to competition, all domestic mail over 50g is open to competition at any price. Private competitors will also be able to carry domestic letters up to 50g provided they charge at least 45 cents. Private competitors may carry all international mail. These changes mean that the mail market open to competitors of Australia Post will double.

In the face of concerns expressed by rural and regional communities, the Federal government has undertaken to ensure that a minimum level of postal services are available. The undertaking is for a minimum retail presence of 4000 postal outlets, of which at least 2500 must be in rural and remote areas (Minister for Communications, the Information Economy and the Arts, 1998). The 1996/97 Annual Report of Australia Post indicates that this guaranteed number is 462 postal outlets short of the number of outlets which existed at 30 June 1997. Furthermore, at 30 June 1997, there were 2560 postal outlets in rural and remote areas, 60 more than the figure guaranteed by the Federal Government.

The Federal Government's plan delays increased competition and then, when it is introduced, applies it according to the weight of letters, thus theoretically applying equally to both business and household letters. However, the definition of bulk mail, for which discounts are applicable, has been changed to apply to a batch of 300 letters, as opposed to the previous threshold level of 2500. Thus many businesses will be able to benefit from lower rates which will be unavailable to households.

The issue of community service obligations and funding mechanisms is a key issue in competition policy and other microeconomic reform.

As discussed above, the very nature of competition policy encourages a “cream-skimming” approach by private firms which has the potential to undermine services in unprofitable areas. Indeed the public sector has generally become involved in service provision in areas where the private sector would have found it unprofitable or unfeasible to invest itself. The public sector’s involvement was designed to serve both an economic and social purpose in terms of the delivery of essential services such as electricity and water, and the development of infrastructure such as railways and postal services. Thus, it is no coincidence that the very areas to which competition policy applies are defined by issues such social cohesion and welfare, access and equity.

There is general agreement that a standard letter rate should apply across Australia, and that people should be entitled to a minimum level of mail deliveries and access to postal outlets. The issue is how these unprofitable but socially desirable services should be funded. Community Service Obligations are generally funded through cross-subsidies from profitable areas or through budget allocations. The NCC recommended that “community services obligations continue to be funded by cross-subsidies between low cost and high cost household letter services, with supplementary funding from the Commonwealth budget” (NCC, 1998c: 8). The emphasis on cross-subsidies is important as such a mechanism is less exposed to political pressures associated with reducing budget outlays. However, the incorporation of supplementary funding from the Commonwealth budget means that some exposure remains. Furthermore, the nature of the cross-subsidisation recommended means that household letters would be cross-subsidising community service obligations. Business would be able to reap the benefits of competition, while household letters which are less responsive to price signals would bear the additional costs of providing for Universal Service Obligations.

Professor John Quiggin’s response to the issue of cross-subsidies and budget funding for CSOs is that

The basic answer is that the ideal policy is a mixture of cross-subsidy and explicit payments from taxpayers ...

However such a policy is only feasible if competitive entry is prevented or at least constrained. Under a policy of open competitive entry, the only option for preserving uniform payment is a taxpayer subsidy. Considerable difficulties will arise in determining the amount required. Furthermore, given that the political pressure to cut measured government expenditure is much greater than the pressure to maximise the returns of government business enterprises ... it is reasonable to predict that budgetary support for the maintenance of uniform pricing would not be long-lived. (Quiggin, 1995a)

The Australian Local Government Association also expresses concern about the concept of direct budgetary funding for community service obligations. The Association recognises the potential vulnerability of such arrangements to future budget cutbacks (Australian Local Government Association, 1997).

While it is clear that the NCC and the Federal Government recognise the essential role of community service obligations in the area of postal services, explicit and transparent policies should be developed as general principles, rather than dealing with funding on a case by case basis.

Electricity

See PIAC
Section 5.1
Electricity
Industry
Page 8

Some of the issues discussed above have also arisen in the context of electricity restructuring. Electricity industry restructuring has been under discussion by heads of government since 1990. NCP agreements categorise electricity restructuring as a "related reform". The direction and timing of the restructuring have been formalised by various documents and two institutional bodies have been established to administer the electricity Code of Conduct and the market. The focus of electricity reform has been the creation of a national electricity market which separates the vertical layers of the industry, rationalises generation requirements and standardises grid management between States. In 1994, Victoria was deemed to have made "substantial progress in structural reform to achieve a competitive Market" (NCC, 1998b: 59). However, an issue of concern in all geographic regions since privatisation has been security of electricity supply. In 1997 it was reported that "many of the companies also believe Victoria needs to experience blackouts in order to 'appropriately value' electricity supplies" (Hannan, 1997).

In Victoria, the separation of distribution into five companies will result in differing supply costs between distribution regions. Urban and rural electricity users will face the same costs until 2001. However, in the long term rural consumers will pay the entire cost of electricity supply. It is estimated that rural consumers have been subsidised by around \$100 million per year by urban electricity users (Energy Action Group, 1998). The Victorian Shadow Minister for Energy and Resources argues that medium to large enterprises in rural areas will pay between \$57,000 and \$200,000 more per annum than equivalent users of electricity in low price areas. In one sense, this difference could give rise to the more efficient allocation of resources in that new companies which use considerable quantities of energy will set up in low cost areas. However, this prospect is of significant concern for

rural communities, many of which are already suffering from a lack of employment opportunities.

In a more direct sense, the restructuring of the electricity industry in Victoria and its subsequent privatisation had a negative impact on employment opportunities in rural and regional areas. Between the late 1980s and the period just prior to privatisation, the workforce was almost halved in the electricity industry. After privatisation, the full time permanent workforce was again cut by almost 50 per cent. In the Latrobe Valley, the electricity workforce of 10 000 in 1990 was cut to 3 000 by 1996 and 1 700 in 1997 (Loney, 1997). Many of these changes occurred prior to the introduction of National Competition Policy. Nevertheless, they were based on the same types of pro-competitive principles as NCP. The case of the Victorian electricity industry is a stark example of the manner in which benefits for some groups (at this stage, large electricity consumers and private electricity companies) may come at the expense of others. In the Latrobe Valley especially, the impact of unemployment on social welfare and social dislocation has been severe. Families are tied to the location through the ownership of houses which are greatly devalued, and family members are forced to travel distances to find work.

Compulsory Competitive Tendering in Victoria

The relationship between competitive tendering, contracting out and National Competition Policy is discussed above in the section on the broader socio-economic consequences of NCP. In that section it was pointed out that contracting out often has negative consequences in terms of employment levels and working conditions, especially for workers in weak bargaining positions. It has also become apparent that the compulsory competitive tendering regime required of local government by the Victorian State Government has distinct geographic implications. That is, rural and remote councils experience fewer advantages and more disadvantages than councils in cities when implementing compulsory competitive tendering.

In November 1996, a study titled *Competitive Communities...? A Study of the Impact of Compulsory Competitive Tendering on Rural and Remote Areas of Victoria* was published. The study was prepared for three rural shire councils in Victoria.

The majority of the respondents to the study's survey indicated that there were overall negative impacts from compulsory competitive tendering (CCT); 55 per cent reported negative impacts, compared with

25 per cent of respondents who reported overall positive impacts. The study reported:

- The positive impacts of CCT include an improved focus on core business and outcomes, more money for capital works, appreciation of cost, organisational efficiency, better business planning priority setting, reporting, benchmarking and performance measures, cultural change, increased (redirected) funds for capital works and access to innovation and technology.
- Negative impacts include loss of economies, demarcation, loss of organisational synergy and productivity and morale problems caused by the client/provider split, deskilling of Councils, excessively pressured implementation time frames and performance targets, excessive focus on driving down prices to the detriment of other issues, unsustainable prices resulting in contract management and policing problems greater for rural councils than elsewhere, cumbersome processes, excessive paperwork and government reporting, organisational stress, low morale, dual accounting systems and inappropriateness of percentage targets as an implementation tool. (Peter Tesdorpf and Associates et al, 1996: 62)

The report concluded that although the process was still developing, there was evidence that rural and remote councils were not reaping significant benefits from compulsory competitive tendering and that many were experiencing disadvantages which were partly based on their geographic isolation. For example, in many cases local businesses do not have the capacity or skills to compete for council contracts. Thus there is either no competition which defeats the purpose of the process, or the competitor for the contract comes from outside the local area. The latter scenario results in contract dollars flowing out of the region (Peter Tesdorpf and Associates et al, 1996: 62).

The study predicted that as larger contracts were let, the negative employment impacts of CCT in rural areas would be increasingly felt. The study concluded that

the spending losses and their multipliers, described in the Study, will inevitably result in widespread job losses both directly and indirectly in smaller communities. The claimed aggregate economic benefits to the whole of Victoria from this process are likely to be of little interest and no practical value to these smaller communities... (Peter Tesdorpf and Associates et al, 1996: 63).

As discussed on pages 10-12 of this submission, NCP is closely linked to competitive tendering and contracting out. There are general potential problems with contracting out and competitive tendering, including reductions in employment levels and working conditions. These problems are supplemented in rural and remote communities with a

raft of difficulties associated with high pre-existing levels of unemployment, low levels of competition, and the absence of relevant skills within the local community. However, the absence of skills often relates to the ability to formulate a bid and win a contract, rather than the skills to perform the work which was traditionally undertaken by members of the local community. Many councils in Victoria have argued that the model of compulsory competitive tendering implemented by the State government is inappropriate for the specific needs of regional and remote communities.

Conclusion

As both the post and electricity examples indicate, high service cost/low population communities benefit from cross-subsidisation and are disadvantaged by cost reflective pricing. It could be argued that it is fair for rural and remote communities to pay for their own services. However, such a characterisation ignores the significant disadvantages faced by such communities and the important role they play in the structure of our society. Compulsory competitive tendering is also insensitive to the issues facing this part of the population. Reductions in employment levels in agriculture and industry, and reductions in government and financial services have resulted in struggling communities which do not have the capacity to pay for the entire cost of their essential services and are unable to absorb further job losses.

Public Interest: Definition and Application

The inclusion of the concept of public interest in National Competition Policy instruments was controversial and the treatment it has received has not been consistent. David Hawker, Chairman of the House of Representatives Standing Committee on Financial Institutions and Public Administration Inquiry into Cultivating Competition, has stated that:

... it is generally accepted that the ultimate decisions on the weighing up of the costs and benefits are basically political ones, to be justified by the Parliament and in the final analysis by the electors... (Hawker, 1997: 14)

This analysis, however, masks the many steps, divergent interests and ambiguous concepts which are inherent in an application of a "public interest" test. The discussion below makes some general points about the concept of public interest and then uses a case study to examine how it is used in practice.

Broader social and environmental elements were included in the detail of National Competition Policy as a result of lobbying by groups concerned with its narrow economic focus. However, concern has been expressed about the method of identifying and evaluating the public interest. One issue is the appropriate weight to be given to qualitative and quantitative indicators (Webster, 1997). For example, the economic cost of restricting competition in the processing of food may be quantifiable, but the health risks and costs associated with inadequate regulation of food processing are not as amenable to quantification.

Furthermore, consultation with trade unions, and community and environmental groups is necessary for public interest issues to be identified and weighed. In July 1997 a number of organisations, including the Public Sector Research Centre and the Public Interest Advocacy Centre, organised a conference in Melbourne titled *Public Interest in the National Competition Policy: Implementation Issues - Getting it Right*. One purpose of the conference was to provide an avenue for information dissemination and debate. Speakers at the conference indicated that consultation and debate had been too limited. Despite the presence at the conference of representatives of governments and administrative bodies associated with NCP, the past year has not given rise to a significant increase in the level of consultation and public debate on National Competition Policy.

Hawker states that subclause 1(3) of the Competition Principles Agreement is relevant to:

- certain aspects of competitive neutrality;
- the structural reform of public monopolies; and
- the legislation review process.

However, as mentioned above, the application of subclause 1(3) to any aspect of NCP is not as straightforward as it appears. For example, the application of the 'public interest' test to the structural reform of public monopolies through access provisions is complex. The discussion set out below draws on the first application for the declaration of rail facilities. This application for access to facilities in Queensland was made in December 1996 by Carpentaria Pty Ltd.

Case Study: Carpentaria Pty Ltd and Queensland Rail

There are at least three approaches to defining public interest and each approach has a connection with the access process. These approaches include:

- the definition set out in the Competition Principles Agreement;
- the provisions relating to public interest in the Trade Practices Act, and case law which has interpreted the provisions; and
- the guidelines developed by the NCC.

The Competition Principles Agreement lists a number of factors which "shall, where relevant, be taken into account" when determining costs and benefits associated with a particular policy. The factors include:

- 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 a class of consumers;
- the competitiveness of Australian businesses; and

- the efficient allocation of resources (Competition Principles Agreement, 1995, clause 1(3)).

However, the Competition Principles Agreement is a policy document of Commonwealth and State governments and does not provide the legislative underpinnings for the access process.

An access application is made under legislation, the Trade Practices Act, which includes the public interest criterion. The TPA does not define public interest and case law and other interpretive devices are generally used to interpret legislative provisions. The Australian Competition Tribunal and its predecessor, the Trade Practices Tribunal, have been central in developing the concept of "public benefit" in the context of the Trade Practices Act. The approach has given primary importance to the concept of economic efficiency (Cousins, 1997: 58).

However, with respect to access provisions, the NCC has developed its own approach to the concept of public interest. Arguably, the focus of the NCC falls between the two other approaches. That is, it is narrower than the position outlined in the Competition Principles Agreement, but to a limited extent supplements and broadens the economic focus of the Tribunal to include a more developed array of non-economic issues. In the Draft Guide to Part IIIA of the Trade Practices Act, the NCC states that clause 1(3) of the Competition Principles Agreement "does not define public interest for the purposes of Part IIIA of the Trade Practices Act" (NCC, 1996: 29). Instead the NCC dwells on the issue of economic efficiency as "a key public interest consideration" (NCC, 1996: 28). The NCC considers that economic efficiency encompasses technical, allocative and dynamic efficiency. The NCC indicates that it "might consider" other public interest issues, including some of the factors set out in the Competition Principles Agreement, but emphasises that "economic efficiency will play an important role in the Council's deliberations" (NCC, 1996: 29).

The economic focus taken in interpreting the public interest narrows the entire focus of analysis and undermines the importance of social and environmental issues. The Draft Guide produced by the NCC (1996: 28-29) indicated that economic efficiency is a key public interest consideration. Broader social and environmental issues are listed and "might" be considered but they are not expanded upon and it is apparent that they are considered to be of secondary importance. The central premise of National Competition Policy is to increase economic efficiency and therefore the criteria relating to access deal with increasing competition through reducing barriers to participation. This is the focus of the criteria listed in the legislation and in its interpretation of the criteria the NCC has been careful to ensure that

technicalities do not subvert the intent of the legislation. It is apparent that the economic focus of the legislation is primary and secure. However, it should be emphasised that an optimum outcome in economic or market terms is not always the optimum result for society. It is for this reason that concepts such as a public interest were developed. The existence of regulation is acknowledgment of the fact that the economy and untrammelled market forces do not necessarily operate for the benefit of all. Therefore, it is appropriate to take one small step towards balancing the approach of National Competition Policy through the examination of issues other than the economic. The use of the public interest criteria to once more emphasise economic issues and marginalise social and environmental factors and issues of access and equity is unfortunate.

The negative framing of the public interest criterion in the legislation also narrows the scope of the analysis. The NCC has previously indicated that the negative framing of the criterion means that where the impact on the public interest is neutral, an application will be allowed assuming it meets the other criteria (NCC, 1996: 28). Such a legislative framing of the criteria reverses the onus and requires that opponents of access prove a detriment, rather than proponents proving a benefit. The NCC defended the framework provided by the legislation by arguing that "criteria (a) to (e) already address a number of positive elements in the public interest". These "positive elements" are not explained but presumably they rely on promotion of competition being in the public interest.

From the analysis of the NCC (1996) in the Draft Guide, it is evident that economic factors are paramount in its interpretation and application of the "public interest" criteria. However, the treatment of the public interest criterion by the NCC in this case of access to rail infrastructure suggests that broad public interest issues are given even less importance than is indicated by the Draft Guide. Not only are broad public interest factors such as social and environmental issues considered to be of secondary importance in terms of the public interest criterion itself, but the public interest criterion as a whole is treated as less important than other criteria. This view arises from the NCC's statement that since the application does not meet the access criteria on other points, the discussion of the public interest is included for "information only". Such a qualifier was not used in relation to other criteria, which were also given more discussion and analysis than the public interest criterion. Seven separate public interest issues were discussed in submissions and identified by the NCC, yet the NCC gives them scant attention in keeping with its view that discussion is included for "information only".

Many submissions to the NCC addressed social issues associated with access. However, opponents of access also addressed economic aspects of the public interest criterion. The Public Transport Union (PTU) submission, along with others, argued that the declaration of the service in question would act as a disincentive for infrastructure investment. This possibility and the need to avert this situation was recognised in the Hilmer Report in 1993. Of interest is the summing up by the Productivity Commission of the feelings of the business roundtable:

... there were concerns expressed about the application of access regimes to private infrastructure facilities. Business groups argued that care is needed to ensure that arrangements do not create undue uncertainty about control over assets and thereby deter investment. (Productivity Commission, 1996: 64)

The suggestion in this statement is that private infrastructure facilities are a special case. Public infrastructure facilities can and should cope with the investment implications of access, but the private sector should be protected. The other criteria do not address the impact of access on the value and operation of public assets and therefore this issue should be addressed under the public interest criterion.

The NCC's response to the issue of investment was that

there is a potential for access regulation to diminish incentives for businesses to invest in infrastructure facilities and thus limit, rather than enhance, overall competition and economic efficiency. These are reasons why the criteria for declaration were designed to ensure that they would lead to declaration being applied to large, nationally significant pieces of infrastructure, so that the potential benefits were strong and would outweigh the costs. (NCC, 1997b: 68)

The reasoning of the NCC is questionable. It is logical that the larger and more significant the infrastructure facilities at issue, the larger and more significant will be the costs associated with inappropriate investment decisions being made in relation to them. Furthermore, the NCC stated that the aim of the process is to ensure that the "benefits [of access] were strong", however in this case, the NCC accepted that the increase in competition was "unlikely to be large" (NCC, 1997b: 34). Such a conclusion suggests that it is far from clear that the benefits of access would outweigh the costs. In any event, and regardless of the NCC's eventual conclusion on other grounds, this issue merited greater analysis than was undertaken by the NCC.

As discussed above in the section on employment issues, industrial relations, employment and regional development issues were raised

in a number of submissions. The Public Transport Union (PTU) stated in its submission to the access inquiry that:

The employment effects of Carpentaria's potential access to QR services are currently difficult to gauge. The fact that Carpentaria effectively seeks to use QR's services in their entirety means that the demands on QR employees will not be reduced. However the reduction in revenue which will be experienced by QR will place further pressure on employment numbers. (PTU, 1997: 22)

The PTU pointed to the significant reduction in employment numbers at QR in recent years. With respect to employment impacts the NCC stated:

The public interest includes the interests of rail workers, the interests of regional businesses, consumers and new rail operators and their employees. Because access is likely to generate benefits to many groups and there is doubt whether it will impose any significant costs on rail workers, the Council feels there is insufficient evidence to conclude that declaration would be contrary to the public interest in terms of these issues. (NCC, 1997b: 70)

The NCC makes no attempt to isolate the benefits and costs which would arise from access. The rail line serves a limited population and specific industries and therefore there is limited growth potential for demand for goods and services. Thus the benefits which could flow to the local population from more competition for transport services are limited to potential minor cost savings. It is possible that any savings would be retained as profits by companies such as Carpentaria. The NCC argued that there "is doubt whether [access] will impose any significant costs on rail workers" (NCC, 1997b: 70). Similarly, there is doubt whether the people of the region will reap any benefit from access. There is no doubt, however, that if job losses occur as a result of access, the people of the region will be affected both directly and indirectly. The effect may be great or minor but in any case, the issue required closer analysis by the NCC.

In the Carpentaria case, the decision of the designated Minister highlights the lack of consistency in the definition of public interest. The designated Minister, in this case the Premier of Queensland, considered that the application failed on the public interest criterion. It was found that "granting access to QR's above track services, would discourage capital investment both by QR and other users in capital equipment in the above track services" (Premier of Queensland, 1997: 7-8). In this analysis the Premier appeared to agree to some extent with the reasoning contained in the PTU's submission, among others. However, the Premier limited his analysis to the impact of the inclusion of above track facilities in a declaration, rather than

examining the impact of access to track on the investment decisions of QR. In his summary of the decision, the Premier stated that he considers that “the Carpentaria application does not demonstrate a public interest benefit” (Premier of Queensland, 1997: 4). This characterisation of the public interest test does not correspond with the wording of the legislation or the NCC’s discussion of the manner in which the test is negatively framed.

David Hawker is quoted above as stating that, in the final equation, a decision on what is in the public interest is a political decision. The decision making mechanisms within the access process qualifies this statement. An appeal from the decision of the designated Minister is heard by the Australian Competition Tribunal. The Tribunal hears the entire matter anew and is not bound by the findings of other parties, including the minister. Thus, although a political component exists in the decision making process, the final decision may rest with the Tribunal.

Conclusion

There is no consistent, universal approach to the concept of public interest under NCP. The definition or approach adopted will depend on the parties involved and the aspect of NCP which is at issue. The result of this situation has been confusion about how and where “public interest” should be addressed in practice. As a consequence, many of the issues which would be considered by a lay person to fall into this category have been marginalised in the implementation of NCP. As has been highlighted throughout this submission, competition and markets do not necessarily lead to socially optimal outcomes. The inclusion of the concept of the “public interest” is one mechanism for rebalancing the economic focus of NCP and it is a mechanism which must not be marginalised or mired in confusion and uncertainty.

Conclusion

The focus of National Competition Policy is the application and extension of market principles and competition in order to promote the efficient allocation of resources. To that end, some operations of the public sector are being restructured, and legislation and administrative arrangements are being reviewed to promote competition. To use Stephen Rix of PIAC's expression, public issues have been treated as "background noise" in the NCP process. Some attention has been paid to the broader socio-economic impacts of NCP, but often it has taken the form of rhetoric rather than real responses to social concerns.

Competition and markets create winners and losers; that is inevitable. The goal of NCP appears to be to create more winners than losers. Unfortunately those who do not benefit from NCP are often groups who are in most need of assistance - those displaced from employment, with all its associated social ramifications; disadvantaged people dependent on access provisions; people in isolated areas where no market is going to provide services - to name a few.

The challenge for NCP is to ensure that the benefits of economic growth are equitably shared throughout the Australian community. There is little evidence that NCP and the bodies responsible for its implementation have come to grips with this issue. The document on water access prepared for the NCC by Tasman Asia Pacific (1997) starkly exposes the issue. It talks of compensation and the manipulation of timeframes and terms and conditions to minimise the adverse impact of NCP on particular groups. Yet, there is no adequate mechanism within NCP processes for realising these suggestions. In determining costs and benefits, and the public interest, attention should be paid to qualitative as well as quantitative indicators. The difficulties associated with measuring issues such as social welfare or dislocation must not result in their marginalisation. Furthermore, the flexibility of interpretation inherent in much of NCP should not be used to undermine attention to issues of equity, access, employment, social welfare, and the environment.

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