

On behalf of Commerce Queensland I would like to submit the following for consideration in the inquiry into the Review of National Competition Policy Arrangements.

Commerce Queensland is the State's leading employer, business and industry association representing approximately 60,000 businesses Statewide, with a significant proportion of these businesses being located throughout regional Queensland. Commerce Queensland has a direct membership of about 3500 businesses throughout Queensland, but also represents the members of 130 affiliated regional and metropolitan Chambers of Commerce (40,000 members) and the members of 30 industry-specific employer associations (15,000 members).

Trade Practices is a critical component of business and consumer interactions in the modern day Australian market place. The recognition of the need for universality in the application of trade practices and the need for a regulatory regime relating to access to natural monopolies were the key catalysts for the development of the National Competition Policy.

Although well documented it is necessary to re-state the six key elements of Australia's National Competition Policy as these elements are still yet to be clearly understood by the general public and business community at large.

1. Limiting of anti-competitive conduct by firms through the Trade Practices Act;
2. Reform of regulations which unjustifiably restrict competition;
3. Reform the structure of public monopolies to facilitate competition;
4. Provide third party access to certain facilities that are essential to competition;
5. Restrain monopoly-pricing behaviour;
6. Foster competitive neutrality between government and private business when they compete.



Competition policy is all encompassing and affects all Australians to a greater or lesser extent. As such it is imperative that the development, assessment and reform of competition is an ongoing process designed to recognise and learn from shortcomings and successes.

The introduction of national competition policy, thus far has had a dramatic effect on certain sectors, such as small business. There has been a continuous move via various regulatory mechanisms to remove the protection that once was afforded to small business in the 'hope' that consumers would benefit.

National Competition Policy was designed to break down the last vestiges of entrenched monopoly power. For example, during the 1990s governments (other than Western Australia) undertook a comprehensive program of reform of the electricity industry. A national electricity market (NEM) was established with the vision of a fully competitive market, accessible to new entrants in generation and retail supply and also establishing interconnected state transmission networks.

Commerce Queensland acknowledges that there has been a certain level of success to date in the creation of a national electricity market, particularly in increased investment in transmission and generation in Queensland, lower wholesale prices and price convergence across the NEM. Large Queensland industrial users have seen price reductions of up to 40%.

However, there was considerable room for improvement as recognised in 2002 by the Parer Report, which identified that inadequate interconnection effectively regionalises the NEM and removes many of the benefits of a national market. It also noted that competition between generators was inadequate and that there was an inadequate level of participation by end-users in the operation of the NEM. The review recommended the implementation of full retail contestability as an essential component of reform.

The Parer Review also concluded that energy sector governance arrangements are confused and there is excessive regulation and the perception of conflict of interest where governments own the assets. Commerce Queensland agrees that this is a significant concern in Queensland.

In 2003 the Ministerial Council on Energy reported to COAG that further reform is needed to governance and economic regulation of NEM if the full benefits of market reform are to be realised.

Commerce Queensland supports these further reforms as they will promote competition. However, concerns have been raised that are Queensland-specific which are not being addressed. Our members have an interest in having access to low cost, reliable quality energy.

From July 2004, the Queensland Government is introducing full retail contestability to small businesses using more than 100mwh per year, a move which is fully supported by Commerce Queensland and our members. However, in Commerce Queensland's submission to the Independent Panel on Electricity Distribution and Service Delivery for the 21st Century, it was noted that, *"distribution entities are being regulated conservatively by the QCA to ensure operation within a tight revenue cap resulting in severely reduced operating and capital expenditure. At the same time, the sole shareholder, the Queensland Government, is drawing significant special dividends from these entities. QCA does not give retailers an incentive for high service quality performance. The result has been that consumers are facing higher prices and lower reliability than in other jurisdictions. Also with limited contestability, they have less choice of supplier."*



Despite national competition policy the Queensland Government appears to have difficulty separating its role as regulator for that of asset owner. This is a crucial flaw in the current NCP format.

In specific cases such as rural and regional Australia, NCP has severely disadvantaged both consumer and small business owner alike. The NCP has unfortunately delivered big winners and big losers – large business over small, metropolitan Australia over regional and remote. It is acknowledged that the Government has attempted to compensate those classified as having ‘lost’ under the NCP but it is still questionable as to whether compensation has, in reality, made up the losses these groups have experienced.

The major deficiency of NCP is that the concept of competition does not ensure those affected actually have the ability to compete. This is arguably the key issue which has arisen in relation to the effect of NCP in regional areas. The main competitive advantage which small firms have in these areas is their ability to be closer to their customers than larger firms (whether geographical proximity or simply being more flexible).

The problem that regions have is not that small firms are disadvantaged by losing protection (which has been economically costly) but that those affected have limited opportunities to access and infiltrate other markets as they do not operate in well-developed economic environments which would enable them to find and exploit new opportunities.

Over time a number of reports (including those carried out by the Productivity Commission and the Senate) have been released and in the majority have highlighted that, by its very nature, competition policy has delivered these winners and losers. It is imperative that this current inquiry seek as to find sustainable solutions to assist those who are adversely affected by the competition reforms.

NCP as a component of micro-economic reform in general has, no doubt, contributed to the development of a strong national economy. Other factors which have contributed to a greater degree to productivity gains include increased trade and foreign investment, research and development, training and education and the take up of innovation, communication and technology.

However, social, regional and environmental improvements can be far more easily and credibly attributed to a range of state-based programs, federal government incentives and business determination and drive rather than micro-economic reform delivered through NCP. In fact NCP is increasingly being met with scepticism and antagonism in regional and rural business communities in Queensland (please refer to Attachment 1).

The effect of the structural changes experienced in the Australian economy due to NCP, which has the stated aim of fostering efficiency and lowering consumer prices, has, in reality simply seen a transfer of market share, profits and income from small business to larger ones. Businesses have been allowed to grow large through mergers, deregulation and globalisation through successful commercial strategies to the detriment of small business and regional and remote business communities.

These combined with the misunderstanding of those in rural and regional areas and small business and the uneven implementation of the NCP by state, territory and local governments has resulted in a melting pot of confusion and antagonism towards what was a well intentioned concept.



When the Council of Australian Governments agreed in 1995 to the implementation of the National Competition Policy it was agreed that efficiency could not be the only criteria which to use to gauge the need for competition reform. Considerations that fell within the ‘public benefits test’ were imperative to ensure as much equity and fairness in the benefits received from enhanced competition due to the national agreement.

Unfortunately as time has passed efficiency, it would appear, has become the key and in many cases only criteria used to assess the desirability of increased competition. Basic economic principles teach us that there are always equity trade-offs created by increased efficiency why has this not been a greater focus in the implementation of the NCP?

NCP is, by its very nature, intrinsically linked to the *Trade Practices Act 1974* and as such any review of the NCP must invariably incorporate investigation into the way the TPA is effectively assisting in the competition process. In its response to the Dawson Review, the Government announced that it accepted the recommendations of the Dawson Committee agreeing that a process be established to allow small businesses to collectively bargain with large business. The Dawson recommendations proposed the following:

- a notification process be established for collective bargaining by small business;
- a transaction value threshold be adopted to provide a definition of small business; initially to be set at \$3 million;
- a period of 14 days to elapse before a notification takes effect; and
- provision should be made in these arrangements for third parties to make a notification on behalf of a group of small businesses.

In accepting those recommendations, the Federal Government also noted that small business would retain access to the authorisation process, the notification fee would be set at an appropriately low level, immunity under the notification would extend for three years and third party representative actions would be allowed. The Government also said that the notification process will ‘*aim to provide an appropriate balance of power where small businesses are competing or dealing with businesses that have substantial market power*’. It is imperative that these recommendations are acted upon as a matter of urgency and should in fact compliment the recommendations that will be determined by this inquiry into the NCP.

A final consideration that must be given in the review of NCP is the capacity of state governments to retain a market power position within certain industries whilst also having carriage of regulatory oversight in these areas. Queensland has attempted to address one such situation with the separation of WorkCover Queensland from the regulatory oversight body of Q-Comp but there are still questions as to the true effectiveness and impartiality of the regulator.

It is Commerce Queensland’s strongly held position that there needs to be an independent arbitrator that assesses competitive neutrality. The Queensland Competition Authority needs to be given regulatory oversight of those areas where the national competition policy principles are being used to deregulate or re-structure industry. This will improve the transparency and independence of these processes. We urge the Commission to investigate ways in which this action can be progressed.



Thank you for the opportunity to provide comment to the Productivity Commission on this important issue. We look forward to reading the Commission's final recommendations in due course.

Yours sincerely

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