

AUSTRALIAN HOTELS ASSOCIATION

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10 June 2004

NCP Inquiry
Productivity Commission
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REVIEW OF NATIONAL COMPETITION POLICY ARRANGEMENTS

As the industry group representing hotels, pubs, resorts and accommodation establishments throughout Western Australia the Australian Hotels Association (WA) welcomes the Productivity Commission Review of National Competition Policy (NCP). The hotel and hospitality sector in WA generates over \$2 billion for the State economy making it a very significant industry and a major employer. An NCP review of liquor licensing undertaken by the WA Government has provided direct experience with the impact of competition policy principles and the process of NCP assessment.

1. The Existing Reform Process

The initial principles behind the competition policy reform agenda designed to deliver greater competition across larger parts of the economy particularly in sectors dominated by Government Enterprises were supported by all State Governments. In some areas this has led to greater competition and increased choice for the consumer. An assessment of the effectiveness of NCP reform in each sector should be based upon whether the reforms actually increased competition leading to increased productivity, lower prices, and improved quality or range of products available to the consumer.

In some areas where competition law did not previously exist such as those sectors dominated by Government Businesses competition policy reform has had a significant effect. In other sectors where private enterprise was already operating in a competitive environment the outcome of applying competition policy reform can potentially be quite detrimental.

2. The WA Liquor Licensing Review

The WA Government undertook a NCP Review of Liquor Licensing, which highlighted some areas we believe could be improved in the competition policy assessment process.

The National Competition Council (NCC) stated that there were two areas requiring review in regard to WA Liquor Licensing legislation:

- (a) Public needs test
- (b) Sunday trading for liquor stores

The State Government, motivated by a desire to claim the maximum bonus payment available for progressing NCP reforms announced the deregulation of liquor licensing. The Government decided not to lodge a public interest case with the NCC or the Federal Treasurer to justify the community benefit or public good of the existing legislative provisions.

The Government's position raised considerable concern amongst many groups including the hotel industry, health research specialists, police, independent liquor store operators and opposition political parties. Of considerable concern was that in this instance the good that's being regulated is a drug. The community has an expectation that the sale and consumption of liquor will be controlled due to the potential social, health and safety issues as a result of abuse. This view is reinforced by Governments who provide the legislative framework within which the sale and consumption of liquor is controlled and not left solely to market forces.

Furthermore the characteristics of the WA market place needed to be taken into consideration. The hotel industry (excluding accommodation) is predominantly small family owned businesses therefore making it an extremely competitive environment with approximately 700 hotels competing for market share.

There were also several concerns with the scope of the review. Omitted from consideration was the Director of Liquor Licensing Policy Guidelines of which several aspects operate directly to inhibit the commercial freedom of licensees to compete and operate within the objectives of the Liquor Licensing Act. The Guidelines impose significant restrictions on licensees' ability to advertise and promote their business, customer service, advertising, pricing, operation of happy hours, operation of reward and VIP clubs, and attracting new customers. The current guidelines concerning the Responsible Promotion of Liquor are directly designed to influence competition by denying the use of certain promotions as legitimate economic activities. Overall, the Responsible Promotion of Liquor Guidelines in their present form place licensed premises at a major disadvantage when competing for the consumer's entertainment dollar, as they are unable to use their primary product as a marketing tool.

3. The NCP Assessment Process

The NCP assessment process restricts the NCC to only receiving the views of State Governments. Given that State Governments may be in some instances motivated by the bonus payment associated with reform the views of industry or social groups may not be adequately conveyed. If NCP is to continue, a mechanism to allow those groups which are directly affected by any legislative change to liaise directly with the NCC needs to be available. The NCC has stated in its assessment reports that in regard to liquor some States did not submit a public interest case. There were clear arguments to maintain the existing legislative provisions for the public good in regard to the two issues raised by the NCC in Western Australia and these should have been brought to the attention of the NCC. Due to concerns that competition bonus payments are not facilitating reform but rather dictating an outcome, desirable or otherwise, alternative assessment process, particularly communication strategies should be considered.

It is also important to revisit the original principles upon which NCP reform was founded. Large scale economic reform, particularly in the area of utilities and finance where Government has dominated supply is very different to engaging in micro reform. If a market place is already highly competitive due to a large number of small privately owned businesses the role of NCP should be questioned. The WA hotel industry is a good example of a highly competitive industry where deregulation of the liquor industry is likely to reduce competition by delivering greater market share to the major retail chains. This is likely to have a negative impact, particularly in regional areas.

Conclusion

The question posed in this review of the future need for NCP reform needs to be based upon whether the industry sector being considered is already subject to a reasonable level of competition or will further deregulation only lead to a reduction in the number of participants in the market place. If the NCP moves further away from macro reform then its effectiveness should be questioned.

Consideration should also be given to the use of bonus payments to facilitate reforms. State Governments have argued on several occasions that they cannot afford the financial penalty of not receiving the payment and are therefore introducing undesirable legislative change.

In order to ensure a thorough and comprehensive review can be undertaken by the NCC, provisions should be made for affected industry groups to be able to liaise directly with the NCC. This will remove any concerns over State Governments not appropriately arguing the public interest case.