

9 December 2004

NCP Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

& By email to:

Dear Commissioners,

Re: Review of National Competition Policy (NCP) Arrangements

I note that Care has registered to attend the Public Hearing in Canberra on 13 December 2004. Our appearance time has been confirmed as 12.15pm. The current President of the ACT Council of Social Service, Robin Brown, has indicated an interest in attending the Hearing as well, to appear with Care. I will complete a further online registration form for Mr Brown on or before Friday 10 December.

Because of the timeframe involved, our comments will focus predominantly on the Commission's references to consumer protection policy.

Introduction:

Care Inc has been the main provider of financial counselling and related services in the ACT and region since 1983. Care also hosts the Consumer Law Centre of the ACT, operates the Territory's only No Interest Loan Scheme, has an active Community Development and Education program and contributes actively to policy and law reform debate.

Our clients are amongst the most vulnerable and disadvantaged consumers in our community. The main reasons our clients report for seeking Care's assistance, relate to problems with credit and debt. The causes and effects of those problems can however be diverse. In the 2003-2004 financial year, Care responded to over 2200 new requests for direct service assistance.

The limitations of Competition:

A common theme amongst the written submissions of consumer and/or welfare agencies in the course of this Review, has been the limitation on the so-called benefits of competition for vulnerable and disadvantaged consumers.ⁱ Those observations accord with the experiences described to us by our clients. It was an issue that was central to the joint Consumers' Federation of Australia/ Care submission to the Senate Inquiry into Poverty, where the following observation was made:

The CFA and its member groups acknowledge many benefits flow from competition. Any expectation or reliance that those benefits will flow evenly through the community is, in the opinion of the CFA, misplaced.ⁱⁱ

That observation sits comfortably with some of the Commission's comments on page 1 of the earlier Issues Paper, including:

The Productivity Commission recognises that some groups will be disadvantaged by competition policy...

It is often the case that our clients do not share the "benefits" delivered by competitive markets. Products and services may not be available to them at all, or where they are, they are more expensive because they cannot take advantage of relationship discounts, or bundling, or do not belong to professional associations and so the list goes on.

There are however more perverse sides of competition, without appropriate policy and regulatory counterbalance. One such example occurs where the vulnerability or disadvantage of consumers becomes the competitive driver. Markets grow and flourish with the express purpose of taking advantage of disadvantage, such as in the burgeoning fringe credit market.

It is matter of increasing frustration that appropriate responses to problems like the growth and prevalence of fringe credit provision are inhibited by the pre-eminence of competition as a policy priority. One explanation is that the counter balances – social policy and appropriate consumer protection regulation are not viewed as priorities in their own right, but as considerations within the competition framework. It is a concept that we have attempted to capture in the diagram annexed to this brief submission.

None of the foregoing is to suggest that effort not be put into ensuring competition delivers the best, fairest outcomes. It is more about recognising what competition does not consider and ensuring that the right tools exist for those additional considerations.

Reviewing Consumer Protection Policy:

For a number of years Care Inc, along with our colleagues in the consumer movement more broadly, has been calling for proper and full review of consumer protection laws and policy frameworks. In particular, Part V of the Trade Practices Act has languished while the competition elements of the legislation have been reviewed, re-reviewed and updated. This was the subject of a paper our agency presented at the National Consumer Congress hosted by Consumer Affairs Victoria, in March 2004.ⁱⁱⁱ

We welcome the Commission's stated intention to undertake such a review, however suggest that the language in the Discussion Paper may need further consideration to properly understand and scope the undertaking. For example the commentary on pages 216 – 218 (incl) appears preoccupied with consumer protection as a sub-set of competition and of undertaking cost-benefit analyses of

existing policy and regulation. With respect, that misses the point entirely. To follow from our earlier comments, for consumer protection to act as an effective and appropriate counter-balance to competition it must be properly recognised as a priority in its own right.

There are many current examples of dysfunctional markets that deliver poor consumer outcomes generally and appalling, unfair outcomes for vulnerable and disadvantaged consumers specifically. Some, like the move to a national electricity market, evidence the poor outcomes that follow an artificial insertion of competition where it is illogical, perhaps impossible to create genuinely competitive processes. Others, such as telecommunications, show the folly of expecting or trusting industry to behave with good faith in self-regulatory endeavours unless there is a credible threat of consequence for non-compliance.

Another example can be found in the Commission's report on its Inquiry into First Home Ownership. One of the most important recommendations in the report was that Government review the taxation advantages provided to the purchasers of investment properties. There is no lack of competition in this market. Indeed the overheated home market has been fuelled in no small part by the skewed tax approach – in effect penalising ordinary families trying to purchase their first home. It has flow on consequences for the rental market as well, affecting many more low-income consumers.

Government ignored this recommendation, so a fundamental structural issue remains un-addressed. The market continues to respond as one might have predicted, seeking to take full commercial advantage. The resultant product range being offered by several major banks has sought to mainstream guarantees, with parents and family members used as leverage for first home buyers to obtain personally unaffordable loans. With offerings of this type there exists real potential for future disaster, not only for the borrowers but the guarantors, most likely retiree parents that we have just spent a generation educating about their obligations to fund their own retirements.

Conclusion:

We support the Commission's recognition that competition has limitations. Those limitations can be balanced by appropriate social policy and consumer protection regulation. We welcome the intention to review consumer protection frameworks as long overdue. For that review to add value it must accord due weight to consumer protection as a policy priority in its own right.

Yours sincerely,

David Tennant
Director.

ⁱ Examples of submissions that make such observations are those by the Council of Social Service of NSW, the Consumer Law Centre Victoria and the joint submission of VCOS, Brotherhood of St Laurence and The Centre for Public Policy (University of Melbourne).

ⁱⁱ Consumers' Federation of Australia and Care Inc Financial Counselling Service, joint submission to the Senate Community Affairs References Committee, Inquiry into Poverty in Australia, Canberra, 17 April 2003, p.7

ⁱⁱⁱ A copy of the paper entitled "Reviewing and updating the consumer protection provisions of the Trade Practices Act – Recognising and navigating the speed humps" is available of the Consumer Affairs Victoria web-site, www.consumer.vic.gov.au under conference proceedings, National Consumer Congress March 2004.