

PRODUCTIVITY COMMISSION REVIEW OF THE NATIONAL COMPETITION POLICY ARRANGEMENTS

Department of Transport and Regional Services Submission

July 2004

<p>The views expressed in this submission are those of the Department and do not necessarily reflect those of the Minister for Transport and Regional Services or the Government.</p>

1. DOTARS approach to competition policy

The Department of Transport and Regional Services delivers transport and regional development programmes and services to assist our Ministers to achieve the Australian Government's desired outcomes for the community.

The overriding portfolio outcomes sought by the Department of Transport and Regional Services (DOTARS) are:

- *a better transport system for Australia; and*
- *greater recognition and opportunities for local, regional and territory communities.*

Transportation is an important element in Australia's economic prosperity, providing Australians with access to a high standard of general services and facilities that are safer, more effective and efficient. The Government, working in partnership with communities, provides programmes and services specifically for communities in Australia's regions, including rural and remote Australia, to foster the social and economic capacity of regions and facilitate their opportunities to share in the benefits of Australia's economic success.

DOTARS considers that competition reform has been, and will continue to be, a key contributor to a better transport system for Australia.

Many regions have been able to achieve economic growth and grasp new opportunities generated through microeconomic reform such as those that have been promoted by National Competition Policy (NCP). However, it is widely recognised that the costs and benefits of reforms associated with competition policy have been unevenly distributed across Australia's regions. The *Stronger Regions, A Stronger Australia* statement outlines the Australian Government's commitment to assist regions cope with structural change. DOTARS considers that any future national competition agreement should require a commensurate commitment by States and Territories to address the regional impacts of competition reform.

2. AusLink – a new way to plan, deliver and fund transport infrastructure

On 7 June 2004, the Australian Government released its White Paper on transport reform. *AusLink – Building our National Transport Future* sets out a far reaching transformation of the way in which Australia plans, funds and delivers land transport infrastructure. Under AusLink, the Australian Government will take a strategic approach to national land transport planning, funding and investment decision making. A copy of the White Paper is attached.

AusLink contains the following core components:

- a defined National Network of important road and rail infrastructure links and their intermodal connections;
- the first National Land Transport Plan which outlines the Government's approach to improving and integrating the National Network, and the investments it will make;

- a single national funding programme; and
- separately earmarked funding for local and regional transport improvements.

Importantly, AusLink provides for the first time an integrated corridor approach to planning and infrastructure investment. This new approach focuses on meeting future passenger and freight needs in the best way, irrespective of the transport mode, and is designed to encourage integrated transport and land use planning to improve transport, urban development and environmental outcomes.

AusLink's effectiveness in delivering better transport outcomes will also require continuing progress in complementary policy areas including transport safety, security, environmental outcomes, logistics and regulatory reform.

3. Land transport regulatory reform

A system of regulation that is efficient, flexible, encourages improvement and innovation, and yet provides consistency and certainty across State and Territory boundaries, is essential for Australia to meet its future freight task needs.

Most regulation of road and rail transport operations is undertaken by the States and Territories, who also ensure application and enforcement. In the past, this has led to significant differences in law and practice resulting in major cost impositions on transport operations across State borders, and limited ability to achieve productivity, safety and environmental reform on a national basis. However, since 1991, the Australian, State and Territory governments collaborated on improving the consistency of road related regulation through the former National Road Transport Commission (NRTC).

The Australian Transport Council and Heads of Government agreed to establish a National Transport Commission (NTC) on 15 January 2004 to replace the NRTC. The NTC's responsibilities now encompass road and rail regulation as well as inter-modal operations. The NTC has prepared a first national transport regulatory reform work programme for road, rail and intermodal reform over the next three years.

3.1 Road transport reforms under the original NCP agreement

The 1995 NCP agreement did not provide details of specific road transport reforms. Rather the reforms to be assessed for NCP purposes were later determined by the Australian Transport Council and agreed by COAG.

The development of the road transport reform package largely pre-dates the NCP process. Indeed, the NRTC had already been established and funded by the Commonwealth and the States and Territories to achieve this goal.

The original reform package has been substantially implemented and DOTARS considers that a well-established and cooperative process is now in place to ensure that a uniform or more nationally consistent approach to road transport

regulatory and operational matters is maintained. Details on this can be found at www.ntc.gov.au.

3.2 *Reform initiatives underway through the NTC*

Key road reform initiatives now being progressed through the NTC processes include:

- performance based standards as a basis for regulating the technical performance of vehicles rather than vehicle weight or dimensions. This has the potential to provide industry with significant opportunities for innovation and productivity gain while improving safety and environmental performance and decreasing consumer and infrastructure costs;
- compliance and enforcement reforms which include holding liable all parties that contribute to illegal behaviour, not just the driver, and introducing penalties which better fit the offence;
- a better driving hours and fatigue management regime which provides more flexibility in the way operators do business while at the same time ensuring better fatigue management;
- vehicle tracking technology which in the future will be able to ensure compliance with regulations together with less intrusive inspection and enforcement regimes and more flexible operating conditions; and
- a road user charging determination, explicitly linked to heavy vehicle fuel tax credit arrangements, that will better align heavy vehicle charges with attributable road maintenance and construction costs.

The rail industry has gone through significant change over the past 10 years from an industry dominated by publicly owned, vertically integrated state based rail systems to entities that are largely vertically separated, often nationally focussed and mostly privately owned. The opening of rail to third party operators has been a key achievement of the competition reform process and has resulted in a much stronger commercial focus within the rail industry. The open access regime is over sighted by the ACCC at the national level and equivalent bodies at the state level.

AusLink will provide a significant impetus to further commercial development in the rail industry through the \$1.8 billion investment programme by the Australian Government and the Commonwealth owned Australian Rail Track Corporation (ARTC) on the National Network over the next 5 years.

In keeping with structure, ownership and access changes in the rail industry, there needs to be a re-consideration of the approach to rail regulation to achieve a national system that does not impede the growth of the rail industry and ensures improved safety outcomes.

In 1996 Australian Governments signed an Intergovernmental Agreement on National Rail Safety. The Agreement was directed towards achieving a nationally consistent approach to rail safety and required the establishment of legislation that allows for the application of the Australian Rail Safety Standard as the basis for accreditation. By 1998, all States had introduced legislation or

processes for consistent rail safety regulation and mutual recognition of rail accreditation.

The need for rail regulatory reform stems from:

- differing requirements and conditions for rail safety accreditation between various jurisdictions;
- differing accreditation requirements within the same jurisdiction;
- interstate rail operators being faced with the need to comply with several differently based access regimes across the national rail network; and
- the tendency for governments to retain jurisdiction rather than cede safety and operational responsibility to separate or a central organisation owing to concerns over public accountability.

Through the Australian Transport Council and the NTC, work is underway to address several of these issues on a collaborative basis. The States and Territories have commenced working with the industry to put in place a 'one-stop shop' approach to rail safety accreditation. The NTC has been tasked with reviewing the existing rail safety regulatory arrangements and developing options for its improvement. This will include a single rail safety legislative framework for adoption by jurisdictions.

The Australian Government has also outlined in the AusLink White Paper its support for other rail regulatory reforms including:

- developing a national framework for communications and train control systems; and
- urgent incorporation of security procedures for dangerous goods into the regulatory requirements for road and rail.

Putting in place the package of rail regulatory reforms will require the agreement of all of the jurisdictions and the track and above rail operators.

While there has been some progress since the 1996 Intergovernmental Agreement on Rail Safety, there is still much to do to achieve national consistency. The need for further regulatory reform in the rail sector is particularly relevant for the expanding interstate market and those track managers and train operators in that market who currently operate in a multi-jurisdictional environment, rather than under a single regulatory system.

Ongoing regulatory reform is also required to ensure that the benefits of the major infrastructure investment programmes announced by the Australian Government and the Australian Rail Track Corporation in June 2004, in relation to the interstate rail network on the Eastern Seaboard corridor are properly realised.

Such regulatory reforms are essential for ensuring that rail plays its part in meeting the doubling of the national freight task expected in the next 20 years.

3.3 Linking competition payments to further land transport reforms is unlikely to produce better transport reform outcomes.

DOTARS does not, at this time, believe that assessment of future road and rail transport reforms that may be developed through the NTC should be linked to NCP payments.

DOTARS considers that effective co-operative mechanisms under the Australian Transport Council and based on the work of the NTC can effectively deliver the regulatory reform agenda. A linkage at this time to any future NCP payments could undermine the cooperative basis of existing processes, effectively serving as a disincentive to the States and Territories to cooperate and contribute to ongoing road and rail transport reform.

4. Regional Australia

If competition payments are to be part of a future National Competition Agreement with the States, DOTARS suggests that the Commission consider whether payments should be conditional on States performance in assessing and addressing the regional impacts of competition reform.

4.1 Government recognition of the particular difficulties of regional communities in adjusting to competition and other reforms.

All Australian communities face significant change from a wide variety of domestic and international sources. Such change results from new government policy and institutional reform, changed economic patterns of development, technological advances, and new environmental and social pressures. However, many rural and regional communities have greater difficulty in adjusting to the structural changes they face than larger centres with more diversified economic structures. Such difficulties are magnified by local factors such as a lack of employment opportunity, outward migration of young people, and an inability to attract or retain skilled employees.

The social security and tax systems, as well as generally available adjustment measures, will usually be the most appropriate vehicles for assisting the adjustment process and moderating adverse distributional impacts. However, there have been many occasions when the Australian Government has considered that additional assistance is required to support adjustment in specific locations. Recent examples of Australian Government initiatives to assist regional adjustment include:

- Sugar industry reform package (\$444m)
- The Dairy Structural Adjustment Program (\$1.63b)
- Sustainable Regions Programme (\$100m)
- Namoi Valley Structural Adjustment Package (Up to \$20 million over 10 years)
- The Rail Reform Transition Program (\$20m) in response to privatisation of Australian Government owned railways
- Newcastle (\$10m) in response to the closure of the BHP Newcastle steelworks.

4.2 Recent Australian Government initiatives to ensure regional adjustment issues are considered in NCP implementation.

In its *Stronger Regions, A Stronger Australia* statement, the Australian Government indicated that the social and economic interests of rural and regional communities would be taken into account in the implementation of NCP. This included a requirement that reform of regulatory arrangements be assessed against the interests of rural and regional communities. The statement indicated that processes for the review of legislation should seek the input of key rural and regional stakeholders and that the outcomes of these processes should be fully and clearly explained.

The statement reiterated, and made explicit, the requirements to consider regional effects that already existed within the NCP processes. For example, the matters to be taken into account when assessing the 'public interest' according to the Competition Principles Agreement (CPA), already included 'economic and regional development, including employment and investment growth'.

The proposal in the statement to have a member of the National Competition Council (NCC) to give particular consideration to rural and regional interests was implemented without the need to change the formal NCP agreements. The appointment of Dr Wendy Craik strengthened the NCC's ability to consider rural and regional issues.

NCP reforms were agreed to be undertaken by the Australian Government as well as all State and Territory Governments. The responsibility to ensure that key rural and regional stakeholders are consulted about and informed of competition reform lies with the government that undertakes the reform. Where reform is the responsibility of the Australian Government, the Australian Government, where possible, seeks to involve key stakeholders.

4.3 Linking competition payments to regional adjustment issues would strengthen the consideration of these issues in NCP implementation

It is widely acknowledged that reform such as NCP can have uneven impacts across Australia's regions. The Productivity Commission noted that the impacts of the range of ongoing structural change facing regional Australia may also be exacerbated by the NCP reforms.

Examples of adverse impacts of NCP reform on some regions in Australia identified by the Productivity Commission include the following:

- The decline in rail industry employment as a result of restructuring and rationalisation of the industry has had a negative impact on regional communities where there was a concentration of rail employees.
 - Small towns experiencing low economic growth have inferior capacity to absorb workforce displaced by reform.

- Deregulation and disbanding statutory marketing arrangements can adversely affect some producers and some regions. Recent examples include both tobacco and dairying regions in Queensland.
- Employment losses in the electricity sector have adversely affected some small towns.
- NCP water reforms have resulted in significant increased charges for many users, particularly irrigators.
- Smaller electricity users in some areas have experienced price increases.

The 2002 report, *Towards a Truly National and Efficient Energy Market*, notes that energy reforms may impact differently on different regions across Australia. In particular the report notes that the price implications of full retail contestability on regional areas are unclear. Any divergence from existing uniform tariff policies is likely to have a negative impact on regional and remote areas.

The Productivity Commission has also noted that NCP is often unfairly blamed for a wide range of regional problems — such as the withdrawal of government services, the demise of local businesses, the closure of country bank branches and the population decline in parts of country Australia¹.

The existing NCP arrangements provide no financial incentive for State Governments to contribute to regional adjustment initiatives. Indeed it may be the case that the arrangements provide an incentive for States *not* to address regional impacts as their NCP payments are at stake and the responsibility for regional impacts can be passed to the Australian Government as the instigator of NCP.

Under the current arrangements, if a State Government enacts NCP identified reform, they would expect to receive their full NCP payment. The Australian Government is then left bearing responsibility for adjustment costs without specific resources allocated to address them.

The Department's proposal would require the States to report on regional adjustment costs related to NCP reform and measures taken by the States to relieve them. The NCC would then assess State performance in addressing regional adjustment and, if deemed adequate, recommend NCP payments be made.

This requirement gives States an incentive to be realistic about the causes of regional adjustment costs as overstating the role of NCP obliges States to greater adjustment assistance. In circumstances where a State's commitment to adjustment measures is considered inadequate, the Australian Government could retain a share of that State's NCP payments with which to fund appropriate further measures.

¹ Productivity Commission, 1999, *Impact of Competition Policy Reforms on Rural and Regional Australia* (p XXIII)

The reporting procedure should be as simple as possible. It is not expected that the requirement would lead to greatly increased expenditure on regional adjustment programmes by either State Governments or the Australian Government. Rather that the cooperative approach required to fulfil the requirement means those regions facing true hardship attain support in an appropriate manner. This measure also gives all stakeholders an incentive to accurately identify and honestly communicate the extent of the impacts of NCP reforms and to publicly highlight the State-Commonwealth resources that have been allocated to relieve them.

4.4 Conclusion

The Australian Government has sought to ensure that regional adjustment costs are considered as part of NCP and other reform processes. Requiring State Governments to report on the regional impacts of their NCP reforms and appropriately contribute to regional adjustment initiatives would strengthen this approach. It would ensure a more cooperative approach in dealing with structural change; provide a disincentive for States to inaccurately attribute adverse regional conditions to NCP; and would ensure resources are available if States fail to adequately address regional adjustment.

5. Local government

5.1 *National Competition Policy (NCP) and competition policy payments to Local Government*

In October 2003, the House of Representatives Standing Committee on Economics, Finance and Public Administration (the Committee) tabled its report *Rates and Taxes: A Fair Share for Responsible Local Government (the Hawker Report)*. The Report examined a range of issues in relation to the governance and financial arrangements for local government in Australia.

The Committee found that NCP was a significant and costly exercise for local government. These costs related to the corporatisation of significant business activities, reviewing by-laws that unnecessarily restrict competition and implementing structural reform of public monopolies such as water and sewerage authorities.

Evidence to the Committee was that while NCP had added to council's costs, NCP payments, have not been passed on to local government by some States – New South Wales, Tasmania, South Australia and the Northern Territory – despite local government's role in achieving NCP goals and requirements. The Committee reported that Queensland, Victoria and Western Australia passed on a portion of their payments to local government.

The Hawker Report stated that the NCC accepted that there had been circumstances where particular councils had incurred significant reform costs without necessarily being able to accrue a proportionate share of the benefits. The Hawker Report also stated that the NCC supported an approach whereby the States and the Northern Territory provide local government with a dedicated share of competition payments.

The Hawker Report made the following recommendation:

“The Committee recommends that, when developing Federal-State intergovernmental agreements, the Federal government consider:

- including representation from local government during negotiations; and
- requiring a commitment from State Governments to identify and provide a share of payments to local government when it is seen as having a significant role in the delivery of programs under the agreement”. (page 47).

DOTARS suggests that the Commission consider the findings of the Hawker Inquiry and provides its view on this recommendation.

5.2 Impacts of water reforms on Local government

DOTARS notes that the scope of the Productivity Commission inquiry includes assessing distributional and community impacts of reforms especially on regional and rural areas.

We recommend that the distributional impact analysis be extended to include the impacts of the NCP and associated reforms such as water reforms on local government.

Some of the potential impacts of water reforms on local government that we are aware of include:

- changes to the rating capacity of councils as a result of separating water access rights from the ownership of land;
- socio-economic impacts of the operations of water trading on local and regional communities and therefore on the financial viability of councils; and
- the need to ensure local government, once it has secured a supply of town water for its community, is not impeded from trading any surplus water allocations.

5.3 Other issues raised in the Hawker Report

There were other issues raised in the Hawker Report that could be considered by the Commission in the current review. For instance, in Chapter 7 of the Report, the Committee pointed to an estimate of the current cost of duplication across governments. The Committee stated:

According to Mr Drummond of the Division of Management and Technology, University of Canberra, it has been estimated that the full extent of duplication and coordination costs under the current arrangements probably amount to more than \$20 billion per annum.

It is time for us to closely examine the way we govern ourselves. The [Local Government Association of South Australia] summed up best what all governments need to do:

To align the efforts, activities and financial relationships of the three spheres of government so that they can work together effectively beyond single terms of office or party political approaches.

(*Rates and Taxes: A Fair Share for Responsible Local Government*, October 2003, p140).

The Hawker Report also identified that local government may not be making full use of available own-sources of revenue to fund its responsibilities. In some cases, the limitations on raising own-source revenue were imposed by State governments. For instance, the Committee recommended (Recommendation 6) that:

the Prime Minister and the Treasurer meet with State and Territory Premiers and Treasurers and local government representatives to develop a Federal-State inter-governmental agreement which:...addresses State restrictions on local government revenue raising such as rate capping, levies and charges and non-rateable land; and ... (*Rates and Taxes: A Fair Share for Responsible Local Government*, October 2003, p52).

Elsewhere in the report the Committee

noted evidence which suggested that there may be room for further increases in local government's revenue from existing sources including rate increases and special levies for environment or infrastructure provision. (*Rates and Taxes: A Fair Share for Responsible Local Government*, October 2003, p11).

DOTARS suggests that the high costs of duplication and coordination across governments and the limitations on local government own-source revenue warrant further examination.