

**THE CABINET OFFICE**

**NEW SOUTH WALES**

Mr Gary Banks  
Commissioner  
Productivity Commission  
L.B2 Collins Street East PO  
MELBOURNE VIC 8003

Dear Mr Banks

**The National Competition Policy Review of the Prices Service Act 1983 Interim Report**

New South Wales has the following comments in relation to the Interim Report:

1. The retention of the Prices Surveillance Act versus repeal of the Act and reliance on the Trade practices Act and other instruments.

The Report's findings in relation to this issue have been noted. NSW will provide comment when the Commission presents its draft recommendation for the review.

2. A national regime for prices oversight versus state and territory based regimes.

The Report discusses whether a national regime for prices oversight, as advocated by the Australian Consumer and Competition Commission (ACCC), would be superior to the current situation, where state and territory regimes play a considerable role in prices oversight for specific industry sectors.

New South Wales believes that the current situation is superior to the ACCC proposal for the following reasons:

New South Wales strongly supports the principle of "subsidiarity" where decision-making is devolved to the local level wherever it is practical to do so. This principle fosters a system of "competitive federalism" that can act as an engine for regulatory innovation and best practice outcomes. Therefore the starting point in this debate should be that regulatory competition ought to be maximised unless there is a demonstrable net public benefit in having a single national regime.

Subsidiarity does not impede the development of national markets. This is exemplified by the current arrangements for the interstate gas and electricity markets. These arrangements allow jurisdictions to regulate matters that are particular to their circumstances, while simultaneously operating within an overarching national framework. The flexibility associated with such arrangements has the capacity to achieve superior outcomes than those that could be achieved through a single national regime.

Regulatory regimes based on the principle of subsidiarity provide flexibility where market characteristics differ between jurisdictions. For example, access to rail track is an area which requires state-specific arrangements, as there are significant differences in the way jurisdictions manage their rail networks. Further, rail access is not a matter in which price can be easily separated from other components of access. Also, state based regulation bring local knowledge and experience to the decision-making process that may not be available to a Commonwealth regulator.

New South Wales recognises the potential for state based regimes to be captured by sectional interests, which lead to inconsistencies and distortions in national markets. However, this can be avoided if regimes operate in a transparent environment. The regime in New South Wales, which is administered by the Independent Pricing and Regulatory Tribunal, contains effective public scrutiny features which ensure operational transparency.

I trust that the above comments will be of assistance to the Commission in preparing the final report and recommendations.

Yours sincerely

Roger B Wilkins  
Director-General