



Economic Regulation Authority

Our Ref: D131213
Contact: Greg Watkinson

Professor Harper
Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Professor Harper

Submission by Economic Regulation Authority to Competition Policy Review

Thank you for the opportunity to make a submission to the Competition Policy Review. The Economic Regulation Authority (**ERA**) is the independent economic regulator for Western Australia. The ERA regulates the electricity, gas, water and rail industries. The ERA also undertakes inquiries that culminate in recommendations to the State Government on economic issues that are likely to have a significant impact on the State. Our purpose is to benefit the Western Australian community by promoting an efficient and customer focussed economy.

The focus of this submission is on the roles that are needed to support the implementation of a revitalised microeconomic reform agenda in Australia.

The ERA supports the finding by the Inquiry that there is a need to refocus the roles and objectives of the national institutions with responsibilities for competition policy. This includes in-principle support for the establishment of an Australian Council for Competition Policy (**ACCP**) to provide leadership, advocacy and education on competition policy and to support the implementation of the competition policy agenda by monitoring progress and making recommendations to government on competition issues. The ERA considers that pressure for microeconomic reform by a national body such as the proposed ACCP is important.

The ERA also notes that the Inquiry contemplates that reforms to national competition institutions would be supported by a framework that is similar to the one that existed under the National Competition Policy reforms of the 1990s. This includes a Ministerial Council of Treasurers, an intergovernmental agreement and potentially competition payments.

The National Competition Policy model was effective in driving micro-economic reform. However, the fact that many reforms that would appear to have been in the public interest have not been implemented demonstrates the need to draw from past lessons and supplement the original competition policy model. In this regard, the ERA considers that a national competition body and an associated competition policy framework are *necessary* to support a renewed microeconomic reform agenda, but not *sufficient* without other supporting structures, particularly at a State-level.

The ERA considers that a very important lesson to be learned from previous microeconomic reform efforts is the need for key stakeholders and decision-makers to genuinely understand and endorse the need for reform. This means that stakeholders and decision-makers need to be 'brought along' on the reform journey, rather than being directed as to what the reforms should be.

Competition payments are reflective of a 'top-down' approach to reform (that is, a national organisation 'imposing' its view of reforms without generating sufficient buy-in from State governments). It is for this reason that the ERA questions whether competition payments can be relied on to achieve sustained microeconomic reforms. The risk of losing competition payments was, unquestionably, a factor in some microeconomic reforms being implemented in Western Australia. However, not all of these reforms have endured. A key example of this are the reforms to the electricity market in Western Australia, which have not progressed to the same extent as in other States. Competition payments may be counter-productive in the long term if the rationale for the reform is not well-understood or supported by Government and the broader public.

The ERA is concerned that a national competition body may not have sufficient influence on, and understanding of, State-level debates. The microeconomic reform needs and priorities of one State may be quite different to those of other States. The parochial nature of States may also mean that advocacy from a national body may not be as effective as, and should be supplemented by, advocacy at a State-level. In part, this will be because a national body may not be able to develop enduring relationships with key decision-makers whereas individuals operating within a State can.

Reflecting these considerations, a national competition body and framework needs to be supported by State-level roles. The ERA considers that these State-level roles need to include: 'championing' microeconomic reform; identification of reform needs; advocacy of reforms; and advice to government and the public sector on regulatory reform and review. Each of these roles is discussed in more detail below.

Champion for Microeconomic Reform

Commitment by government is essential to the successful implementation of a microeconomic reform agenda. Ideally, there would be a senior Minister (such as the Treasurer) willing to champion the need for microeconomic reform in each jurisdiction.

The role of the champion would be to advocate in Cabinet for microeconomic reform across the portfolio areas of government. This would assist to counter-balance any influence that vested interest groups may have on Ministers with particular portfolio area responsibilities.

Identification

The Inquiry has nominated the role of identifying areas of competition reform across all levels of government as being a key function of the ACCP. The proposed ACCP would have an important role in identifying, aggregating and prioritising issues of national importance.

This function would also need to be supported at a State level, reflecting that issues and priorities can vary significantly across States.

In some ways Western Australia is currently operating at best practice in the identification of microeconomic reform needs. The Western Australian Government has established a rolling Microeconomic Reform Inquiry, conducted by an independent agency (the ERA), which will be completed after each election to inform the incoming government of microeconomic reform priorities.

There are also other bodies, such as the Productivity Commission and the Victorian Competition and Efficiency Commission, who undertake inquiries into potential reform options.

While the work of agencies with inquiry functions is sound, a key limitation is that agencies cannot commence an inquiry into a specific issue at their own initiative. Agencies can only commence an inquiry at the direction of the Government. Ideally, a body charged with identifying potential microeconomic reforms should have full discretion as to the inquiries it undertakes.

Advocacy

The ERA agrees with the finding of the Inquiry that advocacy for, and education of, the need for microeconomic reform will be an important role in furthering the microeconomic reform agenda. However, the ERA suggests that further consideration and clarification of the proposed advocacy role is warranted in the final report of the Inquiry.

In particular, greater consideration is needed as to the role and objectives of an advocate. For example, who it will advocate on behalf of and who it will advocate to. The ERA considers that there are two distinct advocacy roles that need to be undertaken.

- A competition advocacy role, which would involve taking the reform suggestions of the identification body and making the case to government as to why they should be implemented. This would include a focus on advocating for long-term reforms that may not be taken up through a consumer advocacy role (for example, because the reforms may not benefit consumers in the short term).
- A consumer advocacy and education role, which would involve lobbying governments in favour of microeconomic reforms on behalf of consumers. Greater consumer advocacy is needed to inform the considerations of identification bodies, including through contributions to the submission process.

The ERA considers that the core institutional skill-sets of the body or bodies that undertake the competition advocacy and the consumer advocacy role needs to be communication and marketing. Economic analysis is important in establishing the initial case for microeconomic reform, but it is not sufficient to win the argument for reform.

The need for both types of advocacy roles reflect the fact that consumers generally do not organise to collectively lobby governments to advocate for reforms because the benefits to individual consumers are generally relatively small. Advocacy is needed to counter-balance vested interest groups, which are generally small, but organised and vocal groups that actively lobby governments to dissuade them from implementing reforms. Direct advocacy to the public may also be needed to address the fact that some vested interest groups may have been very successful at misinforming the public about the effects of particular microeconomic reforms.

Regulatory reform and review

Finally, the ERA considers that there is an important role for a body to assist governments and the public sector with regulatory reform and review. This role would include the following components.

- Acting as a repository of the core expertise on competition policy in the States. This would include assisting and advising portfolio agencies on the implementation of competition policy (for example, how to conduct regulatory impact assessments and legislation reviews), thereby enhancing the capacity of the public sector.

- Acting as a regulatory gatekeeper. A properly applied regulatory impact assessment process is effective in preventing the introduction of poorly designed regulation and hence acting as a safeguard against future regulatory burden. However, this benefit will only be realised when there is strong commitment to its application at the highest levels of government.

In conclusion, the ERA considers that a successfully revitalised microeconomic reform agenda requires roles in identification, advocacy and regulatory reform at both the State and national levels. There are many options for how these roles could be allocated, whether amongst separate bodies or combined into one collective body. For example, these roles could be rolled into a 'federated' body such as the proposed ACCP, with representatives from each of the Australian and State Governments, and with State offices.

I look forward to reading the final report of the Competition Policy Review.

Yours sincerely



DR STEPHEN KING
MEMBER
25 NOVEMBER 2014