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Australia's competition law in practice

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Introduction

- Businesses need to be confident that policies, rules & enforcement today will continue to apply into the future
- Economic regulation should aim to:
 - provide clear & consistent market rules in the national interest
 - eliminate market manipulation
 - establish an independent regulatory & enforcement agency
 - ensure property rights & business interests are respected & protected



Australia's competition law in practice – overview

1. Australia's National Competition Policy framework
2. Current competition policy legislative & institutional arrangements
3. Some topical competition policy reform issues & agendas
4. Competition policy reform case studies
5. Capacity building & cooperative activities the ACCC has undertaken throughout the region



1. Australia's National Competition Policy framework

- 1990s – micro-economic reforms following market liberalising reforms of 1980s
- Extensive public review – National Competition Policy (NCP) Review
- Australian governments recognised competition policy much broader than laws dealing with market conduct
- 1995 – NCP reform package introduced by all Australian governments



1. Australia's National Competition Policy framework

- A single economy wide competition law
 - Trade Practices Act prohibits anti-competitive agreements, misuse of market power, certain mergers & acquisitions
 - Allows in certain circumstances anti-competitive arrangements if net public interest can be proven
- Improving the performance of publicly-owned businesses
 - Competitive neutrality
 - Structural reform & prices oversight of public monopolies



1. Australia's National Competition Policy framework

- Access to essential facilities
 - NCP recognised competition not possible in markets with 'natural monopoly characteristics'
 - Part IIIA (& Part IIC for telecommunications) of TPA introduced to provide national third party access regime to promote competition in markets dependant on infrastructure services
 - Access applies to both publicly & privately owned assets in electricity, gas, telecommunications, rail & airport sectors



2. Current competition policy legislative & institutional arrangements

- The legislative framework
 - ACCC enforces all of Australia's competition laws
 - Consumer protection enforcement shared between ACCC & state agencies
- The regulated industries
 - Energy (gas & electricity)
 - Telecommunications
 - Airports
 - Ports
 - Rail
 - Postal services
 - Water



2. Current competition policy legislative & institutional arrangements

- The legislation
 - Trade Practices Act 1974 (TPA)
- The ACCC as an organisation
 - More than 800 staff across Australia with 7 full-time Commissioners
 - Receives about 110,000 complaints & inquiries yearly
 - Decision-making through committee structure subject to vigorous & robust debate



3. Some topical competition policy reform issues & agendas

- Review of National Competition Policy (NCP) reforms
 - 2003 OECD Economic Survey of Australia noted NCP reforms improved labour, productivity & economic growth
 - Australia's Productivity Commission estimated NCP reforms resulted in GDP growth of 2.5% & increased average incomes by A\$7000
- Competition part of national reform agenda
 - Council of Australian Governments supported NCP reforms
 - Improving productivity a key priority



3. Some topical competition policy reform issues & agendas

- Australian Consumer Law
 - Reforms introduced in 2009 to unify state, territory & federal consumer protection & fair trading laws
 - Provide consistency & clarity for consumers & business
- Criminalisation of cartel conduct
 - Since July 2009, a dual criminal & civil cartel enforcement regime has been in place
 - Recognition that cartels damage the competitiveness of the economy – ie artificially drive up prices, stunt innovation
 - Cartelists may face imprisonment & substantial civil penalties



4. Competition policy reform case studies

- **National energy markets**

- Regulation of electricity & gas markets undergone immense change in recent years
- Australian Energy Regulator (AER), part of the ACCC, set up in 2005 under Part IIIA of Trade Practices Act
- AER regulates wholesale electricity & gas markets as well as economic regulation of transmission & distribution networks
- Challenges ahead: climate change & cost of infrastructure upgrades

- **Water trading & the Murray-Darling Basin**

- Federal Water Act 2007 – national approach to river system
- ACCC tasked with developing various water trading rules
- Effective competition leads to better water use & recognises scarcity
- Challenges ahead: continuing the momentum of national reforms



4. Competition policy reform case studies

- **National Broadband Network**

- Federal government announced in April 2009 plan to connect 90% of Australians to a fibre-to-the-premises network over an 8 year period
- Legislative package to address telecommunication access, competition & structural issues during NBN construction

- **Telecommunications regulatory reform**

- Changes to address incumbent's (Telstra) vertical & horizontal integration & changes to current telecommunications regulatory regime
- Addressing structural issues will lead to greater competition & innovation in telecommunications sector
- Proposed legislative changes currently considered by Australian Parliament
- Challenges ahead: convergence of new & traditional media, implications of digital economy



5. Capacity building & cooperative activities the ACCC has undertaken throughout the region

- ACCC cooperates with international counterpart agencies & nations on competition enforcement cases
 - Coordination & cooperation with other countries can minimise effects from anti-competitive practices in increasingly globalised economy
 - Addressing competition policy in free trade agreements can establish formal links between nations & demonstrate that anti-competitive conduct will not be tolerated
 - ACCC willing to share experiences with new international agencies & learn from others



5. Capacity building & cooperative activities the ACCC has undertaken throughout the region

- Case specific cooperation
 - Pfizer's acquisition of Wyeth
 - Air cargo cartel investigations
 - Cover pricing
 - E-book health cure scams
- Regional capacity building
 - Building effective competition policy regimes
 - Staff secondments, training courses & information exchanges
 - Need for effective collaboration on enforcement cases involving global cartels and anti-competitive mergers



Conclusion

- Open & competitive markets, driven by consumer demand, provide the best means to allocate resources for the benefit of communities & nations
- Competition policy & the regulation of markets must be carried out in the national interest with the goal of promoting a competitive marketplace
- Requires a fine balancing act, reflection and innovation
 - Australia has come far but still faces challenges ahead
- Competition policy and regulation is an evolving process



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