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