Australian Bankers Association
Banking Regulations Forum

The ACCC'S role in promoting competition and protecting Australian consumers

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Introduction

Australia is currently enjoying a period of significant and sustained prosperity. At least some of the responsibility for those gains can be directly attributed to the reforms introduced to Australia's competition framework and Australia's competition law from the middle to late 1990's.

The National Competition Policy adopted by the Australian Governments in 1995, commonly referred to as the Hilmer reforms, recognised that the state of competition in the economy is affected by a range of government policies, and not just the traditional anti-trust, competition or trade practices laws of a country. These include policies concerning international and interstate trade, intellectual property, foreign ownership and investment, tax, small business, the legal system, public and private ownership, licensing, contracting out, and bidding for monopoly franchises, among others.

This broader micro economic reform agenda left few sectors of the economy unaffected, and fundamentally changed the nature and philosophy of competition regulation in Australia. This was in stark contrast to earlier domestic pro-competitive reforms, which had largely been progressed on a sector-by-sector basis.

Today, competition policy and the Trade Practices Act is a cornerstone of Australia's economic success. The most recent OECD economic survey of Australia acknowledged that the reform process undertaken by the Australian Government has now reaped benefits for its economy.

Competition reforms have impacted on nearly every aspect of our daily lives. Much of the time we don't even realise it and the average man in the street has little notion of the implications of National Competition Policy.

But whether you are a doctor or a lawyer, whether you own shares in a power company, own a bottle shop, work on a wheat farm, ever catch taxis, have gas heating in your home, purchase CDs, have sugar in your tea, have milk on your cereal, take public transport, own a mobile phone, post letters, you are benefiting from competition policy reforms.

There is a fundamental philosophy behind National Competition Policy which is as relevant today as it was when it was first conceived. That is, competition is about choice, giving consumers the means and the freedom to choose between products and suppliers, in order to buy the price/quality mix that best suits their needs.

The foundation of the success of the Trade Practices Act has been based on the three-fold aim of:

- promoting competition;
- promoting fair trading - as between competing businesses and as between businesses and consumers; and
- ensuring consumers are protected in their dealings with business.

History

Prior to 1974, the Australian parliament had attempted to address the problem of restrictive trade practices but with little success. The 1906 *Australian Industries Preservation Act* had languished following a High Court decision on its constitutional validity. In 1965, there was a further attempt to introduce rigorous trade practices legislation but the reforms were watered down in the face of substantial business opposition. The 1965 Act prohibited just two practices – collusive tendering and bidding. A company needed simply to register an anticompetitive agreement with the Commissioner for Trade Practices in order to avoid legal sanctions. By 1974, there were more than 14,000 such agreements on a secret register. The Australian economy was characterised by widespread horizontal and vertical arrangements on pricing and entry.

The Trade Practices Commission (TPC) was established in 1974 by the enactment of the *Trade Practices Act 1974* (TPA). The 1974 Act was a significant departure from the earlier limited approach. The objective of the TPA was to enhance the welfare of Australians through the promotion of competition and consumer protection. The Act sought to:

- prevent certain anti-competitive conduct (thereby encouraging efficiency in business, resulting in a greater choice for consumers in price, quality and service); and
- safeguard the position of consumers in their dealings with producers and sellers, and the position of businesses in their dealings with other businesses.

In the broader policy environment:

- a contentious change in approach by the Tariff Board in the mid 1960s;
- deregulation of financial markets in the early 1980s; and
- tariff reform in the 1980/90s

have made their contribution toward a more competitive economy.

The provision of economic infrastructure services in Australia was also evolving during this period. Until the mid 1970s, infrastructure services were generally provided by government departments who had a statutory monopoly. Responsibility was divided between the Commonwealth and the States – for example, telecommunications and airports were controlled by the Commonwealth; gas and electricity were controlled by the States.

In the 1970s, Australian governments began to transfer the supply of infrastructure services from departments to independent government statutory authorities. The 1980s saw the beginnings of the 'corporatisation' of infrastructure providers (requiring government businesses to operate like private enterprise).

1990s: National Competition Policy reforms

By the end of the 1980s Australia's economic performance had deteriorated markedly following the primary industry driven prosperity throughout the 1950s to the early 1970s. Throughout the mid 1970s and 1980s, output growth slowed, inflation and unemployment rose, and relative living standards declined.

The poor productivity performance of Australia's infrastructure industries was regarded as one of the factors that was keeping Australia's per capita growth rate below the OECD average. In particular, greater exposure to international competition through tariff cuts and the floating of the Australian dollar created pressure for more efficient delivery of utility services. Despite this, economic reform was not popular. The limited economic reforms of the 1980s had given the concept of "micro-economic reform" a bad name. Australian governments started looking for other solutions, and a "new" concept of "competition policy" emerged onto the agenda.

In 1991, the Australian Commonwealth, States and Territories reached agreement on the need for a national competition policy.[1] The first step in this process was the establishment of an Independent Committee of Inquiry, chaired by Professor Hilmer, to undertake an inquiry into national competition policy.[2]

At this time much infrastructure was government owned. The revenue from infrastructure services was part of government revenue, and pricing policies were influenced by government social policy. A critical question was the type of regulatory regime required to fulfil the policy objective of improving the efficiency of Australia's public utilities and industry more generally.

The other key question was how to apply the Trade Practices Act beyond Commonwealth jurisdiction over corporations, to individuals, partnerships and other non-corporate business associations.

The Committee, in its 1993 report, affirmed the importance of effective competition to maintaining and improving the welfare of Australians by increasing economic efficiency.[3] In 1995, the Commonwealth Prime Minister, State Premiers and Chief Ministers agreed to the recommendations of the

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1 Communique of Premiers & Chief Ministers' Meeting, Adelaide, 21-22 November 1991.

2 The terms of reference are set out in: Aust, Independent Committee of Inquiry, *National Competition Policy* (Report, AGPS, Canberra, 1993) (Hilmer Report) Annex A.

3 Hilmer Report p 1. The report also recognised that there may be some situations where competition will not achieve economic efficiency or will conflict with other social objectives (at p 6).

Hilmer Report.[4] Central to this reform was the establishment of a more encompassing national approach to competition policy. This included:

- extending the competition provisions in the TPA so that the provisions applied to activity by unincorporated and State and Territory-owned businesses (in addition to corporations and Commonwealth-owned businesses);
- review by governments of all legislation that restricted competition;
- reform of the structure of public monopolies to facilitate competition;
- the provision of third-party access to significant infrastructure facilities. (This reflected the conclusion in the Hilmer Report that, in order to introduce competition in some markets, it is necessary to regulate access to facilities that exhibit natural monopoly characteristics and to which businesses require access in order to compete in upstream or downstream markets);
- price oversight of government business enterprises; and
- competitive neutrality between government and private businesses when they compete.

The overall aim of the reform package was to improve the efficiency of resource use and to raise the living standards of consumers.

The role of the ACCC under National Competition Policy

Following the Hilmer Report, Australian governments agreed to the establishment of a national independent statutory authority (the Australian Competition and Consumer Commission) with economy-wide responsibility for economic regulation in addition to competition law and consumer protection. In summary:

- all businesses are subject to the competition law provisions in Part IV of the TPA[5] which are administered by the ACCC. Where the Commonwealth has created industry-specific anti-trust regulation (such as in telecommunications), the ACCC is the regulator;
- the consumer protection provisions set out in Parts IVA to VC of the TPA are administered by the ACCC;[6]
- all industries are subject to the general access regime set out in Part IIIA of the TPA[7] which, in relation to the terms and conditions of access, is administered by the ACCC. Where the Commonwealth has created industry-specific economic regulation,[8] the ACCC is the regulator;

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4 In April 1995, the Australian Commonwealth, States and Territories signed three inter-governmental agreements: *Competition Principles Agreement*; *Conduct Code Agreement*; and *Agreement to Implement the National Competition Policy and Related Reforms.*

5 Subject to some exceptions such as international liner cargo shipping and designated financial payments systems.

6 In addition, States have their own consumer protection legislation.

7 Subject to some exceptions such as telecommunications and post.

8 For example, telecommunications and post.

- however, within Part IIIA of the TPA, the States have developed industry-specific regimes that confer economic regulatory functions on agencies in addition to the ACCC. This has been an area subject to change – the most significant change being the creation of the Australian Energy Regulator (AER); and
- the Commonwealth has created separate industry-specific regulators (such as the Australian Communications and Media Authority) who are responsible for technical regulation. The States have generally taken the same approach although there are some exceptions.

The Part IIIA access regime is perhaps the most complex element and requires further explanation:

- the decision as to whether or not a service should come within the operation of Part IIIA ('declaration') is made by a Commonwealth or State Minister (upon recommendation of another Commonwealth statutory authority, the National Competition Council (NCC));
- the access provider and access seeker are expected to negotiate the terms and conditions (eg price) of access to a declared service. However, if agreement cannot be reached, the ACCC may, upon notification by either party, arbitrate the dispute;
- an access provider may avoid declaration by submitting an access undertaking to the ACCC setting out the terms and conditions upon which the access provider will supply the service. The ACCC is responsible for assessing the proposed undertaking. (An industry body may also propose an industry access code to the ACCC. An undertaking may then adopt the code); and
- a State may avoid declaration of infrastructure within that State's jurisdiction by applying to the NCC / Commonwealth Minister for a decision that the State's access regime is an effective access regime.

Many have viewed the "negotiate/arbitrate" regime associated with declaration of bottleneck infrastructure under Part IIIA as inappropriately "heavy handed" regulation. But another way of looking at this regime is to consider it a natural development from the findings of the High Court in the Queensland Wire Industries case[9] to develop an essential facilities doctrine akin to that in the United States. In this way, declaration can be viewed a "super section 46" imposing on certain (declared) bottleneck infrastructure an obligation to supply services without the need to prove a (mis)use of market power or a proscribed purpose. Where there is a breach of that obligation, mandatory arbitration by the ACCC fills the need for a process to determine appropriate terms and conditions. Despite the contention over the declaration process, there have been only two arbitrations by the ACCC in relation to declared services and both have been resolved.[10]

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[9] Queensland Wire Industries Proprietary Limited V. The Broken Hill Proprietary Company Limited and another [1989] HCA 6; (1989) 167 CLR 177 FC. 89/004.

10 The dispute between Services Sydney Pty Ltd and Sydney Water Corporation related to the methodology for pricing access to declared sewage transportation services supplied by Sydney Water by means of its North Head, Bondi and Malabar sewerage reticulation networks.

As a result of NCP, and aside from declaration, the ACCC had increased responsibility for the administration of a number of the industry specific access regimes created by the reforms.

The most recent moves by governments to further improve the efficiency and consistency of regulation across the energy sector has occurred with the establishment of a single energy regulator – the AER. And just last week, Water Bill 2007 was passed in the Parliament which gives the ACCC an overarching regulatory role in relation to water charges and to provide advice in regard to the rules for water trading in the Murray Darling Basin

A new energy regulator – the AER

The establishment of the AER followed a decade of national competition policy reforms to open up Australia's State controlled gas and electricity monopolies. The energy sector has now been substantially transformed:

- substantial restructuring has occurred from vertically integrated, State owned energy businesses to disaggregated businesses with a mix of ownership structures;
- some states (Victoria and South Australia) have privatised their electricity supply industries and most of the gas supply sector is in private hands;
- competition has been introduced into the generation and retail sectors; and
- a National Electricity Market (NEM) is well established.

With these changes and as competition in the gas and electricity markets matured, the nature of the regulatory instruments also needed to change and respond. The result is an ambitious program of energy market reform, which has involved the review of legislation, regulations and rules and the transfer of

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Services Sydney proposed to compete with Sydney Water to supply consumers connected to these three networks by undertaking the contestable activities involved in providing sewerage services—retailing, sewage treatment and sewage disposal/recycling. On 22 June 2007 the ACCC determined that the access price that Services Sydney is to pay Sydney Water in respect of the customers supplied by Services Sydney is Sydney Water's regulated retail price for those customers minus Sydney Water's avoidable costs, plus any facilitation costs associated with providing access. In determining the appropriate methodology, the ACCC had regard to the structural features of the sector, including that Sydney Water is a vertically integrated supplier with regulated retail prices set on a geographically uniform basis by the NSW Independent Pricing and Regulatory Tribunal. Services Sydney applied to the Australian Competition Tribunal for review of the determination but subsequently withdrew.

In the second matter, Virgin Blue Airlines Pty Limited notified the ACCC of an access dispute with Sydney Airport Corporation Limited (SACL) and an arbitration related to access to the declared Airside Service began in February 2007. The dispute related to the level of and the methodology for calculating the price SACL was charging Virgin Blue for the use of airside services at Sydney airport. On 24 July 2007 Virgin Blue withdrew its notification of the access dispute citing that it had reached a negotiated commercial settlement with SACL.

roles and functions (not yet complete) from State and Territory bodies to two new institutions:

- the Australian Energy Market Commission (AEMC), which is responsible for rule-making and energy market development at a national level; and
- the AER, which is responsible for economic regulation and compliance at a national level, including in respect of the National Electricity Law and, in the future, the new National Gas Law.

A National Electricity Market Management Company (NEMMCO) retains responsibility for the day-to-day operation and administration of both the power system and electricity wholesale spot market in the NEM and other support activities.

The AER functions

The AER currently has responsibility for economic regulation of electricity transmission;[11] monitoring of the NEM; and enforcement of the National Electricity Law, Regulations and Rules.

The AER regulates electricity transmission networks under a framework set out in the National Electricity Rules. The approach is to determine a revenue cap for each network, based on what is necessary to cover efficient costs, while providing for a commercial return to the owner.

In regard to the electricity wholesale market (the NEM), the AER monitors the compliance of market participants with the National Electricity Law and Rules, and investigates and prosecutes breaches. This requires very close monitoring of wholesale market activity. The AER reports extensively on outcomes, including: weekly and quarterly reports on market activity; investigations of market incidents; and prices that exceed $5000 per megawatt hour. The reporting focuses on potential Rule breaches, but also comments on behaviour that may not be consistent with the objectives of the market.

In addition to these functions, the AER will have its role extensively increased with the major changes occurring in energy regulation.

Australian governments are about to introduce a new wave of legislative reform including amendments to the National Electricity Law (NEL) and a new National Gas Law (NGL).

Responsibility for economic regulation of energy distribution is expected to be transferred from State and Territory regulators[12] to the AER by I January 2008. At that time, gas transmission regulation will also be transferred from the ACCC to the AER. Non-price retail energy functions are also expected to be transferred from State and Territory regulators to the AER by about mid-2008.

As a member of the AER, I believe that the new organisation and its links to the ACCC are working very well. As the roles of other regulators are progressively assumed, the AER and regulatory processes will benefit from the consolidation of energy regulation expertise in one body, whilst maintaining clear synergies

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11 Other than Western Australia and the Northern Territory.

12 Other than Western Australia for gas and electricity and the Northern Territory for electricity.

with the application of general competition and consumer protection regulation to the energy sector by the ACCC. These arrangements, I believe, provide a good lesson for more national approaches to competition policy regulation in other sectors.

The Trade Practices Act today

Along with the expansion of the ACCC / AER's regulatory functions the Trade Practices Act has also been amended to cement Parliament's commitment to effective competition policy.

In October 2006 Parliament passed the first of a suite of significant changes to the Trade Practices Act. The amendments to the restrictive trade practices provisions in Part IV of the Act flow from recommendations made by the Dawson Committee in its report of January 2003. The Trade Practices Legislation Amendment Bill (No.1) 2006 implemented some of the most significant changes to the Act since its inception more than 30 years ago.

Mergers

Under the changes, which came into effect on 1 January 2007, an optional new formal merger review process, administered by the ACCC and reviewable by the Australian Competition Tribunal, has been introduced. It presents merger parties with another option to the existing informal merger review route which remains in place.

While we are yet to see how the new formal route will be utilised, and by whom, it may play a role in specific circumstances where parties are looking for a more strict set of timeframes and processes in preference to the flexibility that exists under the informal system. The formal process will not suit all parties and it will not replace the existing review mechanisms. What it will do is add to the options available.

A new route for parties seeking to have mergers authorised has also been created, whereby in certain circumstances parties will be able to apply for merger authorisation directly to the Australian Competition Tribunal, rather than first dealing with the ACCC. With these amendments, the Parliament has clarified the role of the ACCC in this process, granting the ACCC the right to appear before the Tribunal to provide evidence, cross-examine parties, make submissions and call witnesses.

Increased penalties

The Dawson Bill brought with it a significant boost to the size of penalties that can be handed down to businesses engaged in anti-competitive behaviour.

Beyond the previous maximum pecuniary penalty of $10 million faced by corporations, those found in breach of the TPA can now alternatively receive punishment of up to three times the financial value of the anti-competitive act, or where the value of the breach is difficult to ascertain, 10 percent of the value of the turnover of the body corporate and all related businesses, whichever of the three penalties is the greater.

Individuals can also be banned by the courts from being a director of a business and corporations are prohibited from indemnifying directors from penalties.

Small business

For small businesses, the Dawson Bill includes a number of important changes including the introduction of a notification system for collective bargaining. While the size of the collective bargaining arrangements is required to fit within a $3 million annual transaction threshold per participant, the Government has indicated it may extend that limit for businesses with high turnover and low profit margins. It has already increased this threshold in relation to petrol retailing, car dealers, primary produce and farm equipment retailing.

Information gathering powers

And finally, the regulator's powers to search premises and seize documents have been increased to give more power to the ACCC's investigations. These powers are kept in check by the need for investigators to obtain a search warrant, similar to the provisions in section 10 of the Crimes Act 1914.

The 2006 amendments to the Part IV of the TPA are a precursor to other amendments foreshadowed by the Government which seek to amend the TPA in relation to unconscionable conduct and misuse of market power as well as introduce criminal sanctions for hard core cartel activity.

On the regulatory side, changes to the National Access Regime (Part IIIA) give specific direction to he ACCC about the principles that should be taken into account when making regulatory decisions. The amendments, passed in 2007, include an objects clause to clarify that Part IIIA focuses on the promotion of efficient use of and investment in infrastructure to promote competition in upstream and downstream markets.

Current banking sector issues of the ACCC's radar

Now to consider current issues on the ACCC's radar regarding the banking and financial services sector.

Alleged price fixing agreement

Earlier this week, the ACCC instituted proceedings in the Federal Court of Australia against the Australian and New Zealand Banking Group Limited.

The ACCC alleges that the ANZ Bank, in seeking to limit the level of refund that Mortgage Refunds could provide to customers in respect of ANZ home loans, has breached section 45 of the *Trade Practices Act 1974.*

Mortgage Refunds was a mortgage broker which refunded to its customers a part of the commission it received from lending institutions. The ACCC alleges that the ANZ Bank required Mortgage Refunds to limit its refunds to customers as a condition of it continuing to deal with the bank.

Whilst there is little I can say now that the matter is before the Federal Court, the ACCC brought these proceedings because it takes the view that a

business, in this case, a mortgage broker, should be free to decide how they provide services, and that the ANZ should not have a role in determining whether or not a broker chooses to give back to the customer a portion of the commission they have earned.

Housing affordability is a major issue at the moment, and brokers who advertise that they will refund part of their commission may have a competitive advantage over another business that retains the commission.

Mortgage brokers have been responsible for introducing innovation in the mortgage market. Brokers have provided consumers with a greater choice of lenders to deal with; they introduced after hour services by making themselves available to meet with customers at their own homes and at times which suit their customers.

The offer of refunding part of the commission to a customer is just an innovative way of doing business that effectively reduces prices to consumers, representing two of the main drivers of competition.

Mergers

The degree of convergence between banks and fund managers, including insurance companies, is one which may impact on the Commission's analysis of relevant markets in the financial services sector in coming years.

For some time, many major banks have been underwriting and distributing home insurance – presumably leveraging off their home loan client bases. The Commission is also observing the growth in major banks distributing other insurance products such as motor vehicle insurance and personal insurance.

Such trends are of interest to the Commission for at least two reasons.

First, for the benefits it brings to consumers of insurance products through the greater choice and product innovation this competition has encouraged.

Second, this growing competition has played an important role in the Commission's assessment of mergers in the insurance sector. For instance, in the recent assessment of the merger between Suncorp Metway and the Promina Group it was put to the Commission that brand name was a significant barrier to entry into motor vehicle and personal insurance. The reputation of major banks, combined with their distribution channels, has resulted in distribution arrangements between banks and major insurance companies. These arrangements appear to be breaking down impediments to entry and expansion encountered by out-of-state insurance companies in particular

Currently the ACCC is reviewing:

- Commonwealth Bank of Australia proposed acquisition of IWL Limited – by scheme of arrangement. IWL is a stockbroking service. The ACCC is conducting an informal review of this proposal and submissions have just closed. It is expected that a decision will be made on or around 27 September 2007.
- Proposed merger between Bendigo Bank Limited and Adelaide Bank Limited. On 9 August 2007 Bendigo Bank Limited and Adelaide Bank Limited publicly announced their intention to merge via a scheme of

arrangement. The ACCC does not intend to conduct formal market inquiries as part of this review. However, the ACCC will take into consideration submissions from interested parties if lodged by 3 September 2007.

The Four Pillars policy

There have been calls by various banking leaders to end the so-called "four pillars" policy and permit mergers among the big four banks. However, reports suggest that the Government would want to see a significant improvement in competition among the majors before allowing mergers. The Treasurer has said that the Government would have to be satisfied there was further competition in relation to small business, across the whole range of services, before it could be satisfied that there was sufficient competition to allow mergers among the big four.

Government policy aside, the press has also been speculating that the ACCC would allow big bank mergers if two well matched competitors emerge. It is simplistic to suggest that if two merged entities would be well matched as competitors this of itself will satisfy the ACCC that the merger does not breach section 50 of the Act. The competitive impact of a merger is assessed against a range of criteria set out in section 50 of the Trade Practices Act and the ACCC has a process which it follows in carrying out its assessment.

At this stage, the issue of mergers between the big four banks is not one which the ACCC has analysed in any detail or formed a view on. In any event the question of mergers among the big four banks is an academic one so long as the four pillars policy remains in place. Otherwise the ACCC would have to look at each case on its merits.

Banking system regulatory arrangements

The ACCC and the RBA both have legislative responsibilities for access and competition policy in the Australian payments system. Broadly, the ACCC is responsible for ensuring that payments system arrangements comply with the competition and access provisions of the Trade Practices Act. Primary responsibility for promoting efficiency in payments systems rests with the RBA. The ACCC and the Reserve Bank discuss matters of common interest to ensure an informed regulatory policy.

As far back as 2000 the RBA/ACCC joint study identified concerns that competition in the credit and debit card networks was not working as it should. Specifically, the joint study found that credit and debit/EFTPOS card interchange fee arrangements contributed to the effective price to cardholders for EFTPOS transactions being higher than for credit card transactions despite EFTPOS having relatively lower costs.

In recent years the RBA has instituted a number of reforms to payments systems including abolishing the no surcharge rule for credit cards, prescribing cost based standards for setting credit card interchange fees and reducing EFTPOS interchange fees to better align these charges with costs of processing EFTPOS transactions.

Evidence to date suggests that these reforms, particularly with respect to credit cards, have significantly reduced merchant service fees representing significant savings to merchants. In particular, the RBA's 2006 Annual Report noted that in the 12 months to June 2006, merchants' cost of accepting credit and charge cards were around $730 million lower than they otherwise would be.

While the impact on prices paid by consumers is more difficult to measure, it seems logical to assume that these cost savings would be reflected in lower product prices.

Important reforms have also been undertaken, by the RBA and industry, to make it simpler for new entrants to obtain access to the EFTPOS network. The ACCC would look carefully at any complaints in relation to artificial restrictions that might impede new entrants to this or other networks.

The current RBA review represents an important opportunity to take stock of reforms to date as well as examine the appropriate regulatory regime to promote competition and efficiency in Australia's payments systems moving forward.

Another issue on the horizon is of course access arrangements and interchange fees for Australia's ATM system. In this respect, the ACCC notes with interest indications that, after a number of years of deliberation, the industry may be moving towards agreement on a direct charging regime for ATMs and development of an ATM access regime.

Concluding Comments

The finance sector is one of Australia's most important. Many factors are combining to create conditions for change - new technology, globalisation of markets, the introduction of far reaching regulatory reforms, changes in consumer behaviour and the emergence of new products and industry players. The sector continues to be characterised by significant complexity, information problems, bounded decisions and large dollar purchases on the part of the average consumer. All these factors make this sector different to others.

Like every sector of the Australian economy, finance and banking has benefited from and been exposed to all the implications of competition policy reform and the development of a more competitive economy. This has not been because competition policy reform has been applied regardless of the particular characteristics of this sector. To the contrary, competition policy reform has succeeded in this sector because its underlying principles – that consumers and the public interest are best served by competition where feasible and effective regulation to address specific market failure where it is not. Robust, consistent, responsive and cost-effective consumer protection to deal with specific issues in finance and banking, therefore, have been and will remain important aspects of the application of competition policy reform to this sector.

National Competition Policy has provided clear benefits to the Australian economy, through the economy wide application of competition law and the removal of regulatory and structural impediments to competition.

National Competition Policy and its related reforms have substantially contributed to the most consistent and sustained period of economic growth in Australia's history.

The policy reform process has been contentious. Deregulation of financial markets, tariff reform and every component of NCP has faced opponents, and sometimes almost lethal political opposition. It seems remarkable now to look back on the contention associated with tariff reform in the 80s, the near killing off of NCP as a result of "Hansonism" in the late 90s, or the declared "investment strike' by leading gas transmission companies early this decade. This all underlines the fact that while reform may be contentious at the time, in hindsight, there are few regrets associated with sound economic reforms and little pressure to overturn any of them.

In the meantime, the Australian economy powers on, in large part as a consequence of the economic reforms since the 80s. The resources boom has been a leading factor recently.

But let's not forget that well before that and less than half way through the current growth cycle, Australia was being labelled as "the miracle economy" for its sustained growth.

That's not to say that there aren't challenges ahead. There are many. From time to time, mere application of the current Trade Practices Act is contentious. There are recent reforms to bed down, including new roles for the ACCC in water pricing and trading. Our dominant telecommunications company is bent on restoring its pre-reform market power. Energy reform continues to be work-in-progress. And after a slow start in the NCP reform program, rail and port infrastructure still requires much work.

Despite ongoing contention in some areas, the general view of competition policy and the reform process in Australia is positive. There appears to be no widespread movement to unwind any of the reforms. Most of the debate these days seems to focus on strengthening competition law and policy rather than weakening it.

In the past, the first questions asked about economic reform have been: What does it mean for business? What does it mean for employment? More recently, the question has tended to be: What does it mean for investment? These days, the focus is more on: What does it mean for consumers? This is, I think, the most important enduring legacy of competition reform: the prominent consideration of consumers and the public interest. No proponent or proponent of economic reform can now afford to ignore the consideration of consumers and the public interest. Let's hope that this legacy does, indeed, endure.