AUSTRALIAN COMPETITION & CONSUMER COMMISSION

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National Competition Policy analysis study
Productivity Commission
By email: ncp@pc.gov.au

Dear Commissioners

Re: National Competition Policy analysis

Thank you for the opportunity to contribute in response to your call for submissions regarding the Productivity Commission's study to assess the economic effects of national competition reforms.

Our perspective is drawn from our law enforcement, inquiry, oversight and regulatory roles across a range of markets for goods and services. Through our work we see the impact of competition on the Australian economy but, importantly, the fundamental benefits that competitive markets and informed and confident consumers can bring.

The Australian Competition and Consumer Commission (ACCC) made a submission to the Treasury Competition Review in January 2024. That submission highlighted areas of competition policy that we considered, based on our regulatory experience, would be productive areas for reform. These included:

- ensuring competition laws and policy can adequately constrain the exercise of market power by significant monopoly infrastructure and ensuring privatisations are implemented with an appropriate regulatory framework in place to avoid long term detriment
- much greater harmonisation of regulation around the country
- promoting competition, or preserving the conditions for competition, when addressing key policy issues, or in markets with high levels of government involvement or stewardship, like the transition to net zero, the care economy, and in the digital economy
- recognising the benefits of demand side reforms that are more nuanced than just maximising information provision and enabling competition through addressing switching costs and consumer stickiness
- promoting transparency in concentrated markets to reduce information asymmetries and imbalances in bargaining power, including to address supply side issues.

Competition law seeks to preserve the conditions for competitive markets, including by taking action against anti-competitive conduct and preventing anticompetitive mergers that create or strengthen market power. However, in cases of entrenched market power that is unlikely to be competed away, there may be net benefit in intervention. There is a need to be judicious in market interventions, but they should not be avoided if the benefits to Australians outweigh any regulatory burden or any other related costs.

Innovation and cooperation by the states, territories and Commonwealth in undertaking reform was the foundation that made National Competition Policy in the 1990s so successful. Methods for assessment of potential competition reforms should capture as far as possible the full impact, including in evolving and digital markets. In particular, ensuring that longer-term impacts are comprehensively modelled will provide a robust assessment and mean that short term costs are not a barrier to reform when they are outweighed by longer-term benefits.

Assessing the benefits of reform

Assessing the benefits of pro-competition reforms should be undertaken using analysis that considers the impacts not just on prices and service levels to direct purchasers, but also other stakeholders throughout the market and related supply chains. Associated decreases in deadweight loss should also be included. The allocation of resources to more productive firms will raise the productivity of the economy and may also help drive dynamic efficiency.

Reductions in deadweight loss and possible impacts on dynamic efficiency are similarly key when considering the benefits of reforms to address **monopoly pricing by essential infrastructure**.

The general laws in the *Competition and Consumer Act 2010* for prices oversight and the National Access Regime in this area have not evolved substantially from the time of the Hilmer Report, when the 1995 principles were created. At that time, there was a hope that monitoring or notification could constrain monopoly pricing. The ACCC considers that monitoring may not provide an adequate constraint on monopoly pricing; particularly if monitoring is treated as a longer-term solution with little or no possibility of further intervention should it prove inadequate. Based on our experience, monitoring is more likely to be effective where there is a greater threat of government intervention.

Under the National Access Regime in Part IIIA of the *Competition and Consumer Act 2010*, it is clear now that there is now no credible threat of regulatory constraint from Part IIIA if the monopoly infrastructure is not vertically integrated.

While some of the charges for infrastructure services subject to monopoly pricing can sometimes seem small in the scheme of total input costs, as the Commission would be aware, the volumes they apply to can quickly add up to substantial rents being captured by the monopoly. By way of example, if a port raises a per-tonne charge by 20 cents with no corresponding additional benefit to users, and moves 150 million tonnes, it can appropriate an additional $30 million from its customers. Deadweight loss is costly to the economy and should be fully considered in assessing the potential benefits of reform.

Similarly, **poorly implemented privatisations** of monopoly infrastructure with inadequate regulatory control can create long term efficiency issues through monopoly pricing and reduced incentives to invest for users of the infrastructure.

Possible focuses for reform arising from the Competition Review could be in markets **where the government is heavily involved or has a stewardship role** (such as the care economy), or where there is a key national challenge to address, like the transition to net zero. One of the types of benefit that can be overlooked when assessing reforms in these markets is the benefit that can arise from preserving the conditions for competition in the longer-term. If these policy challenges are not properly addressed, it can give rise to arrangements that create or entrench market power, including by creating barriers to entry. We recommend the Commission prioritise the benefits of potential future competition in any frameworks associated with future reform agenda.

The reform agenda may consider measures to promote consumer's ability to drive competition (**demand side driving competition)**, such as through improved ability of consumers to switch suppliers and reduce the stickiness that comes from switching costs and other barriers to exercising choice. We note that the benefits of these reforms are not 'one-off'. If consumers can more readily (including without risk of substantial harm) exercise choice, they are more likely to do so. To the extent models of demand side measures can, they should incorporate the benefit to consumers of being able to cost-effectively choose their preferred service providers now and in the future. The cost of consumers not being able to choose should also be considered where relevant. These benefits could arise in the banking, telecommunications, energy, and other sectors.

We look forward to continuing to engage with the Productivity Commission as you embark on this important work.

Yours sincerely

Gina Cass-Gottlieb
Chair