# National competition policy in action: The politics of agricultural deregulation and wine grape marketing in the Murrumbidgee Irrigation Area

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In October 1992, the Keating Government commissioned a national inquiry into competition policy. The aim of this inquiry, chaired by Professor Fred Hilmer of the Australian Graduate School of Management at the University of New South Wales, was to establish a consistent national framework for competition in the Australian economy (Hilmer, 1993). This inquiry was a key plank in Australia's neo-liberal project to restructure national institutions in line with market principles.

This paper sketches the anatomy of how the Hilmer competition reforms (known as National Competition Policy, NCP) have been played out in agriculture. It develops a critique that connects three scales of perspective on this issue; the fundamental ideological principles of NCP; the 'process issues' confronting policy-makers attempting to abide by NCP agreements; and, the linkages between the economic restructuring of Australian agriculture and NCP. To use the terminology of Brodie (1996), the paper investigates the way the public-private interface is being renegotiated. As a concrete illustration of these processes, this paper draws on the 1996 review of Murrumbidgee Irrigation Area (MIA) Wine Grapes Marketing Board, undertaken by the NSW Government. It argues that this NCP review needs to be read as a contested agenda over the terms of the NCP debate; the process and methodology for applying NCP; and the way that Governments interpret the findings of review processes. These contests occurred in the shadow of attempts by the Commonwealth's National Competition Council (NCC) and central agencies generally to foreclose or circumscribe debate over NCP, because of its alleged

'economic necessity'. As this paper argues, such an agenda not only represents an attempt to invoke a politicised definition of the 'national interest', it is also based on a lack of understanding of the way agricultural markets are embedded within social, commercial and political contexts.

## The ideological 'big picture' of competition reform

Australia's implementation of NCP is situated within a wider neo-liberal project to restructure the nation state. This project sees as its goal a recasting of the Keynesian liberal-democratic order that emerged in the wake of the Great Depression and the Second World War. The project is enmeshed within the globalisation of capital flows, evoking powerful eddies of cause and effect: neo-liberal reforms are said to be 'necessary' because of the globalisation challenge which, in turn, becomes stronger with each decision to wither the Keynesian liberal-democratic order. An outcome is the emergence of a new kind of nation-state: "the common thread is that the basic precepts of public finance, work organisation, trade policy, wealth creation and citizen rights are being rethought" (Drache 1996, 31). The ideological heart of this transformation is the political support accorded to neo-classical economic theory.

Neo-classical economic theory derives ultimately from two key concepts. First is the concept of supply and demand, developed in the early twentieth century by the economist Alfred Marshall (Marshall, 1932). For Marshall, freely operating markets act as clearing mechanisms for the production and consumption of commodities, releasing consumer surplus for alternative (utility maximising and/or wealth creating) opportunities. During the 1970s and 1980s, neo-classical economists extended Marshallian market analysis through the development of the theory of contestability, providing an intellectual foundation to advocate the more widespread implementation of market processes. The theory of contestability holds that even where free markets may not exist (for example, because of monopoly powers), benefits from competition may still exist if there is the possibility that new market players could potentially enter the market.

Second, neo-classical economics is built on a public choice model of government. This assumes that government action can be explained solely as a result of interest group capture. It is an extreme model for explaining government action, with little empirical support (Quiggin, 1996: 72-79), yet since the early 1980s has wielded substantial political and intellectual power. In policy terms, its key contribution is to slant public debate away from issues of 'market failure', and towards those of 'government failure'. In popular parlance, the combination of Marshallian economics with public choice theory has been labelled 'economic rationalism'.

The history of how and why neo-classical economics took hold of the political debate in western countries during the 1980s is beyond the scope of this paper (but see Kelsey, 1995; Pusey, 1991; Hobsbawm, 1994). Evidently, part of the story is linked to the rhetorical devices used to sell this theory. As observed by Hutton (1995: 227), part of the appeal of neo-classical economics, especially its focus on self-clearing markets and rational individuals, is that it:

> … is an attractive philosophy. It is simple; it describes an important aspect of human behaviour; it corresponds to some deeply held intuitive feelings about human conduct; it yields some robust principles for organising both economy and society.

These assumptions – notwithstanding debate in the economics literature concerning their adequacy[1] – nonetheless form the basic tenets of much econometric modelling used to build support to the neo-liberal project. The econometric modelling of private think-tanks and organisations such as the Productivity Commission (and its antecedents) has been the handmaiden of the reform agenda: the results of these

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[1] Hutton (1995: 227-8) notes that the neo-classical account: "… is wrong, or, more precisely, it fails as a formal theory to describe the actual behaviour of actual people in a modern money-based exchange economy that produces goods over time. Try as they may, free-market economists have been unable to box human and economic activity into the same constructs that make the ideas work in theory. The complexity and variety of rationalities of human response do not fit the narrow requirements of economic rationality".

models have enabled this agenda to be buttressed by quantitative 'proof' of its being in the national interest. The key point about econometric models is that their technical opacity does not lend them to critical public debate, but their 'bottom-line' results frequently receive wide coverage. This process is typified in the Industry Commission's (IC's) modelling of the Hilmer reforms, which concluded that the Australian economy would receive ultimately a boost to GDP of 5.46 per cent from passage of the reform package. This conclusion has formed the basis for literally hundreds of speeches and press releases arguing the 'necessity' for these reforms. Quiggin's (1996, 199-223) critical review of the IC's modelling however exposes substantial errors, generalisations and misplaced estimates, leading him to conclude that the long run boost to GDP is more of the order of 0.48 per cent.

Through these means, a technocratic edifice was built within key components of the bureaucracy and intellectual community to position econometric modelling as 'impartial'. Of course, governments need economic advice, and (accurate) econometric modelling can provide a useful policy tool towards this end. However, economic modelling has taken on a life of its own in much public policy debate, where its assumptions are rarely challenged and its authors rarely brought to task for any misplaced forecasts.

A case in point is the deregulation of the NSW egg industry. Deregulation of this industry was somewhat of a *cause celebre* amongst advocates of free market processes in agriculture (Sieper, 1982). Immediately following deregulation egg prices fell, appearing to vindicate the forecasts of deregulation proponents (Hilmer, 1993: 13). However, in 1997 the NSW Minister for Agriculture reported to the NSW Parliament that the legacy of egg industry deregulation is: "fewer producers, less monitoring and higher prices, and the taxpayer paid $80 million for it" (New South Wales Parliament, 1997: 79).

<u>The National Competition Policy agenda for agricultural statutory marketing</u>

In August 1993, Professor Hilmer presented his report to the Federal Government. In April 1995, following considerable inter-governmental horse-trading, all Australian Governments ratified NCP. The detail of NCP has been reported extensively elsewhere, (National Competition Council, 1996; Ranald, 1995). NCP hinges on three agreements, signed in 1995:

- *The Conduct Code Agreement*, which requires governments to initiate legislative change in order to extend coverage of the *Trade Practices Act* to all businesses;
- *The Competition Principle Agreement*, which requires government businesses to abide by principles of competitive neutrality; and,
- *The Agreement to Implement the NCP and Related Reforms*, which sets out processes for financial transfers between governments, in accordance with reforms. Nationally, $4.2 billion has been earmarked for distribution to states and territories as a 'dividend' payment for implementing reforms.

For agricultural statutory marketing, the key importance of NCP is the requirement for governments to extend the scope of the *Trade Practices Act*. In practice, this necessitates the review of all legislation potentially promoting anti-competitive behaviour. Statutory marketing, because it involves legal sanction of collusive pricing behaviour, falls within this bailiwick. This legislative review task is extensive. Nationwide, 254 pieces of legislation administered by agricultural portfolios need to be reviewed in order for governments to fulfil NCP obligations. Governments have been required to prepare a timetable for legislative review detailing the proposed completion of these reviews (and indeed, those in other portfolio areas as well), by the year 2000.

The scale of this review task and its financial implications for inter-governmental grants has necessitated the creation of a new bureaucracy. In 1995, the Federal Government established the National Competition Council (NCC) with responsibilities to; administer some aspects of the reforms; assess governments' progress in implementing the reforms; advise on areas where more work is needed, and provide public information on NCP (NCC 1997c, 1). Tangibly, the major (and

most sensitive) role of the NCC involves its responsibility to make recommendations concerning 'dividend' payments to state and territory governments for compliance with NCP. These payments constitute the carrot encouraging Governments to abide by the NCP agreements.

The bureaucratic architecture governing the implementation of NCP creates a clear distinction between those responsible for reviewing legislation (Commonwealth, State and Territory Governments), and those responsible for reviewing these reviews (the NCC, established as an independent statutory authority). Yet in practice, this architecture is far from elegant. The 1995 NCP agreements, as well as the NCC itself, display an acute unwillingness to codify key benchmark concepts. As a result, relationships between the NCC and governments can be fraught with confusion and conflict. These tensions revolve about three issues; what constitutes a 'net public benefit'; the process by which legislation is reviewed; and, what defines a government making 'satisfactory progress' in implementing NCP.

*The definition of 'net public benefit'*

The definition of 'net public benefit' is fundamental to NCP. The ideological framework that underpins NCP starts from the premise that competition should be unimpeded unless it can be demonstrated that a net public benefit flows from regulation. However, the NCC has not attempted to define the concept of 'net public benefit', nor specify its measurement. The NCC (1996, 2) stress the point that Governments should possess the ability to implement NCP flexibly, so that it remains consistent with "the weighting placed by the community on particular social objectives". This position accords broadly with that enlisted in the Competition Principle Agreement of NCP, which provides a generous framework for defining the factors may be included in consideration of what constitutes a net public benefit.

This potential flexibility, however, has not been evidenced in the implementation of NCP. Rather than codify a definition of net public benefit, and therefore be required to confront social and political questions relating to the operation of markets, the NCC

instead has relied on the nebulous moral authority of the 'spirit' of NCP reforms. This encourages relatively narrowly-based interpretations of net public benefit. This approach echoes that adopted by the Australian Competition and Consumer Commission (ACCC) and its predecessors regarding authorisation (where the ACCC gives permission to engage in conduct that otherwise would breach the *Trade Practices Act*, on the grounds that such behaviour delivers a net public benefit). The concept of 'net public benefit' is not defined in the *Trade Practices Act*, and so has evolved on the basis of case determinations (NCC, 1996: 5). A review of these case determinations by the Boston Consulting Group found that "economic efficiency effects were predominantly, but not exclusively, considered as providing public benefits" (Nash, Fagan and Davenport, 1997: 13). This raises an important point. Although legislative frameworks allow for potential consideration of a wide portfolio of factors (such as, for example, regional development), ACCC case histories illustrate a tendency to conflate the concept of net public benefit with the measurable outcomes from econometric modelling of market situations. Thus, the potentially wide scope of factors eligible for consideration in net public benefit tests may be not fully represented in the cut and thrust of legislative review.

*The process for legislative review*

The 1995 NCP agreements say nothing on issues of legislative review methodologies, but this has not prevented the NCC from weighing heavily into this domain. The NCC supports legislative review methodologies that involve external consultants, rather than those that make use of existing knowledge bases in government and industry (Samuel, 1998, 3).[2] This argument represents a classic articulation of public choice theory; it assumes that governments only act to protect vested interests, and therefore must be saved from this peril by external consultants.

The potential for conflict over this issue has arisen most centrally in the case of reviews of agricultural statutory marketing by the NSW Government. Between ratification of NCP in April 1995 and the time of writing (the middle of 1998), the

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[2] The NCC couches this preference through the use of the term 'independent' reviews.

NSW Government has undertaken a series of high profile reviews of legislation covering agricultural statutory marketing (Table 1). Methodologically, these reviews have followed a common path.[3] In each significant case, the NSW Government has appointed review groups charged with making recommendations to the Government. These review groups have comprised representatives from both within the industry, and within the bureaucracy (representing both line agencies and central agencies). The findings of these review groups have been presented to the Minister for Agriculture, for their eventual consideration by Cabinet.

This methodology has been critically important for the way NCP has been negotiated by Government in NSW. The review of rice marketing legislation received over 200 submissions from growers, and obtained direct access to commercial-in-confidence data from Ricegrowers' Cooperative Ltd. The Review Group held public workshops in rice growing areas, and the review Chairperson addressed the Annual Conference of the Ricegrowers' Association. Undoubtedly, the direct participation of the industry in the NCP review process spilled over into the channels of Government consideration. In April 1996 the NSW Government chose to retain single-desk rice export marketing arrangements, to the chagrin of the NCC.

The role of process was even more overt in the case of the MIA wine grapes review. The review received submissions from 170 growers, and faced an orchestrated grower campaign for the retention of certain powers by the MIA Wine Grapes Marketing Board. The industry representative on the review group submitted a dissenting minority report outlining the arguments against the immediate deregulation of statutory marketing. In the lead-up to NSW Cabinet's consideration of this issue,

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[3] The review of statutory marketing legislation in NSW is a so-called 'category 1' review. A Legislation Review Group within NSW Agriculture categorises each piece of legislation according to its perceived complexity. This generates four categories of review: *Category 1* – establishment of a Review Group with inter-agency and industry representation; the release of an 'Issues Paper'; a call for public submissions; and the publication of a 'Final Report'; *Category 2* – similar to Category 1 except there is no industry representation on the Review Group and more restrictive public consultation; *Category 3* – internal agency review, with the possible public release of a discussion paper; *Category 4* – these reviews involve minimal consultation and are undertaken when there is broad acceptance that legislation should be repealed (Nash, Fagan and Davenport, 1997: 5-6).

growers engaged in direct lobbying of Cabinet Ministers.[4] The relatively open review framework established by the NSW Government created a space for industry to push its claims.

[4] One of the tools in growers' lobbying armoury was a short video featuring interviews with growers and explaining growers' perceptions of proposed industry deregulation.

Table 1: Significant NCP legislative reviews concerning statutory marketing in agriculture conducted by the NSW Government, 1995-98.

| Act | Status |
|---|---|
| Rice Marketing Board [Marketing of Primary Products Act], 1983 | completed, 1996 |
| Meat Industry Act, 1978 | completed, 1996 |
| MIA Wine Grapes Marketing Board [Marketing of Primary Products Act], 1983 | completed, 1996 |
| Banana Industry Act, 1987 | completed, 1997 |
| MIA Citrus Fruit Promotion Marketing Committee [Marketing of Primary Products Act], 1983 | completed, 1997 |
| Dairy Industry Act, 1979 | completed, 1997 |
| Murray Valley Wine Grapes Industry Development Committee and Murray Valley Wine Grapes Negotiating Committee [Marketing of Primary Products Act], 1983 | proposed joint review with Vic, 1998 |

Source: NCC 1997a.

This level of public participation and debate over NCP clearly appears to be not to the liking of the NCC (NCC 1997c, 73). In June 1997, the NCC wrote to Heads of Government seeking to gain agreement on a single methodology for conducting reviews. Two months later, the NCC's Executive Director wrote to the Director General of the NSW Cabinet Office attempting to influence the conduct of NSW's review of dairy legislation, then in progress (NSW Parliament 1997, 354). In February 1998, the President of the NCC attempted to publicly clarify the NCC's position (Samuel 1998, 3-4). He argued that although: "there need to be genuine opportunities for interested parties to contribute to a review… public consultation is about gaining information which can help the review panel answer the terms of reference, rather than being a straw poll on whether a particular option or regulation should be retained or abolished". The problem with this argument is that the NCC has no jurisdictional right to advise sovereign governments on questions of process not within the terms of the 1995 NCP agreement. Ultimately, it remains the responsibility

of the NSW Government to determine the methodology that will best serve the community's interest (and, moreover, it is also reasonable to suggest the NSW Government is better placed than the NCC to make decisions about such issues). As observed by the NSW Minister for Regional Development and Rural Affairs:

> The Government is determined that competition reviews be based on best possible information, and recognises that the only way to do that is to involve industry people in the process. The only way to know the market is to work with those who know the market. It is natural that industry leaders will provide the leadership that industries expect. They have a duty to make public the views of those industries. This need not compromise their contribution to the review process. It simply means that the industry view will be properly considered by the group. The objectivity of the review group is, first, the responsibility of the independent chairman and, secondly, balanced by the other members of the group (NSW Parliament 1997, 356).

*Determining what constitutes 'satisfactory progress'*

A key responsibility of the NCC is to advise the Commonwealth Treasurer whether jurisdictions are making 'satisfactory progress' in implementing reforms. The disbursement of 'dividend' payments to the states and territories is contingent on this advice. Again however, the concept of 'satisfactory progress' is not defined. The NCC notes that: "NCP reforms are statements of principle rather than specific implementation benchmarks" (NCC, 1997b: 16). This lack of a measuring yardstick can promote friction between the NCC and State/Territory Governments. Such friction was exhibited in the 1996 review of NSW rice marketing, which concluded that the rice industry was import and export competitive, and that the price of rice for domestic consumers had fallen substantially over recent years (NSW Government Review Group on the Rice Industry, 1996). On this basis, the NSW Government chose to retain the basic marketing structure for the industry (NSW Parliament, 23 September 1997, 353). Yet, the NCC has asserted that this decision was inconsistent

with 'the spirit' of NCP (NCC, 1997b: iv, 36), and considered levying a $10 million fine on NSW, because of it.

The unilateral power to arbitrate on 'satisfactory progress' also has emboldened the NCC to adopt a position that elevates the implementation of NCP agreements above concepts of parliamentary scrutiny and independence. The NCC's 1996-97 Annual Report argues:

> ...the Council sees it as incumbent upon a government to devote effort to ensuring that reforms are accepted by the parliament. The Council views a commitment to the NCP agreements and agenda by jurisdictions as binding not only on the government of the day, but also on the jurisdiction's parliament, particularly as governments change over time. Further, the Council's assessments of a jurisdiction's performance in relation to the NCP payments view performance at a 'whole of jurisdiction' level which includes actual reform implementation (NCC 1997c, 76).

Evidently, this statement contains a not too subtle threat to parliaments: the NCC will retaliate for delays in passing NCP legislation. Of course, it may be asked whether it is appropriate for the head of a statutory authority to make such threats to elected parliaments. The aggressive position adopted by the NCC highlights the undercurrent of contest that pervades NCP. To illustrate this, attention now turns to one example of its application.

Competition policy in action: the review of the Murrumbidgee Irrigation Area Wine Grapes Marketing Board

The MIA wine grapes industry has been governed by a legislative framework that is, in many respects, archetypical of agricultural statutory marketing. Grape production began in the MIA in 1913, with the arrival of the McWilliam family into the district (Kelly, 1988: 190). In 1933, district winegrowers received legislative backing to establish the MIA Wine Grapes Marketing Board (the Board), with powers to

determine annual wine grape prices. In 1976 and 1978, the Board's powers were expanded further, via amendments to legislation that granting the Board vesting rights (that is, powers to take ownership of the crop). These amendments provided the Board with powers not only to set minimum prices, but physically to take possession and to process all wine grapes grown in the MIA.[5]

Review of the legislation establishing the Board (*Marketing of Primary Products [Wine Grapes Marketing Board] Act*) was accorded high priority in the NSW Government's legislative review timetable. In May 1996, the NSW Government released an 'Issues Paper' outlining the terms of reference and conduct for the review. In October 1996, the Review Group submitted its report to the Government. A year later, in November 1997, the NSW Parliament passed amendments to the *Marketing of Primary Products [Wine Grapes Marketing Board] Act,* consistent with the Government's consideration of this review process. These amendments received the bipartisan support of Parliament.

The amendments to the *Marketing of Primary Products [Wine Grapes Marketing Board] Act* represent a significant case in the short history of governmental responses to NCP. First, Cabinet's consideration of this issue was undertaken in the context of a minority report being submitted by the industry representative on the Review Group. This lack of unanimity provided a clear set of alternative recommendations for Government. The minority report made plain the argument that potentially there were different readings of how agricultural markets operated, and that *a priori*, the dismantling of this legislation in line with the pro-competition model favoured by the NCC could not be assumed to deliver a net public benefit. Thus, the MIA wine grapes case represents a rare (if not unique) instance where these issues were cast as a debate over the operation of agricultural markets, rather than being cast as a question of 'efficiency' and 'national interest', set against 'vested interests'. Second, the NSW Government's response to the review, as articulated in its 1997 amendments to the *Marketing of Primary Products [Wine Grapes Marketing Board] Act,* illustrate a

[5] For legislative purposes, the MIA is defined as the City of Griffith and the Shires of Leeton, Carrathool and Murrumbidgee.

refusal to flatly accept the assumed net public benefits of deregulation. The legislative amendments edge the industry towards an institutional framework based increasingly on market processes, but within a continued role for the Board.

The 1997 amendments to the *Marketing of Primary Products [Wine Grapes Marketing Board] Act* achieved a number of outcomes. The amendments extend the Board's vesting rights until 31 July 2000, for all wine grapes except those subject to long term supply contracts between individual grape growers and wineries (defined in the Act as contracts with a duration of three years or more) (s. 1.1.a). In legal terms, this allows for a continuation of the practice where individual growers act as agents for the Board in selling their crop to individual wineries (s. 2.8.1). Unlike the previous legislation, however, the Board is specifically prohibited from processing those grapes under its (vested) ownership (s. 2.5.2.). The legislation will be reviewed again in 2000.

Table 2 summarises the main points of difference between the majority and minority reports of the Review Group. The debate over MIA wine grapes legislation compresses into four key issues; the impacts of minimum pricing; the impacts of vesting powers; implications for industry efficiency; and, the ability of the MIA Wine Grapes Marketing Board to levy a fee for industry support functions. The last of these issues garnered broad agreement between the majority and minority reports (though there was a difference of opinion concerning the preferable legislative process for collecting levies). Consequently, debate turned on competing interpretations of the efficiency effects of minimum pricing and vesting.

Table 2: Majority and minority reports of the Legislative Review into MIA Wine Grapes Marketing

| Issue | Majority report | Minority report |
|---|---|---|
| Minimum prices and countervailing power | (i) Redress against any anti-competitive behaviour by wineries is best handled by the ACCC (rather than by specific SMA legislation);<br>(ii) the concept of (regional) market power disequilibrium is mitigated by competition among wineries within the region, and the possibility for wine growers to supply wineries outside the region. | The wine-making industry is highly concentrated, both in the MIA and in Australia generally. |
| Vesting powers | (i) Because the Board has voluntarily agreed to not compulsorily acquire wine grapes, these powers are redundant and should be repealed;<br>(ii) marketing arrangements such as contracts provide a legitimate alternative to the Board's vesting role | Although the Board does not use its vesting powers to actually acquire the wine grape crop, vesting provides the legal capacity to negotiate the sale of the crop and to seek legal remedy in the event of winery default. |
| Industry efficiency | (i) Should minimum prices enable growers to receive above-normal returns, this would represent an income transfer from wineries and consumers, and thus an efficiency loss to the NSW economy (however, the ability of wineries to source grapes from outside the region makes this possibility unlikely);<br>(iii) winemakers assert that vesting and minimum price setting increases industry uncertainty and reduces potential investment and innovation. | (i) The ability to set minimum prices has not resulted in growers receiving above-normal returns, so there is no net public detriment from this power;<br>(ii) winemakers produce no evidence linking alleged reduced investment to the Board's powers (indeed, this seems more likely related to land tenure legislation). |
| Industry service functions | The Board's provision of industry service activities constitute a public benefit and should be retained, through the use of legislative mechanisms that are an alternative to vesting. | The Board's provision of industry service activities constitute a public benefit and should be retained. The Board's vesting power overcomes potential compliance problems with the collection of industry levies. |

Source: NSW Government Review Group on the Wine Grapes Marketing Board, 1996

Pricing and vesting powers and the debate over the efficiency of the MIA wine industry

The 1978 *Marketing of Primary Products [Wine Grapes Marketing Board] Act* provided the Board with full ownership of the MIA wine grapes crop, the legal ability to dispose of the crop, and the powers to specify minimum payments for the crop. Clearly, these legal powers impede the operation of a free and competitive market for the supply of wine grapes in the MIA. To the extent that government policy is to promote free and competitive markets, it is indisputable that the legislative basis for these arrangements require repeal. However as the NCP agreements assert, free and competitive markets are not ends in themselves, but merely means to an end. Accordingly, the test of this legislation should revolve around a critical examination of these powers, as they are applied in practice.

Very largely, this stance is not taken in the majority final report of the MIA Wine Grapes Review Group. The key concern of the report is to assert that the MIA wine grape sector deviates from the ideal of market competitiveness and, therefore, is less than optimally efficient. To this end, the report is couched in language giving emphasis to general concepts of market theory, rather than analysing the industry's specific market arrangements. The report presents the competing claims of the Board and the MIA Winemakers' Association in a disinterested, almost tokenistic way, prior to concluding that market theory suggests that pricing and vesting powers generate efficiency losses (NSW Review Group on the Wine Grapes Marketing Board, 1996, 23-25). The report's disdain for empirical market analysis is illustrated in the way it cites an estimate from the MIA Winemakers' Association that vesting and land tenure restrictions caused foregone investment in the MIA wine industry of $360 million between 1983 and 1996 (page 25). The reader is provided with no information regarding how this estimate was derived, and no framework from which to assess its legitimacy.[6] The report's ideological preference for seeing the world through the lens of market theory leads, at worst, to a situation where the test for net public benefit

[6] Yet, by choosing not to challenge this statistic, the Review Group gives it an implicit imprimatur.

becomes an article of faith concerning which set of submissions the reader is pre-determined to accept.

The MIA wine grapes review would have been more effective had it been constructed upon an alternative methodology; one based on empirically-grounded historical, social and geographical analysis of how the MIA wine grapes market operates. When such a perspective is adopted it becomes apparent that the full bent of the Board's legislative powers is not used. Though the Board has the legal ability to set minimum prices, and therefore to extract potentially higher prices from winemakers than might otherwise be the case, the Board takes a conservative approach to pricing. Annual negotiations over prices occur only after both parties attend an annual supply and demand outlook conference, in November each year, for the three inland irrigated wine regions (the MIA, the Riverland, and Sunraysia). This process encourages an approach to price negotiations which is informed by shared industry information concerning supply and demand. The result is to discourage ambit price claims and confrontation between grape growers and winemakers. In practical terms, MIA grape prices are not consistently above those paid in competing regions without statutory marketing arrangements (Table 3).[7]

It is also the case that the minimum prices specified by the Board can differ substantially from actual prices paid by wineries for MIA grapes. The Board price acts as a floor from which individual growers and winemakers can negotiate upwards. For most varieties, and especially premium varieties, weighted average prices paid to growers greatly exceed the Board's minimum price (Table 4). Therefore, a key plank of the majority final report – that pricing and vesting encourage an income transfer from winemakers and consumers to growers – becomes impossible to sustain. This conclusion is consistent with the 1991 finding of the New Zealand Commerce Commission, in its determination concerning collective bargaining between contract

[7] Though these three regions are broadly comparable for price competitive purposes, they each possess slightly different grape growing attributes that impact on qualities and regional reputations for specific grape varieties. Therefore, some variation in prices between varieties is expected.

grape growers and the Montana winery, which argued that although collective bargaining appeared detrimental to market competitiveness:

> …the Commission does not have any evidence to conclude that the average price achieved through collectivity is *substantially* above that which would be achieved if Montana was required to negotiate prices with each grower individually (New Zealand Commerce Commission 1991, par. 29.6. Italics in original).

Table 3: 1997 weighted average grape prices (per tonne) for selected grape varieties, MIA, Riverland and Sunraysia districts

| | MIA | Riverland | Sunraysia |
|---|---|---|---|
| Chardonnay | 989 | 1,033 | 1,024 |
| Colombard | 406 | 385 | 398 |
| Sauvignon Blanc | 496 | 432 | 514 |
| Riesling | 450 | 408 | 429 |
| Cabernet Sauvignon | 1,201 | 1,136 | 1,067 |
| Ruby Cabernet | 908 | 933 | 848 |

Source: McGrath-Kerr 1997, 20

Table 4: Comparison of MIA weighted average prices and Board minimum prices, selected varieties, 1997

| | MIA weighted av. price ($ per tonne) | Board minimum price ($ per tonne) | Weighted av. price expressed as a premium over minimum price |
|---|---|---|---|
| Chardonnay | 989 | 800 | 23.6% |
| Colombard | 406 | 300 | 35.3% |
| Sauvignon Blanc | 496 | 400 | 19.8% |
| Riesling | 450 | 400 | 24.0% |
| Cabernet Sauvignon | 1,201 | 750 | 60.1% |

| Ruby Cabernet | 908 | 500 | 81.6% |
|---|---|---|---|

Source: McGrath-Kerr 1997, 20.

The Board's vesting powers are a critical complement to its abilities to set minimum prices. Vesting provides the Board with legal ownership of the crop, though in practice the Board does not use this power to intercede in supply negotiations between individual growers and individual wineries. Consequently, vesting powers are manifested as a financial relation whereby the Board mediates grape supply payments from wineries to growers. This financial relation, according to the Board, must be understood as representing a social construct aiming to minimise transaction costs and to safeguard market equity. These points are made clear in the Board's submission to the Review Group, which nominates three merits from vesting (NSW Government Review Group on the Wine Grapes Marketing Board 1996, 24).

First, because vesting requires that payments from wineries for grape supply be channelled through the Board, it provides an efficient mechanism for the collection of levies for industry support purposes. This overcomes the potential free-rider problem, whereby growers evading the payment of levies nonetheless receive the public benefits they accrue.[8] Second, vesting enables the Board to enforce payments from wineries. Through vesting, the Board arranges that growers receive three payments per year (in May, June and October). This arrangement facilitates growers' cash-flow certainty and promotes the orderly payment systems by wineries. Third, vesting powers ensure that all growers supplying the same winery receive equitable treatment with regard to terms of payment, although the prices per tonne received by individual growers may vary with respect to quality and other factors. This promotes market transparency, helping to avert perceptions by growers that they may be treated unfairly in their dealings with wineries, and thus assists the construction of market trust. Given the social complexity underpinning the MIA wine grapes industry (involving almost 500 growers supplying 14 wineries), the importance of this factor should not be underestimated.

[8] Although, as the Review Group argues, other legislative models may also serve this purpose.

The nub of the argument concerning vesting is whether alternative arrangements may be more efficient, and thus generate a net public benefit compared with the status quo. This question is not addressed adequately by either the majority or minority reports of the Review Group. From the perspective of MIA wineries, there is an unequivocal preference to replace vesting arrangements with long term contracts, which are said to provide greater supply certainty (NSW Government Review Group on the Wine Grapes Marketing Board 1996, 24). During the 1990s the Board has permitted the establishment of individual contracts between growers and wineries, although within the overarching powers of the Board.[9] Currently, less than 10 per cent of the MIA wine grapes crop is sold through contract: a level which is considerably lower than that existing in most other wine regions.

Though MIA winemakers favour contracts over statutory marketing arrangements, this support should not be interpreted to mean that a regulatory regime based on contracts generates a superior level of industry efficiency. It may be the case that winemakers support such a change because it realigns industry risk and surplus consistent with their own commercial ends. For a true measure of net public benefit, net efficiency impacts arising from a change to contracting need to be disentangled from any related income transfers. This procedure is acknowledged in debate over contracting out in the public sector (Quiggin 1995, 173-83).

The majority report of the Review Group attempts to address this issue via its discussion of the concept of countervailing power. The report argues that because regional wineries are not monopsonists (that is, they are not single buyers of regional grape production because, hypothetically, growers can sell to wineries outside the MIA), there is no potential for advantageous income transfers accruing to wineries. Over the long term, this may be a fair description of price trends: it has already been noted that MIA grape prices do not vary significantly from those in other irrigated regions, in part because of the contestability of regional grape markets. However, to

[9] In practice, this means that payments by wineries for grapes grown on contract nonetheless are still required to be channelled through the Board.

write off the issue of income transfers via recourse to the argument of regional contestability nonetheless pays lip service to the social relations that actually underpin the annual cycle of grape supply, and the relative powers of both growers and wineries at different moments in the supply chain. Prices are, after all, just one element of market relations.

In general, MIA grower-winery relations are constructed through social relations of trust, embodied by the so-called 'handshake deal'. This means that, although growers from time to time change the wineries to which they supply (and in fact, most supply more than one winery at any one time), there remains significant stability in terms of which growers supply which wineries. These arrangements reflect the fact that many MIA wineries are family-owned companies with extensive regional histories, and which have longstanding supply arrangements with particular grape growing family enterprises. On a day to day basis these relations are mediated by winery field officers, who provide grape growers with information on such things as: forthcoming demand by variety; technical issues; price bonuses; and, harvest dates. Over recent years winery field officers have, in general, increased their level of contact with grape growers. These social relations respond to the situation where the biophysical and commercial risk of wine grapes supply lies pre-eminently with growers, but that wineries require accurate knowledge of grape supply trends and must rely ultimately on grower cooperation.

This network of social relations existing between grape growers and wineries – what can be called the 'informal' tier of market relations above and beyond the legal minimum pricing arrangements enforced by the Board – nevertheless benefits from the existence of statutory marketing. Through the Board's minimum pricing and vesting powers, a safety net is established which facilitates the construction of trust between growers and wineries on a range of grape supply issues. In the words of one grape grower interviewed as part of the research for this paper, "the Board is my union": the implication being that the Board's ability to assure fair and timely grape supply payments enables him to adopt a more cooperative approach with wineries generally.

This analysis of the social relations that underpin collective negotiation and the MIA wine grapes industry contrasts with the model painted by the majority report of the Review Group. As far as the majority report is concerned, the existence of statutory marketing drives a wedge between what may otherwise be cooperative relations between growers and wineries. This line of critique has a robust history in recent analyses of Australian agriculture. It was the centrepiece of the Industry Commission's (1991) inquiry into statutory marketing, and was argued forcefully in the 1994 report of the Federal Government's Horticultural Task Force, which linked contract farming to the agenda of international competitiveness:

> Effective long term co-operative efforts between parties [that is, growers and processors] would mean that price setting arrangements, whether statutory or informal, could be made redundant and the industry more responsive to world competitive prices (Horticultural Task Force 1994, 60).

The simplistic assumptions behind this model of grower-processor relations were borne out in the restructuring experiences of Tasmanian potato growers during 1992-95. These growers had supplied Edgell Birds Eye (EBE) on the basis of individual contracts. The price terms of these contracts were negotiated collectively, at the beginning of each grower season. In 1991, EBE was taken over by the Australian-based transnational corporation Pacific Dunlop, which installed a restructuring agenda aimed at winning export markets (previously, EBE's output was largely sold within the Australian market). One of Pacific Dunlop's first acts upon taking charge of EBE was to dishonour informal price agreements with Tasmanian potato growers, and to force price cuts of 10 per cent. However, the net effect of these actions was to create a climate of mutual distrust between growers and the company that imperilled grower cooperation on a range of other fronts, and thus undermined EBE's capital investments in the region. By 1995, Pacific Dunlop had abandoned its agenda to cut prices, in favour of an approach that used broad agreement on price levels as a lever from which to work cooperatively with growers in raising yields and in improving quality (Pritchard 1995).

The 1995 Federal Government review of the wine industry taxation (Scales, Croser and Freebairn 1995) also criticises the notion that a regime of decentralised contract-based bargaining represents a flexible and fair supply regime. According to this report, wine grape supply contracts, as they have been manifested in Australia, represent merely a legalistic rendering of an agreement that rests inevitably on socially defined market relations(Scales, Croser and Freebairn, 1995, 209-17). For practical purposes, the typical wine grape supply contract is "unenforceable by either party". According to evidence presented to their inquiry by Southcorp Ltd, they are: "like the Clayton's contract – the contract you had when you really didn't have a contract, and that obviously isn't good for predictable outcomes in terms of costs" (Scales, Croser and Freebairn 1995, 212). This situation exists because contracts are generally vague in terms of the key commercial and physical arrangements governing wine grape supply. Specific prices, for example, are rarely quoted in contracts. At best, growers are offered prices relative to regional weighted averages. This lack of specificity is related to contract length: wine grape supply contracts are commonly between five to ten years, and wineries are understandably reluctant about nominating specific prices over such a period. Accordingly, contracts sketch only the broad parameters for grower-winery relations, with actual behaviour guided by socially constructed relations.

At the same time however, a market regulation via individual grower contracts may enforce a subtle legitimation of economic power in favour of wineries. Scales, Croser and Freebairn (1995, 212-13) acknowledge that although wineries readily understand that contracts are unenforceable, growers tend to feel "morally bound" to abide by contract conditions. This point is particularly apposite with respect to contract conditions regarding premium and/or discount payments for sugar content or other factors impinging on quality. In general, wineries have wide (if not absolute) powers of discretion to arbitrate on these matters. MIA wine grape growers interviewed as part of this research provided stories illustrating that, on occasions, the results of quality testing (say, for boumé [sugar content], chemical residues or contamination) were challenged by growers, and thus became a theatre of contest. In such cases,

contract clauses can be invoked by wineries as a means of legitimising power relations.[10] In the United States such concerns have lead recently to the passage of contract regulation laws by some State legislatures (Welsh 1997, 498).

The debate over contracts brings into focus the wider question of the relationship between efficiency and commodity chain structures in agricultural markets. It is generally accepted that vertical coordination is the crucial ingredient for the efficiency of chains (Heilbron and Roberts 1995, 1). Vertical coordination refers to the ability of players at different stages of a chain to meet the expectations of purchasers. However, the goal of vertical coordination can be met through a range of alternative commodity chain mechanisms: some involving direct ownership and/or control, others involving less formal arrangements. Evidently, different mechanisms will prevail in different industries, depending on varied commodity, market and production characteristics:

> In a policy context, it is particularly important to be aware of both the factors encouraging and constraining vertical linkages, in the specific context of a particular industry. There is a need to examine the issues concerned on a case by case basis, without generalising from the experience of other industries, in order to assess the likely impact of policy measures which might affect the nature of coordination mechanisms prevailing in the specific industry concerned. *This especially applies in the context of policy initiatives such as deregulation, which by nature tend to be seen as desirable in themselves and equally applicable across a range of industries* (Heilbron and Roberts 1995, 94. Italics added.)

The danger of confusing the (justifiable) goal of vertical coordination, with the (more contentious) goal of market competition applies to not just the deregulation of statutory marketing, but also to the regulation of agricultural cooperatives.

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[10] This example provides a telling example of the simplistic way that the majority report of the Review Group dismisses the concept of 'countervailing power'. Whereas growers potentially may be able to shift supply from one winery to another from season to season, the same level of flexibility is not available when grapes are physically unloaded in the dock of a particular winery. In such moments, wineries have the capacity to exercise significant economic powers.

Agricultural cooperatives long have been subject to the claim that they allegedly discourage producer innovation. In fact, comparative empirical studies of the financial performance of cooperatives and investor-owned firms reveal no systematic trend one way or another (Lerman and Parliament 1990). This finding gels with recent research in economic geography and other disciplines that reinterprets supply chains in terms of market networks. From this perspective, supply chain outcomes are seen as the product of the underlying trust and cooperation within a network, rather than being seen to be contingent upon a specific 'model' of structural relationships between various players.

In the case of agricultural markets, enhanced vertical coordination appears often to rest on reinvigorated forms of grower-processor cooperation, organised at varying scales. Heilbron and Roberts (1995, 22) cite the work of Jarillo (1988) in arguing that: "through cooperation, significant competitive advantages may be created". Perry et al's (1997) analysis of the advent of total quality management (TQM) in the horticultural complex of Hawkes Bay, New Zealand, suggests that the diffusion of TQM (which, by definition, enhances vertical coordination) is consistent with a range of marketing structures. In the Barossa Valley wine complex, Haughton and Browett (1995, 59) report that "formal support mechanisms are paralleled by a series of less formal regulatory and collaborative mechanisms... [emerging] from a combination of traditional practices, local cultural factors, local responses to national industrial restructuring processes, and the local working through of changes in national and international regulatory mechanisms". Seen through the lens of these studies, the discussion of pricing and vesting that appears in the majority report of the Review Group appears oddly wide of the mark. While it addresses the point that existing arrangements are not consistent with competitive market outcomes, it adds nothing to our understanding of whether those outcomes would enhance vertical coordination, and thus help produce a net public benefit.

## Conclusion

This paper has argued that the implementation of NCP in Australia's agricultural sector is an overtly political process, nonetheless masquerading within apolitical discursive constructs such as 'efficiency' and 'national interest'. These processes can be seen at the three obvious levels at which NCP is applied. At the level of overarching ideology, NCP applies a neo-classicist economic model of human behaviour to public policy. At the level of national administration, NCP's implementation is distorted by political contests over the meanings of the 1995 agreements, and by politicised interventions by the NCC into the realm of state and territory governance and responsibility. At the level of NCP implementation, as shown through the example of the NSW Legislative Review of the *Marketing of Primary Products [Wine Grapes Marketing Board] Act,* an enthusiasm for pro-competition outcomes can preclude wider debate into issues of agricultural supply chain efficiency.

The issues raised in this paper pose substantial questions for an appropriate rendering of NCP in Australia. There is little doubt that the review of competition policy initiated by the Hilmer Report was overdue. There appears an undeniable argument for the need to conduct a comprehensive review of the raft of legislation affecting competition at Commonwealth, State and Territory levels. In practice however, the process of review has been conflated within a single interpretation of how competition policy relates to the national interest. During the remaining period in which legislative reviews will occur, policymakers should give central consideration to widening the review framework and methodology so that 'the national interest' can be captured accurately.

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