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A COMPREHENSIVE NATIONAL COMPETITION POLICY

by

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COMPETITION POLICY BENEFITS

- GDP 2.5 per cent higher
- Household income A\$7,000 higher
- Australia's economy "one of the best performers in the OECD" (OECD)
- Australia's economy "resilient to shocks both internal and external" (OECD)

A COMPREHENSIVE NATIONAL COMPETITION POLICY

- Narrow traditional concept of competition/antitrust/fair trade law
- Limitations of traditional concept
- Elements of a comprehensive competition policy
- The relationship of competition and regulation

AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

1960s & 1970s

- A highly regulated economy in most respects:
 - ❖ Import protection
 - ❖ Fixed exchange rate
 - ❖ Highly regulated financial and other sectors
 - ❖ Absence of competition law → numerous cartels and monopolies

AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

- ❖ Regulated labour market with centralised wage-fixing
- ❖ Protected monopoly public utilities (telecommunications, energy, air and rail transport etc.) Self-regulation. Political price-fixing
- ❖ Numerous anticompetitive laws
- ❖ Poor marketing practices and weak consumer protection law
- Poor economic performance

AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

1980s

- Substantial deregulation
 - ❖ Import liberalisation
 - ❖ Exchange rate float
 - ❖ Financial and some other sectors de-regulated
 - ❖ A modern competition law – Trade Practices Act 1974
 - ❖ Some mild labour market deregulation

AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

- early 1990s
 - ❖ Exposure to more international competition (after reduced import protection, and floating exchange rate) led to emphasis on domestic competition issues.
 - ❖ Lack of competition in sectors not exposed to international competition harmed economic efficiency and GDP, and especially harmed the sectors exposed to international competition



AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

- Early 1990s (cont)
 - ❖ Recognition of limitations of progressing reform on a sector by sector basis, without the benefit of a broader policy framework or process
 - ❖ Recognition of Australia as one national market rather than a set of separate regional markets

AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

- early 1990s (cont)
 - ❖ Greater recognition of value of competition, and of harm from weak application of competition law
 - ❖ Recognition that competition policy needed to be comprehensive
 - ❖ Privatisation (and corporatisation and commercialisation) of public utilities caused a focus on competition questions

AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

- early 1990s (cont)
 - ❖ Vigorous enforcement of competition law (Trade Practices Act)
 - Cartels
 - Other anti-competitive behaviours
 - Mergers
 - Consumer protection (false advertising, misleading and deceptive conduct)
 - ❖ Application to intellectual property law (including parallel import restrictions)

AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

- early 1990s (cont)
 - ❖ Legislative reform to Trade Practices Act
 - Higher penalties (though not criminal)
 - A stronger merger law with test changed from “dominance” to “substantial lessening of competition”
 - ❖ Merger of Trade Practices Commission & Prices Surveillance Authority to form the Australian Competition and Consumer Commission, with a sharper focus on competition, rather than price regulation

AUSTRALIA'S ADOPTION OF A NATIONAL COMPETITION POLICY

- early 1990s (cont)
 - ❖ Emerging focus on competition law and policy
 - Higher penalties
 - A stronger merger law with test changed from “dominance” to “substantial lessening of competition”

COUNCIL OF AUSTRALIAN GOVERNMENTS PRINCIPLES

- Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process

COUNCIL OF AUSTRALIAN GOVERNMENTS PRINCIPLES

- No participants in the market should be able to engage in anti-competitive conduct against the public interest
- Universal and uniformly applied rules of market conduct should apply to all market participants

COUNCIL OF AUSTRALIAN GOVERNMENTS PRINCIPLES

- Conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review, to demonstrate the nature and incidence of the public costs and benefits claimed

COUNCIL OF AUSTRALIAN GOVERNMENTS PRINCIPLES

- Any changes in competition policy should support reforms:
 - ❖ to develop an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition;
 - ❖ to reduce complexity and administrative duplication

ELEMENTS OF NATIONAL COMPETITION POLICY

- Broader comprehensive competition policy including:
 - ❖ A universally applicable competition law
 - ❖ Promotion of interstate and international competition
 - ❖ Reviews and removal of all national, state and local laws that inhibit competition unjustifiably

ELEMENTS OF NATIONAL COMPETITION POLICY

- ❖ Reviews of structures of publicly owned industries
- ❖ An access regime
- ❖ Price regulation of monopoly

ELEMENTS OF NATIONAL COMPETITION POLICY

- A Universal Competition Law for all Business
 - ❖ cartels
 - ❖ misuse of market power
 - ❖ mergers

ELEMENTS OF NATIONAL COMPETITION POLICY

- Universal Application to all Business
 - ❖ private and government-owned
 - ❖ large and small (e.g. professions)
 - ❖ all sectors
 - ❖ rigorous exemption process
 - ❖ labour
 - ❖ intellectual property
 - ❖ exports
 - ❖ other

ELEMENTS OF NATIONAL COMPETITION POLICY

- **INDEPENDENT, WELL RESOURCED,
VIGOROUS, PROPER ENFORCEMENT**

AUSTRALIA'S NATIONAL COMPETITION POLICY

- Removal of Anti-competitive Regulatory Restrictions
 - ❖ reviews of all laws and regulations restricting competition
 - ❖ any restrictions on competition must be demonstrated to be in the public interest
 - ❖ independent transparent review
 - ❖ role of State Governments and of National Competition Council
 - ❖ financial incentives

AUSTRALIA'S NATIONAL COMPETITION POLICY

- Structural Reform of Public Utility Monopolies
 - “Essential Facilities” are:
 - ❖ Necessary inputs into downstream or upstream production
 - ❖ Monopoly facilities
 - ❖ Declaration
 - ❖ Pricing and other disputes
 - ❖ Competition and investment issues

AUSTRALIA'S NATIONAL COMPETITION POLICY

- Structural Reform of Public Utility Monopolies
 - ❖ Permit open entry by new players
 - ❖ Promotion of interstate competition
 - ❖ Substantial restructuring of the industry both horizontally and vertically
 - ❖ Competition law applied in full
 - ❖ If integration remains, then access laws are arguably necessary

AUSTRALIA'S NATIONAL COMPETITION POLICY

- ❖ Regulate monopoly price
- ❖ Ownership reform
- ❖ Separate regulatory functions
- ❖ Functions of public monopolies

AUSTRALIA'S NATIONAL COMPETITION POLICY

- MONOPOLY PRICING
 - ❖ Preference for competitive solutions
 - ❖ Price regulation for monopolies only
 - ❖ Incentive mechanisms

AUSTRALIA'S NATIONAL COMPETITION POLICY

- COMPETITIVE NEUTRALITY
 - ❖ Government businesses to compete on same footing as private business
 - ❖ Review mechanisms for complaints

INSTITUTIONS

- The Australian Competition and Consumer Commission
 - ❖ Enforce trade practices and consumer protection law
 - ❖ Access pricing
 - ❖ Utility regulation (national only)
 - ❖ Merger of TPC and PSA
 - ❖ Small business laws

INSTITUTIONS

- National Competition Council
 - ❖ Legislation review
 - ❖ Access regulation

IMPLEMENTATION

- Identification of all anti-competitive laws in every sector, in every department, at every level of government, including state or local
- All laws reviewed independently and transparently over 6 years

IMPLEMENTATION

- Any new laws reviewed in advance
- If a law was found to be in the public interest, could a less anti-competitive means of achieving that public interest be found?

IMPLEMENTATION

- Very large payments by national government to state governments for doing the review properly
- Penalties if not done properly

IMPLEMENTATION

- The national competition council was ‘umpire’ of whether the reviews were done properly
- Governments were not bound to adopt competitive outcomes, but could be penalised