

17 May 2024

Productivity Commission
4 National Circuit
BARTON ACT 2600

By email: ncp@pc.gov.au

Dear Sir/Madam,

National Competition Policy analysis

1. The Competition and Consumer Committee (**Committee**) of the Business Law Section of the Law Council of Australia refers to the call for submissions paper issued by the Productivity Commission (**Commission**) in relation to the National Competition Policy (**NCP**) analysis.
2. As outlined in the paper, the Australian Government is:
 - 2.1. undertaking a two-year competition review covering, amongst other things, competition issues relating to achieving net zero, data and digitalisation, growth in the care and support economy; and
 - 2.2. working with states and territories to revitalise the National Competition Policy, with potential competition reforms being developed through the Council on Federal Financial Relations (**CFFR**).
3. The Commission has been asked to assess the economic impacts of the reforms, including an assessment of the scale of any benefits and how those benefits are distributed, which will help inform CFFR decision-making about future competition policy in Australia. The Commission has indicated that, where possible, it will use Computable General Equilibrium (**CGE**) models to assess the likely impacts of NCP reforms. For this purpose, the Commission has requested submissions from interested parties in relation to:
 - 3.1. suitable methodologies for modelling direct and economy-wide impacts of competition reforms; and
 - 3.2. what metrics should be used to measure the impact of reforms on the economy broadly, households and consumers, affected industries and small business, and government revenue.

4. The Committee considers that any proposal for reform should be evidence-based. Before reforms are introduced, their likely costs and benefits should be assessed. However, the appropriate way to measure the potential impacts of a reform proposal, and the metrics that should be used to measure these impacts, may differ depending on what the reform addresses. Accordingly, any impact assessment should be conducted on a case-by-case basis, by reference to the subject matter and intended effect of the relevant reform proposal.
5. The Committee notes that caution also needs to be exercised when relying on macroeconomic models to estimate the costs and benefits of reforms that are very broad in nature, where the direct impacts of the reforms are difficult to identify or estimate. The Commission has previously conducted forward-looking assessments of the prospective economy-wide impacts of NCP reforms.¹ In the context of these studies, the Commission noted the difficulty in accurately estimating the likely gains from their implementation. Specifically, it noted:²

“Precision is neither attainable nor claimed. The lack of precision comes from two sources—the nature of the reforms in question and the nature of modelling assessments.

...

Hilmer and related reforms, at this stage at least, are more about concerted strategies to foster a climate for improved economic prosperity than they are about implementing specific, known and tangible changes.

...

The point that needs to be made is that, if the implications of this package of reforms are difficult to tie down in principle, a modelling exercise cannot manufacture certainty out of the unknown.”

6. Although the Commission did conduct extensive quantitative modelling for the purpose of estimating the likely gains of prospective NCP reforms in terms of economic growth and increased revenue, it cautioned that the models used to estimate such gains are inherently imprecise and that one needs to exercise judgement when interpreting the results of such a modelling exercise:³

“... there is a need to exercise judgment in using the modelling results to reach conclusions about the gains from the reforms considered. Models are inherently imprecise, and cannot capture all of the factors that would influence the ultimate outcomes.”

¹ Productivity Commission 2005, [Review of National Competition Policy reforms](#), Report no. 33, Box 2, p. XVIII.

² Industry Commission 1995, [The growth and revenue implications of Hilmer and related reforms](#), Final Report, pp. 2-3.

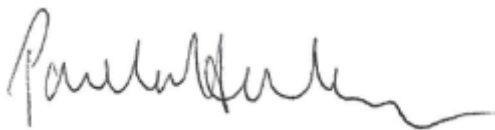
³ Industry Commission 1995, [The growth and revenue implications of Hilmer and related reforms](#), Final Report, p. 49.

7. Similarly, while the Commission did use a CGE model to conduct a later backward-looking assessment of the impact of various NCP reforms implemented prior to 2000, it opted not to put a dollar value on the potential benefits of various forward-looking reforms on the basis that these would be difficult to estimate with any precision and would depend on the specific reform measures adopted.⁴
8. The Committee agrees with the Commission's prior view that the results of macroeconomic modelling should be interpreted with great caution when reforms for which benefits are being estimated lack specificity, and questions the use of such models for this purpose. For example, the Committee questions whether the use of a CGE model is appropriate to estimate the likely benefits of proposed changes to Australia's merger regime given:
 - 8.1. the high degree of uncertainty as to whether the new regime will effectively result in the prohibition of a greater number of anti-competitive mergers that otherwise would have been allowed to proceed under the existing legal framework; and
 - 8.2. the inability to estimate the direct effects of future proposed mergers that are yet to be announced.
9. The Committee understands that the proposed competition reforms that the Commission has been asked to assess have not yet been finalised or made public. We look forward to the opportunity to consult on the methodologies and metrics to assess the economic impacts of these reforms on a case-by-case basis, as the relevant competition reforms are announced.

Conclusion and further contact

10. The Committee would be pleased to discuss any aspect of this submission.
11. Please contact the chair of the Committee, Lisa Huett, at lisa.huett@au.kwm.com, if you would like to do so.

Yours faithfully



Dr Pamela Hanrahan
Chair
Business Law Section

⁴ Productivity Commission 2005, [Review of National Competition Policy reforms](#), Report no. 33, p. XLIII.