



Business SA

Competition Policy Review - Submission

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BusinessSA

South Australia's Chamber of
Commerce and Industry

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Introduction

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

To assist in the preparation of this submission, Business SA hosted two workshops for members in conjunction with the Federal Treasury and members of the Review Panel, one in regional South Australia and one in Adelaide. Business SA would like to take this opportunity to thank the Federal Treasury and the Competition Policy Review Panel members for their genuine engagement with our members. It is pleasing that the Federal Government was interested to hear directly from businesses, including small businesses about what the practical issues are with Competition Policy and Business SA commends this approach.

The Federal Government's recent review of the South Australian and Victorian economies to inform its transition package for both States to move beyond auto-manufacturing has been welcomed. It was a positive start to identifying the industries which are best placed to drive economic growth into the future. However, there are significant constraints on South Australian businesses impeding their ability to be competitive and to expand. The Federal Government's review of Competition Policy is an ideal opportunity to begin taking practical steps to addressing the barriers to South Australian businesses being competitive. We acknowledge that although this is a Federally led review, many of the issues will require actions at all levels of Government. We are confident that the Federal Government can play a lead role in collaborating with State and Local Government to achieve the required outcomes and all levels of Government must work together to ensure our businesses, particularly small businesses are best placed to compete not only within Australia, but even more importantly, within world markets.

Executive Summary

The most recent State Final Demand number for South Australia showed the State's economy has not grown since the September Quarter 2013, and has only expanded 1.3% over the year to March 2014. While Business SA acknowledges that State Final Demand is only a proxy for State Gross Product, it is the best available information until the 2013/14 Australian National Accounts are released in November 2014. Although the economic growth figures are disappointing, it is not surprising given the general state of business conditions in South Australia. Only business can begin to reinvigorate South Australia's economy, but they must start from a competitive base which underlines the importance of outcomes through the Competition Policy Review process.

South Australian businesses face a range of issues which fall under the mandate of competition policy and need attention. While there are a myriad of concerns, the issues impacting the majority of businesses relate to the cost of key inputs where this is little or no competition in key markets or there is no competition in parts of the supply chain, such as the transmission and distribution of electricity. In terms of reducing the cost of doing business in South Australia, the issue of competition in key markets needs the most immediate attention.

South Australian businesses are also being hamstrung when trying to expand through the cumbersome nature of regulatory impediments such as the planning system. The planning system is not adequately supporting economic growth and is acting as a barrier to firms who are trying to increase their competitiveness. It is the nature of growing a successful business that expansion is inevitable, and if businesses are not being supported by a regulatory framework which supports their growth, how can the economy continue to create jobs?

On the other hand, where there are issues of potential misuse of market power, in some instances the extent to which regulators like the ACCC are able to take action is limited by jurisdictional control. Although the ACCC may be best placed to act on a misuse of market power matter, it could be a State or Local Government authority which has ultimate authority over, for example; a development which has ramifications for competition in a key market. The Competition Policy Review needs to recommend some practical solutions to dealing with issues relating to jurisdictional control without imposing an unnecessary regulatory burden, which ultimately is borne by businesses.

Business SA acknowledges the ACCC is trying to engage with business, particularly small business, but the reality is that many small businesses are still frustrated with the process of taking complaints to the ACCC, and feel the interface is not geared around what suits small business. In terms of resources, small businesses are always at a disadvantage when trying to pursue matters of larger businesses misusing market power. For this reason, the ACCC needs to be more accommodative in terms of its requirements on small business when raising potential breaches of competition law. The ACCC also needs to open up communication with business representative groups on a practical level, not just through high level consultations. There are too many 'brick walls' preventing practical access to ACCC staff and in order to better engage small businesses, having direct communication with the right people is essential.

Notwithstanding there have been significant advances through privatisation of Government businesses since the Hilmer Competition Policy review in 1993, there are still many issues impacting the competitiveness of South Australian businesses which emanate from Government business monopolies, the most prominent example being SA Water. The water price rises for South Australian businesses over recent years have been astronomical. Although some of these price rises have been driven by investments such as the desalination plant, the competitiveness of South Australian businesses which rely heavily on water has been severely eroded. The Competition Policy Review also needs to seriously examine issues of transparency related to the actual costs of Government provided services, particularly if privatisation and market deregulation is to be considered.

1. Regulatory Impediments to Competition

When analysing regulatory impediments to competition, it is important to recognise that there are issues which impact upon a business' ability to compete both locally and internationally. While the former may be more transparent and visible, it is becoming increasingly essential for South Australian businesses to become export competitive which can be enabled by Governments through ensuring any costs or constraints on local production are not materially different to those faced by our international competitors. Business accepts that this does not mean a race to the bottom on costs such as labour, but nonetheless Governments need to act to restore Australia's competitiveness. The reality is that if we want to maintain our standard of living, we need to ensure our businesses can be export competitive. This is not an option but rather is economic reality. South Australia is in the unique position of having both an ageing population and facing a significant structural economic adjustment post auto-manufacturing. The rhetoric from both the State and Federal Governments is that South Australian businesses need to diversify and focus on export orientated industries. Business SA agrees, but we need Governments to facilitate that export growth through ensuring the cost base in South Australia is competitive. Without a competitive cost base, any Government funding to assist businesses to transition and export will be ineffective. Further analysis of competitiveness issues related to regulatory impediments are outlined as follows:

- 1.1 The cost base differences between Australia and its international competitors are both obvious and not so obvious. South Australia is one of the highest electricity cost jurisdictions in the world, only superseded by Denmark. Furthermore, a 2012 report prepared for the Energy Users Association of Australia showed that based on 2011 prices, average prices in Australia were 10% higher than Japan, 20% higher than the EU, 70% higher than the US and 130% higher than Canada.¹ Electricity prices have risen even higher since this data was compiled, placing businesses, particularly small South Australian businesses, at a significant competitive disadvantage.
- 1.2 Where the costs differences between Australia and its international competitors are not so obvious is where input prices for specific industries are completely out of relativity with those overseas. As an example, a commonly used vaccine in the pork industry costs \$3.20 per dose in Australia compared with an equivalent \$1.10 per dose in Europe. This is a result of an import monopoly which we understand local companies have had difficulty in breaking due to regulatory constraints. The pork industry already faces significant competition from abroad; including issues with imported Virginia ham being marketed as a 'Product of Australia', and is part of a broader agricultural sector which should be fostered as a vehicle for sustainable economic growth.
- 1.3 It is clear that the planning system is putting up barriers to the expansion of businesses and also enabling anti-competitive behaviour, both of which are impacting upon small businesses.

Business SA acknowledges that the underlying reason for maintaining a robust planning system is to ensure development is appropriate within the strategic planning framework of the State. However, there often appears to be issues of interpretation in the planning system at a local level which results in impractical decisions being made, particularly affecting the ability of small businesses to expand.

In one such example, a South Australian agribusiness is looking to invest in a research and development facility but has faced significant issues in building on their land due to a zoning issue related to the parcel of land required for such a building. In this instance, there needs to be recognition of the broad benefits which would emanate from such a facility and the planning system should function to promote development where appropriate. Where issues often emanate in these instances is with re-zoning and the blanket rules which are applied without common sense reasoning. One area where the planning system could be made more

¹ Carbon & Energy Markets, 'Electricity Prices in Australia: An International Comparison', March 2012

efficient requires the Government to identify priority farmland so agribusinesses and other developers can have more clarity around the re-zoning process where land sits outside these areas, as would likely be the case in the example described. Business SA notes it made a recommendation on this issue in its submission to the South Australian Government's 2014 Planning Reform Panel.

Another example is where a South Australian winery considered expanding its cellar door but could not add another toilet due to the planning restrictions on the number of toilets for a given building in its particular zone. Without the extra toilet, the cellar door could not expand and as a result the economic benefits of this expansion could not be realised. We are not advocating for a 'carte blanche' approach to planning approvals, but the planning system needs to be much more facilitative of development, particularly as it relates to creating sustainable jobs.

Where the planning system is facilitating development for major retailer expansions, this is often done in isolation of the cumulative impacts or effects on competition in the market in which those retailers operate. For example, in a small town, a major supermarket and shopping centre development may not only force an independent retailer out of business, but should this be repeated across multiple towns or suburbs, then the independent wholesale market may also be impacted. It is not Business SA's position to advocate for a more cumbersome development approval process, but the Federal Government through its competition regulator, the ACCC, needs to be able to act proactively to prevent the misuse of market power as enabled through the planning process. It is not reasonable to expect Local Councils to be able to effectively consider matters of market competition but the reality is that they are the gatekeepers to the planning system and as such there needs to be some mechanism for the Federal Government to act where appropriate and necessary.

- 1.4 There are significant regulatory impediments faced by the transport industry which prevent businesses from being competitive. For example, trucks with associated hauling equipment doing seasonal work are forced to pay the same registration as trucks participating in the general freight market. The agricultural, viticultural and horticultural industries all face intense international competition and any assistance to bring down transport costs will enable them to be more competitive. Penalty rates in these industries can also impact upon transport costs at peak times which must be absorbed by growers and ultimately reduces their export competitiveness.

Transport operators which operate interstate are also frustrated by having drivers stopped in multiple jurisdictions for roadworthy checks of a similar nature. To overcome this, there needs to be improved coordination between authorities to minimise the number of times an interstate truck is stopped on any single trip. This is not to diminish the rights of authorities to stop a vehicle if necessary, but more to apply common sense to ensure vehicles are not being stopped multiple times where this can be avoided through appropriate sharing of information.

2. Competition in Key Markets

Competition in utility markets is probably the single biggest issue facing South Australian businesses. Although electricity and gas markets in South Australia are effectively deregulated, there are still significant price pressures emanating from parts of the supply chain which are not subject to competition. Water on the other hand is still a regulated market in South Australia and in recent years the price pressures on businesses have been extraordinary.

In relation to the grocery market, the issues are not so much about a lack of competition but rather the potential misuse of market power by major retailers. Smaller, independent retailers are not worried about competing with the larger retailers, but are concerned about being pushed out of the market with tactics which will eventually result in a duopoly or monopoly market. This is not only at a supermarket level, but also at an individual brand level. As previously mentioned, many of the controls required to ensure market power is not misused need to be enforced at a planning level, but at present it is really beyond the scope of Local Councils to address such matters.

- 2.1** The South Australian electricity market was deregulated in February 2013 and there are now 13 active retailers in the market. However, what must be considered is that the retail margin in South Australia only makes up approximately 4% of the final price. Accordingly, there could be 1,000 retailers in the market and the impact of retail competition on the final prices would still be quite limited. While retail and generation margins in recent years have been depressed, there have still been significant price rises in network charges which are comprised of distribution costs, and to a lesser extent, transmission costs.

Because network revenues are fixed by the Federal Government's Australian Energy Regulator (AER), there is a limited amount that businesses and other customers can do to reduce their network charges. South Australian businesses have already been subject to electricity price rises of approximately 80% since 2009² and Business SA is deeply concerned about the rising impact of electricity costs on the competitiveness of businesses, particularly exporters. Interestingly, the rising impact of electricity prices is forcing many businesses to hire energy brokers, with many business people not being able to interpret what part of the bill is actually adding to the significant price rises they are experiencing.

While we support changes to network pricing to become more cost reflective, there needs to be more consideration of the practical ability of small businesses to adapt their energy consumption patterns to reduce impact at times of peak demand. It is often unviable for a small business to be able to invest in say, peak load shaving equipment such as generators, but if there were options to lease such equipment it may become feasible.

- 2.2** Rising gas prices are also a significant concern for South Australian businesses, particularly those businesses with heavy industrial processes requiring heat generation. For some of our larger industrial members, recently negotiated forward contracts prices are up to 50% more expensive. In time, this impact will eventually flow on to smaller businesses and we are deeply concerned about the supply issues in the market driving up prices for business customers. Business SA is not advocating for a domestic gas reservation policy, but we are concerned that the Federal Government is not playing a lead role in opening up supply side restrictions which are leaving States like South Australia exposed to much higher prices than would otherwise be the case with export parity pricing alone.

Given the lack of transparency in the wholesale gas market, we do not believe that competitive issues are being exposed and effectively dealt with by the ACCC. For example, one of our industrial members is able to access gas at a discount of approximately 25% on the Moomba line versus the SEAGas line out of Victoria. However, there are substantial connection costs involved in accessing the Moomba line which makes this option unviable for the business involved. While there is a deregulated market, given the domination of major retailers on specific gas lines, there are still instances where major retailers are able to use market power to control prices. This is working against South Australian businesses and we need the Federal Government to take steps to ensure the gas market is working efficiently, including through increased transparency in the wholesale market.

- 2.3** In terms of relative impacts on business, the rising cost of water in South Australia has been the most extreme. Business SA has many examples of members experiencing price rises of up to 300% in the last three years alone. These are not isolated instances but rather a reflection of the reality of water costs in a market which now incorporates a desalination plant and is still controlled by a Government run monopoly water utility. While there are moves afoot to introduce third party access to SA Water's network, Business SA is still awaiting the bill to be re-introduced to State Parliament and views this as a key plank of competition policy reform which must be legislated without delay.

² ABS, Consumer Price Index – Adelaide electricity sub-group, March 2014

Whichever way SA Water's monopoly is viewed, the fact is that South Australian businesses are paying significantly more for water than their inter-State counterparts which is reducing our competitiveness. In one example, a South Australian industrial user is paying less than half the cost per kilo-litre (KL) for a plant in NSW when compared with a plant in South Australia. If South Australia is to transition its economy away from auto-manufacturing over the next few years, it needs to start with a competitive cost base.

- 2.4** Although Business SA acknowledges that it is not presently an issue because irrigators own the majority of water allocations, the ACCC needs to maintain a watch on the water trading market to ensure the relative power of non-irrigator investors is not misused should market dynamics change. This will be particularly important during the next drought.

3. Small business and the efficacy of Competition Law

Competition law is inherently complex and it is not reasonable to expect that many businesses, particularly small businesses, are able to comprehend the nuances involved. However, by and large businesses understand that competition law is in place to ensure there is actual competition, particularly in key markets, and that businesses with market power do not misuse it. Competition law is not about diminishing the impacts of competition, but rather ensuring that all competitors are on a level playing field.

Small businesses find it difficult to approach the ACCC because the interface is not practical for them. We acknowledge that the ACCC has a small business help line, but even if it is possible to get through to that number, even Business SA staff have experienced difficulties in obtaining a clear answer on whether or not a particular issue we were raising on behalf of our small business members was something the ACCC may investigate. Furthermore, small businesses are often very time constrained and do not have time to fill out lengthy on-line forms, particularly if their issues are ultimately unlikely to fall under the jurisdiction of competition law.

Business SA understands the ACCC is attempting to better engage with small business, but the most effective way in which to do that is to focus its efforts on a phone service where operators are able to quickly and concisely distil a small business operator's issue into one which either does or does not have some potential merit for further investigation by the ACCC. Small businesses are not seeking for the ACCC to solve all their problems, but if the ACCC designs its small business interface to accommodate the needs of small business, as opposed to its own internal requirements, it will better be able to engage with the vast majority of small businesses. The ACCC also needs to improve its engagement process with business representative groups such as ourselves and other Chambers of Commerce. Small businesses place a high degree of trust in organisations like Business SA and we are well placed to act as a conduit to the ACCC to advance member concerns of anti-competitive behaviour.

There also a need to improve communication by the ACCC about the practical implementation of its powers. There is a perception amongst business, particularly small business, that the ACCC will only prosecute cases where the alleged breach of law results in substantial losses that would be significantly larger than what could ever be attributed to a single small business. Part of this perception may be related to the way in which cases are reported through the media, but the reality is that small businesses perceive the ACCC will not take up their case if it is unlikely to result in considerable losses given the time and resources required to prosecute. We acknowledge that the ACCC releases small business newsletters which detail its prosecutions, but the reality is that the majority of small businesses' have neither the time nor inclination to read them. Where the ACCC

needs to improve its communication is to help small business understand that while the losses they suffer individually may not substantiate an ACCC prosecution, they can help mount a case provided there are other small businesses which have experienced losses of a similar nature. Accordingly, there needs to be improved communication or recognition of how small business can cumulatively assist the ACCC to mount cases, particularly against large retailers. Without this, many small businesses are with justification, not seeing any value in raising their issues with the ACCC.

4. Government Provided Goods and Services and Competitive Neutrality

The example of Government provided services which most impacts upon the competitiveness of South Australian business is in the provision of water by the State Government owned SA Water. As described in Section 2 above, South Australian businesses face materially higher water costs in comparison with their interstate counterparts, and for water intensive businesses, this significantly impacts their competitiveness. We have already detailed the issues of price outcomes in the monopoly market for water, but there are also issues of transparency which involves pricing that prevent the correct price signals flowing to industry.

Issues of price transparency are particularly important for industry to price future development opportunities, particularly relating to the use of recycled water, treated waste water and bio-solids. Business SA is also concerned that come the next drought in South Australia, which is an unfortunate inevitability, pricing information will not be available to compare the cost of all water delivery options, including through the desalination plant or via re-cycling schemes. South Australia has a significant horticultural and viticultural industry which supplies our largest manufacturing sector of food and beverage manufacturing, a significant part of which is reliant on water allocations from the Murray River. If farmers along the Murray are to lose their water allocations, there needs to be analysis performed of the costs of lost production to the South Australian economy versus the cost of running options such as the desalination plant throughout the drought. South Australia needs to make smart choices in the best interests of the whole economy and full transparency in water cost information assist in this occurring.

There have been significant privatisations since the Hilmer national competition policy review in 1993, aside from high profile Government businesses such as Australian Post and Medi-bank Private, but there are still instances where less visible Government businesses are providing services which can be more efficiently provided through the private sector. One such example in South Australia is in the provision of wireline logging services for testing wells with potential defects. At present, there is no legislated provision for the State Government to provide wireline logging services but they continue to do so even though there is a well developed private sector providing these services. Industry operators have also advised Business SA that there is no structured tender process for work which arises out of the State Government's responsibility to manage drill defects under the *Natural Resources Management Act (2004)*. Furthermore, the State Government's wireline logging business has conducted work in areas unrelated to its responsibilities under State legislation, which has included interstate work.