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No

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What should be the priorities for a competition policy reform agenda to ensure that efficient businesses, large or small, can compete effectively and drive growth in productivity and living standards?

Competition policy reform agenda should be ensuring that the interface between competition policy and consumer protection is maximised. This will ask the question - should small business be protected, or have their role enhanced at the expense of consumer welfare. Can it be said that total economic welfare is our goal. A result of this might be that consumers are disadvantaged at the expense of producers, and disadvantage to the consumer market might need to be accepted as an inevitable consequence. If this is the thought pattern, then vulnerable and disadvantaged consumers need to be expressly and overtly protected. Consumer paradigms start with a notion of empowerment, with intervention only occurring if this is ineffective. For the vulnerable and disadvantaged consumer, the point of intervention is much earlier than for the rational economic agent. Competition policy reform has the potential to marginalise our most vulnerable, and for this reason, any reform agenda must never neglect the consumer connection. It is consumers who activate the market and send signals to businesses in relation to their price and non-price strategies. By marginalising the disadvantaged we reduce their living standards and remove what could otherwise be an active participant in the consumerist society in which we live. The reform agenda for competition policy must be interlaced with consumer policy.

Competition and consumer policy must also take far greater cognisance of behavioural economics and how this affects consumer choices. If consumers are empowered to make choices, but they objectively fail to make the right choices, the government then has a role to move the consumer in the direction they should take (e.g., see the Nudge, Thaler and Sunstein). Such moves will lead to a rise in living standards (e.g. moves in superannuation to nudge people in investments that suit their risk profile and stage of life).

An example of where competition policy and consumer policy must be integrated can be seen in the rise of supermarket private labels. In the short term, they may well see reduced prices, but long term, potentially, a reduction in choice and a reduction in innovation as small suppliers to the supermarket giants are removed from the market. The supermarket as both customer and competitor to suppliers is a regulatory challenge of some intractability.

Are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?

We will focus our comments on the legal profession as an example of a self-regulated profession. This is an area in which we feel that consideration of some reform is warranted.

To enter the profession a law degree is required, as well as completion of a practical legal training course, acceptance by the Supreme Court that your character is suitable for entry to the profession, and certification by a Board of Legal Education or equivalent. Upon satisfying these requirements, the person is issued a limited practicing certificate. On top of these impediments, further controls exist.

For example, Law Schools are largely bound by the prescripts of what is known as the Priestley 11. This dominates the content of the degree and means that law schools can only compete at the edges around delivery methods (online/traditional), or rankings (which are derived from research in the main, and don't reflect the undergraduate experience). As regards domestic students, law schools have little capacity to compete on price, and with this in mind, competition between law schools on content, or a focus around the learning experience, or an applied teaching environment leading to a work ready employee, rarely exists.

Perhaps of more concern, entry to the profession is controlled by, for the most part, state-based law societies dominated by those already within the profession. At best this situation presents a real conflict. At

worst it exhibits hall-marks of an anti-competitive environment. We also see law societies now mandating continuing professional development obligations, and also being in the market for the delivery of these matters. The monopoly once enjoyed by the legal profession in relation to conveyancing has been removed in many jurisdictions – the type of anti-competitive measures noted here must be justified in the name of consumer welfare. At the very least, it's difficult to see why a national system relating to the issue of practicing certificates could not be implemented with consumer representation embedded in the process.

Are government-provided goods and services delivered in a manner conducive to competition, while meeting other policy objectives?

Competitive neutrality of government enterprises was a hallmark of the Hilmer report - yet little discussion of this concept has taken place in the policy context post-Hilmer. There is some question as to whether any aspect of government enterprise justifiably remains in government hands. Ongoing debates about the efficiency of services provided in relation to electricity, water and telecommunications provide a case in point.

Intuitive examples where you might ask whether the role of government could be eliminated is in the issuing of licences (e.g. driving and gun licences), as well as the issuing of passports. The private/public partnership that is currently occurring in the development of national e-conveyancing standards and protocols represents the type of relationship that could occur in removing or minimising government involvement in areas where it is not essential that it be involved.

Is there a need for further competition-related reform in infrastructure sectors with a history of heavy government involvement (such as the water, energy and transport sectors)?

See our comments in relation to the previous question (dealing with competitive neutrality).

Would there be a public benefit in encouraging greater competition and choice in sectors with substantial government participation (including education, health and disability care and support)?

The short answer we would give to this question is 'yes'. Given our expertise, we will focus on views on higher education.

Tertiary education in Australia is inefficiently funded. It involves the subsidisation of research from teaching related activities, and the subsidisation of courses with low enrolments from those with large enrolments. The demand driven nature of higher education has seen large enrolments into many of the professional areas with little chance that the majority of those students will be able to undertake a career path in that area. University administration is bureaucratised, and driven by what seems to be a focus on compliance rather than innovation. One way to correct this quickly would be by opening the sector up to private competition. At the moment for every dollar of revenue invested into a University, a substantial portion is dedicated to administering the centralised functions of the University. The remainder flows to the academic division delivering the services to the consumer, with the bulk of this taken up with the salaries of tenured academic staff. Greater financial and labour flexibility would allow productivity gains.

Focusing on efficiency may, however, involve some trade-off in social welfare and consumer gain. In reality, offering consumers (i.e. students) choice may not be realistic. Privatisation would invariably see 'elite' universities able to increase (and charge market) fees, a move which would prejudice consumers in lower socio-economic groups. Smaller universities may close which would exacerbate the problem. Competitive neutrality comes at a cost, and in this case (as with health, and disability support), a hybrid model may be more sustainable model than a fully privatised one. Clearly the issues are complex but the inefficiency of the current model makes this a prime example with which to debate the benefits/costs of privatisation.

Are the current competition laws working effectively to promote competitive markets, given increasing globalisation, changing market and social structures, and technological change?

No comments

Are competition-related institutions functioning effectively and promoting efficient outcomes for consumers and the maximum scope for industry participation?

No comments

What institutional arrangements would best support a self-sustaining process for continual competition policy reform and review?

No comments