

Submission to the Competition Policy Review

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This submission draws on some ten years' research into the National Competition Policy 1995-2005. It makes a number of points, few of which address the specific issues raised in the Issues Paper. However these points address the presuppositions of competition policy in Australia. They are kept brief for readability but can be elaborated with full referencing on request.

Competition is not a good thing in itself.

The idea of competition has been little debated and less researched. Amongst the submissions to the Hilmer Committee there were a number which warned of the dangers of excessive reliance on competition. These included those by churches and the ACTU. No answer was given, the debate was not engaged.

Economics has for a long time (although perhaps less than it claims) asserted the benefits of competition in terms of productive, allocative, dynamic and transactional efficiency and this has been repeated as somewhat of a *mantra* in many government reports, including that of the Hilmer Committee. However, competition has bad effects too. There are losers as well as winners, its supposed incentive effects are founded not only in benefit but also fear. That fear reduces performance. This sophisticated sports coaches know; sportspeople strive for personal best and not to beat others. Even Adam's Smith's peon to liberalism in Chapter 2 of *The Wealth of Nations* was founded in a metaphor we now know as utterly false. His claim was that dogs do not cooperate when hunting, that it is their competition which enhances their performance. We now know that they do cooperate.

Striving to beat other people reduces empathy and cooperation; in a society it reduces community. Yet competition relies on community. Without law, human rights, trust, property, parenting, care and the multitude of other virtues, there is no community within which contracting can work. Competition can, therefore work to undermine the very thing it is supposed to promote.

The claim by proponents of competition is that government action is the product of rent-seeking by individuals and groups. Of course, this charge could be levelled at those seeking to promote competition, that competition benefits them. However, it is a false claim for other reasons too. In as much as seeking the public interest may be flawed by the process of self-interest seeking to bend policy, so also does competition lead to competitors seeking to bend the framework of competition in their interest: they seek to change the rules of contracting, of property and of regulation, to bribe and corrupt. The idea of free competition is as idealistic as the idea of the public interest. Each process is as flawed as the other and each is interdependent. To simply assert that one works and the other doesn't, as the Hilmer Committee did (even to the point a claiming that it promoted gender equality), is simplistic in the extreme. Research is needed into the place of competition in

society. This research should not emanate from the Productivity Commission as it lost its capacity to undertake social research long ago (when the community forum represented by the Economic Planning Advisory Council was subsumed into the Productivity Commission thereby losing all pretence of consultation other than in the limited idea of 'testing').

Competition may be inappropriate

Some functions within government are inappropriate for competition even if it is conceded that competition has benefits. This was well explored in *What Price Competition?*, the Report on the Competitive Tendering of Welfare Service Delivery by the House of Representatives Standing Committee on Family and Community Affairs published in June 1998. That report made a number of strong recommendations on circumscribing the impact of competition policy on welfare provision. It also had little or no effect on what happened thereafter, being rejected in almost its entirety by the then Government.

While its attentions focussed on implementation of a particular aspect of competition policy, that of contracting out of welfare services, the critique was directed at the rationale for doing so. It started with one of the few discussions of flaws in implementation. These were as to accountability, service quality, cost, the nature of work in the industry, and the implications in small and remote communities. While the Committee did not do more than identify these issues, it too called for research and discussion. At that point the Committee went further to challenge competition policy itself, albeit from the point of view of 'How far should contracting out be taken?', rather than 'Contracting out is wrong'. Its terms of reference, if nothing else, precluded the latter question: 'To inquire into and report to Parliament on the desirability and feasibility of increased contracting out and competitive tendering of welfare service delivery by all service providers ...'

The Committee dealt with 'desirability' and 'feasibility', as constrained by 'increased', by challenging the concept of 'contestability'. In some contexts this word is used to describe a product or service the provision of which is subject to competition and others is a measure of potential competition. The Committee defined it as 'a process by which the *potential* to outsource a service (i.e., its contestability) is assessed'. The assessment is then 'used to assist in determining the suitability or desirability of contracting out a particular service and what form the contracting out should take'. This, then, forms the core of its challenge to competition policy: that the 'contestability' of a service should be first examined rather than the requirement of legislative review process that competition should be implemented except if the public interest outweighs its benefits. To put it in simpler terms, which the Committee itself applied, the question of 'Should we?' is preliminary to 'Can we?'

What Price Competition represented a rare challenge to core economic principles evinced in the competition policy. Its challenge was very specific; it was to contracting out of welfare services. It parallels sociological work about contractualisation. Yet it had no impact on the progress of implementation of the National Competition Policy, which had just then begun. Nor were the data and analysis taken up by the media or academia. It thus represents another example of how public discussion about the nature of competition, when it should be deployed, and what its strengths and defects as a policy instrument are, is sorely lacking. Not only was the Committee inhibited from taking the discussion up, even to the extent that it did discuss the limits of competition as a method of governance, it was ignored.

The Hilmer *Report* is a poor example for of policy definition

The Competition Policy Review repeatedly deploys the Hilmer *Report* as a starting point for discussion of competition policy. However, the Hilmer *Report* is a poor example of policy definition.

The rationale provided in the Hilmer *Report* did not deal with the core issues with competition policy. These were identified almost as soon as it was published. These included:

- The idea of the public interest as something which was to be balanced against competition refuses the notion that Parliament is the expression of the public interest and that external balancing of Parliament's will against an alternative policy imperative is to threaten the basis of democracy.
- It refused to engage with the commonly accepted idea that competition policy is about power and the control of monopoly as a rival to the state. To that extent the power to disaggregate monopolies provided by the *Sherman Act 1890* (US) and the *Enterprise Act 2002* (UK) is ignored when it the obvious correlate of the structural change imperative within Australian competition policy.
- That the public interest is not susceptible of definition in any case. Mind you, the question of uncertainty lies in the idea of market as much as it does in leaving the definition of the public interest to politics. Markets are about the question of unknowable price and an accommodation of social processes to the imposition of that price.
- There is no basis for the assertion that the market is superior to any other ground of regulatory policy.
- The lack of attention to the interaction of international trade policies and competition policy and acceptance of the inadvisability of unilateral – this is met by the assertion that competitiveness abroad needs competitiveness at home but that is to deny the rationale of the exchange rate.
- The place, form and manner of maintenance of community service obligations were not explained.
- The subordination of environmental matters to economics rather than explicitly dealing with them.
- A failure in economic reasoning, especially in terms of the problem of second best, the theory of property rights, transaction cost economics, the problem of social cost and the mistaken belief that Kaldor-Hicks efficiency implied that compensation should not be paid.
- The notion of Government Business Enterprise assumes the boundary between business and government.

The Hilmer *Report* summarised the trends of the previous decade or so into five elements. Not one of the elements was particularly new. It assumed the nature of Government Business Enterprise which was to beg the question. To the extent it pushed legislation review into a more universal procedure it caused massive disruption to the ideas on which society was based; ultimately its ideas proved unworkable. Structural reform was already under way and initiatives were merely hitched on to the procedures of the *Implementation Agreement*.

The Hilmer Committee was created not so much out of the desire to formulate a single policy initiative as to rewrite federalism. That much is clear from its foundation in the Council of Australian Governments, in its terms of reference and in the political context of the early 1990s. The key issue was the autochthonous nature of the States and the vertical fiscal imbalance within the Australian federation. The Hilmer Committee were naive in the extreme over federal politics, seeming to believe that the Commonwealth could govern the economy. Its suggestions were roundly rejected in the negotiations leading up to the National Competition Policy. One would hope the Competition Policy Review would acknowledge the federal nature of the Australian polity.

The National Competition Policy achieved little and cost much

The National Competition Policy was negotiated following the Hilmer *Report*. A claim behind the Hilmer *Report* as an ideal of policy definition is that the National Competition Policy carried out its recommendations as to competition policy, if not its suggestion as to institutional structure and methods of implementation, and that these policies led to substantial benefit for Australian society. There is no basis for this claim. Even the Productivity Commission in its 2005 *Assessment* in claiming a 2.5% increase in GDP could not find that the National Competition Policy had caused benefit. Moreover, there was substantial social cost in the form of Australian politics, to numerous communities and perhaps to the underlying nature of Australian society.

The Productivity Commission's 2005 *Assessment* was, indeed, a highly qualified statement based on flimsy evidence. It did not test propositions, rather it set out to support them. It made theory contingent assumptions. Where it conceded evidentiary or methodological problems, it proceeded to ignore their impact: its conclusions frankly ignored the concessions it had made. Costs were narrowly defined, if at all (including the very costs of implementation as such). Causation was not established and it conflated non-National Competition Policy measures with microeconomic reform while at the same time concluding that it was measuring the effect of the National Competition Policy. Claims to increased economic resilience were not borne out nor were those as to continued cost benefits. Finally, the Report did not convincingly settle on what it was measuring: was it productivity, increases in gross domestic product or infrastructure price reduction? The conclusion must be that there was no real assessment of the National Competition Policy; certainly that provided was not convincing. It can be said, then, to have satisfied the requirements of the terms of reference: to provide a panegyric for the National Competition Policy.

What should the Competition Policy Review Do?

With all due respect, the Competition Policy Review should commission research into competition with respect to its personal, social and cultural aspects as well as its place in economic reasoning. It should recognise that, as Philipp Freier, the Anglican Archbishop of Melbourne put it in *The Age* on Monday 9 June 2014, the economy should serve the people, not the people serve the economy. This research should not be given to the Productivity Commission, as it is compromised.

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