

21 November 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Professor Harper

Competition Policy Review Draft Report

Thank you for the opportunity to comment on the Competition Policy Review's Draft Report.

COBA is the industry body for credit unions, mutual building societies and mutual banks and, on behalf of Friendly Societies of Australia, friendly societies. Collectively, the institutions we represent have more than \$87 billion in assets and serve more than 4 million customers. The customer owned model is the proven alternative to the listed model, delivering competition, choice, and consistently market leading levels of customer satisfaction.

COBA strongly supports the work of the competition policy review. Competition is an essential element of efficient markets, and without adequate competition, consumer outcomes suffer, in terms of both price and choice.

Our comments on specific elements of the draft report are set out below:

Market Power

COBA agrees that the current misuse of market power provision (section 46 of the Competition and Consumer Act 2010), is not effective in achieving its policy objective.

We agree with the ACCC's view that its current regulatory toolkit is inadequate to respond to the misuse of market power. The ACCC has advised the Competition Policy Review that the existing misuse of market power prohibition is of limited utility in prohibiting anti-competitive conduct by firms with substantial market power.¹

This is particularly concerning for COBA given the market power currently held by the major banks in the banking sector. The Financial System Inquiry (FSI) Interim Report found that: "The major banks have market power across a range of markets."²

¹ ACCC, *Reinvigorating Australia's Competition Policy – Submission to the Competition Policy Review*, June 2014.

² Financial System Inquiry, *Interim Report*, July 2014, p. 2-21

That the major banks have market power is an immediate concern, given the ACCC's definition of market power as "the ability of a business to insulate itself from competition."

The ability of the major banks to ignore traditional competitive pressures is exemplified by the recent statement of ANZ CEO Mike Smith, who asserted that if the major banks were required to hold more capital this would "come at a cost to customers who will pay more for home lending,"³ and estimated that loan prices would increase by about 50 basis points.

This is despite the fact that the hypothetical capital changes Mr Smith was discussing would be applied to only four or, at most, five of Australia's approximately 180 Authorised-Deposit Taking Institutions (ADIs). In a competitive market, five businesses would not be able to unilaterally increase their prices without suffering a loss of market share. However, major bank CEOs are suggesting that they will be able to entirely pass these costs onto consumers. Such an outcome would not be symptomatic of a healthy and competitive market.

While agreeing that the major banks have market power, the FSI Interim Report also stated that "it is not clear they are abusing this power," given in part that the "ACCC has taken relatively little action against the major banks in recent years."⁴ However, this could be due to the shortcomings in the current legislative framework rather than an absence of an abuse of market power by the major banks.

Further evidence about the true nature of competition between the major banks has been put on the record by a former director of a major bank.⁵ This board-room perspective from John Dahlsen is significant because Mr Dahlsen served as an ANZ director for 20 years (1985-2005).

According to Mr Dahlsen:

"Banks compete through engaging in parallel behaviour and colluding with each other to the disadvantage of the consumer."

COBA supports a strong market power provision in the CCA which is effective in preventing the abuse of market power.

The Draft Report proposes replacing the concept of "taking advantage of market power," with a prohibition on activities which were designed or likely to "substantially lessen competition."

COBA supports this change. We agree that the current test is difficult to apply in practice, and that the proposed focus on the effect of the change, rather than determining the intent behind it, should make it more effective.

As the Draft Report notes, the proposed amendment to section 46 is "intended to improve its clarity, force and effectiveness, so that it can be used to prevent

³ Australian Financial Review, *New bank rules could lead to big rate hikes, says ANZ chief*, 1 Nov 2014.

⁴ Financial System Inquiry, *Interim Report*, July 2014, p. 2-21

⁵ *Murray financial report 'abject failure', says ex-ANZ board man*, Australian Financial Review 18 August 2014

unilateral conduct that substantially harms competition and that has no economic justification.”⁶

Price Signalling

While COBA agrees that price signalling can lead to undesirable outcomes (particularly in the banking sector), we would argue that the improper use of price signalling is just a symptom of a broader underlying problem, namely a lack of competition.

COBA has long argued that there is inadequate competition in the banking sector, and disagrees with the FSI Interim Report’s assessment that the banking sector is “competitive, albeit concentrated.”⁷

It is precisely because there is a lack of competition in the sector that previous governments have seen the need to introduce rules targeting price signalling. The fact that the restrictions were only applied to the banking sector was a clear demonstration competition concerns are particularly prominent in that area.

COBA has made submissions to the FSI seeking reforms to the financial sector which will improve competition by allowing all banking institutions to operate on a level playing field.⁸ We note that if reforms such as these are implemented, the improvements in competition they delivered would go some way towards removing the need for specific price signalling rules in the banking sector.

COBA supports the Competition Review Panel’s proposed changes to the price signalling arrangements. We note that the current rules apply to all ADIs, placing an unnecessary regulatory burden on smaller ADIs when the measure was aimed exclusively at conduct or potential conduct by the four major banks.

Dealing with price signalling in a consistent fashion across all sectors through a broader “concerted practices” element of section 45 of the CCA would be a simpler and more streamlined way to deal with the issue.

Structural Changes

COBA supports the ACCC playing a role in ensuring that the rules and regulations governing the banking sector do not unduly undermine competition.

COBA believes that this outcome could be more effectively achieved by formally including the ACCC in the membership of the Council of Financial Regulators (CFR). Membership of the CFR is currently limited to Treasury, APRA, ASIC and the RBA. While the CFR can choose to seek the input of other agencies on particular issues, it is not obliged to do so, and the absence of a competition focussed regulator in its regular membership risks competition considerations being overlooked.

⁶ Competition Policy Review, *Draft Report*, September 2014, p.43.

⁷ Financial System Inquiry, *Interim Report*, July 2014, p. 2-3

⁸ See www.customerownedbanking.asn.au for details.

The FSI Interim Report acknowledged that broadening the membership of the CFR would “strengthen the Council’s ability to perform its role as a coordination body on a whole-of-sector basis.”⁹

Please contact me on 02 8035 8448 or Micah Green on 02 8035 8447 to discuss this submission.

Yours sincerely



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⁹ Financial System Inquiry, *Interim Report*, July 2014, p. 3-120.