

**Competition Policy Review
(private) submission by
Dr. Troy Lynch**

17 November, 2014

Dear Sir/Madam,

The following submission addresses a number of the observations, and comments on the policy option recommendations stated in the *Competition Policy Review's Draft Review* (September 2014).

Sincerely,

Troy Lynch, PhD.

Troy's background is in funds management and academia. He holds a PhD in economics (capital and interest theory), a Master of Letters (in business cycle theory), a Bachelor of Economics, and completed the Graduate Diploma in Applied Finance and Investment. He is also a registered representative of the Sydney Futures Exchange (now ASX 24).

Observations and comments on the policy option recommendations stated in the *Competition Policy Review's Draft Review* (September 2014).

Draft Recommendation 1 — Competition principles

I support the Panel's proposal whose goal is to emphasise that all governments, both federal and state and local, should allow competition to impact and effect markets in the long term. This will be in the long-term interests of business and consumers. The Panel endorses competition policy that focuses on making markets work in the long-term interests of consumers. A public interest test – benefits should outweigh costs – should apply for independent authorities who oversee prices and when government intends to restrict policy.

Draft Recommendation 2 — Human services

I support the draft recommendation that an intergovernmental agreement should provide for user choice in the field of human services, and that funding, regulation and service delivery should be separate. Multifarious providers should be encouraged to provide these services, which includes community and voluntary agencies. Innovation in service provision should also be encouraged.

Draft Recommendation 3 — Road transport

I support the draft recommendation that encourages 'cost-reflective road pricing.' pricing should be subject to independent assessment. To minimise higher charges on road users, I support the Draft Recommendation that there should be a cross-jurisdictional approach developed to road pricing. In the case where direct pricing is used, in direct charges and taxes should be removed.

Draft Recommendation 4 — Liner shipping

I support the draft recommendation that the Australian Government should repeal Part X of the CCA. This will facilitate further competition. Specific exemptions may be determined by the ACCC.

Draft Recommendation 5 — Coastal shipping

Cabotage restrictions should be removed, unless they can be shown to be in the public interest.

Draft Recommendation 6 — Taxis

I support the draft recommendation that restrictive regulations in the taxi industry should be removed across all states and territories.

Draft Recommendation 7 — Intellectual property review

I support the draft recommendation that a review be undertaken by the Productivity Commission of intellectual property. I support the notion that the guidelines of such of a review should be a balance between innovation and adoption, without stifling restriction, while at the same time reinforcing the importance of supporting the private property rights for the owners and innovators. The principles of protection of private property as well as fostering competition should be upheld.

Draft Recommendation 8 — Intellectual property exception

I support the draft recommendation that subsection 51(3) of *The Competition and Consumer Act 2010* (Cth) (the CCA) be repealed. Intellectual property rights should be subject to the same competition laws as all other property rights

Draft Recommendation 9 — Parallel imports

I support the draft recommendation that parallel imports should be removed, unless it is in the public interest and that, by restricting competition, it is also in the public interest. The removal of restrictions should further promote imports and lead to lower intermediate goods prices and consumer goods prices.

Draft Recommendation 10 — Planning and zoning

I support the draft recommendation that planning and zoning legislation should focus on the long-term interests of consumers, not favour existing operators, and provide for internal review processes that assess potential new entrants that are not subject to the decisions of existing or incumbent operators. I support the notion that competition principles should be central objectives in state and territory laws that deal with planning and zoning, with a focus on the reduction in cost, complexity and time.

Draft Recommendation 11 — Regulation review

I support the draft recommendations to reform regulation that restricted competition and led to anti-competitive conduct, which were not in the public interest. In principle, all federal, state and local Australian governments should review and remove regulations that lead to unnecessary restrictions on competition. I support the notion that these should be guided by a public benefit test and that, given the necessity for the restriction of competition, it must also be in the public interest.

Draft Recommendation 12 — Standards review

I support the draft recommendation that non-government mandated standards be reviewed according to the same process stated in Draft Recommendation 11.

Draft Recommendation 13 — Competitive neutrality policy

I support Draft Recommendation 13 – ‘all Australian governments should review their competitive neutrality policies.’

Draft Recommendation 14 — Competitive neutrality complaints

I support the draft recommendation that ‘All Australian governments should increase the transparency and effectiveness of their competitive neutrality complaints processes’ via the stated minimum requirements in Draft Recommendation 14 for such action.

Draft Recommendation 15 — Competitive neutrality reporting

I support a draft recommendation 15: ‘government businesses [should] include a statement on compliance with competitive neutrality principles in their annual reports.’

Draft Recommendation 16 — Electricity, gas and water

I support the draft recommendation for the deregulation of both electricity and gas retail prices, as well as reform in the water sector.

Draft Recommendation 17 — Competition law concepts

I support the draft recommendation that the concepts and prohibitions articulated in the CCA be retained, to facilitate the importance of improvements in consumer welfare over the long term; protection of competition; maintaining simplicity with a view to its purpose; and balancing prohibition for anti-competitive conduct and support of pro-competitive conduct.

Draft Recommendation 18 — Competition law simplification

I support this draft recommendation.

Draft Recommendation 19 — Application of the law to government activities

I support this draft recommendation, so that the competition law applies to the Commonwealth and the States and Territories and local governments if they engage actively in trade or commerce.

Draft Recommendation 20 — Definition of market

I support this draft recommendation.

Draft Recommendation 21 — Extra-territorial reach of the law

I support this draft recommendation, in which the competition law provisions of the CCA should apply to firms engaging in conduct outside Australia, if that conduct harms competition in markets in Australia, notwithstanding the residence of the firm.

Draft Recommendation 22 — Cartel conduct prohibition

I support the terms of this draft recommendation on cartels (i.e. simplification of prohibitions, etc.).

Draft Recommendation 23 — Exclusionary provisions

I support this draft recommendation.

Draft Recommendation 24 — Price signalling

I support the draft recommendations in which the Panel finds no basis for prohibiting public price disclosure and that private price disclosure may be beneficial except when used to lessen competition. Thus anti-competitive price signalling does not need its own Division in the CCA but by extending section 45 to cover practices that intentionally reducing competition.

Draft Recommendation 25 — Misuse of market power

I support the draft recommendation to prohibit a corporation that has substantial degree of power in a market from engaging in conduct if the intended conduct lessens competition. The defence from over-capture that includes normal, rational business decisions should be introduced, the proof of which should be the responsibility of the corporation to prove.

Draft Recommendation 26 — Price discrimination

I note the Panel's draft recommendation on the requirement to refuse to re-introduce a prohibition on price discrimination or in international price discrimination due to implementation, enforcement problems and unintended consequences. I support the Draft Recommendation to deal with international price discrimination through market solutions.

Draft Recommendation 27 — Third-line forcing test

I support the notion that the CCA should not impede trading conditions between buyers and sellers. I support the draft recommendation that third-line forcing should be prohibited when it reduces competition.

Draft Recommendation 28 — Exclusive dealing coverage

I support this draft recommendation.

Draft Recommendation 29 — Resale price maintenance

No comment.

Draft Recommendation 30 — Mergers

I support a stronger reduction of regulation concerning mergers that offered by the Panel.

Draft Recommendation 31 — Secondary boycotts enforcement

I support this draft recommendation.

Draft Recommendation 32 — Secondary boycotts proceedings

I support this draft recommendation.

Draft Recommendation 33 — Restricting supply or acquisition

No comment.

Draft Recommendation 34 — Authorisation and notification

I support this draft recommendation.

Draft Recommendation 35 — Block exemption power

I support this draft recommendation.

Draft Recommendation 36 — Section 155 notices

I support this draft recommendation.

Draft Recommendation 37 — Facilitating private actions

I support this draft recommendation.

Draft Recommendation 38 — National Access Regime

I support this draft recommendation.

Draft Recommendation 39 — Establishment of the Australian Council for Competition Policy

I support that the National Competition Council should be dissolved but I do not support the establishment of the Australian Council for Competition Policy.

Draft Recommendation 40 — Role of the Australian Council for Competition Policy

The function of a proposed ACCP could be undertaken by an existing body such as the Productivity Commission.

Draft Recommendation 41 — Market studies power

The proposed competition studies of markets in Australia could be undertaken by the authority for this function, such as the Productivity Commission; recommendations to governments on changes to regulation or to the ACCC for investigation of potential breaches could be one of its functions.

Draft Recommendation 42 — Market studies requests

I support this draft recommendation, given that the function is undertaken by an existing body responsible for this task, such as the Productivity Commission.

Draft Recommendation 43 — Annual competition analysis

I support this draft recommendation, given that the function is undertaken by an existing body responsible for this task, such as the Productivity Commission.

Draft Recommendation 44 — Competition payments

I support this draft recommendation.

Draft Recommendation 45 — ACCC functions

I support this draft recommendation.

Draft Recommendation 46 — Access and pricing regulator functions

I support this draft recommendation.

Draft Recommendation 47 — ACCC governance

I support this draft recommendation.

Draft Recommendation 48 — Media Code of Conduct

I support this draft recommendation.

Draft Recommendation 49 — Small business access to remedies

I strongly support this draft recommendation, particularly for specific dispute resolutions for small business for issues dealt with by the CCA. In particular, the ACCC should receive resources which will enable it to test the law on a regular basis to ensure that the law is acting as a deterrent to unlawful behaviour in respect of small businesses as the potentially harmed party.

Draft Recommendation 50 — Collective bargaining

I support this draft recommendation.

Draft Recommendation 51 — Retail trading hours

I support this draft recommendation.

Draft Recommendation 52 — Pharmacy

I strongly support this draft recommendation. This would lead to greater flexibility and competition.