Response to the Australian Competition Policy Review draft report.
Date: 17 November, 2014.

1. The draft report does not mention a method to determine if increasing the level of competition in a particular industry, will result in benefit or harm to the National Interests, consumers or Australian industry. An example of such a method is located at page 36 (Annex F) of my original submission.
2. The draft report does not mention how to evaluate the success or failure of changes in the level of competition in a particular industry. Annex A of this submission provides a recent Swedish example of how changes in the level of industry competition can be evaluated and adjusted if necessary.
3. The draft report does not encourage cooperation between competitors, various levels of government and other relevant agencies to produce what is best for consumers, the national interests and society. The Japanese example at Annex B of this submission provides an example of what can be achieved when competitors, various levels of government and other relevant agencies cooperate in the national interests.
4. The draft report's section on cartels (page 41) does not mention the importance of differentiating between harmful and beneficial cartels. Annex C from the O.E.C.D. website makes this distinction clear. It provides some examples of harmful and beneficial cartels.
5. The draft report's section on procurement (page 177) only mentions one problem associated with competitive tendering. It fails to mention the other eight problems associated with competitive tendering that are explained at pages 39 -43 of my original submission.
6. The draft report does not mention a mechanism to reduce the level of competition in a particular industry if it is in the consumers and the national interests to do so. Emeritus Professor Ted Kolsen (formerly of the University of Queensland) explains the importance of this type of mechanism in his paper, "Microeconomic reform and National Competition Policy: Misconceptions and Problems (1996)." This paper is quoted on page 23 of my original submission.
7. The draft report does not mention any mechanism to prevent political bias or corruption when determining if the level of competition within a particular industry should be increased. For example, if one or more political parties propose that an industry should be opened to competition and the most likely beneficiaries of doing so are financial donors to those political parties. Point 18 at page 38 of my original submission provides such a mechanism.
8. The draft report (page 11) states: "The impact of the NCP reforms is evident not just in economic statistics but in everyday experience. For example, prior to the NCP reforms:
   - consumers had no choice of electricity or gas provider — they paid regulated tariffs and customer service was poor or non-existent,"

   The draft report does not mention what happened to electricity prices when competition was introduced to retail electricity markets. Annex B (page 31) of my original submission shows what has happened to

electricity prices since the introduction of competition to the Brisbane retail electricity market.

- 9. The draft report (page 11) states "there was a monopoly in telecommunications services, which ended only in 1992 when Australia's second telecommunications provider, Optus, entered the market;" The report makes no mention of what impact the duplication of infrastructure, marketing and other expenses (that came about as a result of competition) has had on prices or quality of service.
- 10. The draft report focuses almost exclusively on competition law as the primary market harnessing control. My original submission contains an alternative approach. I can see no evidence that the review panel has considered any part my original submission.

Murray B. Stanley

Annex A Swedish pharmacy example – A re-regulated pharmacy market – Final report (2013:7)

The extract below is located at the website listed at the bottom of this annex.

A re-regulated pharmacy market – Final report (2013:7)

Summary of the publication En omreglerad apoteksmarknad – Slutrapport

On assignment from the Government, Statskontoret (the Swedish Agency for Public Management) has followed up and evaluated the re-regulation of the pharmacy market on the basis of the stated objectives of the reform.

Statskontoret considers that the objective regarding enhanced access to medicinal products and low pharmaceutical costs has been achieved to a large extent. At the same time, Statskontoret perceives that the objective regarding improved services and service range and the objective to retain expertise and a secure supply of medicinal drugs have only been partially fulfilled. It has not been possible to assess the achievement of the objective to make use of the pharmacies' contributions to an improved use of pharmaceuticals.

Furthermore, Statskontoret considers the pharmacy market in May 2013 to generally function in a satisfactory manner, but that the Government's stated ambition regarding diversity and good conditions for both large and small operators may fail to be achieved in the longer term.

Statskontoret's mandate to monitor and evaluate the re-regulation of the pharmacy market

During 2008 and 2009, the Riksdag (Swedish Parliament) reached three decisions which, combined, commonly are referred to as the re-regulation of the pharmacy market. The decisions entail that:

- Healthcare providers were as of 1 September 2008 granted greater freedom to organise provision of medicinal products to, and within, hospitals.
- The state owned company Apoteket AB's monopoly in the pharmacy market was abolished on1 July 2009.
- As of 1 November 2009, sales of certain OTC medicinal products were permitted from outlets other than pharmacies.

In June 2010, Statskontoret was assigned to evaluate and monitor the re-regulation of the pharmacy market based on the objectives of the reform. The assignment also required Statskontoret to shed light on the functioning of the means by which the re-regulation was carried out. Statskontoret has submitted two interim reports on the assignment. This report is Statskontoret's final report.

The Government has defined five overall objectives for the re-regulation reform:

- Enhanced access to medicinal products
- Improved service and an enhanced service range
- Low pharmaceutical costs
- Retained expertise and a secure supply of medicinal drugs

- Making use of the pharmacies' contributions to an improved use of pharmaceuticals

In this report, Statskontoret presents conclusions and observations regarding respective overall objectives. Statskontoret has also carried out weighted assessments of the extent to which the objectives have been fulfilled. We assess the achievement of the Government's overall objectives as well as a number of specific objectives. These specific objectives have been developed based on the Government Bills Hospitals' Supply of Medicinal Drugs, Re-regulation of the Pharmacy Market and Trade of Certain Non-prescription Medicinal Products. Goal achievement is assessed according to the scale High attainment – Partial attainment – Low attainment.

The objective of enhanced access to medicinal drugs

Statskontoret's weighted assessment is that the overall objective of enhanced access to medicinal products has been fulfilled to a great extent.

As of 1 May 2013, there were 1,280 open care pharmacies in Sweden compared to 924 on 1 July 2009 when the pharmacy market monopoly was abolished. This represents an increase of 356 pharmacies, or 39 per cent. In May 2013, 5 of the 924 pharmacies that were in business prior to the re-regulation had closed, but none of these were in sparsely populated areas. A large proportion of the new pharmacies have been established in densely populated areas. No pharmacies have been established in sparsely populated areas, while there have been six more pharmacies in rural areas close to densely populated areas. At the same time, around thirty of the new pharmacies have been established at locations where no pharmacy had previously existed. All counties have gained at least one additional pharmacy, but there is a large difference in growth between the counties.

The average weekly opening hours of pharmacies has increased from just over 45.5 hours in 2008 to 52 hours in 2012. The number of pharmacies in the country that are open on Sundays has increased from 154 to 422.

The number of pharmaceutical agents in the country has declined over a longer period of time, including after the re-regulation of the pharmacy market. In April 2013, the total number of agents was 704, compared with 839 in 2009. Pharmaceutical agents still maintain a good spread countrywide.

In April 2013, there were 5,670 registered retail outlets for certain OTC medicinal products aside from pharmacies. These retail outlets are evenly distributed across the country. The sales of medicinal products outside of pharmacies are dominated by pain medications, nicotine replacement therapy and nasal sprays.

According to Statskontoret's consumer survey, the accessibility at pharmacy premises is about the same in 2013 as before the re-regulation, with the exception of the availability of seats in pharmacies which, in Statskontoret's view, has deteriorated. . There are also indications that the possibility for wheelchair users to access the premises has deteriorated.

Based on, for example, the experiences of pharmacy staff and consumers, Statskontoret concludes that access to medicinal drugs within 24 hours has deteriorated following re-regulation. It should also be noted that the vast majority of consumers receive their drugs directly or within 24 hours despite the decline.

Statskontoret perceives that consumer access to licensed drugs has worsened following re-regulation, while it is unchanged in terms of extemporaneous drugs and medical gases.

Statskontoret's weighted assessment is that the overall objective of enhanced access to medicinal products has been fulfilled to a great extent. This means that we believe that the vast majority of consumers have gained improved access to medicinal products. Statskontoret would also like to point out that there are a few minor consumer groups for which accessibility now, arguably, is poorer. These include consumers who live in those few places where pharmacies have closed.

The objective of improved service and an enhanced service range

Statskontoret's weighted assessment is that the overall objective of improved service and an enhanced service range has been fulfilled to some extent.

The consumers give very high marks to pharmacy staff for respectful treatment both in 2013 and in 2008, i.e., prior to re-regulation. Furthermore, the consumers perceive the pharmacies to be as well staffed in 2013 as before the re-regulation of the pharmacy market.
Following re-regulation, pharmacies now offer a number of new services. Examples of these services include blood glucose monitoring, allergy testing, weight loss and anti-smoking services, and digital search tools for store information about medicinal products in pharmacies. However, in May 2013, the scope of these services as a whole is limited, as many of the new services are only offered in a limited number of pharmacies.
In spring 2013, most pharmacies offer multi-dose drug dispensing. The recently completed procurements of multi-dose drugs may, however, lead to changes in how multi-dose drugs will be distributed and dispensed to consumers in the future. Statskontoret estimates that the pharmacy's role and function regarding multi-dose drugs will change.
Statskontoret's weighted assessment is that the overall objective of improved service and an enhanced service range has been fulfilled to some extent. It should be noted that, prior to the re-regulation of the pharmacy market, consumers were already generally happy with the service in pharmacies, which means that the room for improvement in this regard has been limited.

The objective of low pharmaceutical costs

Statskontoret's weighted assessment is that the overall objective of low pharmaceutical costs has been fulfilled to a great extent.

In conjunction with the re-regulation of the pharmacy market, several regulatory amendments were introduced that impacted the pricing of prescription drugs with generic alternatives. An evaluation by the Swedish Agency for Growth Policy Analysis shows that pharmacies' dispensing of the cheapest drug on the market, the "product of the period", has increased substantially following re-regulation. At the same time, however, both pharmacy purchase prices and sales prices have risen for the product of the period. This is explained by the introduction of the so-called generics. The overall result of the various changes is that the cost to society per daily dose for drugs with generic alternatives has fallen across the board by 10 per cent as measured by pharmacy sales.
In connection with the re-regulation, the incentives for parallel importation of drugs have been strengthened and thus generated great interest amongst pharmacies. The main reason for the recent increase in parallel imports, however, is that changes in exchange rates have favoured parallel imports into Sweden. Statskontoret estimates that the lower purchase prices that pharmacies negotiate on parallel imported drugs have no impact on pharmacy sales.
Price indices for prescription drugs have, according to Statistics Sweden, developed somewhat more slowly than the general price trend as measured by consumer price indices from July 2009 to October 2012. However, these differences are small and should be interpreted with caution.
Following re-regulation, new brands have been introduced with lower prices on many OTC medicinal products. Statskontoret's closer analysis of the top selling substances paracetamol and ibuprofen (for pain and fever), loratadin (for allergies) and nicotine replacement therapy shows that between one and four new brands have been introduced per substance. Common to all products is that they have a lower price than the previously established and top selling brands. The prices of the new brands are between 15 and 40 per cent lower for paracetamol, ibuprofen and nicotine replacement therapy. The price difference is even bigger for loratadin. Statskontoret's analysis also shows that the weighted average price, which includes all brands, for the period July 2009 to February 2013 has declined for three of the substances and remain unchanged for one.
Following the re-regulation of the pharmacy market, it has become possible for the county councils to procure the hospitals' supply of medicinal drugs. After the completed procurements, there are now four different operators who have agreements with one or more county councils relating to at least some part of the hospitals' drug supply. Based on surveys and interviews with the county councils, Statskontoret estimates that the costs of the hospitals' supply of medicinal drugs have decreased following the procurements.

Statskontoret deems the county councils' preconditions for being able to monitor and analyse the costs of drugs within pharmaceutical benefit schemes to be generally unchanged following re-regulation.
Statskontoret's weighted assessment is that the overall objective of low pharmaceutical costs has been fulfilled to a great extent. Several of the conclusions and observations we present relate to price or cost reductions. Statskontoret has made no observations that have shown that pharmaceutical costs have increased. It should be noted that the introduction of the so-called "generics" in and of themselves entail a price and cost increase. The cost of generics would have increased if it were not for other regulatory changes concerning the generics market.

The objective of retained expertise and a secure supply of medicinal drugs

Statskontoret's weighted assessment is that the overall objective of retained expertise and a secure supply of medicinal drugs has been fulfilled to some extent.

The pharmacies' compliance with the regulations is generally quite acceptable according to the Medical Products Agency (MPA). However, at the same time, discrepancies are commonplace within many areas. For example, several major discrepancies have been observed regarding the handling of narcotic drugs, which the Medical Products Agency views as a potential risk for patient safety.
Statskontoret's survey of pharmacy staff shows that more than half feel that the conditions to accurately fill prescriptions have deteriorated following re-regulation. More than half also feel that the environment for providing information and advice on medication and self-care has deteriorated. The Swedish Consumer Agency and Statskontoret's consumer surveys show that consumers today are less satisfied with the pharmacies' advice on medication compared with before re-regulation. Some explanations for the decline that pharmacy employees highlight include the increased workload, more tasks, demands from the pharmacy management that filling prescriptions should not take too long and that additional sales should be prioritised. Other explanations include problems with prescription dispensing systems and a more complicated handling of the product of the period as a result of the stricter exchange rules following re-regulation.
Statskontoret's survey of pharmacy employees also shows that six out of ten feel that the opportunities for professional development, within pharmaceutics for example, have deteriorated following re-regulation. Furthermore, the Medical Products Agency's pharmacy inspections show a common discrepancy to be that the documented professional development for the staff is insufficient or that documentation is lacking regarding professional development. Statskontoret believes that these observed shortcomings may, in the long run, jeopardize expertise and security at pharmacies, if appropriate measures are not taken.
Statskontoret deems that the Medical Products Agency is currently supervising pharmacies in a well-functioning manner, but that its supervision was established too late after the re-regulation. The initial field inspections were conducted more than one year after the first new operators had opened pharmacies. The National Board of Health and Welfare's supervision is based mainly on incoming lex Maria notifications. Statskontoret believes that the supervision would be strengthened if the newly established Health and Social Care Inspectorate, which takes over the National Board of Health and Welfare's supervision, participates in a range of MPA inspections.
When it comes to the sale of certain OTC medicinal products at locations other than pharmacies, the MPA reckons that there are shortcomings, such as unreported sales. However, the Agency does not have a complete picture of whether or not the rules are being followed since many municipalities are not sufficiently active in their control work regarding sales. Statskontoret takes the deficiencies in the municipalities' control work very seriously, particularly in view of the discrepancies that have been observed in the sales.
When it comes to the hospitals' supply of medicinal drugs, Statskontoret feels that the MPA's oversight is at present not sufficiently developed, as the field inspection work has begun only

recently. Furthermore, healthcare providers do not have functioning systems for reporting discrepancies to the Agency. The Medical Products Agency therefore has no picture of the level of compliance with regulations when it comes to the hospitals' supply of medicinal drugs.
The MPA has for many years exercised effective supervision over wholesale trade and the Agency believes that the wholesale traders generally follow the regulations.
In conclusion, Statskontoret believes that supervision within all areas, except wholesale trade, has begun too late after the re-regulation of the pharmacy market and the changes in other markets. Based on available data, we conclude that compliance with the rules is lacking in some areas.
Statskontoret's weighted assessment is that the objective of retained expertise and a secure supply of medicinal drugs has been fulfilled to some extent. This means that we believe that the level of expertise and security that existed prior to re-regulation has not been fully maintained.

The objective of making use of the pharmacies' contributions to an improved use of pharmaceuticals

The overall objective of making use of the pharmacies' contributions to an improved use of pharmaceuticals is, according to Statskontoret, complex and difficult to interpret. It has therefore not been possible to perform any evaluation of the objective or assess its effectiveness. Instead, we have summarily monitored and described how pharmacies today work to improve the use of pharmaceuticals. We have also monitored how county councils and authorities collaborate with the pharmacies to improve the use of pharmaceuticals.
The pharmacy industry has developed a special industry practice which, among other things, aims to make use of the pharmacies' contributions to an improved use of pharmaceuticals. In terms of individual pharmacy operators' work in this area, there is great variation with regard to content and scope. It is therefore not possible to draw general conclusions about their individual work.
Most county councils feel that opportunities for collaborating with pharmacies on issues relating to pharmaceutical use have deteriorated following re-regulation. One explanation is that it is more difficult to collaborate with several competing operators than with only one operator, as was previously the case with Apoteket AB. Statskontoret believes there is room for development when it comes to collaboration between the county councils and operators for an improved use of pharmaceuticals.
Alongside the re-regulation, the Government and the Swedish Association of Local Authorities and Regions (SALAR) have developed a national pharmaceutical strategy. As of 2013, the strategy includes two planned activities that, according to Statskontoret, can be linked to the objective of making use of the pharmacies' contributions to an improved use of pharmaceuticals. The activities involve developing indicators for good patient safety in pharmacies and conducting experimental work with structured pharmaceutical talks at pharmacies.

The function of the pharmacy market

Statskontoret's overall assessment is that, as of May 2013, the pharmacy market is generallyfunctioning in a satisfactory manner. At the same time, Statskontoret believes that the Government's stated ambition regarding diversity and good conditions for both large and small operators may fail to be achieved in the longer term.

At the start of May 2013, there were 29 different pharmacy operators in the country as a whole. The market includes a dozen chains of varying size, some 15 small independent operators and three pharmacy operators that only deal in distance trade. Owners of the operators include the Swedish State, established pharmacy companies engaged in pharmacy operations in several countries, venture capitalists, individual entrepreneurs and small business owners as well as a retail trader. Besides the fact that there are now 29 pharmacy operators of varying sizes and focus, Statskontoret notes that, following re-regulation, 356 new pharmacies have opened and pharmacies' opening times have increased significantly. There are also some indications of reduced prices on OTC medicinal products. According to Statskontoret's assessment, as of May 2013 Apoteket AB still holds a special position in the pharmacy market, but that the clarified monitoring of the company's market share is positive for the functioning of the market insofar as it

creates a clearer framework for the former monopolist. Against this background, Statskontoret's overall assessment of the pharmacy market in May 2013 is that it functions in a satisfactory manner.

The fact that, as of May 2013, Statskontoret perceives the pharmacy market to generally function in a satisfactory manner does not mean that we consider the conditions for engaging in pharmacy business are in practice the same for everyone. According to Statskontoret, there are major challenges for small independent pharmacy operators due to strict requirements regarding pharmacy operations, combined with tough competition in the market and the existence of economies of scale. Other challenges include the backlog of county councils' reimbursement to pharmacies for drugs and concerns about the availability of economically affordable IT solutions. Statskontoret considers there to be clear indications that small independent pharmacy operators are in a vulnerable position. Statskontoret's view is that the Government's stated ambition regarding diversity and good conditions for both large and small operators in the pharmacy market may fail to be achieved in the longer term.

Statskontoret's proposals and recommendations

Statskontoret has not been instructed to draw up proposals, but we have nonetheless chosen to submit some proposals and recommendations that we believe follow naturally from the evaluation:

- The Government should commission the Swedish Agency for Growth Policy Analysis to monitor the development of the accessibility to medicinal drugs and pharmacies across the country.
- The MPA should analyse the pros and cons of specifying requirements on the scope of pharmacy staff's professional development.
- The Government should explore the possibility of facilitating municipal collaboration when it comes to monitoring the sale of OTC medicinal products at locations other than pharmacies.
- Municipalities should annually submit documentation to the MPA regarding completed control inspections of retail outlets other than pharmacies.
- The National Board of Health and Welfare should perform joint inspections of pharmacies with the MPA.
- The National Board of Health and Welfare should systematise the following up of reports and complaints regarding pharmacies.
- The National Board of Health and Welfare should demand that the pharmacy operators register with the healthcare operator register.
- The Government should explore the possibility of changing the current model for payment of pharmacy reimbursements for drugs.

http://www.statskontoret.se/in-english/publications/2013/a-re-regulated-pharmacy-market-final-report-20137/

Annex B Honda Newsletter

The extract below is located at the website listed at the bottom of this annex.

29 July, 2013.

Toyota, Nissan, Honda and Mitsubishi Agree to Joint Development of Charging Infrastructure for PHVs, PHEVs and EVs in Japan

TOKYO, Japan, July 29, 2013 - Toyota Motor Corporation, Nissan Motor Co., Ltd., Honda Motor Co., Ltd., and Mitsubishi Motors Corporation jointly announced their agreement to work together to promote the installation of chargers for electric-powered vehicles (PHVs, PHEVs, EVs*) and build a charging network service that offers more convenience to drivers in Japan.

The move is in recognition of the critical need to swiftly develop charging infrastructure facilities to promote the use of electric-powered vehicles. Assisted by subsidies provided by the Japanese government, the four automakers will bear part of the cost to install the charging facilities. They will also work together to build a convenient and accessible charging network in collaboration with companies that are already providing charging services in which each of the four automakers already have a financial stake.

At present, there are about 1,700 quick chargers and just over 3,000* normal chargers in Japan, which is generally recognized to be insufficient. In addition, the lack of sufficient coordination among existing charging providers can be improved to offer better charging service to customers. The government announced subsidies for installation of charging facilities totaling 100.5 billion yen as part of its economic policy for fiscal year 2013 to quickly develop the charging infrastructure and expand the use of electric-powered vehicles using alternative energy sources. Currently, each prefecture in Japan is drawing up a vision for the use of the subsidies. With this strong support, the four automakers will work together to install the chargers.

Previously, each automaker assessed possible locations for charging facilities on their own. Now, they have agreed to work jointly under the common understanding that the charging infrastructure has public value and that enhancing it should be done quickly during the limited period that the subsidies are available.

Currently, there are three charging methods for electric-powered vehicles: basic charging, where a car is charged at private homes or condominiums; destination charging, where a car is charged at locations such as shopping malls, do-it-yourself (DIY) stores and family restaurants for the return trip home; and en-route charging at locations including expressway roadside service areas, roadside stations (*michi no eki*), gas stations, and convenience stores. In both destination and en-route charging, normal charging is suitable for longer-duration stops, while quick charging is appropriate for shorter stops.

In terms of utility, PHVs and PHEVs would benefit from an expanded charging network because it would maximize these vehicles' EV driving performance and combined fuel economy. EVs, which provide an emissions-free, clean driving experience, could harness a larger charging network to extend their range during longer trips.

http://world.honda.com/news/2013/c130729Toyota-Nissan-Honda-Mitsubishi-Joint-Development/

Annex C OECD website

The extract below is located at the website listed at the bottom of this annex.

What are cartels and how do they affect consumers?

Hard core cartels (when firms agree not to compete with one another) are the most serious violations of competition law. They injure customers by raising prices and restricting supply, thus making goods and services completely unavailable to some purchasers and unnecessarily expensive for others. &

The categories of conduct most often defined as hard core cartels are:

- price fixing
- output restrictions
- market allocation
- bid rigging (the submission of collusive tenders)

Hard core cartel prosecution is a priority policy objective for the OECD. Increasingly, prohibition against hard core cartels is now considered to be an indispensable part of a domestic competition law.

Challenges in detecting hard core cartels

Cartels are very difficult to detect. They can involve many firms in the industry and customers are rarely in a position to detect the existence of a cartel. Antitrust enforcers should be helped in their ability to detect cartels by various means and instruments, the most effective being leniency programmes. These programmes provide immunity or reduction in sanctions for cartel members that co-operate (or 'whistleblow') with competition enforcers. Leniency programmes have been adopted by most OECD countries and have been instrumental in increasing the success rate of the detection of cartels.

The best outcomes are secured by deterring firms from forming cartels in the first place. Strong sanctions are therefore a fundamental component of an effective antitrust enforcement policy against hard core cartels. An important supplement to fines against organisations for cartel conduct is sanctions against individuals for their participation in the conspiracy. These sanctions can take the form of substantial administrative fines or, in some countries, the criminal sanction of imprisonment. The prospect of incarceration can be a powerful deterrent for businesspeople considering entering into a cartel agreement.

But cartels are not always harmful...

Some horizontal agreements between companies can fall short of a hard core cartel, and in certain cases may have beneficial effects. For example, agreements between competitors related to research & development, production and marketing can result in reduced costs for companies, or improved products, the benefits of which are passed on to consumers. The challenge for competition authorities is how to assess these agreements, balancing the pro-competitive effects against any anti-competitive effects which may distort the market.

http://www.oecd.org/competition/cartels/