

## **Submission Australian Competition Policy Review 2014**

---

### **Introduction**

The Competition Policy draft report identified a number of forces for change relevant to the Review. They include the industrialisation of developing nations and in particular, the rise of Asia and the growing Asian middle class.

The draft report also noted that the rise of the Asian middle class will present new opportunities for Australia, especially in traded services like education, health and financial services. The enormous growth in Asian consumption was said to also represent a substantial and broad export opportunity for Australian suppliers of commodities, goods, services and capital.

### **Australia's role in competition policy in Asia**

An important aspect of the development in Asia is the commitment by the Association of South East Asian Nations (**ASEAN**) to an ASEAN Economic Community (**AEC**) by 2015. At its August 2014 meeting in Myanmar attended by Australia, ASEAN reinforced its commitment to this goal. The AEC is expected to see a commitment to tariff reductions and trade within ASEAN member states. A key plank of the AEC is the establishment of competition laws within ASEAN member countries by 2015.

Australia has increased its engagement in Asia, not just within the ASEAN group but also through its involvement in other regional institutions including the East Asia Summit and the Asia Pacific Economic Forum held in China in November this year. This year Australia also chaired the G20 group of economies and hosted the G20 meeting in Brisbane in November. Australia's participation in the UN Security Council reinforces its position as a world player, within the Asia Pacific region.

The report, *Australia in the Asian Century* also identified Australia's technical expertise in the region, including in financial markets, prudential regulation, education, agriculture and healthcare.

Australia also has enormous expertise in competition and consumer law. It has over thirty five years' experience and well-functioning, internationally acclaimed and respected institutions including our courts, tribunals and regulators.

The National Competition Policy (**NCP**) reforms of the mid 1990's transformed Australian markets through structural change, the elimination of regulatory burdens and the reform of government monopolies. Australia therefore has considerable expertise with the structural reforms needed to support well-functioning competition laws, as is proposed within ASEAN and the broader Asian region.

Australia also has a track record in this area that is internationally regarded. Despite nearly two decades since its introduction following the Hilmer report, there continues to be overwhelming interest in Australia's NCP reforms within our region. This is undoubtedly because many ASEAN nations either have centralised economies where government ownership and involvement in the market is still significant or otherwise limited competition in domestic markets. This often includes some level of centralised price setting for many consumer products and services.

Given Australia's own experience in reforming government monopolies, it has both the understanding and empathy for Asian nations with political and economic systems that do not immediately suit global model competition laws, at least not without some suitable transitional mechanisms. Australia also has considerable insight into the difficult transitional and adjustment issues resulting from structural reform, including through its own experience in telecommunications, energy and agriculture.

It is with this background and its increasing regional involvement that Australia can be seen as a trusted source of advice and where it can play a significant role on competition policy in our region.

Engagement on competition policy is an important plank of trade with Asia, particularly within the AEC. The link between trade and competition policy has long been established by work undertaken by the Organisation for Economic Co-operation and Development: Effective competition policy enhances access to markets that may otherwise be unavailable through restrictive practices. It also ensures greater certainty for trading enterprises. It is also well established by Michael Porter's early work, the *Competitive Advantage of Nations* that the key to international competitiveness is effective domestic competition.

## **Utilising the ACCP to work with existing institutions on competition policy in Asia**

The review panel considers that reinvigorating competition policy reform requires leadership from an institution specifically constituted for the purpose. It recommends the establishment of the Australian Council for Competition Policy (**ACCP**). The ACCP will be tasked with advising governments on how to adapt competition policy to changing circumstances facing consumers and business.

The panel also recommends that the ACCP have a role in undertaking research into competition policy developments in Australia and overseas. It will also be required to undertake an annual analysis of developments in the competition policy environment, both in Australia and internationally, and identify specific issues or markets that should receive greater attention.

With the AEC imminent, Australia can make an enormous contribution in Asia in competition and consumer policy and in doing so support Australia's trade agenda. Clearly that contribution needs to work within existing institutional frameworks and be budget effective and possibly budget neutral. There is a role for the ACCP to use competition policy in support of Australia's participation in existing regional forums.

This would first require that competition policy feature on the agenda at regional forums attended by Australia. Although this already occurs to some extent, with the AEC imminent, competition policy should feature more prominently as a standing item at regional forums. It should remain a central feature while these regional economies develop their competition institutions and have fully functional competition laws.

Once competition policy is on the agenda of regional forums, the ACCP could be well placed to undertake the following functions:

- § Supporting departments like Foreign Affairs and Trade by providing competition policy input to the briefing papers for Ministers and senior officials participating at regional forums - drawing on the market studies and international and local research planks of the ACCP's jurisdiction
- § Supporting Federal and State bodies to implement Australia's overseas commitments
- § Monitoring progress on implementation to ensure Australia meets its international commitments on competition – much like it would monitor domestic compliance, as is proposed

§ It would share knowledge and expertise with regional institutions on competition policy

Some obvious areas for regional focus include merger policy where transactions increasingly have an international or regional focus and in addressing structural issues both here and in the region that impede competition and international trade.

If the final report recommends the establishment of the ACCP, and if that body is ultimately established, this submission recommends that the identified international role of the ACCP should have a considerable focus on the Asian region – in both the provision of competition policy leadership in Asia and in translating learnings from our regional partners into tangible initiatives in Australian markets, where appropriate.

Ray Steinwall  
Sydney  
16 November 2014