

Northern Territory Government Submission on the Competition Policy Review Draft Report Recommendations

Competition Policy

Draft Recommendation 1: Competition principles

- The Territory supports in-principle the development of further competition principles.
- The Territory agrees that flexibility for jurisdictions to implement the principles is appropriate given the differing circumstances of jurisdictions across Australia. For example, a diversity of providers may not also be feasible in remote and rural locations in the Territory.
- The Territory supports the separation of public monopolies from competitive service elements. On 1 July 2014, the contestable retail and generation businesses were separated out from the monopoly networks business of the Territory's government owned utilities company, the Power and Water Corporation, and transferred to two newly established government owned businesses, Jacana Energy and Territory Generation.
- The Territory supports the application of the proposed principles being subject to a 'public interest' test.

Draft Recommendation 2: Human services

- The Territory supports in-principle the development of choice and competition principles in the field of human services, including the separation of funding, regulation and provision of human services.
- However, the Territory notes that the implementation of such a reform may not be easily deliverable in the Territory and also may not deliver a net benefit in the Territory, recognising a significant proportion of the Territory's population live in remote and rural areas with small populations, high rates of disadvantage and limited opportunities for choice of services.
- The Territory also queries the scope and depth of the proposed human services reforms, for example the Territory notes that it may not be appropriate for some Government core business to be open to competitive forces and high levels of innovation (which may carry higher business risks), for example statutory child protection.
- The Territory supports jurisdictional implementation that would reflect the unique characteristics of the Territory providing human services.

Draft Recommendation 3: Road transport

- From the Territory's perspective, road funding based on direct user charging does not take into consideration the low user base, remoteness and climatic conditions which influence road requirements in the Territory. This leads to a high community service obligation (CSO) component of the Territory's road funding mix. Any changes to funding methodology would need to factor the CSO requirement, as well as any potential implications on the Territory's Commonwealth grants arising from the cross-jurisdictional approach.

Draft Recommendation 4: Liner shipping and Draft Recommendation 5: Coastal shipping

- The Territory supports in-principle the removal of liner and coastal shipping cabotage, subject to a full examination of the impacts that removal of such arrangements would have on Territory's shipping industry (for example the extent to which domestic industry would be compromised by competition that is derived through operators that do not have to comply with the same levels of safety, taxation and employment conditions that the domestic industry does) as well as the potential benefits for Territory consumers, particularly those in remote coastal communities.
- The Territory supports the Panel's view that cabotage restrictions for international airlines should also be removed unless they can be shown to produce outcomes that are in the public interest and those outcomes can only be achieved by restricting competition. The Territory considers that the Panel should consider making a recommendation to this effect.

Draft Recommendation 6: Taxis

- The Territory is supportive of removing measures that restrict competition in the taxi industry, although it notes that there is a need for a mix of competition and regulation in this industry to ensure that there is adequate supply to meet demand while maintaining service quality. On 20 November 2014 the Department of Transport released their Commercial Passenger Vehicle Review Position Paper that will examine the Territory's commercial passenger vehicle industry.

Draft Recommendation 10: Planning and Zoning

- The Territory supports the introduction of competition principles in planning and zoning legislation where they lead to reduced barriers to entry for business.
- The Territory's planning scheme already encompasses competition principles, balancing community planning needs and safeguards with competition and commercial needs through the use of detailed zoning and land use provisions, including dedicated commercial precincts enshrined in local area plans.

Draft Recommendation 11: Regulation review

- The Territory supports all Australian governments undertaking legislative reviews in their jurisdictions to ensure that unnecessary restrictions on competition are removed.
- The Territory Government has established a Red Tape Abolition Squad to work with business, industry and Government to identify and prioritise red tape abolition and reduction including legislative, regulatory and administrative.

Draft Recommendation 12: Standards Review

- The Territory Government supports reviews of non-government mandated standards.

Draft Recommendation 13: Competitive neutrality policy

- The Territory supports a review of all Australian governments' competitive neutrality policies.
- However, given each jurisdiction is able to adopt its own approach to competitive neutrality, it is unclear what role the independent body (such as the Australian Council for Competition Policy) will undertake in the review other than leadership.

Draft Recommendation 14: Competitive Neutrality Complaints

- The Territory notes the transparency and accountability advantages of jurisdictions assigning an independent body to investigate competitive neutrality complaints and responding publicly to the findings of complaint investigation.
- However, given the low number of competitive neutrality complaints in the Territory (two in the last decade, which were investigated by the Department of Treasury and Finance), the costs of setting up and staffing a separate body may be greater than any additional benefits that would ensue.

Draft Recommendation 15: Competitive Neutrality Reporting

- The Territory supports all government businesses including a statement of compliance with the competitive neutrality principles in their annual reports, provided the compliance burden of doing so is minimal.
- The Territory notes that that the Commonwealth and all States and Territories are currently required to annually submit competitive neutrality compliance reporting matrixes to the Commonwealth as part of reporting requirements under the Competition and Infrastructure Regulation Agreement (CIRA), which are then published on the Council on Federal Financial Relations website.

Draft Recommendation 16: Electricity, Gas and Water

- The Territory has committed to adopting the national framework for the regulation of electricity networks which will see greater alignment of arrangements with those operating in the National Electricity Market, including transfer of economic regulation of networks from the Territory's Utilities Commission to the Australian Energy Regulator and implementing a phased transition to adopting the National Electricity Law and Rules.
- Further, the Territory is implementing a Territory specific wholesale electricity market which will include some key aspects of the National Electricity Market.
- The Territory will examine the merits of adopting the national customer protection laws (NECF), including adopting the National Energy Retail Law once the aforementioned electricity reforms have been finalised.
- Given the high cost of delivering electricity services in the Territory, especially in remote and regional areas, the Territory Government has committed to continuing retail price regulation via a uniform tariff for households and small business.
- However, large business customers (those using over 2 GWh per annum) in the Territory pay commercial tariffs negotiated with an electricity retailer. The Territory Government has committed to removing regulated retail price regulation in the Darwin-Katherine market for Tranche 4 customers (those using between 750 MWh and 2 GWh).
- The Territory supports the transfer of responsibility of reliability standards to a national framework.
- The Territory is currently undertaking reforms in the water sector and is developing an overarching Territory based water policy based on best practice in Australian jurisdictions.
- The Territory notes that there may be benefits of having a consistent jurisdictional approach to water regulation and legislation, however the appetite for such a reform is unclear given the Commonwealth is set to close its independent water advisory body, the National Water Commission, at the end of 2014.

Competition Laws

- The Territory supports measures to streamline and simplify Australian competition laws.

Draft Recommendation 19: Application of the law to government activities

- The Territory reserves its position on the application of competition law to government activities until there has been an opportunity to fully assess the implications of the proposed recommendation on the Territory.

Competition Institutions and Governance

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

- A move to an independent body to drive the implementation of competition which is accountable to all jurisdictions is supported in principle. It is proposed that Australian Council for Competition Policy (ACCP) be funded by all jurisdictions, including the Commonwealth, though the quantum of funding has not been identified at this stage.

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

- The proposed roles for the ACCP are supported in principle.

Draft Recommendation 41: Market Studies Power

- The Territory's view is that undertaking market studies without the appropriate authority to gather information may not result in the most beneficial outcomes for consumers. As such, the Territory supports vesting mandatory information-gathering powers on the ACCP, to be used as a last resort (a similar basis to those used by the Productivity Commission). Any concerns over market information gathering powers could be potentially further mitigated by exploring further caveats to the use of power, such as whether forcibly gathering such information will be in the long term interests of consumers.

Draft Recommendation 42: Market Studies Requests

- The Territory supports government and market participants having the capacity to request market studies being undertaken by the ACCP. The Territory queries whether individuals should also have the capacity to request market studies be undertaken.
- Market study requests will likely be beneficial to the Territory, particularly in regards to current concerns around pricing in the Territory's fuel retail market. A comprehensive review would enable better understanding of the market and identify any possible policy changes or enforcement activities.
- The Territory notes that there is the potential for high demand for market studies within Australia, which may have considerable resource implications for jurisdictions responsible for funding the ACCP (Commonwealth, States and Territories).
- Oversight of prioritisation of market studies requests by the Council on Federal Financial Relations is supported.

Draft Recommendation 43: Annual Competition Analysis

- The Territory supports annual analysis of developments in the competition policy environment, both in Australia and internationally.
- There may be merit in this analysis adopting a forward looking approach, in order to identify sectors where competition issues do not currently exist but may emerge in the future. For example, examining competition issues that may arise due to the increased take up of high speed optical fibre internet across Australia.

Draft Recommendation 44: Competition Payments

- The Territory supports competition payments where there is a likelihood that the benefits of reform will not necessarily flow in proportion to the effort put into pursuing and implementing reform.
- The Territory is often a participant in reforms which have limited or no net benefit to the Territory, so a process to re-balance any revenue effects is supported. Consideration of impacts on the Territory's Commonwealth Grant Commission relativities arising from these payments would also have to be taken into consideration.
- Where benefits of reforms flow to the Commonwealth at the expense of reform efforts by the states and territories, the Commonwealth should also be required to contribute to this re-balancing effort.

Draft Recommendation 45: ACCC functions

- The Territory supports the retention of competition and consumer functions within the single agency of the ACCC.

Draft Recommendation 46: Access and pricing regulator functions

- The Territory requires further information before it is able to form a view as to whether access and pricing functions should be undertaken by a single regulator.
- The Territory notes that there may be scale, cost and consistency benefits arising from a single regulator, and it may also reduce the opportunities for regulatory capture. It appears that these benefits are likely to occur in the longer term.
- However, the Territory notes that there may be considerable practical difficulties and high costs in amalgamating access and pricing functions. While not overtly clear in the Draft Report, it is assumed that the National Competition Council's (NCC) current governance arrangements are the reason as to why the NCC could not be expanded to undertake the proposed roles, as this may have lower implementation costs than establishing a new body.
- The Territory is cautious as to how the proposed recommendation may impact on the Territory's forthcoming transfer of economic regulation of its electricity networks from the Utilities Commission to the Australian Energy Regulator on 1 July 2015. However, the Territory notes that this may not be an issue of significant concern, depending on whether the Territory's reforms have been finalised by the time such a new body is established.

Retail Markets

Draft Recommendation 51: Retail trade hours

- Removal of restrictions on retail trading hours are supported.
- Retail trading hours are not regulated in the Territory with stores closing on certain days in response to consumer demand. Notwithstanding this, take away alcohol retail stores that are not affiliated with licenced venues are unable to operate on Sundays in the Territory.

Draft Recommendation 52: Pharmacy

- Removal of pharmacy ownership and location rules are supported.