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SENATE

SELECT COMMITTEE ON THE SOCIO-ECONOMIC
CONSEQUENCES OF THE NATIONAL COMPETITION
POLICY

**Reference: Socio-economic consequences of the national competition
policy**

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SENATE
SELECT COMMITTEE ON THE SOCIO-ECONOMIC CONSEQUENCES OF THE
NATIONAL COMPETITION POLICY

Tuesday, 30 March 1999

Members: Senator Quirke (*Chair*), Senator Crane (*Deputy Chair*), Senators Coonan, McGauran, Mackay, Margetts and Murray

Senators in attendance: Senators Coonan, Crane, McGauran, Margetts, Murray and Quirke

Terms of reference for the inquiry:

To inquire into and report on the National Competition Policy, including:

- (a) its socio-economic consequences, including benefits and costs, on:
 - (i) unemployment,
 - (ii) changed working conditions,
 - (iii) social welfare,
 - (iv) equity,
 - (v) social dislocation, and
 - (vi) environmental impacts;
- (b) the impact on urban and rural and regional communities;
- (c) its relationship with other micro-economic reform policies; and
- (d) clarification of the definition of public interest and its role in the National Competition process.

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Committee met at 7.37 p.m.**ARGY, Mr Fred (Private capacity)**

CHAIR—Welcome. This is a public hearing of the committee's inquiry into national competition policy, the socioeconomic consequences thereof. Is there anything you wish to say about the capacity in which you appear?

Mr Argy—I am a visiting fellow at the Public Policy Program at the Australian National University, but I appear in a private capacity.

CHAIR—We do prefer all evidence to the committee to be given in public but should you at any stage wish to give part of your evidence or answers to specific questions in private, you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement and at the conclusion of your remarks I will invite committee members to ask you questions.

Mr Argy—Thank you, Mr Chairman. I will only indicate my broad philosophy, if you like, the broad approach that I favour with micro-economic reform, including national competition policy.

I start with two propositions. The first is that micro reform and increased competition are economically desirable. They do generally produce net benefits for the economy. The second proposition is that these benefits are frequently very unevenly distributed across the whole community, with some people being asked to bear a disproportionate share of the costs of adjustment.

I should stress here we are not just talking about short-term adjustment, short-term transitional costs of the kind that you might associate with a one-off individual reform. What we are witnessing is a fundamental and sustained change in the whole thrust of economic policy, a systematic shift from, if you like, statist, protectionist policies to free market, pro-competition policies. This has the potential to create not just short-term adjustment pressures but cumulative, long-term, income and wealth distribution effects, both across households and across regions.

I am not saying that structural change and micro-economic reform always necessarily produce greater inequality—in the absence of government intervention, that is. But one only needs to look at the US, the UK and New Zealand to see that in fact this is what happens in practice unless you have a government actually out there trying to smooth the effect. Here in Australia we can really say with some pride that we have been able to introduce substantial micro-economic reform without the social trauma that you have had in these other three countries I mentioned, for example. We have been able to achieve a reasonably happy compromise between the two. I suspect this is changing. First of all, the impact of micro reform is becoming more and more severe in terms of its effects. And it is becoming harder, for fiscal and other reasons, to smooth the social effects.

So my view is that if we continue just relentlessly down the US path of more and more economic freedom without doing more to smooth some of its social effects, we run the

danger not only of deepening social class divisions and intentions; but, for those who are really concerned about micro reform—as I am and as I am sure you all are—there is a serious danger that it will cause a sharp backlash against structural change and economic reform, so in the end you will be throwing out the baby with the bathwater.

I think we face clearly a dilemma here as a nation. On the one hand, in a competitive, integrated world economy, there are strong pressures on us to continually improve efficiency. We cannot slow down, otherwise we risk being left behind. On the other hand, there are, as I said, signs of growing social tensions and growing inequality. The question is: how should governments respond to this dilemma?

You have three schools of thought on this. One is the school that says, ‘Let’s freeze or slow down the pace of structural change.’ This school in effect is saying, ‘Let’s bail out of the global economy.’ At the other end of the spectrum, you have those who say, ‘We have no choice but to move further down the free market path, given the kind of world we now live in, and we shouldn’t worry unduly about losers and winners because in the end it will all trickle down, everyone will be better off.’ This particular school, then, resolves this dilemma that I posed by largely opting out of the distribution issues altogether.

Then there is a third view, a view that I happen to hold with some degree of passion, and that is that governments should continue to facilitate structural change but, at the same time, actively seek to temper its harsh social effects. It is what I call social smoothing. Social smoothing can take a number of forms, but basically I would categorise them in four groups. You can take what I call targeted, ex ante compensation or adjustment assistance measures to try and achieve a win-win situation. But that assumes you can identify the winners and losers reasonably well.

If that is not so easy, if you want to do some social smoothing in an ex ante fashion, you can do it through what I call log rolling, which is to try to introduce, in tandem, a set of reforms some of which have progressive distribution effects, some have regressive, and you hope that, in the end, you will not have too many sustained consistent losers.

The third approach is what I call reform dilution, which is a form of trade-off. You say, ‘We’ve tried all these other things and we want to take some action beforehand, not just wait till after the event. We want to see how we can water down the reforms a bit, how we can phase them in gradually, how we can restructure them a little bit.’ That is part of the trade-off that you engage in between efficiency and equity.

The final thing to do—it is something that I am currently doing a bit of work on—is to say, ‘It’s going to be very hard to do very much ex ante,’ so you let the reforms go ahead but you build safeguards in the system. You institutionalise a system which will enable you periodically to look back and say, ‘Right, structural change has benefited everybody but some people have been left behind. Who are they? Let’s look at this and let’s see how we can redress the situation.’ It cannot be done just by governments, because they get caught up in political adhocery, to be honest. It has got to be done through some independent, objective body.

Thank you for hearing me out. That is my broad philosophy.

CHAIR—Thank you very much, Mr Argy.

Senator MURRAY—I am interested in two possible political reactions to the philosophy you are applying. One is where the obligation to balance or compromise or resolve structural problems is a governmental responsibility. The other is where it is a parliamentary responsibility. Essentially, you have two possible situations: either the government of the day from its own philosophy agrees to deal with things in the way in which you have outlined, or the government of the day takes a relatively purist view, of whatever kind, and the parliament moderates it and introduces the balance, the compromise and that sort of thing.

Those who seek to wipe out the Senate, for instance, would seek to ensure that the power rides with the government, in which case the entire responsibility for managing structural or social or economic inefficiencies and the consequences would rest with the government. There are others who believe a more pluralist situation allows a government to establish itself fairly purely in terms of its ideology and then moderate, relative to the problems. In your approach I would be interested to see how you believe the political and the parliamentary and the representative process interacts with the consequences of pursuing a modernisation program.

Mr Argy—I am a great believer in the present checks and balances in the system. I believe governments have great advantages, in the sense that they have resources, they have authority, they have great marketing skills and, without being rude, I believe they also have a great capacity to obfuscate—I am not talking of any particular government here. There needs to be a parliament there that can question government, to check some of the statements and facts they have put forward—the kind of process that we are undergoing now with the GST—and can challenge and force government to defend its position.

I know that this has the effect of slowing economic reform a little bit, but personally I think it is a reasonable price to pay. If a government, with all the enormous advantages it has, cannot convince a parliament and the public at large, not only that what it is proposing is in the national interest but that the benefits will be spread widely across the community—they are not going to be just concentrated in a small section of the population—if a government cannot adequately explain this and argue its case, then it probably has not got a very good case.

Senator MURRAY—The heart of my question is really to get from you a view as to whether great change is better managed in a position of political authoritarianism—which in our society would be most evidenced, for instance, in Victoria, where the government of the day controls the parliamentary process—or in a situation of greater pluralism and restraint. You made the point earlier that the political resolution of this thing is now getting harder, it is getting to be more tense and stressed at the margins—that is not your language; it is mine. In what sense it is best resolved?

Mr Argy—My personal philosophy—and this is very personal—is that, while I am a great believer in economic reform, I also fervently believe that the incremental benefits of economic reform need to be spread widely across the community. I believe governments are sometimes insensitive to this. They talk very much in terms of making the total national cake bigger, that being all that counts. I believe that in the long term this is counterproductive. I

think you want to make the national cake bigger but you also want to see that everyone gets a reasonable share.

I am not talking now about a egalitarian society, because I am not going back and trying to redress past social injustice. God knows, there are plenty of them, and I have some very strong views on this, but I realise that one has to be a realist here. I was only talking about the incremental net gains from economic reform.

Perhaps there are going to be huge gains. They often tell us, 'GDP is going to be five per cent higher in three or four years time.' Fair enough. I am often very sceptical of some of these figures, but very often the general picture is quite correct, there are gains to be had for the society as a whole. But these gains have got to be well distributed. So I would prefer the pluralism and restraint that you mentioned: a body like the Senate not only questioning whether the reform itself is well designed—let us face it, sometimes alleged economic benefits of reform are not genuine, so they can question that—but more importantly questioning what it does to the quality of life and to distribution of the benefits.

Senator MURRAY—My second line of questioning concerns facts and figures. You would recall that probably throughout the period of communist control of the Soviet Union the obsession with ideology resulted in manipulation of facts and figures. They would manufacture the figures for how much food they were producing or their industrial production and so on. There is a sense in our society that that happens.

For instance, you would be acquainted with the theoretical analysis of GDP and its shortcomings, and the people who are looking at what is known as a genuine progress indicator, where you try to balance socially environmental things with economic things. You would be familiar with the classification of unemployment in this country, where anybody who works for an hour a week is regarded as not falling into the unemployment figures and so on.

What I am really talking about is: with regard to competition policy, whose main measurement is economic and in statistics, if the statistics are presented in a manner which distorts the benefits or fails to properly assess the inadequacies and the shortcomings, do we have a real problem? Is our ability to assess the pluses and minuses of the economic reform program we have been through, exemplified in national competition policy, at all affected by the way in which we deal with our statistics, and our facts and figures?

Mr Argy—You have reached a very important point which is, again, very dear to my heart—that is, you do not measure the benefits of economic reform simply in terms of what it does to GDP per head. You can produce statistical gains in productivity—demonstrable gains in productivity—but if that is at the cost of greater demands on workers or a lower quality of service for customers, then it becomes an optical illusion. You have a measured improvement in so-called national wellbeing but it is not really an improvement in national wellbeing.

I like to talk in terms of improvements in economic welfare or social welfare as the be-all and end-all of economic policy, not just GDP. Economic welfare, in its broad sense, allows not only for externalities—that is, broader social and economic spin-offs that are not

taken into account in the marketplace at all—but it also takes account of distribution effects and quality of life effects. I cannot but agree with you that, if you simply focused on GDP, it would give you one major component of economic welfare. It is certainly a major component of that. But if you just focused on that you could get very strange outcomes.

Senator McGAURAN—Who does just focus on GDP growth?

Mr Argy—Unfortunately there is a tendency amongst some economists—

Senator McGAURAN—But not government?

Mr Argy—No, it is not the practice of governments to do that. But economists and sometimes economic advisers tend to do that. They tend to take the view that economics is about making the total cake bigger, and their role as economic advisers is to tell government how to make the cake bigger. The rest is up to them. They ought to be there explaining all of the other dimensions of welfare as well to governments if they are to make a balanced and comprehensive decision.

Senator MARGETTS—I found your presentation very interesting. You mentioned that there is the danger of a sharp backlash from the wider community. You indicated that, amongst other things, there are growing social tensions. What is your experience of how much knowledge there is in the community about the economic changes that are occurring?

Mr Argy—It goes back to what I said earlier about the great authority, influence and power that the government in office has. I stress that this is true whether it is a Labor government in office or a coalition government in office. They are marketeers. They market their policies and, because they have this great skill and these great resources, they can easily sell a set of policies to the public without the public really understanding the full ramifications—especially the social ramifications.

You get very loose talk about the national interest, for example. Ministers are very prone to using that expression. But what is the national interest? If the national interest is purely measured in terms of GDP per head, it is a very misleading measure of national interest. I suspect the public can very easily get deluded into thinking, ‘We have just been told this is in the national interest and these people know what they are talking about.’ They tend to accept these things.

It is very hard to then counter the impression that is left. Sure, the media is there, opposition parties are there sometimes to try to put the opposite viewpoint, the community groups are there, the social welfare groups are there and the Senate is there, but I still think that the government in office has an extraordinarily powerful influence on public opinion.

Senator MARGETTS—Am I to take it that the growing social tensions are from a community that does not know what the problems are, or does not actually know what—

Mr Argy—Not in advance; they find out later.

Senator MARGETTS—From your professional colleagues, journalists that you speak to and acquaintances, what level of understanding do you see in something as specific as the implementation of national competition policy? Do you pick up that there is much understanding of what it is about and what the processes are?

Mr Argy—No, at this stage I would say that only a small elite understand what it is all about. I should stress that I am a great believer in national competition policy. I do believe that increased competition is the way to improve efficiency and, through it, improve competitiveness and create higher living standards. But I am also very conscious that competition policy does not share out the benefits at all fairly or equitably. I do not think that part of it is well understood.

I do not want to use the word ‘brainwashed’, but I think the public have been told and have accepted that national competition policy is in the long-term national interest and that it will make us all wealthier in the long term. That is probably right. But they do not understand the social ramifications until after the event. We have seen that with the regional effects. I do not think people really realised that national competition policy would have such uneven regional effects.

Senator MARGETTS—Can I try to paraphrase that? It was the former Labor government that implemented national competition policy. If the public had been taken in on the deal and it had been explained to them that there were potential pluses but also negatives, and they were told what those were likely to be but that on the whole the government believed there were more pluses than minuses, do you think there would be more or less unease within the community?

Mr Argy—Yes, with one important qualification. Having explained the pluses and minuses—and by minuses you mean the losers, if you like, as opposed to all the potential winners out there—if they had gone on to explain how they were going to alleviate the pain for the losers and how they were going to compensate the losers, and that if they could not do it *ex ante* that they were going to do it after a period of years and make it up to them, then so many people out there would not feel that they have been deceived.

Senator MARGETTS—As a committee, we spoke to representatives from the Treasury on Friday, amongst other people, and it was clear that they are not undertaking any modelling on the effects of competition policy on the community, on which groups might win or lose and what the outcomes are. Are you aware of any studies that have taken place here or overseas on this kind of modelling and can you tell us what kinds of studies or modelling might be useful in your opinion?

Mr Argy—You have Ann Harding’s body, NATSEM, that does a lot of distributional analyses, and so do a lot of other research bodies. We are becoming much more sophisticated in our distribution analysis. If a government was serious about wanting to know, in very broad terms, who the winners and losers were, they could generally find out and they could actually do something in advance. I am not saying this is feasible in every case, that is why I stress that sometimes you have to take *ex-post* redistribution measures to smooth the effect.

But, yes, there is a lot of modelling out there that can serve this purpose. It is expensive and it has the uncomfortable effect for governments that they either have to admit that there are going to be some losers, and too bad about it, or they have to say, as they had to do with the GST, ‘We are going to try and show that everybody there is a winner here and we are going to try and make it up to those who otherwise might have lost.’ A lot of governments do not like this because it slows up the works; it means they cannot get ahead with something that they think will be in the national interest, that will improve our national wealth, our national competitiveness. I can understand this, but I still think it is wrong to try and camouflage, if you like, these structural distributional effects and hope that people will not notice later on. I think governments should come clean about them, and right up-front.

Senator MARGETTS—You mention New Zealand and the UK experiences: what are the lessons that you think could be learnt from those experiences? We know that maybe things could have been done at the time national competition policy was implemented by legislation, I guess, in hindsight. What are the lessons we can learn from the UK and New Zealand?

Mr Argy—You have obvious evidence there that because governments took the attitude that their only role is to make the total cake bigger, there has been a very large increase in inequality in those countries. For example, in the US between 1979 and 1996, the level of unemployment has fallen, which is a big plus, GDP per head has increased considerably, another big plus. Yet some 50 per cent of the labour force has seen its income decrease in real terms with the bottom fifth earners suffering a fall of 44 per cent in that period. This is pretty startling. In no way, as an economist, can I say that the US economic reforms or the structural change in the UK has improved economic welfare in the broad sense. It has improved GDP, but it has concentrated all the benefits on just a few. There are a lot of people out there who are actually worse off and I cannot see that as an improvement in national wellbeing.

Senator CRANE—Can I clear up a point there: isn’t the alternative high unemployment?

Mr Argy—No, that is the whole point.

Senator CRANE—How do you manage it, so it isn’t?

Mr Argy—There are several roads to reducing unemployment. One road is the total labour market deregulation route that does reduce unemployment. It achieves its purpose, but it does it at the expense of low paid workers. They are the losers; the rest of the community are the winners.

You have another way of achieving lower unemployment. You can do it through active labour market programs, you can do it through regional development programs, you can do it through increased investment in social and economic infrastructure—you can do it in all sorts of other ways, and it will give you the same outcome. But the costs are borne by taxpayers at large; the costs are not borne by low paid workers.

Senator CRANE—But you are sharing the same cake.

Senator McGAURAN—I would like to let Mr Argy wrap that up. I think you are being a little mischievous to quote the—

Mr Argy—That is my role at the moment. I am retired; I have got nothing else to do but make mischief.

Senator McGAURAN—Well admitted. I am referring to your quoting us the United States figures. Perhaps you could make parallels with the Australian situation or with the British, but not with the US situation at all. It is a mature economy; there is no parallel between their situation and our national competition inquiry which we are undertaking here. Whatever the figures you have quoted and the circumstances in which they have come about, they have in no way come about in relation to national competition policy. For example, privatisation is just not an issue there, so your figures just do not relate to what we are talking about.

Mr Argy—I am sorry, perhaps you were not here at the start when I stressed that I am not an expert on national competition policy; I am talking about micro-economic reform generally, the whole box and dice, including saying labour market deregulation and everything.

Senator McGAURAN—My comments relate to the same thing.

Mr Argy—If we are just talking about national competition policy, I have already indicated my strong, unconditional support for it in terms of its effects on the national economy. Whereas the US approach to it might have been one of saying, ‘Let’s go for it and the devil take the hindmost,’ we have—if I might use this expression—a bit of a mateship approach in this country, that we do not allow that to happen, we should not allow it to happen. I like living in a country that does that, and we would want to see that the benefits were well spread out, that some of the regions that suffered were assisted in other ways.

You could do it through wage subsidies, you could do it through regional infrastructure programs; in some cases where the region looked like being non-viable, you could do it by trying to encourage mobility and a consolidation of regions. There are things you can do to smooth the social impact of economic reform. It has got a dual effect, in my opinion, that is very important to me.

Firstly, it is the only way to ensure you are improving economic welfare in the broad sense, which is after all, the be-all and end-all of economic policy. Secondly, it is the surest way to ensure that you can sustain economic reform in the long term. Otherwise you will find that groups like One Nation and others, with their populist, extremist ideas, will force you into the more statist, paternalistic policies of the past and we will all be worse off as a nation, including the poor.

Senator COONAN—It is your option A, in fact—the bail-out option.

Mr Argy—Yes, that is right, bailing out of globalisation.

Senator CRANE—I will begin by apologising for not being here at the very start of your presentation but I was otherwise occupied, which is a hazard of this place. I am always intrigued by titles such as ‘radical free market’ or ‘progressive liberalism’, because I think if you went down this table here we would all have a very different view of precisely what was meant. Could you, in three or four sentences, explain to us why you particularly chose that terminology. Really, I do not think you could get a collective view in very many places that it meant the same thing.

Mr Argy—I should stress that I just used those two schools of thought as a useful tool of analysis, not because I would name some particular economists—I can name a few, to be honest, whom I would describe as hard liberals, or extreme marketeers—who are openly and frankly saying that we should not worry about distribution and that indeed our welfare state is too big, the size of government is too big, economic freedom should be the sole purpose of economic policy, and by promoting economic freedom—small government, deregulation, privatisation, et cetera—you thereby increase the total standard of living and in the end everyone is better off. That is what I call the hard liberal view.

Senator MURRAY—When you say ‘liberal’, you mean the small-l liberal, don’t you?

Mr Argy—Yes, of course. I am not talking about the Liberal Party, please. Then I have what I call the progressive liberal view. There is, at the other end of the scale, as I said at the start, what I think is the old-fashioned interventionist school that believes we can go back to the 1960s and 1970s, with a much bigger role for government ownership, for government regulation and the like. I think that we would all be the poorer if we went down that road.

So I postulate what I call the progressive liberal approach, which is what I have been trying to convey here. It is trying to get the benefits of structural reform, the benefits of continued structural change—which is so important if we want to remain part of the global economy and we want to improve our living standards—but to do it in a socially sensitive way.

Senator CRANE—In real life I am a farmer, and I would argue that we have had competition policy in this country all my life. It is just that 10 years or so ago it was changed from ‘market adjustment’ and called ‘competition policy’. If you look through agriculture, mining and major industries in this country you see that it has always been cutthroat and we have been very much in the hands of international markets. So really it was an identification of what was happening in the marketplace anyhow with some focuses.

My question coming out of that is: in terms of Australia’s performance internationally, do you think in terms of market reform around the world and us keeping pace? I do not necessarily see the GDP and competition policy as the be-all end-all. At the end of the day it is just as important to do things at a lower cost as it is to increase the size of the cake.

Mr Argy—They are two sides of the same coin.

Senator CRANE—It is a composite thing. Do you think Australia is actually keeping pace in terms of the reform stakes that are happening in our major competitor countries, including South America and South Africa?

Mr Argy—Yes, Senator, I do. In fact, in the book that I put out recently—

Senator CRANE—I have not had time to read it.

Mr Argy—Sure, there are far more important books for you to read. But in it I argue that while in the 1960s and 1970s we did tend to lag a bit in terms of productivity growth, as compared with the rest of the world, in the 1990s we are right at the top in terms of productivity growth. Our productive capacity is growing faster in Australia than in virtually any other country in the world. That I believe is partly a reward we are getting for the reforms we have introduced in the 1980s and 1990s, and that is one of the reasons that I say we should not try to turn the clock back.

Having said that, I also point out that while we do not have an economic malaise any more in this country, and we will not have an economic malaise so long as we continue to look for ways of improving efficiency and reforming the economy, I believe that we are in danger of having a social malaise and that we should be giving a bit more priority to the looming social malaise.

Senator CRANE—This is my last question because I know we are under pressure for time. On page 55 of your book, under the policy framework in the chapter entitled ‘A critique of hard liberalism’, you list six particular points there in terms of the way ahead for hard liberalism. You mention strong productivity growth, et cetera. Having also sat on a couple of boards of public companies, I would suggest that with the changing of a couple of words—the government for company and a couple of other terms—you are spelling out almost identically what are the responsibilities of directors in terms of managing a public company. Would you care to comment on that?

Mr Argy—Government has a much wider responsibility than a company, which is only concerned about its own shareholders and not the wider stakeholders. What I am saying here is that there is nothing inherently wrong with the various goals that the hard liberals are trying to pursue. It is the way they go about it and the priority they give to improving GDP and increasing the level of economic freedom in a country. Mind you, this is in a country like Australia where the level of economic freedom is extremely high. We are a small government country, by any definition, and we have deregulated, privatised and reduced the size and scale of government as well as any other government in the world has in any other country.

They want to go further. That is why I say that we should pause and think about whether we should go further down this path without trying to make sure we have a framework of social smoothing to go with it. I was explaining at the start the kind of social smoothing framework I had in mind. If you do that, you are in danger of losing the momentum of economic reform because governments will lose public opinion and will have to retreat. It will create a divided society—something that we have not really had in this country, which makes it such a wonderful place to live.

Senator CRANE—I would like to keep going but we had better stop.

CHAIR—It is fascinating. It is a shame we have not got more time.

Senator COONAN—I am very interested in us, as parliamentarians—and I mean this across party lines—getting our heads around what it is that is motivating the mood of great public disillusionment with political processes and confidence in this process that we have all committed to. I note that you support—and I think everyone does—the national efficiency and productivity outcomes as a good thing in principle, yet all of us would acknowledge that there can occasionally be uneven impacts. Your proposition that you need to, I think you said, facilitate change but temper it with a bit of social smoothing is something I would like to ask a couple of questions about.

I am particularly interested because you are dealing with the whole micro-economic gamut, not just with competition policy. You made that clear. How can you really measure direct gains from an entire program of micro-economic reform when you have got all sorts of impacts, such as structural reform, demographics and technological change? I am wondering in those circumstances how you would see approaching distributional issues and distribution analysis. How do you isolate the strands? Can you just do it on a case by case basis or can you do it in a much broader way?

Mr Argy—Thank you for asking that question, it is very pertinent. You can never achieve a perfect win-win situation where every single person in the community is better off. But there are situations, such as with tax reform, where you can pretty well identify all the various income groups that benefit and the ones that lose, and try to compensate the ones that lose.

You can do something similar with a proposal like the one of the five economists for a reduction in the minimum wage—a gradual reduction in the real minimum wage—offset by tax credits directed at low paid workers. They have identified who the losers are and they have said, ‘It would not be fair to make them bear the costs if the whole community is going to be better off, so we are going to make sure they at least are no worse off and are hopefully even better off.’

You can do a lot of things like that, which is what I call targeted compensation. This has the advantage that you win support for your economic reform itself; it is seen to be fair and it is easier to implement. It might slow the process down a bit, getting all the facts and figures together and so on, but it can be done. Let me add that, in many cases, you cannot do that. You cannot target particular losers and winners, so you have to do your social smoothing through other ways. I suggested three other ways in which you would do it.

You can look at a whole package of reforms, introduce them all in tandem and say, ‘This one is going to hurt a few people. We are sorry about that. But here is another set of reforms we are introducing at the same time, and this is going to have positive effects for the people who lost from the first set of reforms.’ This is what I call log rolling. Most governments do engage in that sort of thing.

Unfortunately, governments are also a bit secretive and they tend to sneak in one reform after another. They do not tell you in advance what the whole program is. It would be much better if they could and they said, 'This is where we want to end up. This is our integrated program and these are all the various components of our program. This particular one is going to have some positive effects on some people and some negative effects on others, but this one is going to have the other sort of effect. In the end, everybody is better off.' That is one other way you can approach it.

Another way is to admit that there are trade-offs. You may have to phase in reforms. You may have to water down a reform program where, for example, the efficiency gains are relatively small but the social costs are very large. You could say, 'We will forgo some of these efficiency gains.' After all, as I have said so many times this evening, the aim is to further enhance economic welfare, which is not just about efficiency.

In the end, if all of this fails, you can say, 'We are going to go ahead with economic reform because we cannot afford to be left behind and we cannot afford to forgo these enormous output gains in the future. We are going to go ahead with it, but we undertake that, periodically, we will review the situation and make sure retrospectively that the benefits have been widely shared.' That is, in effect, what is happening with national competition policy now, except that it was not institutionalised at the start. I would like to see it all institutionalised, with an independent body.

Senator COONAN—That is the other point I wanted to ask you about.

Mr Argy—I do not see even why a body like the Productivity Commission—which I know is not very popular with many people on the left—if it was given appropriate terms of reference, could not do an excellent job of retrospectively telling governments after a period of years, 'We have introduced all of these reforms, we have looked at all of the social indicators and they show that the benefits have been well distributed or not very well distributed. We think that, if you want to make sure the benefits have been widely spread across the community, these are the most cost-effective, efficient and effective ways in which you can do it.' There are some pretty awful ways of redistributing the cake, which will make the cake smaller. You have a body like the Productivity Commission that can point the way and say, 'These are the ways in which you can redistribute the cake in a way that is effective, efficient and not harmful to economic performance.'

Senator COONAN—To some extent, though, that means you still have to pick winners. It is hard to do it if you do not do it any other way—pick winners and losers.

Mr Argy—You may not be able to do it ex-ante in this case; you do it ex-post.

Senator COONAN—Yes, I understand your point. The other thing—and I will be very brief about it—is you appeared to agree with the proposition put to you by my colleague Senator Murray that the Senate was well placed as an objective questioning body, and then you suggested that the Productivity Commission might in fact be, perhaps, better suited to that role.

Mr Argy—No, I am sorry. May I please correct this, Senator? I am not saying it is better suited. The Senate has certainly got a big role to play but the Senate cannot do a good job of looking at efficient and effective instruments of distribution; I do not think it is equipped for that. The Productivity Commission would be able to do it better.

Senator COONAN—What I was really going to put to you is that the parliamentary system, the Senate included, is a party-based parliamentary body where we are really all in electoral competition with each other and, I would suggest, not dispassionate enough to be making those kinds of analyses. That was the point I was going to make but I think you have cleared it up.

Senator McGAURAN—I have just one question that I want to put to you. I think we have gone through, basically, a lot of the macro questions and I would not mind at some later stage having you back because I think it has been a very good session tonight. But could I just put a micro problem to you? One of the things that we are getting a lot of mail on, a lot of submissions on, is the problems of the perception that competition has imposed, particularly in rural areas.

Mr Argy—That competition has—sorry?

Senator McGAURAN—Imposed in rural areas. In particular, local government; in particular, many of the rural councils that before had their own in-house services—people who lived in the local community, people who derived an income from that—and now the arrangements that are happening, particularly in Victoria where you have compulsory competitive tendering. You have small scale rural communities that are quite upset about this particular process. Have you any idea about the overall benefits of taking competition as far as it has been taken, particularly in these sorts of areas?

Mr Argy—That is a very difficult question. Competitive tendering is something that I very strongly endorse in principle, but you are certainly right that competitive tendering at the local government level has had the effect of reducing jobs and services in a number of regions, and that is a real cost which must be weighed against the benefits to the community at large. If the community at large is much better off because of competitive tendering, which I think they are, then it behoves the rest of the community to try to do something for these communities. I am a great believer, therefore, in regional development policies, policies that take some of the pressure off the big cities and spread employment opportunities a bit more widely across the country.

It is not very fashionable to say that, I know, and I am not suggesting you do it in a dispersed way, but I think we can do a lot more than we have to make the kind of cost that you have just indicated to me more bearable and to neutralise some of this cost with offsetting benefits. But, having said all of that, I think you also raised a classic example where I would want to trade off some efficiency against equity. I would in fact say gradualism is the order of the day there—do not do things like that quickly. Do it over a long period and make sure that all the way you have tried to absorb some of the social cost.

CHAIR—Thank you, Mr Argy. We look forward to seeing you again.

[8.37 p.m.]

RITCHIE, Mr Todd, Director, Economic Policy, National Farmers Federation

CHAIR—I now welcome Mr Todd Ritchie from the National Farmers Federation. We do prefer all evidence to the committee to be given in public but, should you at any stage wish to give part of your evidence or answers to specific questions in private, you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement and, at the conclusion of your remarks, we will invite committee members to ask you questions.

Mr Ritchie—Thank you, Chairman. Can I first make some apologies for Brendan Stewart who is chairman of our economic committee and Ian Donges, the President of the National Farmers Federation. Both wanted to be here but, unfortunately, their schedules have kept them away.

Can I also say, maybe part by way of a policy, that while we have given a submission to this inquiry, the differential impact nature of national competition policy means that in many instances we have left it to our commodity councils and our state bodies to take the running on some of these issues. It would not be right of me, if they are to take the running in some of those issues, to pass anything other than general comments on areas where, as I said, those councils and state bodies are taking the running on the issues.

I am aware that you only just received our report this morning, so what I have attempted to do, albeit roughly, is to nut out a summary for you. With your indulgence, I think it will take about five to 10 minutes to get through that. So I will read that.

In the summary, I will be making some comments on infrastructure, but I will just say at the start that the NFF is currently preparing a major study on the impact of NCP reforms as they relate to infrastructure. We are hoping to have a draft of that report due in the middle of April, and we would be more than happy to come back up and talk to the committee specifically about the findings of that report in mid-April.

Australian agricultural producers, as many will be aware, are generally among the most productive and efficient in the world as a result of long exposure to world markets and a preparedness to move in and out of markets in response to demand pressures.

These factors stand to strain agriculture apart from many others in the international marketplace that require their governments to protect or subsidise their agricultural products. However, after three years of the application of competition policy, a range of concerns are being expressed in rural and regional Australia. These include fears of reduction in or increased costs of services, changes to cooperative marketing arrangements, reduced income from export markets, increased farm input costs with particular emphasis on water, and an uneven distribution of the benefits and costs with the costs being borne by regional Australia and the benefits accruing to metropolitan areas and big business.

Rural and regional Australia increasingly sees itself singled out for disruptive reform processes while other parts of the economy which are also uncompetitive remain untouched.

In addition, the timing of NCP reforms, corresponding as they do with a period of low commodity prices and economic disruption in Australia's major export markets, has also created tensions.

While the overarching aim of NCP must be to contribute to achieving the most efficient use of resources, governments must play a role in facilitating adjustments to change in those areas where change brings significant dislocation and short-term costs. In addition, NCP, along with other micro-economic reforms, must apply equally to all sectors of the economy. This is an important consideration for Australia's rural producers who face both inefficient pre- and post-farm gate processes and significant concentration of market power in the agricultural marketing chain.

Review of agricultural marketing laws is an area of competition policy that is of great relevance to the rural sector. Agricultural marketing arrangements must be assessed individually giving attention to the special features of the product and its market in order to create greater economic wealth.

The single seller status permits Australian producers to be the single large effective marketer in the export market which ensures the maintenance of production efficiencies in our industries. Australia benefits if the SMA can either gain a greater share of the market and/or a better price as this brings in additional export income. SMAs can also play an important role such as standards and quality control and fostering appropriate research and development linkages.

NCP is also concerned with the reforms of government domestic service monopolies. Traditionally, infrastructure was often provided by governments at a loss to rural and regional areas by governments keen to promote broader economic development. However, now functions once thought of as essentially belonging to government are increasingly being provided by privatised or corporatised operators.

Before this new orthodoxy can be accepted, a number of questions should be asked. These include: what economic criteria should be used to decide if new infrastructure is warranted? How does one induce the private operator to provide new infrastructure if he cannot be sure its cost can be recovered through user charges? How does one decide when the government should provide a subsidy to infrastructure provision? Is it a subsidy to government to assist infrastructure provision if there are broader economic benefits anyway accruing to government from spin-off activities—for example, increased employment and taxes generated by the infrastructure?

Also, the national competition policy recognises that some infrastructure facilities are essentially natural monopolies and that owners left uncontrolled might well be tempted to use their infrastructure as licences to tax the consumers and producers. Accordingly, the national competition policy allows for declarations to be made that certain infrastructure represents essential facilities which should be available to all at a reasonable price.

The devil is then in the detail of what is a reasonable price for third party access to someone else's infrastructure assets. At the end of the day it has to be recognised that infrastructure represents strategic national assets. Without it, much rural and regional industry

would become non-viable. An overpriced infrastructure would have similar effects. Australian rural and regional producers must be able to compete if they are to survive, and infrastructure being provided at a reasonable cost is a key component of their competitiveness.

The reforms of Australia Post and Telstra are two areas of particular concern to rural and regional Australia. The services provided by Australia Post remain vital to people living in these areas. Despite the improvements in electronic telecommunications, these new forms of communication are not yet fully available in rural and regional Australia and do not replace the need for a postal service that allows the interchange of physical items such as the supply of health and educational material to people in these areas.

Implementation of the NCP program also necessarily involves difficult judgments about public costs and benefits. The public interest test should be applied in a long-term time frame, thereby allowing all of the implications of change to be fully considered and issues of sustainability to be considered. In many instances, change involves the short-term cost or disadvantage as a trade-off for perceived future benefits. If the total of the future benefits exceeds the adjustment or short-term costs then it may be in the public interest for the change to proceed. However, if change proceeds, assistance or support should be considered for those who suffer the short-term costs.

The notion of community service obligations is also closely related to NCP. CSOs arise in a range of areas, including access to health services, provision of water, sewerage, electricity, telecommunication, quarantine, education, banking, public transport and mail. The delivery and funding of CSOs should be assessed on a case-by-case basis.

In summary then, review of regulations governing competition demands more than indiscriminate dismantling of regulation. Developing more competitive markets requires careful design of regulatory systems that acknowledge the nature of the products and the participants in the markets in question so as to produce outcomes that are efficient and maximise economic benefits. It should be noted that some of the most efficient and competitive markets are, in fact, heavily regulated to protect the interests of participants.

It is also important that the reform extends to all areas of anti-competitive regulation in order to generate the full measure of benefits to the economy. Should reform address only some areas of competitive failures and not others, then only some industries will benefit and these may not necessarily be those in which Australia has a comparative advantage. The implicit bias created by partial reform would move Australia from one distorted economic structure to another distorted economic structure with little real gain in economic welfare. Indeed, the reforms more commonly focused on, including public utility services, the professions and government business enterprises, will not yield their full improvements in efficiency if restrictions remain on inputs such as labour.

On balance, the role of NCP is increasingly viewed as poorly defined with benefits that are not always tangible and review processes that are lacking in transparency. Therefore, it is critical that there is an adequate public education and consultation about the reforms and their progress. Such public education arrangements should have, however, been put in place earlier by all agencies involved in implementing the reforms.

CHAIR—Thank you, Mr Ritchie.

Senator CRANE—I go to the question that I asked our previous witness, about what I call the introduction or the invention of the name ‘competition policy’. In fact, when it comes to the agricultural sector, and I would include mining in that, it was just a new name for adjustment and the things that have been going on in agriculture for a long time because of the pressures of competition. Would you care to comment on that?

Mr Ritchie—I think there are some things specific to national competition policy that we have not had in the past and specifically reform of government monopolies and the corporatisation and outright sale of government assets concerned with the provision of infrastructure. I would have to say that is a completely new area, but I do take your point—and I mentioned in my introduction—that agriculture is one of the industries within Australia that is used to change. In fact, in most cases, it embraces change as something they have to do to compete on international markets. It is an industry that is used to change. Indeed, where national competition policy as it now exists was advanced in 1995, agriculture was one of the sectors that put its hand up and gave fairly general in-principle support with a few caveats to the whole process.

What we have seen—and particularly with infrastructure—is that perhaps that support might have been given a bit too quickly and with the wide-ranging nature of what we have got at the moment with all of these areas going at once—government monopolies, competitive tendering and local government et cetera—we are finding that there might be a bit of reform fatigue in rural and regional Australia.

Senator CRANE—In terms of the pace of reform from an agricultural point of view vis-a-vis our ability to compete internationally—and I am talking about the bigger macro-economic things now—the No. 1 reform measure probably was the deregulation of the financial system and the floating of the dollar et cetera. I notice in your submission that you have made the comment—this is the way I would interpret it; you can correct me if I am wrong—that a lot of the value that should have been derived out of that has been lost for two reasons: firstly, because other areas of reform have not been quick enough or succinct enough; and, equally, the collapse of world commodity prices has masked the benefits of a deregulated financial system. Would you comment on that?

Mr Ritchie—If I could take the last point first: in hindsight, if you had to pick a time to introduce such wide-ranging reforms to rural and regional Australia, the 1990s might not have been the time you would pick. We are all aware that commodity prices—

Senator CRANE—When would you have picked?

Mr Ritchie—Any period where commodity prices might have been on an upward cycle. While the long-term trend in commodity prices is down, they do have periods where they go up, fortunately. Unfortunately, the 1990s have not only been a period of general downward trend in commodity prices; it has also been a period of enduring drought. So if you had to pick a time, it was a very bad time.

We were not to know that the drought was to be so severe when we began this process. I mentioned 1995, but essentially the process goes back a little further than that. It was a bad time to do it. The cry we are hearing more and more in rural and regional Australia is that if there were better times then perhaps we could digest all these changes, but this is a very difficult time. We are concentrating on drought, we are concentrating on low commodity prices, and now we have to come to grips with national competition policy. It just gets very difficult.

Senator CRANE—How is the NFF managing the market arrangements restructure? I am thinking here about the dairy industry, onion boards, potato boards, egg boards, and all these types of things which are fundamentally state authorities. The wheat board is not, although the dairy industry has arrangements which are tied back to the Commonwealth but under state legislation. How is the NFF managing that particular process? What involvement do you have?

I noted you said you are leaving a lot to the state bodies and the commodity bodies, but nonetheless there must be a role for NFF in a coordinating role in terms of the reforms or the readjustments, whatever you want to call it, that are going on. Do you have a strong view that at the end of the day it is really up to the ministers in the state governments to determine the direction in which they go with their own state authorities, or is there a larger role which NFF is involved in?

Mr Ritchie—This is one of those areas where the commodity councils and the states are speaking on behalf of their states and/or commodities, specifically. You will notice in the report that we have canvassed the issue of statutory marketing authorities, but we have pointed to both the positives and the negatives. As you would be aware—it is no secret—there are views in farming communities on both sides, and in particular commodities. There are diverse views out there. It is for that reason that we have left it to the commodity councils and the states to take the running on those individual reforms.

Senator CRANE—How do you answer the charge that is thrown at people like myself that the farm sector, or these commodities, want only the benefits of competition in terms of those inputs? You can go through a whole range of things—chemicals, drenches, and those sorts of things where there have been significant price reductions over the last four or five years, some by 75 per cent—where they want the benefits, yet they want to keep their arrangements in place in terms of the other side in selling to the consumer.

Mr Ritchie—I should mention that not all input prices have fallen by those amounts—

Senator CRANE—I did not say that all had fallen.

Mr Ritchie—I was thinking about my own business where I use a lot of fertiliser. I can assure you we have not seen too many price reductions in fertiliser prices.

Senator CRANE—They have been remarkably stable.

Mr Ritchie—Yes, but after a surge in 1995-96, and a significant surge of about 80 per cent in many cases. That had something to do with some specific marketing arrangements that we will not go into in specific products.

I will take one aspect of that, the single desk export monopoly. A first year economics text book will tell you that if you can enter a market in a position whereby you have some control over your supply, then you extract so-called monopoly rents from that market. If Australia can do that, if we can extract monopoly rents through that selling, then there is an advantage there that I would say it is very hard to challenge.

Senator CRANE—You said ‘single desk export’?

Mr Ritchie—Yes.

Senator CRANE—But that is not touched by competition policy.

Mr Ritchie—Some people have suggested that we should look at that. In some of the reviews that have gone on there have been a number of people who have suggested we should look at that. Obviously, in two of the reviews to date, rice and sugar, they have not been touched. But that is not to say they will not be touched. In the barley decision there were minor changes made to it.

I do not think anybody can challenge the proposition that that is a positive. But when we start discussing the other pluses and minuses of marketing arrangements in individual products, it comes down to the individual products. Once again I am sorry to do this but we have left comment on that to those individual producers and I really feel I have to stick to that.

Senator CRANE—That’s fine. I was just trying to get an overview of how the NFF was tackling that across the board because, fundamentally, the single desk arrangements which are touched by competition policy, or can be changed by competition policy, are domestic single desk arrangements, not export single desk arrangements.

Mr Ritchie—Once again, we are leaving that to the individual commodities.

Senator CRANE—Thank you, Mr Chairman.

Senator MARGETTS—You missed the Grains Council.

Senator CRANE—I beg your pardon?

Senator MARGETTS—On Friday you missed the Grains Council.

Senator CRANE—I have read their submission.

Senator MARGETTS—Single desk, single desk!

Senator CRANE—I had other commitments, unfortunately.

CHAIR—Thank you, Senator Crane.

Senator McGAURAN—In a roundabout way you answered this question for Senator Crane but I will ask it again directly. You mentioned the rules, the primary industry sector being at the forefront of reform, and rightly so, and then you said there have been untouched areas. Can you name the untouched areas?

Mr Ritchie—‘Untouched’ may not have been quite the right word, but there are areas that have not been touched as much. Obviously, there is another committee looking at the marketing power of supermarkets. That is an issue of great concern to farmers and we will certainly be putting a submission in on that. Labour market deregulation is an area of concern to agricultural producers. Reform of the waterfront was an issue that we have been involved in. They are three of the big issues that we have looked at. And reform of meat processing is probably another one that comes quickly to mind.

Senator McGAURAN—You spoke of reform fatigue. Do you think this government’s approach, and the previous government’s approach, towards the car industry and the TCF industries, which was gradual change compared to change in the primary industry sector, is the pace that should have been taken across the board?

Mr Ritchie—Certainly we made submissions on both of those inquiries, and there was a gradual approach taken. As I said in my opening remarks, this is something that is upsetting a lot of rural and regional people. In some issues there is a gradual approach taken but when it comes to national competition policy we have this situation where we have hundreds of regulations and changes to every single statutory marketing arrangement, and changes to local councils. They are being bombarded with change right across the board.

To be honest, I cannot keep up with the number of submissions I have to prepare. Therefore, it is very difficult for an agricultural producer trying to work out what the impact of all these changes are. We have argued in our submission, and we will continue to argue, and probably more forcefully argue, that there is a really good case to be made for slowing the whole thing down.

Senator McGAURAN—Do you think that the philosophy and theory behind competition policy, which has brought about the deregulation of the orderly marketing system—which was long held to be an icon in the rural sector—is to lower consumer prices? Do you think the dismantling of the orderly marketing system has brought about that change at the obvious expense to the producer? Therefore, in the rural sector at least, is it having a reverse social effect where the consumer down the track gets hit because the producer is poorer for it? You can see all the cascading effects from there.

Mr Ritchie—Exactly. I think Professor Argy referred to this. There is a concentration on measuring the benefits of competition policy to the consumer. I was recently at a Productivity Commission forecasting conference looking at the impact of national competition policy and I made that very point there, that we cannot just add up the benefits to one side since markets are made up of producers and consumers. That is so particularly in rural and regional Australia where the micro-economies of those regional areas are intricately related to the economic health of the farmers in that area.

If we are saying we are getting benefits on the consumer side, that may be true and that is very important, but let's also have a look at the disruption on the producer side and try to make an assessment of that impact both directly on the producers and on the regional communities.

Senator MARGETTS—Mr Ritchie, I found much of interest in what you have been saying so far tonight. Can I follow up quickly in relation to the consumer outcome for many of your constituents, or members? What kinds of things are being reported? As we have heard tonight, there is not always a price benefit for rural and regional areas. What are the kinds of outcomes being reported in terms of choice or convenience in relation to this emphasis on keeping margins down, competitiveness and so on in terms of consumer gains?

Mr Ritchie—To be honest, on the consumer side we are not hearing of too many benefits; we hear very few stories of lower consumer electricity prices. We hear stories of large producers, agribusinesses and larger producers of non-agricultural products in the town still benefiting from electricity prices. But, as to consumers, we hear very few stories of benefits. The same applies to gas.

On telecommunications, you are probably well aware of our concerns there. Indeed, there was a report yesterday pointing to some slight improvement in service and quality in rural and regional Australia. The bottom line—and I alluded to this earlier—is that you cannot point to too many concrete benefits from national competition policy in rural and regional Australia. They are just not there. The one that is pointed to is improvement in rail freight, particularly in WA, and that is an undeniable benefit. But, apart from that, you do not hear of too many concrete examples of rural and regional Australia benefiting from national competition policy.

Senator MARGETTS—There were specific legislative changes and new bodies set up in 1995. How much was understood then and how much is understood now of the mechanisms and processes involved with national competition policy?

Mr Ritchie—I cannot speak directly for 1995. I joined the National Farmers Federation only at the start of 1996. Obviously, looking back through the records, it seems to me that nobody understood the scope of what we were embarking on in 1996. It is only now, as the regulatory reforms start to gather pace, that it is becoming obvious to us and obvious to many people in rural and regional Australia that there are some big changes taking place, and it might be that we are adopting those changes just a bit too quickly. I particularly point to changes in infrastructure.

As I said, we are doing a major study that we hope to have the results for in the middle of April. We have a situation here where one of the few areas of government provision that can be justified in the economic text is the provision of infrastructure, and we have thrown that out. I pointed to some questions that we need to ask before we throw that out, and these questions are not being asked.

In my view, we have seen in the banking sector, even though that is not related to national competition policy, a microcosm of what can happen when the government pulls out or stops regulating an area. The banks are under no obligation to provide services in rural

and regional Australia, so they are closing branches in rural and regional Australia. We want to ask what happens when, once we have privatised the infrastructure, a telegraph pole falls down in rural and regional Australia. It is going to cost the company in charge of it millions of dollars to send a team out there and replace the line. Will they do it? Nobody has given us any guarantees that they will do that.

Then there are questions about access pricing. We have situations right around Australia now where firms are boosting the value of government assets. State governments are endorsing that process, not, I do not think, through any fault of their own, other than that I think they might be suffering a bit of reform fatigue and they are finding it very difficult to keep up with the people they are trying to regulate as well. So they are boosting asset values. That is going to boost rates of return; rates of return are applied to those asset values. Ultimately, that has to flow to the end consumer of those services.

Senator MARGETTS—It has been a natural thing for farmers to act in a cooperative way over time in all sorts of ways: bulk handling, cooperatives for obtaining superphosphates, all sorts of marketing. What does it mean for farmers to have to justify or fight for the existence of cooperatives under national competition policy?

Mr Ritchie—Again, this is an area where we are hearing lots of complaints. I am sure you will hear more about this in the supermarket inquiry. We have a situation where supermarkets have a certain percentage of the markets. Some people suggest 80 per cent; supermarkets suggest less. Nevertheless, it is a heavily concentrated sector that has not been touched. They have been allowed to get to that state over a long period of time. Yet here we are, by and large, supplying small suppliers into a market where we face large end-users of our product, and we are the ones having to justify our existence at a time when users and consumers of our products are, by and large, oligopolistic marketing chains.

Senator MARGETTS—So you see the Trade Practices Act leaving private monopolies and oligopolies virtually untouched whilst targeting what you would consider sensible cooperative arrangements for survival?

Mr Ritchie—By and large, we do. That is not to cast any aspersions on the ACCC. The Trade Practice Act is the Trade Practices Act. They have to work with the legislation and the resources they have.

CHAIR—We will cast those aspersions shortly—in about 15 minutes, I suppose.

Mr Ritchie—Perhaps I should not have my back to them!

Senator MARGETTS—Speaking of the ACCC and the NCC, what has been the interaction between your body and the review process of the National Competition Council and some of the administration and policing roles of the ACCC? Have there been administration costs? What has been the process and what have been the problems associated with either the review or the administration of the ACCC?

Mr Ritchie—The problem, from the point of view of the National Farmers Federation, comes down simply to a lack of resources to keep up with the processes. There are all sorts

of reviews that go on that we are not represented in. To our great cost, we are realising that we have a weakness there. I can openly tell you that there are a lot of gas reviews and a lot of electricity reviews that we just have not got the resources to get to. Once again, let me say that we have a very good relationship with both the NCC and the ACCC. We are on a number of consultative committees. The NCC has come to NFF on many occasions to explain its point of view. There are no problems with any relationship between NFF and either of those bodies. But I would say, simply, that NFF is suffering in many ways from reform fatigue. We do not have the resources to keep up with the number of reviews that are going on.

Senator MURRAY—Any brand manager in a manufacturing business knows that, if you want to destroy a well functioning brand, you switch the brand manager, because the new brand manager comes in and wants to adjust the packaging and maybe change the product to put his or her own stamp on it, and the result is that it sends it out of key. It strikes me that what you are complaining about is the same effect with governments. You get new governments and new ministers coming in and they feel that they have to do something. They feel that they have to create laws, introduce regulations or produce policies. You are saying almost, as I hear you, that you need a breather, that you need time to measure what has happened, to evaluate where you stand, to assess the world, to assess the markets—both domestic and international—just to take some time. Perhaps the message from organisations such as yours to various political parties is to actually slow down. Is that what you are saying to us?

Mr Ritchie—That is the message that we are getting from our constituency. It is not a message that is necessarily anti-national competition policy, because the National Farmers Federation and many farmers understand the need to move on. We are not denying the need to change. We are simply saying: either get some resources out to us and explain to us—this is what they are saying—what is going on or slow it down so that we can work it out for ourselves. Having said that, let me say that the process of change that we have seen in Australia—and I think Professor Argy alluded to it—in the last 15 years has delivered some tremendous benefits. All we are saying is that the national competition policy is a big one-off change, and we have state governments that have performance bonuses, for want of a better word, tied to the introduction of these reforms. It seems to me that that is creating incentives for undue haste.

Senator MURRAY—Frankly put, not all governments and not all politicians are competent enough to evaluate and balance these various issues, I would assume.

Mr Ritchie—We have had some reports and some complaints about some of the reviews. By and large, the quality of the review teams seems to be very high, but the timetable of the review seems to be very short.

Senator MURRAY—I think the issue a number of us were exploring earlier with Mr Argy is really that any kind of assessment of where we are needs to be holistic—economic, social, environmental, et cetera—but, secondly, needs appropriate measurement, and the issue is that we do not have enough measurement yardsticks for different things. In other words, the NFF will continue to talk to us in market measurement ways about economics, tonnage, sales and value, but in responding to the consequences of such a thing as NCP will talk to us

in social ways which are evaluative and qualitative and are difficult to measure. I ask you this question: perhaps what your community is doing in saying, 'Slow down' is also, 'Measure this thing properly so that you can respond appropriately.' Is that the wrong encapsulation of what you were trying to express to us?

Mr Ritchie—No, our members are looking for measurement and validation of what they are going through. If they could have it clearly explained to them that there are long-term benefits, I am sure they would accept it. At the moment they are hearing about long-term benefits but they are not seeing any—either definitive examples of long-term benefits or any definitive economic studies or social studies that can unequivocally assure them that there are long-term benefits.

Senator MURRAY—The government has introduced some interesting initiatives like supermarket to Asia, like the action agenda process which deals with a number of industries, and the agricultural industry, by and large, linked back through the food and grocery sector has been a participant in those. Does that sort of process attempt to link in all these various things? Do you still have the problem that individual programs and directions of the government are isolated and sectionalised and are not properly linked through so that an industry such as yours is able to manage how government as a whole is approaching your industry?

Mr Ritchie—No, I would have to say that, by and large, it would be difficult for us to criticise on a coordination basis the government's approach to agriculture—and not just the current government but the previous government as well through the department of primary industries. I think there is a tremendous coordinative role played by that department.

I really think it comes down to the simple fact that NCP is just such a big animal that we are trying to deal with, and it is very difficult to get into groups with all of its tentacles that are out there at the moment. It is very hard to keep up. To give you an example, I spent some time over at the Productivity Commission trying to wade through, I think, something like 200 or so submissions on their inquiry into this, and I think I got through 100, but the number of concerns raised would have to be in the thousands—or 2,000—individual concerns about national competition policy.

Senator MURRAY—As you are aware, we are up against fairly short time lines now with the NCP. Is your submission in broad that the NCP direction is right but needs to be slowed down? In other words, the time lines need to be lengthened so that things that are supposed to happen within a year or two or within a five-year span, in fact, could be lengthened out, similar if you like to the tariff process the government has agreed whereby it has delayed the actual tariff reduction timetable?

Mr Ritchie—I think it is fair to say that there is general agreement on the need to slow down the process right across the board in national competition policy.

Senator MURRAY—So just to summarise my understanding of it, you want better measurement, you want to retain the general policy direction, but you want to slow down the implementation?

Mr Ritchie—Yes.

Senator COONAN—I think a critical conclusion you reach in your submission is this:

The role of the NCP is increasingly viewed as poorly defined, with benefits that are national rather than tangible and the public benefit test is value.

I gather what you mean by that is that the public benefit test is relegated to assessment of economic benefits in favour of the consumer. I am interpreting here, but I assume you mean that. And I just want to contrast it with some evidence that the NCC gave the other day. There is just one sentence I want to quote to you:

At the same time, the reform framework is well equipped to deal with these distributional effects. The public interest safeguards are designed to allow the costs and benefits of reform to be weighed fairly and rigorously—including the impacts on individuals, regions and particular industries—to ensure that reform is in the interests of the community as a whole.

I want to ask you about the public benefit test and suggest to you that it is not interpreted as narrowly as your conclusion.

Mr Ritchie—No. I would accept that criticism. The public benefit test is so ill-defined that you can basically bring anything into it you want. But, by being general like that, it then loses its effectiveness. Perhaps I could answer your question by saying that I have not seen any reference to any provision by the government of the community service obligation as a result of any NCP reform, nor have I seen any evidence or any specific budget allocation of any money to cover adjustment costs.

Taking that issue of lack of money to cover any perceived adjustment costs—and Mr Argy referred to it as well—these things are very difficult to measure in an ex-ante sense. The Productivity Commission is at the moment trying to look at the relative pluses and minuses. As I understand it, even though we have a few problems with the methodology of the research as economists always will, the research seems to us to be leading to a conclusion that metropolitan Australia is benefiting from NCP more so than regional Australia. Yet we have not seen any budgetary allocations of adjustment assistance, we have not seen any community service obligations and we have not seen a public benefit test applied that leads to the conclusion that the social benefits, losses or dislocations may outweigh the economic efficiency gains.

Senator COONAN—Finally, because I know we are running a bit short of time, are you able to point to any instances where the public benefit test has adversely impacted on regional industries as opposed to consumers?

Mr Ritchie—I cannot. But perhaps I could take that one on notice and get back to you on that.

Senator COONAN—Thank you. I think this is an evolving inquiry, anyway, Mr Ritchie.

CHAIR—Thank you very much, Mr Ritchie, for your efforts.

[9.17 p.m.]

JONES, Mr Ross, Economic Consultant, Australian Competition and Consumer Commission

SPIER, Mr Hank, General Manager, Australian Competition and Consumer Commission

CHAIR—I welcome the representatives from the ACCC, Mr Spier and Mr Jones. We prefer all evidence to the committee to be given in public but should you wish at any stage to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement and at the conclusion of your remarks I will invite committee members to ask you questions.

Mr Spier—The role of the ACCC is to apply the Trade Practices Act and the Prices Surveillance Act to improve competition and efficiency in markets for the benefit of all the community. I should point out that the Trade Practices Act has been around since 1974, and the Prices Surveillance Act since 1983.

We predate, I suppose, the focused national competition policy process but, clearly, we are part of it. We are essentially a law enforcement agency with an adjudicative role. I suppose we are at the sharp end in many ways because we are out in the marketplace and we are fairly high profile, as I am sure you are aware. Our essential role as a law enforcement agency is to seek compliance with the Trade Practices Act and, these days—and this is an important point—similar legislation that has been enacted by the states and territories to fill what, until 1996, were constitutional gaps in the Trade Practices Act's coverage. Thank you.

CHAIR—Mr Jones?

Mr Jones—I will just take questions. Thank you.

CHAIR—Good.

Senator CRANE—In terms of assessing public benefit, could you outline to the committee how you take into account the social dislocation that occurs when competition policy, or a competition act or whatever you want to call it, is introduced?

Mr Spier—Certainly. Let me explain first how public benefit comes into our consideration, because it does so in a very limited sense. The Trade Practices Act prohibits a whole series of anti-competitive conduct—certain mergers, price fixing, resale price maintenance and various other things. If anyone is involved in such conduct but they believe that whilst the conduct is potentially unlawful there are countervailing public benefits, they can apply to us for what is called authorisation. That is when our public benefits assessment comes into play.

There is no definition in the act of public benefit. But, as I indicated, we have been around in various forms since 1974 and there has been a very major store of precedents on public benefit, social dislocation, environmental issues, employment issues, all kinds of issues.

Also, one of the public benefits that we have factored into a number of recent decisions is the gradual transition costs from a regulated industry to a deregulated industry. That has happened, particularly in the rural sector. In the poultry farming sector we authorised collective negotiation because, at this point in time at least, most of the poultry farmers are facing very large processors, and only few of them at that.

Certainly, social dislocation costs are part of our public benefit assessment. I should say, however, we have to consult very widely, and we do. It is what comes from the marketplace that we ultimately take into account. So, if no-one raises those issues then we do not take them into account. But, in many cases, people do.

Senator CRANE—Did you say if no-one raises those issues you do not take them into account? You do not go out and seek, people have to bring it before you. Is that how it is done?

Mr Spier—We do go out. As soon as we get an application for authorisation we send that application to anyone that we think has any interest. That includes competitors, unions, state governments, consumer groups—anyone. We have to consult very widely, and by consult I mean send the application to the particular parties and talk to them if need be. It is all on a public register, everything is public.

Senator CRANE—So that is after somebody has actually raised the issue with you.

Mr Spier—It happens after they have applied. They have to apply for authorisation otherwise we do not get involved in public benefit issues.

Senator CRANE—How do you inform people in remote parts of Australia that they have a right under the Trade Practices Act to deal with some of these issues? Do you have some form of communication?

Mr Spier—We do. Clearly, no-one has the resources to approach every single farmer or small business person, but we particularly deal with the peak groups.

Senator CRANE—I am not asking that, I am asking on a regional basis.

Mr Spier—Firstly, we have offices all around Australia and we very much deal with peak groups. Of course, Mr Ritchie, who was here earlier, is one of the people whom we deal with extensively.

CHAIR—I gathered that from what he said.

Mr Spier—We deal also with state governments, and with anyone who advises others. We particularly target those groups in society that advise others. That includes small

business associations, and the small business advisory bodies of the various state and territory governments. We try and tell people as much as we can. Of course, I am sure there are examples where people do not know, but having said that, the law that we administer has been in effect in its current form, effectively, since 1974. It is not new.

Senator CRANE—I am not suggesting that it is new. However, I would suggest there are a host of Australians out there who have no idea of what you have just explained to us at this committee.

Mr Spier—I am sure that is right. But having said that, there are a lot of applications for authorisation so obviously many people do know.

Senator CRANE—Yes, I am not saying there are not.

Mr Spier—That includes a lot of very small groups too whose trade association act on their behalf.

Senator CRANE—I am sure you heard some of the questioning the other night with regard to the repeal of the sites act and the franchise act. My question relates to what is occurring out of the powerful use of market power by some of the big chains. Woolworths happened to be the one we had before us the other night. They initially introduce fierce competition into the marketplace and consumers, wherever they are, tear there at 100 miles an hour. I mentioned the other night, when you were there, Carnarvon and Esperance as two examples of this.

Having done that and the local store disappears and all the other bits and pieces disappear, as a result of competition, a firm like Woolworths then has an open market. Do you follow up any of these particular situations to establish whether or not, with their market power, competitors are virtually eliminated? I know consumers go into their store and buy the cheapest whatever it is. Do you follow up beyond that to see whether they are extracting monopoly rent out of their monopoly position?

Mr Spier—The answer to that is both yes and no. On the no, there is no Australian law that prohibits excessive pricing, it is just not there, although companies can be declared under the Prices Surveillance Act. The petrol refiners were until recently so declared, but there are not all that many companies now declared. And they are declared by the government, they are not declared by us. We have a role to look at their pricing. But if they are not declared there is no law that does anything about excessive pricing.

However, there is the misuse of market power provisions of the Trade Practices Act. If companies misuse their market power then we certainly investigate and we certainly take action. Misuse of market power is a very difficult concept because where does competition end and where does misuse of market power start? The act has some guidance for misuse of market power. Clearly, if we thought Woolworths was going into an area and pricing in such a way that it was aimed at knocking out all the competition, we would certainly have a look at that. But that is not the way Woolworths acts.

Senator CRANE—I should rephrase that. I meant a chain operation like Woolworths, I do not want to particularly brand Woolworths as—

Mr Spier—Okay, a company like that, but that happened to be a new entrant that did enter the market with a slightly lower pricing structure.

Senator CRANE—When they first enter into new areas outside the general metropolitan area where there is competition, do you examine their pricing policies in terms of predatory pricing?

Mr Spier—Yes.

Senator CRANE—How do you go about that?

Mr Spier—We look at their pricing. We know a lot about petrol pricing.

Senator CRANE—I am not just talking about petrol pricing, I am talking about grocery stores, businesses across the board.

Mr Spier—We have looked at Coles and Woolworths in other areas. We have looked at whether they have been engaged in predatory conduct. So far we have not found predatory conduct. The act does not define what predatory conduct is. In many cases what you are talking about is competition. They may just have a lower pricing structure than their smaller competitors.

Senator CRANE—The problem with all this is that the consumers go there and buy, buy, buy until others leave.

Mr Spier—That is right.

Senator CRANE—There is not a hell of a lot you can do about that, but they complain afterwards that their store 50 or 60 miles out has gone under because nobody shops there anymore.

Mr Jones—I think one of the greatest difficulties with any predatory pricing arrangement is the fact that the consumer benefits in the short term. So, even if the arrangement is predatory, it is often very difficult to convince the consumer that they may be worse off further down the line. In this particular case, I do not think that is what we are referring to anyway.

Senator CRANE—In terms of your position, what is your definition of predatory pricing?

Mr Jones—As an economist I would usually consider predatory pricing to be a case of pricing below variable cost, not necessarily pricing even below cost. There may be quite legitimate reasons to price below cost under certain circumstances. Many department stores, for example, might have a sale after Christmas where they get rid of stock they cannot sell at less than the price they purchased it. That is not predatory pricing, I would think.

CHAIR—Do you mind if I just comment on this quickly?

Senator CRANE—Certainly.

CHAIR—Isn't it the case, though, that with petrol there is a wholesale price below which it cannot be sold?

Mr Spier—No.

Senator CRANE—Not any more.

CHAIR—That was the case.

Mr Spier—Not any more.

CHAIR—No, I understand that, but that was the case for some years.

Mr Spier—No, you could not sell above.

CHAIR—The oil company would supply fuel to either the independents or their own badges out there at a price that was determined by—

Mr Spier—Us.

CHAIR—You people, now.

Mr Spier—But that was a maximum wholesale price.

Senator CRANE—That was a maximum, not a minimum.

Mr Spier—That was a maximum wholesale price.

CHAIR—There was no minimum price?

Mr Spier—No.

CHAIR—They could supply it at any price then?

Mr Spier—Yes.

CHAIR—That was just the maximum wholesale price?

Mr Spier—Maximum. Most prices that are set these days, where prices are set, are always maximum prices.

CHAIR—Right. So why don't they get into the business of sending out, through creative accounting—I forget now the wording that was used for this, but they would give subsidies out to their own operators when they could actually sell it to them cheaper in the first place.

Mr Spier—Price support.

CHAIR—That is right, price support—when they could sell it to them cheaper.

Mr Spier—Some oil companies did actually supply cheaper; others used price support for the same mechanism. The price support was to meet what they would call a temporary situation. Oil companies do not really want to say, ‘Yes, we are dropping our price,’ because it is very hard to put the price up once you have dropped it. What oil companies did was say, ‘Our price is X,’ but if they were in a particular situation because the person down the road dropped the price they said, ‘We will give you price support.’

Senator CRANE—Thank you. There are a whole range of complex reasons why the market went in a certain direction.

Mr Spier—That is right.

Senator CRANE—Just coming back to this whole issue, one of the things I think that bugs rural people more than anything is that they have a honeymoon period in terms of pricing when these developments occur. As soon as effective competition is distorted or wiped away, it disappears. You mentioned, Mr Jones, about the Christmas sale: there are not too many Christmas sales out in the bush. There might be a few in Hay Street, Perth or somewhere but there are not too many out in the bush. While the additional costs involved in being there are real and have to be met, there seems to be a monopoly transference of profit from remote areas back to the city in terms of their pricing policies. What is a way through that to solve it so there is equity and fairness in terms of the costing?

Mr Jones—I think it would be very difficult to have a mechanism whereby you regulated prices of specific items or even a basket of specific items. I would have to say that the greatest source of—

Senator CRANE—I am not asking for regulated prices, but there must be some mechanism there that deals with fairness and equity?

Mr Jones—I suppose the difficulty from our perspective would really be the notion of what is a fair and reasonable price. I guess it is a comparison also with what was in existence before. The circumstance you are referring to is where, say, an independent business is effectively replaced by a major chain. Under those circumstances, if the original supplier was a monopoly anyway, I am not sure that it would necessarily be the case that a new supplier would price any higher than the original supplier.

Mr Spier—As soon as you get into fairness and equity, you get into price control if you are looking at what is fair in those areas. There is one issue. In the European Commission, their concept of misuse of market power includes excessive pricing. Ours does not but theirs does.

Senator CRANE—In terms of farm inputs, if I can put it that way—the drenches, fuel, chemicals or generally the parts—there is pretty fierce competition today in the farm sector. In terms of social requirements—food, milk, bread and all those sorts of things—there is a

distinct lack of competition and it is getting worse and worse. That is the issue I am trying to raise. It seems to go hand in hand when you go round some of these larger regional places which have virtually three or four small stores or one major retailer. The competition disappears fairly quickly afterwards. Some hang in there for two or three years but then they go. You can look at a whole range of examples around Australia, but I think probably Western Australia is a better example because the regional towns are generally smaller than they are over on this side of the country. That is the question I am posing. In terms of goods and services for the employees and people who live there, they are everyday living things. Do you have any thoughts about how that can be dealt with? It is probably a repetitive question.

Mr Spier—It is one that will be coming up in various other committees as well. It is a very difficult one, Senator. Frankly, we do not have the answer. We are not a policy agency. It is a very complex issue. Some things have happened in the past under a different legislative regime. As you mentioned, there is no competition in, say, bread. All the bakers merged some years ago when there was a different merger test. But that does not stop people from closing down. The law may slow down mergers but it does not stop people pulling out of the market.

Senator CRANE—There are all sorts of reasons. One of them is that there are not enough people there to eat enough bread.

Mr Spier—This is right. One issue, at times, is much higher transparency and people are more aware of price differences. There might then be consumer pressure.

Senator MARGETTS—You have described yourselves as being a law enforcement agency with an adjudicative role. Can I put it to you that already, in the small amount of evidence in a lot of the submissions, it has been pointed out that that in itself is a problem. I keep thinking of that poem in *Alice in Wonderland* that goes down the page. It says, ‘I’ll be judge, I’ll be jury, I’ll try the whole court and condemn you to death.’

Senator COONAN—I never read that.

Senator MARGETTS—It is fascinating. Isn’t that a problem? Don’t you see that that is a problem when people see that if they go to you then the review is actually conducted by you and you impose the penalties? You come to the conclusion or suggest—

Mr Spier—No. I can see what you are saying. It certainly does not work that way. It acts as a regime of a series of prohibitions. But those prohibitions can be overridden by us after a very public process. There is not a risk that if you fail on the prohibition, if you fail on the exemption process, we turn around and prosecute you. That has never happened.

Senator MARGETTS—What is the incentive for people to put their hand up and in effect do themselves in to you or to ask for a review?

Mr Spier—It is very fundamental, Senator. It exempts them from the law. We are not the only people to take action. There are thousands and thousands of private actions every year. Most of them never see the light of day because they are bluff or tactic actions. It

exempts people from private action. It exempts them from us. We take actions based on a community benefit criteria; commercial parties take action based on any criteria that suits them. I think Senator Cooney probably knows what I am talking about.

Senator MARGETTS—Is there any other roll-out timetable that they are trying to beat the clock on? Originally there was a couple of years for review.

Mr Spier—Not any more.

Senator MARGETTS—There is still review of the legislation.

Mr Spier—That is nothing to do with us.

Senator MARGETTS—Some of the people are coming to you and asking for exemptions on potential legislative changes, aren't they?

Mr Spier—No. They can only seek exemption on, say, private conduct if someone wants a merger when they say, 'Sure, it is anti-competitive but there are public benefits.' We have got one at the moment in cement in Western Australia for a merger where we have an application of authorisation. We got that yesterday, and we have 30 days to do it.

Senator MARGETTS—As a body, the ACCC is having to become experts in a whole range of fields.

Mr Spier—Yes.

Senator MARGETTS—How do you manage that?

Mr Spier—With great difficulty. But we always have. Whilst our role is now bigger, we have always had the role where someone can come to us tomorrow on a matter involving poultry and the next day on cement and the next day on cars and the next day on medical services. We have always had to get up to speed very quickly. We engage consultants.

Senator MARGETTS—How many cases or challenges are you receiving? What sort of load are you receiving of cases, challenges and issues?

Mr Spier—It depends. We have complaints, we have applications for authorisations, we have mergers. We get roughly 150 mergers a year that we are asked to have a view on. We get about 30 to 40 applications for authorisation a year which is a set process that we have to do in a short time frame. We get 60,000 inquiries a year but they sort of filter down to about 2,000 actual investigations, and we run about 30 to 40 court cases a year. We do applications for access in electricity or in gas or airports.

Senator MARGETTS—How many court cases?

Mr Spier—About 50 a year.

Senator MARGETTS—What kind of cost is involved for you and the community in these court cases at the moment?

Mr Spier—Our whole budget is \$38 million in terms of everything, including the court cases—the lot. In terms of court cases there is some cost. Most of our cases these days do not go to full hearing, they are settled. They have a fairly efficient way of doing things.

Senator MARGETTS—Is there going to be a point where you no longer have these?

Mr Spier—In an ideal situation we should work ourselves out of a job, but that has not happened so far. Basically, what comes to us is what comes out of the marketplace. We pursue price fixing or misleading advertising or conduct by Telstra or unconscionable conduct. We have this whole range of prohibitions. We pursue what comes to us. We set our priorities and we filter the work because we cannot do everything, of course

Senator MARGETTS—It has been put to us that the ACCC might be adjudicating or being asked to adjudicate on whether or not it is anti-competitive for farmers to have a water cooperative or a marketing cooperative whereas large commercial monopolies under the Trade Practices Act seem to go scot-free. Are you getting that kind of pressure through your organisation, that people are annoyed that sometimes things which seem to be not doing anybody any harm are being targeted because the law somehow says they have got to be targeted, whereas what blind Freddy might see as anti-competitive behaviour or behaviour against the public interest is not within your ability to deal with?

Mr Spier—That is to some extent what the retailing inquiry is going to be talking about as well. But, yes, they come up, but I do not think it is as black and white as that. In terms of cooperatives, and I heard the question you asked the NFF, I am not sure what the issue is with cooperatives. We have never taken on a cooperative. In terms of a number of small business people acting collectively, not becoming a cooperative but acting collectively, that may be at risk under the Trade Practices Act. We have authorised in a number of situations to allow them to collectively negotiate with people that they deal with—be they insurance companies when it comes to, say, panel beaters, be it a poultry processor when it comes to poultry farmers, or be it the wine companies when it comes to grape growers. We have authorised them to collectively negotiate because they lack market power.

In terms of the size of, say, the retailers, which you picked up on, some of that happened under a different merger test. It was a dominance test until 1993. That was when Coles-Myer happened. In relation to other things, we authorised a number of acquisitions that were to lead to the fourth force in retailing, that is, Davids Holdings, but they have had their own commercial problems since.

Senator MARGETTS—That was maybe more information than I needed on those things. But I am getting messages on a regular basis, especially from my own state of Western Australia, that people in the rural community are being told they have got to change their current cooperative structures in a number of areas. Potato growers, vegetable growers, dairy producers and all sorts of people are being told that there are deadlines or that their current programs are under the chop. Are you saying this is nothing to do with the ACCC? Is it to do with the National Competition Council review?

Mr Spier—I think it is the regulation review. It is the statutory marketing boards that are part of the regulation review process. But as to cooperatives—say, the milk cooperative or the various cooperatives that are around—we have not touched any of those.

Senator MARGETTS—So the statutory marketing boards—

Mr Spier—They have nothing to do with us in terms of their undoing. That is part of the regulation review process.

Senator MARGETTS—But what about water—the cooperative users of?

Mr Spier—That is total news to me. We have never had anything to do with that.

Senator MARGETTS—The issues in Western Australia, you say, are nothing to do with the ACCC.

Mr Spier—I am not saying they are ‘nothing’ because there are some which may, because I—

Senator MARGETTS—I do not really want to get into a situation of being pedantic, if at some other stage you call it another name. The farmers are calling it a cooperative. I do not know what you are calling it. So it is nothing to do with anything the ACCC is doing.

Mr Spier—Not to my knowledge. I think what they are talking about is the statutory marketing arrangements which under state law have to be reviewed as part of the national competition policy. If you are a group of farmers and you form a co-op—

Senator MARGETTS—So, dairy farmers in Western Australia who are worried about their current cooperative marketing arrangements have nothing to do with anything the ACCC is dealing with.

Mr Spier—No.

Senator MARGETTS—Is that the NCC, do you know?

Mr Spier—I presume it is the state government’s regulation review program which is oversights by the NCC because they are the ones who pay the money.

Senator MARGETTS—So they are not telling you about this?

Mr Spier—Certainly we are not doing anything.

Senator McGAURAN—I would think the answer to that is a cooperative is just a form of a business so it does not relate to national competition policy. It is just how you formulate your business structure.

Mr Spier—That is right.

Senator MARGETTS—No. You do not understand. I am talking about people who are saying that under national competition policy they are being told to change. I am not imagining it.

Mr Spier—That is possible, but that is probably part of the regulation review.

Senator McGAURAN—No, they are talking about the deregulation—not the cooperative that Bob mentioned. I have a couple of clarification points, too. Where does the NCC sit with you? That is not Bob Santamaria's organisation?

Mr Spier—No. The National Civic Council does not sit with us at all.

Senator McGAURAN—No, they do not, reading their magazines. Do they have authority over you?

Mr Spier—No. They are quite separate. They deal with the Commonwealth and federal governments on issues like the competition payments. When there are applications for a declaration of a natural monopoly, they declare something to be a natural monopoly and then there is an appeal process. If that goes through that process, we are then the arbitrator on access to that natural monopoly. We have a very close link with the NCC but no formal link.

Senator McGAURAN—No legislative link.

Mr Spier—No.

Senator McGAURAN—Has the unconscionable conduct clause, which has been stiffened in the last year or two, been triggered by you?

Mr Spier—Yes. We have taken a few actions already.

Senator McGAURAN—Really?

Mr Spier—Yes.

Senator McGAURAN—I will not waste the committee's time, then. I do not think this relates to you but I am going to ask the question because Mr Ritchie put it to us. You may be able to answer it even if it is not under your responsibilities. He said that he has no assurances, if a telephone pole falls over, about who is going to put it back up.

Mr Spier—I cannot answer that question, either.

Senator McGAURAN—That would be the ACA, would it—the Australian Communications Authority?

Mr Spier—Yes.

Senator McGAURAN—Under the CSO?

Mr Spier—It is under the CSO. We would have some input, too. We would seek a report from the ACA on broad issues like that—not on a particular pole, but on broad issues because we are the access and price cap regulator for Telstra.

Senator MURRAY—Mr Spier, explain to me your precise relationship with the National Competition Council? Do you meet with them on a regular organised basis or an irregular basis in relation to specific aspects of their task or your task?

Mr Spier—Legally, there is no relationship in a legislative sense. We are a totally independent agency and we report to the Treasurer and the Minister for Financial Services and Regulation. We have very close links with the NCC. We meet with them on a quarterly basis or on a more often basis if there are some common issues, because there are some common issues from time to time, particularly in the access area.

Senator MURRAY—At what level?

Mr Spier—At commissioner level, staff level. It is a fairly informal relationship. It would not be appropriate for us to meet with the Federal Court, because they are the court where we take lots of actions. They are on the same level as us. They are often asked to declare something to be a natural monopoly or an essential facility. At the same time, the people are coming to us with an undertaking on exactly the same facility, so we need to work together because people try different routes to get the same outcome. We make sure that there is not duplication or there are not problems. At the staff level, we would probably deal with the NCC weekly.

Senator MURRAY—Do they ever come to you informally and blow the whistle on some body, some industry? For instance, if they have been having a look at something and they have decided that it is not quite within the range of things that they are legally entitled to do, but they are concerned about competitive aspects, perhaps restrictive practices, things that you might take a natural interest in?

Mr Spier—I am not aware that they have and we certainly do not see that as their role at all.

Senator MURRAY—So they are not a prompt to you to encourage competition under your act, where they cannot deal with it under their act?

Mr Spier—No, and with due respect to the NCC, I think we have a better source of information than they have.

Senator MURRAY—Are you ever a prompt to them in the reverse as to things that they should do under their enabling legislation?

Mr Spier—Not a prompt, but we would quite often refer people to them who come to us for the wrong reason and we say, ‘No, this is really an NCC matter.’

Senator MURRAY—Are you, as an agency, as concerned with monopsony as you are with monopoly?

Mr Spier—Yes, it is the same issue.

Senator MURRAY—Because, in the agricultural sector, monopsony exists far more.

Mr Spier—It comes under our misuse of market power provisions which are not easy provisions. We have to show that the buyer or the seller, whoever, is misusing their market power.

Senator MURRAY—Have you, as an agency, formed a view as to deficiencies in the NCC? You would have heard my summation—perhaps you were not here—of Mr Ritchie's view at the end. Have you formed a view of ways in which you think the NCC process could be improved because I am sure, from your regular meetings, that you have a perspective as to where the difficulties are with their enabling legislation and what they are capable of doing right now, and particularly time lines, because that is a critical issue right now?

Mr Spier—We do not have a view and it would be quite inappropriate for us to have a view, too.

Senator MURRAY—It may be inappropriate, but it would be awfully helpful to the committee if we were to discover from you some perspectives.

Mr Spier—We do not have a problem with the NCC. We are not a client of the NCC. We do not deal with them in terms of seeking things from them. It is more a cooperative arrangement.

Senator MURRAY—Let me be specific. One of the things Mr Ritchie was implying, which I then put into summary for him, was that the process, the time line by which the NCC must fulfil certain obligations, in fact created unnecessary stress and uncertainty, which, if stretched out a bit, the market would manage and cope with better. And we used the example of the tariff delay which allows industries to restructure or retrain and tool up and access their markets and all those kinds of things. It is not inappropriate for you to say to us, in certain respects, 'Haste in dealing with us actually produces unforeseen consequences which are not necessarily favourable for market competition and those sorts of issues.'

Mr Spier—We really do not have a view. Our processes are so much faster than the NCC's, too. So we probably see them as slow in some ways. Our statutory time limits are very short. We do not have any view in terms of the NCC. I think it is more for their clients to have a view, which we are certainly not.

Senator COONAN—I wanted to explore very briefly just one very small aspect that interests me enormously and I know interests the ACCC and that is the medical profession and particularly medical specialists. We had some evidence given to us a day or so ago from a rather indignant representative from the AMA who was complaining about not having received an authorisation to collectively negotiate in South Australia contracts with public hospitals. That is just one case. But there was also an implicit suggestion that the medical relationship between doctor and consumer or patient, as they used to be called, is not an ordinary commercial one and that some of the thrust of the ACCC's movement into looking

at entry into colleges and accreditation really had the potential to interfere with standards for accreditation, and whatever, and put people at risk in that sense. I suppose really, when you start looking at deregulating the professions in the consumer interest, you have some very pointy-ended questions to consider. I wonder if you could enlighten us as to how the ACCC approaches that sort of issue.

Mr Spier—I notice that you were promised a copy of the authorisation. Did you get it from the AMA?

Senator COONAN—Not yet.

Mr Spier—Can I give you a copy now?

Senator COONAN—I was not wanting to explore that with the witness until I had read it.

Senator MURRAY—That is not inappropriate, is it?

Mr Spier—No; we have to be public. Let me start from a basic issue. We do not deregulate the professions. The states who have the responsibility for a professional regulation, licensing or whatever it is, are the ones who deregulate, change the law. We then look at the marketplace as it is, be it regulated, be it deregulated, and then we look at conduct which may be in breach of the Trade Practices Act, which people bring to our attention or we are aware of.

Let me talk about that South Australian issue: they applied to us for authorisation. We did not chase them up. We did not threaten. We did not say that we will take you to court or to stop it or you will go blind. They came to us for authorisation, which is appropriate.

In terms of collective negotiation between doctors and the public health authorities, and it can be with doctors and other hospitals, it is a common issue. Doctors have a long culture of acting collectively. That is the way the medical profession has acted in Australia for many years. I am not saying that is wrong; that is just the way it happened. Although, I must say, I suspect that a very high proportion of doctors were caught by the Trade Practices Act before the 1996 amendment because most would have been incorporated for tax reasons, if for no other reason. So they were always at a bit of a risk. But they applied for authorisation and we went through our appropriate process. We have to consult; we have to go public. We have to do a draft determination, which we did, and then a final.

The issue between us is that doctors have a strong view that anything they do may affect medical standards, may affect their patient relationship. We were looking at a relationship between the doctors and their employer, not doctor and patient, and they did not like that.

When it comes to specialists, most specialists are in an environment where they self-regulate—there is no regulation. Through various schemes, there are often statements by various people, including those in the medical profession, saying that the specialist systems are a barrier to entry. We are not talking about their professional standards—that is one

issue. That is fine; we are not trying to upset that at all. But are they being used or are they at a level or is the system such that there is a barrier to entry? That is our concern.

We are talking to the AMA. We are talking to the specialists to see whether we can come to a compromise where any anti-competitive conduct is eliminated. But, of course, they have the concern that we are trying to attack their standards. The authorisation process under our law is meant to very much meet those issues where there is anti-competitive conduct. But there is authorisation for the public where there is public benefit, and there is a trade-off. There is a compromise and we can set the conditions and it is a public process. Some people do not like the public process.

Senator MARGETTS—If you are not looking at the doctor-patient relationship, how can you say that you can rule in the public interest? If it is health and you are looking at the doctor-employee relationship only, how can you say that, in the end, whatever you are doing is ruling in the public interest?

Mr Spier—What we are asked to do is to start off on a premise that there is a conduct which is in breach of the act, which substantially lessens competition or is a price fix which is deemed to lessen competition—it is not an issue; it is just deemed to lessen competition—and whether there is public benefit which overrides that anti-competitive conduct. And that public benefit may be stability of relationships. It may be lower transaction costs; it may be all kinds of things. We do not have to go to the next step which looks at the patient relationship.

CHAIR—I have a bit of an interest in the medical side of things and, particularly, the question that Senator Coonan asked a minute ago. Your response to it was to say that you were looking at—correct me if I am wrong—some of the surgical colleges. My understanding of the position the ACCC has taken is that you were looking at them as if they are cartels for price fixing: is that correct?

Mr Spier—Price fixing or whether they set up what I suppose is a classic anti-competitive element, which is barriers to entry, to stop entry—

CHAIR—We will come to that in just a moment.

Mr Spier—whether entry is proper, whether the person meets all the necessary standards.

CHAIR—No, I want to come to that in a minute. I want to separate the two issues out. Are you looking at them as price fixing cartels?

Mr Spier—In some cases, yes.

CHAIR—Let us go to this barrier to entry. I put to the AMA representative on Friday—to which he surprisingly did not argue, given the role of the specialists in the AMA and the way they dominate and run it—that what has been put to me is that, in fact, the sorts of people who get into specialist colleges are ones, in effect, who have the pull to get in there, and they are not necessarily attracting the best and brightest. In fact, quite often, if a father

or, on rare occasions, a mother, is part of that college, then the next generation down gets a much easier ride than someone who may actually have a far greater talent. Are you looking at that? Is there anyone looking at that?

Mr Spier—Clearly, that is some of it. I suppose that part of what you are saying is that the self-regulatory system that the colleges have has got some flaws. And we are looking at them as to whether, perhaps not in terms of, say, what you might call some odd conduct or some, say, favouritism, which you might be saying. But we are saying: is the system being used as a barrier to entry, which is not appropriate?

Senator MURRAY—I can add something here, and Mr Jones could respond as an economist. In economic theory, if you are looking eventually for equilibrium, there have to be occasions when there are excess supplies or excess demand, if anyone can tell me at any time when there has been an excess supply of—

Senator COONAN—Anaesthetists.

Senator MURRAY—anaesthetists, cardiovascular surgeons, those specialist things. As far as I am aware, there have not. To me, that is an economic signal that the market is being controlled. Whereas, if you talk about tomatoes, Senator Crane, sometimes there is an excess supply and sometimes there is an excess demand. But it is not so in those professions and, to me, that is an early signal for you.

Mr Spier—That is one of the reasons why we have been engaging in a dialogue with the specialists on those issues. It has been a difficult dialogue, let me say, as you have probably heard from the AMA the other day.

Mr Jones—Of course, even under those circumstances, even if the arrangements are anti-competitive, there is still the opportunity for them to explain that there is public benefit from those arrangements.

Senator McGAURAN—I just have a question of clarification. It is not on this subject.

CHAIR—Sure. We had better make that the wind-up, I think.

Senator McGAURAN—On a point of clarification: your terminology of abuse of market power, is that different from unconscionable power?

Mr Spier—Yes. Unconscionable conduct is basically where you are in a relationship between a supplier and a small business customer—for instance, a landlord and tenant is a classic one; a franchisor, a franchisee.

Senator McGAURAN—You have not got it in your submission, though. Therefore, just for the record—

Mr Spier—Not for this, because that is not a competition issue.

Senator McGAURAN—That is what I was going to ask.

Mr Spier—That is right.

Senator McGAURAN—Do you think unconscionable conduct is a tool in relation to national competition policy, policing it?

Mr Spier—Partly. It does not apply between, say, competitors. It only applies between customers—people in a vertical relationship. So, if you are saying the supermarkets are engaged in conduct that is unfair to small business, that is not an unconscionability issue.

Senator McGAURAN—It is not a competition issue.

Mr Spier—Yes.

Senator McGAURAN—But it is unconscionable—

Mr Spier—It is not an unconscionability issue the way the law stands unless that person is a supplier to the supermarket. But where they are just the competitors, where there is a small greengrocer and there is—

Senator McGAURAN—I know what you mean. I would like to put it in the net, though.

Mr Spier—Sure. And we can give you some more on that if you want.

Senator CRANE—You can take these on notice, if you like. My questions follow what Senator Margetts was raising, I believe, with regard to single desk arrangements which exist on the domestic market in the various states, but Western Australia, in particular. As far as I am aware, they are all held under statute but there may be some held by cooperatives which I do not know about. The Australian Wheat Board is going to be under a company arrangement in terms of them, but they are offshore in a totally different circumstance. What I want to know is, in terms of the review of single desk arrangements in the various states, whether it be the dairy industry authority, the onion board or whatever, how you go about that process and what rights the holders of that single desk—who are fundamentally the producers—have and how do they go about defending their position and arguing their case that it is in the public interest or the public benefit for them to continue?

Mr Spier—If there is a single desk as part of a legislative regime, we have no role at all.

Senator CRANE—So you have absolutely no role.

Mr Spier—The state would be doing its legislation review, which is part of the national competition policy agreement. We may make a submission, although we seldom do. We may, if we are actually asked, but we seldom do. We do not see that as our role at all.

CHAIR—I thank the witnesses before us tonight and the committee.

Committee adjourned at 10.09 p.m.

