HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION

Reference: Aspects of the national competition policy reform package

CANBERRA

Monday, 2 December 1996

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION

Members:

Mr Hawker (Chair)

Mr Albanese	Mr McMullan
Mr Anthony	Mr Mutch
Mrs Bailey	Dr Nelson
Mr Causley	Mr Pyne
Mrs Gallus	Mr Willis
Mr Hockey	Mr Wilton
Mr Latham	

Matter referred to the Committee:

The aspects of the national competition policy reform package. The major issues the Committee has been requested to inquire into are:

(1) the appropriate means, including review processes, for applying the 'public interest' tests included in the Competition Principles Agreement:

These tests are a critical feature of this Agreement. They are described in Principle 1(3), which provides that:

without limiting the matters that may be taken into account, where this Agreement calls:

(a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or

(b) for the merits or appropriateness of a particular policy or course of action to be determined; or

(c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety,

industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth;

(h) the interests of consumers generally or of a class of consumers;

(i) the competitiveness of Australian businesses; and

(j) the efficient allocation of resources.

(2) the impact of competition policy reform on the efficient delivery of community service obligations including an assessment of:

(a) existing government policies relating to community service obligations and

(b) options for the delivery and funding of these services;

(3) the implications of competition policy reform for the efficient delivery of services by local government, including arrangements that have been developed between State Governments and local government authorities for the implementation of the Competition Principles Agreement.

WITNESSES

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION

Aspects of the national competition policy reform package

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Monday, 2 December 1996

Present

Mr Hawker (Chair)

Mr Albanese	Mr Latham
Mr Anthony	Mr McMullan
Mr Causley	Dr Nelson
Mr Hockey	Mr Wilton

The committee met at 9.14 a.m.

Mr Hawker took the chair.

CHAIR—I declare open this inquiry into aspects of the national competition policy reform package. Competition policy is an important micro-economic reform, the results of which will affect the community and government alike. The current inquiry was referred to the committee in August this year by the Treasurer, the Hon. Peter Costello. In accepting this inquiry, the committee picked up the work started by the House of Representatives Standing Committee on Banking, Finance and Public Administration in the last parliament.

To date, the committee has received over 90 written submissions to the inquiry. Copies of those submissions are available from the committee's secretariat. Our predecessor committee held six public hearings during the last parliament and this is the first public hearing that this committee has held.

At our hearing today we will take evidence for the first time from some of the principal Commonwealth competition policy agencies. While there is broad support for the principles of competition policy, debate on progress with reforms is rife. On the surface, all of the right building blocks have been put in place but we will be looking at the structures and processes in more detail. In particular, we are keen to see whether the pace of competition reform is right, whether there is too much focus on the implementation of the reforms to the detriment of the outcomes of the process, what processes and structures are in place to monitor those outcomes and whether the competition agencies are operating efficiently and effectively or need to be rejigged. As well, we will examine concerns relating to public benefit tests and community service obligations and the implications of competition reform for local government.

I stress to the witnesses participating in this hearing today that I will be seeking a frank and constructive contribution to the committee's work.

CASSIDY, Mr Brian David, First Assistant Secretary, Structural Policy Division, Treasury, Parkes Place, Parkes, Australian Capital Territory 2600

CHAIR—I would like to take this opportunity to welcome the representative from Treasury to today's public hearing. The evidence that you give at the public hearing today is considered part of the proceedings of parliament and, accordingly, I would advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament.

The committee notes that Treasury has not made a formal submission to the inquiry. Do you wish to make an opening statement before I invite members to proceed with questions?

Mr Cassidy—Mr Chairman, I do not know that I have too much to say by way of an opening statement. As you say, we have not provided the committee with a formal submission, but we have taken the position, as we did with your predecessor committee, that we would stand ready to provide the committee with whatever assistance or documentation we were able to give. Since you started your hearings, we have provided a number of bits and pieces which the committee has requested. I am basically happy to respond to whatever questions the committee may have or, following this hearing, to provide any further material with which we are able to assist the committee.

CHAIR—I will just start off with the point that I made in my opening remarks about the question of the focus of competition policy on implementation rather than outcomes. Does Treasury have a concern about this too? If so, what sort of processes and structures do you see should be there to ensure we do start to focus more on outcomes?

Mr Cassidy—I think I can understand in a sense why some people might make that observation. We have been through a period since the meeting of the Council of Australian Governments in April 1995 where the policy was basically agreed. We have been through a period which has been fairly heavy on implementation in terms of getting the required legislation in place at the Commonwealth level. The states and territories have also been required to get their required legislation in place. All jurisdictions—the Commonwealth, states and territories—were required, by June this year, to publish various schedules and policies relating to legislation review and implementation of the compared neutrality policy principles.

In a sense, the period up until fairly recently has been fairly heavy on implementation and on getting the agreed framework in place. It is really only in the last few months—since mid-1996—that jurisdictions, including the Commonwealth, have set about the task of actually applying those policies and principles and starting to weigh various issues and making some practical or pragmatic judgments on the competing considerations.

As I say, we have been through a period where the focus has been on implementation, in the sense of getting the relevant bits and pieces in place. We now have a period over the next few years where the focus has to shift from implementation in a formal framework sense to actually applying the policy and the principles and thinking more actively about outcomes in various areas and what those outcomes are going to be.

The short answer to your question is that I can understand why some people might make that observation. I do not know that I would necessarily agree with it as an accurate characterisation of the policy overall. I think it is more a matter of where we are in a timing sense and the overall implementation of the policy.

CHAIR—Do you have a view as to who should be actually responsible for monitoring these outcomes?

Mr Cassidy—In a sense, the policy and the principles give that sort of role to the National Competition Council, representatives of which are appearing later this morning. In particular, there is obviously a difficult issue in all of this, because there are judgments to be made by individual governments. The principles make it clear that it is up to individual governments to be making those judgments—the balance between competition considerations on the one hand and other broader public interest considerations on the other. It is then a matter of judgment for someone as to how governments are going about applying the policy and making those balancing judgments and, in a sense, whether they are broadly getting the balance right.

The Council of Australian Governments decided that that was a role for a body which is at arm's length from all the jurisdictions, in the sense that it does not belong either to the Commonwealth or to any of the states or territories. That body is the National Competition Council. I think that is a role which has been assigned to them.

There is, of course, a broader judgment to be made which ultimately comes back to the parliaments in each jurisdiction. A number of these areas that are being looked at will ultimately involve legislation of one form or another in order to implement various changes. Of course, that will come back to the individual parliaments in each jurisdiction. I think they are the appropriate bodies.

CHAIR—You say they are the appropriate bodies, but is that Treasury's preferred position?

Mr Cassidy—Commonwealth Treasury never aspired to having this sort of role. I think it is important that those sorts of evaluations be made by bodies which are removed from the process of actually implementing the policy. I think there has to be a separation of roles. Leaving aside the parliaments, when you look at the bodies that might undertake that sort of role, there really are not all that many that present themselves.

CHAIR—Do you see it as a problem that the NCC has a dual role of both advising other jurisdictions what they should be doing and then assessing it—being judge and jury?

Mr Cassidy—Again, that is a position which has been put. The concern that is expressed, including by some jurisdictions, is that if the council, in the role of advising jurisdictions on a particular issue, advises, say, on reform in a particular area and then the jurisdictions make their own judgments—as they are entitled to—and decide to do something in that particular area slightly differently from what the NCC has recommended, will the NCC then turn around and say, 'On that basis, because you did not implement our recommendations, we'll decide that you are not implementing a policy view properly'? As I say, there is that

concern.

Personally, I think it is a bit overdone in the sense that the council has made clear on a couple of different occasions in different ways that, basically, its approach to evaluating the performance of the states and territories in implementing a policy is really one of substantial compliance. The fact is that a jurisdiction may decide to do something a bit differently in a particular area—even a bit differently from what the council has recommended. I think the council has made it fairly clear that that would not automatically mean that that jurisdiction is going to be judged harshly. I think that concern is a bit overdone. Nonetheless, I do concede that there is a worry about the dual role that the council has, at least from a presentation point of view. I think that is something which will have to be worked out over time as, firstly, jurisdictions see how the council responds in providing advice on various areas and, secondly, how it implements its assessment role.

CHAIR—Do you, then, share the concerns of some that the council might be a toothless tiger?

Mr Cassidy—I think the import of your previous question is that it is anything but a toothless tiger—quite the contrary. The council's role, particularly in assessing the eligibility of the states and territories for their financial payments from the Commonwealth, has tended to concentrate the minds of the states and territories a fair bit; in fact, perhaps overly much so. That is, in a sense, part of the problem which I think some people are now worrying about. I certainly would not rate it as a toothless tiger. There are some people who refer to it and the other competition body—the ACCC—as being two of the most influential bodies around.

Mr CAUSLEY—I would just like to pursue that questioning a little bit further. Aren't we really dealing with a theory here that, I suppose, we all embrace, because we all like to see the efficiencies that we are trying to achieve, but which, in fact, is only a theory, and we have not thought through just what the results in some areas are going to be?

Mr Cassidy—When you say a theory, in a sense the whole policy is about encouraging and fostering competition on an equitable basis.

Mr CAUSLEY—That is the word, though: equitable.

Mr Cassidy—That is true, and that is where you get into areas of difficult judgment. But I think the underlying premise of the policy is that competition is, by and large, the best way of delivering the outcomes that consumers ultimately want in terms of lower prices and better goods and services. I think in all of this it is important at each step that people ask themselves just who are the ultimate beneficiaries in this particular move. In a sense, the test which should consistently be applied at all stages is not one of competition for competition's sake; it is really a question of what the benefits are that we would expect to derive from having increased competition in this area or in that area.

If you cannot get a reasonably clear answer, at least in a qualitative sense, on what the expected benefits would be, then you need to start wondering whether in a sense increased competition is the answer to achieving the sorts of outcomes that you are wanting to achieve in a particular area.

It is more than just a theory, but there are some difficult judgments involved, particularly where you are dealing with the real world and you are dealing quite often with markets that do not operate perfectly where there are imperfections or shortcomings for one reason or another. So there are some difficult and delicate judgments that need to be made in implementing the policy.

Mr CAUSLEY—Could I put it to you that some experience so far would show that probably the most powerful in the equation—and that does not include the consumer or the producer, but the middle people who are the big multinationals in many instances—are the ones who are benefiting from the process. How do we highlight that? How do we get around the fact that they are likely to cream off the system?

Mr Cassidy—I am not sure what particular cases you have in mind, but in a general sense the ability for any firm to cream off the system really depends on the level of competition that that firm has and also the scope for new competitors to enter the market if there are above normal profits being made. I am not quite sure exactly what you have in mind there, but I think—

Mr CAUSLEY—I did not want to take the committee through it because I have put this question once before, but from my background I am talking about the sugar industry which has been deregulated—not completely—but the theory is that the consumer should get a cheaper product if the price goes down. The price has come down for refined sugar from about $800 to $470, and yet there has been no movement in the supermarket at all, not even in the soft drinks or the confectionery or whatever. So you can only assume if the consumer is not getting a benefit and the producer has lost, then there is only one person who is gaining.

Mr Cassidy—Yes, but I think the next step after that in a sense is to ask the question, 'Why is that?' Do we have a lack of competitive pressures at the producer levels so far as sugar by-products are concerned? That is really in a sense where, depending on what the answer is, perhaps the ACCC comes into play if it is a lack of competitive pressure because of anti-competitive agreements or arrangements amongst the producers.

Mr CAUSLEY—Surely in this case you have got super-competition because you have got all these growers competing with one another, which effectively is pulling the price down.

Mr Cassidy—Yes, but I think the proposition being put was that the price of sugar has come down but, on the other hand, with products which are made from sugar basically their price has not come down. What I am saying is—

Mr CAUSLEY—Gone up, in fact.

Mr Cassidy—I am saying that there is another set of intermediaries between sugar at a raw sugar stage and sugar on the—

Mr CAUSLEY—No, this is refined sugar I am talking about. I am sorry to get you into an involved discussion. I am just trying to put the point across to you that I am worried about who is going to get the benefits from this system.

Mr Cassidy—Yes, that is something we certainly need to be on the lookout for. It is obviously not the intention of the policy to, if you like, reduce prices and increase competition in one area, and for that then to be syphoned off by someone else before it ends up benefiting consumers. That is why, as I say, it is really each stage of the process that needs to be considered. Certainly, increasing competition at one stage of the production process does not, in and of itself, guarantee lower prices to consumers if you have a couple of other intervening stages, one or more of which are not competitive.

Mr ANTHONY—Across most food products where there has been deregulation and greater competition, that certainly has not led to a reduction in prices on shelves generally. Obviously, you have a far better understanding than we have of the results to date of greater competition. Can you give us some examples of what is happening in regional and rural Australia? What are some of the success stories where we have seen increased competition reducing prices?

Mr Cassidy—I have not come armed with figures, but I think telecommunications is an interesting one where, since the early nineties, we have had increased competition, particularly in long distance and mobile phone calls. There certainly have been significant reductions in those areas which have been subject to that competitive pressure. Another area is in postal services, particularly those areas which are open to competition, such as parcels and large letters. Even the basic letter service is in a sense under competitive pressure, although there is still an extent of monopoly protection for it. The basic letter price has now been held at 45 cents for several years, which means it has been coming down in real terms. Electricity is another interesting area to look at. There have been overall price reductions in electricity. It is the case that the reductions have been greater—

Mr CAUSLEY—Not really from competition, though. That has been structural change.

Mr Cassidy—I think it is a combination of factors, including competitive pressure, particularly in Victoria where the competitive market has now been operating for a few years. But I take your point—it is a product of other factors as well. Part of the problem in some of these areas is that competitive pressure is only one factor contributing to the end price. Sometimes what you need to ask yourself is not what the price is now compared to, say, what it was a few years ago, but you have to set up a counter factual: what would the price have been had we not had increased competition?

It may well be that the price of a particular good or service has continued to go up, but because of the increased competition it has not gone up at as fast a rate as it would have otherwise. Sometimes these things take a little unpicking, and in some areas we are also subject to the vagaries of international markets, commodity prices and exchange rates so that that unpicking takes a fair amount of doing. But I think there are areas where there are examples and we would be happy to provide you with some material.

CHAIR—I think Mr Anthony has a question on that.

Mr ANTHONY—You are right with regard to telecommunications and I suppose it is in areas where we have a certain population base, mainly on the coast, that we have seen a reduction in prices. But once you go out of those areas I would say that wherever the coverage ceases there has not been any real substantial reduction in prices. Admittedly, there might have been reductions with long distance calls with Telstra. But

with other services, once you get out of major hubs, where there is a critical mass, competition does not thrive because competition normally does not go there as the returns are not there; it will always go where there is a density.

With the review at the moment—I am sure others will raise this—where local councils provide particular services, there is obviously a social impact which does not come under the ambit of these particular reforms. I just wonder how they are to go about it. For example, west of the divide, where there is a tyranny of distance and a smaller population base, we have not, to date, seen those competitive reforms. We certainly have not seen it with fuel. How do those communities benefit from increased competition when, in most cases, we are seeing a dramatic reduction in services to those areas?

Mr Cassidy—I suppose the answer I would give is two-fold. Firstly, I think there have been some benefits, even to remote areas. Secondly, I think this process still has a way to run and that there will be further benefits forthcoming. The third leg of my answer would be that I think we are starting to get into the area of so-called community service obligations. In some of these areas, particularly where the cost involved depends fairly importantly on distance and a geographic spread, I think the community service obligations and the funding thereof need to be thought about fairly carefully. It may well be that in some of these areas, if people living in more remote parts are to share in the benefits, they need to do so by way of some sort of subsidisation of the goods or services they receive. That is where you get into the area of CSOs.

Mr LATHAM—Do you think the CSOs are adequate in taking special regard of the extra cost of distance? There does not seem to be, out of Treasury or any other federal department, a sense of regional budgeting that the Commonwealth acknowledges that there is a threshold of service provision that is required in regional Australia and that there is an extra cost to all Australians if we are to keep our regions alive. In our reporting systems, at least, we have no way of identifying the type of subsidy that might be flowing through to the regions by way of CSOs.

Mr Cassidy—Yes. In the whole area of CSOs, I think there is a need to think more carefully about CSOs, about the way we define them and about target groups. To pick one that I am familiar with—the CSO in the postal area—there is a common belief that that is basically about providing a reasonable mail service to regional and, indeed, sparsely populated areas. But when you disaggregate that particular CSO most of it, in fact, goes to the outlying urban areas, in terms of the cost to the CSO and where that is coming from.

I think there is a need to think more carefully and to define more carefully CSOs and, in particular, to define more carefully who the intended target groups are. I think it is the case that a number of CSOs are certainly not getting to the people we believe they are getting to. If CSOs were more carefully defined that may well lead to a greater focus on whether more of the CSO funding should be going to regional Australia, if I can call it that.

Mr LATHAM—Is Treasury doing any more than thinking on the subject? Is there any action taking place that might bring these reporting systems into place?

Mr Cassidy—Treasury, by and large, is not the portfolio responsible for various CSOs. Therefore, the short answer to your question is no.

Mr LATHAM—Is it Finance?

Mr Cassidy—No, it would be individual portfolios. Post, for argument's sake, could be in the communications portfolio. Part of what we are doing is setting up various reviews which we are now required to set up under the competition principles. There is a review of post by the National Competition Council which will get under way fairly shortly. We are giving fairly close attention, and encouraging other portfolios to give fairly close attention, to the CSO issue in establishing the terms of reference for various reviews so that CSOs can be closely and properly looked at as part of the overall review process.

Mr LATHAM—I would like to ask a question on a different subject. In its first annual report, the NCC expressed some reservations about the Commonwealth program for legislative review under the competition policy package, particularly with regard to the Wheat Marketing Act. Are they concerns that the Treasury shares?

Mr Cassidy—We have a four-year time frame, as does each jurisdiction, for undertaking our legislative reviews. The review of the wheat marketing arrangements is in fact in year four, so it is within the four-year time frame. I do not think, in looking at the Commonwealth's legislation review schedule, that it could be said that we have, in a sense, back-loaded it, that all the significant reviews are in year four. I think we have them scattered right across the four years. There was a certain logic in not reviewing the wheat marketing arrangements until various other changes which are occurring in the area of wheat and the Australian Wheat Board are put in place. By the time we get to that review in year four, it is expected that those other changes will either be in place or at least their shape will be known. I think there is a certain logic in the timing and certainly I do not think it could be said that the Commonwealth schedule is back-loaded in any sense.

Mr CAUSLEY—It is a good question, though, that Mr Latham raises. While you said that it is down to year four, the competition council, I believe, are not keen on the idea of single-desk selling and, in the rural commodity markets, not very keen on marketing boards. Would Treasury share that view?

Mr Cassidy—I will let the council reps speak for themselves. On single-desk marketing, basically our position is that it is something which should be looked at to ensure that there are benefits to be had from single-desk selling. It is a proposition which, in a perfect world, you would wonder about because by and large Australia is not a dominant world supplier of most commodities, other than perhaps wool, in which case you would stop and ask yourself, 'Why is it we can extract a premium or benefit through single-desk selling in export markets?' On the other hand, the international market is not a perfect one, as we are all well aware and I think the rural sector is particularly well aware. So I think it is a question that does need to be asked: are there benefits to be had from single-desk selling?

Our approach is basically that if it can be reasonably established that there are benefits to be had for Australia from single-desk selling in export markets then so be it. There may be a further question as to whether single-desk selling means the same agency being the seller in each and every market. Perhaps in relation to wheat, say, that raises questions of whether, accepting that single-desk selling is the best arrangement, we should have the Wheat Board as the single seller in each and every market or whether there are better ways of coming at that while still maintaining single-desk selling. But, in a sense, they are two

separate but related issues. Our approach on single-desk selling is that if there are benefits to be had from single-desk selling then they are benefits we should try to obtain.

Mr CAUSLEY—You could probably get the results by a bit of hybridisation by saying you will go as far as a dual desk—one for the Wheat Board and one for private enterprise—without dismantling the whole system.

Mr Cassidy—You could or, in a sense, as is in effect the case now, have different single sellers of, say, wheat in different markets. As I understand it, at the moment about 20 per cent of our export wheat is, in fact, sold by private traders under licence from the Wheat Board. It is the case even with the single-desk wheat selling arrangements at the moment. It is not the Wheat Board that is the single seller in every market.

As I say, I think the issues need to be looked at on their merits rather than starting from a position that there is something necessarily wrong with single-desk selling.

Mr ANTHONY—By the same token, when you look at the coal industry the Japanese have been notorious in playing off different producers against each other. The ultimate beneficiaries are usually our northern neighbours.

Mr Cassidy—That is true. There, again, I suppose you ask yourself what is the alternative to having Australian producers competing with one another? Do we adopt a single-desk selling arrangement for coal? If we do so, do we really believe that we are going to be able either to increase our price or increase our quantities or do we lose out to other countries?

Mr ANTHONY—The message is flexibility, isn't it?

Mr Cassidy—Yes.

CHAIR—There is some confusion in terms of competition policy when we talk about privatisation and competitive tendering. I was wondering whether you could give us your views on that and where you see the role of those three things—competition policy and the other two?

Mr Cassidy—It is something which I have said quite often and, in fact, I am sure I said it to your predecessor committee. If you look at the competition principles, there is nothing in any of those that requires either privatisation or contracting out. I am aware that perhaps some of the state governments, at various points, made some not particularly accurate statements about undertaking privatisation or organising various contracting out arrangements because they are required to by the competition principles. But when you look at the principles and, indeed, if you go back and look at the Hilmer report itself, there is nothing in those that require either privatisation or contracting out.

Basically, on privatisation, the relevant part of the principles are referring to structural reform of public monopolies and the very open principle is that each party is free to determine its own agenda with reform of public monopolies. Then it goes on to say that if you are going to have public sector entities competing with the private sector then there are certain things that should be done in relation to that public

sector entity in order to make sure it is competing on an equal footing. None of those is, in fact, privatisation. Privatisation is one option for achieving those things that need to be done but there are other ways of achieving them. Indeed, at the Commonwealth level in relation to our own GBEs, we believe we are already meeting a lot of those requirements where we have, say, Australia Post, for argument's sake, competing with private sector competitors. We believe that Australia Post is already meeting a lot of those requirements of the competition principles but it, of course, is still entirely in public sector ownership. There is nothing which requires privatisation and I think it is rather unfortunate that some people have chosen to characterise the competition policy as requiring privatisation. Similarly, there is nothing in the principles that requires contracting out.

Again, it is one option for achieving the requirements of the policy. But equally another option is for particular goods or services to be provided by the public sector, providing it is provided on a pricing basis which puts it on the same footing as a private sector competitor.

For argument's sake, if you have an entity which is not required to pay the full range of Commonwealth and state taxes and charges but which, nonetheless, is competing with the private sector for various tenders, the principles require that that public sector entity, in putting in a tendered bid, price as if it were paying those taxes and charges. But, again, there is nothing there requiring actual contracting out. It is one option for achieving what the principles require, but it is only one option. I think there is still quite a lot of confusion. As I say, I can understand it, because, unfortunately, it is being deliberately put about, I think, by some people. There is quite a lot of confusion about the competition policy and principles in those two areas.

Mr LATHAM—You spoke earlier about back-loading: do you thing the recent submission on newsagents is an instance of back-loading?

Mr Cassidy—That is a good question. That is a submission from the government—

Mr LATHAM—Not from Treasury—from the government?

Mr Cassidy—No, there is a government submission. I suppose the only observation I would make is that when the Australian Competition Tribunal last looked at newsagents it made the observation that there are a number of arrangements in place that, as in many areas, you cannot really change overnight. To treat various people equitably you need to give them time to adjust. The tribunal recommended a period of three years as the adjustment period. The government's submission suggests four years rather than the three which the tribunal suggested.

Mr LATHAM—So it is your understanding that after four years the arrangements will end?

Mr Cassidy—The submission says that after four years the newsagents would be, of course, free to approach the ACCC—as, indeed, anybody is—to seek authorisation for any arrangements they might have. But I think the import of that is that after four years it would be up to the newsagents to convince the commission of the merits of their case.

Mr LATHAM—After four years they are on their own. Just one last question. Your statement on competitive neutrality seemed to me to be sort of all one-way traffic. It spoke of instances where the public sector business units might have a competitive advantage by virtue of their public ownership, but it did not deal with the substantial number of instances where they face a competitive disadvantage. There are some cases—I think most notably with the Australian Government Publishing Service—where they have been restricted from seeking work that, in the eyes of the government, is really just the preserve of the private sector. Isn't that a double standard? Shouldn't there be a mechanism by which government departments can lodge complaints with the Productivity Commission that they have been restricted in their capacity to compete for private sector work as a legitimate business unit?

Mr Cassidy—The principles on competitive neutrality actually refer to net advantage—I was using the particular example of taxes and charges without acknowledging that. But the principles do recognise that public sector entities have both benefits and costs as a result of being in the public sector when you compare them with private sector entities. Therefore, there is a notion that you should not only consider the benefits which a public sector entity has as a result of being publicly owned, but that you should also consider the costs or the disadvantages that it has as well.

That, of course, is a fairly difficult exercise. Again, as in so many other areas, it involves questions of judgment as to how you weigh certain benefits as compared with certain costs. But the policy and the principles do recognise that it is not all one-sided; that there are both benefits and costs involved.

Mr LATHAM—But do you think government business units should be able to lodge competitive neutrality complaints with the Productivity Commission?

Mr Cassidy—That is an interesting question. It is the case that the Government Printer, in the example you used, is currently prevented from tendering for certain private sector work. It is also the case that it has a number of public sector printing jobs reserved to it. In terms of benefits and costs, if you were to allow the printer to be tendering fully for private sector work, one might also wonder whether the whole of the public sector's printing should not be up for grabs.

Mr LATHAM—Isn't that competitive neutrality? There is no public or private sector work reserved. Competitive neutrality says that there is just work. Organisations—public and private—that might want to tender and compete for that work do so on a level playing field basis. Isn't that the whole principle?

Mr Cassidy—Yes, that is the principle.

CHAIR—I think we have run over time a bit because we had a late start. Unless anyone else has a burning question, we will have to move on.

Mr CAUSLEY—I just want to ask one question, which is a little further away from what we have been questioning. I want to look at probably one of the more efficient areas in the country—that is, government. I am not talking so much about the government trading enterprises but the delivery of services and the duplication that takes place between federal, state and local governments. Treasury would obviously be keen to have a close look at this, even down to the extent of global budgeting the states to try to save a

few billion dollars.

Mr Cassidy—That is an area which has been looked at and is being looked at through various exercises that are under way at the moment between the Commonwealth and the states. It is not one that really bears terribly on competition policy and the principles thereof. It is more one about efficient government and the most efficient and cheapest way of delivering services. In a sense, I do not know that it is something that I want to perhaps comment terribly much about in this context. But it is something, as you would be aware, that is being looked at under the COAG banner to see whether there is a more efficient way of organising the delivery of services between the different levels of government.

CHAIR—If anyone has any other questions, would you be happy to take some on notice?

Mr Cassidy—Sure, or, alternatively, I can always come back at a later time.

CHAIR—Thank you very much, Mr Cassidy. I know there are a lot of other questions we could have asked but time always becomes a bit of an enemy in this. I thank you very much again for coming along. We appreciate very much the contribution that you have made this morning.

[10.06 a.m.]

COPE, Ms Deborah Ann, Deputy Executive Director, National Competition Council, Level 12, Casselden Place, 2 Lonsdale Street, Melbourne, Victoria 3000

WILLETT, Mr Edward Campbell, Executive Director, National Competition Council, Level 12, Casselden Place, 2 Lonsdale Street, Melbourne, Victoria 3000

CHAIR—I would like to take this opportunity to welcome representatives of the National Competition Council. The evidence that you give at the public hearing today is considered to be part of the proceedings of parliament. Accordingly, I advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament.

The committee notes that the National Competition Council has not made a submission to the inquiry. Would you like to make an opening statement before we start questions?

Mr Willett—Perhaps just a few brief comments, Mr Chairman. As you know, I have already provided a fairly comprehensive private briefing to the committee on the role of the council and on the process of national competition policy reform. I thought I might just make a couple of comments that go directly to the terms of reference of this review.

The council has recently published a paper entitled *Considering the public interest under the national competition policy* and provided copies to you. There are a couple of points that I will draw out from that. The first thing the paper does is identify the different public interest tests that are associated with competition policy and competition policy reform. The first, as you know, is clause 1(3) in the Competition Principles Agreement. The ACCC has a public benefit test that applies for authorisations and notifications under the Trade Practices Act.

There is also a public interest test that the council is to apply where work is referred to it in association with section 51 exemptions by states and territories. In addition, there is a separate public interest test for the council to apply in the consideration of part IIIA applications for declaration of infrastructure services.

There are those separate public interest tests. I should say that they are not necessarily all the same tests, although the council's view is that, in its work on section 51 exemptions, it would apply a test that reflects the indications in clause 1(3).

The critical issue is always going to be the relative weightings which apply to individual factors that make up the public interest versus the broad community interest. The council's view is that that will always have to be addressed on a case-by-case basis. The council is looking for transparency, objectivity and analytical rigour when jurisdictions approach consideration of the public interest in relation to particular reforms, particularly in the areas of competitive neutrality and legislation review.

There is a specific reference to community service obligations in the terms of reference. I should

reiterate that national competition policy reform is not about overturning community service obligations or, indeed, any social policy objectives, but considering the best way to meet the community's needs and to provide those CSOs. The most relevant reform areas in relation to CSOs are in obligations associated with reviewing anti-competitive legislation and in the competitive neutrality obligations.

The provision of CSOs often involves underpricing of some services and overpricing of others. Where there is underpricing, there may be some competitive neutrality implications. Those sorts of cross-subsidies often require legislative protection of overpricing in other areas. That raises the question of whether there are restrictions in competition that need to be reviewed in association with jurisdictions' obligations on legislation review.

Finally, on local government, I think I said in the briefing I provided last time that the council recognises that competition policy reform in the area of local government is a difficult area, particularly in regard to the smaller local governments. But the council recognises that overall reforms to local government in the area of competition policy are a significant part of national competition policy reform. What the council is looking for is an approach to implementation of national competition policy reform in relation to local government that helps to shift the culture in all local government areas. That probably involves focussing on priority areas in relation to the larger local government organisations with a view to pulling through reform in relation to the smaller local governments.

CHAIR—Thank you for that. I might just open the questions by referring to this dual role that the NCC has of advising and assessing. I think it has been quoted as causing a certain amount of tension. How do you reconcile these two roles in order to be as effective as you would hope to be?

Mr Willett—I think the council recognises that those two roles involve some tensions, but the council sees its challenge as using those tensions in a constructive way. I think that involves ensuring that when the council is providing feedback to jurisdictions or conducting work, it is very clear in which of those roles it is operating. At the moment we do not have any formal work program items, so the focus of the council is in the assessment process, and it is fairly clear to jurisdictions that the work it is doing is related to the assessment process and judging whether jurisdictions have met their obligations under the agreements.

As we move more into the promotion role and as we move to conducting work on a formal work program, I think it will be relatively easy to demonstrate that, in relation to that former work program item, we are providing advice on what the most appropriate reforms are. That will be quite distinct from the formal assessment process.

CHAIR—You are saying that in terms of that advice, you are going to do the assessment first and then come back and advise after. Shouldn't it be the other way around?

Mr Willett—The assessment is an ongoing role. The assessment is in relation to reforms that have already been agreed and obligations on governments that have already been agreed. Some of the work that the council has to do may pick up particular reforms, say, in the area of legislation review. Then it would be a matter of the council providing advice to governments on what, in the council's views, are the most appropriate approaches to those areas of reform. They will be in particular areas of reform, not in the overall

reform process.

CHAIR—How independent is the competition council? Given that you are wholly funded by Treasury and you are under the Treasurer's portfolio, how independent, really, are you?

Mr Willett—I would have thought the council had a high degree of independence. I think it is important to start by noting that the council is not a Commonwealth agency, even though it is funded by the Commonwealth. It is a national organisation and it provides advice to all governments.

So, certainly in the advice that the Commonwealth provides to and in relation to the states and territories, there is no question of a conflict of interest, I think, through that Commonwealth funding. By the same token, I do not think the council feels constrained in terms of views it might have or the role it might have in relation to Commonwealth reforms merely by the fact that it is funded by the Commonwealth.

Mr LATHAM—You are the last one left, aren't you? The last independent source of advice—the last of the Mohicans!

Ms Cope—There is a distinction between where we answer administratively and financially and where we answer to on the work that we do. Because we are funded by the Commonwealth in terms of the way that we manage our money and manage an agency, then we are answerable to the Commonwealth. In terms of the work program that we do and the sorts of things that we come out with, we are answerable to COAG and to the council.

Mr McMULLAN—Where does the staff come from?

Ms Cope—They are employed by the National Competition Council and they are employed under the Commonwealth Public Service Act.

Mr McMULLAN—Were most of them previously with Treasury?

Ms Cope—We have a mix of people that come from Treasury. We have had some from state governments come through the organisation. We have had some people from other organisations that are not at all related to Treasury. But, yes, we have had some Treasury staff in the organisation. When it was initially set up, there were quite a lot of Treasury staff temporarily in the council to establish the council, but a lot of those were temporary. They have since moved back and a lot of new people have come into the organisation from quite a range of sources.

Mr Willet—And by Treasury staff there, we are talking about the broader Treasury portfolio, not just the Treasury department, which includes the Productivity Commission and the ACCC.

Mr CAUSLEY—Could I just ask about structure, following on from some of the Chairman's questions. The personnel involved in your organisation that have these dual things, are they separated? Do you have separate groups that assess and separate groups that do the other process, or are they the same personnel? That is the first question.

The second question is: if someone is dissatisfied with the results they might get from your council, what are their rights? Where can they go to to object or to get some appeals to the—

Mr Willett—The answer to the first question is, no, there is no separation of staff. We are a very small organisation. I think it would be difficult to set up those sort of Chinese walls.

Mr CAUSLEY—So personnel could be involved?

Mr Willett—People within the secretariat would be involved. They work on different projects from time to time and, because most of our work is responsive and reactive in nature, we need to be fairly flexible in the way we move staff around. So it just would not be possible to say these staff are assigned to that role only, because at times they might not be doing very much, and these staff over here are assigned to that role because they might be doing, at any particular time, a great deal of work and vice versa. Within a small organisation I am not sure that we could accommodate that sort of division.

In relation to your second question, the council provides advice to the Commonwealth Treasurer on whether each jurisdiction, each state and territory, has met its obligations under the package of reforms. It is for the Commonwealth Treasurer then to make a judgment on those recommendations.

Mr CAUSLEY—So the buck stops with the Treasurer?

Mr Willett—The Treasurer is the person who makes the decision.

Mr LATHAM—On this question about part IIIA access, the ACCC issued guidelines, as did the NCC. The ACCC mentioned that the part IIIA access would apply to natural oligopolies but that was absent from the NCC guidelines. What is your feeling about the access regime for natural oligopolies?

Mr Willett—I am not terribly clear on what a natural oligopoly is. It is difficult for me to form judgments on that sort of area without having done any work, as yet. The council said in its guide that the focus of the access regime, part IIIA, is on what are referred to as natural monopolies. They may not be strictly limited to what are technically natural monopolies but we are really talking about industries or infrastructure services that have entrenched monopoly characteristics, however that entrenched monopoly characteristic might be derived. That could possibly include an area where there is more than one provider. It is difficult to be definitive in that area. I think it is testing the fringe of the application of part IIIA but you would not rule it out. I think in the council's guide that is the approach it has taken.

Mr LATHAM—In both the legislation and your guidelines, electricity was held out as an example of where you could have an access regime. I have never been able to understand the difference between the electricity infrastructure and vertical integration and the petrol industry in Australia, other than that one is in public ownership and the other is in private ownership. Do you see any difference and any reason why the petrol industry could not be adopted for an access regime?

Mr Willett—I think there are some very clear differences between the petrol industry and electricity. I think it is well recognised that there are strong natural monopoly characteristics in transmission and

distribution services in electricity production, not so in generation.

Mr LATHAM—We have six states, each with their own transmission and distribution network and they are technically in different ownership. That has oligopoly features to it, hasn't it?

Mr Willett—But they do not compete with each other.

Ms Cope—They do not supply the same consumer. If you are in Sydney you cannot buy your electricity through the grid in Western Australia, for instance.

Mr LATHAM—Isn't that coming?

CHAIR—You should be able to soon.

Mr LATHAM—Am I buying Western Australian petrol as a Sydney petrol consumer?

Ms Cope—There are a number of different companies from which you could—

Mr McMULLAN—In most states there is one refinery and one electricity generator. What is the fundamental difference?

Ms Cope—The issue is then the refinery and the question of production processes, I suspect. There is nothing in the principles which say that we have to test whether something is or isn't a natural monopoly. They talk about things such as it not being economic to duplicate and that the service is provided by an infrastructure facility. The reason we talk about natural monopolies is that a lot of what those principles are trying to get to is the heart of a natural monopoly. But that is not the principal thing that we look at when we are assessing whether something should be declared. It is the principles and the issues to do whether it is uneconomic to duplicate and whether it is a service provided by an infrastructure facility. It is basically that framework that we are given in the legislation that we need to implement when we are looking at issues of access to part IIIA.

Mr LATHAM—Given that each capital city has one shared refinery, isn't that a sign that the private sector has made a judgment that it is not economic to duplicate shared facilities?

Mr Willett—It is a factor you would certainly take into account, and maybe there are some entrenched monopoly characteristics there. You would also take into account that it is feasible to import petroleum products. I think it is fair to say that, certainly in certain areas of Australia, the import of petroleum products provides some level of competitive discipline. Petroleum is also a product that can be transported by land and maybe that provides some competitive discipline.

CHAIR—I think most of us in the country would have to say that until now the problems with petrol pricing have been immense. Anyway, we might move on and talk about the power and the authority of the NCC. I think Mr Anthony wants to open the batting.

Mr ANTHONY—In some ways, following along from the previous question, is this a carrot or the stick approach? The carrot approach is that if states comply, then they are going to get a competition dividend. At the end of the day, what is going to happen if states do not comply? What is going to happen if the Queensland government says,'No, we are not going to link in substantially on the national grid system'? Are you guys going to make recommendations that they not be part of that competition dividend? I know you cannot enforce it, but how do you envisage it being enforced, if it is enforceable?

Mr Willett—How the agreement is enforced? How the implementation—

Mr ANTHONY—When the push comes to shove, are you going to recommend: 'You guys, you are not going to benefit from this competition dividend because you have not matched the grade regarding reform'? Will you do that? Secondly, how do you envisage that happening if you do make that recommendation?

Mr Willett—I think the council has made it very clear that if there are significant failures in the implementation process by a particular jurisdiction, it will make a negative assessment when the occasion arises.

Mr ANTHONY—And that will ultimately come down to recommending that they do not partake in the dividend.

Mr Willett—That is right.

Mr LATHAM—The other states would feel ripped off if they had made their reforms—

Mr Willett—Of course.

Mr LATHAM—And had received the same benefits as the state that had done very little. But on that question, the one thing Queensland has done—to its credit—is to agree to pass on payments to local government authorities that are participating in national competition reforms. Will other states receive a payment with a local government component, even though it is fairly clear they are not going to pass that payment on to the councils concerned?

Mr Willett—There is some component of the financial assistance grants payments that is part of the package of the competition payments that is tied to local government. What Queensland has done is to offer to share a broader proportion of its component of the payments with local government. I think the council would regard that as a creditable approach to ensuring, or helping to ensure, that local government participates in the reforms.

In relation to local government reforms, local governments are not parties to the specific agreements—states and territories are—and it is the obligation of states and territories to ensure that the reforms are implemented in relation to local government. How they do that is really a matter for each government to determine and there are different approaches you could take to ensuring that local governments come on board.

Queensland has sharing payments as one part of its strategy—it is not the only part. Other governments have different approaches. I am not sure that simply because other governments are not going to take the approach of sharing payments that their approach is necessarily less effective as a result.

Mr LATHAM—Yes, but that was not my question. My question is: say there is a state where local government participates in all the reforms and, even though the state government has said it will not pass competition payments on to those councils, will the state still receive federal payments for that local government component?

Mr Willett—There is no obligation to share the payments other than the payments that are specifically tagged to local government.

Mr McMULLAN—What about those payments that are specifically tagged?

Mr Willett—My understanding is that they will go to local government. There is no question of that.

Ms Cope—There is a component of the financial assistance grants which automatically goes to local government as part of the agreement that says that the real value of payments will be maintained that will increase that proportion of the grant pool. So that always has been going to local government and that still will go to local government, and it will be influenced by the agreements under the competition policy.

CHAIR—Mr Hockey, you have a question.

Mr HOCKEY—Mr Willett, I am going to ask you to gaze into the crystal ball with me. One of the most significant powers that you have is the power to set agendas or to have an influence on the agenda. Sixty years ago, say, governments were more likely to participate in the development of a set industry because the private sector was hardly developed in that area, for example, telecommunications—and the government set up the PMG monopoly—or airlines, when it bought out the private interest in Qantas to further develop it. In the next decade what do you think are the main areas where competition can be encouraged and nurtured? I will give you one example, the delivery of community services. That seems to be a fairly exclusive area of government operations involving the delivery of various services for disabled people or disadvantaged people, and there seems to be very little competition from the private sector. Is that one area, or are there other areas where you think that competition can be applied?

Mr Willett—I am sorry, I was not clear on the specific area you are talking about.

Mr HOCKEY—I am asking you to pick the areas where you think that there is a more significant role for the private sector into the future.

Mr Willett—I think that is a very difficult question for me to address right now.

Mr HOCKEY—There must be some areas, though. Surely in the brainstorming in the NCC you must look at some areas and say, 'Well, this is an area where competition can be nurtured.'

Mr Willett—I would be reluctant to express a view at this stage because, given how broad the agenda is and given our role in that agenda and the discretion that is available to jurisdictions in implementing their reform obligations, I would be very reluctant to start suggesting these are the areas where there is scope for introducing more competition where there is at the moment reliance on public provision alone, and by implication leave out other areas and thereby suggest that they are less important. I think that would be very difficult.

Mr HOCKEY—So you are saying the role of the NCC is merely to focus on the processes rather than to have any role in setting an agenda?

Mr Willett—In its implementation role, which is our core role over the next few years or so, we are tasked with assessing whether jurisdictions have implemented the agreed reforms in good faith, in the spirit and intent of those agreements and, yes, that goes primarily to process issues. Certainly the council will, and it has said it will, look at policy outcomes and reform outcomes as evidence of whether that reform process is working well, but it is not tasked with second-guessing the exercise of discretion by governments, particularly in the area of public interest that is accommodated in terms of the agreements.

Mr ALBANESE—Following on from that, you have indicated you have obviously got a role in assessing the progress of these reforms. What role do you see yourselves as having, or if not, which body would have a role in assessing the impact of those reforms on consumers in terms of the benefits of competition policy?

Mr Willett—To answer that question I would first note that in relation to the package of agreed reforms there has already been a lot of work done in terms of what the appropriate reforms are and what the appropriate level of competition is in particular industries. For example, in the specific reforms in gas and electricity there is a package of largely non-discretionary reforms where governments have said, 'These are things we need to do and we are now going to agree to do them.' It is the council's role to make an assessment on whether governments have met their obligations in relation to those specific reforms. In other areas there are discretions on governments—particularly in, say, the legislative reviews and the competitive neutrality reforms—to implement reforms as appropriate.

Mr ALBANESE—But, in that analysis, isn't there an implicit assumption that the theoretical framework for working out how much competition is necessary, and what reforms are needed, is correct? What about an assessment process to go back and see what impact the reforms in, say, electricity are having in terms of prices at the end of the day for consumers?

Mr Willett—I think it is important to do that work, and it is likely that the council may do some of that work down the track. In relation to the reforms as agreed, it is not necessary in many areas for the council to satisfy itself that these reforms are desirable. That work has already been done and it is reflected in agreements by jurisdictions to implement these reforms. The council's task is simply to assess whether that is done or not.

Mr ALBANESE—But there is an implicit assumption in that, that the agreed reforms are right; that that is the right strategy.

Mr Willett—That is right. And I think there is a presumption that competition is, by and large, in the public interest. There is a presumption in favour of competition, where appropriate and where possible. That does not mean it is competition for competition's sake; competition is just a means to an end, not an end itself. I think there is ample recognition in the package of reforms of the need to consider where competition may not be in the public interest.

CHAIR—But there is Mr Albanese's point: isn't it time that someone actually started to assess the outcomes? It is all very well to say there is the implementation, and we understand that that is a very important part, but the outcomes are the reason we are going through all this. Isn't it time that we started to focus on this?

Mr Willett—The problem with that is that we are very early on in the reform process and some of the outcomes will not be clear until we get a little further into implementation.

CHAIR—Do you have a time frame?

Mr ANTHONY—There should be checks and balances, and a review process constantly reviewing it. I would suggest it should be more formalised, rather than just having the states doing it. Obviously, if it is to the benefit of the states, they are going to be happy. But it might be to their detriment, particularly in border areas. I agree competition is good because, theoretically, it should lead to lower prices. But on many consumable goods it does not lead to that; prices remain exactly the same and the producers get substantially less. I am sure it has been thought out—or it should have been—that there has to be a continual review process and a report back to the public, particularly those communities that go through great anxiety and perhaps uncertainty because of the unknown, to show that these reforms are actually producing benefits. That has to be communicated back to the public.

Mr Willett—I think that is recognised in the package of reforms. The way it is recognised varies, depending on which particular area of reform you are talking about. If you are talking about the legislative review programs, for example, then when jurisdictions approach each of those reviews it will be a matter of consulting with affected people; it will be a matter of analysing, in a rigorous and transparent way, where all the interests lie and then forming a judgment that can be tested against the process as to whether the recommended policy is appropriate or not.

Mr ANTHONY—Who does that analysis?

CHAIR—Treasury has suggested they are doing it. Are they or aren't they?

Mr Willett—Yes they are.

CHAIR—But do you get access to this and, therefore, can you publish it?

Mr Willett—A large part of the reviews they will be conducting will have public elements.

Mr McMULLAN—A fundamental precept of modern public administration is that you evaluate what

you do and feed the result of the evaluation back into a continuing process to see if the direction you are going in is right. What we are all trying to find out is: who is doing that independent evaluation, how does the public find out what the outcome is and how do we, as their representatives, and they, find out if what we all think should flow is flowing and whether we are getting it right or wrong? That is the question that I think everybody wants to know the answer to.

Mr Willett—I see it as an inherent part of the process we are talking about here.

Mr McMULLAN—In 12 months time, say you come and we say, 'Where are the evaluations? Can you give us copies of the evaluations and the assessments and how have they been made public?' What will be the answer? Will there be such material available and who will have done it and who will have had access to the end results?

Mr Willett—By and large, the answer to that question is yes, they will be available. I think it is unlikely that every review that is conducted, for example, under the legislative review program, will be a public review. There are in excess of 1,600 or 1,700 items of legislation that make up all the jurisdiction's review programs. I suspect that not all of those will be public, although the council would expect some level of oversight by governments. We will be running a check on that level of oversight and the checks and balances that are built into those reviews to ensure that they meet what the council sees as the requirements of good reviews.

What the council has also suggested is that there should be some public process for the high priority reviews—the ones that involve the larger issues in terms of public interest and in terms of the benefits of reform. To date, with the work that the council has done in looking at what governments propose in terms of reviews of any competitive legislation, it is satisfied that governments are approaching it in that way—in other words, they are going to have some sort of public process.

CHAIR—But do you actually have a mechanism in place where you are going to start to assess these outcomes? That is the question we are trying to ask.

Mr Willett—First and foremost, it is a matter of governments implementing the right processes so that it is possible for others to make that assessment.

CHAIR—You say it is the right process, but we cannot really judge if it is the right process if we do not know what the outcome is, other than we see a change.

Mr Willett—I am suggesting that that should not be the way it should work. What we have seen so far in relation to the important reviews it that it is not the way it is going to work. There will be, in relation to particular areas of work, adequate levels of public consultation, public involvement, transparency in the review process and the ability for people to make judgments about whether governments are implementing reforms.

CHAIR—I do not want to harp on this too much, but you say that we are making reforms. Governments always want to be seen to be reforming; it is the nature of government, I suppose. But at the

end of the day it is the outcomes that the public, the consumer or whoever you like wants to be able to see. It is all very well to say it is public consultation, but unless people can actually get a handle on what the value of this reform is, they are going to be none the wiser. Would that not be a fair comment?

Mr Willett—I think that is right. It is important that that is recognised in particular reviews or in particular reform processes. I do not see it as the job of the council to conduct a reconsideration of every reform process that is involved in the total package of reforms.

Mr McMULLAN—Whose job is it?

Mr Willett—Primarily, it is the responsibility of jurisdictions.

Mr McMULLAN—The people who are undertaking the process are also the people who should review whether it is right?

Mr Willett—That is not always going to be the case because in many cases they will be independent reviews of some sort. They will be independent reviews using very public processes. Those reviews might be conducted using a variety of institutional arrangements.

Ms Cope—The responsibility lies with the governments in the different jurisdictions who are responsible for the legislation and responsible to the people in their jurisdictions. They are looking at the process of what to review and it is their responsibility to look at the results of that.

CHAIR—Don't you see it as a weakness, though? You are saying that they are going to do the review and you are going to be the one who is going to allocate the dividend but you will be doing it on them reviewing their own performance. Naturally, they are going to say, 'We have done very well, big ticks, A plus.' There seems to be something missing here.

Mr LATHAM—Haven't we got the Industry Commission model that will tell you that if certain things happen in competition policy, you will get certain economic outcomes? Isn't that the basis of the review? I am not saying that the model is perfect, but isn't that the analytical tool that is at the council's disposal?

Mr Willett—That is right. Many of the reviews for which there could be legislation, I would expect the Productivity Commission will be involved. For others that are important reforms that involve independent processes and public processes, I think, again, that that would be the sort of process that would be followed.

Mr LATHAM—Do you have confidence in the Industry Commission model? Leading academics such as John Quiggin, for instance, have written books trying to highlight some of the inadequacies. Any person involved in economic modelling knows that the model can tell you anything if you put the right assumptions into it.

Mr Willett—Are you asking about the Productivity Commission's review processes or their approach to considering issues? There are two separate questions there.

Mr LATHAM—They have a model in place that tells you that if you do certain things and you have certain inputs by way of competition policy, it will give you certain economic outcomes. I just assume that part of your process was to disaggregate the model—to find out, for instance, if you have certain reforms in the rice industry in New South Wales, it does certain things to the rice and broader economy.

Mr Willett—I would not see that as an accurate picture of the Productivity Commission's approach to these sort of issues that they have—the model that you feed things in and you get, of necessity, the result out the other end.

Mr LATHAM—I don't know. It produced a report to government on the basis that really drove national competition policy. I do not have the figures in front of me but there was an extensive report that said that if you implement these reforms—inputs—you get these economic outcomes. If it was a five per cent boost to GDP, you could disaggregate that down to the electricity, gas, transport, agricultural marketing share. Hasn't that all happened and is publicly available?

Mr Willett—In the area of that particular piece of work, I would see that as the best piece of work available in terms of assessing benefits of the national competition policy reforms.

Mr CAUSLEY—I will just follow on from this because the results at the end of the road have concerned me for some time. We will take two of the examples that were put forward by Mr Cassidy. I think one of those was the electricity competition, where he thought there were savings to the community there. I would think that the savings initially have come from the work practices that have been changed to put those industries probably on a more competitive footing. But on the big issue of transmission and the national grid and the sale of electricity between states, has there been any work done to show just what savings there are in buying electricity from Victoria or Queensland buying electricity from New South Wales or are we just going down this road and saying, 'Well, there must be a saving because this is competition'?

Mr Willett—There has been work. If you wanted me to identify that work, I would have to take that on notice at this stage.

Mr CAUSLEY—I will follow on the other one, which is telecommunications. For instance, Mr Cassidy said there were savings there and, undoubtedly, there have been some savings in that area. But wouldn't there have been more savings if we had had a corporatisation of distribution system and then have two competitors over that same system instead of duplicating the systems, which we are doing at present?

Mr Willett—Again, I think that is a difficult question. Involved in that question are judgments about what is commercially viable. The approach that has been taken is to say, 'These organisations can judge for themselves whether—

Mr CAUSLEY—But Telstra still owned them. What I am saying is that it should have been corporatised separately, so you had the transmission separate to the two competing companies. That separate corporation would then sell its services to the two competitors.

Mr Willett—That question raises very difficult issues in terms of trade-offs between the benefits of

structural separation and the efficiencies that are associated with some level of vertical integration. That is a very complex issue in relation to telecoms.

Mr HOCKEY—Is it not your job though to make some assessment of that?

Mr Willett—On that issue, no.

Mr HOCKEY—Not on that particular issue, but generally?

Mr Willett—Only if it is referred to us as an area of work in which we should be involved.

Mr HOCKEY—How do you take into account technological changes in the industry as an impediment to the development of competition?

Mr Willett—If it touched on an area that we were asked to have a look at, we would approach that problem when it arose. It is very difficult to make a general comment about how we go about conducting a piece of work.

Mr McMULLAN—There was some publicity a short time ago about the attitude of the council towards the issue of changes and restrictions to shop trading hours in the ACT. Did that matter actually come before the council and what consideration did it get? What was the view of the council?

Mr Willett—The council had some discussions with the ACT in regard to that area. The issue arose because the changes to the legislation in the ACT involved, at least on paper, what was a new restriction on competition. As a new restriction on competition, there were certain obligations on the ACT in terms of clause 5(5) of the Competition Principles Agreement. They had to provide evidence that the new restriction on competition was justified in terms of costs and benefits and that the restriction on competition was the only way to provide those benefits if they outweighed the costs.

We did have some discussions with the ACT. We took into account a range of factors that impacted upon what they were doing—not the least of which was that, although the new legislation looked on the ground as if it was introducing new restrictions on trading hours in a discriminatory way, when we looked at the existing legislation and compared it with the new legislation, there was actually a general liberalisation.

Mr McMULLAN—You would not notice that if you went to the shop that used to be open.

Mr Willett—That is what I say. On the ground, it looked that way.

Mr McMULLAN—It still does. You go to the shop, it is closed. It used to be open.

Mr Willett—The reason it looked like that on the ground is—

Mr McMULLAN—Because it is. I am not interested in why it looked like that; I am more interested in why you think it is not.

Mr Willett—I will just explain that. The reason it looked like that was that the previous act, by and large, was not being enforced. The ACT were concerned that, with such a high profile being provided to the issue, if they were forced to not proceed with the new act, they would be put in a position of having to enforce the old act, which would actually be more restrictive than the new legislation.

That was one of the more important factors that the council took into account in agreeing with the ACT. We said that they should have a very rigorous review of the appropriate level of regulation of shopping hours in the ACT, that that process should start virtually immediately and that the review would be completed by early 1998 with appropriate reforms implemented. The council was satisfied with that approach as being consistent with the spirit and intent of competition policy reform.

Mr McMULLAN—But there is no doubt that the practice under this new law is more restrictive than the practice under the old law, is there? What is happening is more restrictive than what was happening.

Mr Willett—I think that is true, yes.

Mr McMULLAN—All that you have done about it is say, 'You should have a review of the consequences'?

Mr Willett—What we have suggested is that, rather than push the ACT government to repeal the new legislation, with all the impact that that was likely to have—

Mr McMULLAN—It would have repealed the previous legislation as well. The logic of that is a bit flawed, but go on.

Mr Willett—Yes, I am not sure what the implications would be if you had no legislation at all.

Mr McMULLAN—They would pass a new one that reflected the existing practice. But, anyway, tell me about the review.

Mr Willett—The process that the council agreed with the ACT government was that the ACT would be given some time to consider what the right approach was, and that reforms would be implemented within the spirit of competition policy reform and in terms of the obligations.

Mr McMULLAN—Thank you.

Mr ANTHONY—Just one final question. Obviously you are looking at major infrastructure reforms. One of them, of course, is rail. Can you comment or have you had time to comment on some of the government's recent proposals regarding Australian National and NRC—the current package of reforms? When we get to that fully privatised environment—whether it is electricity, gas pipelines or rail networks—where you have got to have other users, how realistic is this declaration under a national access regime? Are we going to see proper access or are we always going to go through a trade practices act and have a legal battle so private enterprise or private providers can get access, whether it is pipelines, rail networks or electricity grids?

Mr Willett—Regarding the first part of your question, no, we have not looked at the rail reforms. There are no obligations in relation to rail reform, and that is something the council referred to in its annual report. That is, maybe, an area that governments could look at agreeing on what an appropriate reform should be in the rail area. On the second part of your question, as I suggested in the briefing I gave to the committee previously, I think the evidence is that part IIIA is working pretty well. We already have some things going on in relation to access in specific areas—in particular, electricity and gas.

I think that, with the way that is shaping up, we are going to have genuine access arrangements in those industries and genuine competition between producers of gas and electricity. In relation to other areas, I think there is good evidence that there is a growing understanding about how this regime should be working and a growing understanding about how businesses can use the regime to seek access in infrastructure services to enable competition in areas that were previously sheltered. So, I think part IIIA so far is working pretty well.

Mr CAUSLEY—I just want to come back to my favourite question, which I think you heard me ask Mr Cassidy. I will ask you along similar lines; in the past, I may not have. This question is about the marketing of primary products and the fact that, I think, the council has made statements—particularly about the Wheat Board and, I think, about the Rice Board—about single desk selling. It would seem that your assessment is that single desk selling and boards are against competition policy; they are not in line with competition policy. Would your council have an ideal model that they see would be the perfect model for the marketing of primary products so that it fitted in with competition policy?

Mr Willett—No, it does not. It has not done that work. It has not suggested that those sorts of marketing arrangements are contrary to competition policy. What it has suggested is that they do involve some restrictions on competition and therefore need to be looked at in the context of national competition policy reform. That does not mean that you will not end up with single desk selling arrangements in particular industries or that those sorts of arrangements would be contrary to competition policy.

What it has suggested is that, while they do involve some restrictions on competition—and therefore need to be looked at in the context of national competition policy reform—that does not mean that you will not end up with single desk selling arrangements in particular industries or that those sorts of arrangements would be contrary to national competition policy reform.

That means asking this question: are those sorts of arrangements in the community interest, taking into account not only the interests of producers but the interests of consumers and downstream users—the whole Australian community? That answer may come up differently in relation to export selling compared with domestic selling of those sorts of products. The council does not know the answer to that question. It is just suggesting that these are important areas that should be looked at in the context of national competition policy reform.

Mr CAUSLEY—Is this not again an area where you are going to be seen to be throwing the baby out with the bathwater and not worrying about the results until later?

Mr Willett—No, because we are going through the process of analysing those particular arrangements

to judge where the balance of interest lies. New South Wales has already completed its review of rice marketing arrangements and came up with an answer. The answer said that there was a net benefit to the community from single desk export arrangements in rice. They also said that there was a net benefit to the community from deregulating domestic marketing arrangements.

CHAIR—One issue I wanted to get onto is the legislative review timetables. If we are going to have good public access and public consultation, are you going to put together a sort of one-stop shop so that people who want to get involved in this can say, 'Look, we've got a national interest, but we operate in different states'?

Often states do not pull together on these things in terms of their timetable amongst other things. Are you going to be able to have something like that or organise for someone to have that so that, if a group, a company or whatever wants to find out what is going on, they can get a state of play position without having to go around to each state?

Mr Willett—The short answer is yes. In fact, the document has already been prepared. It has now been circulated to governments for comment. It does provide a single form to indicate what areas of legislation are going to be reviewed and when. We see it as a living document that will also include columns and tables that indicate when the reviews have actually been completed and when the policy responses have actually been implemented.

CHAIR—This has been a fairly comprehensive hearing. We have no further questions, so I thank Mr Willett and Ms Cope very much for coming along.

[11.08 a.m.]

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WAIT, Mr Andrew Glen, Research Officer, Industry (Productivity) Commission, cnr Benjamin Way and Emu Bank, Belconnen, Australian Capital Territory 2616

CHAIR—I welcome representatives from the Industry (Productivity) Commission to today's public hearing. The evidence you will give at the public hearing today is considered to be part of the proceedings of parliament and, accordingly, I advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament.

The committee has received your submissions numbered 48, 61 and 75. They have been authorised for publication. Are there any corrections or amendments you would like to make to those submissions? I also believe you want to make an opening statement.

Mr Kerr—I will comment on the amendments. The last submission we gave you was a discussion of the approach by Australian governments generally to CSOs. At the time we lodged it with you we flagged that it was still being refined. In particular, we have sent it out to the state governments for their comments because it relates to their practices and policies. We are getting a few amendments, which we intend to incorporate before publishing it and which we thought we would pass on to your committee.

As to an opening statement, I thought it might help if I made some very brief comments. Most of what we think we can offer to your committee relates to community service obligations. That has basically been the focus of our submissions to you. Let me try to put that in context and pick out the key elements of what we are inviting you to consider. We in the Industry Commission, and the Productivity Commission to be, have had a longstanding interest in the national competition policy framework. A variety of our work has had things to say about it. In particular, we have done inquiries on government business enterprises such as electricity, rail and post. We conduct some work under the remit from COAG on performance monitoring of the performance of government trading enterprises, both at the Commonwealth and state level. We did some work for COAG on the implications of Hilmer and related reforms. You made a comment about that earlier this morning.

We have also conducted research work on various aspects of competition policy reform. For example, last year we published a piece of work on access and pricing issues. Most recently, at the request of the government, we undertook a stocktake on micro-economic reform, surveying the scenery of reforms to date and, more importantly, pointing out what we thought should be the priorities for the micro-reform agenda in

the period ahead. One of the priorities we picked out was the implementation of national competition policy reforms, particularly as they applied to our economic infrastructure.

On the question of public interest tests, I would like to offer you the observation that we think there are some similarities between the approach we take in our public reviews, which are guided by the guidelines in our statute, and the sorts of considerations which I think you will be trying to weigh up—in particular, things such as the systematic assessment of alternative means of achieving policy objectives, identifying those who are likely to be particularly affected by policy change and some efficiency and equity considerations. In that last regard, if you are looking for some background indications of our thinking on the complementarity and trade-offs between equity and efficiency issues, I invite you to look at our most recent annual report, which has a chapter dedicated to that particular subject. I think you should have all received copies of that because it is now a tabled document.

As for our submissions to this inquiry, we made one which pointed out aspects of the regulatory review process with which we are engaged and, in particular, the similarity between regulation impact statements, which is the framework we use for assessing regulatory matters, and the sorts of considerations you have had before you in weighing up public interest tests.

As for community service obligations, we think the Competition Principles Agreement has several provisions which are likely to affect the delivery of CSOs. Competitive neutrality provisions will require governments to clarify objectives and specify non-commercial obligations of government businesses. These provisions also require that CSO arrangements do not confer competitive advantages or disadvantages on government businesses.

I will just add a footnote there. The secretariat of your committee indicated to us that you might wish to discuss competitive neutrality issues and, in particular, the complaints mechanism, which is one of the requirements under the competition policy approach. My colleague Garth Pitkethly is currently engaged in preparing ourselves for that activity, which the government has asked us to undertake from 1 July next year. He will be happy to run through where we have got to on that when you wish.

Broadly speaking, we think implementation of the competition agreement will require a more careful and systematic consideration of the delivery of CSOs by governments. It is on that subject that the bulk of our submission is directed. In particular, we have tried to demonstrate what the current state of play is on the treatment of CSOs by the different jurisdictions within Australia.

Our reading is that most governments have now adopted explicit policies for the identification of costing and funding of CSOs as part of their GBE reform programs. However, the extent of progress in reviewing and reforming CSO policies varies considerably across jurisdictions. Some governments, such as the New South Wales and the Victorian governments, have made considerable progress. At the Commonwealth level, our reading is that there is substantial scope for further reform. In particular, in our perspective, any non-compliance by the Commonwealth in relation to CSO review would set a poor example to other governments in fulfilling the spirit of the agreement, although we understand that there are no particular penalties attaching to the Commonwealth for failure to comply with the Competition Principles Agreement in this area. We are suggesting that the Commonwealth government has an obligation, we think,

to take a leadership role in this area.

I will just pick out the priorities for future review and reform of CSO policies. The first priority is the processes for identifying CSOs. We think that publication of timetables by Australian governments for review and implementation of policy changes could be encouraged. The second priority is the costing of CSOs. We think costing programs need to be expanded to include those CSOs which are currently uncosted or insufficiently costed. Thirdly, the funding of CSOs is obviously a key consideration. We think that the implementation of government policy statements regarding direct funding of CSOs could well have a greater degree of urgency.

As far as some sort of framework for helping to progress these things are concerned, we thought that some new policy initiatives could be required to provide the ongoing intergovernmental cooperation necessary to facilitate further reform of CSOs. For example, the steering committee on national performance monitoring of government trading enterprises—this is a steering committee established under the auspices of COAG for which we provide secretariat services—could be encouraged to pursue the priorities which I mentioned earlier. Thank you, Mr Chairman. I think that provides a bit of a scene-setter.

CHAIR—Thank you very much for that. Mr Pitkethly, you might like to expand on this competitive neutrality. It is an issue that the committee was very interested in.

Mr Pitkethly—Certainly. Just let me spend a few minutes giving some background. I will start with the concept of competitive neutrality and move through to the complaints unit and where we are, being fairly superficial in coverage.

I think we are all aware that under the CPA each government has a commitment to apply a suite of competitive neutrality measures to their significant business enterprises. The aim of that is to basically increase competition and to foster better resource allocation throughout the economy, so it is quite consistent with the broad Competition Principles Agreement.

Each state has responsibility, as you would be aware, for implementing its own agenda on this front. Part of that responsibility is to put in place a complaints mechanism. The major objective of that complaints mechanism is to respond to complaints that competitive neutrality has not been put in place effectively and we have not got a level playing field.

The Commonwealth mechanism, which, as Robert said, will be open for business from 1 July, is fairly broad. There are no restrictions on who can complain. So that means we can have complaints from an individual—perhaps even a crusading academic. We can have complaints from private businesses. Our expectation would be that they will probably be the major users of the complaints mechanism.

We could have complaints from other governments. A New South Wales government electricity agency, for instance, may well take umbrage at the way the Snowy Mountains Authority is conducting its business, saying it is not on a full commercial footing. We could also have complaints to us by Commonwealth agencies that they are still disadvantaged, despite the application of the measures. Whilst we have not had any complaints to date, I suppose the sorts of things they may come along to us and say is that

government procurement policies are disadvantaging them relative to their private sector counterparts.

With the Commonwealth approach, there is also no restriction on who you can complain about. You can complain about bodies which the Commonwealth has applied competitive neutrality to but, unlike most other jurisdictions, you can also complain about bodies that the Commonwealth has not brought into the net, so to speak.

You can also complain about the application of the policy. You can complain that the policy has not been appropriately applied. Let me illustrate that with an example. The Commonwealth, as part of its competitive neutrality measures, will be requiring its significant commercial activities to meet a rate of return requirement. Someone out there could come along to us and say, 'Look, the rate of return requirement is wrong. It is wrong because the underlying theory is wrong.' Alternatively, they could come to us and say, 'You haven't picked up all the advantages.'

In essence, the complaints mechanism that the Commonwealth is considering putting in place is fairly broad. I use the word 'considering' because at this stage we are still in the development stages. Parts of the processes and the policy aspects are still being developed. As you possibly know, there is a task force, which is chaired by Treasury, which really has another two or three months work to do. It is considering the application of competitive neutrality to a range of Commonwealth agencies.

In addition, we are still thinking through the administrative processes that we ourselves will have to go through in order to implement the process. We are finding that there are some rather intriguing questions there. The sorts of questions we are asking ourselves are, 'Do we have a pre-screening process, how far do we allow our crusading academic to go and should there possibly be a fee to try to filter out frivolous and vexatious queries'?

On top of that, we have a fair bit of serious thinking to do about some of the policy issues—how we are going to actually respond to complaints that some Commonwealth businesses are cross-subsidising, if you like, some of their commercial activities. Perhaps the ABC Shop is undercutting its competitors because it is not meeting its fair share of corporate overheads. There are a number of policy issues like that which need to be thought through fairly strongly. I guess we have about seven or eight months to think that through and to get the arrangements in place.

I think, Mr Chairman, that that is all I had in mind to say, unless you would care to follow up with particular details.

CHAIR—Obviously you have considered the point of how you handle frivolous complaints. As I understand from what you are saying, you are still looking at that.

Mr Pitkethly—We think it is a very serious thing. We are conscious that some complaints mechanisms use a fee. We are conscious that that has a downside to it, because we do not want to discourage legitimate complaints and we do not wish to discourage complaints by people who cannot afford the fee up-front. So we are thinking through those things and we have a fair bit of thinking to do before we come out with a final position.

Mr Kerr—We are in the process of talking to the other jurisdictions—principally, the state governments—who are going through some of the same thinking processes as far as complaints and conditions are concerned. So there may be a fair bit of learning by way of exchange of ideas in that area.

Mr LATHAM—If, for instance, the Government Printing Service complained to you that they have been barred from competing for private sector work but the private sector is encouraged to compete for their work, would that be regarded as a legitimate complaint?

Mr Pitkethly—I think so. Let me just get rid of one matter first—that is, to get in the arena as a business, according to the Commonwealth guidelines, you need to have a competitor or a potential competitor. So there are certain tied markets which would disqualify you. When the NCC was talking before, we were talking about single desk selling. That is a tied market, so there can be no competitor to the Wheat Board in export markets, nor is there a potential competitor under the existing arrangements.

Putting that consideration aside, I think that the AGPS could come to us and say, 'Yes, we are competing with one hand tied behind our back compared to the position of our domestic competitors.' Having said that, there could still be particular areas where the AGPS does have a legislative right. These areas have presumably been looked at under the legislative review program, but there could be areas where it does have a legislative monopoly.

Mr LATHAM—Do you recognise the legitimacy of that? For instance, I presume that the Government Printing Service will always print the annual budget documents, for security reasons alone.

Mr Pitkethly—That is what I was thinking of. I do not think it is for the commission to actually recognise the legitimacy of it, such that those arrangements are subject to review under the legislative review program. I think that is the means by which you would question or approve of that arrangement.

Mr Kerr—Perhaps it might help if I could try to generalise your question and generalise our response. The presumption generally on competitive neutrality matters is that government enterprises would be in some way specially privileged or advantaged and, therefore, policy mechanisms should be put in place to try to arrest those. But it is also possible that government business enterprises could feel that they are particularly disadvantaged in some way and, therefore, under our current thinking, they could complain under these arrangements and ask for a review of those particular disadvantages.

Remember, we are not a decision making body; our role will be to receive complaints, evaluate them and then provide a report to the minister—in this case, the Treasurer—as to whether we think a further, more detailed, review is warranted.

Mr CAUSLEY—What about the automotive industry that complains that, in fact, government buying policies discriminate against them? Do they have a right to appeal to you?

Mr Kerr—Not if the government is purchasing motor vehicles. That is what the competition neutrality issue is about. I guess your question goes to the question of potential bias in government procurement. Is that what you had in mind?

Mr CAUSLEY—It comes down to the fact that it is the distributors in particular who complain that because the government buys vehicles the way they do and then they have a very big second-hand market, that certainly disadvantages them in the new car market.

Mr Kerr—There could be some issues there, in particular, in relation to the activities of the Department of Administrative Services and that part of DAS that relates to either government vehicles or the provision of private vehicles to the Commonwealth—for example, servicing arrangements. I am not quite sure of the position of parliamentarians, but if you talk to a senior public servant, the vehicle that may be provided under their conditions of service is serviced by DAS in their own workshops. There may be an issue there: private sector vehicle service companies may feel that they wish to compete for that business. I think—on my reading at this early stage—they might be able to make a submission on that basis. So, in that area, yes—

CHAIR—I was just going to say that, in the case of parliamentarians, that option already exists.

Mr Kerr—Has it produced benefits?

CHAIR—I do not know. Has anyone else got questions on this competitive neutrality?

Mr LATHAM—So, what you were saying earlier on really implies that, if government wishes to preserve monopoly business rights for any part of its operations, it will have to be by legislation, otherwise it will be open to scrutiny, complaint and possible public inquiry and rectification?

Mr Pitkethly—Yes. My impression was that the legislative review schedule was meant to look at all significant restrictions on competition throughout the economy. My understanding is that each state has actually drawn up a schedule. That is what Ed Willett was talking about before when he said that the NCC is about to consolidate that to try to make it a little bit more consumer friendly. I see that as a separate process to the competitor neutrality one. We would take the outputs of that, and that would be a given into some of our complaints mechanisms.

So, if someone came to us and complained about their inability to compete with the sugar corporation or the Wheat Board on export markets, it would not get very far because we would say, 'No, there's been an examination of that. The assessment has been made that, from a national point of view, the benefits outweigh the costs.' We would not proceed the complaint.

Mr LATHAM—That is a rigorous process. I suppose it will have some value just for the transparency of it. Just a step further with the level playing field approach: is there a problem in its administration with regard to measurement exercises? Earlier on the ABC Shop was mentioned. What about separating the overheads of that commercial operation as opposed to the generic overheads of the ABC as an organisation? For example, if I were a private bookshop I might lodge a complaint with you saying, 'The ABC Shop gets all the benefits of ABC television—radio exposure, advertising, general public discourse and Philip Adams rallies or whatever the case may be. The ABC Shop does not pay for any of that free advertising.' Okay, that might be a legitimate argument; it might not. But, in the measurement exercise, how would you ever separate out—

Mr Kerr—With difficulty.

Mr LATHAM—That generic advertising component to the bit that is of some specific benefit to the ABC Shop? I would have thought that would be a very hard measurement exercise.

Mr Kerr—The principles are certainly easier to enunciate than is their application. I guess until we have actually started doing it, we are not quite sure how difficult it is going to be. Separating out cost trails and properly attributing a cost to different parts of businesses—yes, it is going to be difficult.

CHAIR—But in that case are you actually going to do a serious analysis? What Mr Latham has pointed out is a clear case that the ABC can use significant advertising at no cost to the ABC Shop. Would you actually have to go and do a rigorous test or would you say, 'Clearly there is a case that it is not competitive neutrality'?

Mr Kerr—Our current thinking is that we are looking at it as a two-stage process. The first thing is to try to establish whether there is a prima facie case. It is on the basis of that that we would report to the Treasurer whether a fuller and more comprehensive review is required. I think that is basically the approach we are going to rely on.

Mr LATHAM—Can you envisage situations where the measurement exercise will just have you stumped? You might want to say to the Treasurer, 'Look, there is a case here where the playing field is not level, but the measurement exercise has got us stumped. For all practical purposes, there is nothing we can do about it.'

Mr Pitkethly—I think it is going to be extremely difficult. I think you are getting very close to the truth of the matter. Our responsibility, apart from getting the answer right, is to provide a quick turnaround. I think there are going to be some of those cases. I think we are going to go back to the Treasurer with the advice that, 'On the basis of our inquiries, we think there is something there that is a little bit fishy. We think the playing field is not equal. But, quite frankly, to get to the bottom of it, we are going to have to have a more detailed investigation.' That might be the nature of our recommendation. Indeed, he may then pass it back to us—or even to another part of the Productivity Commission—to have an in-depth analysis done; or, perhaps, depending on the nature of the query, there might be another departmental agency that is better qualified to address it.

It is certainly going to be very difficult. We have got to make that trade-off between being timely in responding to complainants and getting sucked into an enormous amount of work. My bottom line is, yes, we are going to have trouble and difficulties in some cases. We may well be referring it back to the Treasurer saying, 'We think there is a problem there. We have not got to the bottom of it.'

CHAIR—We might move on to some of the other areas. I guess it comes back to a couple of fundamental questions. Is there a duplication in any of the work you are doing and what the NCC is doing in terms of competition policy?

Mr Kerr—We are certainly interested in some of the same issues. I am not aware of any duplication

as yet. Basically, the government is in the driving seat here. Remember, the NCC has some well-defined responsibilities and a relatively small staff. It is set up to do some particular reporting on whether different jurisdictions are fulfilling their obligations. I understand that it is also set up to oversee or trigger reviews which are agreed by the jurisdictions which they could either do themselves—remember, the resources are relatively limited—or they could contract out. If they contracted out, it is conceivable that we are a body which could pick up some of those, but they are not obliged to give it to us.

Our formal work program emanates from the Treasurer, from the Commonwealth—that is, those parts which relate to public inquiries. Therefore, the Commonwealth has the capacity to ensure that there is no unnecessary duplication. A duplication of research interests is the other side of the coin to producing alternative ideas on subjects. We think the record to date is reasonably good. It is early days for the NCC of course.

CHAIR—One of the things about the NCC that we were discussing before you is that there has been a lot of emphasis on the implementation of whole aspects of competition policy. But in terms of assessing outcomes, there does not seem to have been a lot of work done to date. Can you see yourselves as having a role in doing some of that?

Mr Kerr—Yes, we could do so.

CHAIR—When you say 'could', will you be looking to do it or would you see that as interfering?

Mr Kerr—Let me explain myself more clearly and you can judge for yourself whether it meets more precisely what you have in mind. We have an obligation under our current statute to report on broader developments in the economy, including in assistance arrangements and micro-reform generally. Under that sort of remit, we would intend to keep an eye on the outcomes and the progress of national competition policy reforms.

We would expect that the Productivity Commission would have a similar request placed on it by the parliament. I would make a qualification in this area. It is all very well to say, 'How can one keep track of how these things are going and measure them?', but you are faced with the perennial problem of not being able to demonstrate the counterfactual—that is, you cannot demonstrate what would otherwise have occurred if the reforms had not been put in place. That is not to say that you cannot make some judgements and bring to bear some analysis, but the economy is not a laboratory where you can demonstrate and show that this happens if you do this and something else happens if you pursue a different set of policies.

We have a set of ideas which we put out publicly as to the sorts of gains which we think our national competition policy reform may bring about in the economy. You mentioned an example earlier—the work we did on the revenue and growth implications of Hilmer and related reforms last year. That was a fairly hurried attempt to draw together some ideas as to what the impact on the economy would be. Over time it may be possible to make some well-researched and reasonably intelligent observations as to whether some or all of those things are being achieved, underachieved or overachieved. But there is no absolute demonstration of these things because we cannot demonstrate the counterfactual.

CHAIR—But who is going to take the responsibility to see whether or not that assessment is going to be done? That is the basic question.

Mr Kerr—The NCC had a subset of them, in as much as it is bound up with the obligations of particular jurisdictions to deliver certain reforms by certain dates. But that really relates to what they do rather than the impact of them. I think the government generally does, but we would probably be the prime body making a comment on that.

CHAIR—But you would not initiate it though?

Mr Kerr—We have a general research program which allows us to comment on these things. If you read through our annual reports, they are a commentary on the process of micro-reform in the economy, year in and year out. We have a clear invitation to do so and we would hope there would be many other bodies making comments on these issues.

Mr LATHAM—Who are they likely to be?

Mr Kerr—The ACCC or academia or particular jurisdictions, depending on the point of interest. Some of the reviews which we mentioned—for example, the reviews that will be taking place under the legislative review program—should themselves bring forth opinions and ideas as to the state of play of reform in a particular sector and the benefits or otherwise of policy changes in that sector.

Mr LATHAM—So you do not see yourself as a natural monopoly?

Mr Kerr—There is a wonderful piece of graffiti at the London School of Economics which says, 'Why is there only one monopolies commission?' We think the market for policy advice is pretty contestable.

Mr CAUSLEY—Do you have any input into the advice that is given in the COAG process? I am really going back to the genesis of the competition policy, I suppose, to try to find out whether there was research done in many of these areas to show the results of this type of policy or whether it just felt warm at the time.

Mr Kerr—Yes, there was. I guess the starting point was the Hilmer review itself.

Mr CAUSLEY—Which Mr Hilmer said was not absolute anyway, didn't he?

Mr Kerr—I do not recall that he said that; he might well have.

Mr CAUSLEY—Do you think his ego might be a bit different to that?

Mr Kerr—I think a bit of humility is a good trait for all economists; let me put it that way. I think the process started with his review, to which we made a submission. COAG picked that up and decided to proceed with it. Because we are a statutory independent body at arms-length from government, I am not privy

to the advice the separate governments had which they took into the COAG meeting in deliberating on these things. I am pretty confident that they would have had copious advice, but exactly what it was, I do not know.

What I can say is that we have had three types of input into the COAG processes generally. One is the general work we have done on performance monitoring, which I mentioned, which falls into two areas. We monitor the activities of 59 government trading enterprises. These are all the principal state and Commonwealth trading enterprises—post, Telecom, the ports, electricity, rail, et cetera. We put out a report every year monitoring different measures of their economic and accounting performance—rates of return, employment, et cetera.

The second part of the performance monitoring—this is 1(b) in my description—relates to the government service provision which COAG has asked us to do. Some of that potentially could become part of competition policy reforms. But basically these are areas of government which relate to things such as public housing, education, public health and public hospitals—the performance of these parts of government services.

The second input we have into the COAG process is that COAG has picked up some of our particular reports on sectors of the economy where we have made observations about the need to coordinate Commonwealth and state policies. One in particular is public housing. Without making any comment on how far that has got, because it seems to be still thoroughly in play at the moment, the report we did on public housing was picked up by the different parts of COAG and by the different governments and they have been debating it in that context.

The third example is the one I mentioned earlier when we were asked specifically by COAG to have a go at estimating the potential growth and revenue implications of a whole set of reforms of which the so-called Hilmer reforms were a part. The proximate reason for that was a bit of argy-bargy at the time, as to if there were gains from this process, who was going to get what slice of the cake, in particular, between the Commonwealth and the states? We did that exercise and published it in early 1995—March, I think it was. That led to some particular conclusions by COAG that it was worth proceeding.

Mr CAUSLEY—Professor Hilmer's report, though, was really in many ways an academic document. It did not really go down to the fine detail of how some of these policies would in fact work. There were some fairly obvious examples where there could be some efficiencies, there is no doubt about that, but it seems to me that this policy has now been taken to its nth degree. Would you agree that, in many instances, an academic theory does not work absolutely in practice; that you have to modify that theory in certain instances to get a practical result?

Mr Kerr—I would certainly agree that the implementation of the principles which he enunciated are needed in an investigation in each particular case and in each particular circumstance. It is my understanding that is why there needs to be a review of particular areas before they proceed. In the final degree—this particularly goes to your concerns about public interest issues—the judgments to be made about public interest can really only be made by elected representatives. There are no tools available that I am aware of that allow an economist to put a number down and say exactly what the public interest is in a particular

reform scenario.

CHAIR—So the laboratory actually is in the parliament still?

Mr Kerr—The judgment is in the parliament.

Mr LATHAM—Do you think the government made an error by not having the sort of review you mentioned before it applied competition policy theory to the labour market in the legislation that has now passed the parliament?

Mr Kerr—In the work we did on Hilmer and related reforms we did not look at labour market issues.

Mr LATHAM—So nobody ever has, have they?

Mr Kerr—I could not really answer that question. The government no doubt has taken advice on the issue. I am not privy to what that advice is.

Mr LATHAM—On the question of intergovernmental cooperation that you raised earlier, how far do you think that can or should go with regard to transfer payments and CSOs? One of the concerns I have had about the closing down of hidden subsidies—say, in water usage—is that there has been no federal compensation for targeted groups on the basis of income support for the introduction of user pays at a state level. Equally, there seems to me to be a target in question in the way in which state governments allocate the pension card. In Australia, a lot of effort goes in to get a dollar pension that might then qualify someone for a state pension card with all sorts of transport, local government rate benefits and the like. Some of that also has some targeting issues that can only be resolved by effective state and federal cooperation. What sort of work has the Industry Commission been doing to try to get that targeting in place?

Mr Kerr—Probably the most specific example I can think of is our public housing report, where we tried to draw a distinction between the social welfare objectives of governments which should properly be picked up by the Commonwealth, and the actual delivery of good public housing—the administration of it, et cetera—which we thought would best lie in the states. But let me try to answer the general part of your question—it is a very difficult one. It is true that there are connections between Commonwealth-state financial relations and micro-economic reform generally. In fact, our annual report—

CHAIR—Two or three reports ago?

Mr Kerr—One of our recent annual reports did debate this issue. Some of the incentives for pursuing reforms at the state level may well be self-contained within the state. In other words, the pursuit of efficiency gains can have its own rewards as far as a state budget is concerned. However, some of the processes of looking for these efficiency gains—this is part of our submission to you on CSOs—require the better specification of particular social objectives of government. In that process it is perfectly possible that a state government may feel, having specified these objectives more clearly, that some of them are not specifically within their own preserve and that they are better in the Commonwealth preserve. I think that is probably the best answer I can give, because it is a difficult area to deal with.

Mr LATHAM—So all state CSOs will be subject to the legislative review process? Are they up for review as much as legislation?

Mr Kerr—I will ask Trevor Cobbold to give a comment at the moment, but our state of understanding—the state of play as we currently understand it in the states—is set out in the document. I think most, if not all, of the CSOs would be locked in as a result of legislation.

Mr Cobbold—Yes. Many of them had previously been operated through cross-subsidies which generally require barriers to entry. Under the terms of the competition principles agreement, the legislative barriers to competition will have to be reviewed and justified. That may mean that some of those barriers are removed. In other cases, it may mean that judgments are made that the social benefits outweigh the social costs. In a case where it is decided that the costs outweigh the benefits, that will force some other means of delivery for the CSOs.

Mr LATHAM—Can I ask one more question on CSOs?

CHAIR—Brendan has been waiting. We will come back to that.

Dr NELSON—I want to ask a couple of questions related to the health area. The first is that, frequently in the health sector, assertions are made in relation to competitive neutrality—about what people perceive to be an unfair advantage that Medibank Private has in the market, in particular because they operate from Medicare offices and also because the other private health insurance operators are not able to process Medicare claims and offer the services which Medicare offices provide. Has the commission actually had a look at this?

Medibank Private themselves factually seek to repudiate these claims but, in the present environment in particular, Medibank Private held back premium increases for what seemed to be an inordinate time. Some of the other players in the market again were intimating, if not openly suggesting, that there was some advantage they were getting. Is that something you have had a look at? If not, would you consider looking at it?

Mr Kerr—We have not had a look at it. I will ask Garth in a moment to give an opinion as to whether it would be an eligible complaint under the competitive neutrality complaints mechanism. I just make the point that the only work we are doing on health and health insurance issues—apart from the performance monitoring work which I mentioned—is the current public inquiry into private health insurance. That has fairly specific terms of reference, which I would be happy to pass to the committee if you wish. That inquiry is due to put out an interim discussion draft before Christmas, and a final report will be due at the end of February.

So there has been no particular work on the subject you were talking about, except inasmuch as it relates to the public inquiry that we are doing. Garth, do you have an observation on whether it would be an eligible complaint from our current state of knowledge?

Mr Pitkethly—I think my comment basically supports Robert Kerr's comment—no, we have not

done any work on it, but, yes, I have actually heard about that query and it relates to the advantage of collocation with the public facility. We will have to look at things like that—that is, how significant that advantage is. The scuttlebutt has it that some of the funds believe it is very significant. Of course, naturally, Medibank Private says, 'It's nothing. They can set up in the shop next door to us if they like.' That is possibly simplifying it, but the short answer to your question is yes, I have heard about it, but we have not actually got around to addressing it at the present time.

CHAIR—Can we come back to the CSOs. You said in your opening remarks that the Commonwealth was dragging the chain a bit, or words to that effect, in properly evaluating them. Who should actually do that work of costing those CSOs?

Mr Kerr—The starting point is for the organisations themselves to be scrutinised by the relevant arms of government. The principal arm there would be the Department of Finance, although the relevant portfolio department would have a strong say in it.

CHAIR—But who should be pushing for this to happen?

Mr Kerr—As we read it, the Commonwealth government has made some broad acknowledgments of what should be done. It is a question of how quickly it moves towards those. In such areas as Australia Post, for example, we think there is further work to be done. Australia Post, to give it credit, does publish a number for CSOs in its annual report each year. It is just that it is a devil of a job to work out how the number was constructed and what it means.

CHAIR—I had experience in the inquiry into Telecom a few years ago and we found that figure got more rubbery as we pressed them.

Mr CAUSLEY—I suppose it is more to do with transparency of accounting too, is it?

Mr Kerr—Yes. That is the first step. The next step, once you have got it as transparent as you can, is to make some policy judgments, such as: is that how much the government wants to spend for that particular purpose? To go back to your opening point, I think it would be fairer to say that the Commonwealth does not have all that many GBEs compared to the group in the states, so in that sense you would expect arithmetically the states to have a lot more examples of the progress they have made. But as I said, New South Wales and Victoria—according to our reading, and we have explained it in our submission to you—seem to have made better progress on the costing and the funding side.

Mr LATHAM—Just to go back to CSOs, your paper defines them as a non-commercial activity. Does that include the extra cost of distance in a country as big as Australia where government has always had a special role in funding a certain community threshold of service delivery and infrastructure? If so, how is that dealt with in the economic modelling of the Industry Commission when a lot of the modelling itself has an assumption that there is factor mobility—that labour is mobile, that service delivery and markets have got a flexibility which might not necessarily apply in a country as vast as Australia?

Mr Kerr—Your general point about factor mobility and our modelling is well taken, and I am happy

to debate that. But, as I see it, it is not specifically relevant to the first part of your question. As I understand it, what you are asking is: how does the CSO process take into account extra costs from a remote location? That is just an extra cost. If, for example, it costs $10 to deliver something to a far outback town—Quilpie or somewhere like that—and for social policy reasons the government wants it delivered there for $5, then the private sector competitor would not be able to do better than $10, and the government business, if it is being asked to do it for $5, would basically put in a claim for $5, being $10 minus $5, as the cost of the CSO. That is basically the way it would work out.

Mr LATHAM—In that reporting system do you think there is a case for whole of government reporting on CSOs that incorporates some opportunity cost? In the management of a single government department or entity there might be some perceived financial benefit in withdrawing a service. But in other parts of the public sector there might be extra costs—funding unemployment benefits, the social costs of unemployment, flow-on costs of running down public investment in regional areas—that are not factored into the narrow decision that is made in the first instance. How do we get to a whole of government approach?

Mr Kerr—Yes and no: yes in the sense that the whole of government approach should be relevant from the point of view of the social policy decision—in other words, the government should have that sort of consideration in front of it; no in the sense that we do not see it as an obligation of the particular business enterprise to report on those extra potential benefits in costing the CSO. So the government would take the social policy decision with those sorts of considerations in mind and use the business enterprise as the tool to deliver that particular objective. The business enterprise would simply say, 'This is how much extra it will cost us above what we would deliver for under normal commercial arrangements.'

Mr LATHAM—Isn't that a fault in government decision making—that there might be a cabinet submission that deals with withdrawal of services to a certain regional centre, but there is no countervailing information from DSS or DEETYA—

Mr Kerr—Government processes have every opportunity to fill those sorts of considerations in. It is difficult to work out what all the implications are, yes. But I do not think there is necessarily a fault of a process there. There is an available process.

Mr CAUSLEY—What you are saying is that, in the Commonwealth sphere, there is not an economic impact statement with the cabinet submission. Is that what you are saying? In the state it does happen—there is an economic impact statement.

Mr LATHAM—I understand that is the case.

CHAIR—There used to be.

Mr Kerr—But the actual texts of cabinet submissions tend to deal with the sorts of issues you are talking about—these are the different considerations.

Mr LATHAM—Yes.

CHAIR—There are no more questions. Thank you very much. I think we have had a very good morning. This hearing has been very valuable and I thank all the members of the committee as well as all of those who have come before us.

Resolved (on motion by Mr Latham, seconded by Mr Causley):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.58 a.m.