

CHAPTER 4

THE PUBLIC INTEREST TEST AND ITS ROLE IN THE COMPETITION PROCESS

“.. the best definition of public interest was in fact expressed in two words, public interest, because that then defies every attempt by those that wish to try and confine the public interest.”¹

4.1 In the interim report the Committee identified, as a recurring theme, difficulties with the way in which NCP has been implemented. Prominent among these difficulties have been problems with interpreting and understanding the Public Interest/Public Benefit Test, including:

- a lack of understanding of the policy;
- a predominance of narrow economic interpretation of the policy rather than wider consideration of the externalities;
- a lack of certainty between States and Territories as differing interpretations of the policy and public interest test, result in different applications of the same conduct;
- lack of transparency of reviews; and
- lack of appeal mechanisms.

4.2 The response to the Interim Report has confirmed the Committee’s concerns. In the Committee’s view, the failure to properly explain NCP has contributed to these serious problems. Without a good understanding of the policy, the Committee cannot see how those applying it, those directly affected, or the broader public, can effectively contribute to the policy’s development or application.

Public interest/benefit test

4.3 In its Interim Report the Committee canvassed the difference between the public interest test of the NCP and the public benefit test of the ACCC.

4.4 The need for public debate and understanding has not diminished.

Public benefit has been and is given wide ambit by the Tribunal as, in the language of QCMA (at 17,242), ‘anything of value to the community

1 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 826.

generally, any contribution to the aims of society including as one, of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress'. Plainly the assessment of efficiency and progress must be from the perspective of society as a whole: the best use of society's resources. We bear in mind that (in the language of economics today) efficiency is a concept that is taken to encompass 'progress' and that commonly efficiency is said to encompass allocate efficiency, production efficiency and dynamic efficiency.²

4.5 The need for involvement of political leaders has been made clear by Mr Samuel.

We are faced with an imperative that those who provide our political leadership all around the country need, first of all, to become champions of reform, if they consider it to be in the public interest. The very public interest test suggests that this reform ought to be not only in general form, but in very specific form and very much in the public interest. We need champions of this reform at political leadership level right across the country. We also need champions of the reform to counter the negative publicity.³

4.6 The Committee has received many expressions of concern about the application of the public interest test.

4.7 Clause 1(3) of the Competition Principles Agreement provides that Governments are able to assess the net benefits of different ways of achieving particular social objectives:

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;

2 Victorian Newsagency Decision, ATPR 41-357 at 42,677.

3 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 845

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- 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.

4.8 The Committee continues to be concerned about the application of ‘public interest’ given the confusion that exists over what the term means or allows under NCP. The confusion, when combined with the administrative ease of simply seeking to measure outcomes in terms of price changes, encourages the application of a narrow, restrictive, definition. The Committee considers that it is important to devise a method of assessment of the policy which attributes a numerical weighting to environmental and social factors to avoid the over-emphasis on dollars merely because they are easy to measure. Mr Waller advised the Committee that:

In summary, it is a difficult area. There are problems of methodology, there are problems about the practical application of the policy. Underlying all this, I would say that I think that, in net benefit terms, the national competition policy arrangements are of major value to Australia in meeting the problems it faces globally.⁴

4.9 The Committee recognises the argument that the NCP has contributed to Australia’s success in meeting the problems it faces globally, particularly, the economic shocks that came out of the “Asian melt down”. However, even if it is accepted that that is the case, the country’s overall ability to cope internationally is not always fully appreciated in the face of lost jobs, reduced pay and conditions, failing or lost social infrastructure, or the other adverse consequences of structural change that are perceived to be attributed to NCP. As noted in Chapter Four:

market forces are global, but the social fallout that policy makers have to manage are local⁵

4.10 The level of understanding was clearly highlighted by the research of the Productivity Commission:

Our analysis of that is that the factors that can be considered in the public interest are extensive and non-exhaustive, and we did not perceive any reason for changing the scope of what could be considered as public interest.

4 Mr M Waller, Committee Hansard, 1 November 1999, p 841

5 Mr M Waller, Committee Hansard, 1 November 1999, p 841

..... there is very poor perception out there. I will use local government as the example and I will also use the Shire of Jerramungup, because they gave us a submission very early in the piece and they perceived that national competition policy, in particular implementing competitive neutrality, debarred them from delivering community service obligations.

That was not just an isolated instance. That was quite typical of the sort of misunderstanding that we came across when we were holding workshops around the place: what factors could be considered to limit competition, in what circumstances and what criteria? That led to a number of our findings. We had made a finding in chapter 11. It says:

The manner by which restrictions on competition may be considered under NCP is not well understood by many people. This is consistent with a wider lack of effective communication about, and hence appreciation of, what constitutes NCP and how it is implemented.

We have seen the need for quite a lot of information about that.⁶

4.11 The consequences of this can be seen in the welfare sector as discussed in Chapter Five. The Committee also notes that the greater the intrusion of NCP into areas with volunteer work being undertaken, such as in welfare areas, the greater the propensity for volunteers to withdraw their labour. In these circumstances, policies directed at realising efficiencies may result in restricted outputs. Whilst services may then be more efficiently delivered on an upfront dollar basis, it is questionable that the public interest will have been served.

Recommendation

1. *For the purposes of measuring outcomes of the policy, a method of assessment be agreed by CoAG which will provide a numerical weighting that can be attributed to environmental, social and employment factors, wherever possible.*

Need for Education

4.12 Public understanding of NCP has been a fundamental problem since the policy's inception in 1995. As far back as 1996, academics and administrators alike have been concerned about the policy being presented in a manner which suggested the changes ought to be accepted on faith. The 'top-down' mandatory approach adopted by the NCC and other Commonwealth and State/Territory CP units, have not, with hindsight, been as successful nor widely accepted as it could have been. Successive policy analysts have warned of the dangers of this approach.

4.13 It is only then that it will be possible to assess the level of acceptance of NCP because it is only then that it can be established whether a fully informed community agrees with ideology behind NCP and would continue to pursue the policy.

6 Mr H Plunkett, Assistant Commissioner, Productivity Commission Committee Hansard, 1 November 1999, p 843

4.14 As the Committee noted in the Interim Report, in 1997 the House of Representatives Committee's Inquiry recommended that the ACCC and the NCC adopt a more open and educative approach to their respective roles. Specifically, that Committee noted:

So far there has been little discussion in the community on competition reforms.

To date there has been little public education with the result that several States/Territory governments now list common misconceptions related to the reforms in their policy statements. Many rural councils are particularly concerned about this issue....

There is a need for a major ongoing program of public education which outlines the contents of the policy and stresses the outcomes (runs on the board). All agencies involved in the competition reform process must be involved, not just the NCC and ACCC.⁷

4.15 In response to this criticism, the NCC and ACCC have produced reports and pamphlets, attended seminars and given speeches in support of National Competition Policy. Notwithstanding those efforts, there has been continued confusion and a lack of community awareness and low levels of administrative understanding. There is a need to educate and inform many bureaucratic and government officials before they seek to educate and inform the public.

4.16 Some critics argue that the problem lies in the attitude of government officials and what is perceived to be an emphasis on economic policy advocacy rather than an explanation of the full workings and impact of NCP. Others tend to argue that there has been a lack of sophistication in administration or political comment:

One of the problems we have encountered right from day one-you might say over the last two years-is that there has been a limited understanding of NCP generally. That is no fault of the Local Government Association or the local government department. They have done an excellent job in making training available and also circulating relevant material. Another problem is the shared vision between councillors and officers-and that may be regarded as a general problem in the local government industry-and also a lack of resources.....In Queensland local government, there is a lot of misunderstanding about NCP.⁸

4.17 An unfortunate conclusion reached by the Committee is that governments have at times contributed to the confusion over the public interest. They have done this by citing NCP, and by implication, the Commonwealth Government, as the reason

7 Cultivating Competition, Inquiry into aspects of the National Competition Policy Reform Package, June 1997, Report from the House of Representatives Standing Committee on Financial Institutions and Public Administration, Parliament of the Commonwealth of Australia, AGPS, Canberra, p 67.

8 Mr D Mullins, Chief Executive Officer, Esk Shire Council, Committee Hansard, Brisbane, Thursday, 8 April 1999, p260.

that policies such as compulsory competitive tendering have been introduced; that particular development and infrastructure projects have been rejected; that assistance was not extended to a proposal, or funding was reduced. Such actions bring the policy into disrepute.

4.18 Not all of the distrust or disagreement with the NCP stems from a lack of understanding of the policy. Many people with a very good understanding of the objectives and underlying premise of the NCP have made a fully educated judgement, that either they are ideologically opposed to it, or that they do not agree with the philosophy behind the policy, or with the method of implementation.

4.19 As noted below the outcome of any assessment of the value of NCP may depend on the time of the assessment against where the impact of the policy is falling - NCP may be adjudged 'a good thing' and later 'a bad thing' by the same person or group. This means that education is not going to be an easy task, because, as pointed out by Mr Kerr of the Productivity Commission:

Similarly, although this is a little bit harder to give a particular example of, you might conceive of differences over time in the calculus of benefits. People might have different preferences as to when benefits are received. Although early losses, early difficulties, may be in time overtaken by later benefits, people may quite properly have different perspectives as to how important early adjustment changes are vis-a-vis later benefits as they arrive. So the calculus over time is difficult.⁹

4.20 The degree of this difficulty can be seen in the interchange of discussion between the Committee and Mr Ritchie, Director Economic Policy, National Farmers Federation and considering the NFF's aggressively pro-reform position in the tariff reduction debates and other sectors, such as the water front, when it had adjudged the interests of its members to be negatively impacted:

The review we will have next year is a one-off opportunity to have a good look at national competition policy. Let us have a look at the underlying assumptions of national competition policy, not the least of which is this underlying assumption that the user should pay for everything rather than taking external benefits into the equation. Let us have a look at the public interest test and its application and let us have a look at things like adjustment assistance and whether any of that money flows through.

...

Also, let us think about the underlying assumption that seems to be here at the moment that national competition policy is a good thing until proven otherwise. When did we have the proof that national competition policy is a good thing? Why can't we turn it around and say national competition policy might have been a bad thing and let us prove it is a good thing? I am not

9 Mr R Kerr; Head of Office; Productivity Commission; Committee Hansard, 1 November 1999, p 843

saying that that is the case but I am just upset that the assumption is that it is a good thing until proven bad, and not the other way around.

Senator LIGHTFOOT—What is your assumption? Is it good or bad?

Mr RITCHIE—I do not think we have the evidence in, but I am upset that the assumption seems to be that it is a good thing. Until somebody like us can come and prove it is a bad thing, and when we have only got five years history, that is a very difficult thing to do.

Senator LIGHTFOOT—What is your assumption, Mr Ritchie?

Mr RITCHIE—My assumption is that obviously we support some of the initial gains that have been made under national competition policy, but in areas such as infrastructure, NFF is starting to have some real, serious concerns. The picture that Rod Nettle painted about what is going to happen to rural and regional Australia is not a difficult picture for us to extrapolate to, either. If you apply a strict principle of user pays to the provision of infrastructure, then you are not going to have a rural and regional Australia to worry about in 25 to 50 years because nobody out there can afford to pay.

This is the whole principle of externalities under which economic theory had been working for 100 years until we decided to throw it out in 1994. Let us go back and see if that was a sensible decision to throw out the principle of externalities and external benefits.

4.21 Senator McGauran was also interested in determining the shift in the NFF's position:

And to the NFF representative, I read in the Australian newspaper the other day, and you have reinforced the comments today, that the NFF are being seen to be shifting in regard to national competition policy. You are basically saying it is the end of the road, any advancements now have to be strictly scrutinised. You do have a lot of economists in your buildings, and I do not know why you would be concerned about putting a presentation to any review. But we are down to the minutiae, and the NFF now have had a complete second thought and are basically wishing to grind NCP to a halt. That is the new perception.

...

Mr RITCHIE—That might be the perception, but that is certainly overstating our position. Most of the concerns we have are in the area of infrastructure and national competition policy.....

Senator McGAURAN—I think we can say it is a new NFF, after that. That is just my observation, and perhaps it is for the better.

Mr RITCHIE—I think so. It is rare that organisations admit their mistakes, but I think we are prepared to say that we might have missed the boat a little bit on what is happening and what is likely to happen on infrastructure provision.

4.22 The Committee believes that more needs to be done and certainly a different approach should be adopted in encouraging the wider public debate and understanding of NCP. In giving evidence about the level of knowledge and understanding that exists amongst government bodies the NCC stated:

It is not satisfactory, but increasing. At national competition policy units around the states, there is a high level of understanding and a high level of interaction between the NCC and those units concerned. As you move outside those units-and they are the units that are responsible for ensuring the State governments in their various departmental levels implement the policy-there is a dissipation of knowledge. In some areas outside those units there will be very little knowledge and very little interest. In some areas there will be not only a disinterest but almost a wish that it would all go away because it changes the status quo.¹⁰

4.23 In commenting on the level of understanding held in the community, the Western Australian Municipal Association noted:

Public perception can often be the enemy of successful policy making. Policies cannot be made in isolation. Resources need to be invested both in facilitating community understanding of why the policies are put in place and how the benefits will manifest themselves. For many in our communities, especially in regional Australia, the why and how remain a mystery. ..The continuing decline of service to the bush has only increased public resistance to change.¹¹

4.24 On the matter of community education the Public Interest Advocacy Centres had this to say in their submission:

We have now passed the half-way point of NCP implementation. To date, there has been virtually no public education campaign on NCP provided by either the national or NSW Governments. We make a distinction between community education and government advocacy of policies. What we have experienced bears the hallmarks of advocacy rather than education.¹²

4.25 The Shire of York supports the general concern over the need for education:

.....most of us are quite confused about national competition policy in the bush. We get glossy pamphlets and we get people releasing information from the city which tells us that national competition policy is here and how we should implement it. We go to seminars on it when we can. But there is nobody actually actively helping us to deal with national competition policy, to put things into perspective, to take the benefits from it or to address the

10 Mr G Samuel, President, NCC, Committee Hansard, Friday 26 March 1999, p37-38.

11 Mr I Mickel, Vice President, Western Australia Municipal Association, Committee Hansard, Perth, Monday 17 May 1999, p 351.

12 Public Interest Advocacy Centre, Submission No 160A, 29 April 1999, p 3.

shortcomings of it as they affect rural Australia. We feel confused about it and many of my colleagues have probably adopted the view that it is just too hard and hope it will go away in due course.¹³

4.26 The Committee is concerned that the educational efforts of the NCC appear to be failing, but it is pleased to note that the NCC concurs with the ongoing need for education and public information. In the 1998/99 Annual Report the NCC states that:

The Council's second broad goal is to help the community to become better attuned to the scope and potential outcomes of competition reform, including how NCP helps achieve Australia's long term economic and social objectives. The Council will pursue this over the coming year through a community information program.¹⁴

4.27 The Committee retains its view that the administration of the policy is in need of a 'healthy dose of sunlight' – an illumination of the facts from the fallacy for the people who are actually implementing the policy and who are directly affected by it. It is time for the NCC and senior state and territory officials to take up the challenge of improving the knowledge of grass roots managers of the policy, political representatives, and the general public. This will require more than simply 'educating from the podium' as a disinterested policy advocate. Greater knowledge of the policy will also ensure that NCP cannot be used as a scapegoat for administrators and others who seek to deflect blame for the negative impacts of their own policy agendas.

4.28 The Committee endorses the initiative of the Queensland Treasury by releasing a guideline on the public benefit test, "Public Benefit Test Guidelines Approach to undertaking Public Benefit Test Assessments for Legislation Reviews under National Competition Policy." As noted by Mr Samuel,¹⁵ the problem of public education is complex and the book provides an interesting and helpful coverage of a range of issues.¹⁶

Indeed, most of the evidence that appears to be coming forward at the moment is directed much more towards public education. Public education is not just simply talking to the masses and saying, 'You have never had it so good and it is going to be better still next year.' It is rather a fact of educating all those involved with the administration of this policy as to how it should be administered properly and fairly, and with educating those who are the beneficiaries of the policy, as to what it is all about and where it might be heading. It is not an easy task.¹⁷

13 Mr E Fisher, Chief Executive Officer, Shire of York, Committee Hansard, Perth, Tuesday 18 May 1999, p 446-447.

14 NCC 1998/99 Annual Report p31

15 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 847.

16 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 845.

17 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 845.

4.29 The Senate Committee is aware that in NSW, the NSW Local Government and Shires Associations, with funding under the Local Government Development Program, have developed an electronic information exchange to record and link information relating to benchmarking and best practice relevant to local government. The information exchange is known as "Towards Best Practice" and is an interactive Internet web site accessible to all Australian Councils. Through the efforts of the NSW Association and the national body, the Internet site is soon to be a national resource. The Committee considers that this is an admirable step in the right direction in bringing valuable information to local government throughout Australia. The site includes information about best practice projects in the areas of competition policy, computer systems, financial management, governance, public relations etc.

4.30 Complementing such programs, the Committee recommends a more extensive educational program that is wide ranging in both content and coverage of those affected by the NCP.

Recommendation

2. *That the NCC publish a detailed explanation of the public interest test and how it can be applied and produces a listing of case histories where the public interest test has been applied as a regularly updated service of decisions. This may form part of the information available through the proposed 'one-stop-shop' advisory service.*

Need for consultation

4.31 The need for consultation occurs at two levels. First, the Public Interest Advocacy Centre has criticised the lack of formal consultative arrangements within the NCC. The Centre believes that the NCC has:

...failed to meet its stated commitment to broad consultation and how it adopts what is essentially a 'complaints driven' approach to problems which may be experienced with NCP implementation. It is also likely that it is the superior attitude adopted by the NCC to criticism of NCP implementation, or of itself, which provokes the sorts of criticisms which the NCC is on record as resenting.¹⁸

4.32 This would accord with the views of many local government and agricultural bodies, which have indicated that not only are the consultation processes of the NCC inconsistent but so are those of states agencies responsible for reviewing legislation. It appears that not all interested parties are being informed of the existence or progress of these legislative reviews, nor being encouraged to actively participate. It is difficult for the Committee to gauge the accuracy of such comments, but there is obviously some problem.

18 Public Interest Advocacy Centre, Submission No 160A, 29 April 1999, p 3.

4.33 The Committee has been advised that significant consultation occurs with governments and others, but that much of it is in private. Whilst the Committee accepts that advice, it is concerned about the wider public perception of lack of consultation.

4.34 The Committee is not sure that such private consultations do not risk being the equivalent of “deals done in smoke filled rooms” that are anathema of the ACCC. The Committee endorses the initiatives and actions of the NCC to broker outcomes, but is mindful of the desirability for such arrangements to be open to public scrutiny. Such scrutiny is the only way of ensuring “deals” are in the public interest.

Recommendations

3. *That CoAG agree on a standardised public interest test procedure to be used in cases where a review has implications across state or territory borders.*
4. *That the NCC and state and territory agencies with responsibility for implementing NCP, undertake expanded public education programs about the policy and how it is to be implemented.*
5. *That a 'hotline' service be set up for organisations seeking information and assistance on how to use the public interest test and review processes. This service should be reviewed after twelve months operation.*

Predominance of economic interpretation

4.35 Officials charged with responsibility for the application of NCP are overwhelmingly drawn from economic backgrounds. Whilst this provides excellent training for the assessment of the financial or efficiency benefits of NCP there is a gap in the determination of the wider issues that can, should and do, arise under the public interest test.

4.36 This gap is more notable as the responsibility for administering NCP is moved down to lower levels of government. At the Committee’s Round Table in Melbourne, Mr Samuel said that:

As we move further away from the sophistication level of governments, as we move down to lower levels of government and particularly into regional areas where there is less direct contact with central government, whether it is at state or federal level, the degree of sophistication in understanding the public interest test tends to diminish, and that then has been reflected in the way it has been applied. One of the recommendations that you do make that we urge upon governments, and have for some time, is that governments should formulate guidelines as to the application of the public interest test and should assist those that are applying that test in its application.¹⁹

19 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 826.

4.37 The central problem was encapsulated by Mr Waller, a witness appearing before the Committee at the Round Table:

One that I can readily draw to your attention is the question of the value of a culture when you are introducing a new economic system or a new project into a remote area. It is very difficult to actually value the loss of, say, the local culture versus the economic benefit. To some extent that is the debate that is going on around rural and regional Australia at the moment, and it is a very difficult one. So the measurement and analysis of the economic benefits and costs versus this broader social issue is a real methodological problem and, if it is something that the committee could actually help with, then I think it would help improve the quality of the evaluation that is going on at state level, which I think is a fairly new area.²⁰

4.38 The Committee agrees. Further, the Committee is concerned that where this difficulty exists and responsibility for administration/implementation of the NCP has, in all jurisdictions, been placed in Treasury or Premiers portfolios, the officers responsible will 'go for the money' under the tranche payments. For example, in Western Australia, the Treasury has responsibility and the Regional Development portfolio has a role in NCP but Mr Morgan of the Regional Development Council said in response to Senator Margetts' query about implementation:

My view is that the state Treasury is probably like all Treasuries around Australia. It tries to maximise its income and it takes as little notice of the social impacts of its policy as possible.

4.39 Mr Morgan went on to say that:

I think the reviews have mainly concentrated on the financial aspects of changes in policy and take no account of the social impacts of some of those policies.²¹

4.40 It is increasingly recognised that the predominantly economic input must be complimented by a multi-disciplinary approach in order to maximise the value of the implementation of NCP. This is particularly important when applying the public interest test. The issue is how the wider public interest requirements of NCP can be balanced against the efficiency benefits that are recognised to be starting to flow from NCP.

4.41 The Committee is concerned to note the response of the Western Australian Government when asked by Dr Frank Harman of Murdoch University if they were a buyer of AlintaGas would they be willing to pay a premium for both a set of sale contracts and the pipeline, over and above the price for the separate sale of those assets.

20 Mr M Waller, Committee Hansard, 1 November 1999, p 840.

21 Mr S Morgan, Chairman, Regional Development Council (Western Australia), Committee Hansard, 17 May 1999, p 319.

You might be right, Frank. That is one of the issues we will look at. If there is a premium, I am inclined to grab it for the taxpayer or for the state rather than allow it to be dispersed elsewhere. I do not believe it is a major issue.²²

Lack of transparency of Legislative Reviews

4.42 The Committee's attention has been drawn to the Productivity Commission's concerns expressed in its recent report,²³ that:

It is it proper that Impact of Competition Policy Reforms on this role [NCP resting with State Treasuries and Premiers Departments] rest with the coordinating agencies of Government which have an overarching State-wide (or economy wide) view which accounts for the interests of producers, users and consumers. This does not preclude participation of agencies with a 'client-orientated' focus – independent review panels can be, and are, drawn from outside of central agencies. A transparent review process, taking submissions from all interested parties, should adopt a 'multi-disciplinary' approach.

4.43 The Committee would agree with this general position if, indeed, the system worked in such an ideal way.

4.44 The Committee has received evidence that the legislative reviews undertaken by States Government are not always being done in a transparent manner; that is, conducted in an open public manner with the views of all interested parties taken into consideration. The NCC's views on this are clear – Mr Samuel has informed the Committee that a requirement under NCP is for transparency in the review process.

4.45 Notwithstanding the requirement for an open review process, the Committee has heard many complaints that the process is not transparent. For example, Mr Hamilton of the Queensland Chicken Growers Association informed the Committee that the review of his industry was undertaken in a closed way:

... In our submission we did comment that the final report of the Queensland review committee had not been released. That is now no longer the case. That report is available. We were sent a copy I think in late January this year. It was the first time we actually saw the document between two covers. Notwithstanding that, it had been completed and submitted to the minister 12 months earlier. As an association with the substantive submission to the review committee, I guess our noses were a bit out of joint in not having received something sooner.

... That material was all reviewed by an independent person. His comments and recommendations went to cabinet and it was subsequent to that that the

22 Hon. Colin Barnett, Australian Institute of Energy Luncheon; 26 March 1999, p. 18.

23 Productivity Commission Impact of Competition Policy Reforms on Rural and Regional Australia, page 325.

final report was released. We have not seen the full text of that independent person's submissions to cabinet.

...

Overall, I think we were justified in complaining about what had not been included or the inadequacies of the report and the work which had been done.²⁴

4.46 The NCC is also aware of the problems with reviews, as explained by Mr Samuel:

We are aware that some reviews have been criticised for lack of independence, lack of transparency and lack of consultation with all relevant stakeholders. As a result there has been concern about the outcomes of reviews.²⁵

4.47 The concern over the way the reviews can be undertaken is demonstrated by the Queensland Farmers' Federation comments on the decision making environment:

Discussions indicate that other factors are operating which are not conducive to balanced decision making.

The first of these is an overt and at times aggressive attitude by Government representatives in relation to the primacy of efficiency gains. At times this approach could be described as economic "zealotry" which at times has not been well grounded in the complex and subtle framework of applied economics. It appears to be ideologically driven and somewhat divorced from a genuine search for balanced economic reform.

The second factor which we believe has distorted the decision making environment is the enormous influence which the NCP payments play. State Treasuries appear to be more influenced by what their agencies might derive from these monies than by a balanced consideration of all the facts and all the impacts of undertaking reforms.²⁶

Recommendations

6. *That all reviews be undertaken in a fully transparent way with opportunity for contribution from the public at all stages.*

7. *That review panels be required to actively seek out contributions from all interested groups and represent the range of views in the report to government.*

24 Mr C Hamilton, Executive Officer, Queensland Chicken Growers Association, Committee Hansard 8 April 1999, p 244.

25 Mr G Samuel, President, NCC, Committee Hansard, 26 March 1999, p 22.

26 Queensland Farmers Federation, Submission No 68, p3

8. *That all reports of reviews be made public at least thirty days before the government is to consider the review.*

Community Service Obligations

4.48 An important aspect of NCP is the ability of Governments to recognise and address Community Service Obligations (CSOs).

4.49 Historically, many goods and services have been supplied to people in Australia on a cross-subsidised basis rather than a full cost recovery or cost reflective basis. These include water, sewerage, electricity, gas, roads etc. The system of cross-subsidisation in each industry has arisen through some governments' commitment to equality of access and commitment to development. The high costs of the construction of infrastructure to support these industries has necessitated government pricing and supply policies which support these objectives.

4.50 Cross-subsidisation has taken a number of forms, including, from commercial or industrial users to domestic users; from wealthy to disadvantaged consumers; between population generations, (viz from the working age population to pensioners), from cities to rural, regional and remote areas. The 'public interest test' raises the issue of broad social goals and the concept of Community Service Obligations. The Productivity Commission (Industry Commission) estimated Australia's expenditure on community service obligations to be in excess of \$3 billion.²⁷

4.51 The Competition Principles Agreement obligates governments to address the issue of community service obligations but does not define them. While it encourages 'transparency' of operation, NCP leaves the responsibility to each individual government to determine definitions and construct. Consequently, each State and Territory has different models of operation and implementation of CSOs.

4.52 One of the problems with CSOs is the need for exhaustive definition of them to be undertaken to facilitate a seamless transition to corporate or private supply. This is difficult to achieve where these services have not been previously provided as part of a distinct program. Further, the service may be intermeshed with other services, and the removal or downgrading of one may collapse others. For example, the post office or local chemist is often a focal point for small rural towns. The closure of these often causes a flow-on of closures of other businesses as people are forced to other centres for the original services.

4.53 There is concern that community service obligations are at risk when governments commercialise, privatise or contract-out such services. This need not be so, as Mr Samuel commented:

National competition policy does not prohibit community service obligations. Indeed, in our various annual reports and documents we have

27 Industry Commission, February 1997, Community Service Obligations: Policies and Practices of Australian Governments, Information paper, Canberra, AGPS, p20.

encouraged, urged and exhorted governments to address issues of community service obligations. It does not prohibit universal service obligations. It does not prohibit the provision of proper services of health, education, telecommunications, water, power, transport or housing to all sections of the community such as they may be entitled to in a properly constructed, fair Australia. The failure of governments to address those issues is not an issue of national competition policy; it is a failure or dereliction of national social policy.²⁸

4.54 In the Committee's view recognition of the ability of NCP to coexist with CSOs provides the response to the concerns expressed by Mr Ritchie of the NFF:

We at NFF are saying: why are we throwing out the principle of beneficiary pays and making it user pays? Another example is what is going to happen to the cost of electricity distribution to any inland town at the moment. The new system dictates that they pay the full cost of the transmission of electricity along those wires. So almost immediately we are going to add a new cost onto rural and regional Australia that will not be apparent for anybody in metropolitan Australia. These are the dangers we see in user pays pricing principles. Only two consequences can come from it: underprovision of infrastructure or an increase in the price of infrastructure. Logically, nothing else can happen.²⁹

4.55 The Committee sees value in CSOs being kept under review to monitor their continued need and ensure the most effective method of delivery is being used.

Recommendation

9. *That CSO commitments be publicly acknowledged, monitored, and regularly reported on.*

4.56 In reviewing the overall structure of the application of NCP, the Committee noted the lack of any formal appeal mechanism against the findings of a legislative review where public interest is claimed. There are a number of ways of addressing this shortcoming in the administration of the policy and the Committee would see this as a matter for consideration by CoAG.

Inconsistent interpretation of public interest test between the States and Territories

4.57 The Committee is concerned that the disparate administration of NCP may lead to different interpretations of the policy and differing applications of the public interest test. The Committee accepts that the NCC has sought to educate the widely dispersed administrators of NCP but, clearly, the education has not worked as well as intended. The NCC itself recognises this and is taking further steps to correct it.

28 Mr G Samuel, President, NCC, Committee Hansard, 1 November 1999, p 879

29 Mr T Ritchie, Director Economic Policy, National Farmers Federation Committee Hansard, 1 November 1999, p 917

4.58 The views of parties in submissions and in hearings, is, that at the level where NCP is applied, the people who have had to comply have been given little, or no advice, on what NCP is and how to go about applying it. Worse, there are suggestions that the lack of knowledge is allowing some people and agencies to prosecute personal or political agendas in the name of NCP. In the Committee's view this is occurring in relation to compulsory competitive tendering. This practice has been introduced in the guise of NCP and is widely understood to be a part of NCP.

4.59 The outcome of such action is that NCP is brought into disrepute and the potential benefits of the policy are then jeopardised.

4.60 As noted above, in the Committee's view, the educative role of the NCC and the State and Territories agencies responsible for administering NCP, needs to be refocussed. Improved education is required not only for those administering NCP at the national and states level but also for those who have to comply; for example local governments. The Productivity Commission has suggested that governments need to provide case studies to assist future reviews as part of a package of proposals to try to explain how the public interest test works.

4.61 The Committee endorses the view of Mr Samuel that all reviews implemented under NCP, whether by the NCC, Commonwealth, States or Territories Governments, should be done in an equally open and transparent way with the opportunity for input from interested parties. The Committee also endorses the Productivity Commission's recommendation that the NCC no longer be required to carry out legislative reviews.

Recommendations

10. *That the NCC no longer be required to carry out legislative reviews; and that Governments, through CoAG, undertake to agree broad systems and processes for reviews, including mechanisms for proper consideration of the submissions and views of any interested parties, in the formulation of the initial recommendations.*
11. *That other governments be provided the opportunity for input to each other's reviews as a way to contribute to impartial outcomes based on a national rather than state or regional perspective.*

