

Part B Assessment of Governments' Progress

B1 Introduction

Australia's National Competition Policy (NCP) reform program builds on a process that was launched with the Trade Practices Act in 1974.

While the contribution of trade practices legislation was significant, by the late 1980s and early 1990s, it had become clear that a more comprehensive approach to reform across the three spheres of government was required. After a series of inquiries, the Council of Australian Governments (COAG) agreed in April 1995 to implement the NCP.

In short, the objective of NCP is to:

- extend the reach of the anti-competitive conduct laws in Part IV of the Trade Practices Act (TPA) to virtually all private and public sector businesses;
- improve the performance of essential infrastructure through implementing nationally co-ordinated reform packages in the electricity, gas, water and road transport industries and establishing a legal regime for third party "access" to the services of nationally significant monopoly infrastructure;
- review and, where appropriate, reform all laws which restrict competition, and ensure that any new restrictions provide a net community benefit; and
- improve the performance of government businesses through structural reform, introducing competitive neutrality so that government businesses do not enjoy unfair advantages or disadvantages when competing with private businesses and considering the use of prices oversight.

Governments also agreed to apply these reforms to local governments within their jurisdiction.

Recognising that Australia is increasingly operating as a single market rather than a series of State and Territory markets, the NCP encourages governments to take a national focus in considering change. A national framework helps overcome inconsistencies that can arise from a more piecemeal approach and allows each jurisdiction to capitalise on what the others are doing. Within the national framework, however, most implementation is occurring on an individual government level, with each government controlling how the policies are implemented in their jurisdiction.

B1.1 The NCP Agreements

The NCP reform program is set out in three intergovernmental agreements signed in April 1995 (see Box B1.1), operating in conjunction with the *Competition Policy Reform Act 1995*.

Box B1.1 The NCP Agreements

The Commonwealth and State and Territory Governments signed three agreements in April 1995 to implement the National Competition Policy reform package.

1. The *Competition Principles Agreement* (CPA) establishes reform principles in relation to access to essential infrastructure facilities; prices oversight of government businesses; structural reform of public monopolies; fair competition between government businesses and private sector businesses; reviewing the merits of anti-competitive legislation and regulation; and the application of competition principles to local government. Clause 1(3) of the CPA also sets out a community benefit test to enable governments to assess the merits of proceeding with particular reforms.
2. The *Conduct Code Agreement*, operating in conjunction with the *Competition Policy Reform Act 1995*, sets out processes for amending the competition laws of the Commonwealth, States and Territories to extend the coverage of Part IV of the *Trade Practices Act 1974* to all businesses in Australia, irrespective of their ownership.
3. The *Agreement to Implement the National Competition Policy and Related Reforms* incorporates COAG reform agendas for the electricity, gas, water and road transport industries into the NCP framework. The Agreement also sets out conditions for financial transfers from the Commonwealth to those States and Territories which implement the NCP reforms, and the timetable for implementing reform.

B1.2 The net community benefit test

The objective of NCP is not to pursue competition as an end in itself, but to inject competition to boost economic performance and provide benefits to Australia. However, recognising that some areas of the economy have not previously been exposed to competition and that NCP can touch on complex areas of social and economic regulation, the CPA includes a mechanism to assess whether a particular reform is in the interests of the community as a whole.

The net community benefit test (see Box B1.2) covers a wide range of factors, including the environment, employment, social welfare and consumer interests as well as business competitiveness and economic efficiency. The assessment of these factors gives equal weight to economic and social considerations. In this sense, the NCP package seeks to balance economic accountability with social responsibility.

The Council has consistently stressed the importance of independent, transparent and rigorous processes by governments in considering the community benefit. This is essential to maintain community confidence that community benefit considerations have been objectively examined.

In general, the process for assessing net community benefit should reflect the significance and complexity of the issue (taking into account such matters as the range of affected stakeholders and community sensitivity). For the more significant or complex matters, objectivity is best served where processes are independent of the matter under review. As a minimum, however, interested parties must have an opportunity to participate and should have confidence that their views will be taken into account and given due consideration.

Where community benefit considerations are rigorously assessed, the best course of action – including whether to retain an anti-competitive measure – will be clear, and the community benefit will be best served by governments acting accordingly. Retention of restrictions on competition is consistent with NCP where the restriction has been assessed through a transparent, independent and objective process. Conversely, retention of restrictions where there is no objective evidence of net community benefit would constitute failure to comply with agreed NCP principles.

Box B1.2 The NCP community benefit test

Under clause 1(3) of the Competition Principles Agreement, governments take into account the following factors when assessing the merits, or appropriateness, of reforms:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

The list is non-exhaustive, meaning that any other relevant matter may also be considered when assessing the case for a competition reform.