

4 Structural reform of public monopolies

Protection of some public monopolies from competition through regulation or other government policies has allowed structures to develop that do not readily respond to market conditions. Rectifying strategies include removing the relevant legislative restrictions and applying competitive neutrality principles. However, these reforms will not always be sufficient to establish effective competition. Structural reform may be needed to dismantle a government business that has developed into an integrated monopoly. Such reform involves splitting the monopoly (or parts of it) into smaller entities, including splitting the competitive or potentially competitive elements from the monopoly elements.

Structural reform is particularly important where a public monopoly is to be privatised. Privatisation without appropriate reform will result in a private monopoly supplanting the public monopoly, with few real gains and potentially considerable risks.

Obligations relating to the structural reform of public monopolies are set out in clause 4 of the CPA. Under this clause, governments agreed to relocate regulatory functions away from the public monopoly before introducing competition into the market served by the monopoly. The aim is to prevent the former monopolist enjoying a regulatory advantage over its (existing or potential) competitors.

Clause 4 also sets out certain review obligations aimed at ensuring that reform paths lead to competitive outcomes. Before introducing competition into a sector traditionally supplied by a public monopoly or privatising a public monopoly, governments have undertaken to review:

- the appropriate commercial objectives of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly from the natural monopoly elements;
- the merits of separating potentially competitive elements into independent competing businesses;
- the best way of separating regulatory functions from the monopoly's commercial functions;
- the most effective way of implementing competitive neutrality;

- the merits of any community service obligations (CSOs) provided by the public monopoly, and the best means of funding and delivering any mandated CSOs;
- the price and service regulations to be applied to the relevant industry; and
- the appropriate financial relationship between the owner of the public monopoly and the public monopoly.

In this assessment the Council considered each jurisdiction's structural review and reform activity (including the location of industry regulation) where competition is to be introduced to public monopoly markets or where privatisation is proposed or underway. Particular structural reform matters are discussed in the relevant chapters of this report. In particular, the Council considered that clause 4 obligations are generated by decisions to introduce third party access regimes, for example in respect to the electricity industry.