

PART 1

COMPETITION POLICY AGREEMENTS

National Agenda For Microeconomic Reform

At the 25 February 1994 COAG meeting, all Australian governments agreed on the need to accelerate the microeconomic reform process, recognising the benefits from sustained economic and employment growth. Governments agreed to the principles for a national competition policy as outlined in the Hilmer Report. An extract from the COAG Communique from its 25 February 1994 meeting detailing governments' agreement to progress microeconomic reform is reproduced below.

“The Council agreed on the need to accelerate and broaden progress on microeconomic reform to support higher economic and employment growth on a sustainable basis. Accordingly, it has agreed to pursue a more extensive microeconomic reform agenda and to establish a standing committee of senior officials to manage this continuing agenda of microeconomic reform.

This Working Group has been asked to report to the next Council meeting with detailed proposals for further reform.

The Council agreed to the principles of the competition policy articulated in the Hilmer Report.

The Council agreed:

1. any recommendation or legislation arising from the Hilmer Report being applicable to all bodies, including Commonwealth and State government agencies and authorities;
2. that the Trade Practices Commission and the Prices Surveillance Authority be merged to form the basis for the Australian Competition Commission.³ The Australian Competition Commission would also have new powers. Commonwealth, State and Territory Governments are to develop the detailed arrangements for the establishment of this body, including the process for State and Territory participation in the appointments process;

3. State, Territory and Commonwealth Governments will also commence work jointly on the new legislation with the aim of considering it in August;
4. State, Territory and Commonwealth Governments will establish by report to the next Council meeting, the practicalities of applying the Hilmer Report;
5. the Commonwealth will consider assistance to the States and Territories for loss of monopoly rents and the process for managing adjustment; and
6. it was recognised that the broadened application of the Act will require changes to some existing State and Territory regulatory arrangements and business practices. A two-year transitional period has been recommended by the Hilmer Report, and officials will explore how to provide the States and Territories with a capacity beyond this period to authorise or exempt, temporarily, particular conduct, practices or arrangements on a case by case basis.”

These principles form the basis of the April 1995 intergovernmental agreements which establish Australia’s National Competition Policy.

Competition Principles Agreement

– 11 April 1995

WHEREAS the Council of Australian Governments at its meeting in Hobart on 25 February 1994 agreed to the principles of competition policy articulated in the report of the *National Competition Policy Review*;

AND WHEREAS the Parties intend to achieve and maintain constant and complementary competition laws and policies which will apply to all businesses in Australia regardless of ownership;

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA agree as follows:

Interpretation

1.(1) In this Agreement, unless the context indicates otherwise:

“Commission” means the Australian Competition and Consumer Commission established by the Trade Practices Act;

“Commonwealth Minister” means the Commonwealth Minister responsible for competition policy;

“constitutional trade or commerce” means:

- (a) trade or commerce among the States;
- (b) trade or commerce between a State and a Territory or between two Territories; or
- (c) trade or commerce between Australia and a place outside Australia;

“Council” means the National Competition Council established by the Trade Practices Act;

“jurisdiction” means the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia;

“Party” means a jurisdiction that has executed, and has not withdrawn from, this Agreement;

“Trade Practices Act” means the *Trade Practices Act 1974*.

- (2) Where this Agreement refers to a provision in legislation which has not been enacted at the date of commencement of this Agreement, or to an entity which has not been established at the date of commencement of this Agreement, this Agreement will apply in respect of the provision or entity from the date when the provision or entity commences operation.
- (3) 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.
- (4) It is not intended that the matters set out in subclause (3) should affect the interpretation of “public benefit” for the purposes of authorisations under the Trade Practices Act.
- (5) This Agreement is neutral with respect to the nature and form of ownership of business enterprises. It is not intended to promote public or private ownership.

Prices Oversight of Government Business Enterprises

- 2.(1) Prices oversight of State and Territory government business enterprises is primarily the responsibility of the State or Territory that owns the enterprise.
- (2) The Parties will work cooperatively to examine issues associated with prices oversight of government business enterprises and may seek assistance in this regard from the Council. The Council may provide such assistance in accordance with the Council’s work program.
- (3) In accordance with these principles, State and Territory Parties will consider establishing independent sources of price oversight where these do not exist.
- (4) An independent source of price oversight advice should have the following characteristics:
- (a) it should be independent from the government business enterprise whose prices are being assessed;

- (b) its prime objective should be one of efficient resource allocation, but with regard to any explicitly identified and defined community service obligations imposed on a business enterprise by the government or legislature of the jurisdiction that owns the enterprise;
 - (c) it should apply to all significant government business enterprises that are monopoly, or near monopoly, suppliers of goods or services (or both);
 - (d) it should permit submissions by interested persons; and
 - (e) its pricing recommendations, and the reasons for them, should be published.
- (5) A Party may generally or on a case-by-case basis:
- (a) with the agreement of the Commonwealth, subject its government business enterprises to a prices oversight mechanism administered by the Commission; or
 - (b) with the agreement of another jurisdiction, subject its government business enterprises to the pricing oversight process of that jurisdiction.
- (6) In the absence of the consent of the Party that owns the enterprise, a State or Territory government business enterprise will only be subject to a prices oversight mechanism administered by the Commission if:
- (a) the enterprise is not already subject to a source of price oversight advice which is independent in terms of the principles set out in subclause (4);
 - (b) a jurisdiction which considers that it is adversely affected by the lack of price oversight (an “affected jurisdiction”) has consulted the Party that owns the enterprise, and the matter is not resolved to the satisfaction of the affected jurisdiction;
 - (c) the affected jurisdiction has then brought the matter to the attention of the Council and the Council has decided:
 - (i) that the condition in paragraph (a) exists; and
 - (ii) that the pricing of the enterprise has a significant direct or indirect impact on constitutional trade or commerce;
 - (d) the Council has recommended that the Commonwealth Minister declare the enterprise for price surveillance by the Commission; and
 - (e) the Commonwealth Minister has consulted the Party that owns the enterprise.

Competitive Neutrality Policy and Principles

- 3.(1) The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.
- (2) Each Party is free to determine its own agenda for the implementation of competitive neutrality principles.
- (3) A Party may seek assistance with the implementation of competitive neutrality principles from the Council. The Council may provide such assistance in accordance with the Council's work program.
- (4) Subject to subclause (6), for significant government business enterprises which are classified as "Public Trading Enterprises" and "Public Financial Enterprises" under the Government Financial Statistics Classification:
 - (a) the Parties will, where appropriate, adopt a corporatisation model for these government business enterprises (noting that a possible approach to corporatisation is the model developed by the inter-governmental committee responsible for GTE National Performance Monitoring; and
 - (b) the Parties will impose on the Government business enterprise:
 - (i) full Commonwealth, State and Territory taxes or tax equivalent systems;
 - (ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and
 - (iii) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.
- (5) Subject to subclause (6), where an agency (other than an agency covered by subclause (4)) undertakes significant business activities as part of a broader range of functions, the Parties will, in respect of the business activities:
 - (a) where appropriate, implement the principles outlined in subclause (4);
or

- (b) ensure that the prices charged for goods and services will take account, where appropriate, of the items listed in paragraph 4(b), and reflect full cost attribution for these activities.
- (6) Subclauses (4) and (5) only require the Parties to implement the principles specified in those subclauses to the extent that the benefits to be realised from implementation outweigh the costs.
- (7) Subparagraph (4)(b)(iii) shall not be interpreted to require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where the Party responsible for the regulation considers the regulation to be appropriate.
- (8) Each Party will publish a policy statement on competitive neutrality by June 1996. The policy statement will include an implementation timetable and a complaints mechanism.
- (9) Where a State or Territory becomes a Party at a date later than December 1995, that Party will publish its policy statement within six months of becoming a Party.
- (10) Each Party will publish an annual report on the implementation of the principles set out in subclauses (1), (4) and (5), including allegations of non-compliance.

Structural Reform of Public Monopolies

- 4.(1) Each Party is free to determine its own agenda for the reform of public monopolies.
- (2) Before a Party introduces competition to a sector traditionally supplied by a public monopoly, it will remove from the public monopoly any responsibilities for industry regulation. The Party will re-locate industry regulation functions so as to prevent the former monopolist enjoying a regulatory advantage over its (existing and potential) rivals.
- (3) Before a Party introduces competition to a market traditionally supplied by a public monopoly, and before a Party privatises a public monopoly, it will undertake a review into:
 - (a) the appropriate commercial objectives for the public monopoly;
 - (b) the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;

- (c) the merits of separating potentially competitive elements of the public monopoly;
 - (d) the most effective means of separating regulatory functions from commercial functions of the public monopoly;
 - (e) the most effective means of implementing the competitive neutrality principles set out in this Agreement;
 - (f) the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;
 - (g) the price and service regulations to be applied to the industry; and
 - (h) the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including the rate of return targets, dividends and capital structure.
- (4) A Party may seek assistance with such a review from the Council. The Council may provide such assistance in accordance with the Council's work program.

Legislation Review

- 5.(1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
- (2) Subject to subclause (3), each Party is free to determine its own agenda for the reform of legislation that restricts competition.
- (3) Subject to subclause (4) each Party will develop a timetable by June 1996 for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000.
- (4) Where a State or Territory becomes a Party at a date later than December 1995, that Party will develop its timetable within six months of becoming a Party.

- (5) Each Party will require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the principle set out in subclause (1).
- (6) Once a Party has reviewed legislation that restricts competition under the principles set out in subclauses (3) and (5), the Party will systematically review the legislation at least once every ten years.
- (7) Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review. If the Party determines a national review is appropriate, before determining the terms of reference for, and the appropriate body to conduct the national review, it will consult Parties that may have an interest in those matters.
- (8) Where a Party determines a review should be a national review, the Party may request the Council to undertake the review. The Council may undertake the review in accordance with the Council's work program.
- (9) Without limiting the terms of reference of a review, a review should:
 - (a) clarify the objectives of the legislation;
 - (b) identify the nature of the restriction on competition;
 - (c) analyse the likely effect of the restriction on competition and on the economy generally;
 - (d) assess and balance the costs and benefits of the restriction; and
 - (e) consider alternative means for achieving the same result including non-legislative approaches.
- (10) Each Party will publish an annual report on its progress towards achieving the objective set out in subclause (3). The Council will publish an annual report consolidating the reports of each Party.

Access to Services Provided by Means of Significant Infrastructure Facilities

- 6.(1) Subject to subclause (2), the Commonwealth will put forward legislation to establish a regime for third party access to services provided by means of significant infrastructure facilities where:
 - (a) it would not be economically feasible to duplicate the facility;

- (b) access to the service is necessary in order to permit effective competition in a downstream or upstream market;
 - (c) the facility is of national significance having regard to the size of the facility, its importance to constitutional trade or commerce or its importance to the national economy; and
 - (d) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.
- (2) The regime to be established by Commonwealth legislation is not intended to cover a service provided by means of a facility where the State or Territory Party in whose jurisdiction the facility is situated has in place an access regime which covers the facility and conforms to the principles set out in this clause unless:
- (a) the Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdictional boundary of the State or Territory; or
 - (b) substantial difficulties arise from the facility being situated in more than one jurisdiction.
- (3) For a State or Territory access regime to conform to the principles set out in this clause, it should:
- (a) apply to services provided by means of significant infrastructure facilities where:
 - (i) it would not be economically feasible to duplicate the facility;
 - (ii) access to the service is necessary in order to permit effective competition in a downstream or upstream market; and
 - (iii) the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist; and
 - (b) incorporate the principles referred to in subclause (4).
- (4) A State or Territory access regime should incorporate the following principles:
- (a) Wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access.

- (b) Where such agreement cannot be reached, Governments should establish a right for persons to negotiate access to a service provided by means of a facility.
- (c) Any right to negotiate access should provide for an enforcement process.
- (d) Any right to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended; however, existing contractual rights and obligations should not be automatically revoked.
- (e) The owner of a facility that is used to provide a service should use all reasonable endeavours to accommodate the requirements of persons seeking access.
- (f) Access to a service for persons seeking access need not be on exactly the same terms and conditions.
- (g) Where the owner and a person seeking access cannot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.
- (h) The decisions of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.
- (i) In deciding on the terms and conditions for access, the dispute resolution body should take into account:
 - (i) the owner's legitimate business interests and investment in the facility;
 - (ii) the costs to the owner of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;
 - (iii) the economic value to the owner of any additional investment that the person seeking access or the owner has agreed to undertake;
 - (iv) the interests of all persons holding contracts for use of the facility;
 - (v) firm and binding contractual obligations of the owner or other persons (or both) already using the facility;

- (vi) the operational and technical requirements necessary for the safe and reliable operation of the facility;
 - (vii) the economically efficient operation of the facility; and
 - (viii) the benefit to the public from having competitive markets.
- (j) The owner may be required to extend, or to permit extension of, the facility that is used to provide a service if necessary but this would be subject to:
- (i) such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;
 - (ii) the owner's legitimate business interests in the facility being protected; and
 - (iii) the terms of access for the third party taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.
- (k) If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement which was made at the conclusion of the dispute resolution process.
- (l) The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.
- (m) The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.
- (n) Separate accounting arrangements should be required for the elements of a business which are covered by the access regime.
- (o) The dispute resolution body, or relevant authority where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.
- (p) Where more than one State or Territory regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other cooperative legislative scheme, provide for a single process for

persons to seek access to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.

Application of the Principles to Local Government

- 7.(1) The principles set out in this Agreement will apply to local government, even though local governments are not Parties to this Agreement. Each State and Territory Party is responsible for applying those principles to local government.
- (2) Subject to subclause (3), where clauses 3, 4 and 5 permit each Party to determine its own agenda for the implementation of the principles set out in those clauses, each State and Territory Party will publish a statement by June 1996:
 - (a) which is prepared in consultation with local government; and
 - (b) which specifies the application of the principles to particular local government activities and functions.
- (3) Where a State or Territory becomes a Party at a date later than December 1995, that Party will publish its statement within six months of becoming a Party.

Funding of the Council

8. The Commonwealth will be responsible for funding the Council.

Appointments to the Council

- 9.(1) When the Commonwealth proposes that a vacancy in the office of Council President or Councillor of the Council be filled, it will send written notice to the States and Territories that are Parties inviting suggestions as to suitable persons to fill the vacancy. The Commonwealth will allow those Parties a period of thirty five days from the date on which the notice was sent to make suggestions before sending a notice of the type referred to in subclause (2).
- (2) The Commonwealth will send to the States and Territories that are Parties written notice of persons whom it desires to put forward to the Governor-General for appointment as Council President or Councillor of the Council.
- (3) Within thirty five days from the date on which the Commonwealth sends a notice of the type referred to in subclause (2), the Party to whom the

Commonwealth sends a notice will notify the Commonwealth Minister in writing as to whether the Party supports the proposed appointment. If the Party does not notify the Commonwealth Minister in writing within that period, the Party will be taken to support the proposed appointment.

- (4) The Commonwealth will not put forward to the Governor-General a person for appointment as a Council President or Councillor of the Council unless a majority of the States and Territories that are Parties support, or pursuant to this clause are taken to support, the appointment.

Work Program of the Council, and Referral of Matters to the Council

- 10.(1) The work of the Council (other than work relating to a function under Part IIIA of the Trade Practices Act or under the *Prices Surveillance Act 1983*) will be the subject of a work program which is determined by the Parties.
- (2) Each Party will refer proposals for the Council to undertake work (other than work relating to a function under Part IIIA of the *Trade Practices Act* or under the *Prices Surveillance Act 1983*) to the Parties for possible inclusion in the work program.
- (3) A Party will not put forward legislation conferring additional functions on the Council unless the Parties have determined that the Council should undertake those functions as part of its work program.
- (4) Questions as to whether a matter should be included in the work program will be determined by the agreement of a majority of the Parties. In the event that the Parties are evenly divided on a question of agreeing to the inclusion of a matter in the work program, the Commonwealth shall determine the outcome.
- (5) The Commonwealth Minister will only refer matters to the Council pursuant to subsection 29B(1) of the Trade Practices Act in accordance with the work program.
- (6) The work program of the Council shall be taken to include a request by the Commonwealth for the Council to examine and report on the matters specified in subclause 2(2) of the Conduct Code Agreement.

Review of the Council

11. The Parties will review the need for, and the operation of, the Council after it has been in existence for five years.

Consultation

12. Where this Agreement requires consultation between the Parties or some of them, the Party initiating the consultation will:
 - (a) send to the Parties that must be consulted a written notice setting out the matters on which consultation is to occur;
 - (b) allow those Parties a period of three months from the date on which the notice was sent to respond to the matters set out in the notice; and
 - (c) where requested by one or more of those Parties, convene a meeting between it and those Parties to discuss the matters set out in the notice and the responses, if any, of those Parties.

New Parties and Withdrawal of Parties

- 13.(1) A jurisdiction that is not a Party at the date of this Agreement commences operation may become a Party by sending written notice to all the Parties.
- (2) A Party may withdraw from this Agreement by sending written notice to all other Parties. The withdrawal will become effective six months after the notice was sent.
- (3) If a Party withdraws from this Agreement, this Agreement will continue in force with respect to the remaining Parties.

Sending of Notices

14. A notice is sent to a Party by sending it to the Minister responsible for the competition legislation of that Party.

Review of this Agreement

15. Once this Agreement has operated for five years, the Parties will review its operation and terms.

Commencement of this Agreement

16. This Agreement commences once the Commonwealth and at least three other jurisdictions have executed it.

Conduct Code Agreement

– 11 April 1995

WHEREAS the Council of Australian Governments at its meeting in Hobart on 25 February 1994 agreed to the principles of competition policy articulated in the report of the National Competition Policy Review;

AND WHEREAS the Parties intend to achieve and maintain constant and complementary competition laws and policies which will apply to all businesses in Australia regardless of ownership;

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA agree as follows:

Interpretation

1.(1) In this Agreement, unless the context indicates otherwise:

“Commission” means the Australian Competition and Consumer Commission established by the Trade Practices Act;

“Commonwealth Minister” means the Commonwealth Minister responsible for competition policy;

“Competition Code” means the text in:

- (a) the Schedule version of Part IV of the Trade Practices Act;
- (b) the remaining provision of that Act (except sections 2A, 5, 6 and 172), so far as they would relate to the Schedule version if the Schedule version were substituted for Part IV; and
- (c) the regulations under that Act, so far as they relate to any provision covered by paragraph (a) or (b)

applying as a law of a participating jurisdiction;

“Competition Laws” means:

- (a) Part IV of the Trade Practices Act and the remaining provisions of that Act, so far as they relate to that Part; and
- (b) the Competition Code of the participating jurisdictions;

“Council” means the National Competition Council established by the Trade Practices Act;

“fully-participating jurisdiction” means:

- (a) until the end of twelve months after the day on which the *Competition Policy Reform Act 1995* receives the Royal Assent — a State or Territory that is a party to this Agreement; and
- (b) after that date — has the meaning given by section 4 of the Trade Practices Act;

“jurisdiction” means the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia;

“legislation” includes Acts, enactments, Ordinances and regulations;

“modifications” has the meaning given by section 150A of the Trade Practices Act;

“participating jurisdiction” has the meaning given by section 150A of the Trade Practices Act;

“Party” means a jurisdiction that has executed, and has not withdrawn from, this Agreement;

“Trade Practices Act” means the *Trade Practices Act 1974*.

- (2) Where this Agreement refers to a provision in legislation which has not been enacted at the date of commencement of this Agreement, or to an entity which has not been established at the date of commencement of this Agreement, this Agreement will apply in respect of the provision or entity from the date when the provision or entity commences operation.

Exceptions from the Competition Laws

- 2.(1) Where legislation, or a provision in legislation, is enacted or made in reliance upon section 51 of the Competition Laws, the Party responsible for the legislation will send written notice of the legislation to the Commission within 30 days of the legislation being enacted or made.
- (2) After four months from when a Party sends written notice to the Commission pursuant to subclause (1), the Commonwealth Minister will not table in the Commonwealth Parliament regulations made for the purposes of paragraph 51(1B)(f) of the Trade Practices Act in respect of the legislation referred to in the notice, unless the Commonwealth Minister tables in the Parliament at the same time a report by the Council on:
 - (a) whether the benefits to the community from the legislation referred to in the notice, including the benefits from transitional arrangements, outweigh the costs;
 - (b) whether the objectives achieved by restricting competition by means of the legislation referred to in the notice can only be achieved by restricting competition; and
 - (c) whether the Commonwealth should make regulations for the purposes of paragraph 51(1B)(f) of the Trade Practices Act.⁴
- (3) Each Party will, within three years of the date on which the *Competition Policy Reform Act 1995* receives the Royal Assent, send written notice to the Commission of legislation for which that Party is responsible, which:
 - (a) existed at the date of commencement of this Agreement;
 - (b) was enacted or made in reliance upon section 51 of the Trade Practices Act (as in force at the date of commencement of this Agreement); and

⁴ The references in this section of the Conduct Code Agreement to paragraph 51(B)(f) of the Trade Practices Act are typographical errors. The correct reference is section 51(1C)(f).

- (c) will continue to except conduct pursuant to section 51 of the Trade Practices Act after three years from the date on which the *Competition Policy Reform Act 1995* receives the Royal Assent.

Funding of the Commission

- 3. The Commonwealth will be responsible for funding the Commission.

Appointments to the Commission

- 4.(1) When the Commonwealth proposes that a vacancy in the office of Chairperson, Deputy Chairperson, member or associate member of the Commission be filled, it will send written notice to the Parties that are fully-participating jurisdictions inviting suggestions as to suitable persons to fill the vacancy. The Commonwealth will allow those Parties a period of thirty five days from the date on which the notice was sent to make suggestions before sending a notice of the type referred to in subclause (2) or (3).
- (2) The Commonwealth will send to the Parties that are fully participating jurisdictions written notice of persons whom it desires to put forward to the Governor-General for appointment as Chairperson, Deputy Chairperson or member of the Commission.
- (3) The Commonwealth will send to the parties that are fully-participating jurisdictions written notice of person whom it desires to put forward to the Commonwealth Minister for appointment as associate members of the Commission.
- (4) Within thirty five days from the date on which the Commonwealth sends a notice of the type referred to in subclause (2) or (3), the Party to whom the Commonwealth sends a notice will notify the Commonwealth Minister in writing as to whether the Party supports the proposed appointment. If the Party does not notify the Commonwealth Minister in writing within that period, the Party will be taken to support the proposed appointment.
- (5) The Commonwealth will not put forward to the Governor-General a person for appointment as a Chairperson, Deputy Chairperson or member of the Commission unless a majority of the fully-participating jurisdictions support, or pursuant to this clause, are taken to support the appointment.

- (6) The Commonwealth will not put forward to the Commonwealth Minister a person for appointment as an associate member of the Commission unless a majority of the fully-participating jurisdictions support, or pursuant to this clause are taken to support, the appointment.

The Competition Code

- 5.(1) The Parties agree that the Competition Code text should apply by way of application legislation to all persons within the legislative competence of each State and Territory.
 - (2) Each State and Territory that is a Party will put forward for the consideration by their legislatures legislation which implements the principle set out in subclause (1).
 - (3) If the Commonwealth Minister is satisfied that the laws of a participating jurisdiction have made significant modifications to the Competition Code text in its application to persons within the legislative competence of the participating jurisdiction, the Commonwealth Minister may publish a notice in the Commonwealth of Australia Gazette stating that the Commonwealth Minister is so satisfied. Any such notice is to be published before the expiry of two months from the date on which the Commonwealth received written notice pursuant to subclause 6(8).
 - (4) If the Commonwealth Minister has published a notice of the type specified in subclause (3), the Commonwealth Minister may revoke that notice by publishing a further notice in the Commonwealth of Australia Gazette.

Modifications to the Competition Laws

- 6.(1) It is the intention of the Parties that where modifications are made to provisions of either Part IV of the Trade Practices Act or of the Schedule version of Part IV of that Act, similar modifications will be made to corresponding provisions of the other.
 - (2) The Commonwealth will consult with fully-participating jurisdictions before it puts forward for parliamentary consideration any modification to Part IV of the Trade Practices Act or to the Competition Code text.
 - (3) At the conclusion of the Commonwealth's consultation with the fully participating jurisdictions in relation to proposed amendments to the

Competition Code text, the Commonwealth will call a vote on the proposed amendments by sending written notice to each fully-participating jurisdiction.

- (4) For the purposes of voting:
 - (a) the Commonwealth will have 2 votes;
 - (b) each fully-participating jurisdiction will have 1 vote; and
 - (c) the Commonwealth will have a casting vote.
- (5) If a fully-participating jurisdiction does not vote in respect of a proposed amendment within thirty five days of the Commonwealth sending notice under subclause 6(3), that jurisdiction will be taken to have voted in favour of the amendment.
- (6) The Commonwealth will not put forward for parliamentary consideration an amendment to the Competition Code text unless a majority of the votes of the Commonwealth and the fully-participating jurisdictions support the amendment.
- (7) The Commonwealth will not be obliged to put forward for parliamentary consideration any amendment with which it does not concur.
- (8) Each Party will send written notice to all other Parties setting out modifications to the Competition Laws that have been made by the legislature of that Party, or by any person.

Consultation

7. Where clause 6 requires consultation between the Parties or some of them, the Party initiating the consultation will:
 - (a) send to the Parties that must be consulted a written notice setting out the matters on which consultation is to occur;
 - (b) allow those Parties a period of three months from the date on which the notice was sent to respond to the matters set out in the notice; and
 - (c) where requested by one or more of those Parties, convene a meeting between it and those Parties to discuss the matters set out in the notice and the responses, if any, of those Parties.

New Parties and Withdrawal of Parties

8. (1) A jurisdiction that is not a Party at the date of this Agreement commences operation may become a Party by sending written notice to all the Parties.
- (2) A Party may withdraw from this Agreement by sending written notice to all other Parties. The withdrawal will become effective six months after the notice was sent.
- (3) If a Party withdraws from this Agreement, this Agreement will continue in force with respect to the remaining Parties.

Sending of Notices

9. A notice is sent to a Party by sending it to the Minister responsible for the competition legislation of that Party.

Review of this Agreement

10. Once this Agreement has operated for five years, the Parties will review its operation and terms.

Commencement of this Agreement

11. This Agreement commences once the Commonwealth and at least three other jurisdictions have executed it.

Agreement to Implement the National Competition Policy and Related Reforms – 11 April 1995

WHEREAS the Council of Australian Governments at its meeting in Canberra on 11 April 1995 agreed to a program for the implementation of the National Competition Policy and related reforms;

AND WHEREAS the Commonwealth and the States have agreed to financial arrangements in relation to the implementation of the National Competition Policy (NCP) and related reforms;

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, AND

THE NORTHERN TERRITORY OF AUSTRALIA agree as follows:

The provision of financial assistance by the Commonwealth is conditional on the States making satisfactory progress with the implementation of NCP and related reforms (as set out below). The Commonwealth's commitment is on the basis that the financial arrangements will need to be reviewed if Australia experiences a major deterioration in its economic circumstances.

The Commonwealth will maintain the real per capita guarantee of the FAGs pool on a rolling three year basis.

- This will involve the Commonwealth extending the guarantee to 1997–98 now.
- The per capita element will have an estimated annual cost to the Commonwealth of \$2.4 billion by 2005–06 (see attached table).
- Local government will benefit from the link between the State and Local government FAGs pools.

There will also be three tranches of general purpose payments in the form of a series of Competition Payments.

- The first tranche of Competition Payments will commence in July 1997 and will be made quarterly thereafter.
- The annual payment from 1997–98 under the first tranche will be \$200 million in 1994–95 prices.
- It will be indexed annually to maintain its real value over time.
- Commencement of the first tranche of the Competition Payments and the per capita guarantee is subject to the States meeting the conditions set out below.
- The second and third tranches of the Competition Payments will commence in 1999–2000 and 2001–02. The annual Competition Payments will be \$400 million, in 1994–95 prices, from 1999–2000 and \$600 million, in 1994–95 prices, from 2001–2002. These payments will be indexed in real terms.

The Competition Payments to be made to the States in relation to the implementation of National Competition Policy (NCP) and related reforms will form a pool separate from the FAGs pool and be distributed to the States on a per capita basis. These Competition Payments will be quarantined from assessments by the Commonwealth Grants Commission.

- If a State has not undertaken the required action within the specified time, its share of the per capita component of the FAGs pool and of the Competition Payments pool will be retained by the Commonwealth.

Prior to 1 July 1997, 1 July 1999, and 1 July 2001 the National Competition Council will assess whether the conditions for payments to the States to commence on those dates have been met.

Conditions for payments to States

The first payments will be made in 1997–98 to each participating State as at the date of the payment and depending upon:

- (i) that State giving effect to the Competition Policy Intergovernmental Agreements and, in particular, meeting the deadlines prescribed therein, in relation to the review of regulations and competitive neutrality;
- (ii) effective implementation of all COAG agreements on: –
 - electricity arrangements through the National Grid Management Council,
 - the national framework for free and fair trade in gas, and
- (iii) effective observance of road transport reforms.

Payments under the second tranche of the Competition Payments will commence in 1999–2000 and be made to each participating State as at the date of the payment and depending upon:

- (i) that State continuing to give effect to the Competition Policy Intergovernmental Agreements including meeting all deadlines;
- (ii) effective implementation of all COAG agreements on: –
 - the establishment of a competitive national electricity market,
 - the national framework for free and fair trade in gas, and
 - the strategic framework for the efficient and sustainable reform of the Australian water industry; and
- (iii) effective observance of road transport reforms.

Payments under the third tranche will commence in 2001–02 and be made to each participating State as at the date of the payment and depending on the State:

- having given full effect to, and continues to observe fully, the Competition Policy Intergovernmental Agreements; and
- having fully implemented, and continues to observe fully, all COAG agreements with regard to electricity, gas, water and road transport.

Full details of the conditions are set out in the [following] attachment.

Agreement to Implement the National Competition Policy and Related Reforms									
National Competition Policy Payments (a)									
Year	Per Capita (b)		Per Capita (b)		Per Capita (b) Total	Competition Payment		State and Local Government Total Payments	
	\$m	\$m	\$m	\$m		1994-95 Prices \$m	1994-95 Prices \$m	\$m	1994-95 Prices \$m
1997-1998	194	14	209	186	186	219	* 200	428	386
1998-1999	392	29	420	365	365	226	200	646	565
1999-2000	604	44	647	546	546	465	* 400	1 113	946
2000-2001	829	60	890	729	729	479	400	1 369	1 129
2001-2002	1 070	78	1 148	914	914	739	* 600	1 888	1 514
2002-2003	1 327	97	1 423	1 101	1 101	761	600	2 184	1 701
2003-2004	1 600	117	1 716	1 290	1 290	783	600	2 499	1 890
2004-2005	1 890	138	2 028	1 481	1 481	806	600	2 833	2 081
2005-2006	2 198	160	2 359	1 675	1 675	829	600	3 188	2 275
Total	10 104	736	10 840	8 286	8 286	5 307	4 200	16 147	12 486

* indicates year in which each additional payment is made

(a) Estimates.

(b) Population growth is assumed to be about 1.1% from 1997-98 onwards.

(c) Reflecting the existing link between the respective pools.

Attachment

Conditions of Payments to the States

(a) Per capita Guarantee and First Tranche of the Competition Payments

Payment under the extension of the per capita guarantee and the first tranche will start in 1997–98 to each State and Territory that:

- has signed the Competition Principles Agreement and the Conduct Code Agreement at the COAG meeting in April 1995;
- in accordance with the Conduct Code Agreement, passed the required application legislation so that the Conduct Code applied within that State or Territory jurisdiction by 12 months after the Commonwealth’s Competition Policy Reform Bill received the Royal Assent;
- is a fully participating jurisdiction under the Competition Policy Reform Bill and a party to the Competition Principles Agreement at the time at which the payment is made (States and Territories must apply the Conduct Code as a law of the State without making significant modifications to the Code in its application to persons within their legislative competence and must remain a party to both Competition Policy Intergovernmental Agreements);
- is meeting all its obligations under the Competition Principles Agreement, which include, but are not limited to:
 - when undertaking significant business activities or when corporatising their government business enterprises, having imposed on these activities or enterprises full government taxes or tax equivalent systems, debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees and those regulations to which private sector businesses are normally subject on an equivalent basis to the enterprises’ private sector competitors,
 - having published a policy statement on competitive neutrality by June 1996 and published the required annual reports on the implementation of the competitive neutrality principles,

- having developed a timetable by June 1996 for the review and, where appropriate, reform of all existing legislation which restricts competition by the year 2000,
- having published by June 1996 a statement specifying the application of the principles in the Competition Principles Agreement to local government activities and functions (this statement to be prepared in consultation with local government); and
- (for relevant jurisdictions) has taken all measures necessary to implement an interim competitive National Electricity Market, as agreed at the July 1991 special Premiers' Conference, and subsequent COAG agreements, from 1 July 1995 or on such other date as agreed by the parties, including signing any necessary Heads of Agreement and agreeing to subscribe to the National Electricity Management Company and National Electricity Code Administrator;
- (for relevant jurisdictions) has implemented any arrangements agreed between the parties as necessary to introduce free and fair trading in gas between and within the States by 1 July 1996 or such other date as agreed between the parties, in keeping with the February 1994 COAG agreement; and
- effective observance of the agreed package of road transport reforms.

(b) Second Tranche of the Competition Payments

Payments under the second tranche will commence in 1999–2000, and be made each year thereafter to the States and Territories that have undertaken the following specified reforms by July 1999 in so far as they apply to them:

- (for relevant jurisdictions) completion of the transition to a fully competitive National Electricity Market by 1 July 1999;
- (for relevant jurisdictions) full implementation of free and fair trading in gas between and within the States including the phasing out of transitional arrangements in accordance with the schedule to be agreed between the parties;
- implementation of the strategic framework for the efficient and sustainable reform of the Australian water industry and the future processes as endorsed at the February 1994 COAG meeting and embodied in the Report of the Expert Group on Asset Valuation Methods and Cost-Recovery Definitions, February 1995;

- continuing to be a fully participating jurisdiction under the Competition Policy Reform Bill and a party to the Competition Principles Agreement at the time at which the payment is made;
- continued effective observance of the agreed package of road transport reforms; and
- meeting all obligations under the Competition Policy Intergovernmental Agreements.

(c) Third Tranche of Competition Payments

Payment under the third tranche will commence in 2001–02 and be made each year thereafter to the States and Territories on the basis of each State’s or Territory’s progress on the implementation of the following reforms:

- the extent to which each State and Territory has actually complied with the competition policy principles in the Competition Principles Agreement, including the progress made in reviewing, and where appropriate, reforming legislation that restricts competition;
- whether the State and Territory has remained a fully participating jurisdiction as defined in the Competition Policy Reform Bill;
- the setting of national standards in accordance with the Principles and Guidelines for National Standard Setting and Regulatory Action and advice from the Office of Regulation Review on compliance with these principles and guidelines; and
- continued effective observance of reforms in electricity, gas, water and road transport.
