

COMPETITION POLICY

The Hon Bruce Billson MP



What is the Competition Policy Review?

Competition policy is about making markets work for the long-term interests of consumers. Competition energises enterprises to keep their prices low and drives innovation and investment in the new technologies that allow the incomes of all Australians to grow over time.

The Government asked Professor Ian Harper and an expert panel to undertake an independent 'root and branch' review of competition policy. This was the first comprehensive review of Australia's competition framework in more than 20 years and delivers on a key election commitment by the Abbott Government.

The Competition Policy Review Final Report delivered to the Government on 31 March 2015 identifies ways to promote effective competition

What is the Government consulting on?

The Competition Policy Review Final Report makes 56 recommendations for reforms across three key themes: competition policy, laws and institutions. The Panel undertook extensive engagement with stakeholders. Its Final Report was informed by around 600 submissions received on the Draft Report it published in September 2014.

The Government supports the broad direction of the Final Report, promoting more dynamic, competitive and well-functioning markets.

The Government is now consulting on the recommendations of the Final Report. The focus of this consultation is to strengthen Australia's *Competition and Consumer Act 2010* (CCA) and give small businesses a fair go. It is now your time for you to help shape Australia's future competition law framework.

We want to hear from industry, consumers and all levels of government. This input will inform the Government's response to the report later in the year.

What does the Review mean for small business?

Small business and family enterprises are the engine room of our economy. The Panel makes recommendations designed to help small businesses compete with bigger rivals.

These include a more effective misuse of market power provision and simpler laws to help small businesses understand their rights and obligations.

The Panel also recommended better access to justice when disputes occur, this includes more flexibility in collective bargaining processes that let small businesses work together to negotiate with large businesses, and strengthening competitive neutrality policies to ensure the commercial activities of government don't disadvantage small businesses.

The Government is interested in your views on how these changes to the law might create a more level playing field and support competition based on merit, not on muscle.

Competition law recommendations to consider

Misuse of Market Power

Businesses with substantial market power are prohibited from using their position to damage competitors. This is an important law to ensure markets remain contestable even where there are large incumbents.

The Panel considers that this law isn't working as well as it should be. The Panel recommends it be re-framed to focus on protecting the competitive process and suggests additional legislative guidance to avoid discouraging pro-competitive activities. The focus on conduct with the purpose or effect of substantially lessening competition is in line with many other provisions in the CCA.

This recommendation has changed since the Draft Report and the Government seeks your views on its effectiveness in preventing misuse of market power.

Mergers and Acquisitions

Mergers that substantially lessen competition are prohibited, except where they result in a benefit to the public. Businesses often seek approval before they merge to avoid the risk of subsequent court action. Currently, businesses have an option of three different approval processes: the ACCC can give informal or formal clearance that the merger does not substantially lessen competition, or the Australian Competition Tribunal can give an authorisation that the merger is in the public interest.

The Panel recommends changes to the way approval processes work, including that the ACCC could also consider the public interest for merger clearances. The Australian Competition Tribunal's role would change so that it would only hear appeals when parties were unhappy with ACCC decisions. The Panel also recommends that laws be changed to ensure competition from potential imports is taken into account in merger decisions.

The Government is interested in your views on how the merger review processes might be improved.

National Access Regime

The National Access Regime allows businesses access to nationally significant infrastructure facilities owned by others, such as railways, airports and gas lines, in certain circumstances. The Productivity Commission (PC) reviewed the Regime in 2013 and recommended changing the circumstances in which access would be granted. The Panel recommended different changes that would require a higher hurdle to be met for access declarations than under the PC's recommendations.

The Government seeks your feedback on the current situation and the recommendations from both the PC and the Panel's review.

Liner Shipping

Liner shipping operators are permitted to enter agreements that would be prohibited under the cartel laws in other parts of the economy. Historically, this sought to ensure stable shipping services for importers and exporters.

The Panel recommends removing the exemption for this industry, but introducing a 'block exemption' for liner shipping agreements that meet a minimum standard of pro-competitive features.

The Government is interested in your views on how best to regulate this sector.

How can I have my say?

There are two ways you can get involved:

1. Lodge a formal written submission
2. Provide brief feedback via the website

You can provide your views until 26 May 2015. If you wish, you can also ask that your submission or feedback be treated as confidential.

Further information is available at:
www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Competition-Policy-Review-Final-Report