

27 May 2015

General Manager
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Dolman

Competition Policy Review Final Report

Thank you for the opportunity to comment on the Competition Policy Review's Final Report.

COBA is the industry body for credit unions, mutual building societies and mutual banks and, on behalf of Friendly Societies of Australia, friendly societies. Collectively, the institutions we represent have more than \$98 billion in assets and serve more than 4 million customers. The customer owned model is the proven alternative to the listed model, delivering competition, choice, and consistently market leading levels of customer satisfaction.

COBA has been a strong supporter of the work of the competition policy review. Competition is an essential element of efficient markets, and without adequate competition, consumer outcomes suffer, in terms of price, choice and innovation.

Our comments on specific elements of the Report are set out below:

Market Power

COBA agrees that the current misuse of market power provision – section 46 of the Competition and Consumer Act 2010 (CCA) – is not effective in achieving its policy objective.

We agree with the ACCC's view that its current regulatory toolkit is inadequate to respond to the misuse of market power. The ACCC has advised the Competition Policy Review that the existing misuse of market power prohibition "...does not effectively capture unilateral anti-competitive conduct by firms with market power."¹

This is particularly concerning for COBA given the market power currently held by the major banks in the banking sector. The Financial System Inquiry (FSI) Interim

¹ ACCC, *Submission to Competition Policy Review – Response to the Draft Report*, November 2014, p. 50.

Report found that: "The major banks have market power across a range of markets."²

That the major banks have market power is an immediate concern, given the ACCC's definition of market power as "the ability of a business to insulate itself from competition."³

The ability of the major banks to ignore traditional competitive pressures is exemplified by statements made late last year by ANZ CEO Mike Smith, who asserted that if the major banks were required to hold more capital this would "come at a cost to customers who will pay more for home lending,"⁴ and estimated that loan prices would increase by about 50 basis points.

This is despite the fact that the hypothetical capital changes Mr Smith was discussing would be applied to only four or, at most, five of Australia's approximately 180 Authorised-Deposit Taking Institutions (ADIs). In a competitive market, five businesses would not be able to unilaterally increase their prices without suffering a loss of market share. However, major bank CEOs are suggesting that they will be able to entirely pass these costs onto consumers. Such an outcome would not be symptomatic of a healthy and competitive market.

Further evidence about the true nature of competition between the major banks has been put on the record by a former director of a major bank.⁵ This board-room perspective from John Dahlsen is significant because Mr Dahlsen served as an ANZ director for 20 years (1985-2005).

According to Mr Dahlsen:

"Banks compete through engaging in parallel behaviour and colluding with each other to the disadvantage of the consumer."

COBA supports a strong market power provision in the CCA which is effective in preventing the abuse of market power.

The Final Report proposes re-framing section 46, removing the "take advantage" element and altering the purpose test.⁶ COBA supports this change. We agree that the current test is difficult to apply in practice, and that the proposed focus on the effect of the change, rather than determining the intent behind it, should make it more effective.

As the Report notes, the proposed amendment to section 46 will deliver "...a more effective prohibition on unilateral anti-competitive conduct."⁷

Price Signalling

While COBA agrees that price signalling can lead to undesirable outcomes (particularly in the banking sector), we would argue that the improper use of price

² Financial System Inquiry, *Interim Report*, July 2014, p. 2-21

³ See: <https://www.accc.gov.au/business/anti-competitive-behaviour/misuse-of-market-power>

⁴ Australian Financial Review, *New bank rules could lead to big rate hikes, says ANZ chief*, 1 Nov 2014.

⁵ *Murray financial report 'abject failure', says ex-ANZ board man*, Australian Financial Review 18 August 2014

⁶ Competition Policy Review, *Final Report*, March 2015, p. 340.

⁷ Competition Policy Review, *Final Report*, March 2015, p. 347.

signalling is just a symptom of a broader underlying problem, namely a lack of competition.

COBA has long argued that there is inadequate competition in the banking sector, and agrees with the FSI's assessment that the high level of concentration in the banking sector creates risks to the degree of competition.⁸

It is this concentration and its impact on competition that led to the previous government's decision to introduce rules targeting price signalling. The fact that the restrictions were only applied to the banking sector was a clear demonstration competition concerns are particularly prominent in that area.

COBA made multiple submissions to the FSI seeking reforms to the financial sector which will improve competition by allowing all banking institutions to operate on a level playing field.⁹ The FSI's Final Report acknowledged many of the concerns raised by COBA, and made several critical recommendations aimed at improving banking competition which, if implemented, would go a long way towards removing the need for specific price signalling rules in the banking sector.

COBA supports the Competition Review Panel's proposed changes to the price signalling arrangements. We note that the current rules apply to all ADIs, placing an unnecessary regulatory burden on smaller ADIs when the measure was aimed exclusively at conduct or potential conduct by the four major banks.

COBA agrees that dealing with price signalling in a consistent fashion across all sectors through a broader "concerted practices"¹⁰ element of section 45 of the CCA would be a simpler and more streamlined way to deal with the issue.

Please contact me on 02 8035 8448 or Micah Green on 02 8035 8447 to discuss this submission.

Yours sincerely



LUKE LAWLER
Acting Head of Public Affairs

⁸ Financial System Inquiry, *Final Report*, November 2014, p. 3.

⁹ See www.customerownedbanking.asn.au for details.

¹⁰ Competition Policy Review, *Final Report*, March 2015, p. 372.