



8 October 2024

Mr Jason McDonald
National Competition Policy Unit
The Treasury
Langton Crescent
PARKES, ACT 2600

By email: nationalcompetitionpolicy@treasury.gov.au

Dear Mr McDonald

Revitalising National Competition Policy Consultation

Thank you for the opportunity to make a submission to Treasury's Revitalising National Competition Policy consultation.

The main actions that the Minerals Council of Australia (MCA) would like to see from the review are:

- A recommitment to neutral National Competition Principles in the context of the global and domestic changes at play
- The National Competition Reform Agenda focusing on pure competition issues, including industrial relations
- Revitalisation of competition policy institutions and frameworks based on robust evidence.

Competitive markets have facilitated investment in the Australian mining industry

Australian mining is constantly seeking to improve its efficiency owing to fiercely competitive international commodity markets and a growing number of mining jurisdictions competing for investment.

Clear policy frameworks are needed to ensure markets function efficiently so that Australia can attract the global mining investment that enables the mining industry's substantial economic contribution.

Mining is by its very nature a risky business. Investment is made under a high degree of uncertainty. Projects are mostly irreversible – they are chiefly location specific and have little productive use outside of the industry. This together with volatile commodity markets means that investors are also exposed to significantly more variation in the returns on assets compared to those in other industries.¹ Australian mining's share of private sector capital stock (15 per cent) is substantially larger than that of any other industry and therefore has the greatest amount of assets at risk compared to other industries.²

¹ Minerals Council of Australia, *Future Critical – Meeting the investment challenge*. September 2023, p.21.

² ABS, *Australian System of National Accounts*, table 68, released 27 October 2023.

Given the characteristics of mining operations and investment, the functions of competition that mining companies rely on include:

- Flexibility, choice and diversity in factor markets.
- Efficiency in the provision of government service and regulatory functions.
- Information rich price signals for production and investment decisions.

MCA provides the following feedback on the Revitalising National Competition Policy consultation paper.

Recommendations

Recommit to neutral National Competition Principles in the context of the global and domestic changes at play

Uncertainty in competition principles may adversely affect decisions concerning investment in and operations of large, lumpy, capital-intensive long-lived projects such as those in the mining industry. To improve principles:

- Re-word principles where necessary to ensure they reflect contemporary conditions
- Evaluate each principle in the context of contemporary conditions
- The Council on Federal Financial Relations recommit to the principles.

Governments recommitting to National Competition Principles would send a clear and stable signal to business about future competition policy.

The world has significantly changed since National Competition Policy (NCP) was first implemented. Geopolitical and geoeconomic conditions are shifting the role of governments in many economies around the world. Policies being implemented, including in Australia, are aiming to realign national and economic security interests as economies transition to net zero and respond to rapid advancements in technologies.

Given the factors at play, NCP principles must remain fit for purpose. MCA's assessment is that NCP principles are enduring, but some may have weathered over time owing to changing conditions. Although the context for the Hilmer report recommendations may have changed, the application of the principles remains sound. The principles have served Australia well in successfully transitioning the economy over time and play a vital role in safeguarding competition policy from backsliding.

MCA cautions against principles that trade off competition for economic stability. Principles should be robust and able to withstand changing global and domestic drivers irrespective of how the economy evolves. To ensure all principles remain fit for purpose and if necessary are revitalised, each should be subjected to rigorous evidence-based assessment.

Some of the proposals concerning principles in the consultation paper present risks to retaining competition neutrality. There is merit in broadening the scope of the Legislation Review Principle to government policies and processes that have the potential to significantly lessen competition. However, a policy posture that shifts from one that defends competition to one that promotes competition creates uncertainty about the potential actions of government.

Furthermore, an independent umpire can make a ruling on whether an action is likely to lessen competition, but a government that is mandated to actively promote competition or 'activate' the demand side will be asked to make rulings on prospective policy arrangements, which will create additional market uncertainty.

Focus the National Competition Reform Agenda on pure competition issues, including industrial relations

Mining companies need a clear line of sight from competition policy reform objectives to the impact on their investment and operational decisions. To improve reform objectives:

- Focus the reform agenda on pure competition issues with the simple objective of improving the efficiency of the Australian economy.
- Adopt reform themes associated with streamlining regulation, reducing regulatory barriers to entry, expansion or exit, and increasing the choice and flexibility with which businesses can go about operations.
- Develop workplace relations policy reform themes that balance the workplace imperatives of competitiveness, innovation and productivity growth with the need for a strong safety net.

The proposed National Competition Reform Agenda set out in the consultation paper represents a shift away from the industry-agnostic thrust of the Hilmer Review report. There is a risk that priorities slated for competition policy reform drift into other policy domains which will undermine investment certainty and dilute the efficiency outcomes sought. The reform agenda must avoid loading more objectives into the NCP, especially where they align more with environmental, technology and industrial outcomes and less with direct competition outcomes.

Where much of the focus of the current NCP and its principles was directed at achieving efficiency outcomes by exposing government functions to the discipline of market competition, several prospective NCP principles and reform themes carry with them the prospect of re-introducing a more interventionist government posture.

Consistent with the Hilmer Review, the outcomes of competition reform should be focused on improving efficiency. Competition policy is not an appropriate vehicle for objectives such as cost-of-living relief, distributional issues, or specific structural targets, though it may indirectly help.

Among the prospective reform themes identified in the consultation paper, 'lowering barriers to labour mobility' is of particular interest to mining companies. Industrial relations regulation has generally fallen outside the auspices of competition policy and union activities are largely exempt from the anti-competitive conduct provisions of the *Competition and Consumer Act 2010*, setting aside secondary boycotts.

However, the pervasiveness of industrial regulations across the economy and their influence on the flexibility of enterprises to innovate, adapt their operations to changing conditions and commit to new investment is at the heart of modern competition. While labour markets are more complex than product markets owing to their human dimension, there is no justification to exclude measurement of the restrictions on the competitiveness of Australian businesses imposed by such laws.

Expanding regulation of Australia's labour market is increasing costs and risks, which will ultimately deter mining investment and bring existing mining operations to early closure. Recent government amendments to the *Fair Work Act 2009* run counter to the direction of reforms to Australia's industrial relations system that began in the 1990s. They are also at odds with the consultation paper's notion that a flexible and mobile labour force is a key driver of a productive, dynamic and resilient economy. These changes have reimposed centralised wage-fixing in the form of multi-employer bargaining; increased risk and uncertainty for businesses under 'same job, same pay' laws; severed the link between productivity and pay by expanding union powers to force bargaining and arbitration; and risked encouraging workplace disharmony by substantially expanding union delegates' rights and union right of entry.

Reduced flexibility in employment arrangements and increased adversarial bargaining will place more matters under the control of centralised tribunals rather than the stakeholders directly involved. In turn, by raising costs, undermining productivity, and weakening competitiveness, re-regulation of

labour markets will limit the future of key industries like mining to continue to deliver benefits to the Australian community.

The industrial relations system must be re-evaluated to provide flexibility and choice for employers and employees, which are the preconditions for improving competitiveness.

Revitalise the competition policy institutions and frameworks based on robust evidence

A renewed emphasis on rigorous policy development and evaluation is required to improve the credibility of NCP for investment in large, capital-intensive projects such as in mining and minerals processing projects. To effectively revitalise competition policy institutions:

- Reinstating the regulatory impact assessment function back into the Productivity Commission alongside the Australian Government Competitive Neutrality Complaints Office to improve the credibility of competition policy and the quality of decision making, which will assist companies to commit to investment.

The institutional framework supporting NCP is sound, but small changes in competition policy institutional arrangements will improve the quality of decision making and credibility.

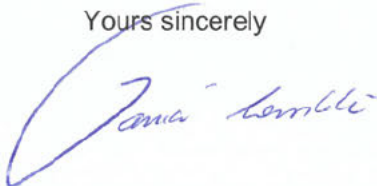
The current institutional framework supporting NCP, led by the National Competition Council and involving a broader suite of actors, will continue to provide the appropriate flexibility to governments. However the level of evidence required by competition policy institutions to develop and evaluate policy will need to be strengthened, and this applies more broadly to impact analysis across government.

This is most effectively achieved by reinstating the regulatory impact assessment function back into the Productivity Commission alongside the Australian Government Competitive Neutrality Complaints Office. Whether specific institutions responsible for assessments change or not, the MCA endorses the observation made in the Productivity Commission's 2005 review of the NCP – frameworks should embody and build on key strengths of NCP, including: clear reform objectives, principles and programs; robust public interest provisions; independent and transparent monitoring; and measures to prevent backsliding.³

The capacity of institutions to do this work has shifted over time. The regulatory impact assessment function has evolved from the Office of Regulation Review – at arm's length from government inside the Productivity Commission – to the Office of Best Practice Regulation housed within departments, to what is now the Office of Impact Analysis at the Department of the Prime Minister and Cabinet. This has been accompanied by a dilution of the stringency with which an assessment of regulatory impacts is required to inform decisions regarding new policy proposals.

The MCA welcomes the opportunity to provide further input to this consultation. Should you have any questions, please do not hesitate to contact Ross Lambie – Chief Economist on [REDACTED] or via email [REDACTED].

Yours sincerely



TANIA CONSTABLE
CHIEF EXECUTIVE OFFICER

³ Productivity Commission 2005, *Review of National Competition Policy Reforms*, Report no. 33, Canberra, p.359.