



Submission to Treasury Competition Review

13 February 2024

Contents

Introduction.....	3
1. Promoting competitive and efficient markets	5
1.1. Reforms are needed for more efficient monopoly infrastructure and supply chains	5
1.1.1. A modernised and more effective range of regulatory tools	6
1.1.2. Clarity on the split between government and user funding of infrastructure	6
1.1.3. Other supply chain and infrastructure challenges.....	7
1.2. Government involvement in markets	8
1.2.1. Privatisations.....	8
1.2.2. Government procurement can impact competition	9
1.2.3. Government procurement can be a target for collusion	9
1.2.4. Harmonisation of key regulatory frameworks	10
1.3. Enabling competition and consumers to drive the green transition.....	11
2. Informed and confident consumers and small business.....	14
2.1. Empowering consumers and small business	14
2.1.1. Addressing switching costs and ‘stickiness’	14
2.1.2. Market transparency in concentrated markets.....	16
2.1.3. Consumer confidence in goods and services.....	17
2.2. A more effective care economy through better regulation of price and service	18

Introduction

Properly functioning markets are critical to productivity growth and prosperity. They provide signals that encourage resources to be devoted to their most highly valued uses, benefitting consumers with lower prices, increased quality, range and other factors of competition. Properly functioning markets also drive innovation and reduce waste by encouraging firms to employ efficient production processes and pursue better ways of doing things.

Australia's competition policy, and the ACCC's role in implementing it, is based on the idea that informed and confident consumers and businesses enable competition on its merits to thrive, in turn driving competitive markets that deliver for all Australians.

Australia's competition laws and their enforcement need to be effective to ensure that barriers preventing meaningful competition are not created, entrenched or extended through acquisitions, forms of coordinated behaviour, or through conduct that limits the ability of rivals to compete on their merits. It is also important that government policies or actions do not impose unintended or unnecessary impediments to competition.

This document proposes a range of reforms that can enhance competition, productivity, and innovation in Australia and that supplement the priorities the Treasury Competition Review Taskforce has already identified. They come under two key themes:

- 1) promoting competitive and efficient Australian markets; and
- 2) ensuring informed and confident consumers and small businesses.

These are topics the Taskforce itself may wish to explore in more detail or alternatively they could be issues to pursue via the revitalised National Competition Policy process as agreed by the Commonwealth and States and Territories in December 2023.¹

This submission does not cover the important issues of competition in aviation, merger reform, digital platform regulation or an unfair trading prohibition, which are being considered in the separate processes underway.

¹ <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/treasurers-meet-queensland>



Productivity enhancing initiatives for the Competition Review

Promoting competitive and efficient markets



Efficient use of monopoly infrastructure in our supply chains is essential to Australia's productivity growth and must be supported by effective regulation that is targeted to the problem.



There are substantial benefits in governments pursuing regulatory harmonisation and taking a stronger focus on competition during procurement and any privatisations.



When considering intervening in markets – particularly those with new and evolving challenges – governments need to ensure that they will factor in the importance of maintaining or promoting competition.



In markets transitioning to net zero, particularly in energy, there must be effective competition and mechanisms to ensure 'consumer trust'.

Ensuring informed and confident consumers & suppliers



Ensure consumers and suppliers have the tools they need to make informed decisions and drive competition. Concentrated markets may require mandated transparency, prompts to consumers or portability to enable switching.



In the care economy, price is not an effective driver of competition, due to subsidies. Governments will need to take a more direct stewardship role.

These proposals are in addition to the important issues of competition in aviation, merger reform, digital platform regulation and an unfair trading practices prohibition, which have separate processes underway.

1. Promoting competitive and efficient markets

1.1. Reforms are needed for more efficient monopoly infrastructure and supply chains

Efficient use of monopoly infrastructure in our supply chains is essential to Australia's productivity growth and must be supported by an effective range of regulatory tools.

Inefficiencies in supply chains affect prices for all goods and services sold in Australia and the competitiveness of our exports. There are reform opportunities for regulation of bottleneck infrastructure that can pay dividends to Australian consumers and producers. Governments no longer own many essential facilities, like ports and airports, but our regulatory frameworks can still be better at promoting efficiency.

Vertically integrated monopolies can be damaging to competition if there is a risk of denial of access or otherwise adversely affecting access through high prices, reduced service or unequal treatment. However, access-related issues have now become less about access to infrastructure and more about the types of advantages a vertically integrated monopoly can gain from its position. This can come through information about how infrastructure users operate or greater visibility of intellectual property or processes relating to their operations, for example, as an owner/operator of an intermodal freight terminal.

Australia continues to have markets characterised by infrastructure monopolies, and consequent monopoly pricing and other inefficiencies which has an impact on competition and productivity. Currently, key monopoly infrastructure such as our airports and ports are able to extract economic rents by pricing access and services in a manner unlinked to the efficient use of these important assets. This is a concern even if infrastructure is not vertically integrated and there is no obvious impact on competition in related markets. In the same way Australia's merger framework would almost never allow the establishment of a monopoly, our competition policy should adequately address those markets where monopolies exist. Similar issues can arise in markets that are highly concentrated short of monopoly.

Under current regulatory frameworks, ports for example are not subject to the credible threat of further or more appropriate regulation, that might otherwise constrain them from exercising their market power. In the case of ports, this has been due (at least in part) to governments privatising ports without first establishing adequate regulation.

The ACCC acknowledges concerns regarding critical supply chain infrastructure and related services have been explored overtime across a range of reviews and processes. While some of these processes are ongoing (e.g. per Part X and liner shipping), the problems identified in many of these reviews persist, concerns from stakeholders have only increased and the impact on the economy grown.

Effective competition policy should not seek to avoid regulating monopoly infrastructure; rather, it should find the best way to reasonably reduce the loss of efficiency due to the absence of competition. Monopolies typically do not have the same incentives to maximise output or invest efficiently as firms in a competitive market, which has flow-on effects for

consumers and businesses in our industries like agriculture and transport. Where competition is not working effectively, economic regulation is needed to create a system of incentives to drive economically efficient conduct and ensure the Australian economy is as productive as possible. Competition and regulation are not mutually exclusive and regulation can also improve outcomes for consumers by improving the competitive incentives for participants in non-monopoly markets. This is particularly the case where there is a strong bargaining imbalance and / or asymmetry of information. By doing so, consumers can enjoy more reliable choice of goods and services at lower prices, and Australia's exporting businesses can more effectively compete internationally.

1.1.1. A modernised and more effective range of regulatory tools

To achieve efficient use of the important infrastructure in Australia's supply chains, regulatory frameworks need to apply effectively to natural monopoly infrastructure in any market or, if appropriate, infrastructure owners or operators with market power. A range of regulatory options must be available, from monitoring through to full economic regulation, so that the right solution can be tailored to each problem.

Currently, Australia's regulatory framework does not effectively deal with the infrastructure competition issues in the Australian economy and needs reform. For example:

- monopoly pricing that is not prohibited by section 46 of the *Competition and Consumer Act 2010* (Cth) (e.g., where a non-vertically-integrated infrastructure owner extracts monopoly rents from all access seekers equally) has no other whole of economy mechanism to address it, meaning there is no credible threat of regulation for key monopoly infrastructure like ports or airports – reducing efficiency;
- declaration under the National Access Regime only applies to vertically integrated monopolies; further, it is a drawn out process and coverage of digital infrastructure is subject to debate;
- price notification provisions and access undertakings have rigid frameworks that do not allow fully effective or efficient regulatory processes (discussed further in section 3 below).

There are improvements available for all aspects of the existing infrastructure regulation framework, and benefits in providing clearer criteria and arrangements for when State and Commonwealth governments would apply a particular level of regulatory oversight. The key regulatory mechanisms and how they are applied to infrastructure have not been overhauled since their introduction nearly 30 years ago. There are also questions about applicability of the regulations in the age of digital infrastructure, some of which has substantial market power. While industry-specific approaches are possible, an updated range of flexible tools for general economic regulation at all levels of government can provide a more certain and consistent way to protect the long-term efficient use of, and investment in, infrastructure.

1.1.2. Clarity on the split between government and user funding of infrastructure

As governments have maintained a role in building and funding major infrastructure (including funding through grants or equity) there is benefit in clarifying the extent that users are expected to pay for government-funded infrastructure as compared to taxpayers at large. This would provide a more transparent and certain medium term price path for the businesses that have no or little choice but to use monopoly infrastructure. This, in turn, should allow for more efficient investment by those users, which should also make supply

chains more productive. It could also provide more clarity for government business enterprises (GBEs) as to how to trade-off between their government-mandated policy outcomes and the commercial aspects of their businesses.

Regulatory frameworks need to interact with the governments' policy roles, and where the monopoly infrastructure is government owned, with the shareholding governance arrangements. A more transparent and clearly defined approach would allow governments to set policy affecting both the monopoly infrastructure provider and the transparency of associated expenditures. Such a framework would establish who should pay for the efficient implementation of any policy decisions – customers (through regulated prices) or government (through grants or other non-equity funding).

Future risks

Without clarity and structure, large projects like the approximately \$30b Inland Rail project could create uncertainty for users and likely lead to inefficient use of the infrastructure. Not only would users not know the likely costs of using a service, it may mean that a state or commonwealth regulator in the future would have to deem large parts of equity-funded projects uncommercial and thus unrecoverable.

For these reasons, there should be greater transparency of government policy decisions and a clear distinction between funding that is, and is not, expected to be paid for by users before it is allocated to the GBEs.

1.1.3. Other supply chain and infrastructure challenges

In addition to the challenges that arise from specific infrastructure, there are other areas of regulation or economic reform that can enhance productivity and efficiency in Australia's supply chains. Current examples include liner shipping and road reform.

Part X of the CCA exempts ocean carriers that register agreements with the Department of Infrastructure from key parts of the CCA that prohibit anti-competitive conduct. Part X allows carriers with registered agreements to fix prices, coordinate schedule and regulate capacity, amongst other things. No other industry has an exemption like Part X, yet Australia is highly reliant on shipping for exports and imports.

Concentration in the shipping industry has grown significantly over the past decade, increasing the risk that exemptions provided by Part X could lead to elevated freight rates on Australian trade routes. The ACCC considers that Part X should be replaced with a more targeted exemption regime (being a class exemption and/or individual authorisations) which would allow for limited forms of cooperation that would not be likely to lead to substantial lessening of competition or that would likely result in an overall public benefit.

More broadly, Australia's approach to road pricing does not align the prices users pay with costs. The funding model faces two key problems: current user charges do not cover expenditure on roads and the current funding for roads is likely to be disrupted by electric vehicles. The recent High Court finding that Victoria's electric vehicle road pricing charge was invalid provides further incentive for national reforms to ensure regulation keeps pace with the use of infrastructure.

Reforms to efficient road pricing would also promote efficient competition between and use of/investment in different modes of freight (road, rail, air, sea). The ACCC is part of the Land Transport Market Reform Steering Committee (along with transport and treasury

representatives from all jurisdictions) and continues to advocate for road reforms that are nationally consistent, efficient, prudent and based on economic principles.

Issue	Potential reform	Benefits
An effective regulatory framework enabling tailored responses to address competition problems	An overhauled infrastructure regulation framework that allows the government to easily tailor regulatory options to infrastructure depending on the specific situations; from price monitoring through to full economic regulation.	More proportionate and flexible regulation that can promote transparency and efficient use of infrastructure. Reduces the need for fragmented and bespoke industry-specific approaches to be developed for each industry.
Monopoly pricing	Regulation should be able to apply based on efficient use of infrastructure, not just downstream competition. Coverage of non-vertically integrated monopolies is needed.	Reduce deadweight loss in supply chains; better incentives (certainty) for users of monopoly infrastructure to invest.
Clarity on government funding of infrastructure	Agreement that governments will state up-front the proportion they will fund infrastructure and how much users are expected to pay.	Transparency and clarity on government policies that place obligations on regulated or government-owned infrastructure. This would in turn allow users to make better informed investment and use decisions in their own businesses.
Liner shipping exemption	Repeal Part X of the CCA with an appropriate transition mechanism.	Promote competition by removing a blanket exemption and limiting cooperation between competitors to conduct that would not substantially lessen competition, or that would likely result in overall public benefit.

1.2. Government involvement in markets

There are substantial benefits in governments pursuing regulatory harmonisation and taking a stronger focus on competition during procurement and any privatisations.

Competition and efficiency need further promotion as a key factor in government decision-making at all levels. Approaches to privatisations, procurement processes and regulatory harmonisation are some of the clear pro-competitive and productivity-enhancing reforms left on the table.

1.2.1. Privatisations

A key objective of privatisation was to increase efficiency as compared to when assets were under government ownership. However, results have been mixed and many privatised infrastructure providers are likely charging inefficiently high prices—often because privatisation processes seek to maximise sale revenue by omitting regulatory controls, at the cost of competition and efficient use of, and investment in, the infrastructure.

When a government monopoly is sold with inadequate regulation in a bid to maximise the sale price, any short-term benefits will be offset by the impact of longer-term negative effects in the economy through inefficiently high monopoly pricing and reduced incentives to invest for users of the infrastructure. A privately-owned monopoly has the incentive and ability to charge prices and set terms and conditions of access that maximise its own profits unless constrained by regulation.

The ACCC has observed problems emerging in many areas of Australia's infrastructure following privatisations that were not well-implemented.

Port of Newcastle

The Port of Newcastle was a stark example where no adequate regulatory framework led to an unconstrained monopoly that could charge inefficiently high prices. Similarly, even where a degree of regulatory oversight was put in place, such as with the Port of Melbourne, the Essential Services Commission VIC has since found the port has used its market power in the setting of rents.²

Australian governments should agree to modernised, national principles for privatisations that focus on ensuring efficient markets and competition. Such principles should require an appropriate regulatory framework be in place before any government monopoly is privatised.

1.2.2. Government procurement can impact competition

Federal, State and Local Government choices about procuring goods or services from particular market participants can have a substantial impact on the markets they deal with. While Federal Government guidelines already exist to attempt to mitigate procurement decisions favouring large incumbent providers, emerging research from the e61 Institute indicates government procurement tends to favour older, larger incumbent firms.³

The Taskforce could usefully consider whether there are further reforms to government procurement processes (at all levels of government) that could be made to minimise negative competition effects.

1.2.3. Government procurement can be a target for collusion

Public sector procurement involves the expenditure of billions of dollars in public funds across a wide range of industries, making a vital contribution to our economy and the welfare of all Australians. Vigorous competition in public procurement ensures the government and taxpayers obtain the best value for money and encourages businesses to innovate and strive for efficiency.

A number of characteristics of public procurement mean that there is a heightened vulnerability to collusion. In particular:

- the scale of the goods and/or services sought by public sector entities in many circumstances limits the number of providers that can tender for the contract

² <https://www.esc.vic.gov.au/transport/port-melbourne/port-melbourne-reviews/port-melbourne-market-rent-inquiry-2020>

³ <https://e61.in/political-economy-the-market-for-government-contracts-and-influence/>

- public sector procurement can involve specialised products or capital-intensive equipment, making it costly and difficult for new firms to set up
- geographic isolation may limit the number of competitors able to supply (e.g. regional Australia).

In addition, government contracts are appropriately subject to greater transparency, so that Australians can easily find out how public money is being spent. This greater transparency can however provide cartelists with information which can assist them to allocate markets, fix prices and police their members to ensure they stick to the deal.

The Taskforce should consider how the ACCC can help support the integrity of public procurement processes through improved processes for the collection of procurement data and providing access to that data to the ACCC, so that it can be screened to detect instances of possible collusion.

There are a number of overseas jurisdictions in which procurement data is centrally captured, reported to the competition regulator and screened for cartel conduct, including South Korea and a number of European jurisdictions. This international experience indicates that access to high quality procurement data would significantly increase the likelihood of public procurement cartels being detected in the future and deter their formation and continuation.

National Gallery of Australia

In August 2023 the Federal Court found that Delta Building Automation Limited and its sole director, Timothy Davis, attempted to rig a bid in connection with a tender conducted by the National Gallery of Australia for the replacement and ongoing maintenance of its building management system.

1.2.4. Harmonisation of key regulatory frameworks

Disparity in regulatory frameworks within Australia can increase costs and regulatory burden for businesses. In a federal system this is far from a new or easy to fix issue, but the potential benefits of reform are large.

For example, fragmented and inconsistent state and territory safety regimes for electrical, gas and building products create unnecessary compliance costs for businesses supplying to and throughout Australia. Critical gaps in these regimes can also create safety risks for Australian consumers. Reform of the state and territory electrical safety regimes could alone have substantial benefits to our economy. Initial estimates indicate that harmonised electrical safety regimes could save our economy \$1 billion over 10 years. Given the importance of these types of products to the green transition, this consistency is an important step in a timely and efficient transition to net zero.

There is also an opportunity for the Australian Government to bring mandatory product safety standards under the Australian Consumer Law (ACL) into alignment with international standards, with significant economic benefits from reduced compliance costs. The cost savings from updating just three of the 50 mandatory safety and information standards was estimated to be over \$8 million per year.⁴

⁴ Australia, The Treasury, Supporting business through improvements to mandatory standards regulation under the Australian Consumer Law, [Consultation Regulation Impact Statement](#), December 2021, p 11.

More broadly, product safety laws should keep Australia in alignment with other OECD countries and help ensure firms cannot gain a competitive advantage by supplying cheap but unsafe goods or supplying goods into Australia that would be considered unsafe in other jurisdictions. The cost to the Australian economy of unsafe consumer goods is estimated to be substantial (780 deaths and 52,000 injuries each year).⁵

Unlike most OECD countries, Australia does not have a law that prohibits the sale of unsafe goods. An inadequate product safety framework can distort the playing field for competitors because it disadvantages those businesses that are investing in safety. In a rapidly evolving digital economy, standards and bans cannot keep up with new products and business models. A general product safety law and positive obligations on sellers should be considered to help deliver this.

Issue	Potential reform	Benefits
Privatisations	The Australian Government engage with the states and territories on updated, nationally agreed principles for if governments privatise, that have competition and long-term efficiency of markets front and centre.	Prevent monopoly pricing and embedding long-term inefficiency in Australia’s supply chains.
Procurement	Improved guidelines to promote competition. Enhanced capture of tender data (including unsuccessful bids).	Reduced entrenchment of large providers and better detection of bid rigging cartels.
Regulatory harmonisation	Various important opportunities include: <ul style="list-style-type: none"> - harmonising electrical safety framework for household consumer electrical goods - enabling mandatory Australian safety standards to incorporate trusted overseas standards. 	Large savings for businesses, as well as lower prices, improved choice and better safety for consumers. Could also support the transition to net zero through consistency.
New general product safety law	Introduction of a general product safety law.	Bringing Australia’s product safety law into alignment with other countries helps ensure firms cannot gain a competitive advantage through supplying unsafe goods.

1.3. Enabling competition and consumers to drive the green transition

Effective competition and consumer trust is needed to transition markets to net zero, and, to the extent possible, must be preserved as Australia transitions to a net zero economy – particularly in energy markets.

⁵ The ACCC estimates the annual economic cost of injury and death caused by unsafe consumer products in Australia is at least \$5 billion and is likely to be much higher. See Australia, The Treasury, Consumer Affairs Australia and New Zealand, Improving the effectiveness of the Consumer Product Safety System, [Consultation Regulation Impact Statement](#), October 2019, p 7.

Australia's transition to a net-zero economy is a response to the global emergency of climate change which threatens human life and economic wellbeing. In an economic policy context, increasing the environmental sustainability of Australia's economy is important to meet consumer preferences, for Australia to meet its domestic and international commitments, and for Australian businesses to meet the growing environmental requirements of Australia's trading partners. A competitive economy supports this by incentivising efficient environmental performance by businesses to meet consumer preferences.

For markets to deliver environmental objectives such as net zero, biodiversity and a circular economy, consumers need to be able to make informed purchasing decisions. We need to empower consumers to drive competition, yet there are barriers to achieving this because of greenwashing, difficulty in comparing products, or the potential for anti-competitive conduct and market concentration.

While the Australian Consumer Law can target misleading claims, it cannot require suppliers to make environmental claims in a format that supports competition by enabling consumers to easily compare competing products. Broader government-led reforms such as trustworthy certification schemes, guidance on the use of key terms, and standardised approaches to emissions accounting will be needed to properly inform consumers and support competition. These initiatives should be informed by behavioural insights on how consumers engage with these products and markets and how consumers understand specific technical terms.

As the transition to a more sustainable economy occurs, new markets are emerging, such as electric vehicles and associated charging infrastructure, the use of hydrogen, the use of carbon offsets and/or mitigation investment, and protection of biodiversity. The role of competition in this transformation is unfolding but will be critical to driving efficiency.

As industries decarbonise or look to achieve other environmental outcomes, there may be times when it is more efficient and effective for companies to work together. Internationally, many competition regulators have released guidance about how they will treat agreements between competitors aimed at promoting environmental sustainability. Australia's authorisation regime enables us to take real, verifiable and significant environmental benefits into account as part of the 'net public benefit' test.

However, it is also critical that the conditions for competition are preserved. We are closely monitoring for indications of illegal collusion or other anti-competitive conduct, and there are already some international examples of concerning conduct. For example, the UK Competition and Markets Authority has accepted commitments from several companies to address competition concerns about exclusive arrangements for the supply of electric vehicle charge points. To the extent possible, environmental initiatives by Australian industries and governments should be designed to preserve conditions for effective competition.

More generally, there is the potential for these emerging markets to develop negative competitive traits—such as market power being transferred from older industries to new, the establishment of barriers to entry, or exclusionary arrangements. As sectors transform, new systems, networks and standards create the prospect of consumers being misled or unable to engage effectively in the market, or may create or entrench market power. These can all have significant effects on the efficiency and productivity of these industries, as well as flow on effects to others. As reforms, policies and industry transitions occur, the ACCC can contribute through studies and policy input to ensure competition and the needs of informed and empowered consumers can be achieved.

Issue	Potential reform	Benefits
Empowering consumers to drive the green transition	Government-led reforms such as trustworthy certification schemes, guidance on the use of key terms, and standardised approaches to emissions accounting are needed to enable consumer choice and support competition.	Reforms would support genuine investment and competition by businesses to improve environmental performance efficiently.
Proactively identifying competition issues	Reviews into emerging or potentially problematic sectors, resulting from Australia's green transition.	Closer examination of the impediments to competition raised by Australia's transition to a more sustainable economy will support an evidence base for any policy interventions to limit harm to consumers and businesses.

2. Informed and confident consumers and small business

2.1. Empowering consumers and small business

Ensure consumers and suppliers have the tools they need to make informed decisions and drive competition. Concentrated markets may require mandated transparency, prompts to consumers, or portability to enable switching.

Consumers and small businesses need to be informed, empowered and capable of exercising the choice that drives competition and unlocks the maximum benefits of a competitive market. To drive competition and in turn economic efficiency and productivity growth, we need empowered consumers and small businesses that can engage in markets and choose effectively between the offers of suppliers—particularly for essential services (in addition to the related issues in section 1.3 above for the green transition).

There are a range of ways that governments can promote enhanced consumer and small business engagement in markets. For example, consumer law seeks, among other things, to address: information asymmetry between sellers and buyers; imbalances in relative bargaining power; false and misleading advertising; contract terms that are unconscionable or unfair; or products that are unsafe. These protections can enhance consumer and small business trust in markets.

However, general consumer laws cannot always address high levels of product or service complexity, or other aspects of markets that prevent consumers or small businesses exercising choice effectively. In these cases, additional regulatory or other policy measures may be needed, such as increased price transparency and quality regulation frameworks, to drive efficiency.

In some markets competition alone is not sufficient to achieve all desired social objectives or community expectations, even with informed consumers, and supply side interventions may be required - particularly in essential services.

From the ACCC's recent experience, the following areas may warrant greater intervention by governments to ensure effective and efficient markets that meet government objectives.

2.1.1. Addressing switching costs and 'stickiness'

In electricity markets, governments have implemented a series of initiatives aimed at empowering consumers to engage in the market and to facilitate their switching decisions. These initiatives include prompting consumer engagement in the market at key times, and reducing switching costs for consumers by making it easier to compare offers, through simple and effective comparison tools like Energy Made Easy, a government-run comparison website, and faster to switch providers. While these initiatives have made the market more accessible to consumers, there is scope for further reform to improve consumer engagement and outcomes.

In the December 2023 Electricity Inquiry report, the ACCC found that 47% of the sampled customers were on plans equal to or higher than the default offer and that 79% of customers

could achieve a better offer if they switched to a competitive acquisition offer in Energy Made Easy or Victorian Energy Compare. The ACCC found that retailers compete at the point of acquisition, but are not incentivised to keep prices competitive, as they increase prices for their existing customer base over time. As a result consumers who do not regularly engage with the market and switch providers experience higher prices.⁶

There are also other sectors of the economy where complexity or opaqueness could be addressed directly to better facilitate consumers exercising choice, such as in banking, insurance and other financial services.

Home loans

In the ACCC's 2020 Home Loan price inquiry, we found that as borrowers' loans get older, the gap between what they pay compared to borrowers with new loans widens. We consider that this gap demonstrates that many borrowers could achieve significant savings by switching lenders or negotiating with their lender to receive an interest rate similar to that on offer for newer loans. Understanding why consumers do not do so is an important element of effectively addressing this issue.

Retail deposits

In the 2023 Retail Deposits Inquiry, we noted that banks are aware of customers' stickiness and develop strategies to increase it, the use of targeted and negotiated pricing reduces reliance on universal pricing initiatives that could trigger intense price competition, and instead enable banks to compete on acquiring and retaining customers at the lowest cost. Bank's measures designed to increase customer loyalty can have the effect of reducing the number of consumers who shop around and/or switch to an account which may provide them more benefit.

Insurance

In our 2020 Northern Australia Insurance Inquiry, we found that consumers are not always given the information they need to make choices, as there is little visibility over how insurers are assessing risks or how premiums are set. We also heard from consumers that wanted to shop around but found comparing insurance policies difficult and time consuming.

However, more transparency and information will not be sufficient in all cases, particularly where consumer engagement is low or good and services are essential. Policymakers should also examine the 'stickiness enhancing' behaviors of businesses outlined above and do the same but in reverse. We must accept the quirks of human behavior and work with them.

The ACCC has previously made specific recommendations financial services reforms that would better empower customers to engage in the market and switch providers. However, we consider there would be benefit to further focused work on this specific issue given the many complex markets that are essential to consumers on a day-to-day basis.

⁶ ACCC, *Inquiry into the National Electricity Market: December 2023 Report*, pp. 1, 5 and 9. See: https://www.accc.gov.au/system/files/accc-inquiry-national-electricity-market-december-2023-report_0.pdf

2.1.2. Market transparency in concentrated markets

Information asymmetries can result in efficiency losses when consumers and small businesses do not have enough information to make informed decisions. These information asymmetries inhibit consumers and small businesses making investment, production, and/or consumption decisions which would be in their best interests. This can be harmful to both small businesses and the overall efficient operation of markets—particularly those with high levels of concentration.

Agriculture

In our 2020 Perishable Agriculture Goods (PAG) Inquiry, we identified that bargaining power imbalances and information asymmetries occur across PAG industries, especially where parts of supply chains are highly concentrated. This can result in the transfer of risk and costs to those with less bargaining power, distorting or disincentivising productivity-enhancing investment decisions.

For example, a vegetable grower will be less likely to commit the capital needed to install a precision, water-saving irrigation system if they are supplying processors or retailers which have sufficient market power to unilaterally change prices or supply requirements over very short timeframes.

Measures to enhance market transparency, sometimes in combination with industry codes that specify minimum contracting and dispute resolution standards, can at least partially address the bargaining power imbalance and assist markets to result in more economically efficient outcomes.

We had previously made recommendations for improving transparency through the cattle and beef, and wine grapes market studies, and the Dairy Inquiry.

In the PAG inquiry report, the ACCC did not make specific recommendations on how to address these information asymmetries as it is important to ensure that transparency measures are designed and implemented in a manner that is tailored to the circumstances, having regard to regulatory burden, and does not have unintended consequences (such as facilitating collusive conduct or removing the incentive for firms to offer discounts).

We did however note that measures to improve price transparency may include:

- compelling market participants to publish prices offered or paid
- requiring prices to be communicated in standardised form across a sector
- tasking industry bodies or an independent organisation with collecting, analysing, and publishing market data in a timely and usable fashion to help inform market participants.

In other jurisdictions such as the USA and EU, some extensive price reporting mechanisms exist to enhance market transparency. For example, in the United States, the *Livestock Mandatory Reporting Act 1999* was established to improve reporting of market information about cattle, livestock and meat products.

Since this inquiry, the Federal Government has conducted a 2022-25 grants program on 'improving market transparency in perishable agriculture goods industries'. This funds sector participants in a range of agriculture sectors to develop transparency measures.

However, we consider the issue is worth broader and deeper engagement as part of the Review. Within the agriculture supply chain, changing commercial practices by oligopsonists and monopsonists have the potential to quickly lead to harm and inefficiency (e.g., retailers

allegedly making late and unforeseeable changes to the prices offered for horticultural produce in circumstances where growers have few outside options and limited reliable reference points to assess the current market price). However, these issues could extend beyond the agriculture sector.

2.1.3. Consumer confidence in goods and services

Despite the considerable compliance and enforcement activities by regulators over the years, consumers can still struggle to exercise their consumer guarantee rights. For example, around 30 per cent of the more than 98,000 total contacts to the ACCC in 2023 (excluding scam reports) were about consumer guarantees and/or warranties. Consumer guarantee issues persistently represent a significant proportion of contacts received by the ACCC and have remained roughly around this level since 2020.⁷ Even prior to 2020, consumer guarantees related contacts to the ACCC were increasing year on year.⁸

The ACCC and state and territory ACL regulators are not able to take legal action to penalise suppliers or manufacturers that refuse to provide consumers with a remedy they are entitled to under the consumer guarantees. While the ACL regulators can take action if the supplier or manufacturer misleads a consumer about their entitlement to a remedy, such an action does not directly deal with the core issue of suppliers or manufacturers not providing the remedy consumers are entitled to.

Currently, the consumer guarantees provide a private right enforceable by consumers. While small claims courts and tribunals are intended to provide a low-cost method for consumers to enforce claims, including consumer guarantee claims, many consumers still face challenges in pursuing such claims through these mechanisms. These challenges include access to expert witnesses or other relevant evidence, the costs of obtaining technical reports or legal advice, differences in interpretation by tribunals, and mandatory conciliation models that involve compromise on ACL statutory entitlements. This combination of factors means that for many consumers the time and cost of pursuing a private remedy can outweigh the cost of the faulty good or service.

The consumer guarantees supplier indemnification obligation also provides a private right enforceable by suppliers against manufacturers to compensate suppliers for any remedies they are obliged to provide to consumers for consumer guarantee failures that the manufacturers are responsible for. In practice, smaller suppliers face similar challenges as those faced by consumers in bringing such actions. They face an additional challenge that manufacturers may threaten to cease a supply relationship, or make the supply terms less favourable, if they attempt to enforce their rights. Consequently, suppliers end up either:

- disproportionately bearing the costs of providing remedies to consumers in circumstances where many of these costs should be borne by the manufacturer, or
- avoiding providing consumers with the remedies they are legally entitled to.

Amendments to bolster these laws and provide penalties for non-compliance would significantly change business incentives to comply with their consumer guarantee and supplier indemnification obligations. This would more effectively support consumers and small businesses in securing their statutory consumer guarantee rights. In turn, this would also reduce the ability of businesses to obtain an unfair competitive advantage from providing low-quality goods and services, increasing consumer and small business

⁷ <https://www.accc.gov.au/media-release/broken-but-out-of-warranty-your-consumer-guarantee-rights-may-still-apply>

⁸ https://treasury.gov.au/sites/default/files/2021-12/c2021-224294-cqsicris_2.pdf, Figure 1 on page 23.

confidence to drive competition on its merits. This reform would usefully complement a general product safety provision and other harmonisation described in section 1.2.3 above.

Issue	Potential reform	Benefits
Addressing switching costs and 'stickiness'	Consideration across the economy of mandated prompts, objective information, and portability to support consumer engagement, and addressing persistent barriers to switching.	Empowering consumers to more confidently engage in markets would increase demand side pressure and focus competition on innovation, better products and lower prices.
Transparency challenges in concentrated markets	Further work is needed to promote transparency in concentrated markets beyond the agriculture sector. A general framework could be established to provide transparency in concentrated markets. This could be through principles in an intergovernmental agreement, or a general legislative framework that could apply to a sector following a ministerial decision.	Further work would identify sectors of the economy that are being impacted by, for example, monopsony and oligopsony markets and where transparency measures could be targeted. A general framework could promote enhanced market efficiency, as access to accurate and reliable information would empower producers to make investment decisions that enhance industry productivity.
Confidence in goods and services	Make it a contravention of the law (with civil pecuniary penalties) for: <ul style="list-style-type: none"> - businesses to fail to provide a remedy for consumer guarantees failures when they are legally required to do so under the ACL consumer guarantees - manufacturers to fail to reimburse suppliers for consumer guarantees failures that the manufacturers are responsible for. 	Support consumers and small businesses in securing their statutory consumer guarantee rights, increasing confidence and enabling competition on its merits.

2.2. A more effective care economy through better regulation of price and service

In the care economy, price is not an effective driver of competition due to the characteristics of human services and the impact of subsidies; more direct government stewardship will be required.

In sectors where high levels of government subsidies to users (for example, in childcare, aged care and the National Disability Insurance Scheme), the subsidies, while broadening access, limit the capacity for competition to constrain prices, resulting in an increasing taxpayer burden over time. The greater the extent of government subsidy in a market, the less effective those price signals are likely to be. As a result, cost and price increases become more heavily borne by government than those making consumption decisions. Refinements to existing regulatory settings and mechanisms may be required.

The nature of services in the care sector typically mean that quality is important to potential users. At the same time these sectors have 'experience good' and 'credence good' qualities, making it difficult for consumers to assess quality prior to consuming them. This can further limit the influence of competition to constrain prices, as consumers will often rely on proxies for quality; this can include using prevailing market prices as a proxy and assessing services that differ substantially from that level as either very high quality or unacceptably low. This tends to support convergence of prices within markets and limit price competition. Issues around relative bargaining power, capacity to assess quality and information asymmetries are also likely to be present to varying degrees in these markets.

Case study: Childcare

In the Childcare Inquiry September 2023 Interim Report, we find that the role of price depends on the decisions being made by consumers and that the Child Care Subsidy cushions the impact of price and price changes on consumer behaviour. It means households do not pay the full amount of a fee increase or pocket the full reduction if switching to a cheaper service. When combined with other barriers to switching – such as waitlists, disruption to a child's routine and experience and credence good characteristics of childcare services – there is often little value (if any) for parents and guardians in 'shopping around' to switch providers. This means the Hourly Rate Cap, which was intended to act as a price signal and limit government expenditure over time, has had limited effect in placing downward pressure on prices and taxpayer burden.

The Childcare Inquiry September 2023 Interim Report also found that market forces alone are unlikely to achieve all the objectives of the Australian Government, nor meet the expectations of consumers, as market dynamics in this sector encourage supply to markets where demand for childcare is highest and parents and guardians are likely to be willing, and have capacity, to pay higher prices. While this may reflect what could rationally be expected of functioning markets, it can lead to thin markets with limited or no supply and is unlikely to ensure equitable outcomes and/or opportunity across all demographics. This can particularly affect consumers experiencing disadvantage, First Nations children or households, culturally and linguistically diverse households and/or children with disability/complex needs.

The Childcare Inquiry June 2023 Interim Report found there are more childcare places available per child, on average, in major cities, with the number of available places reducing the more remote an area is and as SEIFA deciles decline. Responses to our parents and guardians surveys also report significant difficulties faced by parents and guardians trying to find a childcare place for a child with disability and/or complex needs, and difficulties in accessing culturally appropriate care for First Nations and culturally and linguistically diverse households.

Case study: Pharmaceuticals

In addition, a range of factors in the Australian pharmaceutical sector may be contributing to reduced innovation, reduced consumer choice, and increased consumer prices, with flow-on effects on the Pharmaceutical Benefits Scheme. Innovation and patents are crucial to the performance of pharmaceutical markets. Most of the innovation does not occur in Australia, but our patent regime provides incentives for pharmaceutical innovators to market their products here. Previous studies have highlighted strategies by innovators to extend their protection from competition beyond the expiry of their patents. These include 'pay for delay' and 'evergreening' strategies designed to delay or soften competition from cheaper generic alternatives. 'Pay for delay' refers to agreements between an originator and a generic manufacturer which involves delay of the generic entry in return for a payment.

'Evergreening' refers to a variety of unilateral strategies by originators to extend patent protection. International developments and ACCC experience suggest a wider range of behaviours may be present. The ACCC recommends further light be shed on these critical markets to identify issues that may require further reform.

The government may need to perform a 'market stewardship' role to ensure that care sectors deliver all government and taxpayer objectives. This can include where there is a lack of service for consumers with limited capacity to pay, more complex needs or in difficult to serve locations, and where there is limited connection or price impact on the party making a (government-subsidised) consumption decision, which can cushion or dampen competitive tension and the capacity of the market to deliver efficient outcomes. As part of market stewardship, government monitoring of prices, provision of services, service standards and outcomes can identify appropriate market and regulatory models to meet government objectives, community expectations and local needs.

Issue	Potential reform	Benefits
A more effective care economy	Greater government monitoring and stewardship of care economy services markets, potentially with updated and dynamic market and regulatory/subsidy models, including pharmaceuticals.	More efficient care markets. Improved equity and economic outcomes across the population and economy (including improved economic and social outcomes for cohorts experiencing disadvantage, cohorts with disability and/or complex needs, First Nations households, and culturally and linguistically diverse households).