

BARTON DEAKIN BRIEF: ACCC Chair Speech Suggesting Future Agenda

Wednesday 23 February 2022

Overview

In his final speech to the National Press Club, Mr. Rod Sims, Chairman of the ACCC, outlined a competition policy future reform agenda. There are ten areas he sees as needing reform: Australian consumer law, competition law enforcement, infrastructure, energy, digital platforms, financial services, agriculture, small business, Consumer Data Right, and aviation.

Areas for Reform

1. Australian Consumer Law
 - Need to address conduct which is not general unlawful such as:
 - selling unsafe goods
 - not honouring consumer guarantees, provided you do not tell the affected consumer that they have no such right
 - putting terms into standard form contracts that, for example, allow the large company seller to unilaterally increase the price you must pay during the contract, and
 - large companies abusing their position of strength by treating their customers unfairly; for example, health insurers raising the effective prices patients pay for repeat hospital services without telling the affected patients who only find out they have a large bill to pay after their next hospital visit.
2. Competition Law Enforcement
 - Ensuring that there are few 'false positives' when taking enforcement activity as the cost of anti-competitive activity is too great
 - Implementing a formal merger approval system, and ensuring that firms which already have substantial market power should not be able to acquire in a manner that would significantly increase their market power or extend or entrench it.
3. Infrastructure
 - When privatising infrastructure assets, governments need to sign up to a checklist before infrastructure assets are sold to avoid provisions which restrict competition and to ensure there is appropriate regulation where monopoly or significant market power will exist post sale.
 - Rework regulatory provisions for the NBN, to ensure that the objective not be a commercial return on the sunk investment.
4. Energy
 - Needs to be a simultaneous focus on three objectives: affordability, sustainability, and reliability.
5. Digital Platforms
 - Deal with digital platform problems such as product bundling to self-preferencing their own products and services, that have lessened competition in various important digital markets over time.



- Next week the ACCC will release options to deal with this, including up-front rules that would prevent the worst abuses of dominance and protect consumers.
- 6. Financial Services
 - Regarding mortgages, the ACCC has recommended that consumers be continually informed by a “prompt” of what typical borrowers are paying so that they know when they need to seek a lower interest rate or change their bank.
 - There must be a scheme to enable fintechs or money remitters to show banks they have adequate systems in place to manage risks in order to help address issues with debanking.
 - Examine issues of Near Field Technology and digital wallets.
- 7. Agriculture
 - In the Agricultural sector, Mr Sims believes an Unfair Practices Provision inserted into the Australian Consumer Law must be considered. Additionally, the Murray Darling Basin Inquiry report must continue to be taken seriously.
- 8. Small Business
 - Mr Sims believes small businesses suffer badly from unfair contract terms in standard form contracts, and from a range of unfair practices that an Unfair Practices Provision would prevent.
 - Small business must be further protected by further reforms to competition law, especially regarding unfair contract terms.
- 9. Consumer Data Right
 - Mr Sims believes that the benefits that will flow on from the Consumer Data Right must not be underestimated.
 - The Right must come with inbuilt privacy protections to address outdated privacy laws, and significant changes must be made to the Privacy Act
- 10. Aviation
 - Mr Sims is concerned that there continues to be no price regulation of landing or other charges levied by the airports.

Additional Information

You can access a full copy of Mr Sims’ speech [here](#).

For more information, contact [David Alexander](#) on +61 457 400 524, [Grahame Morris](#) on +61 411 222 680, [Cheryl Cartwright](#) on +61 419 996 066, or [Samuel Gorman](#) on +61 427 233 108

To stay up to date with the affairs of Coalition Governments and Oppositions around Australia, you can follow Barton Deakin on [Twitter](#) and [LinkedIn](#). For more information on Barton Deakin please visit our [website](#).