

Regulation proves Hydra-headed

| [Alan Moran](#)



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Following the launch of the annual report of the National Competition Council in December, Treasurer Peter Costello announced competition payments to the states of \$834 million. This is the final such payment from a \$16 billion bag of money available on a pro rata basis to the states and territories.

The council's focus has been on eradicating impediments to competition in such forms as restrictive occupational and supply licensing. It has also looked at exclusion of potential suppliers from monopoly facilities, especially gas, electricity and rail. This latter task married its other role of determining whether such facilities were monopolies and whether they should be opened to users who had been previously excluded.

In advising on the competition payments, the NCC oversaw a program of regulatory reviews across all jurisdictions (including, in theory, the commonwealth) and vetted the conduct of those reviews. There were deductions for bad behaviour and the states actually forfeited some \$40 million of the final available pool for not fully meeting their obligations.

In its early days, especially under the present chairman of the Australian Competition and Consumer Commission, Graeme Samuel, the NCC was at pains to stress that it was not bent on pursuing "so-called economic rationalism". Even so, it has applied the blowtorch of logical analysis to examine government interventions that impeded competition. The deductions it recommended represented highly visible lost revenue. Not only was income forgone, but the state governments that had to forgo funds also had the badge of reform recalcitrants pinned to their chests.

The NCC tested the water concerning such deductions in 1998 when it withheld \$10 million from NSW, which had refused to dismantle its restrictive marketing arrangements for rice. NSW finally did so in November 2005. More recently it has even recommended deducting funds from Western Australia for not opening up shopping hours in spite of a WA referendum tying the government's hands.

Disengaging government from the economic decisions that should be left to buyers and sellers has been a major backbone to economic reform. The NCC has punched above its weight in generating an environment where the best economic outcomes are achieved by the market rather than politicians and bureaucrats.

Its formal tasks are coming to an end. Not only is the competition payments pool now drained but also diminishing is the council's other role of assessing whether monopoly facilities should be required to be opened up. It recently recommended that the Moomba-to-Adelaide gas pipeline be removed from access controls, recognising a new supply vehicle, the SEAgas pipeline linking Adelaide with offshore Victorian gas, provides adequate competitive disciplines. New rival supply systems like this as well as technology developments are gradually paring the incidence of genuine monopolies to localised heartlands like electricity and gas reticulation.

As demonstrated by the Business Council of Australia and other contributors to the Gary Banks-chaired Red Tape Taskforce, much remains to be done in regulatory review. Many submissions have supported the common knowledge that, despite lofty deregulatory statements, governments have barely drawn breath in their regulatory marches.

The Banks report, due out this month, is bound to offer much evidence of continued regulatory excesses that will provide material for further efforts to stem the tide of regulatory costs. An important milestone for achieving these is the meeting next month of the Council of Australian Governments. A promising grounding for this meeting is rival deregulation challenges being posted by the Victorian and commonwealth governments.

Victoria is undoubtedly the most advanced Australian jurisdiction in its regulatory control procedures. Even so, its own Competition and Efficiency Commission's report on regulation in regional Victoria has demonstrated that the pace of

new regulation has not slackened and is adversely affecting the regional economy.

The commonwealth, for its own part, has comprehensive regulatory review machinery. But too often this provides reviews of new regulation that simply offer spurious rationales for the regulation and no time for public comment.

While the NCC and others have been successful in highlighting the benefits of competition reform, much of the more recent regulation is social regulation aimed at safety, the environment and health. It is more difficult to address such regulation since, unlike pure economic regulation designed to hinder competition, it does not have the automatic presumption in favour of government disengagement.

The NCC has won its spurs in helping to root out much of the economic regulation of competition that characterised Australian markets until recent years. Stemming the tide of social regulation will be a more formidable task and will require considerable resourcing.

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