Reform that threatens our prosperity

Deregulation Unit | Alan Moran
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Mineral exports, largely fuelling China's industrial expansion, have been vital to the health of the Australian economy. Almost all of Australia's increased exports over the past three years have comprised coal and iron ore. This bolstering of the balance of payments has upheld the value of the Australian dollar. The benefits have been enjoyed by all of us. They include cheaper imports and production inputs.

Without the China minerals boom we would now be much poorer, irrespective of Australia's micro-economic reforms of the 1990s.

But it is one of those reforms - that regarding competition policy - which now threatens our continuing prosperity. The 1993 Hilmer report spurred changes to the Trade Practices Act to open up transport and other government-owned monopoly facilities to rival suppliers.

As well as demolishing government monopolies, this legislation also amplified the powers of the Australian Competition and Consumer Commission and its sister regulatory agency, the National Competition Council. Though the target for opening access was largely government-owned "essential" facilities, built under guarantees against any competition, the laws were written much more broadly.

Making it mandatory for companies, individuals or institutions to provide services, essentially on terms and conditions decided by a government agency, is a sweeping power. It is fundamentally at odds with the basic property rights that underpin the economy and the free market.

For these reasons the power should be used sparingly. But once we combine well-resourced regulatory agencies with businesses that are keen to get free-ish rides on other businesses' assets we have a potent brew for cooking up monopolies that are ripe for government control.

Regulators have required private enterprises to give access to their facilities in industries that include gas, ports, airports, telecoms and rail lines in the Pilbara. These requirements extend not only to assets built under a government protective shelter but also to new facilities built without government protection. The only facilities that automatically escape coverage are those deemed to be manufacturing.

The issue of rail in the Pilbara has been before the Federal Court on two occasions. In the first instance, Rio Tinto was fighting off an attempt by North (which it later took over) to access its rail lines. Judge Susan Kenny decided the system was a de facto manufacturing operation and therefore beyond the scope of the Part IIIA provisions. Judge John Middleton took a contrary view in a case last December concerning BHP Billiton. He said the facility looked like a railway, smelled like a railway and by golly it was a railway and BHP must offer access to it.

Regulatory intrusions on property bring a cost and this is why such measures are associated with failing states and not successful ones.

Private facilities are rarely conscripted for some greater "public good" for three reasons. First, companies' opposition to such confiscation will hold things up; second, the risks government regulation creates require higher threshold rates and "dampen" new investment; and, third, companies considering new investment will wait and see what others are doing rather than take the entrepreneurial plunge themselves.

In the context of the Pilbara dispute, several consultancies have considered the implications of regulators requiring access. They used conservative assumptions but still estimated large costs. The Centre for International Economics examined a deferment of six months in the start of an investment program which would eventually duplicate the

estimated $35 billion in capital investment in the Pilbara mines and associated facilities. The outcome involved a net loss to the economy over 20 years of up to $20 billion.

Charles River Associates estimated that a one-year delay in annual spending of $2 billion with a catch-up in the following year would still mean a permanent loss of output of $400 million.

The actual delays would far exceed the assumptions these models used. But even these indicate the huge penalty the economy pays for the sort of buccaneering approach to property rights that regulatory agencies are taking. The agencies argue the costs will be offset by increased competition, but this seems doubtful.

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