



Asia-Pacific Economic Cooperation

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Best Practice in the Enforcement of Competition Policy

Purpose: Information
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of Competition Policy
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Best Practice in the Enforcement of Competition Policy

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Overview

- Introduction – an overview of Australia's institutional framework
- Relationship between the policymaker and the regulator
- The influence of judicial interpretation
- Recent developments in Australia
- Harmonisation of competition laws
- Questions/Discussion



Introduction

- Australia's institutional framework
 - Treasury's role as a policymaker
 - The ACCC as the regulator
 - The goal of Australian competition policy

- Australia's federal structure
 - Federal Australian Government
 - 8 State/Territory governments
 - Intergovernmental agreements on amending competition policy



Treasury and the ACCC

- Relationship between the policymaker and the regulator
- Reflection of government intent through policy development
- Balance between “black letter” law and more general law
 - Powers given to the enforcement agency
 - Consultation with stakeholders
 - Effective enforcement and separation of policy and enforcement roles



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Judicial interpretation

- Matching policy intentions with real-world outcomes
- Role of judiciary in influencing policy
 - Unintended consequences of policy may lead to refinement of the legislation
- Need for policy to adapt to changing circumstances and conditions
 - Periodic reviews of competition laws



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Recent developments in Australia

- *The Review of the Competition Provisions of the Trade Practices Act (the Dawson Review)*
 - Review directed at improving the speed, efficiency and transparency of the enforcement process
- Major recommendations
 - Non-merger authorisation applications
 - Merger clearance processes
 - Third-line forcing



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Other matters of interest regarding the Act

- **Senate Committee report on Section 46 of the Act**
 - Investigated the effectiveness of the Act in protecting small business
 - Recommended a number of changes to the Act
 - Government is considering the report

- **Cartels**
 - Dawson review recommended criminal penalties for serious cartel behaviour
 - Working Party on Criminal Penalties for Cartel Behaviour



Other recent developments

- Resources of the regulator
 - ACCC funding has increased significantly in recent years
 - Allows the regulator to pursue its objectives
- Use of the Media
 - Highlighting competition and consumer policy issues
 - Educating the public
 - Deterrent for potential offenders
 - More reporting of potential breaches



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Harmonisation of Competition Laws

- Cross-jurisdictional differences in competition law
- National Competition Policy (NCP) program
 - Nationally coordinated program
 - Aimed at harmonisation of competition laws across Australian jurisdiction
- Significant achievements
- Review of NCP arrangements



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Questions?