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**Working Group on the Interaction
between Trade and Competition Policy**

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COMMUNICATION FROM AUSTRALIA

The following communication, dated 27 July 1998, has been received from the Permanent Mission of Australia with the request that it be circulated to Members.

Replies to Questions put by Members

Following are the answers to questions put by Members of the WTO Working Group on the Interaction between Trade and Competition Policy to the Delegation of Australia at the Meeting of 11-13 March 1998.

(a) Should anti-dumping measures be a legitimate area of concern for regulatory authorities or competition authorities?

We understand that most countries which apply anti-dumping measures have allocated responsibility for such measures to regulatory authorities rather than competition authorities. This is presumably at least in part a reflection of the fact that competition authorities have tended to focus on the domestic market factors and (apart from New Zealand under the Australian New Zealand Closer Economic Relations Trade Agreement) are not extra-territorial. It is difficult to see how normal competition law and remedies could deal with the factors leading to injurious dumping from other countries. In Australia's case, responsibility for anti-dumping investigations rests with the Australian Customs Service, but decisions on imposing duties lie with the Customs Minister.

However, having commented that in Australia's experience responsibility for anti-dumping measures should reside with regulatory authorities separate from the competition authority, experience has highlighted that anti-dumping and competition matters can intersect. Conceptually, anti-dumping matters can be of concern to competition authorities.

For example, in Australia mergers are prohibited if they have the effect, or likely effect, of substantially lessening competition in a market for goods or services. The Australian Competition and Consumer Commission (ACCC - Australia's competition authority) has adopted the approach that it will not prevent a merger in a market where imports exceed 10% of the market over a sustained period, on the basis that imports, or the threat of imports, will restrict the conduct of the merged entity.

However, there have been cases where companies, after receiving no opposition from the ACCC, have merged and then sought to have anti-dumping measures imposed. This action has effectively limited the positive effects of import competition on the relevant market/s in Australia and reduced the restraint on the merged firm's conduct (albeit a restraint which necessitated that it compete at a price level influenced by dumped product). The ACCC does have the power to seek

divestiture of assets after the fact, but a resolution of this kind can be a second best outcome and may not in the end be deemed plausible.

This experience has highlighted the complexities of dealing with competition factors in a market. It does not, however, negate the fact that anti-dumping measures are an important complement to policies dealing with price discrimination in the domestic sector.

(b) Could a competition body be seen as a regulator?

We understand that competition and economic regulatory functions have been entrusted to the one agency in a number of countries. In Australia, the competition body also has some regulatory functions in some industry sectors. Following is a summary of Australia's views.

Australia's general regulatory framework

Australia has a general competition law, the *Trade Practices Act 1974* (TPA), that applies across all industries and is administered by a single competition authority, the Australian Competition and Consumer Commission (ACCC). The Australian Competition Tribunal is an appellate body able to review certain adjudication and market access decisions made by the ACCC.

The ACCC and the National Competition Council (NCC) also perform several important economic regulatory functions. For example, the ACCC has various responsibilities in relation to the terms and conditions of access to certain essential monopoly or near monopoly infrastructure facilities such as telecommunications, gas and electricity and in monitoring prices in industries where competition is weak. It also has a quality of service monitoring role in respect of airports. These responsibilities reflect a government view that there are advantages in placing these economic regulatory functions with the general competition agency. In the case of the NCC, the main regulatory function is in relation to establishing rights of access to the services of certain essential monopoly or near monopoly infrastructure facilities. Other significant aspects of economic regulation, such as the granting of licences, are typically administered by industry-specific regulators or by more general government regulators. Technical regulatory issues that do not have a significant competition element are typically administered by industry-specific regulators or may be subject to goods and services standards set by Australia's principal standards organisation, Standards Australia.

Under the general or "economy wide" access regime for essential monopoly or near monopoly infrastructure facilities established in Part IIIA of the TPA, the NCC advises the Government as to rights of access and, where these are established, the ACCC acts as an "arbitrator of last resort". That is, the ACCC has the power to arbitrate access disputes and determine the final terms of access (including price) if access seekers and owners of essential facilities fail to reach a commercially negotiated settlement.

More specific "economic regulatory" functions are performed by the ACCC under the access regimes for telecommunications and for gas transmission pipelines (with the exception of those in the State of Western Australia). The gas role includes monitoring compliance with ring fencing obligations and approving access arrangements (covering services, reference tariffs, trading and expansions) in accordance with an industry code. In addition, from 1999 the ACCC will assume the role of transmission regulator for the electricity industry. This will involve setting a revenue cap for use of the services of electricity transmission networks.

(c) Difficulties or problems that might be encountered during the process of transformation from a narrow competition regime to a wider one

One of the main requirements for moving to a wider competition regime is obtaining support for the key elements and principles which would support such a regime. The principles underlying Australia's wider competition regime have been outlined in paragraphs 15 and 22 of WT/WGTCP/W/60.

One of the key challenges in taking this path, in Australia's experience, is reaching agreement on the boundaries of a wide competition regime and obtaining a commitment to ongoing support for reform - at all levels of government. One of the main issues for Australia was to design frameworks and changes so that effective competition and competitive market structures could be introduced and encouraged across all sectors of the economy. The outcomes of this task for other countries would obviously be affected by the characteristics of each economy (including the stage of economic development, political system and geographic circumstances).

Other challenges include deciding on a framework for competition regulation. The split between competition, technical and economic regulation can be controversial and following are some comments on Australia's circumstances:

Integrated vs separate administration of economic, technical and competition regulation

Technical regulation and some significant aspects of economic regulation are administered in Australia by industry specific bodies or more general government regulators. This recognises that the national competition authority should focus on anti-competitive conduct and not become embroiled in overly detailed or complex regulatory matters unless they have a clear connection with competition issues in, for example, network industries.

However, the separation of regulatory duties between competition, technical and economic regulators does entail the risk that competition regulators will not always have the same level of technical knowledge that can be achieved by an integrated industry regulator. This has not been a serious problem to date in Australia and the risks are less in industries where the ACCC has both an economic regulatory role as well as its normal competition role. In addition, various mechanisms are in place to improve coordination between regulators.

Addressing regulatory uncertainty

With the "division of labour" between various regulators, there is potential for some degree of overlap of functions between the ACCC, which administers competition regulation across all sectors of the economy, and those technical and economic regulators that operate within specific industries or within certain States across a number of industries. For this reason, a number of steps have been taken to minimise uncertainty regarding the jurisdiction of particular regulators and avoid confusion for consumers and the business community.

For example, the ACCC has frequent information exchanges with a variety of economic and technical regulators through regular liaison meetings and the exchange of publications and other information. The ACCC also has a significant public and business education role. In addition, chairpersons of various Commonwealth and State economic regulators (such as the Australian Broadcasting Authority, the New South Wales Independent Pricing and Regulatory Tribunal and the Victorian Office of the Regulator General) are associate members of the ACCC; and certain members of the ACCC are appointed as associate members of the Australian Communications Authority and the Australian Broadcasting Authority. This helps to bridge the "knowledge gap" that can arise when competition, economic and technical regulators are separate bodies.

Some of the arguments that arise in the context of integrated versus separate regulation follow. Arguments for integrated regulation include:

- Regulation has significant effects on competition, so efficiencies and synergies can be realised when regulatory activity is linked with competition regulation.
- Integrated regulation provides a framework for a competition culture to pervade regulatory decision making.
- General regulation is more suitable for industries undergoing convergence (e.g. energy, communications, financial services).
- Regulation on its own can be anticompetitive or downplay competition at the expense of other values.
- Encourages consistency of regulation requirements across the economy.
- Resource saving and economy.
- In theory at least, general regulators are less likely to be captured by industry, and specific regulators can be susceptible to adopting industry-specific perspectives.
- Integrated regulation reduces the need for business to deal with a multitude of regulators.

Arguments for separate regulation include:

- Avoids confusing the competition regulator's role.
- Competition regulator does not become distracted with industry specific/technical regulatory details.
- Specific regulators may have better technical expertise and can more easily deal with detailed technical regulation.
- Ensures some diversity in regulation to meet requirements of specific sectors (if appropriately coordinated, inconsistent regulations can be avoided).
- In terms of providing checks and balances for market activity, separate regulation ensures that there is more than one perspective brought to bear on market issues.

Is there an institutional framework that could facilitate such a transformation?

Institutional frameworks will vary from country to country depending on the circumstances in individual economies. One important element of an effective institutional framework would be an effective forum for governments at all levels to discuss and coordinate policy reform. Other important elements would include an effective legal system and transparency in the development of policy, to counter pressures for policy to be captured by particular interests or manipulated by bureaucracy.

(d) What concrete measures have been taken in the context of the agreement between Australia and New Zealand relating to the free movement of persons?

Essentially, there has been a free flow of people between Australia and New Zealand under various arrangements since the 1920s, reflecting the historically close bilateral social linkages.

- The 1973 Trans-Tasman Travel Arrangement has allowed Australian and New Zealand citizens without criminal convictions to enter each other's country to visit, live and work exempt from the need to apply for authority to enter the other country.
 - The 1983 Australia New Zealand Closer Economic Relations Trade Agreement which established CER formally recognised the role of the movement of people in strengthening the long-standing and close bilateral relationship.
 - The Trans-Tasman Mutual Recognition Arrangement (TTMRA), signed in 1996 and brought into operation on 1 May 1998, facilitates the movement of service-providers between Australia and New Zealand. With the exception of medical practitioners, the TTMRA provides that a person registered to practice an occupation in one country may practice an equivalent occupation in the other country.
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