

## Regulatory Policy Institute Australia and New Zealand Launch

13 November 2018

Gilbert + Tobin, Barangaroo, Sydney

### *Competition in Regulated Markets: Fostering Innovation or Failing to Deliver?*

#### **Context and Framing for Panel Session: Luke Woodward opening remarks**

Public faith in competition in critical service markets, typically regulated sectors (but not always), is under challenge.

In many sectors there is a perception that the expected consumer benefits of competition, consumer disclosure and regulatory settings are not being delivered. Innovative new markets are treated not as competitive disrupters, but as potential devious means to exploit consumers' data and use their revealed preferences against them.

The adequacy, effectiveness and sufficiency of well accepted and historically dominant public policy paradigms (economic efficiency, consumer welfare and market failure theories) that underpin National Competition Policy (**NCP**) are being openly challenged, including by some regulators and academics around the world (for those who are interested in the global debate, you might find the recent *US Federal Trade Commission Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century* interesting in terms of how much accepted wisdom seems to be up for challenge).

Arguably, we are finding that consumers trust regulators more than markets and certainly more than business. This lack of trust in markets is not just a local phenomenon; it seems to be a global one too.

Of course, governments have been adjusting their approaches in response.

This can clearly be seen in the Australian energy sector. However, it is not restricted to that sector, and we can see this to some extent in the financial services sector as well as in other areas such as digital platforms.

Where will this lead? Will it lead to:

- backsliding on NCP reforms, with governments stepping back into markets more directly; and/or
- increasing levels of regulatory prescription and red tape?

And who is to blame? Is it:

- cynical business behaviour exploiting consumers; and/or
- regulators, whether they be:
  - successful strong regulators building a constituency for regulatory market oversight; or
  - weak regulators who, having failed to do their jobs properly, have triggered calls for further market intervention and regulation?

Or is it opportunist politicians wanting to offer all things to all people?

Or is it really just consumers? Is it that consumers don't care so much about the competitive process, they just want what they feel is a good and fair deal. They don't like price increases, whatever the rationale, and they don't like to feel exploited, whether that is a competitive and efficient outcome or not. Is it the case that they don't want to have to work so hard for a good deal by having to wade through layers of fair market "disclosure" of what can appear to be arcane and unduly complex products and conditions? Have our policy settings not paid sufficient attention to the political economy of consumer expectations?

In this panel session, we will explore these issues, first through brief presentations and then through an extended Q&A session, where we should hopefully also have time for audience questions and comment.

First off, Dr Ron Ben-David will frame the issue from the consumer perspective in terms of the concept of 'nonconsumer markets'. Ron is chair of the Victorian Essential Services Commission (**ESC**) and over the last ten years has led significant reforms to the Commission's regulatory approach in water and

energy. He joined the ESC after heading the secretariat for the Garnaut Climate Change Review, and a career in the Victorian Department of Premier and Cabinet.

Nevenka Codevelle will then address an energy industry initiative to respond to these issues, through the Energy Charter Initiative. Nevenka is here today principally in her role as Chair of the Energy Charter Industry Working Group, an important and timely initiative she will speak to. Nevenka's day job is as head of the Group Governance, Risk and Legal Division at APA, the ASX top 30 gas transmission business. Nevenka joined APA after an extensive career as a competition and regulatory lawyer in government and private sector roles.

Dr Peter Boxall will pick the discussion up from Ron's presentation. Peter will address the question of whether we should re-regulate retail energy for the sake of nonconsumers. Peter is Chairman of the Independent Pricing and Regulatory Tribunal (IPART), and has held many and varied senior government roles, including as a Commissioner of the Australian Government's National Commission of Audit, and secretary of various Commonwealth departments. Peter's doctorate is in economics from the University of Chicago, and it is always insightful to get a Chicago school perspective.

Following their brief presentations, we will move to the panel discussion and Professors George Yarrow and Fred Hilmer will join the panel for the Q&A.