Australian Competition & Consumer Commission

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Contact officer: William Herron
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26 May 2017

JS

Via email to: foi+request-3453-69c91910@righttoknow.org.au

Dear JS

Decision on freedom of information request

I refer to your email dated 28 April 2017 in which you request access, under the *Freedom of Information Act 1982* (Cth), to the following:

'In Oct 2016 the International Competition Network (ICN) and the World Bank Group announced the launch of the 2016 – 2017 Competition Advocacy Contest with submissions to be lodged by 31 Jan 2017. In Mar 2017 the ACCC announced that it had won the award for its advocacy work in promoting pro-competition measures when governments are privatising public assets.

I seek administrative access to a copy of the ACCC submissions that led to the award.'

Decision

I have decided to release these documents to you in full in accordance with the Schedule (Attachment A). Your review rights are set out in Attachment B.

I am authorised under s.23 of the Act to make this decision.

Understanding the schedule

In relation to the Schedule, please note:

(a) Column 1 of the Schedule refers to each document by a document number created for the purpose of processing this request;

(b) Column 2 of the Schedule gives, where applicable, the name and organisation of the author of the document;

(c) Column 3 of the Schedule gives, where applicable, the name and organisation of the addressee of the document;

(d) Column 4 of the Schedule shows the date appearing on the document;

(e) Column 5 of the Schedule briefly describes the document or, where applicable, each part of a composite document;

(f) Column 6 of the Schedule gives the number of pages of the document or, where applicable, each part of a composite document;

(g) Column 7 of the Schedule shows my decision on whether, and what form, access has been granted to the document, where applicable;

Charges

Under the Act the first 5 hours ($100.00) of processing your request are free. As the cost of processing your request is less than $100.00, there are no charges for processing your request.

Enclosed are copies of the 2 documents which were 'Granted' as per the Schedule.

Publication of documents released under FOI

In accordance with s.11C of the Act, I have decided to publish the documents released on the ACCC's Disclosure Log. This will occur within ten business days of the documents being released to you.

Yours sincerely

Will Herron

FOI Coordinator
ACCC Legal Group

Sent by email 26/05/2017

ATTACHMENT A
Schedule of documents

Doc No	Author	Addressee	Date	Description	No of folios	Access	Findings, Reasons and Brief Descriptio
1	ACCC		22.2.2017	Submission ICN-WBG Competition Advocacy Contest 2016-2017 - ACCC IRD Submission	6	Granted	
2	ACCC		22.2.2017	Submission ICN-WBG Competition Advocacy Contest 2016-2017 - ACCC IRD Submission attachment	8	Granted	

ATTACHMENT B

INFORMATION ON RIGHTS OF REVIEW

1. ACCC Internal Review

Under s.54 of the FOI Act, you can apply for an internal review of my decision by writing to the ACCC within 30 days of receipt of this letter indicating that you seek an internal review of this decision.

If you make an application for review, another officer of the ACCC will review and make another decision in regards to these documents.

There is no charge payable for requesting an internal review. No particular form is required to apply for review. You will need to set why the decision should be changed.

Please send any correspondence to:

FOI Coordinator

Australian Competition & Consumer Commission

GPO Box 3131

Canberra ACT 2601

If you make an application for internal review and we do not make a decision within 30 days or such further period as the IC allows, the original decision is considered affirmed. In such circumstances, you can seek review of our deemed decision by the IC.

2. Review by the Information Commissioner

You may ask for a review of a decision by the Australian Information Commissioner (IC). You do not have to go through our internal review process first for this process. If you do choose to seek an internal review, you can still seek IC review for the internal review decision if we refuse access to the documents.

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

If you disagree with the Information Commissioner's review decision, you can appeal to the Administrative Appeals Tribunal (AAT).

The Tribunal is a completely independent review body with the power to make a fresh decision. A filing fee of $861.00 (as at 1 July 2014) should accompany your application, unless you are granted legal aid or you come within an exempt category of persons (check with the Tribunal registry in your State). The Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded if you are successful.

3. Complaint to the Information Commissioner

You may request the Information Commissioner to investigate action taken by the ACCC in relation to this Freedom of Information request. There is no fee for making a complaint. The Information Commissioner will consider your complaint and, if appropriate, conduct an investigation into it. Any investigation will be completely independent.

You must lodge your complaint in writing and do so in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

1

Australian Competition & Consumer Commission

ICN-WBG Competition Advocacy Contest 2016-17— ACCC IRD Submission

Competition advocacy work of the ACCC in relation to privatisations of Australian ports

Theme: Elevating competition policies in economic policy agendas: innovative advocacy strategies to address market challenges

Sub-theme: Levelling the playing field through competitive neutrality or by elevating competition policy to the economic policy agenda

Summary

In the wave of numerous port privatisations, the Australian Competition and Consumer Commission **(ACCC)** has been concerned that some Australian governments have focused on achieving high one-off sale proceeds at the expense of appropriately addressing competition and economic efficiency concerns. While the sale proceeds may be used to fund new projects now, over the longer-term worsening or entrenching significant market power and/or putting in place inadequate regulatory arrangements through the privatisation process will lead to higher prices for port users and consumers. This is effectively a 'tax' on future generations of Australians.

Working within the difficult confines of often having no legislated or formal role in the privatisation processes, the ACCC has therefore used a variety of approaches to advocate for governments to put in place arrangements that would deliver better outcomes for the long-term interests of Australians. For example, during 2015–16, the ACCC's advocacy efforts have led to strengthened pricing regimes, improved scope of oversight and independent dispute resolution for the privatisations of the Port of Melbourne, Port of Darwin, and the Utah Point Bulk Handling Facility (**Utah Point BHF**) at Port Hedland. These changes reduce the potential for monopoly pricing and increase the likelihood that users will be able to access those monopoly port services on reasonable terms and conditions post-privatisation.

More broadly, the ACCC's advocacy efforts have elevated competition policy onto the agenda of all Australian governments seeking to privatise ports and other monopoly assets (such as data registries) and have influenced a shift towards more competitive and efficiency focused outcomes in those privatisation processes.

Background to the Australian system of government

Australia is a federation whereby powers are divided between a central government, referred to in this submission as the Australian Government, and individual states and territories. The Australian Government oversees matters that affect the whole country as defined in the Australian Constitution. The states and territories have their own constitutions, parliaments, governments and laws and oversee matters that are not controlled by the Australian Government.

In Australia, key port assets (such as major container ports) have historically been owned by States and Territories. Accordingly, it is a decision for individual states and territories to privatise port assets and make laws and regulations concerning the nature of the arrangements that will apply post-privatisation.

ACCC's concerns with approaches to port privatisations

Due to a number of factors, such as large geographical distances between states and territories, many key ports in Australia are monopoly bottleneck infrastructure. Over time, state and territory governments have sought to privatise port assets as a means to obtain significant proceeds, which can then be used to fund new projects.

The ACCC has on many occasions stated that privatisation can facilitate innovative management and improve the efficiency of infrastructure in the interests of users and the general community. At the same time, the ACCC has cautioned that such economic efficiency benefits will only be realised where privatisations are implemented with sufficiently competitive market structures and/or appropriate access and pricing arrangements.

In relation to recent port privatisations, however, the ACCC has observed a preference by state and territory governments to rely on price monitoring arrangements as a means of influencing prices. The ACCC has also observed the implementation of arrangements that hinder the potential for future competition and entrench the significant market power already held by the private operator.

While such arrangements may lead to high one-off sale proceeds by effectively conferring unregulated monopoly port assets upon private operators, over the longer-term they will also lead to higher prices that are ultimately paid for by port users and consumers. This is effectively a 'tax' on future generations of Australians. As such, the ACCC has been concerned that state and territory governments have been too focused on the shorter-term objective of achieving high one-off sale proceeds at the expense of appropriately addressing longer-term competition and efficiency concerns.

The New South Wales (**NSW**) Government's privatisation of the Port of Newcastle, Port Botany and Port Kembla absent of any effective regulatory regime to constrain pricing and including anti-competitive arrangements is an example of the ACCC's concerns. The Port of Newcastle, which is one of the world's largest coal export ports, was privatised in 2014 with a sale price of $1.75 billion. Less than a year later, the private operator revalued its port assets to $2.4 billion and increased some charges by between 40 and 60 per cent with no independent check on the appropriateness of those revaluations and price increases. The price increases are now the subject of a lengthy and costly dispute between an access seeker and the private operator. In relation to Port Botany and Port Kembla, it has been reported that the NSW Government privately agreed to compensate the private operator (who paid $5.07 billion for the two ports) for any loss of trade to a future competing container terminal in Newcastle.

Challenges and the ACCC's approach to competition advocacy work in port privatisations

In light of the above, the ACCC has advocated for governments to put in place market structures and regulatory arrangements through the privatisation process that would deliver better outcomes for the long-term interests of Australians. However, opening a dialogue between the ACCC and state and territory governments about their approaches to privatisations and the longer-term considerations has taken some time due to a number of challenges.

Most significantly, the ACCC has no legislated or formal role in the privatisation process beyond assessing bidders that raise competition concerns through the mergers and acquisitions review process under section 50 of the *Competition and Consumer Act 2010* (Cth) (**CCA**).As could be expected, this has meant that State and Territory governments have been hesitant to provide what is often sensitive information to the ACCC beyond that which is necessary for assessment under section 50. It follows that obtaining the right information for the ACCC to be able to make a meaningful assessment of whether concerns may arise and be in a position to provide constructive input into the privatisation process more broadly has been difficult.

The ACCC therefore undertook a range of approaches to open the dialogue with governments and subsequently work with them to take steps to address the longer-term considerations. In the first instance, the ACCC began highlighting its general concerns about the likely long-term effects of past approaches to privatisation through public speeches, media interviews, industry monitoring reports and submissions to government reviews on matters of competition and economic policy. This re-invigorated public debate about the merits of privatisation, elevating competition and economic policy onto the agenda of

governments seeking to privatise assets, and signalled to governments that the ACCC had concerns that it would like to work together to address.

This is highlighted by a number of public reports on the matters. Over the past 12 months, the ACCC Chair Rod Sims has spoken at public events and to journalists on issues relating to privatisation of public assets on multiple occasions. This has resulted in some 144 mentions in the Australian media, which potentially reached an audience of 13,576,109 (based on circulation figures).

The ACCC also wrote to relevant senior government officials inviting early engagement on section 50 issues, and used this as an opportunity to open the dialogue on the privatisation process more broadly. For example, the ACCC outlined its general concerns and invited governments to approach the ACCC to discuss the appropriateness of proposed market structure and regulatory arrangements.

In some instances, the ACCC also sought to escalate issues by highlighting its initial concerns with particular privatisations in its public commentary as well as highlighting subsequent productive engagement with the relevant government and any positive changes to the arrangements where applicable. This was particularly effective in cases where the privatisation was also the subject of a parliamentary inquiry process and the government sought the ACCC's support for the proposed arrangements, such as the privatisation of the Port of Melbourne and Utah Point BHF (discussed further below).

Over time, the ACCC's advocacy efforts have influenced a shift towards more competitive and efficiency focussed outcomes in privatisation processes. This is evidenced by some governments beginning to approach the ACCC and initiating conversations in the first instance to get a sounding for the ACCC's likely reaction to the proposed privatisation arrangements as well as the positive outcomes discussed below.

Outcomes of ACCC's advocacy efforts in recent port privatisations

The ACCC has delivered three key messages to governments privatising ports:

1. price monitoring is not effective for regulating monopoly port infrastructure
2. a negotiate-arbitrate framework is the minimum for effective regulation of monopoly port infrastructure, and
3. market structures or arrangements that hinder potential for future competition should not be created or maintained.

During 2015–16, the ACCC's advocacy efforts led to strengthened pricing regimes, improved scope of oversight and independent dispute resolution for the privatisations of the Port of Melbourne, Port of Darwin, and Utah Point BHF. Evidence of the direct link between the ACCC's advocacy efforts and the changes to the privatisations are drawn out in government media releases and commentary in parliamentary debates, which are referenced below.

Port of Melbourne

The Victorian Government initially proposed CPI price caps and price monitoring for certain charges for the first 15 years. Most notably, the covered charges excluded land rents even though this was an area of port operations over which the private operator would have significant market power. Indeed, land rent changes were the subject of a lengthy dispute with an access seeker during the privatisation process when the Port of Melbourne Corporation sought to increase land rent by 750 per cent. The Victorian Government also proposed to pay compensation to the private operator if a second port operating in

competition with the Port of Melbourne was developed by the government sometime over an unspecified period of up to 50 years.

While the ACCC had some engagement with the Victorian Government early in the privatisation process, the ACCC ultimately made a submission and appeared at the hearings for the Victorian Legislative Council Select Committee inquiring into the privatisation. The ACCC also provided commentary of some concerns with the proposed arrangements in media interviews and speeches. This resulted in a constructive dialogue with the Victorian Government about how it could improve the proposed arrangements.

The ACCC's advocacy work resulted in there being more regular reviews by the Victorian regulator of the private operator's compliance against strengthened pricing principles, and the ability for more direct forms of price regulation to be imposed. Reviews of land rents and the ability for access seekers to seek independent dispute resolution of these charges were also included. Further, the compensation clause was limited to only 15 years with increased transparency of the arrangements.[1]

Although not perfect, these changes move the dial towards a more robust regulatory regime, providing stronger incentives for parties to negotiate sensibly and ensuring that all services where significant market power exists are covered so as to reduce the potential for monopoly pricing. It is noted that the Victorian Government went on to achieve a sale price of $9.7 billion for the port, which was almost double original estimates.

Port of Darwin

The Northern Territory (**NT**) Government initially proposed a light-handed monitoring regime to apply to a limited scope of services. The ACCC raised its concerns about such a proposal for regulating monopoly port infrastructure pricing with the NT Government when it approached the ACCC regarding section 50 issues.

The ACCC's advocacy work was successful in changing the NT Government's approach to this port privatisation. Legislative requirements were put in place for the private operator to develop an 'access policy' that needed to be approved by the NT Utilities Commission. Most significantly, the access policy would be required to include a negotiate-arbitrate framework that covered price terms. This provides an incentive for the private operator to offer reasonable terms and conditions in order to avoid the process of arbitration, and it levels the negotiating playing field by providing leverage to access seekers.[2]

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1 Premier, Victorian Government, media release (30 September 2015):

- 'Following productive discussions with the ACCC, Treasurer Tim Pallas and Minister for Ports Luke Donnellan today announced that the Andrews Labor Government will include additional economic safeguards in the Port of Melbourne lease transaction documents.'
- 'The ACCC submission to the Select Committee states that 'privatisation can facilitate innovative management and improve the efficiency of infrastructure in the interests of users and the general community'. The Government agrees with this, and is working to provide a framework around the lease that ensures strong competition and better outcomes.'
- 'We have listened to and sought to positively address the matters discussed with the ACCC, and the measures announced will provide even more protection for competitive outcomes.'

2 Legislative Assembly of the Northern Territory: Port of Darwin Select Committee (April 2015):

- 'Ensuring the model incorporates a dispute resolution mechanism was also considered important. Where access regulation is appropriate, the ACCC notes that competition issues, including those relating to pricing, are best addressed through Part IIIA of the Competition and Consumer Act and recently called on governments to consider giving the ACCC, as the regulator, authority to intervene in access and pricing disputes.' (p. 49)
- 'Ensuring rights to fair access to the Port of Darwin is vital for the development of the Northern Territory economy. As pricing is an essential element of access, the dispute resolution mechanism should also cover pricing. The Committee

Utah Point BHF

The Western Australian (**WA**) Government initially proposed that prices would be subject to a price monitoring regime, benchmarked against CPI, and provided that an ex-post review of price movements could instigate changes to the pricing regime.

The ACCC made a submission to the WA Standing Committee on Legislation inquiring into the privatisation setting out the limits of the proposed pricing regime to constrain monopoly pricing. This instigated a direct and constructive dialogue with the WA Government about how to improve the proposal.

The ACCC's advocacy work ultimately resulted in the WA Government changing its approach to the privatisation. In particular, the WA Government decided to replace the price monitoring regime with a strengthened negotiate-arbitrate framework to enable access seekers to seek independent arbitration if there is a dispute about price or non-price terms and conditions of access. This change provides a more credible constraint on monopoly pricing and ensures that users can access the monopoly port infrastructure on reasonable terms and conditions.[3] [4]

Conclusion

As evidenced by the outcomes in relation to the Port of Melbourne, Port of Darwin, and Utah Point BHF, the ACCC's advocacy efforts have elevated competition and economic policy onto the agenda of governments seeking to privatise assets and have influenced a shift towards more competitive and efficiency focussed outcomes. The effect of these efforts is to protect users and consumers from unreasonably high prices and deliver better outcomes for the long-term interests of Australians.

recommends that the Ports Management Bill be amended to provide an alternative mechanism to taking legal action for resolving access and pricing disputes.' (p. 58)

[3] Treasury, WA Government, media release (18 November 2016):

- 'The Treasurer said the changes introduced to the pricing regime were consistent with the recommendations of both the Legislation Committee and the Australian Competition and Consumer Commission, with a 'negotiate/arbitrate' model now adopted for pricing as well as access.'
- 'Bidders will be required to base their prices on the access and pricing regime and any associated constraints. From a user perspective, the legislation sets out a clear mechanism to promote fairness in access and pricing.'

[4] Standing Committee on Legislation: Pilbara Port Assets (Disposal) Bill 2015

- The Committee makes Recommendation 7 based on the ACCC's submission (see pp. 28–29): 'The Committee recommends that the 'negotiate-arbitrate' model proposed by the Pilbara Port Asset (Disposal) Bill 2015 be extended to apply to prices to access the facility.'

06 Jun 2016
Australian Financial Review, Australia

Author: Lucille Keen • Section: General News • Article type : News Item
Classification : National • Audience : 50,288 • Page: 7 • Printed Size: 255.00cm²
Market: National • Country: Australia • ASR: AUD 4,459 • Words: 624
Item ID: 605863252

2

Privatisation price monitoring 'useless'

Lucille Keen

The competition watchdog has warned state and federal governments against trying to maximise profits from privatisations just days before the first-round bids close for Australia's largest port.

Australian Competition and Consumer Commission chairman Rod Sims told *The Australian Financial Review* that price monitoring regimes were not enough in the privatisation of state-owned monopolies.

Last week Glencore was successful in convincing the Australian Competition Tribunal to overturn past decisions by recommending the declaration of the Port of Newcastle's disputed shipping channel. Once an asset is "declared" its services are regulated under the Competition and Consumer Act.

"The Glencore decision is a great decision in the sense that it recognises that simply price monitoring a monopoly is essentially useless," Mr Sims said. "It points out at the Port of Newcastle the monopolist could and did increase prices without consultation. The whole notion that we privatise assets with simply a price monitoring regime, I'm hoping that the Glencore decision puts that to rest one and for all."

Mr Sims said governments were maximising sale proceeds to the detriment of the economy over time and if government had budget problems they should be tackling them in other ways rather than seeking to get higher prices for privatising monopolies without effective regulation.

He said the ACCC wouldn't push for guidelines in a lease contract.

"That isn't effective because there is no one enforcing them," he said. "What you need is regulation by a regulator. I want all governments to understand you shouldn't be privatising to maximise proceeds. The Victorian government has done a better job than other government's when it comes to privatising ports, in a sense there is some control in prices.

"But I think the lesson is give the regulator, which could be the Essential Services Commission ... make sure they can police the price controls rather than leaving it to the contract. They've (the government on the Port of Melbourne) got price caps on, they're quite contractual, but we'd prefer a stronger role for the ESC."

The issue of pricing and regulation has been at the heart of the privatisation of the Port of Melbourne, with the state government dealing with threats from the stevedores after the Port of Melbourne Corporation attempted to increase rents by up to 750 per cent.

Asciano, which last week saw investors vote in favour of a $9.05 billion takeover of the company, is expected to review its rents at the port later this year.

First-round bids for the $6 billion 50-year lease of the Port of Melbourne are due mid-June and the government is expected to call for binding offers by mid-September and have the sale completed by the end of October.

Last week it was revealed in *Street Talk* that IFM Investors and its partners for the Port of Melbourne auction went to the ACCC to start a review under the merger process guidelines and was seeking industry submissions into the potential deal by June 17.

Much of the ACCC's investigation is expected to centre on IFM.

Any user of the asset can apply to have an asset declared. Applications are made to the National Competition Council, which then refers the decision to the designated minister.

During the Glencore process, the Victorian government, in its submission to the application for declaration of shipping channel services at the Port of Newcastle, said where a state has leased assets to a private operator but has been careful to retain ownership the designated minister is the premier of that state and not the Commonwealth treasurer.

When asked if he was concerned about any threat of the Port of Melbourne being declared, Victorian Treasurer Tim Pallas said the Port of Melbourne lease transaction has a robust economic regulatory framework, enshrined in state legislation.

27 Jul 2016
Sydney Morning Herald, Sydney

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Words: 457 • Item ID: 632966478

Policy Advocate reverses position as consumers bear burden of rising prices

ACCC chief hits privatisation

Patrick Hatch

Selling public assets has created unregulated monopolies that hurt productivity and damage the economy, according to Australia's consumer and competition tsar, who says he is on the verge of becoming a privatisation opponent.

In a blistering attack on decades of common government practice, Australian Competition and Consumer Commission chairman Rod Sims said the sale of ports and electricity infrastructure and the opening of vocational education to private companies had caused him and the public to lose faith in privatisation and deregulation.

"I've been a very strong advocate of privatisation for probably 30 years; I believe it enhances economic efficiency," Mr Sims told the Melbourne Economic Forum on Tuesday. "I'm now almost at the point of opposing privatisation because it's been done to boost proceeds, it's been done to boost asset sales, and I think it's severely damaging our economy."

Mr Sims said privatising ports, including Port Botany and Port Kembla in NSW, which were privatised together, and the Port of Melbourne, which came with conditions restricting competition from other ports, were examples where monopolies had been created without suitable regulation to control how much they could then charge users.

"Of course, you get these lovely headlines in the *Financial Review* saying 'Gosh, what a successful sale, look at the multiple they achieved'," Mr Sims said.

"Well, of course they bloody well did: the owners factored in very large price rises because there's no regulation on how they set the price of a monopoly. How dopey is that?"

Mr Sims, who recently launched legal action against Medibank Private alleging it concealed changes to health insurance policies to boost profits before its privatisation, said billions of dollars had been wasted in the scandal-plagued vocational education sector since it was opened up to the private sector.

Deregulating the electricity market and selling poles and wires in Queensland and NSW had seen power prices almost double there over five years, he said.

"When you meet people in the street and they say 'I don't want privatisation because it boosts prices' and you dismiss them ... recent examples suggest they're right," he told the room of influential economic and policy experts.

"The excessive spend on electric poles and wires has damaged our productivity. The higher energy price we're getting from some poor gas and electricity policies are damaging some of our productive sectors."

Mr Sims said he was growing "exasperated" as governments including the Commonwealth became more explicit in trying to maximise proceeds from asset sales.

"I think a sharp uppercut is necessary and that's why I'm saying: stop the privatisation," he said.

27 Jul 2016
Sydney Morning Herald, Sydney

Author: Patrick Hatch • Section: Business News • Article type : News Item
Classification : Capital City Daily • Audience : 102,512 • Page: 19
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Words: 457 • Item ID: 632966478

Rod Sims is dismayed at the effects of privatisation of public assets. Photo: Vince Caligiuri

28 Jul 2016
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Classification : National • Audience : 50,288 • Page: 12 • Printed Size: 203.00cm²
Market: National • Country: Australia • ASR: AUD 3,550 • Words: 451
Item ID: 633585862

Glencore backs ACCC's Sims on privatisation

Ben Potter

Coal giant Glencore strongly backed competition regulator Rod Sims's criticism of monopoly privatisations structured to maximise sale proceeds at the expense of customers.

Glencore is involved in a long-running dispute with the owners of the Port of Newcastle over 40-60 per cent channel fee increases, which is headed for the Full Federal Court.

The company's manager of ports and rail, Frank Coldwell, said privatised key infrastructure assets such as ports used by the mining sector "should be regulated in a manner that does not penalise industry unfairly or undermine the economic viability of future growth and investment in the sector".

Mr Sims, chairman of the Australian Competition and Consumer Commission, cited the Port of Newcastle as well as the sale of Port Botany and Port Kembla as a package by NSW's Baird government as examples of badly structured public asset sales that were turning him against privatisation after a professional lifetime of support for the policy.

Rod Sims says governments are not thinking long term.

He said on Wednesday that past privatisations such as Qantas, the Commonwealth Bank and Telstra into competitive, regulated markets had clearly benefited the public.

But he said that governments today weren't thinking about the long-term economic consequences of privatisations that just turned public monopolies over to unregulated private monopolies.

"I am taking the step of going as public as I am because I really think people, as they are privatising assets, ought to give this a lot more thought and think about the future economic consequences for your state and your country of what an unregulated privatised monopoly is able to do," he told *The Australian Financial Review*.

"I understand governments want money, but ultimately they are interested in the economic future of their geographic area and there are consequences when you privatise an unregulated monopoly."

Glencore won a decision from the Australian Competition Tribunal that the Port of Newcastle should be declared under Part IIIA of the Competition and Consumer Commission, which means users can get regulated access to vital infrastructure.

The decision means the ACCC can rule on the channel fee increase.

Glencore sees it as important because access to other infrastructure that could be privatised in future – such as Australian Rail Track Corporation's rail lines – could also depend on it.

"Glencore believes there are lessons to be learnt from privatisations which resulted in a significant increase in the cost of access and enabled the monopoly owner to extract excessive rents from users," Mr Coldwell said.

But the port's private owners – Hastings Fund Management and China Merchants Group bought a 99-year lease for $1.75 billion in 2014 – have now appealed the decision to the Full Federal Court.

▸ Matthew Stevens p30

11 Oct 2016
Australian Financial Review, Australia

Author: Matthew Stevens • Section: Companies and Markets • Article type : News Item
Classification : National • Audience : 50,288 • Page: 32 • Printed Size: 555.00cm²
Market: National • Country: Australia • ASR: AUD 9,704 • Words: 1138
Item ID: 669880318

Matthew Stevens
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Greed harming privatisation mandate

Australian governments risk erosion of their social licence to privatise state-owned assets if they continue their collective focus on price maximisation rather than on seeding broader and demonstrable efficiency benefits across the economy.

This view was put with unusual clarity and force in an overlooked, unreported speech delivered last Thursday evening by the chairman of the Australian Competition and Consumer Commission, Rod Sims.

Speaking from notes, Sims told a Sydney audience gathered by the Centre for Independent Studies that "we're doing it wrong" in our national approach to privatisation and the public's increasing scepticism of what should be a lever of enhanced economic efficiency is well justified.

"In my view, it is seeing prices rise. In my view therefore the public – who associate privatisation with higher prices – they're more right than wrong. And so we shouldn't single the public out in saying, 'What do they know, they just don't understand the argument?'

"They understand it very well. They see that we have been privatising in ways that push up prices and we shouldn't be doing it because we're actually harming the whole concept of privatisation itself."

Sims said the failure of governments, economists and commerce to acknowledge even the most obvious mistakes of past economic reforms stood as a roadblock to microeconomic reform. He offered the "VET fee disaster" as an example of reform gone very bung, and cited privatisation as the other.

"Privatisation is not popular if you take a vote, because people believe it leads to high prices. They're right. Often privatisation does lead to higher prices because we privatise for the wrong reasons and in the wrong way."

Some might identify Sims as a classic poacher turned gamekeeper. Here is a past architect of open economies, who believes profoundly that governments have no place operating commercial enterprise, who now finds himself running the competition regulator, and who is convinced increasingly of the necessity of regulation as an essential lever for free enterprise to succeed.

Sim's counterpunch is that he has stood firm for 40 years against the sorts of monopolies and oligopolies that are being created through this latest generation of privatisations.

Sims opened with an reassertion of the overarching logic of privatisation. "No one in Australia thinks we would have cheaper cars, cheaper food, better clothes if the government had a bigger role in producing. So my first point is we privatise for the economic efficiency reasons, not to raise money.

"A community activated only by self-interest would be a community of ruthless profiteers," he said, citing the eminent American economist and historian Robert Heilbroner. "The regulator is competition."

Sims maintains that government is the wrong owner of commercial assets but privatisation that puts sale price ahead of economic efficiency is wrong.

Because ambitions are misplaced, long-term economic fundamentals are forgotten. So there is a long and unfortunate history of governments driving up service charges and diluting regulatory oversight ahead of sale processes.

"I think it does huge damage to the Australian economy," Sims said.

That is why the ACCC chairman stepped into the Victorian port privatisation last year, why he quietly encouraged Glencore to exercise the competition law to challenge the repricing of the Port of Newcastle and why the Commonwealth's 2002 privatisation of Sydney Airport continues to be his model for how not to go about it.

"The examples abound of privatising in the wrong way," Sims said. "Sydney Airport, [where] the government doubled – I'll say it again, doubled – the landing charges prior to selling it. They put no constraints on parking fees or anything else and they also gave the [new] owner the first right of refusal over the second Sydney airport so that there would be no competition and you boost price. [It was] a terrible example of how not to privatise.

"The Port of Melbourne tried to increase the rents on the land by 750 per cent as they were privatising the port," he said. "You have to ask, what were they thinking?"

Sims then offered a former South Australian government as a pin-up for pre-privatisation price pillage. Through the back end of the 1990s, the Olsen government sold the Moomba-to-Adelaide gas pipeline along with a suite of electricity assets. Sims claimed the pipeline tariff was doubled before the sale to boost the sale price and that a proposed electricity interconnector with NSW was abandoned in the name of lifting prices for the generation assets.

The price increases forced on the customers of the Port of Newcastle by the monopoly's new owners is another constant bugbear for Sims. NSW sold the thing, essentially unregulated, for $1.75 billion in 2014. Within about six months the new owners revalued the asset by up to $2.4 billion and increased the price for using a shipping channel, which was paid for by the customers in the first place, up to 60 per cent.

"Personally, I have a problem with that," Sims said

Outside of a simple moral objection to the operator's behaviour, Sims

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recognised a lingering economic cost. Why would users of the world's biggest coal port invest in sustaining or growing production when a monopoly port owner "can suck the economic rent" out of their projects?

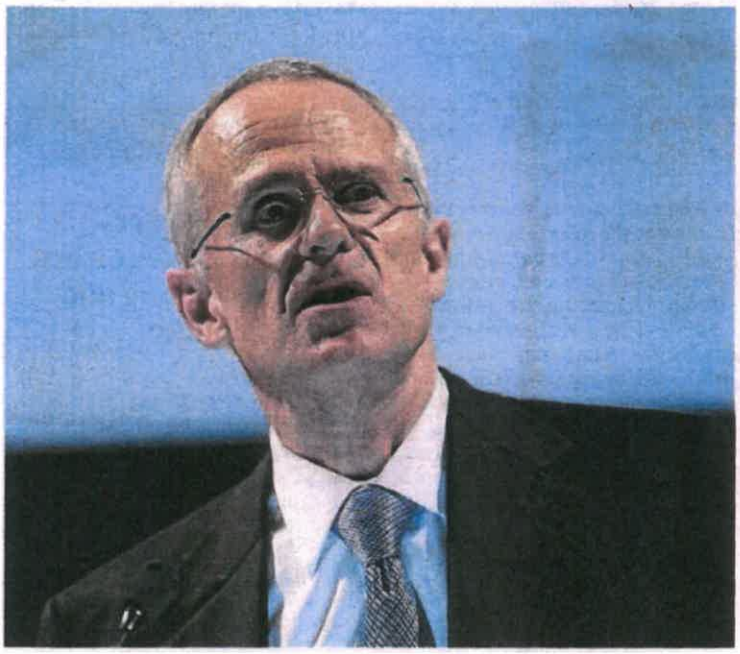
"So a lot of money raised [in privatisation] equals success, not much money raised equals failure? Wrong. I think, if you are privatising for economic efficiency and these are assets that matter for the state, you have got to make sure they face competition where they can, you've got to make sure they're properly regulated if they can't," Sims said.

"I ran into somebody from a state government not so long ago – I won't mention names or the state – but they really took me to task. So I thought, 'Well, OK, I can see there's a few little weaknesses in some of my arguments, possibly, let's see where he comes from.'

"And then what he says, basically, while pointing his finger at me, is, 'You don't realise that we actually don't have many taxation options in our state, privatising to maximise proceeds is a very efficient tax.'

"I could not disagree more. I think it's a very inefficient tax, because if you're privatising to maximise proceeds, you get a one-off gain but imposing a continuing cost on society, as that owner, unfettered by competition or unfettered by any sense of regulation of their monopoly, will charge what they like and that will damage the economy."

With that, Sims repeated an oft-repeated mantra. The state should pass a monopoly into private ownership only with regulatory controls built around the negotiate-arbitrate pricing model. Either the owner and customer can work out an appropriate access price or the matter can be settled by a regulator. It really is that simple.



ACCC chief Rod Sims has taken governments to task. PHOTO: ANDREW MEARES

21 Oct 2016
Hobart Mercury, Hobart

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ACCC ports warning

THE consumer watchdog has warned there is no proper government constraint to prevent monopoly pricing at privatised ports. Australian Competition and Consumer Commission chairman Rod Sims said governments needed to do more in terms of regulatory constraints during privatisation processes to ensure proper pricing at ports, adding the current framework was not sufficient.

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West Australian, Perth

Author: Shane Wright • Section: General News • Article type : News Item
Classification : Capital City Daily • Audience : 153,763 • Page: 17
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Competition fear over sale of port

Shane Wright
Economics Editor

The competition watchdog has raised concerns that a key part of the Barnett Government's plan to sell Fremantle port could end up hurting the State's economy and port users.

In a review of the nation's main ports, the ACCC noted the Government's privatisation proposal and a provision that would give the new owner first right to develop the long-awaited outer harbour at Kwinana.

The competition authority and the Government have been in talks over the regulatory framework around the sale, which is hoped to raise at least $2 billion.

But in a sign of the ACCC's continuing concerns, it used its annual stevedoring review to highlight the risks of a private owner of the Fremantle port having a direct say in the development of the outer harbour.

"An example of a similar right of first refusal mechanism — entered into over a decade ago — relates to Sydney Airport," it said.

"This anti-competitive arrangement has curtailed the potential for Sydney to be serviced by two competing airports, to the detriment of passengers and business."

The commission also noted the risks if the legislation governing the privatised port failed to protect users.

It said while there were economic benefits from privatisation, this was not maintained if the new monopoly owner could charge excessive prices.

"If privatisation occurs without taking these factors into account, governments may unwittingly place a tax on future generations of Australians and hinder Australia's competitiveness," it said.