

National Competition Policy Review Agricultural and Veterinary Chemicals Legislation

Environmental Defenders Office (TAS) Submission

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Competition is widely touted as the answer to all economic woes. It is true that certain areas of industry can only benefit from the allocative, productive and dynamic efficiency which result from increases in competition. However this is not always the case. The highly influential Hilmer Report of 1993 states "In some cases competitive market outcomes will not meet the national interest, because they fail to deliver either efficiency or some other valued social objective".¹ The Report goes on to put forward the following as one of a number of broad principles as a basis for national competition policy: "There should be no regulatory restrictions on competition unless clearly demonstrated to be in the public interest".²

The basis of this submission is that the protection of the environment is both a "valued social objective" and "in the public interest". The Agricultural and Veterinary Chemicals Legislation ought to be brought in line with national competition policy but not to the extent that it impedes on the valued social objective of environmental protection.

Within the sphere of microeconomic analysis pollution and other forms of environmental degradation form negative externalities. In the simplest of markets with pure competition and no form of government intervention price and industry conduct are determined by the interaction of demand and supply within the market. In an altruistic world social considerations such as the environment would automatically be integrated into the demand and supply decisions made by each consumer and producer. In this situation demand and supply would reach an equilibrium at which environmental protection is recognised and implemented and no negative externality would result.

To use the present context, in such a market there would be no need for government regulation of the production, distribution and use of agricultural chemicals on the basis of environmental protection. Consumers of these chemicals would demand only those which are safe for the environment. Suppliers would comply in order to retain market share.

Unfortunately the perfect altruistic market is a myth. The rational consumer is uninformed and irrational with respect to environmental issues and demand does not correspond with environmental friendliness. The rational producer seeks to minimise monetary costs and environmental considerations can be prohibitively costly for producers facing a market which does not require them. The reality is that in the Australian marketplace for agricultural and veterinary chemicals, a competitive market would cause adverse environmental effects by encouraging the creation of this negative externality. It is true that much headway has been made in recent years with respect to community awareness of environmental issues. Germany presents probably the most advanced national market in this area. However until all consumers become more informed and demand environmentally friendly products, government regulation is the only alternative.

Government regulation seeks to overcome the environmental problem by forcing the market to take its own externalities into account. It is true that government regulation imposes a market failure of its own in the form of stifled production. However without regulation the environmental harm caused will also increase, and regulation was introduced in the first place to prevent or ameliorate environmental harm. Government restrictions on competition in the form of legislative control, such as the Agricultural and Veterinary Chemicals legislation, is required to address market failure and protect both the community and the environment from the negative impact of chemical use.

A high level of government regulation in this area also has the positive effect of protecting the community from the unknown. The current provisions of the Agvet Code are very wide with respect to the definition of agricultural chemical product.³ This allows regulation of a large number of substances both currently used and under development. Without such a high level of regulation the community and environment will become susceptible to chemicals whose effects are not yet scientifically certain.

Consumers also gain protection from government regulation. By setting chemical standards which require proof of effect the Agvet Code protects the environment from chemical overuse, where a particular ingredient is substandard in its effectiveness.⁴ Conserving the amount of each product needed is in the interests of the consumer both in terms of environmental protection and cost savings. Licensing and permit control encourage similar good practice and safeguarding of community welfare.⁵

Any loosening of regulation in the agricultural and veterinary chemicals industry will bring about a number of results. No doubt it will have a "positive" impact on the revenue of producers by decreasing the cost of compliance. A negative impact is similarly likely as the externality created in the form of environmental harm increases. We submit that the latter ought to out-weigh the former when considering the public benefit of any changes to the Agricultural and Veterinary Chemicals Legislation. The widely quoted Hilmer Report⁶ is the darling of Australian pro-competition analysts. As can be seen in the opening paragraph of this submission, even Professor Hilmer acknowledges that a valued social objective may override the requirements of competition policy. The Trade Practices Tribunal has considered this notion of "public benefit" and concluded that social objectives such as environmental concerns fall within this category.⁷ When considering whether a high level of government regulation of the Agricultural and Veterinary Chemicals industry ought to be retained, we submit that the long-term ecological and community benefit derived from regulation far outweighs any burden which the legislation places on producers and users.

¹ National Competition Policy, Report by the Independent Committee of Inquiry, August 1993, p18

² Ibid, p 206

³ Section 4(2) Agricultural and Veterinary Chemicals Code Act (Cth), 1994

⁴ Ibid s.14(3)(f)

⁵ Part 7 and Part 8 Agricultural and Veterinary Chemicals Code Act (Cth), 1994; Agricultural and Veterinary Chemicals (Control of Use) Act, 1995 and Regulations, 1996

⁶ See 1

⁷ Re ACI Operations Pty Ltd; Re 7Eleven Stores Pty Ltd

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