

RESPONSE TO THE COMPETITION POLICY REVIEW PANEL (SEPT. 2014)

Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, Sydney 2037

www.Carolodonnell.com.au

OVERVIEW: (Baby, I am the fairest trader of all – yer grandma and a mudder. Just ask Russell.)

Competition is ideally an arm of trading which is fair, rather than the reverse. Fair trading may have other arms besides competition which ideally aim to increase the wellbeing of all parties related to contracting now and for future generations.

The Panel's recommendation for a new national competition body appears unjustified and high risk. Openly implement the Select Committee Report on Social, Public and Affordable Housing (2014) and many related fairer and greener regional operations instead.

Go back to Hilmer as they lost the plot the minute it went to the lawyers. The current Panel is led by the court, wrongly calling for more confusion and cost led by monopoly legal theoretical supposition as usual.

One wonders why hold an inquiry if the pre-judged answer lies in the law and court, as in the case of the Panel. To do so seems a waste of public money. (One idly wonders if an Inspector General would be better.)

Are we to keep treating each other as children forever? Baby I don't know? Try something more openly practical for a change in housing and related utilities. Spit out the lawyer and be so much more than an artist. Tell Obama his book 'Dreams from My Father' is great. I will go to bed with it again tonight and find out more. This is not a typical political autobiography. This is a story of life.

This response to the Panel which produced the draft report entitled 'Competition Policy Review' (2014) also responds to the Panel's invitations regarding small business later. One's view is also based on analysis and critique of the draft report and recommendations in the light of key conditions related to the Commonwealth, State and Territory government acceptance and support for the report of Independent Inquiry entitled 'National Competition Policy' (the Hilmer report) in 1993.

The basic position of this response is that the Panel appear too confused and conflicted for their new court recommendation to be other than comparatively high risk for what the Panel refer to as 'human services' and for fostering any community understanding of the requirements of quality management all round. To develop an adequate theory of the service and communication economies it would do far more good to implement the NSW Legislative Council Select Committee report on Social, Public and Affordable Housing. Use National Disability Insurance Funds to do it and how could you go wrong? (Better than yet another giant building for the top beings rattling around

inside.) The report appears to rest on more grounded experience. Why repeat the misery of late 2008 and after for lots of old people and those in small business when you don't have to? This is discussed later in the context of a re-focus on the key directions of the Hilmer era and report. It seems that those who wrote 'Competition Policy Review' have not read Hilmer. It is a great read.

According to the draft report, the Australian Government established the Review *'to consider how well Australia's competition policy, laws and institutions are travelling two decades on from the Hilmer Review. In particular, how appropriate are current competition policy settings for the challenges that face us now rather than twenty years ago? (2014, p.12)*. However, this draft report may be best read backwards as key definitions and information necessary to respond effectively are at the back. The terms of reference, for example, are in Appendix A (p. 300) and refer to 'the past major review of competition policy in 1993', only to focus on the Competition and Consumer Act (CCA 2010). One wonders what interests, if any, the Panel thinks their efforts represent – the court I guess. The legal privilege, however, is to expect that key information to settle a dispute should only be seen in court. Secrets, not information, are viewed as sacrosanct indicators of legal behaviour. One wonders how this is supposed to square with the ideal view, which is that perfect markets rely upon perfect information. Why did hardly any 'experts' predict the global financial crisis of 2008? (Is this mob scientific, or what? What do they call themselves, accountants or lawyers?)

In National Competition Policy, on the other hand, Hilmer defined competition as 'striving or potential striving of two or more persons or organizations against one another for the same or related objects' (1993 p 2). This indicated competition is not necessarily for purely financial objectives, but may have related social and environmental goals. (*Think of football and picking up girls. You are usually not doing it for money, I hope. Neither is competition an end in itself for a nice life.*) This broadly humanist view which is not dog eat dog plus charity is also seen, for example, in Hilmer's response about the Trade Practices Committee (TPC) of the Law Council of Australia:

The TPC has proposed that the competitive conduct rules could be more simply expressed by a single provision that 'all conduct which substantially lessens competition is prohibited unless authorised'. While seeing some merit in the idea behind this proposal, the Committee has come to the view that such a sweeping simplification would not be appropriate. The consequences of different types of conduct warrant different types of rules, and it is not always appropriate to permit authorization. The proposal would also present significant problems in the area of unilateral conduct. (1993, p. 30).

The TPC has a national competition policy above which makes us all into gerbils joining the same old rat races they have set up while carefully ignoring others options, until they decide to kick us off. Fight back with open fair trading. You know it makes sense. They murder you without it. Look at the US. Land of the free with guns where the weak also have to be brave as abortion is frowned on.

Anyhow, one has no idea what the Panel think of Hilmer's definition, his views, or of state and services contexts for competition, as it ignores his report. Yet this was the planning direction that Commonwealth, State and Territory government signed up to. It was also part of a clearer, more openly shared, fair and stable regional service provision, asset development and risk management

strategy which was also pioneered in regional and non-profit health, rehabilitation and retirement service provision as well as in industry superannuation. The role of competition in this ideal regionally shared and more openly accountable management context requires understanding globally and locally. Implementation of the report of the Select Committee on Social, Public and Affordable Housing seems a good way to get more competitive benefits more broadly in future.

Thus a primary charge against the Panel is that in spite of referring back to the Hilmer Report, the key aspect of Hilmer's new global and regional understanding for planning and related competitive direction was ignored. (Baby, so much for small business?) This is addressed again later. When discussing competition policy, however, let us first remember the national competition policy was agreed to by the Commonwealth, State and Territory governments and supposedly leading to more rational national and related regional approaches globally and locally. Has it changed its tiny legal mind? How inconvenient is this for business? Don't be sorry they all ignored it in the first place?

Anyhow, the first principles of National Competition Policy (1993) were:

- (a) No participant in the market should be able to engage in anti-competitive conduct against the public interest (*Public interest is paramount here, dolts. What and where is it in law?*)
- (b) As far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership. (*Fair enough. We've wanted to know the difference between a lot of terms – not just employee and contractor*)

This regional direction, endorsed by governments in the national competition policy principles (Hilmer, 1993, xix) was also strongly embraced in Australia earlier by states signing up for World Health Organization and related global directions such as the UN Declaration of Human Rights. The latter first stressed the ideal rights to inclusion in regard to minimum standards of living whether they appear competitive or not. (Chop yourself off two years before your medicated death and save yourself a lot of pain and us a lot of money, for example. I'm planning to do it with a campaign to use my body as food for endangered species. Will you join me as I am too frightened to do it alone? Let us talk to Russell and some old doctors and footballers, leading the pack. I will go first as usual. (*Surely ANU and veterinarians will also back us up. This is a better move than backing companion animals as we are all going to die and throughout life I find my body has been my greatest asset.*)

Hilmer wrote after Australian acceptance of global environment protection and sustainable development agreements and after the passage of state Environment Protection and Assessment Acts. This ideally established the arena openly and consultatively for planning and for related national construction and triple bottom line accounting, also with a view to improving all operations on any openly shared and related grounds in future. 'Competitive neutrality' is ideally addressed later in this context. It traditionally relates to removal of the Shield of the Crown, so that governments can be taken to court and held to account in the same manner as those in the private sector. Another way of viewing the accountability problem is to demand the private sector keep us informed, not snowed for some sectional financial advance that they may or may not be driving.

Frankly, the economic reporting for years and years before late 2008 was a disgrace in housing. I had to retire on a package and suffer the effects of the global financial crisis on my capital and on the body corporate where I live under strata title to develop the vaguest clue about fund ownership, construction and building management and maintenance in theory and reality in shared housing. It has enormous potential but must be understood. The people who know anything don't say much. They are like that in construction. Busy, along with the Catholics, intent on just pumping out more babies for God and the markets. Do they never get sick of calling for growth? Try broader planning which uses a broader range of assets which may not be valued by the market. (Old people like us.)

The Panel do not appear to embrace state planning but instead concentrate on the requirements of the Competition and Consumer Act (CCA 2010). This is superficially reasonable, as it is the act finally driving some to court with their business and legal concerns which may be legion. On the other hand, this also produces more conflicted lawyers' theoretical rubbish, which infects the deliberations of the Panel, as discussed in this response. The Hilmer Report was accepted theoretically in 1993 by Australian government only to lose the field again to earlier battenning feudal legal interests, as usual.

The Panel states the CCA has been framed to take account of all sources of competition that affect markets in Australia (p. 40). I haven't read the act lately but I strongly doubt it. How does it do it – by repeating the same word that it is supposed to be explaining, as usual? (The lawyer should be given an understanding of the common dictionary role in the Enlightenment development of scientific thought, communication and numerical advance – let alone bureaucracy or democracy).

Under the heading 'Definition of Market' the Panel recommends retaining the definition of 'market' in the CCA but the definition of 'competition' should be re-worded. In neither the case of 'market' nor 'competition', does it state what the current definitions in the CCA are, or what they should be in future. This seems a recipe for disaster brought about by leaving matters to lawyers later. Talk about high risk? From quality management views this start is a shocker because it passes the buck to daddy as usual. The value of inquiry is unclear if it is just expected to genuflect to more lawyers.

The Panel state: *'Competition policy, like other arms of government policy, is aimed at securing the welfare of Australians. Broadly speaking, it covers government policies, laws and regulatory institutions whose purpose is to make the market economy serve the long-term interests of Australian consumers. Competition is about making markets work properly (p. 15).* If this was the case competition policy would be correctly recognised as an historical aspect of trading fairly which is better conceptualised as an arm of state governance, informed by earlier English feudal and later global associations. Australian regional operations are ideally planned today as part of broader international operations, preferably undertaken in plain language. *(As distinct from nasty idiot law.)*

The Panel appears unable or unwilling to grasp the history and scope of its deliberations consistently and effectively. Greater competition is ideally part of more open global and regional direction that also allows comparison of performance quality and outcomes and more informed choice. They do not play football behind a screen and tell us the score. We can see by a comparison of OECD

statistics that the sale of guns in the US does not keep people safe. It makes them murder each other. Where does that leave your theory of competition and community wellbeing? Personally I always liked the way John Howard linked gun control to the Medicare levy and hence to health.

This problem of ignoring comparative statistical realities like death and population, or the related cost of court, is again discussed in regard to Hilmer's report on national competition policy later. The Panel, on the other hand, appears conflicted about whether competition rules above the ruck or serves the people, coming down on the side of the former naturally with the court. They also appear unequal to the task of achieving the latter service for those who fund them, because of their lack of consideration of the requirements of data collection. Their report produces almost none, for example, about the operations of the court on competition so far. The Panel states the ACCC is 'a well-regarded and effective body' (p. 6) but provide little or no evidence of why. (*Is this the worst of all possible worlds, where accountants write their reports without any numbers, as usual or not?*)

The Panel's key recommendation is to replace the National Competition Council (NCC) with a new national competition body called the Australian Council for Competition Policy (ACCP). This should *'be an independent entity, truly 'national' in scope, established and funded under a co-operative legislation scheme involving the Commonwealth, States and Territories* (p.5). Is this a bit like the view of the Trade Practices Committee (TPC) of the Law Council of Australia, earlier addressed? (*Why wouldn't it be if this game is still following the feudal court as distinct from regional logic?*)

This new body (ACCP) would apparently be an 'advocate and educator' in competition policy. What does this mean that it would do besides hand out money to states, as indicated? The Australian Competition and Consumer Council (ACCC) is apparently to retain both competition and consumer functions (p. 6). The Panel note in passing, however, that typical of the concerns expressed to it were those of the Australian Chamber of Commerce and Industry (ACCI), which claimed:

Few businesses know exactly what competitive neutrality is, few complaints are filed, and for those upheld, government's response is usually slow. A fundamental issue remains regarding the adequacy of the enforcement process (p.23).

When they confront the ACCP and all the other legal brothers they will not know if they are Arthur or Martha. Also remember that many who think they know, are also unwilling to reveal what key big words used in law actually mean and this is not all they won't reveal. They won't write it down in case somebody steals it or another lawyer wants to see it different. (This is the Manly First Rule.) The key word in law is typically not explained for fear of transgressing the court prerogative of its interpretation. (*Do you wonder why I hate this filth spit on the open spirit of Wikipedia? –surely not.*)

In short, Panel recommendation appears likely to increase current confusion and cost wrongly as lawyers don't normally explain key words. They simply repeat and add them, as is the legal practice. The point today is that Australia is part of a global economy which it ought to take a helpful approach to trying to manage in the interests of all, as distinct from reinforcing the old feudal and tribal drivers, putting down trouble. The role of cooperation or competition in any regional planning

and strategic direction is discussed in housing, communications and related utilities later in response to Panel questions on small business. Historically, news media has often been a huge help in life.

The Panel view of human services, competitive neutrality and other key concepts are discussed in related regional planning and funding contexts later. Planning and zoning, for example, are not ideally seen as aspects of competition policy but as aspects of regional planning, trade and management to deal with key global, national and related local problems. This competitive ideal is to implement UN and related conventions critically on their particular merits on the ground now and for future generations as distinct from in another way. Good media are the obvious way to do it.

Intellectual property is also considered in related geographic and historical contexts at Sydney University, as attached. Surely, for example, if one can give one's money away, one should be able to give one's intellectual property away before death, if anyone will accept it. There will be oodles of old Sydney Uni. and other academics falling dead like flies fairly soon. At least let them work at donating their thoughts, their books, bodies, etc. (Baby, do not say they are worthless. That is what really hurts when they pull the plug. From hero to total zero in minutes. Baby, say it aint so. See my personal teaching case on www.Carolodonnell.com.au and I'm not the only one. How come at Sydney University in the charitable areas they only ever want you to give them your money? (Does this question make sense to the Panel? All my life I thought I was cutting edge and then I lost it.)

One recommends government and others concentrate on regional planning for implementation of the NSW Select Committee report on social, public and affordable housing (2014.) and related heritage rehabilitation or reconstruction. This can establish the place and personal context for more rational discussion of services, like risk management and insurance in housing, as well as for health.

From reading some recent reports, it appears NSW government are keen to embrace Hilmer's direction, which the Panel appears to ignore. It took the global financial crisis of 2008 to shed dim journalistic light for us pig-ignorant public on the key role of land, housing and business mortgages, loans and derivatives, securities, hybrids, instruments, etc. in wealth creation and distribution. I find this intellectual growth is not reflected in the Competition Policy Review draft report. The recommendations of the Panel appear likely to make the current competitive situation, whatever it is, worse rather than better as they are mainly widening the circles of contesting lawyers ruling by the secret and legal adversarial and/or meaningless letter to the client. (*This is sloppy Joe work.*)

Hemmed in by lawyers, and hemming us in further, the Panel is thus likely to lead again to what no experts saw coming in 2008 which is greater ignorance, financial crisis, uncertainty, instability and cost in future. Let us go back to the Hilmer Report, as discussed again later, and Introduce planning and competition together in implementation of the Select Committee report on social, public and affordable housing (2014). This is openly shared regional ground on which we ideally operate alone or together, trying to understand more about what we are doing. 'Think globally, act locally' is the antithesis of court origins, which are feudal. Who am I to judge? (*We need good evidence to do it – as distinct from the adversarial game that they dish out while expensively turning science into junk.*)

THE PANEL'S VIEW OF THE IDEAL NATURE AND OPERATIONAL ROLE OF MARKETS AND COMPETITION IN PLANNING AND DEVELOPMENT ARE UNCLEAR. IT JUST RELIES ON THE COURT

The Panel's legal direction will just confuse us more and cost more money. It states first '*Competition policy is aimed at improving the **economic welfare** of Australians. It is about **making markets work properly to meet their needs and preferences***' (p. 4). (Just markets? Should public servants and others do what they want? What about courts?) The Panel states '*Our competition policies, laws and institutions serve the national interest when focused on the long term interests of consumers*' (p. 4). Surely we first consume at the breasts of our mothers who may or may not rely unpaid upon the bounty of earth (men included), for their own provision as well as our own? The Panel should explain its view of a consumer as distinct from a paid worker or a related trader such as a superannuation investor retired and living off capital or not. (*One shouldn't hold one's breath?*)

The old primitive accumulator (saver) should be wary in markets as taxpayers usually pick up the tab, in one way or another, for those who are not. Go out in the open is the natural attitude of a woman with dependants to risk, surely. Statistically speaking, as I used to tell students, if you want to be safe from violence as a woman you should go out, and if a man you should go home. From this perspective, Barack Obama, as described in his amazing memoir 'Dreams from my father', convincingly appears as the globally fooling or fooled but honestly searching embodiment of the absent father of mixed race parents. (Mom.) Could anyone else have helped him with his writing? If it's possible for him to ever be anything more in the US system God alone knows. On the other hand, you can bet there is much sympathy for that kind of thing in our neck of the woods. Even if it was made up it has the real ring of truth but can he do anything about it? Seeing America I doubt it.)

As Johnny, his protege, said to Barack in Chicago 'Whole panorama of life out there. Crazy shit going on. You got to ask yourself, 'is this kinda stuff happening elsewhere? Is there any precedent for all this shit? You ever ask yourself that?' Plumbers, etc. etc. should ponder the question with kids. From the perspective of the public interest and gaining the benefits of competition and freedom of choice, intellectual property may clearly also be donated. There are benefits for current providers such as universities in this related regional communication and research direction for greener work. Implementation of the university strategic plan, rather than collegiate interests are vital in this. (I found Obama's book at Vinnies when I was there to drop off books and DVDs. How does this work?)

The Panel recommends that the Australian Competition and Consumer Commission (ACCC) retain both competition and consumer functions (p. 6). Please explain. In making this recommendation the Panel were supposedly guided by their own consideration of whether Australia's competition laws are *fit for purpose*. The Panel states it wanted to answer its own questions on how competition laws enhanced and will enhance **consumer wellbeing over the longer term** (p. 5). However, wellbeing is not only due to markets and the Panel provide little or nothing in the way of analysis or data from court operations which would let it measure fitness for purpose at all, in spite of their financial acumen. The Panel prefers to rely instead on the authority of the court. They need an analysis

which differentiates clearly between consumers, producers, investors and other community inputs or transactions, whether money is changing hands or not. Try history. John Howard liked it too.

One wonders how economic welfare is defined and relates to wellbeing or welfare or other ideas in theory and in practice for the Panel. Knowing this is particularly important in figuring in the substantial part of the global population who remain largely dependent upon a desert and dwindling subsistence economy as well as those living on the edge of an urban market economy with or without welfare state or charitable family making remittances from income gained elsewhere.

The Panel state, *'the competition laws are not directed at protecting competitors but rather competition. This requires the competition law to balance preventing anti-competitive behaviour that undermines competition with not inhibiting behaviour that is part of normal vigorous competition'* (p. 218). From any regional growth or sustainable development perspective this represents a leap of faith in the supreme value of competition which is unjustified in reality and which is not present first, where it counts most, which is in the multiple lawyer's monopolistic and adversarial championship of key exclusive secrets over or with his clients about their businesses. What exactly is it that the Panel, who I believe are accountants, want to measure - how and why?

The fact that health is better and health care services and systems in many OECD countries are cheaper, more equitably available and of as high quality as those in the US, proves that life can be organized more effectively and cheaper than when government leaves the field to competition instead of planning to meet the consumer and public interest. The concept of 'competitive neutrality', which Alan Fels more plainly and helpfully used to call 'competition on a level playing field', is discussed in related regional management contexts later. It is ideally the common goal to increase the breadth, diversity and comparability of services, to provide better outcomes for all. Medicare provides a key example of how the service expectation of 'universal' basic standards is preserved in an environment which increases diversity and benefits of competition. Don't destroy it. Make it work better in related environments like housing. Drains and water are about public and related environment health. They are not ideally treated as some aspect of ideal competition policy.

The Panel states *'competition policy should foster diversity, choice and responsiveness in government services'* (p.4) What is so special about government services, one wonders. Doesn't diversity, choice and responsive in commercial or other services deserve to be fostered, on public money or not? This is behind Medicare for a start. The Panel asks 'Does the law focus on enhancing consumer wellbeing over the long term? The answer is no, because the court produces no data in a form which would allow the outcomes of judgments to be systematically assessed and used outside court to prevent more problems from arising. The Panel, for example, appears to use no data about the matters in court operations in its own report. Is that because it doesn't exist? (If so, how quaint?)

The ideal notion of competition has historically been based on the interactions between supposedly free and equal **traders**, where the contract exchange ideally denotes its supposed benefits and the mutual satisfaction of the trading parties. The historical advent of trade unions and collective

bargaining became state recognition that traders may start from bargaining positions where one of the contracting parties may have the upper hand in any agreement reached. For example, the advent of **workers'** compensation legislation at the end of the 19th century indicated government recognition that a man who needs money to feed himself and his family may not quibble if the effect is to put him in danger of death or severe injury through the work contract he has felt compelled immediately to take up. This was the beginning of a great leap forward in the manufacturing of wealth and the welfare state which grew together in Europe, Australia and some other countries.

The concept of the product or service **consumer**, who may be in an asymmetrical knowledge position in comparison with the producer and thus in need of protection, is a later trading construct. It is often related to the growth of public wealth to fix public health problems and in service industries backed in related regional government and legal practice. Consumer and public protection principles and practices grew up with the expansion of the state and lawyers but Australian states long retained the Crown and its shield to protect their services from suit. After World War 2, signatories to the UN Declaration of Human Rights ideally promised inclusion for all in regard to certain basic standards of living, with the potential for increasing variation in services to meet particular need. This is discussed again in regard to ideal operations of the Hilmer Report and competition led in health care, treatment of retirement and investment incomes, land and housing.

The draft report refers to 'human services' without making clear what they cover or how they may or may not relate to government services or services to species other than humans. How do 'human services' ideally relate, for example, to 'public services', or 'public utilities', or 'infrastructure'? Are they conceptualised in geographical and related social and institutional locations for mutual planning purposes or not? The Panel states, *'the Trade Practices Act is our principle legislative weapon to ensure consumers get the best deal from competition. But there are many areas of the Australian economy today that are immune from that Act: some Commonwealth enterprises, State public sector businesses and significant areas of the private sector, including the professions* (p. 71). This is the case. However, the Panel appears to wish to wipe the lawyers' brush over the lot Why? (For example, one has great faith in engineers as one sees planes that fly, etc. Lawyers just talk rubbish.)

The answer to the above problem of the historical schism between much private and public sector service operation, is not to create a newer, larger, more irrational legal edifice of secrets in the National Council of Australian Competition Policy, etc. This fetish for competition is a problem because the democratic state arose to deal with its consequences. (Funnily though it was Winston Churchill who wiped out the sons of the aristocracy in warmongering for World War 1 and who later increased taxes on aristocratic lands, driving key families off). Keep opening up more in keeping with global and related regional planning direction in the Hilmer report, discussed later. This can be done through many inquiries and communications media such as websites, TV, radio, DVDs, etc. etc.

The Panel recommends, (apparently sensibly from a global, regional and democratic government perspective on competition) that funding, regulation and service delivery be separate (p.5). However, it mystifyingly states it recommends: *a diversity of providers be encouraged, while not crowding out community and voluntary services*. How can voluntary services be 'crowded out' of a

market that by definition they don't appear to occupy? Surely the Panel should be worried about the reverse if mainly interested in seeing more competition. Is it paid? The Panel also recommends in regard purely to 'human services' that 'innovation in service provision be stimulated, while ensuring access to high quality human services' (p. 5). How is this quality to be achieved – in secret?

From the perspective of the public interest, more openly monetized mutually satisfactory interaction between government, business, research, teaching and related philanthropic institutions or individuals, could only be a good thing for more satisfaction, jobs and learning, surely? This is the context in which donations of intellectual property or property of another kind are ideally discussed as well. (See related views attached to the Senate Inquiry into Australia's Innovation System and to researchers in veterinary science and architecture, design and planning at Sydney University. From the perspective of the Australian and related international interest one also asks the question: **Can you justify public funding for any university services outside the related global, regional and strategic planning contexts for financial system and other innovation? How do you do it?**

As the Consumer's Federation of Australia notes: *'the risk of making a 'wrong' choice in health or education can have significant long term consequence.....it is not appropriate or fair to pass on those risks (to consumers) in the absence of an appropriate and high standard safety net in public services'*. Why stop at so-called public services, and how are they to be defined? If one buys into a financial market in ignorance, as is the normal situation, one can retire and lose one's life savings, home or business, as occurred to many in 2008. The taxpayer then has no choice about taking up the slack. The problem of making a wrong choice of any kind, from any perspective, can be fixed to some extent with more reliable information about what is on offer. The concept of 'competitive neutrality' ideally may require justification, however, of more secret operation or more open competition, depending upon whether one champions operations in the private or the public sector. *(One grinds away against the court.)*

The key trading justification is individual choice which is ideally in the public interest, which is ideally globally inclusive. From this view 'unconscionable conduct' is not an aspect of competition law. It is behaviour judged purposely unfair when carried out in ideal global and regional frameworks for fair trading. These judgments ideally recognise individual and related environmental differences, as well as the dominant or ideally related aims of cultural practice in globally related geographic arenas with institutions which have also been historically driven. This UN stuff is ideally not just some Chomsky's grandma quibble while guys go on with play as usual. Price and related forms of discrimination are ideally treated on their merits in related contexts which preferably also appear as real in practice.

Championing competition 'uber allus', following in legal frameworks also based on key legal justifications for secrecy, rather than perfectly informed and informing markets, appears outdated. Support for more competitive behaviour could more usefully occur through implementation of the NSW Legislative Council Select Committee recommendations on Social, public and affordable housing' (2014). This should also provide more openly informed and sensible vantage points on collectively shared regional grounds, from which to discuss what the Panel refers to as 'Infrastructure markets'. Supposedly these are electricity, gas, water and transport (pp. 117-130). The Productivity Commission Inquiry report entitled Public Infrastructure addressed roads,

subdivisions, bridges, railways, electricity, water drain and 'other' in overview tables (2014, p.5)
What no local waste? One responds to Panel questions on small business and economists later.

THE MODERN CONTEXT FOR THE HILMER REPORT: MARKETS HAVE GROWN UP LIKE TOPSY TO MEET UP INTERNATIONALLY. SUPPORT BUSINESSES BY GIVING THEM BETTER OPEN DIRECTION

We all started somewhere and markets have started locally to become networked globally. Post-war planning exemplified in the International Declaration of Human Rights and related International Labour Organization (ILO) and United Nations (UN) conventions suggests that to plan business effectively today one also needs to be directed by more openly and globally informed rather than closed and local specialist logic, with or without numbers. Historical and comparative judgment are ideally a more broadly informed and democratic approach to land and peoples who laboured free or were owned and loved and abused by many competitors before them. (Stop it or you will go blind.) Tell Obama that at Chicago Zoo they put the monkeys on contraception, which is opportunity lost. I always wonder when somebody says they have found asbestos in the building. Whose job is that?

The 2014 Australian budget and regional planning way forward ideally leads through more ecological (holistic?) and sustainable development into related discussions of project management, education and policy direction for now and in future. Why aren't the water storage tank, eco-toilet, revegetation, greening waste or related power the cutting edge innovation for the regional environment which is also a village in an advancing desert, connected to an urban jungle? These and other puzzling topics may appear dealt with better in openly shared contexts of regional health development and assessment in particular environments. This Australian experience is discussed at www.Carolodonnell.com.au Planning direction along the Illawarra coast is addressed as a model.

The advent of state occupational health and safety acts in the 1980s lifted the shield of the Crown which prevented the government from being sued. However, who will shield us from the court to introduce more rational judgment openly to serve the people? The Commonwealth, State and Territory Governments agreed on the need to develop a national competition policy which would give effect to developing 'an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition;' and to 'recognition of the increasingly national operation of markets, to reduce complexity and administrative duplication' (Hilmer, 1993, p.xix). To plan and act nationally or regionally states ideally should see themselves globally first. This seems necessary to establish more effective local answers and serve people more broadly and effectively.

UN direction is ideally think globally, act locally, rather than the reverse. Australians are part of the global whole who ideally act regionally in planning and welfare contexts promoted by the Universal Declaration of Human Rights, where competition, open or not, may be an operational asset. Hilmer's direction was not translated well to legislation as legal understanding of competition grew up from disputes in feudal England and local states to connect globally from local markets over time. The global and regional planning directions which Australian governments signed up to with Hilmer

was lost again to lawyers driven by earlier larger legal interests maintained in secret legal associations operating at all levels of government and business and shielded by courts.

In this context the BCA and others should declare some key interests and associations. The views presented on competition in the Competition Policy Review draft report (2014) are unclear and wrongly directed to the markets rather than to serving those for whose benefit the Hilmer direction was ideally established. We are the entire Australian community, including future generations.

RESPONDING TO THE PANEL'S QUESTIONS ON SMALL BUSINESS AND ECONOMISTS

The Panel invites views on whether there should be a specific small business dispute resolution scheme for 'CCA-related matters' (p. 259) (i.e. matters taken up under the Competition and Consumer Act (2010)).

Yes, there should. No doubt the perfect market is perfectly informed, at least in theory. However, competition is not some ideal legal God to which we bow down, but an arm of fair trading, which may have many other arms which aim to increase the wellbeing of humans now and for future generations. Education is one. Put many fair trading disputes on TV like 'Judge Judy' so all can learn (systematically or not) about places they may work in and the problems which may come up. One wonders why a DVD on hazards of roof insulation wasn't given away free in a newspaper under the Rudd government scheme to provide economic stimulus of benefit to people rather than big banks. Surely that would have been the most obvious risk management approach from day one?

One may often be unable to pin down the exact cause of any event, as much as one might like to. However, the open investigation may still be a learning process for all involved and others watching. Government inquiries and other independent or partial processes, such as this, are part of learning. Their efficacy ideally depends on the breadth and quality of evidence brought to any decision. The court is an ancient adversarial institution which is not set up in a manner which is useful for judging anything from more broadly rational and scientific perspectives. It often undoes them. An example of this is that this Competition Policy Review brings to the table no evidence, quantifiable or not, of what the Australian Competition and Consumer Commission has actually been doing which has been of benefit to the Australian people since 1993 and how much it cost taxpayers. This is a grave failing, especially when compared with the standard of achievement in health service provision. Does the Commission not consider itself a 'human service' – or is it divine perhaps? (Only on Fridays?)

The Panel notes that in some countries, notably New Zealand, the court is able to draw on the assistance of an economist who presides over the proceeding with the trial judge. The Panel invites submissions about that practice, and whether there are procedural practices that might be implemented in Australia that would be beneficial in resolving competition law proceedings in a just and cost-effective manner' (p. 298).

While one can only support more sensible voices than those of adversarial lawyers operating with the wrong view of competition, there is sadly nothing magic about being an economist. There are also many different kinds of economist, on a spectrum driven by purely theoretical numerical and legal financial speculation on one hand, and the investigation or related experience of institutional

practice on the other. (For examples of problems read about fishing www.Carolodonnell.com.au .) Most economists, however, are also beholden to our laws and courts to also justify their occupation. One notes how many of them predicted the global financial crisis of 2008 and is far from impressed with a professional market which one might see as far from perfectly informed – to put it politely.

In a giant housing industry dispute, why shouldn't somebody like a retired Harry Triguboff, for example, assist the judge most? At least he understands the planning, technical and industrial practice on the ground and can be shown to have been through it repeatedly and effectively for years. Surely this is the surgeon's test? Let him explain his view of what is in the public interest openly, and justify them, as a surgeon does with a patient. Would he do it for free? Surely he has enough money already? I wouldn't really care if he wasn't retired as long as he opened his books to show us how one might sensibly go on in the public interest. One assumes old men in the Business Council of Australia (BCA), etc. would hope to do more of this kind of thing, as distinct from more narrowly representing secret sectional financial interests in the global market. The BCA is quoted as emphasising the need for a 'commercially realistic' market definition and expresses concern that 'the administrative approach to market definition can at times be unduly narrow' (p. 192). (What does the BCA suggest? If they are worried about the administrators they should see the lawyers?)

Surely there will be many who counter the views of a man like Harry Triguboff, but at least the operational process is not a fight with law in court. This seems a comparatively huge waste of public money because the golden mean of the public interest is not found in the fight between lawyers in conflict. Ideally we may support the Australian and New Zealand Standard Industry Classification System as it provides a modern categorical basis for global management (as diagnosis normally does in health care or treatment for the physical body. Admittedly, however, this is not always helpful, especially in cases of chronic, repeat and/or multiple conditions of uncertain origin.) In this case one naturally therefore also heeds the warning of the Monash Business Policy Forum which stressed the need for 'co-locating functions by similarity of analytical approach rather than by industry', stating:

Co-location by industry increases the likelihood of capture. It creates regulatory inflexibility as 'industry specialists' rather than 'analytical generalists' dominate regulators. It risks the creation of a regulatory culture that views the particular industry that is the focus of regulation as 'special' and 'separate' from broader economic and social considerations (p. 296).

Too right. It's the professions and lawyer mates always seeking market closure or who are inevitably dragged into it by following law that do it. Surely, however, the Monash Business Policy Forum fear of the above is true only if one abrogates the field to lawyers and their legal privileges which are based on the ideal of secrecy for a man and his brief. Sadly they usually do, although usually still adhering to the ideal views about what makes up the perfect market and perfect competition, which both depend on perfect knowledge. This always happens and wastes money when all involved could be more honestly helpful by addressing the arena more openly and broadly on TV, DVDs, etc.

CONCLUSION

Australian health, workplace and retirement policy and related insurance and fund management already point weakly in the ideal service direction of openly related and shared regional and strategic funding and communication. This is also the international governance direction begun with the Universal Declaration of Human Rights and related agreements. These lean against the feudal past and its related closed collegiate treatments in favour of open governance in service to the people who are the ideal beneficiaries of the fund. These key stakeholders include their future beneficiaries, as distinct from the currently partial lot. Those growing old need to understand it most as they may not wish to go through a lot of financial or other stress, humiliation and pain for years before dying.

States are ideally committed to open regional and strategic planning direction already through environmental planning and assessment and related planning acts, including local government, crown land and heritage directions, such as national parks and wildlife. Do not let us be blamed for loving this heritage to death. It appears sad and short-sighted not to turn a loss around through related regional planning which involves native bush regeneration and related opportunistic rare species breeding. More sustainable development, more tourism, work, research and education. What is construction, if not an ideal related ground for learning, jobs, and what anybody may mean by innovation, duty or pleasure outside court? The public interest in regional planning, fair trading and related competition could also be served by more openly shared operation on regional grounds to address the following problems outlined in the Financial System Inquiry Interim Report (2014).

The FSI Interim Report laments the following which should be directed through regional planning:

'The current disclosure regime produces complex and lengthy documents that often do not enhance consumer understanding of financial products and services, and impose significant costs on industry participants (p. xxxi). The regulatory perimeters could be re-examined in a number of areas to ensure each is targeted appropriately and can capture emerging risks (p. xxxiv). The retirement phase of superannuation is underdeveloped and does not meet the risk management needs of many retirees (p. xxxviii). There are regulatory and other policy impediments to developing income products with risk management features that could benefit retirees (p. xxxix). Coordination of Australia's international financial integration could be improved (p. xiv).

Fix it in open regional funds designed openly to serve the public interest, including through competitive service. From ideal regional planning and related strategic perspectives which have been globally, nationally and regionally led by the elected in Australian states, the Senate Economics References Committee Inquiry into Australia's Innovation System should not only '**consider the need to attract investment in innovation to secure high skill, high wage, jobs and industries**'. It should consider many old, disabled, unemployed and underemployed people who the Senate ideally also represents and who would appreciate help in reducing expenses or finding something better to do.

They include artists, writers, musicians, former or current business people, academics, teachers, journalists, students or others who may welcome simpler, less stressful, cheaper and more effective service. This is also why many cohabit or marry. Find those who may be seeking and put them

together more effectively so that trust may be based on broader, better organized evidence. The services to and from students, universities and others are also addressed in related ways on www.Carolodonnell.com.au . Someone has to take responsibility for stopping too many babies. Why not let the state provide housing incentives for cutting back and call it pro-competitive behaviour? Ask the Chinese government for pointers. They must get sick of being ignored.

Cheers, Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, Sydney 2037