Professor Allan Fels AO
National Press Club Speech
Wednesday 7 February 2024

CHECK AGAINST DELIVERY

Good afternoon.

I want to begin by acknowledging the Ngunnawal and Ngambri people, the traditional custodians of the land on which we are gathered.

I pay my respects to their elders past and present.

I report to you today on my inquiry commissioned by the ACTU into price gouging and unfair pricing practices.

The greatest concern of Australians today is the cost of living which has two components:

- The incomes which people receive
- The prices which they pay

My conclusion is that Australians are paying prices that are too high, too often.

The cause is weak and ineffective competition in too many markets.

Two policies are needed.

First, the Australian government needs to act on high prices, to investigate their nature and causes and, where possible, their remedies. The remedies do not include price controls but there is much that governments could do.

Secondly, greatly strengthen competition policy to remove or weaken market power, which enables excessive prices to be charged.

There are three reasons why I am pleased to have done this inquiry.

First, there has been much discussion about inflation and its causes such as monetary and fiscal policy and so on. However, there is silence about actual prices charged to consumers, the processes by which they are set, the profit margins and their contribution of prices to inflation.

Second, there is much discussion about the harms of monopoly market power and reduced competition, of which the main harm is high prices. But there is little discussion of what to actually do directly about the high prices.

The fact is that a monopoly or dominant firm is free to charge as high a price as it likes. Providing they don’t collude unlawfully, duopolists are free to coordinate their prices and raise them to even higher levels than might occur if there was an illegal cartel. And governments themselves frequently sanction very high prices by restricting competition.

For example, refusing additional Qatar flights into Australia which let Qantas charge prices about thirty percent higher than otherwise.

A policy gap about high prices even though these are a major concern of Australian's today. [I recommend ways of filling this policy gap.]

Third, I am pleased to be doing this inquiry with the ACTU because the focus is on the effect of prices on ordinary people. We have been flooded by submissions – some 750 of them.

In conducting the inquiry, I have heard from workers, farmers, ordinary people, ACOSS, and others on behalf of poor and disadvantaged people and I have heard stories of real hardship and sacrifice to make ends meet.

Here is a story about the impact of high prices on a typical person.

Take Danielle a nurse. She has many years' experience in her field. She works full time.

But she was considering getting a second job just to make ends meet because of the large price hikes in her bills. She told me of the forty percent increase in her home insurance premium (and that is not an unusual increase for insurance currently), despite the fact she had never made a claim. When calculated together, her bills had risen by an estimated total of $8,700 in one year. Her wage had risen by just $102 in the same period.

She told me about the spending compromises she now made every single day. She told me that there have been times when she has skipped meals or lived off toast. She told me about wearing shoes with holes in them for extended periods because she could not afford to replace them.

I should define price gouging.

It occurs when businesses take advantage of their market power and set prices well above the levels that would occur if there was competition.

I now turn to my findings which fall into three classes.

First, business price setting has contributed significantly to inflation. There has been a significant degree of 'profit push' or 'sellers inflation'. It has occurred against a background of high and seemingly rising corporate concentration and is reflected in the surge of corporate profits and the rise in the profit share of Gross Domestic Product. There is much authoritative support for the view that prices have added much to inflation. This is to be found in research from the OECD, IMF, Bank of International Settlements, the European Commission, the European Central Bank, the US Federal Reserve Bank, the Bank of England and many think tanks globally and locally and many detailed research studies around the world and in Australia.

Claims in Australia that the rise in profit share is due to mining prices do not hold up. The profit share excluding mining has risen and energy and other prices associated with mining have themselves been a very significant contributor to Australian inflation.

The cost to the public of a four per cent rise in inflation costs is over 100 billion dollars.

In this report I refer to prices often going up quicker than they fall. Petrol prices are a well-known example. This is sometimes called the ‘rockets and feathers’ effect. When costs rise, business prices rise fast – like a rocket. When costs fall, business prices fall slowly to the ground like a feather. It is very profitable to delay price falls. A recent example concerns meat

As inflation falls, I am concerned that there may be a ‘rockets and feathers’ effect on prices.

We want business to play its part in bringing prices down, like rockets – not feathers.

My second finding relates to business pricing practices. I have examined a small sample of business pricing practices that are designed to extract more than their fair share of the consumer dollar.

Here are some examples.

First, there is so ‘loyalty tax’ pricing under which initial prices are set low and then they sharply increase in later years when consumers cannot easily know, question, navigate, renegotiate, or find alternatives. And when the costs and difficulties are changing to other competitors are high.

We need better pre-disclosure. Insurers in recent times have been required to do so, despite their stiff resistance, and tell us last year's premium, rather than just this year's premium.

Drip pricing occurs when firms only advertise part of the price of a product and only reveal later other additional elements of the price as the customer goes through the buying process. Drip pricing is spreading including in airlines, accommodation, entertainment, pre-paid phone charges, credit cards and medical procedures.

Out of pocket costs for medical procedures are often not disclosed in advance and have skyrocketed. In some cases 300% in five years. We need the bi-partisan USA *No Surprises Act* to protect medical consumers from price shock.

Confusion pricing involves confusing consumers with a myriad of complex price structures and plans making price comparisons difficult and dulling price competition. It occurs more and more in areas such as telecommunications, financial, or maintenance services, and other fields.

Firms often set prices automatically using algorithms. These can sometimes operate like a cartel especially if the price algorithms are programmed to cooperate with prices of competitors.

Price Discrimination involves, in its simplest form, setting different prices for the same good for different customers depending on their need, ability, and wish to pay.

Too often price discrimination reflects businesses exploitation of a lack of competition. If a business singled out a group of customers and tried to charge them very high prices, this would be not possible in a competitive market because a competitor would undercut the high prices. But if there is little or no competition price discrimination works.

Professor Lynne Chester of Sydney University has compared the prices which consumers and large businesses pay for electricity and gas. For every consumer bill of $1000 there is an apparent excess to be explained of $205.61 relative to prices charged to large business customers and not accounted for by genuine cost differences.

Likewise, with gas the apparent excess to be explained is $348.24 for every consumer gas bill of $1000.

The public needs a please explain.

I would like to report to you that banks compete across the board making general price reductions that all customers benefit from. This is not so. There are no price wars in banking. Where there is the possibility, however, of a customer switching to a competitor, banks tend to reduce prices just for them whilst retaining higher prices for loyal consumers more. This is unfair.

The best solution is for governments to require bank accounts to be readily portable in the same way as years ago when the government and ACCC required mobile phone businesses to enable customers to switch suppliers whilst retaining their existing telephone numbers.

I am especially concerned about the growing use of price discrimination now enabled by the rise in digital platforms, new technology, detailed customer data and sophisticated profit maximising pricing methodologies.

Many business pricing practices use the platform of limited competition to set prices that are not in the interests of consumers. The balance between consumers and producers is wrong.

I return later to what Governments can do.

The third set of findings relate to cases of price exploitation.

There has been a long history of strong anti-consumer, unwarranted restrictions on competition in both international and domestic aviation. The current Commonwealth government transport department review of aviation policy should remove these restrictions. If any restrictions are left, they should be removed by the Treasury lead review on National Competition Policy.

The electricity industry is riddled with questionable prices. This is not surprising – it is concentrated at all levels – and includes a high degree of vertical integration through generation, retail integration. There is regular price gouging, according to regulators themselves, in the generator/wholesale market brought about by limited competition and the bid pricing system. There has also been an earlier history of excessive regulated transmission and distribution prices. At retail there is significant price discrimination as mentioned earlier. And consumer confusion about retail price offers. I recommend an overall review of electricity prices.

We need to ask whether we should redesign the market or consider switching to the USA, and WA, system of a capacity market to reduce price gouging and help the energy transition.

Professor Chester gave an account of the severe lifestyle changes and sacrifices low-income households must make to cope with escalating energy costs. These include cutting back on essentials like food and healthcare, leading to physical discomfort, reduced mental well-being, and increased social isolation. Particularly harrowing were the accounts of people spending their days out of the home in shopping malls just to access free heating or cooling. The distress caused by high energy bills extends beyond financial hardship, affecting the social and emotional well-being of both adults and children in these households.)

The effect of increases in electricity bills for consumers is greatest on low-income households.

Professor Lynne Chester research has shown that to conserve energy amid rising prices these households will regularly:

- only use heating or cooling on extremely hot or cold days
- Limit the use of hot water, or
- Limit the use of ovens or stove tops for cooking

They will often manage rising bills by spending less on food.

Parents have reported sacrificing their own nutrition so that their children do not go without.

They have reported being less able to visit a GP if bulk billing is not readily available and delaying filling medical prescriptions.

They have reported having less to spend on their children's school related activities, sport, or other hobbies.

They have reported going to bed fully clothed in winter because they cannot afford the cost of heating. But we also heard of families without heating that went to shopping centres simply in order avoid the cold or the heat

An area of major concern is of prices in rural and regional Australia particularly more in remote areas. An example is remote and island communities in far north Australia. Consumers are paying, two, three times the prices for basic necessitaties in remote communities and it is unlikely this is to do solely with the actual cost of shipping goods. (Lettuce price)

Regarding shipping incidentally, we should abolish part X of the Competition Act, which sanctions a global shipping cartel.

The care industry is an important growing part of the economy. Prices need review.

I am concerned about child care prices. Parents can’t easily move their children when prices rise. The excellent ACCC report has found that competition is inherently limited and for-profit providers are able to gain high profits from parents, calling into question the general market design.

Bill Shorten in referring NDIS prices to the ACCC referred to ‘wedding cake’ prices. That is when you buy a cake if the vendor knows it is for a wedding the price goes up. The same seems to be happening with NDIS and possibly other government purchases when they buy services.

We noticed that the price of electric vehicles in Australia is high compared to New Zealand. On investigation there is a reason. There is an unwarranted import restriction on electric vehicles in Australia. It is called a ‘parallel import restriction’. New Zealand does not have it and its prices are far lower. If we remove that restriction in Australia the price of electric vehicles would fall by about $10,000 and there would be beneficial emission and environmental effects.

Medical specialists have high market power stemming from an information imbalance between the patient and specialist, and from anti-competitive restrictions on who can be a specialist. We need the National Competition Policy to investigate fees and any unwarranted anti-competitive entry restrictions and practices.

Let me bring together what lies behind my findings. Whilst I acknowledge that there are many sectors of this economy that are competitive, and they charge fair and reasonable prices there is disturbingly insufficient amount of competition in too many sectors.

Many markets are dominated by a small number of providers, including banking, supermarkets, mobile telecommunications, internet service provision, energy retailing, gas supply and transport, insurance, pathology services, domestic air travel, internet search and social networking services to name a few and there is some evidence for example from the IMF and other sources that market power is increasing with harm to consumers and sometimes to suppliers like farmers and sometimes to small businesses that are facing unfair competition.

There is a serious policy gap on prices. There is no part of government that focuses on high prices. The ACCC worthy though it is only deals with price collusion and occasional price references by the Government.

I have made several recommendations that would achieve greater government activity on high prices, including a reinstatement of the legal powers employed by the Coalition when the GST was introduced in 2000 – a power to expose and name firms that charged excessive prices. But my findings led me to consider a broader alternative – the establishment of a standing body – an independent commission which could look into high prices. Not to regulate them but to identify their causes, remove where possible anticompetitive causes and other harms.

But instead I propose the establishment of an independent National Competition and Prices Commission, drawn from the Commonwealth, States and Territories.

It would implement the welcome decision by the Government to revive the National Competition Policy, which attacks the many Government restrictions on competition – and it would be combined with a standing Price Commission function.

The former function is about removing restrictions on competition which cause high prices. The latter is about investigating high prices and the restrictions on competition which cause them.

The functions overlap.

The ACCC would retain its functions and could do market studies where appropriate.

The other need is to strengthen competition policy. I support the ACCC proposals to introduce compulsory pre-merger notifications and have a reverse onus of proof or something close to that in merger cases.

We need a divestiture law – of how to break up big businesses in instances where courts have found that they have broken the law and where courts think that this is the best remedy. Divestiture has been very successfully applied in the United States – in areas like oil, cigarettes, chemicals and telephones and it should be part of our armoury. If a court finds there has been a breach of competition law and if the court thinks that divestiture is the best remedy, then the law should permit this. There would also be one powerful side effect from the establishment of a divestiture law. It would make business far more compliant with Section 46 of the Act which prohibits the misuse of market power but is currently not a big worry to business.

And I would plead for a shorter competition Act. Our competition provisions are about 20,000 words. The American law is just a sentence or two and Europe keeps it down to half a page.

We should also ban no-compete clauses, nearly 40 per cent of managers and more than a quarter of community sector workers are covered by these with no public interest rationale for these existing.

A significant part of the cost-of-living crisis has been caused by companies taking advantage of their market power and relying on gaps in Government policy to squeeze consumers and often suppliers to breaking point.

Reform to curb this is urgent.

I would be happy to answer questions on any of this.

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