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Inquiry into IT Pricing – Treasury submission

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INTRODUCTION

The House of Representatives Standing Committee on Infrastructure and Communications (the Committee) has been asked to inquire into whether a difference in prices exists between IT hardware and software products sold in Australia and overseas; what those differences are; why those differences exist; what the impacts of the differences are; and what actions might be taken to help address any differences that operate to the disadvantage of Australian consumers.

The purpose of this submission is to assist the Committee's consideration of the issues by providing some information about price differentials, why they occur and the extent to which they are or are not a problem.

In broad terms, Treasury considers that the global marketplace, and consumers' access to it, is developing and changing rapidly. Price differentials that are not based on differential costs of supply will generally decline over time, providing there is sufficient competitive pressure or low barriers to entry. Anecdotal evidence does suggest that Australian consumers pay higher prices for IT products than consumers in some other markets – but not necessarily the highest from a global standpoint. To that end, improving local competition and increasing access to international markets are 'no regrets' measures that can assist in ensuring Australian consumers and business have access to goods and services at internationally competitive prices.

However, more interventionist measures that seek to dictate the terms on which consumers and business transactions take place may stifle innovation and reduce competition even further. Those types of measures should only be considered if there is a significant market failure that would cause substantial and persistent consumer detriment.

THE CURRENT REGULATORY FRAMEWORK

Prices for IT products are not regulated – the market determines the prices consumers will pay, based on the many factors affecting supply and demand. This submission does not attempt to cover the field of any regulatory regimes that are relevant or apply to IT products; instead it will briefly discuss competition and consumer policy by way of background.

Competition policy

Competition policy recognises that competition is a means, not an end. Competitive and flexible markets are an important contributor to economic efficiency and growth, and generally there is no role for Governments to intervene directly in markets unless there is sufficient evidence of a substantial and persistent market failure.

In general, firms should be free to determine the price of goods and services. Price regulation can prevent lower prices and other benefits for consumers by discouraging new investment, innovation and competition. Price regulation can also result in significant compliance costs for industry and administrative costs for the Government, which in turn would be passed on to consumers and taxpayers.

Accordingly, the *Competition and Consumer Act 2010* (CCA) promotes competition through the prohibition of certain anti-competitive conduct, and allowing firms to set their own prices in response to the drivers of demand and supply. Part IV of the CCA prohibits certain anti-competitive conduct, such as cartel conduct, misuse of market power or exclusive dealing arrangements, to promote businesses competing vigorously on price and

quality. If these types of behaviour occur in the Australian market, the Australian Competition and Consumer Commission (ACCC) is equipped to take appropriate enforcement action.

Consumer protection

In addition to competition policy, Australia seeks to enhance consumer welfare by providing a consumer protection regime in the technology-neutral Australian Consumer Law (ACL). The ACL sets certain standards around business conduct, including by:

- prohibiting misleading or deceptive conduct, unconscionable conduct and unfair contract terms in standard form consumer contracts; and
- regulating certain aspects of consumer transactions (for example by providing certain statutory consumer guarantees).

Within the framework of the ACL, Australian consumer agencies are also active in improving consumers' awareness of the opportunities and risks of purchasing products online. Australian consumer agencies have published a range of guidance materials (website information, pamphlets, and smart phone applications) to provide accessible and up to date information to consumers about their rights. These measures are aimed at improving consumers' confidence when shopping online.

Ever increasing consumer access to the internet in particular has assisted in breaking down barriers to consumers searching for the best price for products. Consumers of IT products are especially well placed to make use of these new opportunities.¹

WHY ARE THERE PRICE DIFFERENTIALS?

While in many instances Australian consumers may be able to access internationally-competitive pricing, there are cases where Australian prices are higher than those available overseas. Similarly, for some products, Australians may have access to prices that are lower than those that are available to consumers in other countries.

Such differentials are not a new phenomenon, nor are they unique to Australia or the IT sector in particular. However, Australian consumers have become more aware of international price differences, as the internet – and with it, the international marketplace – has become increasingly accessible to Australian consumers.

The internet has enabled consumers to overcome some of the factors that traditionally allowed suppliers to maintain different prices in different markets and has intensified competition to the benefit of Australian consumers. While the globalisation of markets has clearly delivered better outcomes in a number of areas – for example the price of LCD televisions – increased price transparency has also led consumers to realise they may not always have access to the best prices internationally at all times.

The Productivity Commission's Retail Inquiry

In December 2010, the Government commissioned the Productivity Commission (the Commission) to undertake an inquiry into the *Economic Structure and Performance of the Australian Retail Industry* (the Retail Inquiry).²

¹ Baye, M. et al. (2003), p 23.

The Retail Inquiry report covered a range of issues, including government regulations affecting the retail industry and indirect tax arrangements for low value imports, as well as international price discrimination. It highlighted that international price differences may occur as a result of a range of factors, including the cost of supply and international effects such as exchange rates.

The Commission compared online and bricks-and-mortar retailers located in Australia and overseas,³ and found that international online retailers frequently price products the same or cheaper than Australian retailers. The Commission's comparisons did not find a convergence in the price of identical goods, even taking into account freight costs. The Commission also considered the pricing of applications, videos and music downloads, where differences in prices cannot be so obviously explained by differences in distribution costs.⁴

However, the Commission placed a number of caveats on the price comparisons including that there may be other aspects of the product and the consumer's experience that may not be captured by price comparisons.⁵ For example, prices may vary according to the level of service provided. The Commission also noted that their study did not use a robust sample size.⁶

As discussed above and noted by the Commission, there are a number of reasons for the price differences between Australian and overseas goods. Broadly speaking, price differences can occur due to:

- differences in the cost of supplying goods or services between countries (which can encompass a very broad range of factors); and
- international price discrimination, where suppliers may be pricing in different markets according to what they consider the market will bear.

The Commission noted that international price discrimination is relevant not only for consumers but also for local retailers, as it impacts on the price they can supply products locally. However, the Commission considered that a range of market forces were helping to alleviate some of the concerns around the regional pricing of products. For example, Australian consumers are now more aware of price differences, and in some circumstances, can circumvent this by directly importing products. This could help motivate international suppliers to change region-based pricing policies.

Differences in the cost of supplying

In its Retail Inquiry, the Commission noted that it is not unexpected that there may be price differences across retailers and retailer types; as different cost drivers apply to different methods of retailing, or retailers in different markets. Key cost drivers include wage and labour on-costs, occupancy costs, Australian wholesaler and distributor prices, other retailer-specific costs and government taxes.⁷

² The Government released the final report and the Government's response on 9 December 2011. A copy of the Retail Inquiry report and a link to the Government's response is available at www.pc.gov.au/projects/inquiry/retail-industry.

³ Productivity Commission (2011), p 143.

⁴ Productivity Commission (2011), p 157.

⁵ Productivity Commission (2011), p 144.

⁶ See Productivity Commission (2011), Appendix E1.

⁷ Productivity Commission (2011), p 148-152.

In addition, there may be cost differences due to the size and scope of a market, as well as other factors such as distribution costs. The Commission noted that retailers in larger markets such as the United States face lower cost structures.⁸ The cost of distribution – including shipping, warehousing and other freight costs – is also likely to be higher for some markets depending on geographic location and the spatial densities⁹ of consumers. Australia has a series of small geographically dispersed markets, relatively distant from other markets and sources of supply. While Australia may be relatively close to manufacturing centres in Asia, costs can depend on trade volumes rather than distances travelled, meaning that Australia's trade routes can be more expensive than those for other countries.

A closely related consideration for price differences is that Australia is a relatively small player in the global retail landscape, particularly compared to the significantly larger United Kingdom and United States markets. Retailers that acquire large volumes of goods are generally able to obtain more favourable terms and prices. As such, Australian retailers, in a smaller market, may not be able to access as favourable conditions and prices for their imported goods.

An additional factor that can be considered is the number of steps in the supply chain, and the mark-ups associated with each stage. The Commission noted that 'gross retail margins for Australian retailers *expressed as a percentage of retail sales* were similar to the gross margins in the United States and Canada' (emphasis in original).¹⁰ However, the Commission further noted that 'while the percentage margins on sales are similar, the absolute dollar margin on sales in Australia in many cases may be larger'.¹¹ As the Commission noted, this likely reflects the higher costs of doing business in Australia – as wage costs, rental costs, returns on capital (at least historically), and the cost of sourcing products have been relatively high for Australian businesses compared to overseas, resulting in relatively high retail prices.¹² Competition in the retail sector, including pressures from domestic and overseas online retailers, provides a natural limit on the retailer gross margins that can be applied by Australian retailers.

Another factor that may increase costs is where suppliers are providing after-sales support in a market with smaller volumes. The extent of after sales support, warranties and packaging may also differ from market to market leading to price differences.

Tax-based reasons for price differences

The price of goods supplied in Australia is impacted by taxes and duties, including the goods and services tax (GST), a broad-based consumption tax applied to goods and services supplied in Australia. It is set at a rate of 10 per cent of the GST-exclusive retail price. Import duties may also apply to certain imported goods. Australia has a low value import threshold in place, currently set at \$1,000. Imported goods valued under this threshold are exempt from import duties and the GST, as well as Customs and DAFF Biosecurity charges. When the Productivity Commission considered the appropriateness of the threshold in its Retail Inquiry, it calculated that under current arrangements the removal of the threshold would generate revenue of around \$600 million at a cost of well over \$2 billion.

⁸ Productivity Commission (2011), p 158.

⁹ Burns, L. et al. (1985)

¹⁰ Productivity Commission (2011), p 147.

¹¹ Although the percentage margin may be consistent with those applied in other countries, the percentage margin may translate into higher absolute dollar margins where the cost of goods sold are higher for one country than they are in another.

¹² Productivity Commission (2011), p 147-153.

The Commission acknowledged the concerns of industry that this policy could encourage consumers to directly import products to avoid paying the GST and import duties on their purchases. It recommended that the Government should explore ways to reduce the cost of processing imported goods with a view to lowering the threshold. The Government formed the Low Value Parcel Processing Taskforce to investigate and make recommendations on ways to reduce the cost of processing imported goods. The Taskforce provided its final report to Government on 31 July 2012. The Government is currently considering the report and will release it publicly in due course. Previously, the Government announced that should significant improvements be made to the cost of processing international parcels it would be in a position to reassess the threshold. If the threshold is lowered, this will impact on the price of goods imported by consumers and on the cost base of the retail sector to the extent that stock is imported in amounts which would then be subject to tax, customs duty and other charges. However, businesses which are registered for GST are entitled to obtain input tax credits for the GST paid on imports.

Imports of digital products that are considered services (which includes downloads of software, games, e-books and music from overseas suppliers) are generally not subject to GST or customs duty. This generally reflects the difficulty of enforcing compliance by non-resident suppliers who do not have a presence in Australia. These services are subject to GST when acquired from an Australian supplier. However, some services acquired from overseas are subject to GST via a 'reverse charge' mechanism (that is, the recipient and not the supplier is made liable for the GST on the supply). These relate to services acquired by a registered Australian business (for GST-purposes) from a non-resident where these services do not have an Australian connection. To the extent the Australian recipient cannot fully recover the GST as an input tax credit they are required to 'reverse charge' the GST.

Exchange rate-based impacts on price differences

Another factor to consider is price differences due to exchange rate effects. The recent strength of the Australian dollar has meant that the prices of consumer goods and services offered in overseas markets are now cheaper in Australian dollar-terms. Exchange rate fluctuations occur instantly. In contrast, prices for goods tend to be far more sticky, reflecting that supply contracts are renegotiated at fixed intervals, and that there can be costs associated with constantly changing retail prices.

Suppliers may tend to absorb some degree of exchange rate volatility, at least for a time, such that there may not be full exchange rate pass through. If there is less than full exchange rate pass through, using a simple exchange rate comparison will tend to show Australia as a relatively cheap place to buy goods when the Australian dollar is low. Conversely, when the exchange rate is high it will tend to show Australian prices as relatively expensive. For example in 2008, following a depreciation of the Australian dollar, Australia was shown to be the cheapest place in the world to purchase an Apple iPod.¹³

International price discrimination

Higher prices that cannot be explained by differences in the cost of supplying to Australia are not optimal for Australian consumers or businesses. Consumers are understandably frustrated when paying more for IT products than consumers in other countries.

¹³ Commonwealth Bank (2008).

Geographic price discrimination occurs when a business charges different prices for the same product in two or more different locations. International price discrimination is when geographic price discrimination occurs across country borders.

To maximise profit, many businesses do not sell based simply on a mark-up of what the product cost to produce, but rather price according to what they consider the market can bear, that is, according to the consumers' marginal willingness to pay. This allows businesses to maximise the profits earned in each respective market – something that should not be considered inherently 'bad', and which their shareholders would reasonably expect in order to maximise the return on their investment.

Price discrimination is not unique to any particular market; however there are two conditions that must be present if price discrimination is to be effective. Firstly, the willingness to pay for a particular good or service must vary between different groups of consumers in order for a business to benefit from price discrimination; and secondly, the business must be able to separate these groups of consumers in order to enforce the arrangement. Common examples of price discrimination that are less controversial include discounts for children and senior citizens, and discounts offered for purchasing goods in bulk.

In the Retail Inquiry, the Commission noted that there may be incentives for suppliers generally to maintain higher prices in one market where there is sufficient consumer demand and consumers cannot readily purchase goods or services that are cheaper (for example where local markets are segmented from overseas markets or there is no competition).¹⁴ That is, there are incentives for suppliers, in the form of profits, to engage in price discrimination.

Price differences between goods and services are not a new phenomenon. As part of the Retail Inquiry, the Commission also noted that the practice of price discrimination has been traditionally sustained through sufficient demand from Australian consumers, lack of competitive rivals, and the ability for market and/or consumer segments to be kept separate.¹⁵ The Commission noted that the internet has allowed international price discrimination to become more apparent to Australian consumers.¹⁶

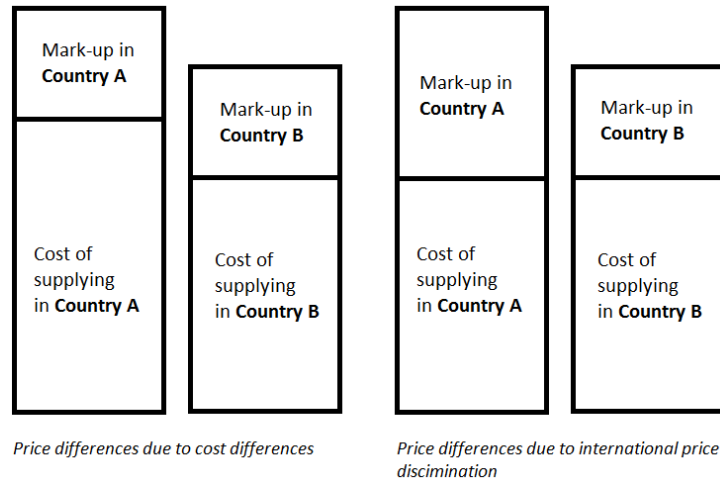
Figure 1 demonstrates how international price discrimination can be distinguished from price differences that can be explained by costs.

¹⁴ Productivity Commission (2011), p 155.

¹⁵ Productivity Commission (2011), p 155.

¹⁶ Productivity Commission (2011), p 168.

Figure 1 — Graphical representation of international price discrimination



The ability to successfully engage in international price discrimination will depend on the price and availability of substitute products, including whether consumers are able to access the cheaper prices that may be offered in other markets. Where consumers are able to transact with alternative suppliers, international price discrimination will become less viable.

Innovation may, to some extent, explain why international price discrimination may occur for some categories of IT products. Where a supplier's product is sufficiently differentiated from its competitors, it is likely that they will have some price-setting power for a limited period. Innovative companies are indeed seeking to innovate in order to gain some price setting power and the associated profits. Additionally, intellectual property laws provide various rights for the protection of economic investment in innovation and creative efforts. To the extent that these rights allow rights holders to control the marketing and distribution of goods and services, there is a potential for price discrimination, should the rights holder choose to do so.

The market for IT products, in particular, is subject to ongoing innovation and change. A brand that may appear to have substantial market power at one time will need to continue to innovate and change in order to maintain such a position. History demonstrates that many brands have struggled to hold onto dominant positions where they have gained them from any one particular innovation alone.

The increased transparency of prices has made Australian consumers more aware of potential price discrimination on particular products, and it is likely to impact on the sustainability of price discrimination as a strategy. Firms employing this strategy over the longer term risk reputational damage or loss of goodwill or even their profits. It can provide consumers with greater incentives to 'vote with their feet' where they are unsatisfied with the prices offered to them in the Australian market.

Competition law and price discrimination

The competition laws in Part IV of the CCA are concerned with protecting the competitive process, but are not intended to protect competitors from rigorous competitive behaviour, to force businesses to compete or to regulate prices.

The former section 49

The CCA (known at the time as the *Trade Practices Act 1974*) once contained a prohibition on some forms of price discrimination that had, in the past, been considered to be anti-

competitive. This prohibition was repealed in 1995, as it was found to reduce price flexibility and was, as such, detrimental to competition.

From its enactment in 1974 until its repeal in 1995, section 49 of the CCA made it illegal to offer or attempt to induce discriminatory pricing if the discrimination was of such magnitude or was of such a recurring or systematic character that it was likely to have the effect of substantially lessening competition.

It is important to note, however, that the provision was not contravened if:

- the discrimination made only reasonable allowance for differences in the cost or likely cost of manufacture, distribution, sale or delivery resulting from the differing places to which, methods by which or quantities in which the goods are supplied to the purchasers; or
- the discrimination was the doing of an act in good faith to meet a price or benefit offered by a competitor of the supplier.

Between 1974 and 1995, three major independent reviews looked at the operation of the CCA. All three reviews examined section 49 and ultimately recommended the repeal of section 49 for a variety of reasons.

The *Trade Practices Act Review Committee* (Swanson Committee) in 1976 considered that section 49 reduced price flexibility and recommended its repeal. The *Trade Practices Consultative Committee* (Blunt Review) in 1979 regarded section 49 as detrimental to price flexibility, to consumers, and to big and small business. It also noted that it brought about undesirable inflationary effects. The *National Competition Policy Review* (Hilmer Report) in 1993 considered that price discrimination was generally efficiency enhancing and where it was not, the conduct may be dealt with by section 45 (anti-competitive agreements) or section 46 (misuse of market power) of the CCA. The Hilmer Report recommended that section 49 be repealed.

Only a handful of cases were brought before the courts in reliance on the provision. In the one known instance where anti-competitive price discrimination was proven, the conduct also amounted to contravention of the prohibition on exclusive dealing (section 47), which remains in effect.¹⁷

Section 49 was repealed in 1995 through the *Competition Policy Reform Act 1995*, as part of the National Competition Policy Reforms. Since the repeal of section 49, there has been one prominent review of the CCA – the 2003 *Review of the Competition Provisions of the Trade Practices Act* (Dawson Review), which noted that the terms of section 46 (misuse of market power) are apt to enable anti-competitive price discrimination to be addressed.

Current competition laws

Subsection 46(1) of the CCA prohibits corporations with a substantial degree of market power from taking advantage of that power for a prescribed purpose. That is, for the purpose of eliminating or substantially damaging a competitor, preventing the entry of a competitor, or deterring or preventing a person from engaging in competitive conduct. The Hilmer Report stated that the purpose of section 46 'is to distinguish between

¹⁷ First instance: *Re Cool and Sons Pty Ltd Trading As Wagga Windscreen Service v O'Brien Glass Industries Limited* [1981] FCA 95 (13 July 1981). Appeal: *Re O'Brien Glass Industries Limited v Cool & Sons Pty Limited Trading As Wagga Windscreen Service* [1983] FCA 191; 77 FLR 441 (18 August 1983).

vigorous competitive activity, which is desirable, and economically inefficient, monopolistic practices, which are undesirable.'

Section 46 would prohibit a corporation carrying on business in Australia from engaging in price discrimination if it was taking advantage of substantial market power for the purpose of substantially damaging or eliminating a competitor or deterring competitive conduct.

It should be noted that other provisions may also prohibit certain, specific types of conduct related to price discrimination. Section 47, which prohibits exclusive dealing, already makes it illegal to supply products on the condition that the recipient accepts some restriction on who else they can deal with or how they can resupply – if it would have the effect of substantially lessening competition.

In relation to overseas businesses' decisions, where there is a sufficient link to Australia – for example where the company is carrying on business in Australia – competition laws can still apply.¹⁸

Internationally, the United States *Robinson-Patman Act 1936* (RPA) – an amendment to the *Clayton Antitrust Act 1914* – prohibits price discrimination between competing buyers if that discrimination would: substantially lessen competition; or tend to create a monopoly in any line of commerce; or to injure, destroy, or prevent competition. In 2007, the United States *Antitrust Modernisation Commission* recommended that the RPA be repealed; however, the RPA still remains in effect in the United States. According to the *Antitrust Modernisation Commission*¹⁹, the Federal Trade Commission (FTC) pursued only one RPA matter between 1992 and 2003²⁰; further, it indicated that there were only two successful private actions under the section during that period.

In 2009, Canada repealed its specific anti-competitive price discrimination provision, noting that it had been frequently criticised for producing uncertainty and chilling innovative pricing.

Australian and international experience appears to have been that specific prohibitions on price discrimination could lead to reduced price flexibility – a key component of competition between firms.

Digital products

Digital products have brought consumers a range of benefits; including lower prices through lower costs of supply (for example, compare the cost of a DVD to that of a digital download). However, some digital content providers – including those that develop software and entertainment media – may charge different prices to different consumers for the same content depending on where they are located. This is commonly cited as an example of international price discrimination; where the cost of supply appears to consumers to be the same.

With the rise in digital content, different sales methods to those typically associated with physical goods are becoming more common. Licensing for example, is now more common – whereby the consumer contracts a user license from the rights holder rather than purchasing ownership of a physical article embodying the digital product. This means that for those products, there will usually be no secondary market for purchased

¹⁸ By virtue of the extraterritorial conduct provisions in section 5 of the CCA.

¹⁹ Antitrust Modernisation Commission, *Report and Recommendations*, April 2007 (p 316).

²⁰ The FTC 'issued a complaint'. An explanation of FTC enforcement proceedings can be found here:
<http://www.ftc.gov/ftc/action.shtm>.

products. Similarly, streaming content provides a period of access or service where the consumer never takes possession of a digital or physical version of the product.

While the marginal cost of supplying to an additional consumer may indeed be low, particularly compared to physical goods, it should be noted that there may be significant fixed costs associated with developing the digital content. In addition, there may be other costs that may vary from market to market, such as local licensing fees. In charging differential prices, suppliers may simply be seeking to maximise their revenue to cover such costs.

However, it may also be that suppliers are charging a higher price in order to maximise the benefits of their intellectual property rights, given significant past investments. Those intellectual property rights are provided in Australia and other countries through a complex system of international treaties, including trade agreements. These treaties are a key component of economic development and international trade law.

While seeking to ensure value from past investments is understandable, in doing so, suppliers may also impose barriers to control distribution, such as region coding or country-specific software. Region coding of DVDs, for example, was a controversial measure that – until region-free DVD players became available – restricted the ability for consumers to use genuine DVDs purchased in other markets. While commonly used, measures used to impose geographic market segmentation for films and computer games are not legally protected in Australia and may be circumvented.

However, in much the same ways as consumers take advantage of parallel imports to avoid high prices charged by authorised distributors for physical goods, consumers are likely to seek ways to reduce the impact of international price discrimination for digital products as well. Such avoidance will signal to the suppliers of the content that they may need to adjust sales practices to better meet consumers' demands.

The online landscape

The internet has given rise to sophisticated new marketing techniques and selling practices. For example, firms now have access to tools that allow advertisements to be targeted to individual consumers. Reports²¹ indicate that some online retailers have access to tools that may support first degree price discrimination by estimating an individual consumer's willingness to pay. While the methods used to implement these pricing strategies may be sophisticated, consumers are also increasingly sophisticated and have access to techniques, new technologies and business models that can limit the effectiveness of these tools (for example, blocking cookies, managing the personal information they provide, and making use of privacy protections).

At the same time, methods of consumer empowerment have been considerably expanded with online retailing; the rise of social networking in internet and mobile communications, the development of peer review websites and blogs, online price comparison tools, and group buying websites. Each of these provides consumers with new opportunities to share their experiences or to search for a better deal. It is highly likely that further innovations will continue to empower consumers.

²¹ See <http://www.economist.com/node/21557798>.

WHAT SHOULD BE DONE ABOUT PRICE DIFFERENTIALS?

Treasury considers that businesses should generally be free to independently set their own prices in the marketplace, both in Australia and overseas. It is important to be mindful of any effect on market access or innovation that measures aimed at improving consumers' access to competitive prices might have. Regulating businesses' ability to make pricing decisions should only be considered where it is evident that without intervention, there would be persistent and substantial economic detriment (for example, to regulate pricing of access to monopoly infrastructure). Seeking to intervene where it is not well justified can create significant distortions in markets – quite possibly to the detriment of business and consumers well into the future.

Global markets are still developing, and the fact that consumers can access international markets directly is still a relatively new development from a historical perspective. Over time, it is likely that dynamic global product markets (noting particularly that the market for IT products is one of the most dynamic markets of all) will continue to develop, and consumer and business access to overseas markets will further increase, putting downward pressure on prices.

In particular, Treasury considers that the current competition laws are capable of addressing anti-competitive conduct without the need for a specific price discrimination prohibition.

This does not mean that there is nothing that can be done. Where prices remain high for particular goods, this may nonetheless create opportunities for the alternative sourcing of products or for local businesses to enter the market to provide a more competitive price. In relation to digital products, where parallel importing is not relevant, encouraging local or international competitors to supply the Australian market with alternative, substitute products to drive prices down will be particularly beneficial. This may include removal of any barriers to entry to the Australian market that may exist, particularly those which would prevent alternative suppliers and substitute products that could help to place additional competition on existing suppliers.

The Committee could also consider exploring approaches to improve consumer understanding of the reasons for price differentials and how to mitigate them where possible. Further, the Committee may wish to consider the question of barriers to entry to this market, the extent to which they exist, their impact, and whether any steps can or should be taken to address them. The Committee could also give consideration to whether there are other measures that could be taken to promote domestic competition.

In summary, while there may currently be price differences for IT products that are not based on cost of supply – improving competition and educating consumers can serve to mitigate these differences. The market for IT products is still relatively young – consumers would be best-served by measures designed to foster the development and expansion of the Australian marketplace, rather than through any measures that are designed to force a particular, short term, outcome.

The Treasury would be happy to assist the Committee further in the light of the public submissions or hearings.

REFERENCES

Productivity Commission (2011), *Economic Structure and Performance of the Australian Retail Industry*, Productivity Commission Inquiry Report, No 56, 4 November 2011.

Commonwealth Bank (2008), *CommSec iPod index: Australia now leads the world*, Economic Insights, 3 November 2008.

Burns, L. Hall, R. Blumenfeld, D. Daganzo, C. (1985), *Distribution strategies that Minimize Transportation and Inventory Costs*, *Operations Research*, 33:3, pp 469-490.

Baye, M. Morgan, J. Scholten, P. (2003), *The Value of Information in an Online Consumer Electronics Market*, *Journal of Public Policy & Marketing*, 22:1, pp 17-25.