

Name

Ms Joanne Rea

Comment

1. What are examples of business conduct that are detrimental and economically damaging to competition (as opposed to competitors) that would be difficult to bring action against under the current provision? Would meat processors conspiring with anyone including animal welfare orgs, to shut down live export qualify? 3. Would removing the take advantage limb from the provision improve the ability of the law to restrict behaviour by firms that would be economically damaging to competition? Yes but not sufficiently. 6. Would including 'purpose, effect or likely effect' in the provision better target behaviour that causes significant consumer detriment? Yes. To prove purpose sets the bar too high and makes proof almost impossible. 7. Alternatively could retaining 'purpose' alone while amending other elements of the provision be a sufficient test to achieve the policy objectives of reform outlined by the Harper Panel? No. 13. Should authorisation be available for conduct that might otherwise be captured by section 46? No. Authorisation involves the ACCC making assumptions about future consequences. Efficiencies and benefits of innovation are not usually passed on when firms have substantial market power. Previous authorisations do not often give positive outcomes. We note that the concept of 'authorisation' is introduced very early in the options. There is not an option offered which offers no 'authorisation', removal of 'take advantage' and introduces 'effect'. If 'authorisation' is allowed efficiency and innovation should be removed. Large players should not need any incentives to carry out these actions. 16. Which of options A through F above is preferred? What are the relative strengths and weaknesses of each option? What information can you provide regarding the regulatory impact of each option on businesses? Option E is preferred. It is where the 'effect' is first taken into consideration. However there should be regard to previous comments on authorisation. Option F By directing the Court to consider 'the extent to which the conduct has the purpose, effect or likely effect of increasing competition in the market, including by enhancing efficiency, innovation, product quality or price competitiveness' fails to consider the observed consequence that companies who operate in a monopoly, duopoly, monopsony or duopsony often do not pass on benefits of efficiency and innovation. Similar comments apply to authorisation where such things cannot be known in advance.