

Dear Peter

22 March 2018

NSX comments on Productivity Commission Draft Report on Competition in the Australian Financial System

Mr. Peter Harris, AO,
Chairman

NSX welcomes the opportunity to respond to the Productivity Commission's Draft Report outlining its very important recommendations to improve competition in this key sector.

Productivity
Commission

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Whilst the focus of the Commission's work in this area is aimed at facilitating greater competition in retail banking and associated products, NSX notes that similar considerations and concerns arise in relation to exchange markets.

Specifically, the Commission will no doubt be aware that exchange markets in Australia are presently characterised by high concentration, a lack of contestability and extensive vertical integration by incumbents with significant market power. In this market NSX is a seeker of access to key systems, services and information provided only by ASX whilst at the same time being a direct competitor of ASX for listing and trading. This dependency has given rise to vulnerability for the NSX with ASX acting as gatekeeper to key inputs necessary for NSX to innovate, provide a compelling competitive alternative and achieve scale.

Against this background NSX fully endorses Draft Finding 2.1 (Key Features of Workable Competition in the Financial System) which include, as relevant to NSX, (a) minimal limits to entry by new providers and expansion by existing providers and (b) regulators which are more open-minded towards innovation and aware of the effects of their actions (or inaction) on weakening competition and creating consumer detriment.

The Commission has rightly recommended that the New Payments Platform be subject to a formal access regime aimed at facilitating competition through third party access (Draft Recommendation 10.5). NSX urges the Commission to replicate this recommendation in relation to exchange markets, in particular, settlement and ancillary post-trade services. Importantly, this includes the asset holdings of consumers (similar to what is contemplated with the Open Banking regime).

NSX has, in recent years, had extensive dealings with not just ASX on access and interconnection issues, but also with many of the institutions comprising the Council of Financial Regulators. Whilst we welcome the input of bodies such as the ACCC and ASIC in discussions with NSX about competitive dynamics and challenges in this market, it is unfortunately our experience that progress in addressing the concerns we have raised is impaired as a result of the inevitable regulatory ping pong as to who is best placed to assume responsibility and which powers are to be invoked. This has led to the absence of (timely) outcomes with an ongoing impact on the confidence with which our closest competitor continues to deal with NSX and further entrenching the position of the incumbent.

NSX therefore wholly agrees with Draft Recommendation 17.1 (New Competition Functions for a Regulator) and its aims to clearly prescribe a mandate for an existing regulator to take the lead on promoting competition in the financial system. Irrespective of which regulator is charged with this responsibility, it must be proactive in approach with an appreciation of the value of timely action in markets characterised by limited or no new entry or expansion. NSX regards proactivity as non-negotiable: a reactive approach relying on the application of ex-post competition powers can only result in market distortion and, in many cases, irreparable harm to long-term competition and market structure. Furthermore, this will stifle ongoing innovation and harm the reputation of our market globally. NSX also urges the Commission to include a requirement that the regulator's

performance against any new expectations or mandate be reviewed periodically after implementation to ensure efficacy of the new mandate.

In relation to Draft Recommendation 17.2 (Transparency of Regulatory Decision Making) NSX urges the Commission to go further in requiring the CFR to undertake and publish a full Regulatory Impact Assessment before decisions to act - or refrain from acting - are taken. This will ideally improve the quality and accountability of decision making by the CFR.

In summary, NSX notes that the above recommendations are no less relevant to exchange markets and strongly urges the Commission to broaden its findings and final recommendations to expressly include these markets.

We would welcome the opportunity to discuss these points further and look forward to receiving your final report.

Yours sincerely,

Ann Bowering
Managing Director and CEO