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Privatisation price monitoring 'useless'

Lucille Keen

The competition watchdog has warned state and federal governments against trying to maximise profits from privatisations just days before the first-round bids close for Australia's largest port.

Australian Competition and Consumer Commission chairman Rod Sims told *The Australian Financial Review* that price monitoring regimes were not enough in the privatisation of state-owned monopolies.

Last week Glencore was successful in convincing the Australian Competition Tribunal to overturn past decisions by recommending the declaration of the Port of Newcastle's disputed shipping channel. Once an asset is "declared" its services are regulated under the Competition and Consumer Act.

"The Glencore decision is a great decision in the sense that it recognises that simply price monitoring a monopoly is essentially useless," Mr Sims said. "It points out at the Port of Newcastle the monopolist could and did increase prices without consultation. The whole notion that we privatise assets with simply a price monitoring regime, I'm hoping that the Glencore decision puts that to rest one and for all."

Mr Sims said governments were maximising sale proceeds to the detriment of the economy over time and if government had budget problems they should be tackling them in other ways rather than seeking to get higher prices for privatising monopolies without effective regulation.

He said the ACCC wouldn't push for guidelines in a lease contract.

"That isn't effective because there is no one enforcing them," he said. "What you need is regulation by a regulator. I want all governments to understand you shouldn't be privatising to maximise proceeds. The Victorian government has done a better job than other government's when it comes to privatising ports, in a sense there is some control in prices.

"But I think the lesson is give the regulator, which could be the Essential Services Commission ... make sure they can police the price controls rather than leaving it to the contract. They've (the government on the Port of Melbourne) got price caps on, they're quite contractual, but we'd prefer a stronger role for the ESC."

The issue of pricing and regulation has been at the heart of the privatisation of the Port of Melbourne, with the state government dealing with threats from the stevedores after the Port of Melbourne Corporation attempted to increase rents by up to 750 per cent.

Asciano, which last week saw investors vote in favour of a $9.05 billion takeover of the company, is expected to review its rents at the port later this year.

First-round bids for the $6 billion 50-year lease of the Port of Melbourne are due mid-June and the government is expected to call for binding offers by mid-September and have the sale completed by the end of October.

Last week it was revealed in *Street Talk* that IFM Investors and its partners for the Port of Melbourne auction went to the ACCC to start a review under the merger process guidelines and was seeking industry submissions into the potential deal by June 17.

Much of the ACCC's investigation is expected to centre on IFM.

Any user of the asset can apply to have an asset declared. Applications are made to the National Competition Council, which then refers the decision to the designated minister.

During the Glencore process, the Victorian government, in its submission to the application for declaration of shipping channel services at the Port of Newcastle, said where a state has leased assets to a private operator but has been careful to retain ownership the designated minister is the premier of that state and not the Commonwealth treasurer.

When asked if he was concerned about any threat of the Port of Melbourne being declared, Victorian Treasurer Tim Pallas said the Port of Melbourne lease transaction has a robust economic regulatory framework, enshrined in state legislation.

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Policy Advocate reverses position as consumers bear burden of rising prices

ACCC chief hits privatisation

Patrick Hatch

Selling public assets has created unregulated monopolies that hurt productivity and damage the economy, according to Australia's consumer and competition tsar, who says he is on the verge of becoming a privatisation opponent.

In a blistering attack on decades of common government practice, Australian Competition and Consumer Commission chairman Rod Sims said the sale of ports and electricity infrastructure and the opening of vocational education to private companies had caused him and the public to lose faith in privatisation and deregulation.

"I've been a very strong advocate of privatisation for probably 30 years; I believe it enhances economic efficiency," Mr Sims told the Melbourne Economic Forum on Tuesday. "I'm now almost at the point of opposing privatisation because it's been done to boost proceeds, it's been done to boost asset sales, and I think it's severely damaging our economy."

Mr Sims said privatising ports, including Port Botany and Port Kembla in NSW, which were privatised together, and the Port of Melbourne, which came with conditions restricting competition from other ports, were examples where monopolies had been created without suitable regulation to control how much they could then charge users.

"Of course, you get these lovely headlines in the *Financial Review* saying 'Gosh, what a successful sale, look at the multiple they achieved'," Mr Sims said.

"Well, of course they bloody well did: the owners factored in very large price rises because there's no regulation on how they set the price of a monopoly. How dopey is that?"

Mr Sims, who recently launched legal action against Medibank Private alleging it concealed changes to health insurance policies to boost profits before its privatisation, said billions of dollars had been wasted in the scandal-plagued vocational education sector since it was opened up to the private sector.

Deregulating the electricity market and selling poles and wires in Queensland and NSW had seen power prices almost double there over five years, he said.

"When you meet people in the street and they say 'I don't want privatisation because it boosts prices' and you dismiss them ... recent examples suggest they're right," he told the room of influential economic and policy experts.

"The excessive spend on electric poles and wires has damaged our productivity. The higher energy price we're getting from some poor gas and electricity policies are damaging some of our productive sectors."

Mr Sims said he was growing "exasperated" as governments including the Commonwealth became more explicit in trying to maximise proceeds from asset sales.

"I think a sharp uppercut is necessary and that's why I'm saying: stop the privatisation," he said.

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Rod Sims is dismayed at the effects of privatisation of public assets. Photo: Vince Caligiuri

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Glencore backs ACCC's Sims on privatisation

Ben Potter

Coal giant Glencore strongly backed competition regulator Rod Sims's criticism of monopoly privatisations structured to maximise sale proceeds at the expense of customers.

Glencore is involved in a long-running dispute with the owners of the Port of Newcastle over 40-60 per cent channel fee increases, which is headed for the Full Federal Court.

The company's manager of ports and rail, Frank Coldwell, said privatised key infrastructure assets such as ports used by the mining sector "should be regulated in a manner that does not penalise industry unfairly or undermine the economic viability of future growth and investment in the sector".

Mr Sims, chairman of the Australian Competition and Consumer Commission, cited the Port of Newcastle as well as the sale of Port Botany and Port Kembla as a package by NSW's Baird government as examples of badly structured public asset sales that were turning him against privatisation after a professional lifetime of support for the policy.

Rod Sims says governments are not thinking long term.

He said on Wednesday that past privatisations such as Qantas, the Commonwealth Bank and Telstra into competitive, regulated markets had clearly benefited the public.

But he said that governments today weren't thinking about the long-term economic consequences of privatisations that just turned public monopolies over to unregulated private monopolies.

"I am taking the step of going as public as I am because I really think people, as they are privatising assets, ought to give this a lot more thought and think about the future economic consequences for your state and your country of what an unregulated privatised monopoly is able to do," he told *The Australian Financial Review*.

"I understand governments want money, but ultimately they are interested in the economic future of their geographic area and there are consequences when you privatise an unregulated monopoly."

Glencore won a decision from the Australian Competition Tribunal that the Port of Newcastle should be declared under Part IIIA of the Competition and Consumer Commission, which means users can get regulated access to vital infrastructure.

The decision means the ACCC can rule on the channel fee increase.

Glencore sees it as important because access to other infrastructure that could be privatised in future – such as Australian Rail Track Corporation's rail lines – could also depend on it.

"Glencore believes there are lessons to be learnt from privatisations which resulted in a significant increase in the cost of access and enabled the monopoly owner to extract excessive rents from users," Mr Coldwell said.

But the port's private owners – Hastings Fund Management and China Merchants Group bought a 99-year lease for $1.75 billion in 2014 – have now appealed the decision to the Full Federal Court.

▸ Matthew Stevens p30

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Matthew Stevens

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Greed harming privatisation mandate

Australian governments risk erosion of their social licence to privatise state-owned assets if they continue their collective focus on price maximisation rather than on seeding broader and demonstrable efficiency benefits across the economy.

This view was put with unusual clarity and force in an overlooked, unreported speech delivered last Thursday evening by the chairman of the Australian Competition and Consumer Commission, Rod Sims.

Speaking from notes, Sims told a Sydney audience gathered by the Centre for Independent Studies that "we're doing it wrong" in our national approach to privatisation and the public's increasing scepticism of what should be a lever of enhanced economic efficiency is well justified.

"In my view, it is seeing prices rise. In my view therefore the public – who associate privatisation with higher prices – they're more right than wrong. And so we shouldn't single the public out in saying, 'What do they know, they just don't understand the argument?'

"They understand it very well. They see that we have been privatising in ways that push up prices and we shouldn't be doing it because we're actually harming the whole concept of privatisation itself."

Sims said the failure of governments, economists and commerce to acknowledge even the most obvious mistakes of past economic reforms stood as a roadblock to microeconomic reform. He offered the "VET fee disaster" as an example of reform gone very bung, and cited privatisation as the other.

"Privatisation is not popular if you take a vote, because people believe it leads to high prices. They're right. Often privatisation does lead to higher prices because we privatise for the wrong reasons and in the wrong way."

Some might identify Sims as a classic poacher turned gamekeeper. Here is a past architect of open economies, who believes profoundly that governments have no place operating commercial enterprise, who now finds himself running the competition regulator, and who is convinced increasingly of the necessity of regulation as an essential lever for free enterprise to succeed.

Sim's counterpunch is that he has stood firm for 40 years against the sorts of monopolies and oligopolies that are being created through this latest generation of privatisations.

Sims opened with an reassertion of the overarching logic of privatisation. "No one in Australia thinks we would have cheaper cars, cheaper food, better clothes if the government had a bigger role in producing. So my first point is we privatise for the economic efficiency reasons, not to raise money.

"A community activated only by self-interest would be a community of ruthless profiteers," he said, citing the eminent American economist and historian Robert Heilbroner. "The regulator is competition."

Sims maintains that government is the wrong owner of commercial assets but privatisation that puts sale price ahead of economic efficiency is wrong.

Because ambitions are misplaced, long-term economic fundamentals are forgotten. So there is a long and unfortunate history of governments driving up service charges and diluting regulatory oversight ahead of sale processes.

"I think it does huge damage to the Australian economy," Sims said.

That is why the ACCC chairman stepped into the Victorian port privatisation last year, why he quietly encouraged Glencore to exercise the competition law to challenge the repricing of the Port of Newcastle and why the Commonwealth's 2002 privatisation of Sydney Airport continues to be his model for how not to go about it.

"The examples abound of privatising in the wrong way," Sims said. "Sydney Airport, [where] the government doubled – I'll say it again, doubled – the landing charges prior to selling it. They put no constraints on parking fees or anything else and they also gave the [new] owner the first right of refusal over the second Sydney airport so that there would be no competition and you boost price. [It was] a terrible example of how not to privatise.

"The Port of Melbourne tried to increase the rents on the land by 750 per cent as they were privatising the port," he said. "You have to ask, what were they thinking?"

Sims then offered a former South Australian government as a pin-up for pre-privatisation price pillage. Through the back end of the 1990s, the Olsen government sold the Moomba-to-Adelaide gas pipeline along with a suite of electricity assets. Sims claimed the pipeline tariff was doubled before the sale to boost the sale price and that a proposed electricity interconnector with NSW was abandoned in the name of lifting prices for the generation assets.

The price increases forced on the customers of the Port of Newcastle by the monopoly's new owners is another constant bugbear for Sims. NSW sold the thing, essentially unregulated, for $1.75 billion in 2014. Within about six months the new owners revalued the asset by up to $2.4 billion and increased the price for using a shipping channel, which was paid for by the customers in the first place, up to 60 per cent.

"Personally, I have a problem with that," Sims said

Outside of a simple moral objection to the operator's behaviour, Sims

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recognised a lingering economic cost. Why would users of the world's biggest coal port invest in sustaining or growing production when a monopoly port owner "can suck the economic rent" out of their projects?

"So a lot of money raised [in privatisation] equals success, not much money raised equals failure? Wrong. I think, if you are privatising for economic efficiency and these are assets that matter for the state, you have got to make sure they face competition where they can, you've got to make sure they're properly regulated if they can't," Sims said.

"I ran into somebody from a state government not so long ago – I won't mention names or the state – but they really took me to task. So I thought, 'Well, OK, I can see there's a few little weaknesses in some of my arguments, possibly, let's see where he comes from.'

"And then what he says, basically, while pointing his finger at me, is, 'You don't realise that we actually don't have many taxation options in our state, privatising to maximise proceeds is a very efficient tax.'

"I could not disagree more. I think it's a very inefficient tax, because if you're privatising to maximise proceeds, you get a one-off gain but imposing a continuing cost on society, as that owner, unfettered by competition or unfettered by any sense of regulation of their monopoly, will charge what they like and that will damage the economy."

With that, Sims repeated an oft-repeated mantra. The state should pass a monopoly into private ownership only with regulatory controls built around the negotiate-arbitrate pricing model. Either the owner and customer can work out an appropriate access price or the matter can be settled by a regulator. It really is that simple.

ACCC chief Rod Sims has taken governments to task. PHOTO: ANDREW MEARES

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ACCC ports warning

THE consumer watchdog has warned there is no proper government constraint to prevent monopoly pricing at privatised ports. Australian Competition and Consumer Commission chairman Rod Sims said governments needed to do more in terms of regulatory constraints during privatisation processes to ensure proper pricing at ports, adding the current framework was not sufficient.

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Competition fear over sale of port

Shane Wright
Economics Editor

The competition watchdog has raised concerns that a key part of the Barnett Government's plan to sell Fremantle port could end up hurting the State's economy and port users.

In a review of the nation's main ports, the ACCC noted the Government's privatisation proposal and a provision that would give the new owner first right to develop the long-awaited outer harbour at Kwinana.

The competition authority and the Government have been in talks over the regulatory framework around the sale, which is hoped to raise at least $2 billion.

But in a sign of the ACCC's continuing concerns, it used its annual stevedoring review to highlight the risks of a private owner of the Fremantle port having a direct say in the development of the outer harbour.

"An example of a similar right of first refusal mechanism — entered into over a decade ago — relates to Sydney Airport," it said.

"This anti-competitive arrangement has curtailed the potential for Sydney to be serviced by two competing airports, to the detriment of passengers and business."

The commission also noted the risks if the legislation governing the privatised port failed to protect users.

It said while there were economic benefits from privatisation, this was not maintained if the new monopoly owner could charge excessive prices.

"If privatisation occurs without taking these factors into account, governments may unwittingly place a tax on future generations of Australians and hinder Australia's competitiveness," it said.