

**AUSTRALIA**

*(July 2002 - June 2003)*

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## COMPETITION LAW AND POLICY IN AUSTRALIA

### **Executive Summary**

1. This report addresses events occurring in the past Australian financial reporting year (1 July 2002 until 30 June 2003), although later developments have been included where possible.
2. While there were no substantive changes to competition laws and policies, there was a major review of the competition provisions of the *Trade Practices Act 1974* (the TP Act). The Government's response to this review was announced on 16 April 2003, and legislation to give effect to this response is currently being drafted.
3. Australia's National Competition Policy (NCP) framework continued to guide the ongoing development and consideration of competition related issues in 2002-03.

### **Part I - Changes to competition laws and policies**

4. On 16 April 2003 the Treasurer released a report on the competition provisions of the TP Act and their administration, and the Government's response. The Prime Minister announced this review in October 2001, and it was conducted by an independent committee of inquiry.
5. The Committee concluded that the competition provisions of the TP Act have served Australians well. The TP Act has sustained a competitive environment that has benefited consumers in terms of service and price. The Committee found that the TP Act had achieved an appropriate balance between the prohibition of anti-competitive conduct and the encouragement of competition. The Committee made a total of 43 recommendations aimed at improving the competition and authorisation provisions, and the administration of the TP Act.
6. The Government endorsed the Committee's recommendations and will now work to implement the response via legislation.

### ***Telecommunications sector***

7. In December 2002, reforms arising from the Productivity Commission's (PC) telecommunications competition regulation inquiry, which assessed telecommunications-specific competition regulation under the TP Act, were implemented through passage of the *Telecommunications Competition Act 2002*. These amendments will facilitate more timely and effective access to basic telecommunication services under the telecommunications specific access regime, and address concerns about the ability of vertically integrated incumbent carriers to price discriminate against retail competitors in the provision of wholesale services.
8. The Government's formal response to the inquiry was released in February 2003.

### ***New guidelines***

9. The Australian Competition and Consumer Commission (ACCC) released 20 new publications including:
  - a report to the Senate on prices paid to suppliers by retailers in the Australian grocery industry;
  - regulatory reports on phase 1 airports 2001-02; and
  - the second insurance industry market pricing review.

10. In most cases, publications are available from the ACCC's web site<sup>1</sup>.

### *Leniency policy*

11. In June 2003 the ACCC released its policy for the application of leniency to the prosecution of cartel conduct. The policy aims to provide greater certainty for leniency applicants so that the ACCC can better detect and break up hard core cartels operating in Australia.

## **Part II - Enforcement of competition laws and policies**

12. The TP Act prohibits a wide range of anti-competitive practices, such as arrangements that substantially lessen competition, secondary boycotts, misuse of substantial market power, mergers or acquisitions that may substantially lessen competition and resale price maintenance. In addition, the TP Act contains telecommunications-specific competition rules.

13. In addition to the ACCC's enforcement function under the TP Act, provision is also made for any person to independently seek a remedy from a court. This right of private action generally enables persons who consider the TP Act has been contravened to approach a court directly, irrespective of the view of the ACCC.

### *Anti-competitive conduct matters*

14. During 2002-03 the ACCC investigated around 200 competition matters. This figure includes matters where the ACCC sought additional information to establish whether there was a contravention and/or if ACCC action was appropriate. Some investigations were concluded after initial inquiries and others were investigated in depth. Six competition proceedings were concluded during the year, and 28 competition matters were continuing before the courts as at 30 June 2003.

### *Vitamins case*

15. In February 2003, the ACCC commenced proceedings against F Hoffmann-La Roche (Switzerland), BASF Aktiengesellschaft (Germany), Takeda Chemical Industries (Japan) and various related companies in the Asia Pacific region, alleging they fixed prices for vitamin C used for human consumption.

16. The ACCC has obtained leave of the Federal Court to serve the proceedings on alleged participants located in Switzerland, Germany and Hong Kong. The proceedings arise from alleged agreements implemented overseas between January 1991 and October 1995, and which are part of the broader global vitamins cartel which ceased in about 1999.

### *Obstetricians*

17. In October 2002, orders were made by consent against three obstetricians in a regional area who had agreed, in December 2000 and January 2001, to boycott certain billing arrangements being offered by a number of private health insurance funds. The outcome of the boycott was that approximately 200 affected patients were required to pay a gap for the in-hospital medical expenses associated with the birth of their child that they would not have been required to pay if the conduct had not occurred. Approximately A\$97,000 was ordered be repaid to affected patients.

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### *Safeway case*

18. In June 2003, the Federal Court unanimously held that the retailer Safeway had engaged in price-fixing. A majority of the Court found that, in four of the nine instances pleaded by the ACCC against Safeway, the company had misused its market power. The allegations concerned the supply of bread retailers who discounted their prices. The ACCC alleged that Safeway took action against bread manufacturers to induce them, or attempt to induce them, to stop retailers discounting.

19. The decision is currently on appeal to the High Court.

### *CDs case*

20. In December 2001, the Federal Court held that Warner Music Australia Pty Ltd and Universal Music Australia Pty Ltd had misused market power and engaged in exclusive dealing, by threatening to withdraw trading benefits from CD retailers who stocked parallel imports. The matter went on appeal, and in August 2003, the Full Federal Court found that the companies had engaged in exclusive dealing but had not misused market power. The court increased the total penalties payable by Warner, Universal and company senior executives to approximately A\$2 million.

### *Boral*

21. Proceedings were commenced by the ACCC in March 1998 against Boral Besser Masonry Ltd alleging contravention of section 46 of the TP Act by way of 'predatory pricing' in the supply of concrete masonry products. ACCC action in the lower courts was successful.

22. On 7 February 2003, the High Court by majority (6-1) allowed Boral's appeal. The majority took the view that Boral was operating in an intensely competitive environment and that its pricing behaviour was consistent with responding to competitive pressure. The new market entrant, who was the target of the alleged misuse of market power, was seen to have 'survived and thrived' during the period of the conduct.

### *Rural Press*

23. In 1997, the Waikerie Printing House, which operates three South Australian Riverland Newspapers – The Murray Pioneer, The Loxton News and The River News – began circulating one of its papers to the town of Mannum. Rival newspaper group Rural Press already had a paper operating in that region and, in retaliation, threatened to set up a free newspaper in the Riverland unless Waikerie Printing House pulled out of Mannum.

24. The Federal Court found that Waikerie Printing House, Rural Press and Bridge Printing entered into an arrangement, for the withdrawal of The River News by Waikerie Printing House from the Mannum area in South Australia, that contained an exclusionary provision in breach of section 45 of the TP Act. The Federal Court also found that the arrangement had the purpose or effect of substantially lessening competition that amounted to a further breach of section 45.

25. Subsequently, the Full Federal Court found that the arrangement between Rural Press, Bridge Printing and Waikerie Printing House did not contain an exclusionary provision but did have the purpose or effect of substantially lessening competition in breach of section 45 of the TP Act. The Full Federal Court also decided that Rural Press and Bridge Printing did not misuse their market power in breach of section 46 of the TP Act.

26. The matter is currently before the High Court.

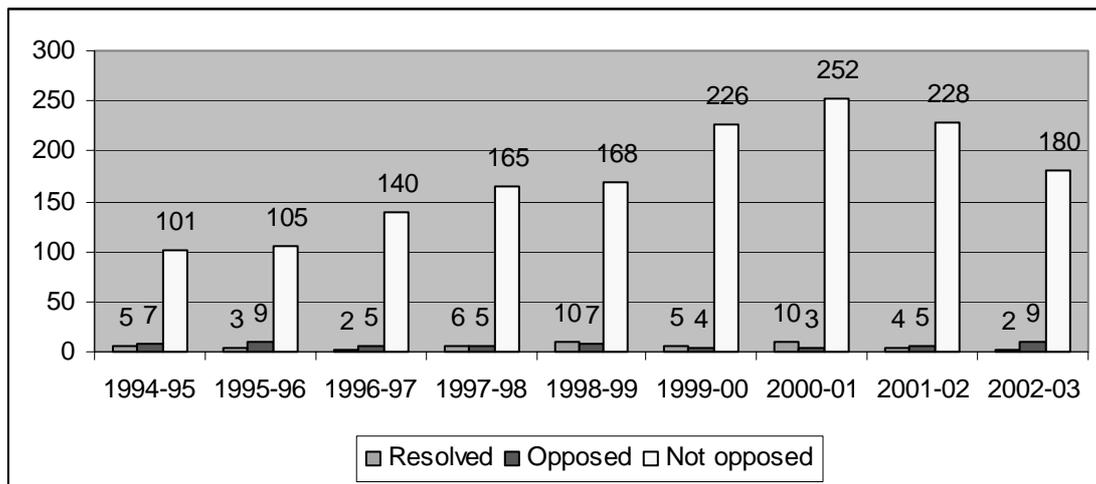
**Mergers and acquisitions**

27. Analysis of mergers and acquisitions constitute an important part of the ACCC’s work. A merger or acquisition is prohibited under the TP Act where it has the effect, or would be likely to have the effect, of substantially lessening competition in a market.

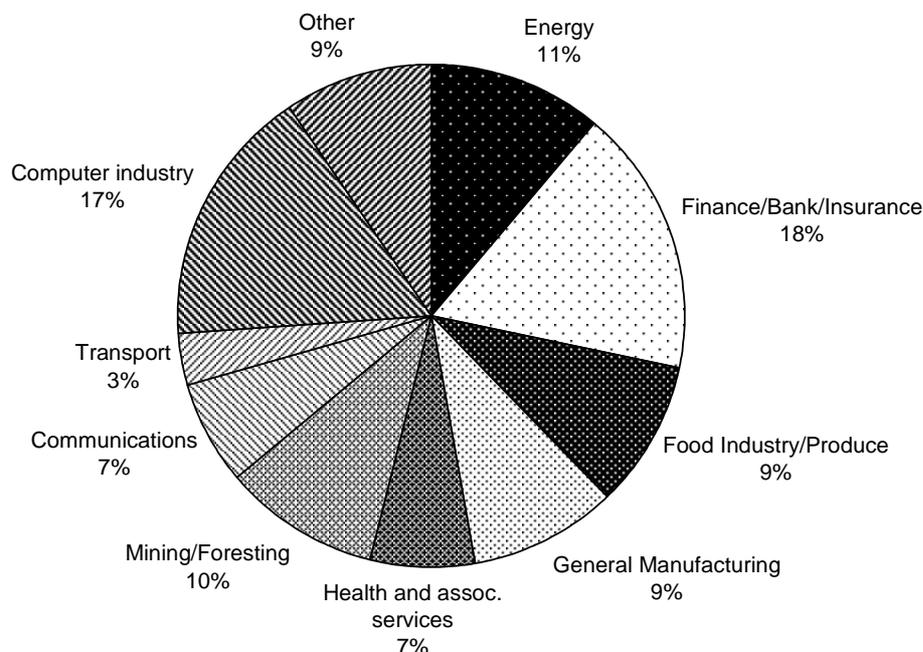
28. In 2002-03 the ACCC considered 191 mergers, asset sales and joint ventures. Of these the ACCC objected to nine on the basis that they were likely to substantially lessen competition. Seven of these matters were subsequently withdrawn, whilst two proceeded following the provision of Court enforceable undertakings to the ACCC under the TP Act. The courts considered no mergers during the period.

29. Chart 1 highlights the small percentage of merger matters the ACCC has opposed. It shows that the number of matters where a substantial lessening of competition would, or was likely to, occur, in the ACCC’s view, has been stable at around four to five per cent for several years. Chart 1 also shows the number of merger matters considered in 2002–03 has eased, consistent with wider marketplace trends, including as a result of factors facing the international economy.

**Chart 1 - Mergers not opposed, opposed and resolved with the ACCC**



**Chart 2 – Percentage of mergers by industry**



30. Chart 2 shows merger matters considered in 2002–03 by industry. Energy and computer industry transactions formed a larger proportion of mergers considered than in the previous year, while the proportion of transport, communications and health industry mergers decreased. The proportion of mining/forestry, food industry and finance/banking matters remained broadly stable.

31. The ACCC communicates with international counterpart agencies when assessing the implications of international mergers and acquisitions. These discussions relate to technical aspects, such as the appropriate market definition, barriers to entry, and emerging market dynamics.

32. Three major merger matters considered by the ACCC in 2002-03 are discussed below.

*Pfizer Inc’s Acquisition of Pharmacia Corporation*

33. The ACCC analysed the impact of this worldwide merger on competition in a range of markets for human pharmaceutical products and products used for animal healthcare in Australia.

34. The ACCC was concerned that the proposed merger may have resulted in a substantial lessening of competition in the market for cattle progesterone delivery services (used for the management of cattle reproduction). To address these concerns, the ACCC accepted an undertaking from Pfizer for the divestiture of the intellectual property and business associated with the CueMate cattle progesterone product. The undertaking aims to preserve competition between two key products used for the treatment of non-cycling cows and synchronisation of the mating of multiple cows.

35. In addition, the ACCC considered the undertakings that had been given by the parties, to the European Commission, were sufficient to address concerns in the Australian market.

*API and Sigma*

36. The ACCC declined to authorise a proposed merger of two major pharmaceutical wholesalers. The merger would have given the merged entity approximately 60 per cent of the pharmaceutical wholesaling market in three major Australian states and up to 50 per cent in the remaining states.

37. The ACCC considered that the deterioration in competitive pressure, as a result of the merger, would be a major public detriment and not likely to be overcome by any anticipated benefits. The scope for parallel conduct between the merged entity and the one remaining full line wholesaler would be significant and the ACCC foresaw a high probability of decreased service levels and higher prices to pharmacists, and thus to consumers.

*Foxtel and Optus*

38. In November 2002, the ACCC announced that it would not oppose the content sharing arrangements proposed by Australia's two largest pay-TV firms, Foxtel and Optus. Initially, the ACCC viewed the proposed arrangements as raising significant competition concerns beyond the market for retail pay television services. This was particularly so given that Optus is both the number two telecommunications and pay television provider in these markets, and Foxtel is 50 per cent owned by Telstra, the largest telecommunications carrier.

39. However, the ACCC indicated that the court enforceable undertakings proposed by Foxtel, Optus, Telstra and Austar (the third largest pay-TV firm) sufficiently addressed concerns about the potential anti-competitive effects of the proposed arrangements between Foxtel and Optus. The undertakings provide access to programs for pay-TV operators, broader choice for consumers, and access to both Telstra's cable network and Foxtel's set-top boxes.

*Qantas and Air New Zealand*

40. In September 2003 the ACCC rejected an application for authorisation of a Joint Airline Operation (JAO) between Qantas and Air New Zealand. The proposal for the JAO included Qantas buying a 22.5 per cent shareholding in Air New Zealand, in three stages, at a cost of around A\$490 million.

41. The ACCC had previously released a draft determination that refused the application, following which the applicants had submitted revised undertakings.

***Pricing matters***

*Aviation*

42. The ACCC administers a regulatory framework for major capital city airports recently privatised by the Australian Government. The ACCC will closely monitor airport pricing arrangements over coming years, following the Government's decision to remove price controls on airports. It also has the role of assessing price increases for air traffic control and aviation fire fighting and rescue services provided by Airservices Australia.

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### *Airservices Australia*

43. In June 2003, the ACCC opposed a proposal by Airservices Australia to increase charges for terminal navigation, aviation fire fighting, and rescue services, by around 7 per cent at most major Australian airports, primarily because Airservices had failed to develop a longer-term approach to pricing.

### *Postal services*

44. Australia Post is subject to prices surveillance by the ACCC, largely because it has a statutory monopoly over letter carriage. In 2002 the ACCC assessed letter prices when Australia Post proposed price increases averaging about 5 per cent. The ACCC did not object to the increase in the basic stamp price to 50 cents, but did object to the increases for bulk mail.

### *Insurance pricing*

45. Following widespread concerns in 2002 about the affordability and availability of public liability insurance, the ACCC acquired a price monitoring role in particular aspects of the insurance market.

- In July 2002, the Government asked the ACCC to monitor costs and premiums in the public liability and professional indemnity sectors of the insurance market on a half-yearly basis over the next two years.
- The ACCC was asked to consider to the impact on insurance premiums of measures taken by governments to reduce and contain legal and claims costs and to improve the data available to insurers to evaluate and price risk.

46. In addition, in October 2002, the Prime Minister announced reforms to the medical indemnity industry designed to improve insurance affordability for medical practitioners and the longer-term viability of the medical indemnity industry. The ACCC was asked to monitor medical indemnity premiums to assess whether they are actuarially and commercially justified and will provide its first report to the Government in late 2003.

### *Petroleum*

47. The ACCC has had an informal fuel price-monitoring role since the deregulation of petrol and diesel price in August 1998. It monitors the retail prices of unleaded petrol, diesel and automotive liquefied petroleum gas in the capital cities and around 110 country towns.

### *Petrol pricing arrangements in Australia*

48. In April 2003, the ACCC released a report on terminal gate pricing (TGP) arrangements in Australia, and other fuel pricing arrangements in Western Australia. TGP broadly refers to the sale of fuel from the terminal gate without additional services that may be provided such as freight, branding and marketing.

49. TGP arrangements were introduced on a regulatory basis in Western Australia and Victoria in 2001 and on a voluntary basis in other states by a number of oil companies in 2002.

50. The report concluded that it was unclear whether the WA fuel pricing arrangements have been successful to date. Further, it was difficult to form a view on the impact of the Victorian arrangements because the extent to which they apply to the petroleum market in Victoria was not clear.

*Harbour towage*

51. In March 2002, the Government requested the PC inquire into harbour towage, including the continuing need for towage price oversight. In its March 2003 response to the PC's final report, the Government supported the PC's recommendation that limited price monitoring for a period of three years would be of assistance to towage users as well as other industry stakeholders including ports and shippers. The Government announced that the monitoring would be limited to an annual survey of prices being charged within nominated ports, to be conducted by the Bureau of Transport and Regional Economics.

*Access to infrastructure facilities*

52. Under NCP, all Australian governments must legislate to allow third party access to services provided by essential infrastructure facilities. While the 1995 addition of Part IIIA to the TP Act provided for a National Access Regime, the states and territories also have in place procedures for establishing access regimes. In addition to these measures, there are a number of industry-specific access regimes, including the telecommunications-specific access regime under Part XIC of the TP Act.

*Natural gas pipelines*

53. NCP commitments on natural gas aim to remove all legislative and regulatory barriers to the free trade of gas, both within and across state boundaries and to provide for third party access to gas pipelines.

54. The ACCC released final approvals for proposed access arrangements for the Moomba to Adelaide, Ballera to Mount Isa, Wallumbilla to Brisbane, Amadeus Basin to Darwin and the Victorian natural gas transmission pipeline systems. The ACCC is in the process of making a final decision for the proposed access arrangement for the Moomba to Sydney pipeline. In May 2003, Western Australia's Office of Gas Access Regulation issued its final decision on the access arrangement for the Dampier to Bunbury natural gas pipeline.

*Airports*

55. The National Competition Council (NCC) has issued a draft recommendation on Virgin Blue's application under Part IIIA of the TP Act for declaration of airside services at Sydney Airport, operated by Sydney Airports Corporation Limited (SACL). Declaration of the airside services would provide Virgin Blue with a legally enforceable right to negotiate access to the services. The NCC is expected to issue a final recommendation to the designated Minister in late November 2003.

*Railways*

56. In September 2002, following an application by AuIron Pty Ltd, the designated Minister declared the Wirrida to Tarcoola rail track service, creating a right of access in accordance with a recommendation by the NCC. Under the TP Act's access provisions, if a designated Minister declares a service, a provider of the relevant facility may apply to the Australian Competition Tribunal (ACT) for a review of the declaration. Later in September 2002, Asia Pacific Transport Pty Ltd, the provider of the Wirrida to Tarcoola rail track service, applied for an ACT review. The Tribunal set aside the Minister's declaration after the applicant for access withdrew from the proceedings. The declaration was intended to last until early 2004, when the Australasia Railway Third Party Access Regime is expected to become effective.

*Adjudication*

57. Through the adjudication process, the ACCC assesses the public benefits and detriment resulting from certain anti-competitive practices prohibited by the TP Act. If there is a net public benefit, the ACCC

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will authorise parties to engage in these practices. Authorisation provides immunity from legal proceedings under the TP Act. A simpler process known as notification provides immunity for exclusive dealing conduct.

58. In addition, the ACCC assists the ACT in its consideration of applications for the review of adjudication decisions.

59. Adjudication decisions made by the ACCC in 2002-03, compared to relevant figures for the two preceding periods, are shown in Table 1.

**Table 1: Adjudication matters considered**

60.

	<i>Tribunal reviews</i>			<b>Applications for Authorisation</b>			<b>Notifications</b>		
	<b>02-03</b>	<b>01-02</b>	<b>00-01</b>	<b>02-03</b>	<b>01-02</b>	<b>00-01</b>	<b>02-03</b>	<b>01-02</b>	<b>00-01</b>
Previously under consideration	3	0	1	26(67)	28(83)	64	89	63	38
New applications/notices	1	3	0	25(61)	18(36)	53	24 8	287	345
Withdrawn	2	2	0	10(22)	1(1)	5	3	1	2
Decided	1	1	1	17(59)	19(51)	30	26 8	281	318
Unresolved as at 30 June	1	0	0	24(47 <sup>^</sup> )	26(67 <sup>*</sup> )	83 <sup>(a)</sup>	66	69	63

# Figures in brackets indicate total applications including electricity and gas matters.

<sup>^</sup>Total figure includes 12 applications relating to National Electricity Code changes and 11 applications relating to gas supply market rules.

<sup>\*</sup>Total figure includes 30 applications relating to National Electricity Code changes and 11 applications relating to gas supply market rules.

<sup>(a)</sup> Total figure includes 43 applications relating to National Electricity Code changes and eleven applications relating to gas supply market rules.

61. The following is an outline of major adjudication matters considered in 2002/03.

62. The ACCC considered applications relating to:

- a proposed alliance between Qantas and Air New Zealand; the re-authorisation of the International Air Transport Association's arrangements; the authorisation of a program offering Star Alliance business travellers discounted airfares; and the re-authorisation of a joint services agreement between Qantas and British Airways;
- authorisation of collective bargaining from: newsagents seeking to negotiate with publishers; hoteliers seeking to negotiate with the suppliers of betting and broadcasting services; lottery agents seeking to negotiate with the suppliers of soft gambling products; and concrete carters seeking to negotiate with concrete producers;
- the professions and health industry, including in respect of: the training program and entry requirements of the Royal Australasian College of Surgeons; fee agreements within general

practitioner associateships; a collective tender proposal for the acquisition of nursing agency services by several metropolitan public hospitals in the State of Victoria; and a requirement that private in-patients in all public hospitals in the State of New South Wales use public pathologists; and

- the joint provision of public liability insurance to certain not-for-profit organisations; an arrangement to limit the use of genetic testing in life insurance policies; and an agreement between banks to offer a basic bank account with minimum features to low income consumers.

### **Part III – The role of competition authorities in the formulation and implementation of other policies**

63. All Australian governments agreed to implement NCP in 1995. NCP has several elements, including the review of legislation that restricts competition or imposes costs on business and the provision of access to significant infrastructure facilities. While considerable progress has been made in implementing NCP, significant reforms are continuing. These include implementation of specific water and energy reform commitments and the reform of the remaining statutory agricultural marketing arrangements, retail trading arrangements (including liquor licensing arrangements), taxi licensing, the regulation of the professions and mandatory insurance arrangements (e.g. workers' compensation and transport accident insurance). The Government has announced it will examine streamlining Australia's various workers' compensation and occupational health and safety schemes.

64. The principal government departments/agencies involved in the development, implementation, administration and enforcement of competition policy and laws are:

#### **(1) *The Department of Treasury***

65. The Department of Treasury has primary policy responsibility for the competition provisions of the TP Act and NCP, which includes the provision of policy advice in relation to international aspects of competition policy, and oversight and administration of key agencies, including the NCC, the ACCC, the ACT, and the PC.

#### **(2) *The ACCC***

66. The ACCC was formed in 1995 and is an independent statutory authority that administers the TP Act. Under the NCP program, the TP Act has been amended so that its prohibitions of anti-competitive conduct apply to virtually all businesses in Australia.

#### **(3) *The NCC***

67. Established in 1995, the NCC acts as a policy advisory body to oversee the implementation of NCP. The NCC does not, however, set reform agendas or implement reforms, which are the responsibility of Australian governments.

#### **(4) *The PC***

68. The PC, an independent statutory authority, is the Government's principal review and advisory body on microeconomic policy and regulation, and undertakes public inquiries in response to terms of reference provided by the Government.

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### (5) *The ACT*

69. Until 1995, the ACT was known as the Trade Practices Tribunal (originally established in 1965). The ACT is a review body that, amongst other things, hears applications for review of determinations of the ACCC.

#### *Legislation review*

70. In 1996, all Australian governments agreed to review legislation that restricts competition by the end of 2000. In November of that year, CoAG agreed to extend this deadline to 30 June 2002.

71. In February 2003, the PC commenced a review of disability discrimination legislation, which will report in February 2004. The Government released its final response to the review of the *Prices Surveillance Act 1983* (the PS Act) and in March 2003 introduced legislation into Parliament to repeal the PS Act and insert a new part into the TP Act.

72. The Government released the PC's final report on the review of the National Access Regime in September 2002, and announced its interim response. The Government is expected to announce its final response shortly. The Government received the PC report of the review of local government exemptions under the TP Act in August 2002, and released it in December 2002. The Government is considering the report's recommendations.

73. In December 2002, the Government released its response to the Radio communications Review Report and the PC's Radio communications Inquiry Report. The response largely endorsed the recommendations and supported the reforms undertaken to date to introduce a greater market-based approach in spectrum allocation.

74. In June 2003, the Government announced its final response to the PC's review of superannuation legislation.

75. The Government announced its response to the NCP review of intellectual property protection legislation (see also Part V). Further legislative amendments were introduced into the Parliament in 2003. Consistent with the report's recommendations on removing restrictions on parallel importation, the Government proposed permitting the parallel importation of books (including printed music), computer programs and periodical publications.

#### *Other reforms*

##### *Water*

76. At the August 2003 CoAG meeting it was agreed that there was a need to refresh the 1994 CoAG water reform agenda to increase the productivity and efficiency of water use, sustain rural and urban communities, and to ensure the health of river and groundwater systems.

77. CoAG has therefore agreed to develop a National Water Initiative to:

- improve the security of water access entitlements, including by clear assignment of risks, of reductions in future water availability and by returning over allocated systems to sustainable allocation levels;
- ensure ecosystem health by implementing regimes to protect environmental assets at a whole-of-basin, aquifer or catchment scale;

- ensure water is put to best use by encouraging the expansion of water markets and trading across and between districts and states (where water systems are physically shared), involving clear rules for trading, robust water accounting arrangements and pricing based on full cost recovery principles; and
- encourage water conservation in our cities, including better use of storm water and recycled water.

78. The National Water Initiative will build on the achievements of the 1994 CoAG strategic framework for the reform of the Australian water industry, the National Heritage Trust and the National Action Plan for Salinity and Water quality.

79. Recognising the declining health of the River Murray system in particular, member jurisdictions of the Murray-Darling Basin agreed to provide new funding of A\$500 million over five years to address water over allocation in the Basin.

#### **Part IV - Resources of competition authorities**

80. The ACCC's budgeted staffing level for 2002–03 was 490. The ACCC staff consists of six full-time members, and twelve associate members; eight of these are ex-officio, being economic regulators from other federal or state and territory bodies.

81. Funding of A\$62.5 million was provided to the ACCC in the 2002-03 budget, this included A\$0.70 million additional funds to undertake increased regulatory work involving Australia Post and to monitor medical indemnity insurance premiums. In the 2003-04 budget total funding of A\$66.6 million was provided, including A\$2.3 million over three years to implement the Government's response to the Wilkinson Review, A\$1 million over two years to monitor medical indemnity insurance premiums and A\$22.9 million over four years for continuing telecommunications competition regulation.

82. Additionally, the NCC's funding increased from A\$3.6 million in 2002-03 to A\$3.8 million in 2003-04. Staffing levels have not changed, with twenty persons currently employed as economists, lawyers, other professionals and support staff.

**Table 2 – Annual Budgets (\$million)**

	ACCC		NCC	
	03-04	02-03	03-04	02-03
A\$	66.6	62.5	3.8	3.6
USD <sup>2</sup>	43.9	41.2	2.5	2.4

#### **Part V - Studies and reports**

##### ***Report on the competition provisions of the TP Act and their administration***

83. On 16 April 2003, the Treasurer announced the release of the report on the competition provisions of the TP Act and their administration, and the Government response. The report concluded that the competition provisions of the TP Act had served Australia well. The TP Act had sustained a competitive environment that had benefited consumers in terms of service and price.

84. The report made a total of 43 recommendations aimed at improving the competition and authorisation provisions, and the administration of the TP Act. The Government endorses the report and will now work towards implementing the report's recommendations.

***The Wilkinson Review***

85. On 10 November 2002, the Prime Minister announced the release of the review of the impact of Part IV (competition provisions) of the TP Act on the recruitment and retention of medical practitioners in rural and regional Australia.

86. The review found that the TP Act has minimal actual implications for the practice of medicine in rural and regional Australia and does not need to be amended in order to address the issues considered. The review did, however, find that there was a widespread perception that the TP Act does have significant implications and that this perception could be a disincentive for doctors to enter or stay in rural practice. To this end the review made a number of recommendations aimed at improving community awareness of the TP Act and improving communication channels between the ACCC and the medical profession.

87. Consistently with a review recommendation, in September 2003 the Treasurer announced the membership of the Health Services Advisory Committee. The Committee, consisting of members from the ACCC, the medical profession and consumers, is designed to act as a medium of consultation between the ACCC, doctors, other relevant health professionals and health consumers to achieve a better understanding of, and compliance with, the TP Act. The Committee is to perform an advisory role for doctors and other relevant health professionals in matters relating to the application of the TP Act, and will provide advice to the ACCC on the environment in which doctors and other health professionals operate.

***Productivity Commission inquiries, reports and publications***

88. The PC released reports of a number of public inquiries and commissioned research studies during 2002-03, including a review of existing local government exemptions from the competition provisions of the TP Act and a review of the Radio communications Acts.

89. The PC's report on airport price regulation recommended that there were insufficient grounds for an airport-specific access regime as the general access provisions available under Part IIIA of the TP Act (and Part IV) provide sufficient safeguards for those seeking access to airport facilities. The Government has accepted the PC's recommendation and will repeal the existing access provisions of the *Airports Act 1996*.

90. The PC is currently looking into the affordability and availability of first home ownership, and the rules of origin that exist under the Australia-New Zealand Closer Economic Relations Trade Agreement.

***ACCC report on health insurance issues***

91. Australia operates a free universal public health care system for all residents, supplemented by a private system allowing consumers wider choice at additional cost. The additional cost incurred by utilising the private system may be covered in whole or in part by consumers taking private health insurance cover: currently around 45 per cent of Australians have such cover as a result of Government initiatives. On 25 March 1999 the Senate ordered the ACCC to report every six months on its assessment of 'any anti-competitive or other practices by health funds or providers which reduce the extent of health cover for consumers and increase their out-of-pocket medical and other expenses'.

92. The ACCC instituted proceedings in November 2001 against several companies alleging misleading and deceptive advertising of health insurance products. In its report to 31 December 2001, the ACCC raised concerns that some in the medical profession did not appreciate the significance of cost as an important consideration in the provision of specialist care and that patients may not have been adequately

informed about the commercial or financial interests of medical practitioners when they refer patients to other practitioners.

93. The fourth report to the Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance was tabled in June 2002 in the Senate.

***CoAG's Review of Energy Markets***

94. In December 2002, CoAG's Independent Review of Energy Market Directions: Towards a truly national and efficient energy market was released by the Ministerial Council on Energy<sup>3</sup>. The review endorsed the direction of earlier reforms that introduced competition to the sector and recommended further reforms to streamline governance arrangements, encourage efficient network investment, and increase the role of the demand-side in the electricity market. All Australian governments are currently working on a joint Government response.

**Glossary**

ACCC	Australian Competition and Consumer Commission
CoAG	Council of Australian Governments
CPA	<i>Competition Principles Agreement</i>
ICN	International Competition Network
NCC	National Competition Council
NCP	National Competition Policy
PC	Productivity Commission
PS Act	<i>Prices Surveillance Act 1983</i>
TP Act	<i>Trade Practices Act 1974</i>
ACT	Australian Competition Tribunal

**NOTES**

1 [www.accc.gov.au](http://www.accc.gov.au)

2 Calculated at rate A\$1 = USD0.66

3 [www.energymarketreview.org](http://www.energymarketreview.org)