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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN AUSTRALIA

-- 1 July 2004-30 June 2005 --

This report is submitted by the Australian Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 19 and 20 October 2005.

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Executive Summary

1. This report addresses events occurring in the past Australian financial reporting year (1 July 2004 until 30 June 2005), although later developments have been included where possible.

2. The Government has focused on introducing three major bills into the Parliament in the last financial year. These bills include amendments to the existing competition provisions of the *Trade Practices Act 1974* (TP Act) and their administration, amendments to the national access regime and the introduction of criminal penalties for serious cartel conduct.

3. Australia's National Competition Policy (NCP) framework continued to guide the ongoing development and consideration of competition related issues in 2004-05. In addition, the Australian Commonwealth and state governments have agreed to review NCP in order to determine the success of competition related reforms, and to explore ways of increasing the gains from such reforms going forward.

1. Part I—Changes to competition laws and policies

1.1 Dawson Review

4. On 16 April 2003, the Treasurer released the report on the competition provisions of the TP Act and their administration (Dawson Review), and the Australian Government's response. The Dawson Review concluded that while the competition provisions of the TP Act have served Australia well, the TP Act should be amended to improve its operation by providing for greater accountability, transparency, and timeliness in decision making by the Australian Competition and Consumer Commission (ACCC) and on review by the Australian Competition Tribunal and reducing the regulatory burden on business. A bill to implement the Government's response was first introduced to Parliament on 24 June 2004. However, this bill lapsed due to the federal election in October 2004. The bill was re-introduced to Parliament on 17 February 2005 as the Trade Practices Legislation Amendment Bill (No.1) 2005, with minor amendments to enhance and clarify its operation. The re-introduced bill is awaiting consideration in the Senate. The Government is proposing to make minor procedural amendments in the Senate to further enhance and clarify the bill.

1.2 Misuse of market power

5. In March 2004, a Senate Economics References Committee reported on the effectiveness of the TP Act in protecting small businesses. The report considered a range of issues including those relating to section 46 (misuse of market power), unconscionable conduct (particularly section 51AC) and administration of the TP Act. The Australian Government announced its response to the report on 23 June 2004, accepting 8 of the 17 recommendations. It intends to introduce legislation to implement its response in the near future.

1.3 National Access Regime

6. On 20 February 2004, the Government released its final response to the Productivity Commission's (PC) report on the Review of the National Access Regime for 'nationally significant' infrastructure services. The Government's response supports most of the PC's proposed reforms, and in developing its response, it consulted with state and territory governments. The Government introduced into Parliament, on 2 June 2005, the Trade Practices Amendment (National Access Regime) Bill 2005, to amend Part IIIA of the TP Act to give effect to its response to the PC report. The Bill is expected to be debated in the Spring sittings of Parliament.

1.4 *Criminal penalties for cartel conduct*

7. On 2 February 2005, the Australian Government announced that it intends to introduce criminal penalties for serious cartel conduct. The proposed criminal cartel offence will prohibit a person from making or giving effect to an agreement between competitors that contains a provision to fix prices, restrict output, divide markets or rig bids, where the agreement is made or given effect to with the intention of dishonestly obtaining a gain from customers who fall victim to the cartel. In developing its response, the Australian Government had regard to the OECD's 'Recommendation of the Council Concerning Effective Action Against Hard Core Cartels'.

1.5 *National Competition Policy Review*

8. In November 2000, the Council of Australian Governments (COAG) agreed to review the terms and operations of the NCP agreements and the assessment role of the National Competition Council (NCC) by September 2005. The Australian Government considered that, before such a review took place, it would be beneficial to have an independent, in-depth analysis of the success of competition related reforms, and to explore ways of increasing the gains from such reforms going forward. Accordingly, on 23 April 2004, the Australian Government announced that it had asked the PC to undertake such a review. The PC's inquiry into NCP arrangements was released on 14 April 2005. The Government has indicated that its response will be the outcome of the COAG review. On 3 June 2005, COAG agreed to immediately commence the review of NCP, focus on a possible new national reform agenda, and that the review would report to COAG by the end of 2005. COAG agreed that the new agenda draw from, but not be limited to, the recommendations of the PC's report on the review of NCP.

1.6 *Energy market reform*

9. The new Australian Energy Regulator (AER) and Australian Energy Market Commission (AEMC) began operations on 1 July 2005. They have assumed functions previously performed by the National Electricity Code Administrator (NECA) and the ACCC. The AER is a new legal entity with independent decision making power, while being a constituent part of the ACCC. The AER will assume economic regulatory, enforcement and monitoring functions in relation to the National Electricity Market (NEM). The AEMC will make the National Electricity Rules in relation to these functions under the new National Electricity Law. The ACCC will retain responsibility for regulation of competition matters. These energy market reforms will strengthen the national character of energy markets, reduce regulatory complexity, streamline and enhance the quality of economic regulation across energy markets.

1.7 *Telecommunications*

10. In August 2005, the Australian Government announced a package of regulatory adjustments in the lead up to the divestiture of its remaining stake in Telstra. The package, to be implemented by end of 2006, includes the operational separation of Telstra's retail and wholesale/network business areas. This will involve equivalence and transparency measures for both price and non-price business dealings in a move to help ensure Telstra does not use its dominant wholesale/network position to advantage its own retail business in an anticompetitive manner.

11. A revised price control regime will also be imposed on Telstra from 1 January 2006 to 31 June 2009. The updated regime will narrow the scope and increase the flexibility of the price controls, in particular removing large business customers from the regime, reflecting the increased competition for these services. Since 1989 Telstra has been subject to price control arrangements, aimed at stimulating competitive outcomes by requiring Telstra to pass on productivity gains to consumers through lower prices for services where price reductions are unlikely to be achieved by effective competitive pressure. These

controls apply to such elements as line rentals, local, long-distance, international and fixed to mobile call services.

1.8 *New guidelines*

12. The ACCC produced 85 new publications including new guidelines for informal merger review aimed at providing greater transparency and accountability, an updated guide to unconscionable conduct, 18 new compliance publications, 6 corporate publications, 36 about effective competition and informed markets, and 25 about fair trading and consumer protection. The ACCC also distributed in total 500,598 copies of publications and produced videos and CDs on compliance issues.

13. On 26 August 2005, the ACCC issued the revised 'first-in' Immunity Policy for Cartel Conduct. The new policy replaces the 2003 leniency policy and follows a review to ensure that the policy was operating effectively. The Immunity Policy began operation on 5 September 2005. The 2003 policy will continue to apply to applications made before this time.

14. In most cases, publications are available from the ACCC's web site.¹

2. Part II—Enforcement of competition laws and policies

15. The TP Act prohibits a wide range of anti-competitive practices, including cartel conduct, arrangements that substantially lessen competition, secondary boycotts, misuse of substantial market power, mergers or acquisitions that may substantially lessen competition and resale price maintenance. The TP Act also contains telecommunication-specific competition rules.

16. 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 that the TP Act has been contravened, to approach a court directly, irrespective of the view of the ACCC.

2.1 *Anti-competitive conduct matters*

17. During 2004-05, the ACCC investigated around 200 competition matters. Eleven competition proceedings were concluded during the year. Fifteen competition matters were continuing before the courts as at 30 June 2005.

2.1.1 *Petrol distribution*

18. The Federal Court imposed penalties totalling A\$23.3m against eight companies and eight individuals for petrol price fixing in the Ballarat region in Victoria. These arrangements had led to a long standing agreement to maintain higher prices for consumers in the Ballarat region. One company and one individual successfully appealed to the Full Federal Court which found that they had not demonstrated a necessary commitment to the price fix.

2.1.2 *Liquor retailing*

19. A penalty of A\$4.75m was levied against Liquorland, a member of large retailer Coles Myer, for five contraventions relating to its response to liquor licensing applications by smaller competitors. Proceedings in relation to similar allegations against Woolworths Limited are continuing.

2.1.3 Resale price maintenance

20. The ACCC brought a number of court cases in relation to illegally maintaining prices by discouraging or banning discounting. Skin care product company Dermologica Pty Ltd was penalised A\$250,000 for attempting to force two retailers to stop discounting. Other cases were brought in relation to paragliders, digital set-top boxes and porcelain figures.

2.1.4 Baxter Healthcare

21. The Federal Court found that Baxter Healthcare Pty Ltd had not contravened the TP Act because it was dealing with various state government departments that were not carrying on business, and was therefore entitled to immunity derived from the immunity of the Crown. Baxter had entered into various supply contracts with state purchasing authorities which bundled products in which it was a monopoly supplier with products in which it faced a competitive market. The Federal Court indicated that without the protection of derivative Crown immunity it would have held that Baxter had breached the exclusive dealing provisions of the TP Act and would have found one contravention of the market misuse provisions of the TP Act. The ACCC has appealed the decision.

2.1.5 Telstra

22. In March 2004, the ACCC issued Telstra with a Part A competition notice in relation to pricing of its broadband internet services. This followed Telstra's announcement in February 2004 of a retail price reduction for its broadband plans without a similar drop in its wholesale charges to provide similar retail services.

23. The issuance of a Part A competition notice allows parties such as carriers and internet service providers to take action to seek damages and compensation for the specified anti-competitive conduct that occurs while the notice is in force.

24. Following the enforcement action of the ACCC, Telstra adopted a series of measures. These included reducing its wholesale prices over a period of time until 1 January 2005, accepting a formal arrangement under which it must notify the ACCC of future retail price reductions and acknowledging that its pricing changes made in February 2004 for its retail broadband services may have adversely affected the competitive position of its wholesale broadband customers. In light of the measures accepted by Telstra, the ACCC revoked the competition notice on 21 February 2005.

2.2 Mergers and acquisitions

25. 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.

26. In 2004-05, the ACCC considered 189 mergers, asset sales and joint ventures. Of these, the ACCC opposed two outright, and nine were allowed to proceed, including one merger authorisation, following the provision of court enforceable undertakings to the ACCC under the TP Act.

27. In 2004-05, the Australian Competition Tribunal (ACT) considered one merger authorisation application — Qantas' proposed acquisition of shares in and an alliance with Air New Zealand. The ACT set aside the ACCC's decision to deny authorisation to the application. The authorisation provisions in Part VII allow the ACCC, or the ACT on review, to exempt mergers from the application of Part IV of the Act.

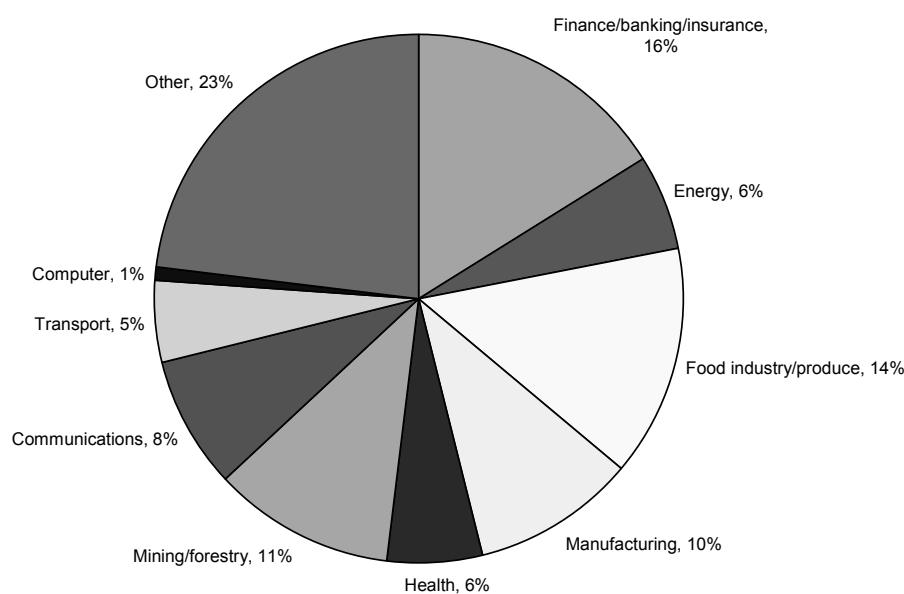
28. Table 1 highlights the small percentage of merger matters the ACCC has opposed. It shows that the number of matters where, in the ACCC's view, a substantial lessening of competition would, or was likely to, occur has been stable at around five per cent for several years. Table 1 also shows that the number of merger matters considered in 2004–05 is very similar to the number considered in both 2003-04 and 2002-03.

Table 1—Mergers not opposed, opposed and resolved with the ACCC

	Matters not opposed	Matters opposed	Matters resolved	Matters decided (total)
1996-1997	140	5	2	147
1997-1998	165	5	6	176
1998-1999	168	7	10	185
1999-2000	226	4	5	234
2000-2001	252	3	10	265
2001-2002	219	9	9	228
2002-2003	180	9	2	191
2003-2004	183	4	2	189
2004-2005	178	2	9	189

Chart 1 shows merger matters considered in 2004–05 by industry. Finance, banking & insurance, food & produce, and mining & forestry industry mergers formed a larger proportion of mergers considered than in the previous year, with fewer mergers from the transport and communication sectors.

Chart 1—Percentage of mergers by industry



29. 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.

30. Three major merger matters considered by the ACCC in 2004-05 are discussed below.

2.2.1 Pacific Brands Limited's proposed acquisition of all operating assets of the foam business of Joyce Corporation Limited.

31. Pacific Brands through Dunlop Foams and Joyce are the largest manufacturers of foam in Australia. Market share estimates from industry participants illustrate that the merged entity would have in excess of 65% (by sales) in all the states. The merged entity would also be the only foam supplier in the industry with national coverage. Following market inquiries the ACCC considered the proposed acquisition would be likely to substantially lessen competition in a number of state based markets for foam.

2.2.2 Foster's Group Limited's proposed acquisition of Southcorp Limited

32. The ACCC noted that the merged firm's market shares in the production of wine and wholesale supply of bottled wine were below merger concentration thresholds that would ordinarily concern the ACCC. Further the ACCC considered that there were a number of wine producers that would be likely to constrain the merged entity and the large liquor retailing stores were in a position to exercise some degree of countervailing power. The ACCC therefore considered that the acquisition was unlikely to substantially lessen competition.

2.2.3 China Light & Power's proposed acquisition of the Australian non-regulated energy assets of Singapore Power.

33. The assets being sold or assigned by Singapore Power included the TXU retail business, a long-term lease over the Torrens Island Power Stations in South Australia, a one-third interest in the SEAGas pipeline, the Western Underground Gas Storage facility located near Port Campbell, and the long-term Master Hedge Agreement with Ecogen Energy which enables hedges to be placed with Ecogen Energy for electricity supply from the Ecogen portfolio (Newport Power Station and the Jeeralang power stations) in Victoria. An important issue was horizontal aggregation of control of generation capacity. In that regard, the ACCC noted the likelihood of new electricity peaking capacity in Victoria being commissioned in the near future as a constraining factor.

2.3 Pricing matters

2.3.1 Airports

34. The ACCC published airports regulatory reports for the major seven airports. Under Part VIIA of the TP Act, the ACCC monitors the prices, costs and profits relating to aeronautical services and aeronautical-related services and under the Airports Act it reports on financial accounts and quality of service.

35. The ACCC reported that, following the removal of price caps on aeronautical charges in 2000-01, average aeronautical revenue per passenger increased by between 46 and 201 per cent between 2000-01 and 2003-04. However, in 2003-04, increases in average revenue were less (up to 16 per cent) and, in some cases, average revenue fell. The ACCC also reported that the greater security requirements imposed on airports since 2001 led to increases in average aeronautical expenses.

2.3.2 *Airservices Australia*

36. The ACCC received and made decisions on two price notifications from Airservices Australia in 2004-05.

37. The ACCC did not object to a proposal which introduced prices for a five-year period for en route air navigation and terminal navigation services. Prices for aviation rescue and fire fighting services were held constant, pending a review of the structure of these charges.

38. However, the ACCC did not object to a proposal to introduce a temporary price increase for aviation rescue and fire fighting services, while increasing the threshold before which charges apply, pending the outcome of the more comprehensive charge structure review.

2.3.3 *Australia Post*

39. On 29 September 2004, the ACCC did not object to a proposal which introduced prices for a new service, 'Impact Mail', which relates to the delivery of bulk quantities of irregular-shaped mail within Australia.

40. Amendments to the *Australian Postal Corporation Act 1989* have recently been enacted, giving the ACCC the ability to require Australia Post to keep records that are relevant to the ACCC's functions of testing for cross-subsidy, assessing proposals for price increases and dispute inquiry. One of the key reasons behind the requirement on Australia Post to keep records about different parts of its business is to enable the ACCC to assess allegations raised by competitors that Australia Post is competing unfairly by subsidising competitive services with revenues raised from its monopoly services. On 30 March 2005, the ACCC released record keeping rules for Australia Post.

2.3.4 *Insurance premium monitoring*

41. The ACCC currently has two monitoring roles with respect to the insurance industry.

- Monitoring of public liability and professional indemnity costs and premiums to assess the impact on premiums of the measures taken by governments to reduce the cost of these classes of insurance. The third of four six-monthly reports was released by the Australian Government in August 2004. The fourth report was released in February 2005.
- Monitoring medical indemnity insurance premiums to assess whether they are 'actuarially and commercially justified'. The second of three annual reports was released by the Australian Government in March 2005.

2.3.5 *Petrol monitoring*

42. The ACCC informally monitors the retail prices of petrol, diesel and automotive LPG in the capital cities and around 110 country towns. It also monitors international crude oil and refined product prices, published terminal gate prices of the oil majors and the city-country price differential.

43. The ACCC also provides information on its website on petrol price cycles in the five largest metropolitan cities the purpose of which is to increase consumers' understanding of petrol price cycles and how to take advantage of them. The website also includes information on what determines petrol prices, country petrol prices and answers to some frequently asked questions, and has links to a number of other websites that have information about petrol prices and petrol pricing issues.

44. The petroleum industry in Australia has experienced significant changes over recent years, including the entry of the supermarkets, and the ACCC has been closely monitoring the effects that these developments are having on prices and the level of competition in the market.

2.3.6 Container stevedoring monitoring

45. The ACCC released its sixth container stevedoring report in November 2004 examining trends in prices, costs and profits of the three major stevedoring companies, P&O Ports Pty Ltd, Patrick Stevedores Operations Pty Ltd, and CSX World Terminals Pty Ltd for the period of July 2003 to June 2004. Increases in container throughput and increases in unit revenue led to the stevedores' unit profit margins continuing to rise during 2003–04. However, for the first time since monitoring began in 1999, industry average costs increased indicating that capacity constraints may be emerging. The significant productivity improvements made since 1999 were continued over the 2003–04 period.

2.4 Access to infrastructure facilities

46. Under NCP, all Australian governments must legislate to establish a right for third parties to negotiate access to services provided by essential infrastructure facilities. The 1995 addition of Part IIIA to the TP Act established a National Access Regime, including providing a mechanism for state and territory governments to submit access regimes for certification by the Australian Government under the National Access Regime. Under Part IIIA of the TP Act, declaration of a service of an infrastructure facility establishes a right for third parties to negotiate access to the service with recourse to arbitration before the ACCC on the terms and conditions of access. There are a number of industry-specific access regimes in operation, including the telecommunications-specific access regime under Part XIC of the TP Act.

2.4.1 Natural gas pipelines

47. 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.

48. The ACCC released seven final decisions for access arrangements to four gas transmission pipelines, and also assessed annual ring fencing reports for compliance with the national gas code from 19 service providers, reflecting their interests in nine transmission pipelines.

2.4.2 Electricity

49. NCP commitments on electricity aim to facilitate trade across and within state boundaries, and provide for third party access to transmission and distribution infrastructure.

50. In 1998, the national electricity access code was approved by the ACCC as an industry access code, under Part IIIA of the TP Act. There have been a number of subsequent amendments to the access code that have been accepted by the ACCC. All transmission and distribution network service providers operating in the national electricity market have submitted undertakings to the ACCC, specifying compliance with the access code.

2.4.3 Telecommunications

51. The ACCC issued a high-level pricing principle for declared telecommunications transmission services, having issued a new declaration in April 2004. The ACCC also commenced an inquiry into whether it should issue indicative prices for the use of the declared transmission capacity service to supply long-haul transmission.

52. In April 2005, the ACCC commenced its review on the future of local services regulation by issuing a discussion paper. The local services review will consider the existing LCS declaration and the need to declare a wholesale line rental service.

53. The ACCC decided not to oppose two third generation (3G) mobile radio access network (RAN) infrastructure sharing arrangements between Vodafone and SingTel Optus 3G, and between Telstra Corporation Limited and Hutchison 3G Australia Pty Ltd. The ACCC assessed both proposals in parallel and concluded that while the proposals might ultimately reduce the extent of infrastructure-based competition between 3G mobile network operators, the arrangements should avoid unnecessary duplication of mobile network infrastructure, and encourage the deployment of more extensive 3G networks, sooner.

54. During the reporting period, the ACCC decided that Australian mobile carriers that offer domestic inter-carrier roaming (domestic roaming) on second generation CDMA mobile networks will be required to provide the ACCC with details of the terms and conditions they charge for this service.

55. In June 2005, the ACCC released its final decision on the review of the Digital Data Access Service (DDAS) and ISDN declarations. The decision specified that declaration of DDAS and ISDN services in CBD and metropolitan areas of capital cities will be removed by 30 June 2006. In relation to regional areas, the lack of competition for the provision of data services means that the existing declarations will remain in force. The ACCC will be reviewing the regional declarations in three years time.

2.4.4 Aviation

56. On 29 January 2004, the Parliamentary Secretary to the Treasurer of the Australian Government (the Minister) decided, under Part IIIA of the TP Act, not to declare the airside services at Sydney Airport provided by Sydney Airports Corporation Limited in response to an application by Virgin Blue Airlines Pty Ltd. In making this decision, the Minister accepted the recommendation by the NCC that relevant statutory criteria were not satisfied. On 18 February 2004, Virgin Blue applied to the ACT for a review of the Minister's decision. The matter was heard by the ACT in October 2004 and the judgment was reserved.

2.5 Adjudication

57. The ACCC assesses the public benefit and detriment resulting from certain anti-competitive practices prohibited by the TP Act through the adjudication process. The ACCC will authorise parties to engage in these practices where there is a net public benefit, providing 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 2004-05 are shown in Table 2.

Table 2—Adjudication matters considered – gas, electricity, merger and other

	Authorisation applications	Minor variation applications	Revocation and substitution applications	Revocations of authorisations previously granted	Total
Opening balance	17 (33)	2 (4)	6 (14)	1 (12)	26 (63)
New applications	27 (60)	10 (18)	6 (8)	2 (2)	45 (88)
Applications withdrawn	2 (6)	0 (0)	0 (0)	0 (0)	2 (6)
Applications decided	27 (61)	10 (20)	5 (8)	3 (14)	45 (103)
Balance	15 (26)	2 (2)	7 (14)	0 (0)	24 (42)

Notes: Figures in brackets indicate total applications while figures without brackets indicate number of projects (i.e. some projects involve multiple applications).

60. The ACCC considered a number of authorisation applications including relating to:

- The Restated Joint Services Agreement between Qantas Airways and British Airways.
- A substitution of the broad immunity in place for the International Air Transport Association.
- A range of collective bargaining arrangements including with respect to: car importers and area service providers at a specified port; chicken growers and chicken meat processors in Victoria; milk vendors and milk processors in South Australia; vegetable growers and vegetable processors in Tasmania; and international airlines with airport operators. The ACCC continues to consider a number of applications relating to collective bargaining in the dairy industry.
- Various levy arrangements including with respect to: clay brick and paver industry training; oyster grower research; and the collection of used chemical containers.
- Queue management systems for coal export loading services at two ports.
- Price caps for after hours medical services.
- A joint venture for the mining, processing and transport of iron ore in north-west Australia.
- A joint venture shareholder agreement for the management and coordination of the supply chain for bulk grain from silos in Queensland, New South Wales and Victoria.

61. Applications for review by the ACT are shown in Table 3.

Table 3—Applications for review by the Australian Competition Tribunal

	This Year	Last Year
Opening balance	1	1
New applications	2	3
Applications withdrawn	0	1
Applications decided	1	2
Balance	2	1

62. During the year, the ACT made its decision in relation to the proposed alliance between Qantas and Air New Zealand involving coordinating, among other things, pricing, capacity, scheduling and purchasing on nominated routes. The ACT set aside the ACCC's decision to deny authorisation to the alliance.

63. At the end of the year, the ACT had before it appeals concerning:

- The ACCC's decision not to revoke twelve authorisations granted in the taxi industry relating to the forcing of non-cash payments on drivers by certain taxi networks.
- The ACCC's decision to allow Victorian chicken meat growers to collective bargain, including the right to collectively boycott chicken growing contracts, with processors. Only the boycott aspect is under appeal.

3. Part III—The role of competition authorities in the formulation and implementation of other policies

64. The role of competition authorities in Australia has underpinned a broad based reform agenda that was developed to provide a consistent approach and address reforms across markets.

65. In April 1995, Australia's NCP was established by three intergovernmental agreements, including the *Competition Principles Agreement (CPA)*, signed by the Australian Government and the governments of Australia's states and territories.

66. The CPA laid down principles and processes for reviewing legislation that restricts competition. The guiding principle is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs and the objectives of the legislation can only be achieved by restricting competition.

67. Under NCP, governments also committed to undertake other reforms to encourage competitive outcomes, including:

- The implementation of competitive neutrality for all significant government business activities operating in a contestable market, which requires that such businesses not benefit commercially simply by virtue of their public ownership.

- The structural reform of public monopolies, where their markets are to be opened to competition or they are to be privatised, to ensure they have no residual advantages over potential competitors.
- The provision of access arrangements to services provided by significant infrastructure facilities (such as electricity grids, airports and communications networks) that would be uneconomic to duplicate, to encourage competition in upstream and downstream markets and reduced prices for related products.
- Independent oversight by state and territory governments of the pricing policies of government business enterprises, to ensure that price rises are not excessive.
- The application of competition laws across all jurisdictions (including the scope for exceptions in certain circumstances), centrally administered by the ACCC.
- Ensuring commitment to related reforms in the key infrastructure areas of electricity, gas, water and road transport with a view to improving efficiency, implementing nationwide markets and standards, and protecting the environment.

68. Each year, the NCC, an independent body established with the agreement of all Australian governments, assesses each government's reform achievements against their NCP commitments.

69. Incentives for reform are provided by annual competition payments to the states and territories from the Australian Government. The payments are reduced where the Australian Government accepts recommendations from the NCC for penalties to be imposed on payments to the states and territories for lack of progress with NCP related reforms. The competition payments represent the states and territories' share of the additional revenue raised by the Commonwealth as a result of effective competition reform, and are worth around \$5 billion (between 1997-98 and 2005-06).

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

3.1 *The Department of the Treasury*

71. The Department of the 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 ACCC, the NCC, the ACT and the PC.

3.2 *The ACCC*

72. 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.

3.3 *The AER*

73. The AER was formed in 2005 under Part IIIAA of the TP Act and is both a separate legal entity and a constituent part of the ACCC. The AER comprises three statutorily appointed members, consisting of a full time chair, one member who is also Commissioner of the ACCC, and a third part-time member. The ACCC and the AER have a single body of staff that support and advise both the ACCC and the AER in

their respective electricity and gas regulation work. While the ACCC has retained responsibility for the application of competition law to the energy sector, the AER performs economic regulation in relation to the National Electricity Market (NEM).

3.4 *The NCC*

74. 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 governments.

3.5 *The PC*

75. The PC, an independent statutory authority, is the Australian 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 Australian Government.

3.6 *The ACT*

76. 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.

3.7 *Legislation review*

77. In 1996, as part of their commitments under NCP, the Australian, state and territory governments undertook to review and reform legislation that restricts competition.

78. The objective of the legislation review program is to remove restrictions on competition that are found not to be in the interests of the community such as legislation that restricts entry into markets or constrains competitive behaviour within markets. Governments agreed that legislation should not restrict competition unless it could be shown that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can be achieved only by restricting competition.

79. All governments developed a timetable for the review and, where appropriate, reform of all existing legislation that restricts competition, by 30 June 2002. Further, it was agreed that proposals for new legislation that restrict competition must be accompanied by evidence that the legislation is consistent with the guiding principle. Governments also committed to systematically reviewing this legislation, after its initial review, at least once every ten years.

80. The Australian Government and state and territory governments have continued to progress their legislation review schedules.

81. On 3 June 2005 COAG agreed to commence a review of the NCP arrangements, which is to be completed by the end of 2005. The COAG review of NCP will draw from, but not be limited by, the recommendations of the PC's inquiry report into NCP reforms, which was released on 14 April 2005.

3.8 *Other reforms*

3.8.1 *Water*

82. On 25 June 2004, the National Water Initiative (NWI) was considered by COAG and signed by the Australian Government and the governments of New South Wales, Victoria, Queensland, South

Australia, the Northern Territory and Australian Capital Territory. Tasmania signed the NWI on 2 June 2005. The NWI covers a range of areas in which greater compatibility and the adoption of best-practice approaches to water management nationally will bring substantial benefits. In particular, the NWI will result in:

- expansion of permanent trade in water bringing about more profitable use of water and more cost effective and flexible recovery of water to achieve environmental outcomes;
- more confidence for those investing in the water industry due to more secure water access entitlements, better and more compatible registry arrangements, better monitoring, reporting and accounting of water use, and improved public access to information;
- more sophisticated, transparent and comprehensive water planning that deals with key issues such as the major interception of water, the interaction between surface and groundwater systems, and the provision of water to meet specific environmental outcomes;
- a commitment to addressing over-allocated systems as quickly as possible, in consultation with affected stakeholders, and addressing significant adjustment issues where appropriate; and
- better and more efficient management of water in urban environments, for example through the increased use of recycled water and stormwater.

83. Consistent with the NWI, the National Water Commission (NWC) was recently established as an Australian Government independent statutory agency. The NWC will accredit state and territory NWI implementation plans, assess progress in implementing the NWI and advise on actions required to better realise the objectives of the NWI. The NWC will also undertake the 2005 NCP assessment of progress with implementing water reform and administer the Water Smart Australia and Raiding National Water standards programmes of the Australian Water Fund.

4. Part IV—Resources of competition authorities

84. The total number of staff employed by the ACCC at 30 June 2005 was 519 compared with 501 on 30 June 2004. It should be noted that in addition to competition matters, the ACCC has a role in regulating national infrastructure services and it is therefore difficult to provide a breakdown of staff resources. The number of ACCC staff which predominantly deal with traditional competition law issues, when compared with other OECD members, consist of the following main three areas: mergers 24 staff; enforcement 148 staff; and advocacy 73 staff. It should also be noted that ACCC enforcement staff along with investigating anticompetitive matters also investigate breaches of consumer protection law. The ACCC consists of seven full-time members, and seven associate members; three of these are ex-officio, being economic regulators from other federal or state and territory bodies.

85. The ACCC's total funding for 2004-05 was A\$123.2 million, comprising the original appropriation of A\$121.8 million², additional appropriation of A\$0.6 million³ and other revenue of A\$0.8 million. The ACCC's total appropriation in 2005-06 is A\$86.5 million⁴. This includes additional funding in 2005-06 of A\$10.9 million as part of a total increase of A\$23.7 million over four years.

86. The NCC employed 15 staff at 30 June 2005. The NCC's total funding increased slightly to A\$4.0 million in 2005-06.

Table 4—Annual Budgets (\$million)

	ACCC		NCC	
	05-06	04-05	05-06	04-05
A\$	86.9	123.2	4.0	3.9
USD ⁵	67.1	95.1	3.1	3.0

5. Part V—Studies and reports

5.1 *Telecommunications sector*

87. In its competitive safeguards report⁶ the ACCC found that competition in the telecommunications sector had provided positive outcomes over the past seven years, but that the positive effects slowed in 2003–04, continuing a trend observed for 2002–03.

88. The changes in prices for telecommunications services report⁷ found that, overall, average prices paid by telecommunications consumers decreased by 1.1 per cent during 2003–04. The average prices paid by residential and small business customers rose by 1.4 per cent and 3.1 per cent respectively, while the average price paid by large business consumers fell by 5.6 per cent.

5.2 *PC inquiries, reports and publications*

5.2.1 *Government-commissioned projects*

89. In the past year, the PC completed a number of public inquiries and commissioned research studies⁸. Completed inquiries included:

- *Review of the Disability Discrimination Act 1992* (report released in July 2004) – the Australian Government announced its final response in January 2005.
- *Review of Gas Access Regime* (report released in August 2004) – the response to this report will be developed by the Ministerial Council on Energy.
- *Impacts of Native Vegetation and Biodiversity Regulations* (report released in August 2004) – the Australian Government announced its final response in August 2004.
- *Review of National Competition Policy Reforms* (report released in April 2005) – the Australian Government response will be the outcome of the COAG Review of NCP.
- *Australian Pigmeat Industry* (report released in August 2005) – the Australian Government announced its final response in August 2005.
- *Smash Repair and Insurance* (report released in August 2005) – the Australian Government announced its final response in August 2005.

90. The PC also completed five commissioned research studies during the year. These involved examinations of:

- Restrictiveness Index for Preferential Rules of Origin;

- Industry Assistance in Australia and New Zealand under the CER Agreement;
- Reform of Building Regulation;
- Australia and New Zealand Competition and Consumer Protection Regimes; and
- Economic Implications of an Ageing Australia.

5.2.2 Other research

91. The PC also undertakes a variety of research studies. Projects completed in the 2004-05 year include:

- ICT Use and Productivity: A Synthesis from Studies of Australian Firms (July 2004);
- Responsiveness of Demand for Irrigation Water: A Focus on the Southern Murray-Darling Basin (August 2004);
- Modelling Water Trade in the Southern Murray-Darling Basin (November 2004); and
- The Growth of Labour Hire Employment in Australia (February 2005).

5.2.3 Current work program

92. The PC is currently undertaking inquiries into:

- Economic and Environmental Potential Offered by Energy Efficiency; and
- Conservation of Historic Heritage Places.

93. The PC is also undertaking commissioned research studies into:

- Impact of Advances in Medical Technology on Healthcare Expenditure in Australia;
- Economic Impacts of Migration and Population Growth;
- Health Workforce; and
- Consumer Product Safety.

Glossary

ACCC	Australian Competition and Consumer Commission
ACT	Australian Competition Tribunal
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
COAG	Council of Australian Governments
CPA	<i>Competition Principles Agreement</i>
NCC	National Competition Council
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NWC	National Water Commission
NWI	National Water Initiative
PC	Productivity Commission
TP Act	<i>Trade Practices Act 1974</i>
USO	Universal Service Obligation

NOTES

1. <http://www.accc.gov.au>
2. Treasury Portfolio Budget Statements 2004-05, Agency Budget Statements – ACCC, pg 74 available at <http://www.budget.gov.au/2004-05/>
3. Treasury Additional Estimates Statements 2004-05, pg 51 available at <http://www.budget.gov.au/2004-05/>
4. Treasury Portfolio Budget Statements 2004-05, Agency Budget Statements – ACCC, pg 85 <http://www.budget.gov.au/2005-06/pbs/html/index.htm>
5. Calculated at rate A\$1 = USD0.77, 16/8/05
6. Telecommunications competitive safeguards for 2003-04, Report to the Minister for Communications, Information Technology and the Arts, March 2005, <http://www.accc.gov.au/content/index.phtml/itemId/596533/fromItemId/587632>
7. Changes in the prices paid for telecommunications services in Australia 1997-98 to 2003-04, Report to the Minister for Communications, Information Technology and the Arts, March 2005 <http://www.accc.gov.au/content/index.phtml/itemId/596533/fromItemId/587632>
8. PC inquiry and research reports are available at www.pc.gov.au