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*(July 2000 - June 2001)***Table of Contents**

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Executive Summary

1. This report addresses events occurring in the past Australian financial reporting year (1 July 2000 until 30 June 2001), although subsequent developments have been included where possible.
2. While there were no substantive changes to competition laws and policies, there were a number of major competition reviews. Minor amendments were made to the *Trade Practices Act 1974* (TP Act) to expand and facilitate access to remedies. The Government also announced proposed legislation to streamline the telecommunications access regime of the TP Act.
3. The Council of Australian Governments (CoAG) re-affirmed the importance of National Competition Policy (NCP) in contributing to higher living standards.
4. In the 2001-02 Budget, the Government announced an increase in funding to the Australian Competition and Consumer Commission (ACCC) of AU\$66.8 million over the following four years reflecting the commitment of the Government to having an effective competition regime in Australia.

Part I - Changes to Competition Laws and Policies

5. At its November 2000 meeting, CoAG affirmed the importance of NCP in sustaining the competitiveness and flexibility of the Australian economy and contributing to higher living standards.
6. CoAG also agreed to several measures to clarify and fine-tune NCP implementation arrangements. These measures include: calling on Governments to document the public interest reasons supporting a decision or assessment and to give consideration to identifying the likely impact of reform measures on industries, sectors and communities; that the deadline for completing the NCP legislation review and reform program be extended from 31 December 2000 to 30 June 2002; and that the NCP Intergovernmental Agreements be amended to provide further guidance to the National Competition Council (NCC) on how to assess whether jurisdictions have complied with their legislation review commitments.

Small business and the Trade Practices Act

7. The *Trade Practices Amendment Act (No 1) 2001* simplifies procedures for the ACCC to commence representative actions for most matters arising under Part IV of the TP Act (Restrictive Trade Practices). The ACCC can now bring actions on behalf of small business which often do not have the resources required to engage in lengthy legal proceedings. This Act also confirms current practice that the ACCC and the Courts consider the competitive impact of proposed mergers or acquisitions on substantial regional markets.

Telecommunications sector

8. On 26 June 2001 the Government announced proposed legislation to streamline the telecommunications access regime under Part XIC of the TP Act. The changes are designed to further encourage commercial negotiations in the resolution of access disputes between telecommunications providers, and to speed up the arbitration process should commercial negotiations fail.

New guidelines

9. As outlined in previous reports, Part VB (Price exploitation in relation to A New Tax System) was added to the TP Act to counter the possibility of consumer exploitation and excessive profit taking during the introduction of the New Tax System changes from 1 July 2000. As part of the ACCC's campaign to ensure compliance with these price exploitation provisions, a total of 61 Goods and Services Tax (GST) publications were produced over the two years since 1999. A further series, *GST Bulletin* (issues 1-27), were produced for online consumption only.

10. The ACCC continued to produce publications outlining aspects of the TP Act and other competition legislation including brochures on Internet auctions and Internet advertising, as well as the ACCC's approach to enforcement. In most cases, publications are available from the ACCC's web site¹.

Part II - Enforcement of competition laws and policies

11. The general competitive conduct rules in the TP Act prohibit a wide range of anti-competitive practices, such as arrangements which substantially lessen competition (primary boycotts and price fixing are deemed to do so), 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 industry-specific competition rules and transitional rules to prevent price exploitation during the introduction of significant taxation reforms.

12. The TP Act established the ACCC as an independent enforcement agency and provides for the Court to grant remedies, which vary according to the rules involved. While the ACCC has an important enforcement function under the TP Act, any person may independently seek a remedy from the Court. This right of private action generally enables persons who consider the TP Act has been contravened to approach the Court direct, irrespective of the view of the ACCC².

Transitional price exploitation measures covering tax reform implementation

13. Under Part VB (Price Exploitation in Relation to A New Tax System)³ of the TP Act, the ACCC has powers to monitor prices, and take enforcement action against businesses engaging in price exploitation in relation to the New Tax System changes.

14. During 2000–01 substantial ACCC resources continued to be used to ensure that the benefits of the New Tax System were passed on to consumers and that businesses did not exploit consumers in implementing the tax changes. This involved providing information to business and consumers, national monitoring of prices, investigating complaints and taking appropriate enforcement action.

15. From early July 1999 the ACCC has investigated potential non-compliance with the pricing guidelines, handling more than 120 000 inquiries (64 000 during 2000–01), including about 40 000 complaints (24 000 during 2000–01). Many were found not to be breaches of the TP Act and many were multiple complaints about the same business. Since July 1999 the ACCC has investigated in detail about 6 200 GST-related matters. As a result, several businesses took corrective action to remedy contraventions related to the tax changes. They have refunded nearly AU\$10.1 million on behalf of approximately 990 000 consumers.

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Anti-competitive conduct matters

16. During 2000-01 the ACCC investigated 403 competition matters. The ACCC was in Court in relation to eighteen restrictive trade practices cases and had twelve matters in Court for price fixing arrangements and cartels.

17. The Full Federal Court of Australia upheld a claim by the ACCC that its powers under section 155 of the TP Act to gain access to documents should extend to documents subject to legal professional privilege. This means that a person or company being investigated by the ACCC cannot refuse to provide information by relying on legal professional privilege. This decision may be challenged in the High Court.

18. The ACCC concluded proceedings against 56 parties for price fixing and market sharing in the fire protection industry in Queensland. The total of pecuniary penalties imposed was AU\$14.79 million, along with a costs order of AU\$596 000.

Vitamins cartel

19. The ACCC was successful in proceedings against three multinational vitamin companies who, through a global cartel, set prices for animal feed vitamins in the Australian market. The Federal Court awarded record penalties totalling AU\$26 million. The ACCC is currently investigating other global cartels, some concurrently with overseas regulators.

Credit card interchange fees

20. In October 2000, a joint report of the ACCC and the Reserve Bank of Australia (RBA) found that the interchange fees for ATM, EFTPOS and credit card transactions were all significantly above the costs of providing these services. Credit card interchange fees were of particular concern because of the way in which these fees are collectively set by the credit card schemes' Australian member financial institutions.

21. Legal action against the National Australia Bank (NAB) commenced in September 2000. Although the ACCC took action only against NAB, it alleged that the price fixing behaviour involved all the major banks and the credit card associations. In April 2001, following extended negotiations with Banks and credit card associations the RBA 'designated' the Visa, MasterCard and Bankcard schemes in Australia as being subject to the RBA's regulatory powers under the *Payment Systems (Regulation) Act 1998*. The ACCC's proceedings against the NAB were consequently discontinued.

Misuse of market power actions taken by the ACCC

22. The ACCC has taken Federal Court actions relating to the misuse of market power. The Full Federal Court of Australia decided that a masonry products manufacturer had misused its market power in the Melbourne concrete block market when it cut prices and introduced additional capacity into a depressed market – the decision has been appealed and no penalty has yet been fixed.

23. In a separate case, the Federal Court held that a large publisher of regional newspapers had misused its market power when it threatened to compete in an area traditionally served by a small rival unless that rival withdrew from a small town traditionally serviced by the large publisher. Following the rival's withdrawal, both parties were also found by the Court to have given effect to a market sharing arrangement. Total penalties of AU\$745,000 were awarded.

Publishing industry – Melways Publishing Pty Ltd

24. The ACCC was granted leave by the High Court to intervene in a private action concerning a refusal to supply. The High Court accepted the ACCC's submission that a firm takes advantage of a substantial degree of market power where its action is facilitated, or made easier, by possessing that market power, even though the action may not have been impossible without the power. In this respect the High Court confirmed and enhanced the interpretation of section 46 of the TP Act initially set down in its 1989 decision, *Queensland Wire Industries v BHP*⁴.

Mergers and acquisitions*Mergers remedies*

25. Analysis of mergers and acquisitions constitute an important part of the ACCC's work. A merger or acquisition is prohibited under section 50 of 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 2000-01 the ACCC considered 265 mergers, asset sales and joint ventures. Of these the ACCC objected to thirteen on the basis that they were likely to substantially lessen competition. Ten proceeded following the provision of enforceable undertakings under section 87B of the TP Act. The remaining three were withdrawn. No mergers were considered by the Courts during the period.

27. As Chart 1 below illustrates, over the past few years there has been a steady increase in the number of merger matters examined by the ACCC. The chart also illustrates that the ACCC only opposes a small percentage of mergers brought to its attention. In fact the proportion of mergers which in the ACCC's view substantially lessen competition has remained roughly constant at four to five percent per year.

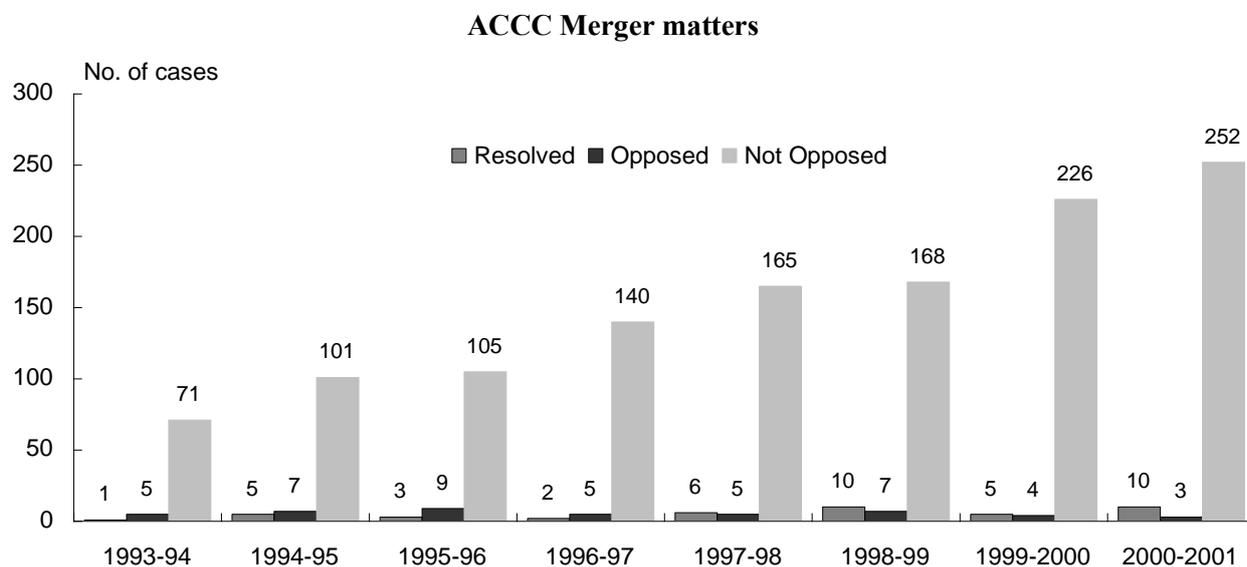
28. This increase in merger activity is expected to continue. The factors which have driven this growth relate in the main to the commercial domestic and international business environment and include the effect of continuing deregulation, privatisation and asset sales, the impact of a more liberal trading environment and rapid technological change.

International co-operation in merger control

29. A recent trend has been a major increase in the number of global mergers, with commentators forecasting continuing growth, particularly in sectors driven by technological change or where there is a perceived need to achieve economies of scale. Examples include resource-based industries, pharmaceutical industries, media and finance. Mergers such as DeBeers/Ashton Mining, Metso/Svedala, Glaxo Wellcome/Smithkline Beecham and Warner Music/EMI have generated competition issues in many countries. Australian companies have also engaged in substantial overseas acquisitions – such as BHP/Billiton.

30. Consequently, there has also been increased contact between the ACCC and overseas agencies on merger matters. There has also been important contact between agencies on mergers which may not have been transnational in character, but upon which agencies have been able to provide information, especially in regard to market definition issues. Of particular value to the ACCC has been information obtained regarding the gas, electricity and telecommunications industries from EU, UK and US authorities.

Chart 1



Merger activity by economic sector

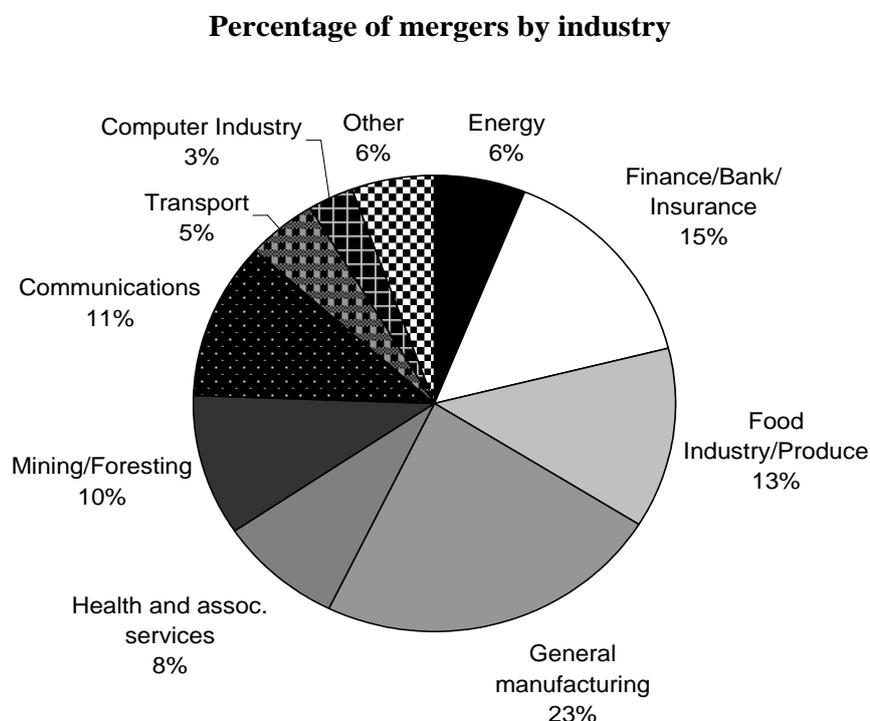
31. The past year saw major activity in the resources, building materials, airlines, agribusiness and supermarket sectors. Most of the mergers in the resource sector raised little concern given the global nature of the sector. High levels of imports or internationally set prices mitigated many of the concerns over increased concentration.

32. A breakdown of mergers by industry is outlined below. The highest number of mergers occurred in general manufacturing (23 per cent) and second highest was finance, banking and insurance at 15 percent.

33. Industry areas of particular priority are likely to be financial services, telecommunications and broadcasting, electronic commerce, transport and energy sectors. A further priority area is the health sector, which is currently undergoing significant structural change, with consolidation likely to continue in areas such as medical practices, ancillary services (pathology, radiology) and private hospitals.

34. In addition, agribusiness continues to be an area in which there is considerable pressure to restructure and, in many instances, consolidate.

Chart 2



Significant merger cases or investigations that came before the ACCC in 2000-01

Breakup of national supermarket chain

35. Three national retail supermarket chains accounted for about 80 per cent of dry packaged grocery sales. On 22 May 2001 the ACCC announced that it had reached in-principle agreement with the owners of the third largest chain, Franklins, for the sale of stores in the Franklins supermarket chain. The ACCC agreed, subject to being given appropriate undertakings, not to intervene in the proposed managed sell down of Franklins' stores because the undertakings would facilitate the entry of two new players into the eastern Australian supermarket industry. The ACCC was of the view that the proposal provided a major boost to independent grocery retailers in Australia and provided a strong competitive force in the supermarket industry. On 7 June 2001 the ACCC therefore announced that it would not oppose the proposed acquisition.

Domestic airlines

36. Qantas Airways Limited (Qantas) and Impulse Airlines Holdings Limited (Impulse) publicly announced a proposal to enter into a commercial arrangement on 1 May 2001. The ACCC concluded that the withdrawal of support by certain investors had prevented Impulse from remaining viable.

37. The ACCC concluded that while the acquisition would lessen competition, the competition concerns could be better addressed by allowing the acquisition to proceed accompanied by undertakings designed to improve the competitive position of firms currently constrained in their ability to expand and

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any potential new entrants. It was considered that a less competitive outcome would be likely if Impulse went into receivership.

Pricing matters

*Declaration of airport prices*³⁸. On 30 June 2000 the Minister for Financial Services and Regulation issued revised instruments under the PS Act covering the major regulated airports. The new arrangements permit airport operators to pass on to airport users the net costs arising from the new taxation arrangements. The instruments also allow the ACCC and the industry to calculate the consumer price index (CPI), which is used in the calculation of the CPI – X price caps at airports. On 13 October 2000 the Minister clarified that only congestion charges under the *Airports Act 1996* can be passed through the price cap, and addressed an anomaly that aircraft refuelling services were not included in the list of aeronautical-related services subject to prices monitoring.

39. On 19 April 2001 the Minister issued a Direction to the ACCC pursuant to section 20 of the *Prices Surveillance Act 1983* (the PS Act). This Direction clarified the Government's policy position that, in assessing prices for aeronautical services at Sydney (Kingsford Smith) airport, the ACCC should not take into account revenues generated or costs incurred in the provision of services other than aeronautical services.

40. On 7 May 2001 the Minister issued a Direction that to facilitate continuing access to Kingsford Smith airport by operators of regional air services, the overall level of charges paid for aeronautical services by operators of regional air services should not be increased in any year by a percentage in excess of growth in the CPI.

Access to infrastructure facilities

41. Under the NCP, Commonwealth, State and Territory Governments must implement legislation that allows for third party access to services provided by significant infrastructure facilities. While the addition of Part IIIA of the TP Act in 1995 provided for a national access regime, the States and Territories also have in place procedures for 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.

Access hearings

Judicial review infrastructure cable television

42. In August 2000 the Federal Court decided *Foxtel Management Pty Ltd & Anor v ACCC*, which upheld the validity of an earlier analogue pay-TV service declaration. This decision obliges telecommunications carriers, subject to capacity, to provide access to their cable networks to access seekers for the supply of analogue pay-TV services (Telstra and Optus, the two principle carriers, currently have such networks). Telstra argued that the ACCC's declaration was invalid and that provision of access would deprive Telstra, and pay-TV company Foxtel, of a contractual right that is protected under the legislation. This decision is currently under appeal.

Telecommunications

43. In July 1999 the ACCC made a significant access declaration in respect of the local call network. This requires Telstra to allow its competitors direct access to the use of its customer access network⁵. This will allow competitors to provide both local calls and high-speed data and other enhanced services to customers. The ACCC expects this development to lead to lower prices for local and long distance calls, stimulate the introduction and use of other services and generally to reduce the costs of participating in the information economy.

44. In May 2001 the ACCC announced its final decision to deregulate the intercapital telecommunications transmission service by removing the current access regulation applied under Part XIC of the TP Act. The service is used for the transmission of voice, data and other communication between mainland capital cities. The ACCC found that new investment is occurring and is planned on intercapital routes such that access regulation on these routes was no longer likely to benefit telecommunications users.

Natural gas pipelines

45. In the past year, the Commonwealth Minister for Financial Services and Regulation certified, as being effective under Part IIIA, the Third Party Access Regimes for Natural Gas Pipeline Systems now applying in the Australian Capital Territory, and the States of New South Wales and Victoria. These regimes, which will remain in force for a period of fifteen years, establish a framework for third parties to obtain access to natural gas pipelines in these jurisdictions.

Railways

46. Under the access provisions of the TP Act, services may not be declared if the ACCC has already accepted an access undertaking from a service provider. On 22 February 2001 the Australian Rail Track Corporation (ARTC) lodged an access undertaking with the ACCC covering terms and conditions of access to its rail tracks, which are part of the interstate mainline standard gauge track. The ARTC was established pursuant to an Intergovernmental Agreement signed by the Commonwealth, State and Territory Governments in 1997. Its primary objective is to promote use of Australia's national rail network linking all capital cities by providing a single point of access to providers of rail freight services whose operations traverse State or Territory jurisdictions.

47. The ACCC released an Issues Paper and invited submissions as part of its evaluation of the ARTC's access undertaking. If the ACCC accepts the undertaking it will form the basis for access, providing both the infrastructure provider and access seekers with greater certainty. In this case the risk of declaration is not the principle motivation for lodging an undertaking because the ARTC's business is to provide access to rail operators. Rather, an undertaking will provide increased public and customer confidence in the ARTC.

48. A private vertically integrated rail operator in Victoria sought, on 1 May 2001, to have its own rail line services declared under the TP Act, because it prefers to be subject to the national access regime rather than to a Victorian regime. The Minister will decide in due course whether to make the declaration, based on advice from the NCC.

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Authorisation decisions and notifications

Authorisation enforcement statistics exclusive dealing

49. Except for misuse of market power, immunity from legal proceedings for contraventions of the general competitive conduct rules is provided by the TP Act under one of two administrative procedures. Under the *authorisation* procedure, the ACCC is empowered to grant immunity when satisfied that the conduct will be likely to result in a net public benefit. Under the *notification* procedure, a party which notifies exclusive dealing to the ACCC obtains automatic immunity when the notice comes into force. ACCC decisions to revoke notifications are reviewable by the Australian Competition Tribunal, upon application. The number of ACCC determinations processed in 2000-01, compared to relevant figures for the two preceding periods, are shown in Table 1.

Table 1: Adjudication matters considered
Tribunal Reviews – Authorisations -Notifications

		00- 01	99- 00	98- 99	00- 01	99- 00	98- 99	00- 01	99- 00	98- 99
Previously under consideration		1	3	5	64	74	78	38	20	38
New applications/notices		0	1	2	53	47	43	345	344	246
Withdrawn		0	2	1	5	7	10	2	1	2
Decided		1	1	3	30	50	37	318	325	262
Unresolved at 30 June		0	1	3	82 ^(a)	64 ^(b)	74	63	38	20

(a) Total figure includes 43 applications relating to electricity distribution and marketing arrangements and eleven applications relating to gas distribution and marketing arrangements.

(b) This figure includes thirty applications relating to electricity distribution and marketing arrangements (previous years: 43 & 34) and ten applications relating to gas distribution and marketing arrangements (previous years: 10 & 22).

Payments systems

50. In August 2000 the ACCC granted authorisations to the Australian Payments Clearing Association (APCA) in respect of the regulations and procedures for the Consumer Electronic Clearing System (CECS). The CECS arrangement aims to co-ordinate minimum standards and procedures for ATM and EFTPOS payment instructions between CECS members, and all aspects of the clearing cycle. In granting authorisation the ACCC concluded that the minimum standards and procedures would result in net benefit to the public by enhancing the security and integrity of the ATM and EFTPOS network.

51. However, the ACCC granted the authorisation on the condition that the CECS regulations be amended to ensure that:

- CECS members cannot require non-members to meet interchange standards and procedures other than those set out in the CECS manual; and
- no CECS member is able to refuse to engage in ATM or EFTPOS interchanges with either a member or a non-member acquirer or a merchant principal that has APCA certification, on technical, operational or security grounds.

Part III - The Role of Competition Authorities in the Formulation and Implementation of Other Policies

52. The Commonwealth, State and Territory Governments agreed to implement the NCP in 1995. The 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 the NCP, significant reforms are continuing. These include implementation of specific water and road transport 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).

53. Competition policy is the responsibility of the Department of the Treasury within the Commonwealth Government, the Premier's Department in each State and the Chief Minister's Department in each Territory. The ACCC is an independent statutory authority charged with, inter alia, administering the TP Act and the PS Act. The NCC is also an independent authority, which provides national oversight of NCP. Another significant body at the national level is the Productivity Commission (PC), which is an independent Commonwealth agency that undertakes public inquiries in response to terms of reference provided by the Commonwealth Government. Most State and Territory governments maintain competition units and have appointed independent pricing regulators. Further information on the roles of the national authorities is available on their Internet sites⁶.

Legislation reviews

Deregulation

54. In 1996, Commonwealth, State and Territory Governments agreed to review a schedule of legislation that restricts competition by the end of 2000. In November 2000 CoAG agreed to extend this deadline to 30 June 2002. The NCC estimates that of the almost 1,700 pieces of legislation that have been identified as restricting competition, reviews have been completed or commenced for over 900 by mid 2000.⁷

55. The PC has reported on a comprehensive review of the PS Act and the report is being considered by the Government. The PC is due to report by October 2001 on the National Access Regime (Part IIIA TP Act). A review of exemptions for local government activities under the TP Act is expected to commence in 2001. During 2000-2001 the PC also reviewed Parts XIB and XIC of the TP Act as part of its Review of Telecommunications Specific Competition Regulation. The PC's final report was scheduled for delivery in September 2001.

Deregulation pharmacists

56. A national review covering State and Territory legislation relating to pharmacy ownership and the registration of pharmacists, plus Commonwealth legislation relating to the location of premises for pharmacists, has been completed. Having considered the report, the Commonwealth Government has liberalised some arrangements. A Commonwealth, State and Territory Working Group is preparing a co-ordinated response for consideration by Government on other review recommendations.

57. At the State and Territory level, there has also been significant progress with the scheduling for review of legislation governing a range of professions. Many professions have traditionally been shielded

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from competitive pressure through specific legislation and/or self-regulatory arrangements. The PC reported on the preferred option for the regulation of the architectural profession in November 2000. A State and Territory working group has been established to develop a response to the review recommendations.

Other reforms

Road transport

Deregulation road transport

58. The standardisation of existing road regulation across Australia's State and Territory jurisdictions has been a major reform objective in itself and it is also important that new reforms be progressed in a nationally consistent way. The implementation of NCP has provided a framework to achieve those objectives by providing both a mechanism to monitor, and a financial incentive for jurisdictions to progress their nationally agreed agendas.

59. Governments endorsed a road transport reform package, which was assessed by the NCC in 1999. This package of nineteen reforms include a nationally consistent regulatory framework for heavy vehicle registration, driver licensing, heavy vehicle mass and loading restrictions, commercial driver fatigue management and the national exchange of vehicle and driver information. The NCC found that most of this package was in place at 30 June 1999. Outstanding matters are currently being assessed together with progress on a subsequent package of nationally agreed reforms for the 2001 review. These latter reforms include uniform vehicle design and construction standards, national road rules, bus and truck driving hours, roadworthiness enforcement, revised heavy vehicle charges, and axle mass increases for ultra-low floor buses.

Water

60. Commonwealth, State and Territory Governments have continued to implement the strategic framework for the efficient and sustainable reform of the Australian water industry. This involves the adoption of urban and rural water charges that reflect cost recovery, the establishment of a system for determining and trading water entitlements and the provision of water allocation to the environment. Reform implementation has progressed in a number of areas. For example, pricing reform across the metropolitan water industry is nearly complete with urban water now priced to encourage efficient water service provision and use, with residential and commercial consumers only paying for water actually consumed. Rural pricing reform has seen all Governments establish reform paths to institute efficient water pricing, ensure adequate water allocations to the environment, and to provide clear water property rights, separate from land title. Water trading arrangements are also gradually being extended and expanded.

Part IV - Resources of competition authorities

61. The ACCC's budgeted staffing level for 2000–01 was 437 (up from 372 in 1999-2000), including six full-time holders of public office (ACCC members). The average level of staff employed during the year was 438.1 (up from 381.71 in 1999-2000) while the actual number of employees (including part-time employees) at 30 June 2001 was 482. The increase in average staffing levels was because of the ACCC's

role in the introduction of the New Tax System and the establishment of a national first-point-of-contact centre, the ACCC Infocentre.

62. Of the 482 employees employed at 30 June 2001, 43 were engaged in work relating to the ACCC's GST function (down from 135 at 30 June 2000). This is mainly because fewer employees were engaged in GST call centre activity.

63. The ACCC's 2000-01 budget was AU\$73.4 million. The Government provided AU\$66.8 million (a 27 percent increase) in additional funding over four years to the ACCC in the 2001-02 Budget. The increased funding does not represent a change in the ACCC's functions or role, but strengthens the ability of the ACCC to fulfil its responsibilities under the TP Act and other legislation.

64. Additionally, the NCC's funding has increased from AU\$3.271 million in 1999-00 to AU\$3.28 million in 2000-01. Staffing levels have not changed, with twenty persons currently employed as economists, lawyers, other professionals and support staff.

Table 2 – Annual Budgets

	ACCC			NCC		
	00-01	99-00	98-99	00-01	99-00	98-99
AU\$	73.4M	56.537 M	42.469 M	3.28M	3.271M	2.875 M
USD ⁸	40.37M	31.095 M	23.358 M	1.804M	1.799M	1.581 M

Part V – Studies and Reports

Productivity Commission: National Competition Policy Inquiry and Senate Report on the Socio-economic Effects of the National Competition Policy

65. The PC report into the impact of the National Competition Policy (NCP) on rural and regional Australia was released in October 1999. The report provided a strong endorsement of NCP, with the Commission finding that, in addition to benefiting the Australian economy overall, NCP benefits rural and regional Australia as a whole. The Commission's modelling of selected competition policy reforms estimates that these will continue to provide a sustained increase in Australia's income and in the living standards of Australians.

66. A Select Committee of the Senate of the Federal Parliament tabled a report on the socio-economic consequences of NCP, including the benefits and costs on unemployment, changed working and social conditions, equity and environmental impacts, in February 2000. This report was also broadly supportive of NCP, acknowledging that, overall, NCP has brought benefits to the community.

67. Both reports noted that NCP is often incorrectly blamed for the effects of broader influences on rural and regional Australia, such as technological innovation, long-term decline in commodity prices, and changing consumer preferences. The Government responded to the two reports in August 2000. The Government endorsed the thrust of the reports' recommendations, which were directed at improving the way in which NCP is implemented, for example, through better education of those implementing reforms, the conduct of legislation reviews and oversight by Governments of NCP. In November 2000, CoAG

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confirmed the importance of NCP in sustaining the competitiveness and flexibility of the Australian economy and contributing to higher living standards. CoAG also agreed to several measures to clarify and fine-tune NCP implementation arrangements (see Part I).

ACCC Report to the Senate on health insurance issues

68. 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 Australian 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'.

69. The ACCC's August 2001 Report raised no significant competition issues but did express concerns that the Australian Medical Association has not acknowledged the significance of cost as an important consideration in selecting specialist medical services. The ACCC also warned that it will carefully consider the prospects of pursuing matters where consumers are not informed of the extent of costs involved in medical treatment.

Productivity Commission: Review of prices regulation of airports

Regulation maritime transport

70. In 1997 the Government sold airports owned by the Commonwealth Government and put in place prices oversight arrangements which were to operate for the first five years of private ownership. It was also announced that there would be a public review, before the end of the first five years, to determine the appropriate form of subsequent prices oversight arrangements. The Government subsequently decided that this review would be undertaken by the PC.

71. The PC is currently undertaking this review, and released a draft report in August 2001. In its draft report, the PC presents two options for future price regulation of airports. Its preferred option is light handed - a five year probationary period of price and conduct monitoring at Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin airports. The fall-back option presented by the PC would see: CPI-X price caps continuing at Melbourne, Brisbane and Perth airports; new price monitoring arrangements at Adelaide, Canberra and Darwin airports; no airports-specific economic regulation of remaining privatised airports; and, for Kingsford Smith Airport, price notification for aeronautical price increases above the CPI. The PC will submit its final report to the Government in December 2001.

Intellectual Property and Competition Review Committee

72. The Committee was established in 1999 to inquire into and report on the effects on competition of Australia's intellectual property laws. The Review covers the *Patents Act 1990*, the *Trade Marks Act 1995*, the *Designs Act 1906*, the *Copyright Act 1968* and the *Circuit Layouts Act 1989*. The Committee released its final report in December 2000.

73. On 28 August 2001 the Government announced its response to the Committee's report. The changes announced to the intellectual property system are designed to make it more responsive to the needs of rights holders and users in the private and public sector, and provide a better balance with competition policy. One specific change announced is to amend the current limited exception for intellectual property licensing from competition laws to better balance the needs of the intellectual property system and competition policy. Prior to that amendment taking effect, the ACCC will issue guidelines on the application of competition law to intellectual property.

74. On 27 June 2000 the Government announced its intention to amend the *Copyright Act* to allow parallel importation of books, periodicals, printed music and software products, including computer-based games. The *Copyright Amendment (Parallel Importation) Bill 2001* is currently before Parliament.

ACCC: Review of price control arrangements

75. In early 2001 the ACCC completed a final report on the price control arrangements applying to Telstra under Part 9 of the *Telecommunications (Consumer Protection Standards) Act 1999*. The report recommended the controls be simplified. The Government decided to extend current price control arrangements for a further 12 months to provide time for public consultation on the ACCC's recommendations. The extension will also allow these recommendations to be considered at the same time as the Government is considering the PC's broader review of telecommunications competition regulation, due in September 2001.

1 www.accc.gov.au

2 Only the ACCC may seek an injunction to prevent a merger or acquisition.

3 With State and the Northern Territory mirror legislation, the Part created the National Price Exploitation Code.

4 83 ALR 577.

5 i.e. the copper lines which link customers to local telephone exchanges – such access will not occur until appropriate standards, procedures and rules about how services are to be provided, and how access and interconnection will occur, have been developed.

6 www.pc.gov.au ; www.ncc.gov.au

7 National Competition Council 2000 *Annual Report 1999-2000*, Ausinfo, Melbourne, August.

8 Calculated at rate \$A1 = USD 0.55