

AUSTRALIA**(July 1999 - June 2000)****Table of Contents**

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Executive Summary

1. This report addresses events occurring in the past Australian financial reporting year (1 July 1999 until 30 June 2000), although subsequent developments have been included where possible.

2. The focus of significant attention within the Australian economy during the year involved preparations for major taxation reforms, especially the introduction of a broad-based goods and services tax effective from 1 July 2000. The tax agenda tended to dominate the focus of competition law changes. It also dominated the activities of the Australian Competition and Consumer Commission (ACCC), which has the role under the *Trade Practices Act 1974* (the TP Act) of enforcing transitional measures to counter price exploitation in relation to the tax changes.

3. There were no significant changes to the competition laws and policies. This can partly be explained by the focus on tax reform but also by the fact that a number of major competition reviews are still in progress.

4. Australia's National Competition Policy (NCP) continued to be the subject of widespread and public debate. NCP has been subject to some criticism, particularly in rural and regional areas. However, inquiries into NCP showed that many of the problems for which NCP has been blamed are in fact the effects of broader influences and demonstrated that the NCP had brought overall benefits to the community at large. In particular, many of the adverse influences being experienced by rural and regional communities were found to be of a long-term nature and largely beyond government control (e.g. lower commodity prices, changes in technology and in consumer tastes). The reports from those inquiries are described in Part V of this report.

5. A number of cases were decided during the year in relation to the infrastructure access provisions in Part IIIA of the TP Act, which has now been in operation for nearly five years. Implementation of access arrangements is a key element of reform in a number of infrastructure industries in Australia.

Part I - Changes to Competition Laws and Policies

6. A legislative package to give effect to the postal industry reforms announced in 1998 is currently before the Parliament. Other amendments were made to the competition provisions of the TP Act in relation to the tax reform exercise and international liner cargo shipping.

Postal Services Access

7. The Government introduced legislation into Parliament in April 2000 to give effect to a postal reform package which will boost competition by reducing the protected services reserved for the Government's fully-owned postal service provider (Australia Post) and by creating an access regime.

8. It is proposed that Australia Post's 'reserved service protection' will be reduced from 250 grams and four times the standard letter rate (\$1.80) to 50 grams and one times the standard letter rate (45 cents). In addition, all international mail will be open to competition.

9. A post-specific access regime will give postal operators access to Australia Post's infrastructure on reasonable terms and conditions (although the regime potentially applies to the infrastructure of other postal operators). Declaration of Australia Post's post office boxes and bulk interconnection services will be automatic from the commencement of the regime.

Transitional Price Exploitation Measures covering Tax Reform Implementation

10. As outlined in previous reports, the new 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. In particular, there was a concern to ensure that the effect of the 10 per cent goods and services tax (GST) was appropriately offset by the removal of the Wholesale Sales Tax (WST). Part VB is transitional only and will apply until 30 June 2002.

11. During the year additional provisions were added to the TP Act prohibiting misrepresentations about the effects of the New Tax System changes. These provisions are similar to the general misrepresentation provisions contained in Part V (Consumer Protection) of the TP Act.

International Liner Cargo Shipping

12. Part X of the TP Act provides liner shipping conferences with an exemption from the prohibition on anti-competitive agreements under the competitive conduct rules in Part IV of the TP Act. Specifically, Part X allows international liner cargo shipping companies to collaborate as conferences in order to coordinate joint services, share capacity and agree on freight rates.

13. Following a report by the Productivity Commission¹, Parliament recently amended Part X to increase the application of competition policy principles to international liner shipping. The amendments increase the powers of the Minister for Transport and Regional Services and the ACCC to address concerns about conduct which has resulted in, or is likely to result in, a substantial lessening of competition. The amendments also extend to Australian importers - as far as practicable - the countervailing powers granted to exporters, enhancing the ability of importers to negotiate on minimum service levels and the terms and conditions offered.

New Guidelines

14. Many of the ACCC's publications during 1999-2000 concerned the implementation of the tax reform measures. In accordance with the requirements of the Act, the ACCC issued Price Exploitation Guidelines, which explained when prices may or may not be unreasonable during the New Tax System transition period. The guidelines were supplemented by an indicative price guide which was sent to every Australian household. The price guide gave indicative price ranges, based on economic modelling commissioned by the ACCC, that consumers could expect in the first six months of tax reform.

15. The ACCC continued to produce publications outlining other aspects of the TP Act and other competition legislation, as well as the ACCC's approach to enforcement. In most cases, publications are available from the ACCC's web site².

Telecommunications Sector

16. On 5 August 1999, the ACCC issued new competition notice guidelines, which indicate when it will issue a telecommunications industry 'competition notice'. Part XIB of the Act prohibits a carrier or carriage service provider from engaging in anti-competitive conduct and where the ACCC considers there has been a contravention, it may issue a written 'competition notice'. A competition notice operates to reverse the onus of proof. Once a notice is issued, the carrier or service provider must establish that it has not contravened the law³.

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17. The ACCC is responsible for administering the telecommunications specific access regime under Part XIC of the Act, which includes declaring services for access by the service supplier as well as approving access codes and undertakings, arbitrating disputes and registering access agreements. To enhance regulatory certainty, the ACCC has released a number of papers covering the regulatory pricing options for mobile termination services, access pricing for the local carriage service and pricing of unconditioned local loop services.

Part II - Enforcement of Competition Laws and Policies

18. 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 Act contains telecommunications industry-specific competition rules and transitional rules to prevent price exploitation during the introduction of significant taxation reforms.

19. 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 Act, any person may independently seek a remedy from the Court. This right of private action generally enables persons who consider the Act has been contravened to approach the Court direct, irrespective of the view of the ACCC⁴.

Transitional Price Exploitation Measures covering Tax Reform Implementation

20. Under Part VB (Price Exploitation in Relation to A New Tax System)⁵ 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. During the year the ACCC's primary focus has been on enhancing compliance with the laws and, to this end, it conducted an extensive education and information campaign. As noted earlier, the ACCC issued pricing guidelines to indicate when prices may be regarded as contravening the new provisions. The ACCC also established a national pricing 'hotline' to answer inquiries and receive complaints regarding New Tax System pricing issues.

21. As part of the price monitoring function, the ACCC will collect over 3 million prices on 1000 goods at 8,000 to 9,000 sites, with 7 major collections between December 1999 and December 2001.

22. The ACCC has taken enforcement action against a number of businesses over GST-related matters, and accepted 15 court enforceable undertakings in relation to matters finalised before 1 July 2000 (mainly under Part V (Consumer Protection) of the TP Act). The ACCC issued one price exploitation notice (such a notice is prima facie evidence of a contravention in court proceedings). The relatively low level of enforcement activity (there are around 2.8 million registered businesses in Australia) suggests that most businesses are adopting a responsible attitude towards the New Tax System changes. However enforcement action is still continuing, including in relation to possible breaches of the price exploitation provisions after 1 July 2000.

Anti-Competitive Conduct Matters

23. In 1999-00 the ACCC investigated 560 competition matters and commenced 7 new court actions⁶, bringing matters being litigated before the Court at 30 June 2000 to a total of 31.

24. The ACCC enforces the TP Act against cartels where necessary. The most recent major cartel case involved 56 parties which the ACCC alleges engaged in long-standing arrangements covering the installation of fire sprinkler and fire alarm systems throughout the State of Queensland. Pecuniary penalties exceeding \$A8 million have been imposed to date.

25. Since the 1995 reforms to the TP Act extended its application to all businesses, the ACCC has devoted increasing enforcement resources to the professions, particularly those in the health sector. This effort was given additional impetus after the Australian Senate ordered the ACCC to report every six months on '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'⁷. In late July 2000 the ACCC instituted the first penalty proceedings in the sector against the West Australian branch of the Australian Medical Association and Mayne Nickless Ltd alleging that they were involved in price fixing and other anti-competitive conduct. Other major cases include the ACCC's investigations into the international vitamins cartel and alleged cartels in markets for domestic power and distribution transformers.

26. The ACCC has recently taken Federal Court action in several matters in relation to the misuse of market power, which is prohibited under the TP Act. It has appealed a decision in a case where the trial judge found that a masonry products manufacturer had not contravened the TP Act where it had engaged in below cost pricing for the purpose of deterring new entrants and driving competitors from the market. Decisions on that appeal, and in other cases, have been delayed pending a decision by the High Court of Australia on an appeal in private litigation over the construction of the prohibition provision. The ACCC intervened in the High Court to make submissions supporting the current interpretation.

Mergers and Acquisitions

27. The ACCC is charged with a very significant role in relation to merger control because it may seek Court action to prevent a merger from taking place. After a merger has been completed, any person may seek divestiture, a declaration or a compensatory award of damages – although such action is rarely taken. Australia does not operate a pre-merger notification scheme in the interests of reducing the regulatory burden on business, but has a well developed review process. Where a merger raises competition concerns, options available to the parties include applying for authorisation (which requires the applicant to demonstrate that the merger would result in a net *public* benefit) or offering the ACCC an enforceable undertaking under section 87B of the TP Act to remove any competition concerns, or both. The ACCC's preference is for 'structural' undertakings, as opposed to ongoing behavioural undertakings, such as price, quality and service guarantees.

28. The merger rules explicitly refer to trade considerations and the ACCC must take these factors into account when considering an application for authorisation. Since 1993, when the current merger test was re-introduced, the ACCC has not opposed any merger where there has been substantial import competition, recognising the increased exposure of Australian businesses to global markets. More generally, the ACCC has only opposed around 5 per cent of the mergers it has considered.

29. During 1999-2000, the ACCC considered 234 proposed mergers and joint ventures, compared with 185 in the previous year. The ACCC reviewed these mergers against the concentration thresholds set out in its 1996 Merger Guidelines in order to determine whether it should undertake more detailed investigations. Table 1 shows the number of mergers considered during the past three years and their outcome.

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Table 1: Result of mergers considered

	99-00	98-99	97-98
New mergers referred to the ACCC	234	185	206
Not proceeded with or amended following ACCC concern	9	8	7
Court action	0	0	1
Authorisation sought	0	2	1

Pricing Matters

Declaration of Harbour Towing Prices

30. On 19 September 1999 the Minister for Financial Services and Regulation extended the declaration of harbour towing services at Australian ports for a further three years under the *Prices Surveillance Act 1983*. The Minister extended the declaration until 19 September 2002, as the industry is still undergoing reform, and because towing services remain highly concentrated at the declared ports. The declaration requires towing companies to notify the ACCC of price increases. However, the Act only requires towing companies voluntarily to comply with decisions made by the ACCC in response to price notifications.

Declaration of Airport Prices

31. On 30 June 2000 the Minister for Financial Services and Regulation issued revised instruments under the Prices Surveillance Act covering the major regulated airports. The instruments included new arrangements to permit airport operators to pass on to airport users the net costs arising from the new taxation arrangements. The instruments also included new arrangements to 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.

Access to Infrastructure Facilities

32. Under the National Competition Policy, Australian 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 general 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

33. During the period covered by this report, three cases were concluded. In the first case⁸, decided by the Federal Court, the application for access was rejected because the relevant service was considered to be part of a 'production process'. Under Part IIIA, 'service' is defined not to include 'the use of a production process'. The issue came before the Court when a developer of an export iron ore mine sought access to the railway infrastructure of a neighbouring iron ore exporter. The Court found on the evidence

that the railway formed an integral and essential part of the production process and was therefore not covered by Part IIIA.

34. The second case⁹ involved the Australian Competition Tribunal deciding to reject an appeal against a 1997 decision made by the Treasurer. Specifically, the Tribunal held that the declaration of the services provided at Sydney International Airport through the use of freight aprons and hard stands, and the service provided by the use of an area to store equipment used to load and unload international aircraft, would promote competition in the downstream markets of ramp handling and cargo terminal services. The Tribunal has made clear that the provisions of Part IIIA of the TP Act are not limited to essential facilities controlled by vertically integrated organisations. This has provided an important precedent.

35. The third case¹⁰, decided by the Federal Court in August 2000, 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 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

36. 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 network¹¹. 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.

Railways

37. During the year, two rail access regimes were certified by Commonwealth ministers under Part IIIA as 'being effective'. As a consequence of certification, rail services covered by the State access regime cannot then be declared or be the subject of an undertaking under the general access provisions in Part IIIA. Certification is granted where the State access regime meets a set of principles for access, as agreed between the Commonwealth and the States as part of the Competition Principles Agreement which provides the basis of National Competition Policy.

38. In November 1999, the Minister for Financial Services and Regulation certified (until 31 December 2000) the NSW rail access regime as effective. Subsequently, in March 2000, the Treasurer certified the access regime for the proposed Alice Springs to Darwin Railway for a thirty-year period. The substantial certification period in this case was warranted in order to provide certainty for the operators. In a third matter, the National Competition Council (NCC) is currently considering an application by the Western Australian Government to certify its rail access regime as a preliminary step before a Commonwealth Minister considers its certification. In addition, the Australian Rail Track Corporation has continued negotiations with the States towards the formation of a national access undertaking for the interstate network.

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Airports

39. On 25 October 1999, the Minister for Transport and Regional Services declared airport services at a number of privatised airports under Part IIIA. This action was mandated under the *Airports Act 1996* because the purchasers of several former Government owned airports had not given access undertakings within 12 months of the 1998 sales.

Authorisation Decisions and Notifications

40. 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 1999-00, compared to relevant figures for the two preceding periods, are shown in Table 2.

Table 2: Adjudication matters considered

	Tribunal Reviews			Authorisations			Notifications		
	99-00	98-99	97-98	99-00	98-99	97-98	99-00	98-99	97-98
Previously under consideration	3	5	1	74	78	52	20	38	20
New applications/notices	1	2	5	47	43	61	344	246	230
Withdrawn	2	1	0	7	10	8	1	2	3
Decided	1	3	1 ^(a)	50	37	27	325	262	209 ^(c)
Unresolved at 30 June	1	3	5	64 ^(b)	74	78	38	20	38

(a) ACCC decision to revoke authorisation was overturned by the Tribunal.

(b) This figure includes 30 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).

(c) Three notices issued under s 93(3) removing protection.

41. With Sydney hosting the 2000 Olympic Games, issues have arisen when arrangements established by the Organising Committee have had an impact on competition. Although the State of New South Wales has provided a legislated exemption for the Committee from the application of the competitive conduct rules in that State, the Committee is bound by the rules when operating elsewhere in Australia.

42. In February 2000 the Committee notified the ACCC of proposed third line forcing conduct covering the national sale of event tickets. The Committee initially planned to restrict applications for tickets to those made via its call centre and over the Internet, and required consumers to pay by VISA card. Following concerns raised by the ACCC about the impact of such arrangements on competition, the Committee agreed that it would accept orders through other facilities and other means of payment, although not other credit cards. The Committee also agreed to provide consumers with full access to all relevant information when the offers were made and to only debit VISA cards when an application for tickets was successful. (This did not happen with the initial ticket offer). The ACCC accepted the 'somewhat imperfect arrangements' on the basis that timing of the offer was critical and that the arrangements represented a substantial improvement on those previously proposed.

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

43. The Commonwealth, State and Territory Governments agreed to implement the National Competition Policy (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, some significant areas of reform are still to be addressed. 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).

44. There are a number of agencies involved in NCP, in addition to the ACCC and the NCC. At the national level, these include the Department of the Treasury, other Commonwealth Government Departments and the Productivity Commission. The Productivity Commission 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 sites.

Legislation Reviews

45. In 1996, Commonwealth and State governments agreed to review a schedule of legislation that restricts competition by the end of 2000. A significant number of these reviews have been completed or are in progress.

46. At the Commonwealth level, a review of the general exemption provisions of the TP Act has been undertaken. These provisions involve employment agreements, restrictive covenants, agreements about the use of certain types of standards, agreements relating exclusively to exports, and agreements dealing with licences and assignments of intellectual property which are exempt from the application of the competitive conduct rules in Part IV of the TP Act. A Government response to the review is currently being prepared. A comprehensive review of the *Prices Surveillance Act 1983* is currently being undertaken by the Productivity Commission, while a review of Part IIIA of the TP Act will commence shortly.

47. There are a number of restrictions on competition in broadcasting that are specific to that sector. These restrictions include limits on the number of licence holders, limits on the availability of broadcasting spectrum and cross-ownership rules. The Productivity Commission submitted a review of broadcasting legislation in April 2000. The Report contained wide-ranging recommendations covering the conversion to digital television, management of the broadcasting spectrum, ownership and control rules, structural diversity in broadcasting, Australian content (including advertising) and the broadcasting of sport. The broad thrust of the recommendations favoured a phased removal of a number of key restrictions on competition and a more liberal introduction of digital television in Australia. The Government is considering the report's recommendations.

48. Other significant Commonwealth processes subject to review include intellectual property legislation, statutory wheat marketing arrangements and government regulation of drugs, poisons and controlled substances, food standards and pathology services.

49. 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

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liberalised some of current arrangements, whilst the States and Territories are currently considering their responses.

50. 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 from competitive pressure through specific legislation and/or self-regulatory arrangements. In addition, the States and Territories have recently deregulated the remaining price and market controls applying to the dairy industry.

Other reforms

Road Transport

51. The Commonwealth, State and Territory Governments endorsed a road transport reform package which includes 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 road transport reform commitments have essentially been met to date, although further assessment will be conducted in July 2001.

Water

52. Governments have agreed to a 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 Australian metropolitan water industry has meant that urban water is generally now priced to encourage efficient water service provision and use, with residential and commercial consumers only paying for water actually consumed. The next major stage is the introduction of a legislative and administrative framework to establish water allocations, including for the environment, and support an associated trading regime, and to extend pricing reforms to non-metropolitan areas.

Part IV - Resources of Competition Authorities

53. The Government made significant additional resources available to the ACCC, because of the ACCC's role in enforcing the transitional measures in Part VB of the TP Act. At its peak, this function increased total staff at the ACCC to 518 on 30 June 2000 (an increase of 44 percent on the number of staff one year earlier). Reflecting the transitional nature of these arrangements, a large number of staff were engaged on a temporary or part-time basis. The additional resources provided for the function also enabled the ACCC to establish a national call centre and to undertake extensive pricing surveys and business and consumer information programmes, including a national letterbox drop.

54. Tables 3 and 4 set out details of expenditure and human resources of the two principal independent authorities, the ACCC and the NCC, over the past three years. The employee figures are expressed in person years, to allow for more meaningful comparisons with previous years (where the workload and staffing levels were more uniform). The analyses are based on a financial year commencing on 1 July and shows the past three years.

Table 3 – Annual Budgets

	ACCC			NCC		
	99-00	98-99	97-98	99-00	98-99	97-98
\$A	56.537M	42.469M	36.386M	3.271M	2.875M	2.730M
USD ¹²	31.095M	23.358M	20.012M	1.799M	1.581M	1.502M

Table 4 – Employees (person years) – by discipline

	ACCC			NCC		
	99-00(a)	98-99	97-98	99-00	98-99	97-98
Economists	96	84	78	11	7	7
Lawyers	106	95	95	3	4	4
Other professionals	95	84	84	2	3	3
Support staff	85	94	80	3	4	4
All staff combined	382	358	337	20	20	20

(a) Core staff – does not include staff involved with the tax reform function

55. Table 5 details the human resources employed by the ACCC on three principal competition activities: the figures are estimates only since available statistics do not directly relate to the categories and no attempt has been made to apportion corporate resources.

Table 5 – ACCC Human Resources (person years) – by function

	99-00	98-99	97-98
Enforcement against anti-competitive practices(a)	156	143	127
Merger review and enforcement	25	25	25
Competition advocacy	11	11	11
	192	179	163

(a) Includes adjudication and market studies and research directly related to competition issues

Part V – Studies and Reports.

Productivity Commission: National Competition Policy Inquiry

56. A report by the Productivity Commission 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.

57. The report 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. However, the Commission noted that there is likely to be greater variation in the incidence of benefits and costs of the NCP among country regions than in metropolitan areas.

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58. The Government responded to the Productivity Commission's report and to the report of a Senate Committee Inquiry into NCP (see below) in August 2000. The Government endorsed the thrust of the Commission's recommendations, which were directed at improving the way in which NCP is implemented, for example, through better education of those implementing reforms. The Government also agreed with the Commission's recommendations that generally available assistance measures should be the principal means of assisting people who are adversely affected by NCP reforms, but that special circumstances can exist that require governments to consider specific adjustment assistance of a time-limited and targeted nature to facilitate the necessary change.

Senate Report on the Socio-economic Effects of the National Competition Policy

59. In February 2000, 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.

60. The report was broadly supportive of NCP, acknowledging that, overall, NCP has brought benefits to the community. The Committee also noted that there is some misunderstanding of the benefits of competition policy since it is often associated with economic changes which are due to other factors such as social and technological change, or other Government policies.

61. The Committee's recommendations were focused on improving understanding of NCP, the conduct of legislation reviews and oversight by governments of NCP. The Government's response, which was announced in August 2000, noted that Commonwealth policy is consistent with many of these recommendations, and that as the implementation of NCP is in large part the responsibility of the States and Territories, the Commonwealth Government will draw to their attention the issues raised in this report (and also in the Productivity Commission report).

Parliamentary Inquiry into the Retail Sector

62. A Joint Select Committee of the Commonwealth Parliament tabled a report on 30 August 1999 concerning the degree of industry concentration within the retail grocery sector, with particular reference to the impact of this on the ability of small independent retailers to compete.

63. The report found that Australia's retail sector is highly competitive, with consumers benefiting through low prices, convenient shopping and a greater range of products. The Committee did not favour significant intervention, explicitly rejecting calls for the imposition of a cap on market share, but made a number of recommendations in relation to the retail grocery sector.

64. The Government responded to the report by announcing a package of measures in December 1999. The Government has supported the development of a voluntary code of conduct and an ombudsman scheme to provide an efficient means of dispute resolution for the retail grocery industry. The Government has also introduced amendments to the TP Act into Parliament. These amendments are designed to improve access to the protection of the TP Act for all small businesses and consumers.

Productivity Commission: Review of the Broadcasting Services Act 1992 and Related Legislation

65. A report was released in April 2000 and is described above in Part III. The Government is considering the report's recommendations.

ACCC Report to the Senate on Health Insurance Issues

66. 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 part by consumers taking private health insurance cover: currently around 40 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'.

67. On 12 April 2000 the ACCC made its initial report to the Senate, noting that the community seeks better information from hospitals, medical and other health practitioners and health funds about the products or services they provide. Submissions from the hospital sector addressed the conduct of health funds in relation to contracting for hospital services. As a consequence, the ACCC is monitoring the health fund-hospital contracting environment and will pursue any matter raising competition issues.

Productivity Commission: Review of Exemption for Shipping Conferences

68. The Productivity Commission (PC) submitted its final report on the operation of Part X (International Liner Cargo Shipping) of the TP Act to the Government on 15 September 1999. The Government had earlier requested the PC to report on this subject as part of the Government's legislation review programme. The PC recommended that Part X be retained with some minor amendments, as noted in Part 1 of this report, and be reviewed again in 2005.

Intellectual Property and Competition Review Committee

69. 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*.

70. In the first of two final reports, the Committee recommended that the statutory restrictions covering the parallel importation of copyright material be removed from the *Copyright Act 1968*. The Government has subsequently announced plans to amend the Copyright Act to allow parallel importation of legitimately-produced books, periodicals, printed music and software products, including computer-based games.

71. The second of the final reports will be delivered late in 2000, and will report on exemptions under the *Trade Practices Act 1974* for licences and assignments of intellectual property.

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NOTES

1. See Part V for details of the Report
2. www.accc.gov.au
3. If it cannot, it is subject to Federal Court penalties of up to \$A10 million plus \$A1 million for each day the conduct continues, as well as injunctions.
4. Only the ACCC may seek an injunction to prevent a merger or acquisition.
5. With State and the Northern Territory mirror legislation, the Part created the National Price Exploitation Code.
6. The actions involved alleged price fixing agreements (2), other agreements lessening competition (4), primary boycotts (1), secondary boycotts (1), misuse of market power (2) and exclusive dealing (1).
7. The first report covered the six months to the end of 1999 and was presented on 12 April 2000 - an outline is provided in Part V of this Report.
8. *Hamersley Iron Pty Ltd v National Competition Council & Ors* (1999) ¶ATPR 41-705
9. *Re Review of Declaration of the Freight Handling Services at Sydney International Airport* (2000) ¶ATPR 41-754
10. *Foxtel Management Pty Ltd & Anor v ACCC*
11. 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.
12. Calculated at rate \$A1 = USD 0.55