



COMPETITION COMMITTEE

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS
IN AUSTRALIA**

JULY 2003 – JUNE 2004

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Executive Summary

1. This report addresses events occurring in the past Australian financial reporting year (1 July 2003 until 30 June 2004), although later developments have been included where possible.

2. While there were no substantive changes to competition laws and policies, the Australian Government's response to a 2001-02 major review of the competition provisions of the *Trade Practices Act 1974* (TP Act) was announced on 16 April 2003, and legislation to give effect to this response was introduced into Parliament on 24 June 2004. On 31 August 2004, the legislation lapsed when Parliament was prorogued.

3. Australia's National Competition Policy (NCP) framework continued to guide the ongoing development and consideration of competition related issues in 2003-04.

1. Part I—Changes to competition laws and policies

1.1 *Prices surveillance*

4. In 2003, the Parliament passed legislation so that prices surveillance powers previously operating under the *Prices Surveillance Act 1983* (PS Act) would now be contained in Part VIIA of the TP Act.¹ These powers provide for selective surveillance of, and the holding of inquiries into, the prices of certain goods and services. The legislative amendments were consistent with the Productivity Commission's (PC's) review of the PS Act² — which concluded that prices oversight is now seen as part of competition policy rather than as part of a prices and incomes policy — and the Australian Government's response³ which were released on 20 August 2002.

1.2 *COAG's review of energy markets*

5. In December 2002, the Ministerial Council on Energy (MCE) — established by agreement of the Council of Australian Governments (COAG) — released its *Independent Review of Energy Market Directions: Towards a truly national and efficient energy market*.⁴ In response to the review, on 30 June 2004, governments signed an agreement — the Australian Energy Market Agreement — which set out the reform agenda for national governance arrangements, electricity transmission, user participation and gas market developments.

6. There has been significant progress toward establishing a national framework for the governance of the energy markets. The *Trade Practices Amendment (Australian Energy Market) Act 2004* was passed to provide for the establishment of a single, national energy regulator, the Australian Energy Regulator. In addition, the South Australian Parliament passed legislation⁵ to create the Australian Energy Market Commission (AEMC), a national rulemaking and market development body. The rules that the AEMC will make in relation to electricity and gas regulation will be applied across jurisdictions.

1.3 *Aeronautical-related services*

7. The Australian Government directed the Australian Competition and Consumer Commission (ACCC) to undertake monitoring of the supply of aeronautical-related services at Brisbane, Melbourne, Perth, Sydney (Kingsford Smith), Adelaide, Canberra and Darwin airports. This replaces the CPI-X price cap regime that previously applied at Brisbane, Melbourne, Perth, Adelaide, Canberra and Darwin airports, and the system of prices notification applying to Sydney (Kingsford Smith) airport.

1.4 *New guidelines*

8. The ACCC released 82 new and updated publications including:

- a report on assessing shopper docket petrol discounts and acquisitions in the petrol and grocery sector;
- a booklet on export agreements and the TP Act; and
- a new monthly electronic version of the ACCC Journal — ACCC ejournal.

9. In most cases, publications are available from the ACCC's web site.⁶

2. **Part II—Enforcement of competition laws and policies**

10. 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. In addition, the TP Act contains telecommunications-specific competition rules.

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

2.1 *Anti-competitive conduct matters*

12. During 2003-04, the ACCC investigated around 280 competition matters. Eighteen competition proceedings were concluded during the year. Seventeen competition matters were continuing before the courts as at 30 June 2004.

2.1.1 *Leniency policy*

13. On 30 June 2003, the ACCC introduced its leniency policy to assist in the detection and breaking up of cartel conduct in Australia. Several applications relating to a number of possible breaches of the TP Act were received under the leniency policy during the 2003-04 year. These matters are being pursued by the ACCC.

2.1.2 *Electricity transformers*

14. The ACCC's case against suppliers of distribution transformers and power transformers in the Australian market concluded during the year, resulting in record penalties of A\$35 million. The Federal Court found that ABB Transmission and Distribution, Alstom Australia, Wilson Transformer Company, AW Tyree Transformers and Schneider (Electrical) Australia had engaged in market sharing and price fixing for a number of years during the 1990s, and that various company executives had been knowingly concerned in the contraventions.

2.1.3 *Fire protection*

15. The Federal Court imposed penalties of A\$3.5 million on FFE Building Services and A\$50,000 on one of its executives for price fixing in the provision of fire protection services. The Court also, by consent, granted injunctions and declared that FFE Building Services, Tyco Australia, Metropolitan Fire

Systems, and a number of individuals had engaged in price fixing and market sharing in breach of section 45 of the TP Act in relation to various fire protection tenders.

2.1.4 Bricks

16. In June 2004, the Federal Court by consent declared that Metro Brick, a clay brick supplier in Western Australia, had breached section 45 of the TP Act by engaging in price fixing. The Court also granted injunctions and imposed a penalty of A\$1 million against the company and A\$25,000 against a senior manager.

2.1.5 Rural Press

17. The High Court overturned the decision of the Federal Court and found that an arrangement between Rural Press, Bridge Printing and Waikerie Printing House had a provision, the purpose of which was to prevent, restrict or limit the supply of newspaper services by Waikerie Printing to readers and advertisers in the Mannum area of South Australia (an exclusionary provision in breach of section 45 of the TP Act).

18. The High Court affirmed the decision of the Federal Court that the arrangement had the purpose or effect of substantially lessening competition that amounted to a further breach of section 45. The High Court also affirmed the decision of the Federal Court that Rural Press and Bridge Printing did not breach the misuse of market power provisions of the TP Act.

2.1.6 Telstra

19. 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.

20. The issuing 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. The ACCC is also able to seek pecuniary penalties, through the Federal Court, in relation to the specified anti-competitive conduct that occurs while a competition notice is in force. The Court may impose maximum penalties of A\$10 million for each contravention of the competition rule and A\$1 million for each day it continues.

21. Shortly after the ACCC issued the competition notice, Telstra announced a revised wholesale pricing structure. As of 30 June 2004, the ACCC still had reason to believe that Telstra was continuing to engage in anti-competitive conduct and the competition notice remained in force. The ACCC was continuing to gather evidence to determine what further action should be taken in relation to the matter.

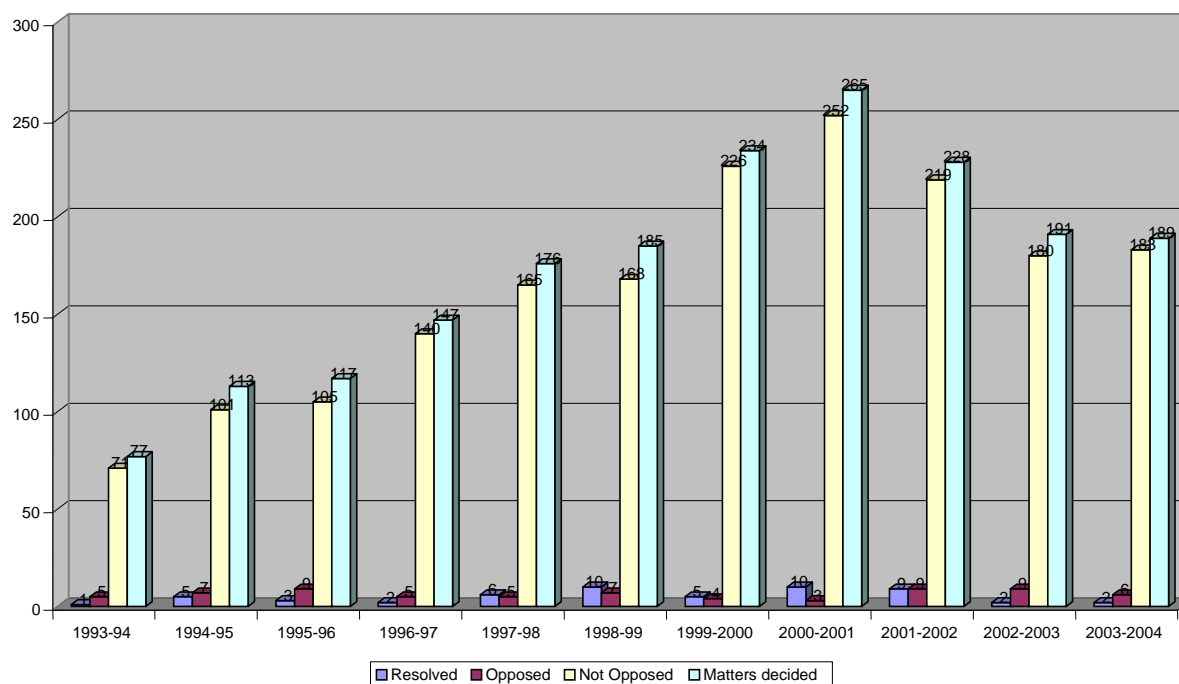
2.2 Mergers and acquisitions

22. 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.

23. In 2003-04, the ACCC considered 189 mergers, asset sales and joint ventures. Of these, the ACCC objected to six on the basis that they were likely to substantially lessen competition. Two of these proceeded following the provision of court enforceable undertakings to the ACCC under the TP Act. The courts considered one acquisition during the period.

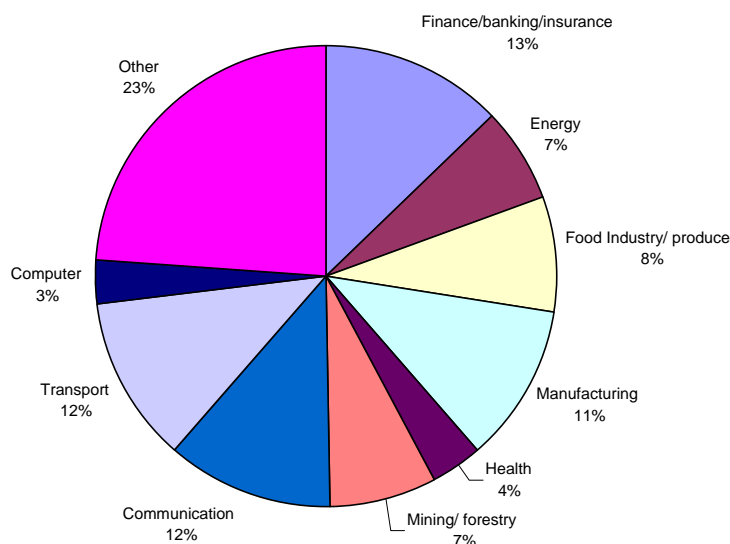
24. Chart 1 highlights the small percentage of merger matters the ACCC has opposed. It shows that the number of matters where, in the ACCC’s view, a substantial lessening of competition would, or was likely to, occur, has been stable at around four to five per cent for several years. Chart 1 also shows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

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



25. Chart 2 shows merger matters considered in 2003–04 by industry. Transport and communication industry mergers formed a larger proportion of mergers considered than in the previous year, with fewer mergers from the finance, banking and insurance sectors.

Chart 2—Percentage of mergers by industry



26. 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.

27. Three major merger matters considered by the ACCC in 2003-04 are discussed below.

2.2.1 Coca-Cola Amatil Limited proposed acquisition of Berri Limited

28. Coca-Cola Amatil Limited (CCA) is Australia's largest non-alcoholic beverage manufacturer, with a leading portfolio of carbonated soft drink, packaged water and sports drink products. Berri is Australia's largest fruit juice manufacturer and accounts for close to half of total national sales of fruit juice and fruit drink.

29. In October 2003, the ACCC advised CCA of its view that the proposed acquisition would likely substantially lessen competition in the national market for production and wholesale supply of fruit juice and fruit drink. In November 2003, the ACCC determined it would not accept behavioural undertakings from CCA and announced it would oppose the proposed acquisition which did not proceed.

2.2.2 The acquisition of a 35 per cent interest in Loy Yang Power by The Australian Gas Light Company

30. The Australian Gas Light Company (AGL) is the largest electricity retailer in Victoria and Loy Yang Power is the largest electricity generator in Victoria. The ACCC held concerns that the proposed acquisition would effectively result in the re-aggregation of AGL's substantial electricity retail and distribution businesses in Victoria with the largest and lowest cost generator in Victoria.

31. In late 2003, AGL sought a declaration from the Federal Court that its acquisition of a 35 per cent interest in Loy Yang Power did not amount to a contravention of section 50 of the TP Act. The declaration was granted subject to a number of AGL undertakings which were agreed to in early 2004.

2.2.3 *TABCORP Holdings Limited and TAB Limited*

32. In December 2003, the ACCC considered the proposed merger of TABCORP Holdings Limited (TABCORP) and TAB Limited. TABCORP is a gaming and hospitality business which is the exclusive state wagering licence holder in Victoria. TAB Limited is New South Wales' exclusive state wagering licence holder and owner and operator of Sky Channel, a satellite TV station which broadcasts racing.

33. The provision of exclusive state wagering licences to privatise the industry resulted in the formation of what are essentially state-based monopolies with a significant level of regulation. Therefore, there is limited cross-border competition between the TABs, and their pricing and day-to-day operations have been closely regulated. Accordingly, the ACCC formed the view that the transaction was unlikely to result in a substantial lessening of competition.

2.3 *Pricing matters*

2.3.1 *Aviation*

34. In February 2004, the ACCC released its 2002-03 price monitoring and financial accounts report for Australia's seven major airports. The report showed that, following the removal of price caps on aeronautical charges in 2000-01, average aeronautical revenue per passenger increased by between 40 per cent and 160 per cent in the two years from 2000-01 to 2002-03. It also showed that the greater security requirements imposed on airports since 2001 had led to increases in average aeronautical expenses.

2.3.2 *Airservices Australia*

35. The ACCC received and made decisions in relation to two price notifications from Airservices Australia in 2003-04.

36. The ACCC did not object to a proposal to introduce a temporary price for a new aviation rescue and fire fighting service, pending the establishment of long-term pricing arrangements.

37. The ACCC did not object to a proposal to continue current prices for air traffic control services until 31 December 2004 to allow Airservices Australia time to finalise its forthcoming proposal for a five-year pricing plan.

2.3.3 *Insurance premium monitoring*

38. 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 first of four six-monthly reports was released by the Australian Government in August 2003. The second report was released in February 2004.
- Monitoring medical indemnity insurance premiums to assess whether they are 'actuarially and commercially justified'. The first of three annual reports was released by the Australian Government in February 2004.

2.3.4 *Petrol Monitoring*

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

40. There have been significant developments in the petroleum industry over the last year, including the entry of supermarket alliances into the market, the tighter Commonwealth fuel standards that took effect from 1 January 2004 and the Australian Government's downstream petroleum reform package. The ACCC closely monitors the recent changes in the petroleum market.

2.3.5 *Stevedoring monitoring*

41. In October 2003, the ACCC published its *Container Stevedoring: monitoring report no.5*, covering the 2002-03 period. The report showed continued improvement in stevedores' productivity and profitability levels. Stevedoring productivity has increased substantially over the course of the ACCC's monitoring program, with 2002-03 productivity levels being the highest ever recorded.

2.4 *Access to infrastructure facilities*

42. 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*

43. 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.

44. The ACCC released one final decision and drafted and approved its own access arrangement for the Moomba to Sydney pipeline (MSP) as the pipeline owner did not submit an access arrangement complying with the ACCC's final decision. The MSP decision was appealed to the Australian Competition Tribunal (ACT) which released its decision in April 2004. The ACT also made determinations on reviews of the ACCC's Moomba to Adelaide and GasNet pipeline decisions during the year.

45. The ACCC is in the process of undertaking public consultations before issuing a draft decision for the proposed access arrangement for the South West Queensland pipeline.

2.4.2 *Electricity*

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

47. In 1999, the national electricity access code was approved by the ACCC as an industry access code, under Part IIIA of the TP Act. 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

48. The ACCC continued its wide ranging review of mobile telecommunications services in Australia, releasing two final decisions in June 2004. The ACCC issued a new declaration continuing the regulation of the mobile terminating access service. The declaration relates to terminating access of voice calls on all digital mobile networks (including third generation, or 3G, mobile networks). The ACCC also released a new pricing principle for the service, which specifies price-related terms and conditions relating to access to the service and requires the price of the service to follow an adjustment path so that the price and underlying cost of providing the service are more closely associated. Previously, a retail benchmarking principle applied.

49. The ACCC also decided to discontinue regulation of the mobile originating access service, finding little evidence of mobile operators being able to take advantage of their control over access to this service. This was supported by an absence of evidence of carriers setting excessively high access charges for, or denying access to, the service. The mobile services review will continue in 2004-05, focusing on the domestic and international inter-carrier roaming services.

2.4.4 Aviation

50. 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 National Competition Council (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 is currently under consideration and the hearing is expected in October 2004.

2.5 Adjudication

51. 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.

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

53. Adjudication decisions made by the ACCC in 2003-04 and for the two preceding periods are shown in Table 1.

Table 1—Adjudication matters considered

Tribunal reviews	Applications for Authorisation			Notifications					
	03-04	02-03	01-02	03-04*	02-03	01-02	03-04	02-03	01-02
Previously under consideration	1	3	0	24(44)	26(67)	28(83)	51	89	63
New applications/notices	3	1	3	18(39)	25(61)	18(36)	543	248	287
Withdrawn	1	2	2	1(1)	10(22)	1(1)	4	3	1
Decided	2	1	1	30(57)	17(59)	19(51)	514	268	281
Unresolved as at 30 June	1	1	0	11(25 [†])	24(47 [^])	26(67 [*])	78 ⁺	66	69

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

* Authorisation figures relate only to applications lodged under section 88 of the TP Act. In particular, figures do not include 1 new application for minor variation to an existing authorisation, and 15 new applications to revoke an existing authorisation and grant a substitute authorisation.

† Total figure includes 3 applications relating to National Electricity Code changes and 11 applications relating to gas supply market rules.

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

* Total figure includes 30 applications relating to National Electricity Code changes and 11 applications relating to gas supply market rules.

+ Includes 2 notifications previously decided which are now under review.

54. The following is an outline of major adjudication matters considered in 2003-04.

55. The ACCC considered applications relating to:

- A proposed alliance between Qantas and Air New Zealand which included: coordination of pricing, capacity, scheduling and purchasing on nominated routes (reviewed by the ACT); the re-authorisation of the International Air Transport Association's arrangements; the authorisation of a program offering Star Alliance business travellers discounted airfares; and the re-authorisation of a joint services agreement between Qantas and British Airways.
- Collective bargaining arrangements for: newsagents seeking to negotiate with major newspaper and magazine publishers and distributors; hoteliers seeking to negotiate with the suppliers of betting and broadcasting services; lottery agents seeking to negotiate with the suppliers of soft gambling products; private hospitals seeking to negotiate with health insurers, the Repatriation Commission and suppliers of various goods and services to the hospitals (including the ability to collectively boycott); chicken growers and vegetable growers seeking to negotiate growing contracts with processors.
- An agreement by 12 financial institutions to collectively reduce the interchange or wholesale fees for EFTPOS transactions to zero (reviewed by the ACT); a requirement that private in-patients in all public hospitals in New South Wales use public pathologists (reviewed by the ACT); the joint provision of public liability insurance to certain not-for-profit organisations; a capacity distribution system to reduce a queue of coal ships at Newcastle; collective tendering by local governments for waste disposal services; a code of conduct regulating the promotion and marketing of prescription medicines by pharmaceutical companies, and an industry levy imposed on sale of clay bricks and concrete masonry products.

56. The ACCC has also proposed to revoke a number of old authorisations granted in the taxi industry relating to the forcing of non-cash payments on drivers by certain taxi networks.

57. During the year, the ACT:

- set aside the ACCC's decision to allow 12 financial institutions to collectively reduce EFTPOS interchange (or wholesale) fees to zero;
- granted conditional authorisation to NSW Health to require private inpatients in public hospitals to obtain pathology services from public pathologists; and
- heard an application for review by Qantas and Air New Zealand of ACCC's determination to deny authorisation to their proposed arrangements (as at 1 September 2004, the decision is pending).

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

58. 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.

59. In April 1995, Australia's National Competition Policy (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.

60. 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.

61. 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.

62. Each year, the National Competition Council (NCC), an independent body established with the agreement of all Australian governments, assesses each government's reform achievements against their NCP commitments.

63. 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).

64. 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*

65. 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*

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

3.3 *The NCC*

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

3.4 *The PC*

68. 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.

3.5 *The ACT*

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

3.6 *Legislation review*

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

71. 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.

72. 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.

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

3.7 *Review of NCP*

74. In November 2000, COAG agreed to review the terms and operations of the NCP agreements and the assessment role of the 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 reform going forward.

75. On 23 April 2004, the Treasurer announced that the Australian Government had asked the PC to inquire into the impact of the competition policy reforms undertaken by Australian governments to date, and to identify areas of opportunity for significant gain through further competition reform.⁷

3.8 *Other reforms*

3.8.1 *Water*

76. On 25 June 2004, COAG agreed to a National Water Initiative (NWI) covering 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.

77. Further, COAG agreed to establish a National Water Commission (NWC) which will report to COAG. It will assess progress in implementing the NWI and advise on actions required to better realise the objectives of the NWI agreement. The NWC will also undertake the 2005 NCP assessment of progress with implementing water reform. Further information on the NWI can be accessed from the COAG communiqué.⁸

4. Resources of competition authorities

78. The total number of staff employed by the ACCC at 30 June 2004 was 501 compared with 490 on 30 June 2003. The ACCC Commission 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.

79. The ACCC's total funding for 2003-04 was A\$74.6 million, comprising the original appropriation of A\$66.6 million, additional appropriation of A\$7.6 million and other revenue of A\$0.5 million. The ACCC's total appropriation in 2004-05 is A\$121.8 million. This includes additional funding in 2004-05 of A\$54.4 million as part of a total increase of A\$77.1 million over four years.

80. The NCC's staffing levels remained unchanged during the 2003-04 financial year with twenty persons currently employed as economists, lawyers, other professionals and support staff. The NCC's total funding remained steady at A\$3.9 million in 2004-05.

Table 2—Annual Budgets (\$million)

	ACCC		NCC	
	04-05	03-04	04-05	03-04
A\$	121.8	66.6	3.9	3.9
USD ⁹	86.5	47.3	2.8	2.8

5. Studies and reports

5.1 *Report on the competition provisions of the TP Act and their administration (Dawson Review)*

81. On 16 April 2003, the Treasurer released the report on the competition provisions of the TP Act and their administration, and the Australian Government's response.¹⁰

82. Legislation to implement the Australian Government's response was introduced on 24 June 2004.¹¹ On 31 August 2004, the legislation lapsed when Parliament was prorogued.

5.2 *Report on the effectiveness of the TP Act in protecting small business*

83. In March 2004, a Senate Economics References Committee reported on the effectiveness of the TP Act in protecting small business.¹² 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.

84. The Australian Government announced its response to the report on 23 June 2004.¹³

5.3 *Telecommunications sector*

85. In June 2004, the Australian Government released a review of the operation of the telecommunications Universal Service Obligation (USO) and Customer Service Guarantee (CSG)¹⁴ which concluded that the USO and CSG are operating effectively as key safeguards for Australian telecommunications consumers.

5.4 *ACCC review of telecommunications*

86. In March 2002, the Australian Government that requested the ACCC provide advice on the extent to which emerging market structures are likely to affect competition across the communications sector.

87. The report *Emerging Market Structures in the Communications Sector*, released in June 2003, outlined a series of recommendations which the ACCC considers will promote infrastructure-based competition. These recommendations dealt with specific issues of ownership, regulation in a constantly evolving market, access to content and carriage services, and bundling of different telecommunications services. The Australian Government is considering these recommendations.

5.5 *PC inquiries, reports and publications*

5.5.1 *Government-commissioned projects*

88. In the past year, the PC completed a number of public inquiries and commissioned research studies¹⁵. Completed inquiries included:

- *Review of the National Access Regime* (report released in September 2002) — the Australian Government announced its final response in February 2004¹⁶.
- *Review of Section 2D of the TP Act* (report released in December 2002) — the Australian Government announced its response to the inquiry recommendations on 8 December 2003¹⁷ and legislation to implement the Australian Government's response was introduced into Parliament on 24 June 2004. On 31 August 2004, the legislation lapsed when Parliament was prorogued.
- Review of the Disability Discrimination Act 1992 (report released in July 2004).
- *Review of the Gas Access Regime* (report released in June 2004).
- *Impacts of Native Vegetation and Biodiversity Regulations* (report released in August 2004) — the Australian Government responded to the report on 10 August 2004¹⁸.
- *First Home Ownership* — the Australian Government released the report and a response¹⁹ in June 2004.

- *National Workers' Compensation and OHS Frameworks — the Australian Government released the report and a response²⁰ in June 2004.*
- *Review of TCF Assistance (report released in July 2003) — the Australian Government announced its response on 27 November 2003²¹.*

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

- *rules of origin under the Australia-New Zealand Closer Economic Relations Trade Agreement; and*
- *the Trans-Tasman Mutual Recognition Arrangement and Australia's Mutual Recognition Agreement.*

5.5.2 Other research

90. The PC also undertakes a variety of research studies. Projects completed in the 2003-04 year include:

- *Responsiveness of demand for irrigation water: A focus on the Southern Murray-Darling Basin (released in August 2004).*
- *ICT use and productivity: A synthesis from studies of Australian firms (released in July 2004).*
- *Assessing environmental regulatory arrangements for aquaculture (released in February 2004).*
- *Water rights arrangements in Australia and overseas (released in October 2003).*
- *Mechanisms for improving the quality of regulations: Australia in an international context (released in July 2003).*

5.5.3 Current work program

91. The PC is currently undertaking inquiries into:

- *NCP arrangements;*
- *Part X of the TP Act;*
- *the economic and environmental potential offered by energy efficiency;*
- *the Australian Motor Vehicle Smash Repair Industry and the Motor Vehicle Insurance Repair Industry; and*
- *the competitive situation and outlook for the Australian pigmeat industry.*

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

- *the impact of advances in medical technology on healthcare expenditure in Australia;*
- *Australian and New Zealand competition and consumer protection regimes;*
- *the progress made under the 1994 Inter Government Agreement on the reform of building regulation and its impact on the building and construction industry and on economic efficiency in Australia; and*
- *productivity, labour supply and fiscal implications of likely demographic trends over the next 40 years, to further improve understanding of the challenges and opportunities resulting from an ageing Australia.*

Glossary

ACCC	Australian Competition and Consumer Commission
ACT	Australian Competition Tribunal
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AGL	Australian Gas Light
CCA	Coca-Cola Amatil
COAG	Council of Australian Governments
CPA	<i>Competition Principles Agreement</i>
CSG	Customer Service Guarantee
DORC	depreciated optimised replacement cost
JAO	Joint Airline Operation
MCE	Ministerial Council on Energy
MSP	Moomba to Sydney pipeline
NCC	National Competition Council
NCP	National Competition Policy
NWC	National Water Commission
NWI	National Water Initiative
OHS	occupational health and safety
PC	Productivity Commission

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PS Act	<i>Prices Surveillance Act 1983</i>
TCF	Textiles, clothing and footwear
TP Act	<i>Trade Practices Act 1974</i>
USO	Universal Service Obligation

NOTES

1. *Trade Practices Legislation Amendment Act 2003*
2. <http://www.pc.gov.au/inquiry/psa/finalreport/index.html>
3. <http://www.treasurer.gov.au/tsr/content/publications/20020820.asp>
4. <http://www.energymarketreview.org>
5. *Australian Energy Market Commission Establishment Act 2004*
6. <http://www.accc.gov.au>
7. <http://www.treasurer.gov.au/tsr/content/pressreleases/2004/023.asp>
8. <http://www.coag.gov.au/meetings/250604/index.htm>
9. Calculated at rate A\$1 = USD0.71
10. <http://www.treasurer.gov.au/tsr/content/pressreleases/2003/021.asp>
11. <http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/24060400.pdf>
12. http://www.aph.gov.au/Senate/committee/economics_ctte/trade_practices_1974/report/report.pdf
13. http://www.treasurer.gov.au/tsr/content/publications/TPA_Small_Business.asp
14. http://www.dcita.gov.au/Article/0,,0_1-2_1-3_143-4_119242,00.html
15. PC inquiry and research reports are available at www.pc.gov.au
16. http://www.treasurer.gov.au/tsr/content/publications/FinalReport_NationalAccessRegime.asp
17. <http://parlsec.treasurer.gov.au/rac/content/pressreleases/2003/007.asp?pf=1>
18. http://www.treasurer.gov.au/tsr/content/publications/native_vegetation_response.asp
19. <http://www.treasurer.gov.au/tsr/content/publications/firsthome.asp>
20. http://www.treasurer.gov.au/tsr/content/publications/workers_compensation_response.asp
21. http://www1.industry.gov.au/minister/media_releases.cfm?objectid=505768D7-5097-4BCD-9F5980C529A937E7