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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN AUSTRALIA

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This report is submitted by Australia to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 27-28 October 2015.

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Executive summary

1. This report addresses events that have occurred in the past financial reporting year (1 July 2014 to 30 June 2015) and, where appropriate, significant developments since then.
2. Australia's competition policy is implemented by a range of agencies (see [Appendix A](#)). This report primarily covers the activities of the Australian Competition and Consumer Commission (ACCC), and the Australian Energy Regulator (AER). The role of the ACCC is to enforce the *Competition and Consumer Act 2010* (CCA) and a range of additional legislation, promoting competition and fair trading, and regulating national infrastructure. The AER is Australia's national energy market regulator. Its functions are set out in national energy market legislation and rules, and mostly relate to electricity and gas markets in eastern and southern Australia. While funded through the ACCC, the AER undertakes these functions as an independent regulatory agency.
3. On 31 March 2015 the independent panel led by Professor Ian Harper released the Final Report of the Competition Policy Review. This was the first comprehensive review of Australia's competition framework in more than 20 years. The Report makes 56 recommendations for reforms across three key themes: competition policy, laws and institutions.
4. At the end of June 2015, the ACCC had nine cases alleging cartel conduct before the courts. In a landmark decision the Federal Court ordered a supermarket chain to pay a significant penalty for engaging in unconscionable conduct. The ACCC's allegations of misuse of market power and exclusive dealing concerning Pfizer Australia Pty Ltd's supply of atorvastatin to pharmacies were dismissed but this decision is under appeal. The ACCC also appealed the decision dismissing allegations against Air New Zealand Ltd and PT Garuda Indonesia Ltd in relation to surcharges applied to air cargo services (judgment is awaited). Flight Centre Ltd successfully appealed against findings of attempting to enter into anti-competitive arrangements with three international airlines to eliminate differences in the international airfares offered to customers. (See *Section 2: Anti-competitive conduct matters*). The ACCC considered 322 matters under the mergers and acquisitions provisions of the CCA (see *Section 2: Mergers and acquisitions*).

1. Changes to competition laws and policies

1.1 Competition and deregulation reforms

5. In March 2014 the Government released the terms of reference for the independent review of Australia's competition policies and laws, the Competition Policy Review. The Review examined whether Australia's competition policies, laws and institutions are fit for purpose against future opportunities and challenges for Australia, including increasing globalisation, changing market and social structures, as well as technological change. On 31 March 2015 the expert panel released its Final Report, which made 56 recommendations for reforms across three key themes: competition policy, laws and institutions. Following release of the Final Report the Australian Government engaged in an eight week public consultation process, including written submissions and several targeted roundtable discussions. The Government is considering its response to the Review.
6. Since 2013, the Government has held three parliamentary 'Repeal Days' with the express purpose of repealing counterproductive, unnecessary or redundant legislation and associated regulations. Through these Repeal Days, the Government has repealed around 12,000 regulations or pieces of legislation and reported on deregulation initiatives that will result in compliance cost savings of more than \$2.45 billion per year.

7. The Government's Regulator Performance Framework for assessing the performance of regulatory agencies commenced on 1 July 2015. Its role is to encourage regulators to minimise the regulatory burden that arises in the course of fulfilling their objectives.

1.2 Water market reform

8. The Commonwealth *Water Act 2007* established the Murray-Darling Basin Authority (MDBA), requiring it to prepare a Basin Plan for the coordinated management of the Murray-Darling Basin by the Commonwealth and relevant states and territories. The Plan aims to optimise economic, social and environmental outcomes and develop an efficient water trading regime across the MDB. The Water Act also provides for other rules to underpin trading and transfer of rights and charging of service in water markets. The Water Market Rules and Water Charge Rules commenced in 2009 and 2010. The Water Trading Rules commenced in 2014. In May 2014, the Australian Government announced a review of the Water Act by an independent expert panel with a focus on improving the Act and opportunities to reduce regulatory burden on the water industry, water managers and irrigators. In December 2014 the panel published its final report. Among other recommendations the panel recommended the ACCC conduct a separate review of the Water Charge Rules. The ACCC commenced the review in May 2015 and expects to be able to provide final advice to the Government in December 2015. The focus of the ACCC's review is on opportunities to reduce cost to industry and government.

1.3 Energy market reform

Reforms to network regulation

9. Over the past few years there has been a comprehensive suite of reforms to energy network regulation aimed at encouraging network businesses to seek out more efficient ways of providing services. The program, known as the Better Regulation program, resulted in the AER having a wider scope for examining and assessing the revenue proposals of regulated energy network businesses. The measures are aimed at supporting continuing investment in essential services without requiring consumers to fund excessive returns to network businesses. Further, the reforms provide mechanisms for the AER and network businesses to engage more effectively with consumers.

10. The reforms include:

- new guidelines outlining the AER's approach to network regulation
- a Consumer Reference Group to contribute to the AER's guideline development work, and
- the appointment of an ongoing Consumer Challenge Panel to help incorporate consumer interests in revenue determination processes.

11. The AER released its first decisions under these revised regulatory arrangements in 2014-15.

Reforms to energy retail market regulation

The National Energy Customer Framework (NECF) provides a consistent nationwide regulatory and institutional regime for the sale by retailers and supply by distributors of electricity and gas to retail customers. The NECF provides for the transfer of current state and territory (except Western Australia and the Northern Territory) legislation to a single set of national laws, regulations and rules.¹

¹ Tasmania and the Australian Capital Territory implemented the NECF in July 2012, South Australia in February 2013, New South Wales in July 2013, and Queensland in July 2015. In late 2014 Victoria undertook reforms to better harmonise its electricity code with the NECF.

Other regulatory and policy developments in energy markets

12. The Government released the Energy White Paper on 8 April 2015. The White Paper's focus is on increasing competition, energy productivity and investment to deliver reliable and cost competitive energy to households and business. To support this approach, the Australian Government is leading, through the Council of Australian Governments Energy Council, market reforms aimed at encouraging greater competition and consumer choice. A National Energy Productivity Plan is being developed for improving Australia's energy use against a global and transitioning energy market. The Australian Government is also putting in place appropriate market settings to maintain Australia's investment attractiveness and ability to adopt new technologies.

13. The Australian Energy Market Commission (AEMC) continued to implement its Power of Choice reforms to network regulation in 2014-15. They include requirements on time variable pricing (to encourage consumers to shift their energy use away from peak times), reforms to expand competition in metering and related services, and stronger incentives for demand side participation. Under these arrangements, the AER will also develop new guidelines and apply new criteria in considering any new or amended demand management incentive scheme. AER has commenced consultations with network businesses on the introduction of time variable pricing, and businesses are preparing their tariff structures in consultation with consumers and retailers.

14. Other key reforms in energy markets included the establishment of Energy Consumers Australia (ECA) on 30 January 2015. This is an important step towards increasing consumer advocacy on national energy market matters of strategic importance and material consequence for energy consumers, in particular household and small business consumers.

15. On 13 April 2015 the former Minister for Small Business directed the ACCC to hold an inquiry into the competitiveness of the wholesale gas industry. The inquiry is considering a wide range of issues influencing competitiveness, including:

- the availability and competitiveness of offers to supply gas, and the competitiveness and transparency of gas prices
- the competitiveness of, access to, and any restrictions on market structures for gas production, gas processing and gas transportation
- the significance of barriers to entry into the upstream production sector
- the existence of, or potential for, anti-competitive behaviour and the impact of such behaviour on purchasers of gas, and
- transaction costs, information transparency, including gas supply contractual terms and conditions, and other factors influencing the competitiveness of the markets.

16. The inquiry is due to report to the Government by April 2016.

1.4 Telecommunications

17. The Government is rolling out a high-speed national broadband network (NBN) across Australia to operate on an open access, wholesale-only basis. Following its election in September 2013 the Coalition Government implemented its policy to shift the NBN technology composition in its fixed network footprint, from an all fibre to the premise network, to a multi-technology mix (MTM) model incorporating fibre to the node, fibre to the basement and Hybrid fiber-coaxial (HFC).

18. During 2014 a panel of experts undertook an Independent Cost-Benefit Analysis of the NBN and Review of Regulation, and produced three reports with a number of recommendations in relation to regulatory arrangements and industry structure for communications. It also endorsed the Government's decision to proceed with a MTM NBN.

19. In December 2014 the Government announced its response to the panel's recommendations including the introduction of a new regulatory framework from 2017 with appropriate transitional arrangements, to establish a more competitively neutral regulatory framework for NBN Co and other industry players. While structural separation will remain the default requirement for new high-speed broadband networks, the new arrangements will provide greater flexibility for operators, by allowing functional separation in some circumstances. In addition, NBN's national uniform pricing is to be replaced with price caps and an alternative method of funding non-commercial services is to be developed.

1.5 New guidelines

20. The ACCC and AER are required to produce a number of reports to Parliament and Ministers (see Section 4, *Studies and Reports* below). In addition, they prepare specific, more detailed guides for consumers, businesses and industries on a range of competition and consumer issues.

21. In September 2014 the ACCC published its updated *Immunity and Cooperation Policy for Cartel Conduct*.

22. Digital (rather than hard copy) production and distribution is favoured. In most cases, publications are available from the ACCC and AER websites at www.accc.gov.au or www.aer.gov.au. In 2014–15 the ACCC logged 192,798 visits to online publications, from 199,210 in 2013–14.

2. Enforcement of competition laws

23. The CCA prohibits a wide range of anti-competitive practices, including cartel conduct, contracts, arrangements or understandings that substantially lessen competition, exclusive dealing that substantially lessens competition, secondary boycotts, misuse of substantial market power, mergers or acquisitions that are likely to substantially lessen competition, and resale price maintenance. The CCA also contains telecommunication specific competition rules.

24. The CCA provides the ACCC with a range of enforcement remedies, including court based outcomes and court enforceable undertakings. The ACCC also resolves many matters administratively. In enforcing the provisions of the CCA, the ACCC's primary goals are to maintain and promote competition and remedy market failure, to protect the interests and safety of consumers, and to support fair trading in markets. The CCA allows any person to independently seek a remedy from a court, including an action for third party damages, regardless of any action by the ACCC.

25. The ACCC cannot pursue all the complaints it receives. Priorities for each year are set out in its *Compliance and Enforcement Policy*, and include cartel conduct, anti-competitive agreements and practices, misuse of market power and product safety. The focus of the Policy released in February 2015 includes cartel activity in government procurement, competition issues in the health and medical sectors, and in highly concentrated sectors, including those identified through the ACCC's monitoring of the fuel industry.

26. The ACCC will be raising the level of its enforcement and engagement work in the agricultural sector, following the release of the *Agricultural Competitiveness White Paper* in July 2015. As part of that process, the Government provided resources to establish an Agricultural Enforcement and Engagement

Unit in the ACCC. The Government also intends to appoint a new Commissioner with particular responsibility for agricultural issues.

2.1 Anti-competitive conduct matters

27. In the period 1 July 2014 to 30 June 2015, the ACCC commenced litigation in six non-merger competition matters. It achieved successful outcomes in one case at first instance, and four on appeal. An additional four matters were resolved through enforceable undertakings.

28. At 30 June 2015, out of a total of 17 continuing matters before the courts, nine allege cartel conduct, four allege anti-competitive agreements, two allege misuse of market power, one alleges a secondary boycott, and one alleges exclusionary conduct.

Proceedings instituted

29. In May 2015 the ACCC instituted proceedings in the Federal Court against a number of respondents alleging bid rigging in relation to a 2009 tender process that the NSW Department of Trade and Investment (then the Department of Primary Industries) conducted for exploration licences over the Mount Penny and Glendon Brook coal tenements in the Bylong Valley in NSW.

30. In August 2014 the ACCC instituted proceedings in the Federal Court against Informed Sources (Australia) Pty Ltd and five petrol retailers which subscribed to Informed Sources' retail petrol price information system. The ACCC alleges that this information sharing arrangement had the effect or likely effect of substantially lessening competition in markets for the retail supply of petrol in Melbourne.

31. In November 2014 the ACCC instituted proceedings in the Federal Court against the Construction, Forestry, Mining and Energy Union (CFMEU) and two senior CFMEU officers, alleging secondary boycotts of Boral Resources (Vic) Pty Ltd and Alsafe Premix Concrete Pty Ltd, and undue harassment or coercion.

32. In December 2014 the ACCC instituted proceedings in the Federal Court against Olex Australia Pty Ltd and several other parties for alleged cartel conduct in the supply and acquisition of electrical cable throughout Australia.

33. In December 2014 the ACCC instituted proceedings against Little Company of Mary Health Care Ltd and Calvary Health Care Riverina Ltd alleging that in granting medical practitioners the right to use its medical facilities Calvary entered into contracts that had the purpose of substantially lessening competition in day surgery markets.

Proceedings concluded

34. In October 2014 the Federal Court ordered penalties totalling \$8.3 million against Renegade Gas Pty Ltd (trading as Supagas NSW) and Speed-E-Gas (NSW) Pty Ltd, for giving effect to a cartel arrangement which included not supplying liquid petroleum gas (LPG) cylinders for forklifts to each other's customers.

35. In August 2015 the Federal Court ordered OmniBlend Australia Pty Ltd (OmniBlend), an online retailer of kitchen appliances, to pay a pecuniary penalty of \$17,500 for attempting to fix the retail price of blenders with its competitor, and inducing its supplier to direct Omniblend's competitor not to discount its prices for blenders.

36. In September 2015 the Federal Court ordered Visa Worldwide Pty Ltd to pay a pecuniary penalty of \$18 million for preventing the expansion of dynamic currency conversion services (DCC) to new merchant outlets in Australia, such as retail stores. The ACCC also alleged that Visa prevented businesses in Australia from supplying DCC services on ATMs in competition with Visa's own currency conversion service.

37. In December 2014 Coles Supermarkets settled two cases brought by the ACCC in the Federal Court by admitting it had engaged in unconscionable conduct in its dealings with certain suppliers. The Federal Court ordered Coles to pay penalties totalling \$10 million. Coles also provided an undertaking to the ACCC to establish an arbitration process overseen by the Hon. Jeff Kennett, that resulted in Coles refunding more than \$12 million to suppliers and, in addition, allowing suppliers to exit the Active Retail Collaboration program without penalty.

38. The following matters were resolved by court enforceable undertakings.

- In August 2014 the ACCC accepted an undertaking from Mobil Oil Australia Pty Ltd to not subscribe to the retail petrol price information sharing exchange service supplied by Informed Sources (Australia) Pty Ltd for the next five years. As a result the ACCC did not join Mobil to its proceedings against Informed Sources and five other petrol retailers.
- In October 2014 the ACCC accepted undertakings from Standard White Cabs Ltd (trading as Townsville Taxis) following an investigation of allegations that Townsville Taxis restricted its affiliated drivers from making lawful use of mobile telephones and third-party booking applications to accept taxi bookings.
- In December 2014 the ACCC accepted undertakings from Italiattech Australia and TMO Sports, two importers and wholesale distributors of bicycle parts and accessories to retailers Australia-wide, following admissions that they had engaged in conduct that amounted to, or was likely to amount to, resale price maintenance.
- In June 2015 the ACCC accepted an undertaking from Cabcharge Australia Limited which outlines a process under which rival payment processors will be able to process Cabcharge cards on their own in-taxi payment terminals.

39. Other matters concluded during 2014-15 include the following.

- In July 2015 the Full Federal Court denied the ACCC's appeal against the decision dismissing the ACCC's allegations that Australia and New Zealand Banking Group Ltd had breached the price fixing provisions of the Trade Practices Act 1974, now the CCA. The ACCC alleged that in 2004 ANZ required Mortgage Refunds Pty Ltd to agree to limit the amount of the refund it could provide to its customers for arranging ANZ home loans.

Ongoing court matters

40. In December 2012, the ACCC commenced proceedings against Yazaki Corporation, a wholly owned subsidiary of Australian Arrow Pty Ltd, alleging cartel conduct in relation to the supply of wire harnesses to Toyota Motor Corporation and its related entities in Australia. The case is ongoing.

41. In December 2014 the ACCC appealed the Federal Court's decision to dismiss the ACCC's separate proceedings against Air New Zealand Ltd and PT Garuda Indonesia Ltd in relation to an alleged air cargo cartel. The ACCC alleged that Air New Zealand and Garuda contravened the *Trade Practices Act 1974*, now the CCA, by fixing the level of various surcharges to be applied to air cargo services between 2001 and 2006. The appeal was heard in August 2015. Judgment is awaited.

42. In February 2015 the Federal Court dismissed the ACCC's allegations of misuse of market power and exclusive dealing concerning Pfizer Australia Pty Ltd's supply of atorvastatin to pharmacies. In March 2015 the ACCC filed a notice of appeal seeking to overturn the court's findings that Pfizer did not have a substantial degree of market power at the time of the conduct and that Pfizer did engage in the alleged conduct. The case is ongoing. The appeal hearing is scheduled for November 2015.

43. In July 2015 the Full Federal Court allowed Flight Centre Ltd's appeal against findings (and an order to pay penalties totalling \$11 million) for repeatedly attempting to enter into anti-competitive arrangements with three international airlines to eliminate differences in the international airfares offered to customers. In August 2015 the ACCC announced it was seeking special leave of the High Court to appeal that decision.

2.2 *Adjudication*

44. The authorisation and notification provisions of the CCA allow businesses to obtain protection from legal action for certain conduct that might otherwise raise concerns under the competition provisions in the CCA, where that conduct delivers public benefits. The authorisation and notification provisions reflect a recognition that, in certain circumstances, arrangements which restrict competition can nonetheless be in the public interest, principally by addressing market failure and increasing efficiency.

45. During 2014–15 the ACCC issued 33 final authorisation decisions within statutory timeframes. These authorisations helped to improve the level of effective competition and stimulated more informed and better functioning markets across a range of industries—for example:

- facilitating small business collective bargaining to enable more efficient and informed negotiation outcomes
- enabling the use of industry levies to fund research and development or education and training that would not be provided without the collective funding
- facilitating the use of industry codes that address problems associated with information asymmetry and conflicts of interest.

46. During 2014-15 the ACCC also granted authorisation to the first application for resale price maintenance under the CCA. In December 2014 the ACCC granted authorisation for four years to Tooltechnic Systems (Aust) Pty Ltd (Tooltechnic), an exclusive importer and wholesaler of Festool power tools in Australia, to set minimum retail prices. Festool products are complex and pre-sales and post-sales services to customers are important. Given that customers can access pre- and post-sale services from one retailer but purchase the product at a discount from another retailer which may not provide the services, Tooltechnic sought authorisation to address this risk, as high-servicing retailers may not gain sufficient return on product sales to continue providing these services. Enabling Tooltechnic to set minimum prices would encourage all Festool retailers to offer better services to attract customers. The improved services would allow some customers to make more informed decisions in purchasing trade quality power tools and to continue to buy a premium trade quality power tool accompanied by a high level of post-sales services. While some customers would face higher retail prices for Festool products, the ACCC found that Tooltechnic had a very small market share and was subject to competition from many large suppliers of trade quality power tools.

Applications for authorisation from two major airline alliances were also considered during 2014-15.

47. In August 2015 the ACCC granted authorisation to Virgin Australia and Delta Air Lines to enable them to continue to coordinate their operations between Australia and the United States for a further five years. The alliance allows Virgin and Delta to offer a single integrated network, which includes

services between Australia and the US and within the respective Australian and US domestic networks. The alliance has resulted in enhanced products and services including increased and better connections, access to each other's flights and better schedule spread, loyalty program benefits, and improved lounge access. The enhanced products and services and single integrated network allows Virgin and Delta to compete more effectively with the incumbents on routes between Australia and the US.

48. Also in August 2015 the ACCC finalised its consideration of the Qantas and China Eastern alliance. The ACCC decided, on balance, to grant authorisation, subject to important conditions, to enable Qantas and China Eastern to coordinate their operations between Australia and China. This reversed a draft decision in March 2015 which proposed to deny authorisation. Under the alliance, over the next two years, China Eastern proposes to increase the frequencies of its services on routes between Shanghai and Sydney, Melbourne and Cairns during peak periods and introduce year round services on a new route, the details of which were provided to the ACCC confidentially. Qantas and China Eastern also propose to significantly expand the range of destinations covered by their existing codeshare Agreement. The ACCC considered that the addition of a significant number of new services, and expanded range of destinations would constitute a significant public benefit. The conditions of authorisation require, among other things, Qantas and China Eastern to grow their capacity on routes between Australia and China Eastern's hub in Shanghai and to report to the ACCC their average fares, month by month, on each route between Australia and China on which they offer services.

Notifications

49. Approximately 450 exclusive dealing notification matters were considered by the ACCC in 2014-15. The vast majority of these were allowed to stand. Most of these notifications related to 'third line forcing' conduct, which is a per se breach of the CCA.

2.3 Mergers and acquisitions

50. Section 50 of the CCA prohibits mergers and acquisitions that would have, or are likely to have, the effect of substantially lessening competition in any market in Australia.

51. In 2014-15 the ACCC assessed 322 merger matters, conducting public and confidential reviews of 42. No matters were opposed outright, but remedy undertakings to address competition concerns were accepted in seven matters.

Table 1: Merger matters assessed and reviewed in 2014–15

Financial Year 1 July 2014 – 30 June 2015	
TOTAL MATTERS ASSESSED AND REVIEWS UNDERTAKEN	322
Matters pre-assessed - no review required	278
Reviews undertaken	44
<i>Total reviews can be broken down into the following categories:</i>	
Not opposed	35
Finished - no decision (including withdrawn)	1

Publicly opposed outright	0
Confidential review – opposed or ACCC concerns expressed	0
Resolved through undertakings	7
Variation to undertaking accepted	1
Variation to undertaking rejected	0

52. The following two case studies provide examples of the ACCC’s assessment of merger proposals during the period.

Two Case Studies

ACCC allows CSR and Boral clay brick joint venture

53. In 2014 CSR Ltd and Boral Ltd notified the ACCC of a proposed joint venture to manufacture, market and supply clay bricks in eastern Australia. CSR and Boral both supply building products including clay bricks, plasterboard, insulation, fibre cement and roof tiles.

54. In December 2014 the ACCC decided not to oppose the joint venture on the basis that, if the joint venture did not go ahead, Boral was unlikely to remain in clay brick manufacturing in eastern Australia. The Boral and CSR joint venture would reduce the number of major clay brick manufacturers in eastern Australia from three to two (the other manufacturer being Austral Brickworks). In their submission, CSR and Boral argued that the price of clay bricks was significantly constrained by other external cladding materials that could be used as a substitute for clay bricks—for example, autoclaved aerated products, fibre cement and concrete masonry. To support this, CSR and Boral pointed to the long-term structural shift in demand for clay bricks over the past 40 years.

55. The ACCC recognised this long-term decline in demand for bricks. However, our market inquiries suggested that this was due to the growth of multi-residential dwellings, where brick is less commonly used, as well as the shift from double-brick to single-brick construction. Our inquiries indicated that, for many residential builders and end consumers, other forms of external cladding were not close economic substitutes for clay brick. Therefore, the ACCC defined the relevant product market as the market for the manufacture and supply of clay bricks.

56. Following a three-month delay during the review at the request of the merger parties, on 16 October 2014 the ACCC issued a statement of issues that identified preliminary competition concerns. In New South Wales and Queensland, the concerns focused on the reduction in the number of major clay brick suppliers in eastern Australia from three to two would likely result in an increase in the price of clay bricks as well as a reduction in the product range available.

57. A key element in assessing the proposed joint venture was what would happen if the joint venture did not proceed. After the ACCC released the statement of issues, the ACCC conducted an extensive review of business records and the financial performance of Boral Bricks East as well as s. 155(1)(c) oral examinations of two senior executives of the joint venture parties.

58. The ACCC concluded that there was sufficient evidence to support Boral’s claims that, if the joint venture did not go ahead, Boral would end its brick manufacturing on the east coast to realise the land

value of its brick manufacturing sites. Therefore, the ACCC determined that it would not oppose the joint venture.

ACCC allows Expedia's proposed acquisition of Wotif

59. In 2014, online travel agent Expedia Inc. notified the ACCC of its proposed acquisition of online travel agent Wotif.com Holdings Ltd. The ACCC decided not to oppose the proposed acquisition. The ACCC considered that, given the dynamic nature of the industry and developments in related online sectors, such as metasearch sites, the acquisition was unlikely to substantially lessen competition. At the time, Expedia and Wotif were two of the three largest online travel agents operating in Australia. The main area of overlap in their operations was for accommodation booking services, which allowed accommodation providers to distribute, and consumers to book, accommodation.

60. The ACCC's review focused on the likely impact of the proposed acquisition on the supply of online distribution services to accommodation providers. In a statement of issues published on 4 September 2014, the ACCC noted that Wotif was an important source of bookings for some accommodation providers and expressed a preliminary view that its removal from the Australian market may mean that those providers would pay higher commission rates to online travel agents. However, some industry participants expressed the view that Wotif's lower rates could not be sustained and that, even if the proposed acquisition did not proceed, Wotif would need to increase its commission rates. This was because it would be forced by competition to remove its consumer booking fees, which would in turn result in Wotif increasing commission rates to cover the lost revenue.

61. The ACCC found considerable change in the competitive dynamics of the online accommodation distribution market in recent years. For example, a number of competitors, including Booking.com, had entered the market. Booking.com has grown quickly to become the largest online travel agent in Australia. It also noted the increasing importance of metasearch sites such as TripAdvisor and Google Hotels Finder. These sites present offers from hotels and numerous online travel agents in one place so that consumers can choose between them. The ACCC found that hotels are now using metasearch websites to promote themselves alongside OTAs and to transact directly with consumers.

62. The ACCC also looked at overseas developments in metasearch sites as an indication of what was likely to happen in the Australian industry in the near future. Despite the potential for commission rates to increase from current levels, the ACCC considered that the acquisition was unlikely to diminish the dynamic nature of competition in the industry, and that other online travel agents and companies such as the metasearch providers would be expected to constrain Expedia in the future. The ACCC therefore concluded that the proposed acquisition was unlikely to substantially lessen competition.

2.4 Pricing matters

Airports

63. Under Part VIIA of the CCA, Parts 7 and 8 of the *Airports Act 1996*, and related Airports Regulations 1997, the ACCC monitors and reports annually on a range of indicators—including quality of service, prices, costs, profits and investment levels—relating to aeronautical and car-parking services at Australia's four major airports. Further information about the 2013-14 monitoring report is available later in this paper under Section 4, *Studies and Reports*.

64. The Australian Government has directed the ACCC to monitor these airports until June 2020 because of concerns that airports could use their position to earn monopoly profits to the detriment of consumers.

Airservices Australia

65. The ACCC has a role in assessing proposed price increases (price notifications) for terminal navigation, *en route* navigation and aviation rescue and fire-fighting (ARFF) services provided by Airservices Australia (Airservices) under Part VIIA of the CCA.

66. In June 2015 Airservices submitted its price notification to the ACCC, proposing prices for the above declared services from 1 July 2015 that were the same as those outlined in the Long-term pricing agreement. Airservices also included proposals for fees for ARFF services at four regional airports that commenced operation during 2014-15 and out-of-hours fees for ARFF and terminal navigation services. In June 2015 the ACCC decided to not object to Airservices' proposed price increases, which took effect from 1 July 2015.

Australia Post

67. The ACCC has a role in assessing increases in the prices of some of the letter services over which Australia Post has a legislated monopoly under Part VIIA of the CCA.

68. The ACCC also produces annual cross subsidy reports, to determine whether Australia Post has used revenue from its reserved services to cross-subsidise its non-reserved services. The ACCC issued its cross-subsidy report for 2013-14 in April 2015. It concluded that the regulatory accounts did not show that Australia Post was cross-subsidising its competitive services with revenue from its monopoly services, rather the source of any subsidy appears to be Australia Post's competitive services. Further information about the ACCC's role in relation to Australia Post is available later in this paper under Section 4, *Studies and Reports*.

Petrol

69. The ACCC performs a number of roles in the fuel industry, including monitoring prices, costs and profits, undertaking enforcement work, and informing the general public about the petrol industry. The ACCC has no role in setting fuel prices. Australian fuel prices are not regulated by the Government and companies are free to set prices in the market.

70. In December 2007 the then Government instructed the ACCC to undertake formal monitoring of prices, costs and profits relating to the supply of unleaded petroleum prices in the petroleum industry, and report to the Government every year for a period of three years. This direction was subsequently extended to 2014. In December 2014 the former Minister for Small Business, the Hon. Bruce Billson MP, gave the ACCC a new direction to monitor prices, costs and profits of unleaded petroleum products in Australia for a period of three years. Instead of providing an annual report to the Minister, the ACCC will provide at least four reports a year. Under the direction the ACCC will also produce market studies that look at 'micro' issues in considerable depth and will include an analysis of the price drivers of petrol in three regional markets in 2015.

71. The ACCC has sought to improve consumer understanding about fuel issues by providing information on its website, including about petrol price cycles in the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth). The ACCC's website includes information on what determines petrol prices, as well as regional fuel price differences, and it provides answers to some frequently asked questions.

Container stevedoring monitoring

72. Under Part VIIA of the CCA, the ACCC monitors prices, costs and profits of container stevedoring operators located in the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney. The ACCC releases the monitoring reports annually. Further information about the ACCC's monitoring report for 2013-14 is available under Section 4, *Studies and Reports*.

2.5 *Monitoring/enforcement of water charge and water market rules*

73. Under the *Water Act*, the ACCC has responsibility for monitoring compliance with and enforcing the following water market and water charge rules:

- Water Market Rules 2009
- Water Charge (Termination Fees) Rules 2009
- Water Charge (Planning and Management Information) Rules 2010, and
- Water Charge (Infrastructure) Rules 2010.

74. The ACCC or an accredited state regulator regulates charges for large, non-member owned water infrastructure operators in the Murray-Darling Basin under the Water Charge (Infrastructure) Rules. In June 2015, the ACCC released its annual review of the charges of Water NSW (formerly State Water Corporation of New South Wales) for regulated charges for the 2015-16 period.

2.6 *Energy infrastructure regulation and energy market monitoring/enforcement*

75. The electricity and gas rules require the network businesses to periodically (usually every five years) submit regulatory proposals (electricity) and proposed access arrangements (gas) to the AER for approval. The AER must assess the regulatory proposals of network businesses and justify network pricing decisions with regard to the legislative criteria.

76. In 2014–15, the AER completed ten electricity network revenue determinations and one gas network access arrangement review, and commenced a further six processes. The decisions were the first to apply new network regulation rules and the guidelines developed through the AER's Better Regulation program. The rule changes removed constraints on the AER's ability to diverge from network businesses' cost forecasts and give the AER clear authority to benchmark network business practices and costs and use the results to inform the regulatory decisions.

77. The decisions reflect developments in the energy sector since the previous round of determinations. Electricity demand is forecast to remain flat over the regulatory period, easing strain on the networks and requiring less investment than in the past to provide a reliable supply of energy.

78. The investment environment has also improved. The previous round of determinations was made at the height of uncertainty surrounding the global financial crisis. But in the current healthier environment, financing costs to attract efficient investment are less onerous. Additionally, the AER applied a revised approach to determining rates of return. This approach was set out in new rate of return guidelines, developed following an extensive engagement process with businesses and other stakeholders. In combination, these factors resulted in significantly lower rates than in the previous round of determinations.

79. The AER also found that electricity distribution businesses in New South Wales and the ACT operate less efficiently than other networks. Benchmarking and detailed reviews of the businesses' historical expenditure show that costs for these networks are above what an efficient operator would incur

in delivering services. While these decisions generally reduced the revenues proposed by the network businesses, the AER's decisions provide sufficient expenditure for an efficient network business to provide a safe and reliable service to customers. The NSW and ACT electricity distribution businesses have appealed the AER's decisions to the Australian Competition Tribunal.

80. The AER ensures compliance by network businesses with its regulatory decisions. This includes approving annual tariffs, assessing businesses' compliance with incentive schemes, and developing and amending guidelines as required. Further, the Australian Competition Tribunal can remit regulatory decisions back to the AER to be remade if a network business successfully appeals a decision.

81. The AER is also responsible for monitoring and enforcement of national energy legislation and rules for wholesale and retail electricity and gas markets in all jurisdictions except Western Australia and the Northern Territory. The wholesale markets of interest include the National Electricity Market (NEM) in eastern and southern Australia, facilitated markets for gas at demand centres in Adelaide, Sydney, Brisbane and Victoria, and the upstream gas supply hub linked to the new liquefied natural gas exports. Compliance with Retail market obligations in each jurisdiction covered by the National Energy Customer Framework (NECF) are also monitored and enforced by the AER.

82. The AER aims to promote more efficient, competitive, transparent and secure wholesale energy markets. To ensure market participants comply with the relevant legislation and rules, the AER:

- takes effective, targeted and timely enforcement action when necessary
- promotes best practice through compliance publications and audits
- reports on day-to-day market activities and pricing outcomes
- detects and report on market irregularities and manipulation, and
- provides policy advice to address market inefficiencies and improve competition (for example, via submissions and rule change proposals).

83. 2014-15 was a landmark year for enforcement action under the National Electricity Rules. In July 2014, the AER instituted proceedings in the Federal Court alleging that the generator Snowy Hydro failed to follow dispatch instructions issued by the wholesale market operator on nine occasions in 2012 and 2013. On each occasion, Snowy Hydro generated more power than the dispatch instruction required. The Federal Court ordered by consent that Snowy Hydro pay total penalties of \$400,000. These were the first court ordered penalties for breaches of the National Electricity Rules. The Court also ordered by consent that Snowy Hydro appoint an independent expert to review the accuracy of its internal documents relating to compliance with dispatch instructions. In conjunction with the Court's orders, Snowy Hydro provided an enforceable undertaking to the AER on the operation of generators under certain conditions. This is the first enforceable undertaking accepted by the AER under the National Electricity Law.

84. In terms of monitoring the markets, the AER publishes reports covering weekly wholesale electricity activity in the NEM, weekly activity in the Victorian Declared Wholesale Gas Market and gas Short Term Trading Markets in Adelaide, Sydney and Brisbane, electricity prices events above \$5000 per megawatt hour, as well as significant price variations in gas markets, and special or systemic issues in the market.

85. The AER's retail market compliance activities are currently focused on the protection of disadvantaged and vulnerable customers and on promoting customer confidence in the retail energy market, taking action against conduct which may undermine that, such as, a failure to obtain a customer's explicit informed consent to switch retailers or enter into a particular contract.

86. The AER instituted proceedings in the Federal Court against one retailer for contraventions of the National Energy Retail Law, following an investigation with the ACCC into telemarketing practices. The AER also issued eight infringement notices to electricity distributors for incidents in which customers known to require life support equipment unexpectedly lost electricity supply; and two infringement notices to retailers for disconnecting customers on a hardship program or payment plan.

87. The AER does not have a role in setting retail energy prices. The AER guides and informs energy consumers so they understand the range of energy offers available, make better choices about those offers, and are aware of their rights and responsibilities when dealing with their energy provider. The AER's Energy Made Easy website is a key vehicle for providing this information. It includes:

- a price comparator that shows all generally available offers available to consumers where the National Energy Retail Law has commenced
- an electricity use benchmarking tool that allows households to compare their energy use with that of similar sized households in their area, and
- information on the energy market, energy efficiency and consumer protections.

2.7 Access to infrastructure facilities

88. Under the National Competition Policy reforms of the mid 1990s, all Australian Governments agreed to the introduction of an economy wide access regime for essential infrastructure services. The National Access Regime, which was established in 1995 under Part IIIA of the now CCA, provides an avenue for firms to access certain essential infrastructure services on reasonable terms and conditions in cases where commercial negotiations on access are unsuccessful. The regime provides three regulatory routes for access.

89. A party may: request the National Competition Council (NCC) to recommend that the designated Minister declare a particular infrastructure service (with the ACCC acting as arbitrator for determining terms and conditions of access); seek access through a state or territory access regime that is certified as effective by the Commonwealth Minister; or give an enforceable undertaking, setting out the terms and conditions of access acceptable to the ACCC. There are also a number of industry specific access regimes, both at the Commonwealth level—for example, access to telecommunications services is provided for under Part XIC of the CCA—and at the State and Territory level.

Telecommunications

90. During 2014-15 the ACCC had a significant role arising from the implementation of the Government's policy for the roll out of a national broadband network (NBN) in Australia. The ACCC also continues to have a role under the telecommunications-specific regulatory framework under Parts XIB and XIC of the CCA.

91. In December 2013 the ACCC accepted a special access undertaking submitted by NBN Co. The undertaking forms a key part of the regulatory framework for the NBN. It specifies price and non-price terms and conditions of access to NBN's fibre, fixed wireless and satellite networks and other related services. The undertaking will be in effect until 2040 and has been designed with a modular structure to strike the balance between certainty and flexibility. The undertaking is currently in the initial regulatory period which contains more detailed terms than those applied in subsequent modules.

92. The undertaking specifies a wide range of obligations on NBN Co including prudency criteria, price controls and revenue constraints. In addition, the undertaking also provides for an ongoing compliance monitoring role for the ACCC. This includes making a determination each financial year with

respect to the revenues NBN Co is allowed to earn and whether its prices are below the maximum regulated prices. During 2014-15, the ACCC made the first of these annual determinations. A number of other matters relating to the implementation of the undertaking, such as approving dispute resolution arrangements between NBN Co and access seekers, were also considered by the ACCC during 2014-15.

93. The ACCC has also continued to oversee Telstra's compliance with its structural separation undertaking (SSU). The SSU recognises that Telstra, as the vertically integrated access provider to the ubiquitous copper network, operates at all levels of the supply chain and competes with businesses to which it supplies. The SSU requires Telstra to structurally separate over time, by ceasing to supply fixed line voice and broadband services over its copper and hybrid fibre-coaxial networks and progressively migrating its customers to the NBN as it is rolled out. It includes commitments to safeguard competition until the NBN is built and Telstra has migrated its fixed-line customers to the new network.

94. Telstra's SSU contains an overarching commitment requiring Telstra to provide equivalent outcomes for wholesale customers to those achievable by Telstra's retail businesses. In September and October 2014 the ACCC accepted rectification proposals from Telstra to address possible breaches of the overarching equivalence commitment in respect of wholesale service qualification requests for ADSL and line sharing services (LLS), and fault rectification for the basic telephone service (BTS). The rectification proposals were designed to remedy instances where wholesale customers were incorrectly advised that ADSL or LSS could not be supplied due to excessive transmission loss, and where Telstra had reported significantly better performance repairing BTS faults for its retail services than wholesale services.

95. Telstra's failure to prevent unauthorised disclosure of confidential or commercially sensitive information that it receives from wholesale customers to its retail business units has been an ongoing SSU compliance issue. Telstra is continuing to take steps to remediate its information technology systems and processes to better safeguard against disclosure of protected wholesale customer information.

96. In responding to Telstra's SSU breaches, the ACCC has focused on stopping the conduct, ameliorating its impact, and ensuring that Telstra's systems and processes are remediated as soon as practicable to safeguard against recurrence.

97. As part of the ongoing structural reform, the ACCC was required to approve Telstra's migration plan. The plan outlines how Telstra will progressively migrate voice and broadband services from its copper and HFC networks to the NBN as the fixed line network is rolled out across Australia. The migration plan has been varied a number of times since it was first accepted by the ACCC in 2012. The variations have been in response to various technical and process issues that have arisen during the migration of services in the initial NBN rollout regions. In June 2015 the ACCC accepted a revised migration plan that reflects the renegotiation of the agreements between Telstra, NBN Co and the Government to implement the shift to the MTM rollout model for the NBN.

98. The ACCC continues to oversee the Telecommunications Access Regime under Part XIC of the CCA. Part XIC of the CCA is a key part of the regulatory framework supporting the development of a competitive telecommunications industry. Part XIC allows services to be 'declared.' Once declared, the service must be supplied, on request, to other providers for use in their own services. This arrangement guarantees access to telecommunications services in the interest of the provision of competitive services to end-users.

99. The ACCC can set terms and conditions for access to declared services through final access determinations. In 2014-15, the ACCC progressed final access determination inquiries into the terms and conditions of access for:

- the seven declared fixed line services, and

- the domestic transmission capacity service.

100. In August 2015 the ACCC released its final decision on the access determination for the price and non-price terms for the mobile terminating access service. The final decision implemented reduction in the mobile voice termination charge and set a regulated price for SMS termination for the first time.

101. Under the *Radiocommunications Act 1992*, the Minister may request the ACCC for advice in relation to competition limits for licences to use radiofrequency spectrum. The ACCC received a request for advice in March 2015 in relation to spectrum in regional areas to provide mobile telecommunications services. The ACCC provided its advice to the Minister in May 2015.

Rail

102. The ACCC has a role in assessing and monitoring compliance with Part IIIA access undertakings submitted by rail access providers in relation to rail track infrastructure ('below-rail' services). To date, only one rail infrastructure provider, the Australian Rail Track Corporation (ARTC), has submitted access undertakings under Part IIIA of the CCA. There are currently two access undertakings—one for ARTC's Hunter Valley rail network and one for its national interstate rail network.

103. In 2014-15 the ACCC continued to monitor and administer relevant provisions of the undertakings for ARTC's interstate and Hunter Valley rail networks. The Hunter Valley access undertaking specifically requires ARTC to annually submit documentation to the ACCC demonstrating its compliance with the financial model and pricing principles in the undertaking. The ACCC considered that ARTC's reconciliation of its revenues and costs for 2013 and 2014 may be inconsistent with the principles set out in the Hunter Valley access undertaking and may result in a cross-subsidy from one group of users to another. The ACCC's assessment of ARTC's compliance for both the 2013 and 2014 calendar years is ongoing, with the ACCC having engaged an independent consultant to review the costs of ARTC's Hunter Valley rail network.

104. In 2014, ARTC submitted an application to vary the Hunter Valley access undertaking to implement provisions relating to an efficient train configuration and associated indicative charges. During consultations with stakeholders conducted by the ACCC it became clear that there remained divergent views within industry on the efficient train configuration and appropriate pricing and there needed to be more time for stakeholders to discuss these issues. In November 2014 ARTC withdrew its application from the ACCC's consideration but committed to further developing the concepts as part of its next undertaking.

Bulk wheat port terminal services

105. The ACCC enforces a mandatory code of conduct on bulk wheat port terminal access regulating the conduct of port terminal operators. The purpose of the code is to ensure that exporters of bulk wheat have fair and transparent access to port terminal services.

106. The code of conduct commenced on 30 September 2014 and triggered the repeal of the previous *Wheat Export Marketing Act 2008* under which vertically integrated bulk wheat port operators were required to have access undertakings in place with the ACCC. Wheat port access is also subject to general competition law.

107. The code includes many of the features of the previous undertakings regime, such as a non-discrimination obligation, an ACCC role in approving capacity allocation systems, and obligations for port operators to publish certain information. The code, however, unlike the previous regime, applies to all port terminals operators rather than only vertically integrated operators.

108. The code provides for two explicit tiers of regulation whereby the ACCC may grant a port terminal operator an exemption from the full set of obligations in the code and only required it to comply with a minimal set of obligations. The Minister for Agriculture can also grant exemptions to a port terminal operator that is a cooperative and meets certain criteria.

109. During 2014-15 the ACCC granted exemptions to the following three bulk wheat port terminals:

- GrainCorp Operation Limited's Newcastle (Carrington) and Geelong port terminals
- Emerald Logistics Pty Ltd's Melbourne port terminal.

110. The ACCC also commenced exemption assessments of a number of other port terminals around Australia. The ACCC also considered an application from Viterra Operations Limited to implement long term arrangements for capacity allocation at its port terminals in South Australia.

3. Resources of competition authorities

111. In the first half of 2014 the ACCC overhauled its internal corporate governance system, streamlined its organisational structure and reduced staff numbers, to match available funding. The total average number of staff employed by the ACCC for 2014-15 was 715 (down from 788 in 2013-14). In addition to competition matters, the ACCC has consumer protection, product safety and national infrastructure services regulatory functions, which account for more than half of the ACCC's total average staff. The ACCC also administers the functions of the AER. The ACCC consists of seven full time members and four associate members; three of these are ex officio, being economic regulators from other federal or state and territory bodies. The AER consists of three full-time members.

112. The ACCC's total funding for 2014-15 was \$170.2 million, comprising the original appropriation of \$167.5 million and other revenue of \$2.7 million. The NCC had an average staff of 2 over 2014-15. The NCC's total funding was \$1.9 million in 2014-15.

Table 2: ACCC and NCC funding appropriations

	ACCC*		NCC*	
	2014-15 \$m	2013-14 \$m	2014-15 \$m	2013-14 \$m
A\$	167.5	179.5	1.9	2.7
US\$	141.2	169.1	1.6	2.5

4. Studies and reports

4.1 Petroleum industry

113. In 2014 the ACCC published its seventh annual monitoring report Monitoring of the Australian petroleum industry – Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia,

* Foreign exchange rate used for conversion purposes: (13/14) 1A\$ = US\$0.9420
(RBA 12 month Average) (14/15) 1A\$ = US\$0.8430

December 2014. As noted above the ACCC was given a new monitoring direction in December 2014. The new arrangements will enable the ACCC to undertake more timely and targeted monitoring and analysis of particular topics and fuel markets that are of concern to consumers.

114. The ACCC will produce two types of reports:

- quarterly ‘macro’ reports on petrol price movements and the overall drivers of Australian fuel prices, and
- market studies that look at ‘micro’ issues in considerable depth. These will include an analysis of the price drivers of petrol in three regional markets in 2015.

4.2 Water sector

115. The ACCC published its fourth annual water monitoring report in April 2015. The report provides data for the 2013-14 year and covers water trading activity, regulated water charges, transformation arrangements and compliance with the water market rules and water charge rules in the Murray Darling Basin. The 2013-14 report observed that the Water Act and associated rules had resulted in significant improvements to the scope and functionality of water markets in the Murray Darling Basin.

4.3 Telecommunications sector

116. The ACCC continued to collect pricing information for a number of telecommunications services. Together with usage data provided by major carriers and carriage service providers, this information was used to determine and report on the changes in price for telecommunications services in 2013-14 published in March 2015. The ACCC also published the *Telecommunications Competitive Safeguards for 2013-14* report which highlighted key trends in competition in the industry.

117. In February 2015, the ACCC reported that Telstra adequately complied with the retail price control arrangements from 1 July 2013 to 30 June 2014, under its statutory reporting obligations, based on its review of an independently audited compliance report that Telstra supplied.²

118. Under the *Telecommunications Act 1997*, the ACCC must monitor and report each financial year on breaches by Telstra of its structural separation undertaking. In May 2015, the former Minister for Communications tabled the ACCC’s annual compliance report for the 2013-14 financial year.³ The report identified a number of breaches of the SSU, which Telstra brought to the ACCC’s attention pursuant to the SSU’s monthly reporting obligations.

119. In September 2014 the ACCC commenced a public inquiry into whether to declare a superfast broadband access service such as the very-high-bit-rate digital subscriber line (VDSL) service. The decision to commence the declaration inquiry followed the report of the expert panel which recommended the ACCC undertake a declaration inquiry into vectored VDSL services.

² Telstra’s retail price control arrangements have since been revoked by the Minister in March 2015.

³ ACCC, *Telstra’s Structural Separation Undertaking – Annual Compliance Report 2013-14*: <http://www.accc.gov.au/publications/telstras-structural-separation-undertaking/telstras-structural-separation-undertaking-2013-14>

4.4 Airports

120. The ACCC released its Airport Monitoring Report 2013-14 in April 2015. The report found that despite relatively low passenger growth, monitored airports have continued to report substantial increases in aeronautical revenues and margins. The report also suggested that there is evidence that at some of the monitored airports, airlines do not possess enough bargaining power to ensure appropriate commercial outcomes.

121. The report noted that airlines may have some bargaining power through their ability to initiate an application to the National Competition Council for an airport to be declared under Part IIIA of the Act. However, there is considerable time and uncertainty involved for airlines in going through the declaration process. The report noted that a potential avenue to address these imbalances could include deemed declaration. This would require the Australian Government to amend the *Airports Act 1996* to deem all aeronautical services as open to arbitration by the ACCC if commercial negotiations break down.

4.5 Australia Post

122. In addition to its role in assessing increases in the prices of some of the letter services over which Australia Post has a legislated monopoly under Part VIIA of the CCA, the ACCC also produces annual cross subsidy reports. These reports analyse Australia Post's regulatory accounts for the preceding year, to determine whether it has used revenue from its reserved services to cross-subsidise its non-reserved services. (Reserved services are services for which Australia Post has a statutory monopoly; non-reserved services are services it provides in competition with other businesses.)

123. In April 2015 the ACCC released the 2013-14 cross subsidy report on Australia Post. This report is addressed in *Section 2: Pricing matters*, above.

4.6 Container stevedoring

124. In October 2014 the ACCC issued its container stevedoring monitoring report, for 2013-14. The report, the sixteenth produced by the ACCC, highlighted industry improvements since the waterfront reforms of the late 1990s and the benefits of greater competition in the industry. The report identified two key risks to improved performance—the potential impact of labour outcomes and port privatisations where adequate regard is not given to the promotion of competition or the appropriate level of economic regulation. The report also highlighted opportunities that exist to further improve landside connections to container terminals.

4.7 Energy

125. In addition to its regulatory, monitoring, reporting and enforcement activities, the AER published the *State of the Energy Market 2014*, an accessible report on activity in Australia's energy industry. The report targets a wide audience, including market participants, policy makers and the wider community. The 2014 edition consisted of a market overview and analysis of activity and performance in each segment of the electricity and gas supply chain.

126. The AER published quarterly compliance reports summarising the compliance and enforcement activities in the gas and electricity sectors, weekly electricity and gas market analysis reports and reports into circumstances where the spot price of electricity exceeded \$5000/MWh. It also published its annual Retail Market Performance Report in November 2014. The report assessed competition in retail energy markets, energy retailer performance and energy affordability.

4.8 Productivity Commission inquiries, reports and publications

127. In the past financial year, the Productivity Commission (PC) completed a number of public inquiries and commissioned research studies. These can be accessed at www.pc.gov.au. Completed inquiries included:

- Access to Justice Arrangements;
- Childcare and Early Childhood Learning;
- Natural Disaster Funding.

128. The PC also completed two commissioned research studies during the past financial year:

- Costs of Doing Business in Australia: Dairy Product Manufacturing;
- Costs of Doing Business: Retail Trade Industry.

129. In 2014-15 the PC completed five commissioned research papers:

- Australia's International Tourism Industry;
- Examining Barriers to More Efficient Gas Markets;
- Housing Assistance and Employment in Australia;
- Efficiency in Health;
- International Education Services.

130. Other completed research work includes:

- On Productivity: Concepts and Measurement;
- An Introduction to Entropy Estimation of Parameters in Economic Models;
- Incorporating Household Survey Data into a CGE Model;
- Effects of Mutual Recognition of Imputation Credits.

131. As at 30 June 2015, the PC was undertaking inquiries or research studies into:

- Mutual Recognition Schemes (<http://www.pc.gov.au/inquiries/completed/mutual-recognition-schemes>);
- Business Set-up, Transfer and Closure (<http://www.pc.gov.au/inquiries/completed/business>);
- Migrant Intake into Australia (<http://www.pc.gov.au/inquiries/current/migrant-intake>);
- Workplace Relations Framework (<http://www.pc.gov.au/inquiries/current/workplace-relations>);
- Service Exports (<http://www.pc.gov.au/inquiries/current/service-exports>);
- Public Safety Mobile Broadband (<http://www.pc.gov.au/inquiries/current/public-safety-mobile-broadband>).

APPENDIX A

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

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

The Treasury

133. Amongst other functions, the Treasury advises the Government on competition law and policy, including advice on the economic regulation of infrastructure and broader product markets.

134. More information can be found at <http://www.treasury.gov.au/>.

The Australian Competition and Consumer Commission

135. The ACCC was formed in 1995 (with the amalgamation of the Trade Practices Commission and the Prices Surveillance Authority) and is an independent statutory authority that enforces the CCA. The CCA prohibitions of anti-competitive conduct apply to virtually all businesses in Australia.

136. The ACCC has responsibilities in industry regulation that include promoting efficient investment and access to monopoly rail infrastructure, access to wheat ports, monitoring prices and service quality for Australia's four major airports, providing information on the performance of Australia's container stevedoring industry, regulating and monitoring a range of water charges, and monitoring and enforcing compliance with water market and charge rules..

137. More information can be found at <http://www.accc.gov.au/>.

The Australian Energy Regulator

138. The AER is the economic regulator of the electricity transmission and distribution networks and is responsible for monitoring the wholesale electricity market and enforcing the National Electricity Law and National Electricity Rules in the NEM. The AER is also responsible for the economic regulation of gas transmission and distribution networks and enforcing the National Gas Law and National Gas Rules in all jurisdictions except Western Australia. The AER also regulates retail markets (other than retail pricing) in all states that have adopted the National Energy Customer Framework.

139. More information can be found at <http://www.aer.gov.au/>.

The National Competition Council

140. The NCC considers applications in relation to major infrastructure services under Part IIIA of the CCA, and makes recommendations to the relevant decision making Ministers. The NCC has a similar role under the National Gas Law, where it makes recommendations on coverage, the form of regulation (light or full regulation), classifying pipelines (as transmission or distribution) and various exemptions for greenfields gas pipelines.

141. More information can be found at <http://www.ncc.gov.au/>.

The Productivity Commission

142. 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 and other research in response to terms of reference provided by the Australian Government. The PC also undertakes self-initiated research.

143. More information can be found at <http://www.pc.gov.au/>.

The Australian Competition Tribunal

144. The ACT is an independent statutory tribunal whose primary role is to review decisions of the ACCC, the AER and responsible Ministers under Part IIIA of the CCA. Decisions of the ACCC which may be referred to the ACT for reconsideration include decisions on whether or not to grant authorisations under the CCA, and arbitration decisions in cases involving access to essential facilities. The ACT may also consider applications at first instance for authorisation in relation to mergers and acquisitions under the CCA.

145. More information can be found at <http://www.competitiontribunal.gov.au/>.

Glossary

ACCC Australian Competition and Consumer Commission

ACT Australian Competition Tribunal

AEMC Australian Energy Market Commission

AER Australian Energy Regulator

ARFF Aviation rescue and fire-fighting

ARTC Australian Rail Track Corporation

CCA Competition and Consumer Act 2010

CCP Consumer Challenge Panel

CFR Council of Financial Regulators

COAG Council of Australian Governments

CPA Competition Principles Agreement

DCC Dynamic currency conversion

ESCV Essential Services Commission of Victoria

LTPA Long-term pricing agreement

MDBA Murray-Darling Basin Authority
NAR National Access Regime
NBN National Broadband Network
NCC National Competition Council
NCP National Competition Policy
NECA National Electricity Code Administrator
NECF National Energy Customer Framework
NEM National Electricity Market
NWC National Water Commission
NWI National Water Initiative
PC Productivity Commission