



Organisation for Economic Co-operation and Development

DAF/COMP/AR(2017)26

Unclassified

English - Or. English

14 November 2017

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Annual Report on Competition Policy Developments in Australia

-- 2016 --

5-6 December 2017

This report is submitted by Australia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-6 December 2017.

JT03422864

Table of contents

Executive summary	3
1. Changes to competition laws and policies, proposed or adopted	4
1.1. Competition reforms	4
2. Enforcement of competition laws	5
2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions	5
2.1.1. Anti-competitive conduct matters	5
2.1.2. Merger review	8
2.1.3. Adjudication – authorisation applications and notifications	9
2.1.4. Market studies– improving the transparency of Australia’s markets	12
2.2. Infrastructure Regulation	12
2.3. Access to infrastructure facilities	12
2.3.1. Rail	13
2.3.2. Telecommunications	13
3. The role of competition authorities in the formulation and implementation of other policies. 13	
3.1. The Treasury	13
3.2. The Australian Competition and Consumer Commission	13
3.3. The Australian Energy Regulator	14
3.4. The National Competition Council	14
3.5. The Productivity Commission	14
3.6. The Australian Competition Tribunal	14
4. Resources of competition authorities	14
5. Summaries of or references to new reports and studies on competition policy issues	15
5.1. Productivity Commission inquiries, reports and publications	15
Annex A. Summary of ACCC Activities Competition Matters.....	17
Merger review - Statement of Issues issued	19
Public competition assessments issued	19

Tables

Table 1. ACCC funding appropriations.....	15
---	----

Boxes

Box 1. Case study – NYK Criminal Cartel prosecution	7
Box 2. Case study – proposed merger between APN Outdoor Group Limited and oOh!media Limited	9
Box 3. Case study – Collective negotiation by banks	11

Executive summary

1. This report addresses events that have occurred in the financial reporting year (1 July 2016 to 30 June 2017) and, where appropriate, significant developments since then.
2. Australia's competition policy is implemented by a range of agencies (see Item 3 below). This report primarily covers the activities of the Australian Competition and Consumer Commission (ACCC), and the Australian Energy Regulator (AER). The roles of these agencies are outlined in Item 3 below.
3. The *Competition and Consumer Amendment (Misuse of Market Power) Act 2017* and the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* commenced on 6 November 2017. These Acts amend the *Competition and Consumer Act 2010* (CCA) to implement a significant number of the competition law reforms recommended by the 2015 Competition Policy Review.
4. A number of significant court decisions were handed down during 2016-17:
 - In August 2017, the Federal Court convicted Japanese shipping company Nippon Yusen Kabushiki Kaisha (NYK) of criminal cartel conduct and ordered it to pay a fine of \$25 million: the second-highest imposed in ACCC history. The conviction marked the first successful prosecution under the criminal cartel provisions of the CCA.
 - In June 2017 the High Court (Australia's highest court) found, in favour of the ACCC, that price fixing agreements entered into between Air New Zealand, Garuda Indonesia and other international airlines, which occurred between 2002 and 2006, breached Australia's competition law.
 - The ACCC won its High Court appeal regarding Flight Centre's attempt to induce three international airlines to enter into price-fixing arrangements between 2005 and 2009 in relation to airfares offered online by the airlines that were cheaper than those offered by Flight Centre.
 - ANZ and Macquarie Banks were found to have breached the cartel provisions for attempted cartel conduct in 2011 in relation to the benchmark rate for the Malaysian ringgit. They were ordered to pay \$9 million and \$6 million respectively.
 - On 5 October 2017, the Full Court of the Federal Court dismissed an appeal by Cement Australia Pty Ltd and ordered Cement Australia to pay penalties totalling \$20.6 million for anti-competitive flyash agreements.
5. Further, in May 2017 the ACCC instituted proceedings against Ramsay Health Care Australia for alleged anti-competitive conduct involving misuse of market power and exclusive dealing. The ACCC also considered 288 merger matters, including conducting 33 public reviews.
6. Over 2016-17, the Government has directed the ACCC to conduct inquiries into:
 - the competitiveness, trading practices, and transparency of the Australian dairy industry;
 - residential mortgage products;
 - Northern Australia insurance;
 - the supply of retail electricity and the competitiveness of retail electricity prices; and
 - the supply of and demand for wholesale gas in Australia, as well as to publish regular information on the supply and pricing of gas for three years.
7. The ACCC initiated market studies into:
 - new vehicle retailing;

- the communications sector; and
- the cattle and beef sector.

8. The ACCC has also published draft reports in the gas and electricity sectors, as well as a report on the communications sector.

1. Changes to competition laws and policies, proposed or adopted

1.1. Competition reforms

9. The second half of 2017 has seen landmark amendments to Australia's competition and consumer laws, with sweeping changes to the misuse of market power (dominance) provisions, the merger review processes and adding the new prohibition of anti-competitive concerted practices.

10. The *Competition and Consumer Amendment (Misuse of Market Power) Act 2017* and the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* commenced on 6 November 2017. These Bills amend the CCA to implement a significant number of the competition law reforms recommended by the 2015 Competition Policy Review.

11. The *Competition and Consumer Amendment (Misuse of Market Power) Act 2017* amends the prohibition on the misuse of market power by corporations. The current 'prohibited purpose' test will be replaced with a Substantial Lessening of Competition (SLC) test, prohibiting a corporation with a substantial degree of market power from engaging in conduct that has the 'purpose, effect or likely effect' of substantially lessening competition. The Bill also removes the 'take advantage' element of the provision.

12. The *Competition and Consumer Amendment (Competition Policy Review) Act 2017* contains a broad range of amendments to the CCA that will affect the work of the ACCC significantly. The changes include:

- broadening the definition of 'competition' to include potential imports of goods and services, to fully reflect the range of competitive pressures facing Australian firms;
- making it clear that the cartel conduct provisions are focused on conduct which has an effect on trade or commerce within, to or from Australia and clarifying the scope of the exceptions for joint ventures and vertical trading restrictions to apply to common, pro-competitive business arrangements;
- amending the National Access Regime declaration criteria, including to ensure that third-party access is only mandated where it is in the public interest, rather than "not contrary" to the public interest as currently required
- consolidating the various authorisation processes into a single, streamlined process; and
- simplifying the CCA by repealing separate, specific prohibitions on price signalling and exclusionary provisions, and introducing a prohibition against concerted practices.

13. On 16 October 2017 the *Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017* commenced. This Act amends the *Broadcasting Services Act 1992* in response to the significant technological and commercial changes occurring in the sector. Changes to the Act include:

- Repealing media control and ownership rules that limited the scale and reach of individual media operators across regulated forms of media (i.e. commercial radio, commercial television and associated newspapers); and
- Establishing new local content obligations on regional commercial television licences following a change in control, such as a merger. These changes mean that the mergers in the media sector will be primarily regulated by the competition law and the foreign investments review law.

2. Enforcement of competition laws

2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

14. 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.

15. The ACCC's current competition priorities, set out in its Compliance and Enforcement Policy, include:

- competition issues in the agriculture sector;
- competition issues in the commercial construction sector; and
- issues arising from the ACCC's monitoring of broadband speed and performance claims.

16. Some forms of conduct, such as cartel conduct, anti-competitive agreements, and the misuse of market power, are so detrimental to consumer welfare and competition that the ACCC will always assess them as a priority.

2.1.1. Anti-competitive conduct matters

17. In 2016–17 the ACCC was involved in 12 new competition enforcement interventions, covering medical, building and construction, shipping and transportation, financial services and more. Despite widespread awareness of the illegality of cartel behaviour, and our success when prosecuting cases, cartel cases remain an important feature of the ACCC's work.

18. A major milestone was achieved when in July 2016 Japan-based global shipping company Nippon Yusen Kabushiki Kaisha (NYK) pleaded guilty in the Federal Court to criminal cartel conduct. This is the first criminal charge laid by the CDPP against a corporation under the criminal cartel provisions of the Act. In August 2017 the Federal Court imposed a penalty of \$25 million—the second highest penalty imposed under the competition law in Australia. In handing down his decision, Justice Wigney stated the fine “incorporates a global discount of 50 per cent for NYK's early plea of guilty and past and future assistance and co-operation, together with the contrition inherent in the early plea and co-operation: meaning that but for the early plea and past and future co-operation, the fine would have been \$50 million”.

19. In May 2017 the ACCC instituted proceedings against Ramsay Health Care Australia for alleged anti-competitive conduct involving misuse of market power and

exclusive dealing in the Coffs Harbour region. The ACCC alleges Ramsay took action to preserve its position in day surgery services in the Coffs Harbour region by making threats to reduce or withdraw individual surgeons' access to operating theatres at Baringa Hospital if they were involved in a competing day surgery facility. We alleged that the surgeons suspended their plans to establish a competing day surgery facility because of these threats. The case was continuing at time of publication, but highlights the scope of ACCC concerns regarding anti-competitive behaviour.

20. In June 2017 the High Court of Australia found that price fixing agreements entered into between Air New Zealand Ltd (Air NZ), PT Garuda Indonesia Ltd (Garuda), and other international airlines, which occurred between 2002 and 2006, breached Australia's competition law. This was a long and complicated case which commenced against Air NZ in 2009 and Garuda in 2010. The ACCC alleged Air NZ and Garuda colluded with other airlines on charges for fuel, security, insurance surcharges and a customs fee for the carriage of air freight from origin ports in Hong Kong (both airlines), Singapore (Air NZ) and Indonesia (Garuda) to destination ports in Australia. Under the law as it then stood, the ACCC was required to establish that the conduct occurred in a 'market in Australia'. The High Court unanimously dismissed the appeals by each airline and held that all aspects of the market, including the presence of customers in Australia, need to be considered in deciding whether a market is 'in Australia'. At time of publication, penalties had yet to be decided by the Federal Court.

21. Multi-year litigation ended in December 2016 when the ACCC won a High Court appeal regarding Flight Centre's attempt to induce three international airlines to enter into price-fixing arrangements between 2005 and 2009 in relation to airfares offered online by the airlines that were cheaper than those offered by Flight Centre. The ACCC argued that Flight Centre and the airlines are competitors, a position the High Court endorsed.

22. The ramifications of this case are large. It provides important guidance for the future application of competition laws in Australia to other situations where competing offers are made directly to consumers by both agents and their principals. It is likely to be particularly relevant when businesses make online sales in competition with their agents.

23. Following lengthy investigations and court proceedings, the Federal Court ordered ANZ to pay penalties of \$9 million and Macquarie Bank to pay penalties of \$6 million in December 2016 for attempted cartel conduct in 2011 in relation to the benchmark rate for the Malaysian ringgit.

24. Cartel behaviour is a particularly insidious anti-competitive behaviour. It limits price competition and the ability of new entrants to enter the market. In response, over the past three years the ACCC invested significant resources to build a substantial team of specialist criminal cartel investigators and a number of briefs of evidence have been provided to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution.

Box 1. Case study – NYK Criminal Cartel prosecution

In August 2017, the Federal Court convicted Japanese shipping company Nippon Yusen Kabushiki Kaisha (NYK) of criminal cartel conduct and ordered it to pay a fine of \$25 million: the second-highest imposed in ACCC history. The conviction marked the first successful prosecution under the criminal cartel provisions of the Competition and Consumer Act 2010 (CCA).

NYK is headquartered in Tokyo and has a controlling interest in a global group of companies with offices in Europe, Africa, East Asia, South Asia, China, Oceania and the North and South Americas with over 33,000 employees. It also operates an Australian subsidiary, NYK Line (Australia) Pty Ltd.

Following an extensive investigation by the ACCC, the Commonwealth Director of Public Prosecutions (CDPP) charged NYK with giving effect to cartel provisions in an arrangement or understanding with other shipping lines relating to the transportation of motor vehicles to Australia between 2009 and 2012. The cartel operated from at least February 1997 and affected vehicles transported to Australia by NYK and other shipping lines from locations in Asia, the US and Europe on behalf of major car manufacturers including Nissan, Suzuki, Honda, Toyota and Mazda.

On 3 August 2017, NYK was sentenced for one “rolled-up” criminal charge of giving effect to cartel provisions. A “rolled-up” charge is one in which more than one offence forms part of the charge. Rolling-up is permissible on a plea of guilty in Commonwealth matters.

In this case, the maximum penalty was calculated on the basis of 10 per cent of NYK’s annual turnover in connection with Australia, in the 12 months prior to the commencement of the offence. On that basis, NYK’s conduct attracted a maximum penalty of \$100 million. Justice Wigney gave NYK a significant discount for past and future assistance and co-operation, meaning that but for NYK’s early guilty plea and co-operation, the fine NYK faced would have been much higher.

In delivering his judgment, Justice Wigney stated “cartel conduct of the sort engaged in by NYK warrants denunciation and condign punishment” because “it is ultimately detrimental to, or at least likely to be detrimental to, Australian businesses and consumers. The penalty imposed on NYK should send a powerful message to multinational corporations that conduct business in Australia that anti-competitive conduct will not be tolerated and will be dealt with harshly”.

On 2 November 2016, the CDPP laid charges against another alleged participant in the cartel, Kawasaki Kisen Kaisha (K-Line), also a Japanese shipping company. The ACCC’s investigation in relation to other alleged cartel participants is continuing.

The judgment against NYK is the result of a significant investment by the ACCC, in building a specialist criminal cartel investigation team. The ACCC now has a strong capacity to conduct careful and thorough criminal investigations.

2.1.2. Merger review

25. 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.

26. The ACCC considered 288 mergers of which 33 were subject to a public review during the year. Significantly, and in accordance with our stated objectives, we cleared 88 per cent of mergers without the need for a public review (well above the target of 70 per cent). The ACCC unconditionally cleared 23 mergers that underwent a public informal review and two were approved subject to undertakings.

27. While the number of mergers considered by the ACCC has declined marginally over the past year, down from 319 in 2015–16, those mergers that have undergone a public review have been increasingly complex and, in many cases, have been more contentious compared with previous years. A statement of issues was released in relation to 13 of the publicly reviewed mergers. While the ACCC did not oppose outright any mergers, it is significant to note that eight reviews were discontinued either because the transactions did not proceed or because the parties withdrew their request for clearance. In all eight of these matters we released a statement of issues identifying issues of significant concern or that may raise concerns.

28. Consistent with its role in assisting the Australian Competition Tribunal in its assessment of merger authorisation applications, in 2016–17 the ACCC assisted the Tribunal in relation to Tabcorp Holdings Limited's application for merger authorisation to acquire all of the shares in Tatts Group Limited. The net public benefit test applied by the Tribunal requires a weighing of the likely detriments and benefits to the public, which is different to the substantial lessening of competition test which the ACCC applies in its informal merger clearances.

Box 2. Case study – proposed merger between APN Outdoor Group Limited and oOh!media Limited

On 19 May 2017, the ACCC discontinued its review of the proposed merger between APN Outdoor Group Limited and oOh!media Limited (the proposed merger) following an announcement by the merger parties that they were terminating the transaction in the light of the concerns expressed by the ACCC. The ACCC had released a statement of issues on 4 May 2017 in which it identified preliminary competition concerns about the merger, which would combine the two largest providers of out-of-home advertising services in Australia.

The ACCC's review focused on whether the proposed acquisition would be likely to substantially lessen competition in the market for out-of-home advertising. Out-of-home advertising reaches consumers on the move or in particular environments.

It comprises various different categories, including large, high-impact banners and billboards; advertisements on bus shelters, in stations and on trains, taxis and buses; and advertisements at leisure centres, in public amenities and in shopping malls and supermarkets.

The ACCC took the view that out-of-home advertising has special characteristics that are not easily replicated by other advertising channels, including the fact that it has dominant visibility for its audience in their immediate location and is involuntary in the sense that it is 'inescapable' and cannot be switched off.

While recognising the significant recent growth in digital online advertising (such as on Google and Facebook), we concluded that the special characteristics of out-of-home advertising channels indicate that digital online advertising is not a close substitute.

The ACCC found that APN Outdoor Group and oOh!media are each other's closest competitors in out-of-home advertising. We identified three major preliminary concerns in our statement of issues:

1. less competition in the market for the supply of out-of-home advertising services (leading to higher prices, reduced service levels and less innovation)
2. higher barriers to entry and expansion, because of scale and bundling
3. less competition in the market for leasing of out-of-home advertising sites (leading to lower site rents for landlords).

Other providers of out-of-home advertising focus on specific categories. The ACCC's preliminary view was that they would not provide sufficient competitive constraint on the merged entity.

2.1.3. Adjudication – authorisation applications and notifications

29. 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.

30. 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.

31. During 2016–17, we issued 27 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were aviation, financial services, agriculture, energy, waste services, transport and retailing.

32. Applicants sought authorisation for conduct such as collective bargaining, co-ordination agreements, joint tender or buying processes, industry codes and other price or fee agreements. The ACCC also received and assessed 536 exclusive dealing notifications involving 407 separate matters – 18 percent fewer than in the previous year.

Box 3. Case study – Collective negotiation by banks

On 31 March 2017 the ACCC issued a determination denying authorisation to Bendigo and Adelaide Bank, Commonwealth Bank, NAB and Westpac (the applicants), who sought authorisation on behalf of themselves and other card issuers to collectively negotiate with Apple on two issues:

1. to obtain access to Apple iPhone's embedded near-field communication (NFC) controller so that they could provide their own digital wallet apps using the NFC controller in Apple devices without relying on Apple Pay for mobile payment processing
2. to allow their digital wallet apps to be distributed from Apple's App Store without unreasonable prohibitions, unreasonable terms, or unreasonable delays from Apple.

The applicants also sought authorisation to enter into a limited and voluntary collective boycott in relation to Apple Pay during the collective negotiations.

Digital wallets are apps for mobile devices that perform some of the functions of a physical wallet, such as storing payment cards, processing mobile payments and, in some cases, storing other cards such as loyalty cards. The applicants could already offer digital wallets on iPhones, but their digital wallets could not bypass Apple Pay to directly access the NFC controller to make mobile payments. As a result, the applicants' digital wallet apps were limited to making mobile payments either via Apple Pay or by using external NFC hardware.

We considered that, if the proposed collective negotiations were successful, they would be likely to result in increased competition in mobile payment processing, a slight increase in competition in digital wallet apps, and reduced information asymmetry. On balance, however, we were not satisfied that these public benefits were likely to outweigh the anti-competitive detriment resulting from lessening of competition between payment cards and distortion of competition in the markets of mobile operating systems and mobile payment devices.

In particular, successful collective negotiations on NFC access would affect Apple's strategy for mobile payments and mobile operating systems more generally, which would also affect how Apple competes with Google. This could artificially alter the development of these dynamic high technology markets, which are currently undergoing rapid innovation and change. In addition, we noted that multi-issuer digital wallets such as Apple Pay have the potential to increase competition between the issuers by making it easier for consumers to switch between cards at checkout and by limiting any additional lock-in effect of bank-specific digital wallet apps.

2.1.4. Market studies—improving the transparency of Australia’s markets

33. Under the CCA the ACCC can be directed to conduct formal market inquiries, which can include the use of compulsory information-gathering powers. The ACCC can also elect to undertake informal market studies without being given a government direction as detailed below:

- At the request of the Government, the ACCC is conducting inquiries into the supply of retail electricity and the competitiveness of retail electricity prices in the National Electricity Market;
- The ACCC has also commenced an inquiry into prices charged or proposed to be charged by Authorised Deposit-taking Institutions affected by the Major Bank Levy between May 2017 and June 2018;
- The ACCC will run an inquiry into the supply of home, contents and strata insurance in Northern Australia;
- The ACCC has conducted three ‘micro’ market studies into petrol prices in targeted regional locations around Australia (Cairns, Armidale and Launceston);
- In April 2017 the Treasurer directed the ACCC to hold an inquiry into improving the transparency of gas supply in Australia. The ACCC will submit interim reports no less frequently than every six months and provide information to the market as appropriate, with a final report due by 30 April 2020. This will build on the considerable work the ACCC and AER have undertaken to identify issues in the market which have resulted in significant energy price rises over the past few years; and
- In June 2016 the ACCC commenced a market study into the new car retailing industry. Public forums attested to issues beyond the buying process in relation to consumer guarantees, such as proprietary software and security devices which limited the ability of third parties to carry out repairs and servicing on modern cars, and the accuracy of fuel economy information to consumers. These issues were all assessed in the Draft Report released in August 2017.

34. Annex A provides a high level summary of the ACCC’s competition activities during the period 2015 – 16.

2.2. Infrastructure Regulation

35. The ACCC and other competition agencies have a number of duties and functions in relation to the regulation of infrastructure and natural monopoly assets. Key developments in relation to these functions for 2016-17 are outlined below. More information can be found at acc.gov.au and ncc.gov.au.

2.3. Access to infrastructure facilities

36. 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. Effective access to these essential services promotes competition in upstream and downstream markets that rely on that infrastructure.

37. On 22 May 2017, the Treasurer, the Hon Scott Morrison MP, made the decision to certify the South Australian water access regime as effective under Part IIIA for a period of 10 years. This is consistent with the final recommendation made by the National Competition Council.

2.3.1. Rail

38. The ACCC has a role in assessing, and monitoring compliance with, access undertakings submitted by the Australian Rail Track Corporation (ARTC), a provider of “below rail” track access services. There are currently two access undertakings in place—one covering ARTC’s rail network in the Hunter Valley region of New South Wales, and one for its national interstate rail network.

2.3.2. Telecommunications

39. The telecommunications access regime contained in the CCA supports the development of a competitive telecommunications industry by allowing services to be ‘declared’—a process that determines which services are regulated by the ACCC.

40. The ACCC has been considering variations to its special access undertaking proposed by NBNCo.

41. In August 2016 the ACCC also announced it would undertake an inquiry about whether it should declare a domestic mobile roaming service. In October 2017, the ACCC released its final report for the mobile roaming declaration inquiry. The ACCC decided not to declare a mobile roaming service as it is not satisfied that declaration would promote the long-term interests of end-users.

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

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

3.1. The Treasury

43. 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.

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

3.2. The Australian Competition and Consumer Commission

45. The ACCC was formed in 1995 and is an independent statutory authority that enforces the CCA. The CCA prohibitions of anti-competitive conduct apply to virtually all businesses in Australia.

46. 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.

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

3.3. The Australian Energy Regulator

48. 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 National Electricity Market (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.

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

3.4. The National Competition Council

50. The National Competition Council (NCC) considers applications in relation to third party access 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.

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

3.5. The Productivity Commission

52. The Productivity Commission (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.

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

3.6. The Australian Competition Tribunal

54. The Tribunal 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.

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

4. Resources of competition authorities

56. In 2016-17 the ACCC had seven full time members, one part-time member, and five associate members. The AER had three full-time members.

57. The total average number of staff employed by the ACCC over the 2016-17 year was 772.

58. It is noted that in addition to competition matters, the ACCC has consumer protection and national infrastructure services regulatory functions. ACCC staff can have diverse roles, in carrying out investigative functions they may assist with competition enforcement (including merger and authorisation review), consumer protection, the investigation of product safety concerns, as well as advocacy and outreach

activities. In addition staff from the ACCC infrastructure area may assist with competition enforcement in relevant sectors.

59. The ACCC's investigative and regulatory functions are supported by specialist advisers in the Legal and Economic Division. The division comprises two groups: the Legal Group and the Economic Group.

- The Legal Group consists of general and special counsel, and four core units that provide in-house legal services to the ACCC and AER. It assists the ACCC and AER to make legally informed decisions and manage litigation, including by facilitating, as an informed purchaser, external litigation services. It also assists in managing the agency's corporate legal obligations.
- The Economic Group consists of the Chief Economist, and two core units that provide in-house strategic economic advice and related services to the ACCC and AER. It aims to facilitate the consistent use of economic principles in decision making, increase the quality of economic analysis and contribute to economics-related learning and development initiatives.

60. The ACCC's total funding for the period 1 July 2016 to 30 June 2017 was \$177.54 million, comprising the original appropriation of \$173.36 million and other revenue of \$4.18 million.

Table 1. ACCC funding appropriations

	2016-17\$m	2015-16\$m
	173.4	165.3
	133.3	127.1

Note: (Exchange rate at 30 June 2017 – A\$1 = US\$0.76887 = €06729)

61. The cost of administering the ACCC's telecommunications specific regulatory functions are recovered from telecommunications carriers through carriers' annual licence fees.

5. Summaries of or references to new reports and studies on competition policy issues

5.1. Productivity Commission inquiries, reports and publications

62. In the past financial year the PC completed a number of public inquiries and commissioned research studies. These can be accessed at www.pc.gov.au. These included:

- Telecommunications Universal Service Inquiry
- Education Evidence Base Inquiry;
- Marine Fisheries and Aquaculture Inquiry;
- Data Availability and Use Inquiry;
- Regulation of Agriculture Inquiry;
- Migrant Intake into Australia Inquiry;
- Consumer Law Enforcement and Administration research study.

63. Competition-related inquiries and research studies underway as at 30 June 2017 include:

- Competition in the Australian Financial System
- Superannuation
- Human Services
- Australia's productivity performance

Annex A. Summary of ACCC Activities Competition Matters

Table A A.1. Cartel conduct proceedings finalised

Australia and New Zealand Banking Group Limited Alleged attempted cartel conduct by ANZ traders and a Macquarie Bank trader to influence the fixing rate for Malaysian ringgit non-deliverable forward contracts	
commenced jurisdiction	concluded outcome 25 November 2016 14 December 2016 Federal Court Sydney Pecuniary penalty of \$9 million, and contribution of \$200 000 to ACCC costs
Macquarie Bank Limited Alleged attempted cartel conduct by ANZ traders and a Macquarie Bank trader to influence the fixing rate for Malaysian ringgit non-deliverable forward contracts	
commenced jurisdiction	concluded outcome 25 November 2016 14 December 2016 Federal Court Sydney Pecuniary penalty of \$6 million, and contribution of \$200 000 to ACCC costs
OLEX Australia Pty Ltd & Ors Alleged cartel and exclusionary conduct in the supply and acquisition of electrical cable throughout Australia	
commenced jurisdiction	concluded outcome 4 December 2014 10 March 2017 Federal Court Melbourne ACCC case dismissed

Table A A.2. Cartel conduct proceedings commenced

Australia and New Zealand Banking Group Limited Macquarie Bank Limited	
As above	
Kawasaki Kisen Kaisha Ltd Alleged cartel conduct concerning the international shipping of cars, trucks and buses to Australia between 2009 and 2012	
commenced jurisdiction	2 November 2016 Downing Centre Local Court Sydney
Nippon Yusen Kabushiki Kaisha Alleged cartel conduct concerning the international shipping of cars, trucks and buses to Australia between 2009 and 2012 (as stated earlier, this company was sentenced on 3 August 2017).	
commenced jurisdiction	14 July 2016 Federal Court NSW Criminal Division

Table A A.3. Cartel cases ongoing

Air New Zealand Limited (appeal) Alleged cartel conduct concerning price fixing of surcharges on air cargo services	
commenced jurisdiction	17 May 2010 Federal Court Sydney
P.T. Garuda Indonesia Ltd (appeal) Alleged cartel conduct concerning price fixing of surcharges on air cargo services	
commenced jurisdiction	2 September 2009 Federal Court Sydney
Australian Egg Corporation Limited & Ors (appeal) Alleged attempt to induce members of the corporation into an arrangement for the purpose of reducing the available egg supply	
commenced jurisdiction	28 May 2014 Federal Court Adelaide
Cascade Coal Pty Ltd & Ors Alleged bid rigging conduct involving mining exploration licences in the Bylong Valley, NSW	
commenced jurisdiction	25 May 2015 Federal Court Sydney
Colgate-Palmolive Pty Ltd & Ors Alleged cartel and anti-competitive behaviour in supplying laundry detergent	
commenced jurisdiction	12 December 2013 Federal Court Sydney
Oakmoore Pty Ltd, Palram Inc, Ampelite Pty Ltd & Ors Alleged cartel conduct in the supply of polycarbonate roof sheeting to retailers in Australia	
commenced jurisdiction	23 June 2016 Federal Court Brisbane
Prysmian Cavi e Sistemi S.r.l. Alleged cartel conduct in relation to the allocation of projects supplying high-voltage or extra-high-voltage land or submarine cable	
commenced jurisdiction	23 September 2009 Federal Court Adelaide

Table A A.4. Anti-competitive agreements and practices proceedings commenced

Ramsay Health Care Australia Pty Ltd Alleged anti-competitive conduct involving misuse of market power and exclusive dealing in the day surgery market in the Coffs Harbour region	
commenced jurisdiction	1 May 2017 Federal Court Sydney

Table A A.5. Anti-competitive agreements and practices proceedings ongoing

Flight Centre Ltd (High Court appeal) Alleged anti-competitive arrangements with three international airlines to eliminate differences in international airfares offered to customers	
commenced jurisdiction status	9 March 2012 Federal Court Brisbane Successful High Court appeal by the ACCC. Penalty to be determined.
Cement Australia Pty Ltd & Ors (appeal) Alleged conduct in contravention of s. 45 of the Act, relating to flyash contracts between Cement Australia and power stations in south-east Queensland	
commenced jurisdiction status	12 September 2008 Federal Court Brisbane Awaiting judgment
Construction, Forestry Mining and Energy Union (CFMEU) Alleged secondary boycott conduct by the CFMEU, Mr John Setka and Mr Shaun Reardon in relation to Boral Resources (Vic) Pty Ltd and Alsafe Premix Concrete Pty Ltd in contravention of s. 45D. Attempted contravention of s. 45E, and alleged undue harassment or coercion of Boral in contravention of s. 50 of the Act	
commenced jurisdiction status	20 November 2014 Federal Court Melbourne Awaiting judgment

Table A A.6. Misuse of market power proceedings ongoing

Pfizer Australia Pty Ltd (appeal) Alleged misuse of market power for the purpose of substantially lessening competition in relation to particular cholesterol-lowering products by offering to supply its originator brand of atorvastatin, Lipitor, and its own generic atorvastatin product to community pharmacies in early 2012		
Commenced	Jurisdiction	Status
13 February 2014	Federal Court Sydney	Judgment reserved

Merger review - Statement of Issues issued

APN Outdoor Group Limited proposed merger with oOh!media Limited

Australian Grain Technologies Pty Ltd proposed acquisition of InterGrain Pty Ltd

Tabcorp Holdings and Tatts Group proposed merger

Caltex Australia Petroleum Pty Ltd proposed acquisition of assets from Milemaker Petroleum

South32 Limited proposed acquisition of Metropolitan Collieries Pty Ltd

PMP Limited proposed merger with IPMG Group

DowDuPont Inc proposed acquisition of EI du Pont de Nemours and Company and The Dow Chemical Company

Link Administration Holdings Limited possible acquisition of Superannuation Corporation Administration (trading as Pillar)

Aurizon Operations Limited proposed acquisition of Glencore Rail (NSW) Pty Ltd

Pacific National proposed acquisition of certain assets and interests of Glencore Rail

News Corporation proposed acquisition of APN News & Media Limited's Australian Regional Media division

Seven West Media Limited proposed acquisition of The Sunday Times publication and website from News Limited

The Borg Group proposed acquisition of MDF manufacturing assets of Alpine MDF Industries Pty Ltd

Public competition assessments issued

Consortium comprising **Brookfield, Qube and others** proposed acquisition of Asciano Limited

Metcash Ltd proposed acquisition of Home Timber and Hardware Group

PMP Limited proposed merger with IPMG Group