

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Independent Sector Regulators – Note by Australia****2 December 2019**

This document reproduces a written contribution from Australia submitted for Item 3 of the 68th OECD Working Party 2 meeting on 2 December 2019.

More documents related to this discussion can be found at

<http://www.oecd.org/daf/competition/independent-sector-regulators.htm>

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Australia

1. Institutional arrangements in Australia

1. Australia is a federation whereby powers are divided between a national government, referred to in this submission as the Australian Government, and individual States and Territories. The Australian Government oversees matters that affect the whole country as defined in the Australian Constitution. The States and Territories have their own constitutions, parliaments, governments and laws and oversee matters that are not controlled by the Australian Government.

2. The ACCC is an independent statutory authority that administers the *Competition and Consumer Act 2010* (the CCA) and other acts. Appointments to the ACCC involve participation by both the Australia Government, as well State and Territory Governments. The ACCC comes under the portfolio responsibilities of The Treasury.

3. The ACCC is the economy-wide regulator responsible for enforcing Australia's competition laws. In addition to competition and consumer protection, the ACCC also has responsibility for national economic regulation of a range of infrastructure areas.

4. As with other statutory authorities, the ACCC is subject to a Statements of Expectations (SoE) issued by the Australian Government. Among other things, the SoE sets out the Government's expectations about the role and responsibilities of the ACCC, including the way it communicates and collaborates with other regulators.

5. Under the SoE, the ACCC is expected to maintain robust, effective and collaborative working partnerships with other agencies within the Australian Government, as well as State and Territory agencies, to ensure the proper functioning of Australia's regulatory framework. The ACCC is expected to avoid the duplication of the supervisory activities of other regulators, and should consider whether outcomes could be achieved by using existing regulation administered by another regulator, in order to ensure an integrated regulatory framework and minimise compliance costs.¹

1.1. Australia's National Competition Policy

6. Through the Council of Australian Governments (COAG), the Australian, State and Territory Governments agreed in 1995 to implement a comprehensive microeconomic reform agenda to improve Australia's economic performance.

7. The National Competition Policy (NCP) and related reforms were established to facilitate competition across the economy. NCP reforms included structural and legislative reforms to promote competition in markets where it was limited. In markets where competition was not feasible or desirable, access regulation was introduced.

8. One of the key features of Australia's National Competition Policy (NCP) has been the combination of competition enforcement, consumer protection and economic regulation into a single, economy-wide body in the ACCC.

¹ See Australian Government Statement of Expectation, online at: https://www.accc.gov.au/system/files/ACCC_Statement_of_expectations%5B1%5D.docx

9. The ACCC recognises that internationally there are a range of different approaches to the institutional structure and design of competition institutions. These may include, for example, ‘concurrency’ regimes (where sector regulators also have concurrent competition law powers) or a firm separation of competition enforcement and regulatory functions in a sector.

10. This submission makes no comment on the relative merits of different approaches to institutional design taken in other jurisdictions. With regards to the evolution of competition policy in Australia, in the ACCC’s view the concentration of regulatory functions and competition law powers has improved regulation. These functions complement each other as access regulation, in curtailing market power, has a ‘competition bias’ and generally seeks to mimic the results of a competitive market.

11. A single body, performing the functions of competition, consumer protection and economic regulation fosters a ‘pro-market’ culture across the three functions. An example is the winding back of economic regulation where a market becomes effectively competitive and can deliver efficient outcomes to the benefit of consumers. Concentration of these functions also facilitates coordination and depth of analysis across common issues, ensuring that market failures are analysed holistically—through consideration of supply side (competition), demand side (consumer) and economic regulation. This provides the skills and expertise to tailor responses accordingly.

2. Cooperation with sector regulators

12. The Australian Energy Regulator (AER) is Australia’s national energy market regulator. The ACCC has an integrated operating relationship with the AER. The ACCC and AER each have an independent board (with a cross-over Commissioner/Board Member), and share staff, resources, facilities and an annual combined regulatory conference. This includes sharing legal and economic expertise across both agencies.

13. The integrated relationship has allowed efficient transfer of staff resources in relation to subject matter expertise when needed. Two examples of this are the Retail Electricity Pricing Inquiry, and the Gas inquiry 2017-2020. In these inquiries the ACCC was directed to examine issues related to the supply of electricity and the competitiveness of retail electricity prices, and gas supply arrangements in Australia respectively. The AER’s knowledge of Australia’s energy markets helped to understand and explore the issues raised during these inquiries.

14. In addition, the ACCC has regular exchanges of information with a range of economic and technical regulators, including with State and Territory regulators. The ACCC’s relationship with regulators in the communications and financial sectors provide prominent examples of the ACCC’s regular, ongoing cooperation with sector-specific regulators on competition aspects.

2.1. Communication and cooperation with the ACMA

15. The ACMA is the sector-specific regulator for communications in Australia, with responsibility for industry codes, technical standards and oversight of several retail consumer safeguards, as well as reporting requirements.

16. The ACCC’s responsibilities in communications include administering the telecommunications access regime, as well as monitoring and enforcing compliance with a

range of telecommunications-specific legislation, as well as the general consumer protection and anti-competitive conduct provisions in the CCA.

17. The ACCC's enduring role providing advice on spectrum competition limits is a useful case study in the close engagement the ACCC has with the ACMA. Under the Radiocommunication Act 1992 the ACMA is responsible for managing spectrum, and the ACCC regularly advises the Minister of Communications and the ACMA on appropriate allocation limits for the sale of spectrum licenses. While there is no legislative power to set allocation limits to apply to apparatus licences, the ACCC may provide advice to the Minister and the ACMA on competition issues associated with apparatus licences at any time during the allocation process.

18. With the 'division of labour' between the ACCC and the ACMA in the communications sector, there is potential for some degree of overlap of functions between the two agencies. For this reason, a number of steps have been taken to minimise uncertainty and promote coordination.

19. These include a cross-appointment process (appointing ACMA members as Associate Commissioners of the ACCC, and vice-versa) to facilitate discussions and deliberations of matters where the agencies have regulatory matters of common interest.

20. The appointment of Associate Members from associate regulators facilitates information sharing between agencies. Associate Members are able to contribute to the deliberations of the ACCC on matters of common regulatory interest, leading to greater diversity and broader experience being brought to decision-making.

21. The ACCC has also entered into a Memorandum of Understanding (MOU) to promote effective co-operation and communication between the Agencies. The MOU covers the referral of matters between the agencies as well as the provision of information, documents and assistance.

22. Regular liaison meetings are held between the agencies and briefings are arranged as required to address an issue of interest or concern, or for background purposes.

23. The ACCC also regularly makes submissions to ACMA consultations.

2.2. Closer engagement with financial sector regulators

24. As the economy-wide competition regulator, the ACCC has responsibility for tackling anticompetitive conduct in the financial services sector. Over the last few years, the ACCC has regularly undertaken inquiries into specific financial sector competition issues, as well as enforcement action.

25. In late 2018, the ACCC formed the Financial Services Competition Branch (FSCB). The Branch's mandate is to improve competition in the financial services sector through investigations and enforcement action as well as market studies and advocacy.

26. A number of financial regulators have separate remits and expertise in the sector, including the Australian Prudential Regulation Authority (APRA) in the prudential regulation of banking, insurance and superannuation; the Australian Securities and Investments Commission (ASIC) in its market conduct and integrity role; and the role of the Reserve Bank of Australia (RBA) in maintaining financial stability.

27. In recent years the ACCC has increased its cooperation and engagement with these financial regulatory agencies, in particular via the Council of Financial Regulators (the CFR).

28. The CFR is a (non-statutory) coordinating body for Australia's main financial regulatory agencies. The role of the CFR is to contribute to the efficiency and effectiveness of financial regulation, and promote stability of the Australian financial system. Members share information, discuss regulatory issues and, where appropriate, coordinate responses on matters impacting the financial sector. The CFR also advises Government on the adequacy of Australia's financial regulatory arrangements.

29. The ACCC is not a member of the CFR, but has increasingly been invited to participate on issues relating to contestability and competitiveness—for instance, via the CFR's Competition Working Group and the Financial Market Infrastructure (FMI) Steering Committee.

30. The ACCC's collaboration with the CFR includes:

- Competition in the clearing and settlement of Australian cash equities;
- The current development of an online calculator that reports on average interest rates paid by different types of residential mortgage borrowers; and
- Current engagement on competition matters in the e-conveyancing market.

2.3. Information sharing with State and Territory regulators

31. The ACCC also develops and maintains cooperative relationships with State and Territory economic and sector regulators. Meeting every six months, the ACCC coordinates the Utility Regulators Forum to encourage this cooperation and act as a focal point for regulators to share information about priorities and regulatory approaches.