Australian
Competition &
Consumer
Commission

Annual Report 1999–2000

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Australian Competition & Consumer Commission

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The Honourable Joe Hockey MP
Minister for Financial Services and Regulation
Parliament House
CANBERRA ACT 2600

In accordance with section 171 of the *Trade Practices Act 1974* and section 63 of the *Public Service Act 1999* the Australian Competition and Consumer Commission is pleased to present you with its fifth annual report, covering the Commission's operations for the year ended 30 June 2000.

Sub-section 63(1) of the Public Service Act requires the responsible Minister to cause a copy of a report given to him or her under section 63 to be laid before each House of the Parliament before 31 October in the year in which the report is given.

Professor Allan Fels
Chairperson

Allan Asher
Deputy Chairperson

Sitesh Bhojani
Commissioner

David Cousins
Commissioner

Ross Jones
Commissioner

John Martin
Commissioner

Rodney Shogren
Commissioner

E X E C U T I V E O F F I C E

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Overview

Review by the Chairman

The Australian Competition and Consumer Commission has had a challenging year. In particular, it had the extra responsibility to protect consumers against price exploitation in relation to the New Tax System. The Commission has also had to maintain all its normal functions, and manage an increasingly larger litigation workload. It believes that it has met these challenges and maintained the high standards that the community expects of it.

Priorities for 1999–2000

The Commission's GST role was a major priority in the lead up to 1 July 2000. However, it also actively pursued other areas, such as investigating cartel activity, both in Australia and internationally. Such activity has been a recent focus of many competition agencies worldwide, and is one in which the Commission has had success. For example, this year the Commission has taken action against members of the Queensland fire protection cartel and, although the matter is still continuing against a number of respondents, over $8 million in fines and costs have already been imposed by the Federal Court of Australia.

Consumer protection issues were also a priority for the Commission this year. The majority of its 48 current litigation matters are in response to alleged breaches of part V of the Trade Practices Act.

Highlights of the year's activities

In 1999–2000 the Commission commenced 4588 investigations and was involved in more than 70 court actions. The Commission also accepted 70 court enforceable undertakings under s. 87B of the Act.

The Commission has also remained committed to informing the public about the Trade Practices Act, the Commission and its functions. It conducted a comprehensive education campaign in relation to the GST and price exploitation, targeted to both business and consumers.

Enforcement

The Commission was successful in most of its litigation during the year, and over $14 million in penalties were imposed against companies found to be in breach of the Trade Practices Act. Over $12 million was spent by the Commission on litigation.

In particular, two litigation matters completed this year are worthy of special mention. First, the Commission was successful in its prosecution of Simsmetal in relation to its attempt to engage in market sharing in 1995 (see p. 33). This long-running matter was completed in June 2000 with penalties of $2 million being imposed against the company. Second, the Commission successfully brought its first action under s. 51AC of the Act. The Federal Court granted a declaration against Leelee Pty Ltd (see pp. 29 and 187) indicating that it had engaged in unconscionable conduct towards one of its tenants, and also granted a number of injunctions against the company.

The GST

The highest profile work of the Commission in the last 12 months has been in relation to the GST. The Commission had an important educational role to play in informing businesses of their obligations under part VB of the Trade Practices Act. This included a mail-out of the Commission's *Everyday Shopping Guide* to every household in Australia. In addition, the Commission conducted a comprehensive consumer awareness program to ensure that Australians everywhere had a clear understanding of the likely effect of the GST on prices. The Commission took enforcement action against a number of businesses for misrepresentations and anticipatory price increases in relation to the New Tax System changes.

This work has been important in ensuring that businesses understand their pricing obligations in relation to the New Tax System, and that consumers have enough information to be able to determine if a business is engaged in price exploitation.

Regulatory activities

This year has also been a very active one for the Commission's regulatory activities.

In telecommunications the Commission concluded a number of declaration inquiries, finding that it would be in the long term interest of end users to declare a number of services that provide local telecommunication services. It also declared an analogue subscription television broadcast carriage service over cable links.

The Commission decided not to declare a long distance mobile originating service because it expects competition to intensify in the foreseeable future.

The Commission commenced 11 arbitrations during the year. Over that period it has issued one final and five interim determinations while three others have been withdrawn.

In electricity the Commission authorised a number of major amendments to the National Electricity Code (NEC) and issued final determinations for authorisation of vesting contracts in NSW and South Australia.

The Commission conducted an inquiry into the appropriate revenue cap to apply to the NSW and ACT transmission networks for the regulatory period 1 July 1999 to 30 June

2004. The final decision is the first made by the Commission as the economic regulator of electricity transmission in the National Electricity Market (NEM).

In gas the Commission is the transmission regulator under the National Third Party Access Code. The Commission has issued its final decision on the central west pipeline access arrangements and is considering several access arrangements for gas transmission pipelines under the National Access Code and has released a draft decision on the Epic Moomba to Adelaide pipeline system.

The Commission continued monitoring of pricing for 11 privatised airports and has reported on compliance with the CPI-X price caps at these facilities.

It has finalised a number of proposals to increase charges to fund new investment, in particular Adelaide's airport proposal for a new multi-user integrated terminal (MUIT) and the introduction of new charges for new facilities catering for new entrants at both Sydney and Melbourne airports.

As well, the Commission undertook functions under the *Prices Surveillance Act 1983* including consideration and price notifications for harbour towage services, Australia Post and Airservices Australia and price monitoring of stevedore container charges and of milk prices.

Notwithstanding what has been a busy year in regulatory activities, the Commission is concerned at the overall progress in regulating reform and this report includes an extended discussion of this issue in part 1 of chapter 4.

Mergers

The Commission considered 234 merger proposals in 1999–2000 and was concerned that nine of these proposals would result in a substantial lessening of competition. Five of these matters were resolved when the parties provided the Commission with s. 87B undertakings to address the competition concerns. The remaining proposals were withdrawn by the parties involved.

Consumer protection

In addition to the litigation that the Commission brought in respect of alleged breaches of part V of the Trade Practices Act, it has been active in other ways. The highest profile aspect of this activity has probably been in relation to SOCOG and the Olympics where the Commission was able to resolve a number of concerns about ticketing. The Commission also vigorously pursued misleading country of origin claims, and conducted a large information campaign about this issue. It participated in the Internet Sweep Day, an international initiative where websites are examined for breaches of consumer protection law.

Small business program

The Commission continued to upgrade the level and style of its dealing with small business in providing information on their rights and responsibilities under the Trade Practices Act. Its program of outreach to small business stemmed from the Government's decision in 1998 to strengthen the Act in respect of the new unconscionable conduct provisions in s. 51AC and related provisions in s. 51AD underpinning the Franchising Code of Conduct. The

Commission's small business program has assisted the Commission to investigate and deal with unconscionable behaviour by larger businesses in their relations with small business.

The activities of the small business unit and the appointment in June 1999 of Commissioner John Martin with responsibility for small business have focused on demonstrating that sector's considerable rights under the Trade Practices Act, as well as how to avoid or handle trade practices related problems, preferably before they require resolution or litigation.

Adjudication

The Commission was active in adjudication matters. It received 47 applications for authorisation during 1999–2000 and 344 notifications. It made 50 determinations. One decision of the Commission was appealed to the Australian Competition Tribunal, but was withdrawn.

Summary of financial report

The Commission's budget for 1999–2000 was $57.453 million, an increase of nearly 50 per cent on 1998–99. Most of this increase was in relation to its price exploitation prevention role in relation to the New Tax System. There was a one-off allocation for 2000–01 of $10 million for legal costs mainly applicable to those not related to the GST. The Commission also received $19 million in extra funding in the 2000–01 Federal Budget, although these funds are specifically allocated for the GST, telecommunications and the monitoring of milk products.

It is likely that the Commission's budget will come under continuing pressure in the future. Partly because of the high profile of the Commission's GST work, consumers are becoming more aware of the Commission's non-GST functions, and this is increasing the workload in all areas.

The Commission commenced a funding and pricing review with the Department of Finance and Administration, which expects to report in December 2000.

ACCC staff

This year the Commission's long serving CEO, Hank Spier, retired. Hank Spier has been involved in trade practices law for the past 30 years and has managed the Commission's expansion over the last decade. His contribution to all facets of the Commission's work was very large and highly valuable. Brian Cassidy has joined the Commission as its new CEO. He has come from the Department of Prime Minister and Cabinet where he was the head of the Industry and Environment Division. Before that he worked for many years in the Structural Reform Division of the Department of Treasury.

More generally, the Commission engaged in heavy recruiting over the year, necessary to fulfil its GST role. At 30 June 2000 the Commission had 518 actual staff (full and part-time). This represents a large increase over the 30 June 1999 staffing level of 359 actual staff (full and part-time).

The Commission has maintained its commitment to recruitment of quality employees. Its graduate recruitment program is an important strategy in attracting some of Australia's best

and brightest. Skills at the senior level are being maintained and the Commission invests substantial resources in learning and development, and tertiary study assistance. However, like other agencies that employ a high proportion of professionally qualified staff, the Commission is experiencing some turnover in its middle ranks.

Liaison

Liaison has always been an important role for the Commission and it maintained the practice of regular liaison with business, consumer and community groups and other Federal, State and Territory Government agencies, as well as with its foreign counterparts. It constantly seeks feedback about its activities.

Outlook

As noted above the Commission seeks to continue to meet community expectations and to remain an effective force in protecting consumer welfare and economic efficiency. It believes it has dealt with the challenges faced last year, and is well positioned to continue to meet the likely challenges and demands in 2000–01.

In producing these results, Commission staff have worked tirelessly and with singular dedication. Their professionalism and their ability to find creative and workable solutions to what are often difficult matters have been the key to the Commission's success in 1999–2000. I thank them for their commitment and hard work.

Professor Allan Fels
Chairman

Overview of the ACCC

The Commission is an independent statutory authority which has the role of administering the *Trade Practices Act 1974*, State and Territory Application Acts and the *Prices Surveillance Act 1983*.

The Commission seeks to improve competition and efficiency in markets, foster adherence to fair trading practices in well informed markets, promote competitive pricing wherever possible and restrain price rises in markets where competition is less than effective. It is especially concerned to foster a fair and competitive operating environment for small business.

In seeking to prevent or limit anti-competitive conduct and to ensure adherence to fair trading principles the Commission:

- takes action through compliance education programs, investigations, litigation or enforceable undertakings if necessary to overcome market problems;
- adjudicates on business practices (including merger proposals) and access to essential facilities;
- considers access issues concerning essential facilities;
- enforces product safety standards;
- has functions under provisions of the Trade Practices Act which impose a liability on manufacturers for damage caused by defective goods;
- undertakes certain functions relating to prices surveillance, public inquiries and monitoring of goods and services under the Prices Surveillance Act;
- administers the prohibition on price exploitation in relation to the New Tax System;
- maintains close liaison with Federal, State and Territory Governments, and regulatory authorities on economic structural reform; and
- provides guidance to business and consumers about the Trade Practices Act and the Prices Surveillance Act.

Legislation

Trade Practices Act

The object of the Trade Practices Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

Prices Surveillance Act

The Prices Surveillance Act enables the Commission to examine the prices of selected goods and services. The objective is to promote competitive pricing wherever possible and to restrain price rises in markets where competition is less than effective.

Related legislation

The Commission has responsibilities under other legislation as follows.

Airports Act 1996 — to perform quality of service monitoring and reporting, to facilitate access to airport services of national significance, and to receive accounts and reports which facilitate its prices oversight role.

Australian Postal Corporation Act 1989 — to inquire into disputes as to the amount of postal rate reduction given by Australia Post to bulk mailers interconnecting or attempting to interconnect to the Australian Postal System.

Broadcasting Services Act 1922 — to report, in terms of the merger and authorisation provisions in the Trade Practices Act, on the allocation of subscription television broadcasting licences to applicants. To monitor, in conjunction with the Australian Broadcasting Authority, the cross-media ownership of the holders of subscription television broadcasting licences.

Gas Pipelines Access (Commonwealth) Act 1998 — gives effect to the Commission's role as regulator of third party access to natural gas pipeline systems under the National Third Party Access Code for Natural Gas Pipeline Systems. This role includes arbitration of disputes over spare capacity, and regulation of increases in capacity and the terms and conditions upon which haulage services are provided.

Moomba–Sydney Pipeline System Sale Act 1994 — arbitration of disputes over the existence of spare capacity, the interconnection of a pipeline to the Moomba–Sydney pipeline, increases in capacity, and terms and conditions of provisions of haulage service.

Telecommunications Act 1997 — the Commission's main functions under the Act relate to telecommunications competition matters. Various provisions give the Commission a role wider than it has under the Trade Practices Act.

Trade Marks Act 1995 — responsibilities in relation to the approval of Certification Trade Marks.

Exceptions under Commonwealth, State and Territory legislation

Some Commonwealth, State and Territory Acts permit conduct that would normally be an offence under the Trade Practices Act. Section 51(1) of the Trade Practices Act provides that such conduct may be permitted if it is specifically authorised under those other Acts.

Below is a list of legislation that allows such conduct.

Jurisdiction	Legislation
Commonwealth	*Australian Postal Corporation Act 1989* *Trade Practices Amendment (Country of Origin Representations) Act 1998* Item 1, Schedule 3 *Wheat Marketing Legislation Amendment Act 1998* *Year 2000 Information Disclosure Act 1999*
New South Wales	*Sydney Organising Committee for the Olympic Games Amendment Act 1996* *Farm Produce (Repeal) Act 1996* *Totalizator Legislation Amendment Act 1997* No. 151 *Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997* *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998* *Marketing of Primary Products Amendment (Rice Marketing Board) Act 1998* *Dairy Industry Amendment (Trade Practices Exemption) Act 1998* *Competition Policy Reform (NSW) Amendment (Waste) Regulation 1998* *Competition Policy Reform (NSW) Amendment (Grain Marketing) Regulation 1998* *Competition Policy Reform (NSW) Amendment (SOCOG and SPOC) Regulation 1998* *Olympic Roads and Transport Authority Act 1998* *Liquor and Registered Clubs Legislation Further Amendment Act 1999* *Competition Policy Reform (NSW) Amendment Regulation 2000*
Queensland	*Primary Industries Legislation Amendment Act 1999,* amending the *Chicken Meat Industry Committee Act 1976* *Competition Policy Reform (Queensland — Dairy Produce Exemptions) Regulations 1997* (as amended) *Competition Policy Reform (Queensland — Chicken Meat Industry Exemptions) Regulation 1998* *Sugar Industry Act 1999*
Victoria	*Electricity Industry Act 1993* *Gas Industry Act 1994*
Tasmania	*Electricity Supply Industry Act 1995* *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*
Western Australia	*North West Gas Development (Woodside) Agreement Amendment Act 1996*
South Australia	*Dairy Industry Act 1992*
Australian Capital Territory	*Milk Authority (Amendment) Act 1999* (No. 2 of 1999)

Outcome and output structure

The Commission has one outcome that defines its role in delivering Government competition and consumer policy: that is, to enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets.

The Commission's outputs as published in the 1999–2000 Treasury Portfolio Budget Statements were:

- Output 1.1.1: Compliance obligations pursuant to administration of Acts (Trade Practices Act, Prices Surveillance Act) and statutory responsibilities arising from parts of other relevant Acts and subordinate regulatory instruments; and
- Output 1.1.2: Competition initiatives, regulatory mechanisms, liaison and information.

The Commission has amended the description of its two outputs to be more meaningful. They are:

- Output 1.1.1: The proper administration and enforcement of the *Trade Practices Act 1974*, the *Prices Surveillance Act 1983* and related laws; and
- Output 1.1.2: Performance of actions that promote competition and fair trading and enable well functioning markets.

Output 1.1.1 assists in the achievement of the Commission's outcome by improving compliance, reducing compliance costs and influencing community behaviour and confidence. Competitive markets are promoted through the administration and enforcement of the Trade Practices Act, Prices Surveillance Act and statutory responsibilities arising from parts of other relevant Acts and subordinate regulatory instruments. Important aspects include enforcement of the Acts' provisions relating to restrictive trade practices; consumer protection; price exploitation in relation to the New Tax System; authorisations; notifications and prices for goods and services under price control; the prohibition of certain misleading or deceptive conduct and unfair practices; the disclosure of consumer information relating to the supply of certain goods and services and the promotion of product safety; and the promotion of information, in particular, public awareness of the requirements of, and remedies available under the Acts.

Output 1.1.2 assists in the achievement of the Commission's outcome by having a well regulated, informed competitive and fair market. This includes developing, implementing and promoting public awareness of regulatory frameworks, maintaining and fostering international developments to improve market conduct, and effective liaison with, and advice to, Government and other agencies.

In seeking to achieve its outcome the Commission will:

- pursue enforcement of the law without fear or favour;
- maintain a focus on competition and consumer strategies as reflected in virtually all parts of the legislation administered;

- give the highest priority to the non-traded goods and services sector;
- pursue its published enforcement priorities; and
- foster compliance via education and publicity.

Monitoring of possible price exploitation as a consequence of the New Tax System's changes will be a major Commission activity from now until mid-2002.

Table 1.1 shows the relationship between the former program structure by which Government budget initiatives and appropriations were specified, and the current outcomes and outputs structure.

Table 1.1. Relationship between program and outcome structure for outcome 1

Program management budgeting	Accrual budgeting
Program 6 — Australian Competition and Consumer Commission	**Outcome 1**
To enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.	To enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets.
To give special weight to small business interests through the coordination of enforcement and education activity in relation to small business issues.	**Output groups** ***Output group 1.1*** — Australian Competition and Consumer Commission
Sub-programs	
Sub-program 6.1 — Compliance with the Trade Practices Act	Output 1.1.1
Sub-program 6.2 — Improvement in market conduct	Output 1.1.1 and 1.1.2
Sub-program 6.3 — Education and information	Output 1.1.2
Sub-program 6.4 — Corporate planning and management	Output 1.1.1 and 1.1.2

Performance indicators

Performance indicators for its outputs, as published in the Portfolio Budget Statements 1998–99 and 1999–2000, were as follows.

Output 1.1.1 indicators

- Responded to complaints and inquiries.
- Appropriate enforcement action taken and goals achieved, i.e. stopped unlawful conduct, compensation gained for loss or damage, compliance with the Act, pecuniary penalty.

- Merger proposals likely to have an anti-competitive effect opposed or authorised where there is sufficient public benefit.
- Appropriate action taken to ensure no business takes unfair advantage of the New Tax System.
- Granted statutory immunity from legal proceedings where there is sufficient public benefit concerning some anti-competitive practices (as prescribed by the Trade Practices Act).
- Access to essential services including postal services and airport regulation is made on reasonable terms and conditions.
- Regulated gas market as required by the National Third Party Access Code for National Gas Pipeline Systems.
- Regulated electricity market as required by the National Electricity Market Code.
- Regulated telecommunications market.
- Publication of new and amended provisions of the Trade Practices Act and the new ACCC procedures.
- Promoted competitive pricing where possible and restrained price rises in markets where competition is less than effective.

Output 1.1.2 indicators

- ACCC policy and positions formulated — discussion documents and guidelines on competition initiatives and regulatory mechanisms be prepared, disseminated and discussions take place with Government, industry and consumers.
- Consulted with Federal and State Governments on competition issues arising from regulatory reforms.
- Responded to Government inquiries on competition and consumer protection issues including references under s. 28 of the Trade Practices Act relating to dissemination of information, law reform and research.
- Actively participated in the development of effective competition and consumer protection laws internationally.

Table 1.2. Financial and staffing resources 1999–2000

	Outcome 1		*Total*	
	Budget $'000	**Actual $'000**	**Budget $'000**	**Actual $'000**
Total net administered expenses	–	261	–	261
Add net cost of entity outputs	52 196	68 011	52 196	68 011
Net cost to budget outcome	52 196	68 272	52 196	68 272
Total assets deployed as at 30 June 2000	3 743	12 242	3 743	12 242
Net assets deployed as at 30 June 2000	(4 111)	(12 620)	(4 111)	(12 620)

	Outcome 1 **Actual $'000**	***Total*** **Actual $'000**
Major agency revenues and expenses by outcome		
Major expenses		
Employees	25 970	25 970
Suppliers	41 102	41 102
Depreciation and amortisation	1 243	1 243
Major sources of revenues		
Revenues from government	57 442	57 442
Sale of goods and services	812	812
Interest	99	99

Major administered revenues and expenses by outcome		
Major expenses		
Net write-down of assets	261	261
Major sources of revenues		
Fines and costs	13 650	13 650
Authorisation fees	537	537
Other	28	28

	1999–2000	**1998–1999**
Staff years	382	358

Structure of the Commission

During the reporting period the Commission comprised seven full-time commissioners including a Chairperson and Deputy Chairperson, and a number of part-time associate commissioners.

The seven full-time commissioners were: Chairperson Professor Allan Fels; Deputy Chairperson Allan Asher; Commissioners Sitesh Bhojani, Dr David Cousins, Ross Jones, John Martin and Rod Shogren.

Five part-time associate commissioners served during the report period: Teresa Handicott, Yasmin King, Warwick Wilkinson AM, Don Watt and Professor Douglas Williamson QC. Rhonda Smith resigned on 18 January 2000.

The eight ex-officio associate commissioners were: Paul Baxter, Professor David Flint AM, Edward Hall, Dr Thomas Parry, Andrew Reeves, Graham Scott, Tony Shaw and Dr John Tamblyn.

Biographies and photographs can be found in appendix 6.

See also organisation chart on p. 16.

Social justice

Social justice and equity themes are implicit in both the Trade Practices Act and the Prices Surveillance Act and are strongly reflected throughout this annual report. In the Trade Practices Act the themes are most obvious in the parts dealing directly with fair trading and consumer protection — the basic rights of people in their everyday consumer transactions:

- part IVA — which prohibits unconscionable conduct in both consumer and business-to-business transactions;
- part V — which is built on a general prohibition of misleading and deceptive conduct, reinforced by a range of specific proscriptions of such behaviour and includes provisions dealing with product safety, information standards and statutory warranties;
- part VA — which imposes a liability of manufacturers for damages caused by defective goods; and
- part VB — which prohibits the exploitation of consumers or excessive profit-taking resulting from the implementation of the New Tax System.

Other documents

The Commission has a very active publishing program dealing with the specifics and rationale of its work. Discussed in chapter 5 and appendix 7, this includes a regular journal of developments and issues, and a wide range of booklets, guidelines and discussion papers aimed at promoting better understanding of the legislation for which the Commission is responsible, its work and procedures. Many of these publications and documents are available to the public at the Commission's Internet websites — <http://www.accc.gov.au> and <http://gst.accc.gov.au>.

External scrutiny

The operations of the Commission were audited by the Auditor-General during the year. Internal control recommendations made by the Auditor-General are being implemented. The audit of the financial statements was satisfactory and an unqualified audit report was issued.

Freedom of information

The Commission received 12 formal freedom of information requests during 1999–2000. The requests were for access to a wide range of documents relating to investigations and complaints involving the Commission.

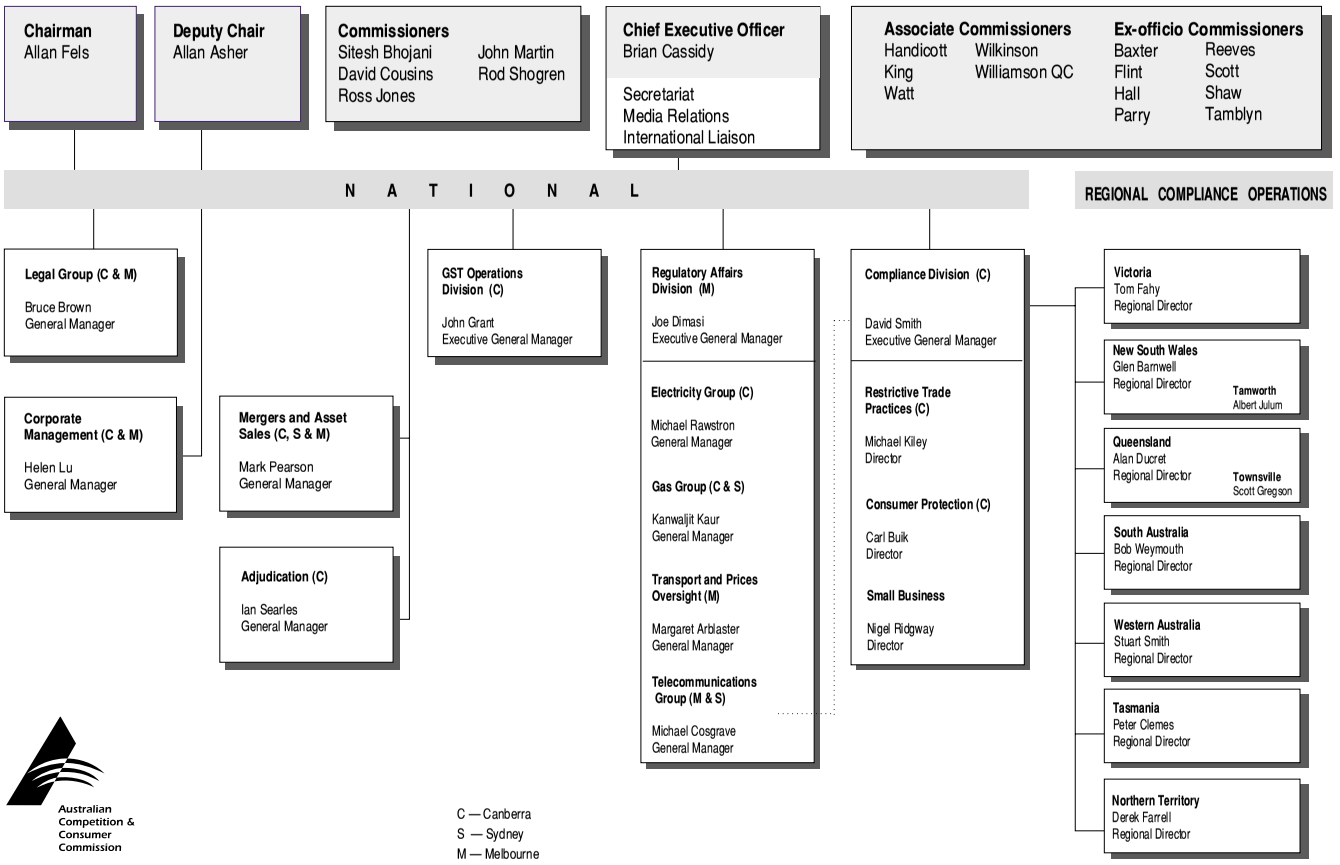
In four cases access was granted in part. Access was granted in full in one and refused in two. Three requests were not proceeded with and one had no relevant documents. One request had not been finalised by the end of the year. It is Commission policy to provide information whenever possible. However, it seeks to protect information provided to it in the course of its investigations and inquiries, and treats that information as confidential both to protect the sources and to ensure the flow of information vital to the Commission's functions.

Three requests to have processing charges waived were granted. All were on the grounds of public interest.

There were no requests for internal review. One application was made to the AAT for review of a decision made in 1998–99. In this matter, Telstra Corporation Limited had sought access to internal documents and documents provided to the Commission by several telecommunications companies during the Commission's investigation into Telstra's commercial churn service. The Commission agreed to release a number of documents that were no longer considered sensitive by the parties who provided them and Telstra withdrew its request for access to several other documents.

In relation to the eight documents that remained in dispute, the AAT upheld the Commission's decision to refuse access. This was done on the basis that they contained commercially sensitive information provided by third parties and that their release would have a substantial adverse effect on the Commission's ability to obtain information in future. The AAT also found that release of the documents would not be in the public interest.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION ORGANISATION CHART



Achieving compliance under the New Tax System

Output 1.1.1: The proper administration and enforcement of the *Trade Practices Act 1974*, the *Prices Surveillance Act 1983* and related laws; and

Output 1.1.2: Performance of actions that promote competition and fair trading and enable well-functioning markets.

Objective

To achieve compliance with provisions of the Trade Practices Act which prohibit price exploitation in relation to the introduction of the New Tax System.

New Tax System responsibilities

Performance indicator

- Appropriate action taken to ensure no business takes unfair advantage of the New Tax System.

The Commission's New Tax System responsibilities under part VB of the Trade Practices Act require it to issue guidelines on pricing responses to the New Tax System changes, and to check prices and take action against businesses that increase prices unreasonably as a result of the changes. The law against price exploitation operates until 30 June 2002 and reflects the Federal and State Parliaments' concern about the possibility of businesses exploiting consumers and making excessive profits from the tax changes.

Price exploitation carries penalties of up to $10 million per offence for corporations, and up to $500 000 per offence for individuals. The provisions also apply to professionals. The Act provides no protection for advisers found to be knowingly concerned in, or aiding and abetting, contraventions of the law against price exploitation by businesses.

The law allows the Commission to issue a notice to a corporation (or person) it considers has contravened the prohibition against price exploitation. In any proceedings for injunction or penalty, a notice will constitute prima facie evidence that the price charged is

unreasonably high, and is not attributable to the New Tax System changes, supplier's costs, supply and demand conditions or any other relevant matter. If a price exploitation notice is served, it will be up to the corporation (or person) to show that it did not engage in price exploitation.

The Commission may also issue a second type of notice to help prevent price exploitation by specifying a maximum price for a supply for a specified period, which may extend to the end of the three-year transition period. In effect, a maximum price notice will be a warning to the business that a supply above the maximum price specified will constitute price exploitation.

The Commission has additional New Tax System responsibilities in relation to the Commonwealth Fuel Sales Grants Scheme. The scheme provides a grant of 1 or 2 cents per litre to fuel retailers and distributors for the sale of petrol and diesel to consumers in regional and remote areas of Australia. Retailers of petrol and diesel will be expected to pass on to consumers the benefits of the grant. To assist in that process the grant was prescribed under the price exploitation legislation administered by the Commission.

The Federal Government has also asked that the Commission begin an audit program into the pricing structures of caravan parks, relocatable home parks and boarding houses from 1 July 2000. The objective is to ensure that operators do not increase net dollar margins and that residents are not subjected to unreasonable price increases as a result of the New Tax System changes.

The Commission is also required, under part VB of the Act, to report to the Minister within 28 days after the end of each quarter about the operations of its price exploitation responsibilities in relation to the New Tax System.

Guidelines

The Commission's price exploitation guidelines are a summary designed to give readers the basic information needed to comply.

Draft preliminary guidelines were first released in April 1999 and discussed at an industry round table on 2 June 1999. Shortly after, the Commission issued its first edition guidelines, as required under part VB.

The guidelines were subsequently revised to reflect part VB amendments that took effect in December 1999, and to clarify some issues relating to interpretation. In addition, it was implicit in the first edition that prices should not rise by more than 10 per cent as a result of the New Tax System. This was expressly stated in the March 2000 guidelines to provide greater certainty for business.

The net dollar margin rule is a fundamental principle of the guidelines. That is, if the New Tax System changes cause taxes and costs to fall by $1, then prices should fall by at least $1. If, after taking into account tax and cost reductions resulting from the New Tax System, the costs of a business rise by $1, then prices may rise by no more than that amount.

Price monitoring

Specialist price checking companies have been engaged to undertake the bulk of the Commission's price survey work. The data comes mainly from six sources:

- retail price surveys undertaken nationally by experienced price collection firms covering a wide range of household goods and services;
- established, ongoing private databases on prices in specific industries;
- public compliance commitments offered by large corporations and registered with the Commission;
- price index statistical series compiled by the Australian Bureau of Statistics (ABS) for the consumer price index and price indexes relating to the manufacturing and building, construction and services industries;
- State regulatory authorities and State/local government business enterprises (in relation to certain industries such as electricity, gas, public transport); and
- industry and professional associations.

Many of these information sources provide the Commission with specific prices charged by specific businesses.

The combined scope of the commissioned surveys is over three million prices across approximately 10 000 outlets. The surveys involve visits by price collectors to stores across all States and Territories, in capital cities, regional centres and medium and small country towns.

In addition, from early January 2000 the Commission has commissioned monthly price collections of household items commonly purchased from supermarkets. Prices of 100 items are collected each month from about 300 supermarkets across all States and Territories, in capital cities, regional centres and small country towns.

The Commission is also using established private price databases to monitor particular categories of products, such as motor vehicles, TVs, stereos, electrical appliances and financial services to households and businesses (including bank fees and charges).

Checking of petroleum product prices includes an expansion of the Commission's existing petrol price monitoring of capital city petrol, diesel and LPG prices. Monitoring covers nearly one-third of total retail petrol outlets in major cities and regional and rural Australia.

The Commission is also checking price changes on a number of household services, including house cleaning, clothes dry cleaning, shoe repairs, legal services, motor vehicle tune-up, hairdressing, child care, sports lessons, GP medical services, dental services, building design services and architectural services.

Price changes revealed from commissioned price collections and established price databases are assessed against the Commission's expectations of price changes resulting from the New Tax System.

Community information

Performance indicators

- Publication of new and amended provisions of the Trade Practices Act and new ACCC procedures.
- ACCC policy and positions formulated — discussion documents and guidelines on competition initiatives and regulatory mechanisms prepared, disseminated and discussions to take place with Government, industry and consumers.

The Commission has a comprehensive communication strategy in place to promote compliance with the law prohibiting price exploitation in relation to the New Tax System. The aim is to raise awareness in the community for consumers and business about rights and obligations in relation to price changes and the New Tax System.

The communication strategy reflects the differing needs of the two major target groups: business and consumers. In addition, communication strategies targeting both these groups have been developed for non-English speaking background and Aboriginal and Torres Straight Islander audiences.

The key elements of the business strategy are:

- *Small business compliance guide*;
- *Small business cost savings estimator*;
- *Small business retail price adjustor*;
- *GST News for business* publications;
- *GST checklist* publications;
- seminar program;
- business information network; and
- industry association liaison and business presentations.

The *Small business compliance guide*, which was developed in the March quarter, explains the guidelines in detail and contains numerous examples and illustrations of the concepts in the guidelines. It also contains practical compliance tips and checklists. The guide will serve as a reference manual throughout the transition period. It is available in hard copy and electronic form through the website and on CD.

The *Cost savings estimator* is a software tool that assists businesses to calculate likely cost changes in business inputs arising from the New Tax System changes. The *Retail price adjustor* assists small retailers to adjust their retail prices taking into account cost savings in overheads, the removal of Wholesale Sales Tax (WST) and adding GST. It also calculates the amount of WST in stock-on-hand. These tools are available on the website and on CD.

For the month of June 100 000 businesses accessed the pricing kit through the website. Businesses are using the complete package of materials provided by the Commission with a further 106 000 publications accessed during the same period.

The key elements of the consumer strategy are:

- *Australia's everyday shopping guide with the GST* booklet;
- an advertising campaign;
- point of sale material;
- the National Consumer Liaison Group;
- a consumer information network;
- *GST talk* publications;
- *How to make a complaint* brochure; and
- a consumer newsletter.

On 23 May 2000 the Commission issued a guide and wallet-sized booklet in a plastic wrapper titled *Everyday shopping guide with the GST* containing estimates of how prices are likely to change due to the New Tax System in the six months from 1 July 2000.

The list of commonly purchased household goods and services gives consumers the estimated percentage shift in a price as a result of the New Tax System changes. An example price is also given in the guide to illustrate the impact of the percentage change.

The guide is an estimate of price changes and recognises that prices may vary for reasons other than the tax changes, e.g. exchange rates, business costs, competition and regional factors.

The estimated price changes were independently calculated by the Commission drawing on a number of sources of indirect tax and pricing information including industry data and economic modelling. The estimates reflect the impact of the tax changes on businesses in

the short term. Competitive forces may well mean that price rises are lower in some cases and falls greater than shown in the guide.

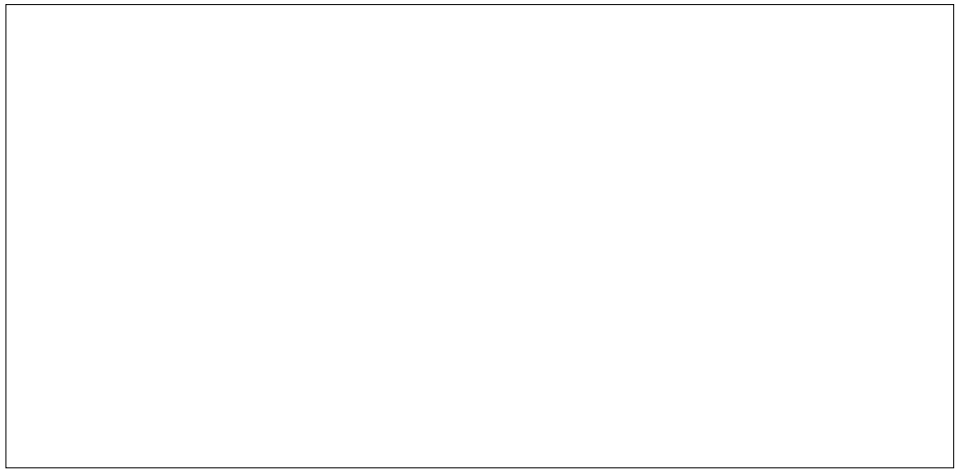
The Commission undertook an extensive advertising program to inform the community about the expected tax-related price changes during the period of release. Advertisements were displayed in most Australian newspapers, including rural and regional Australia.

In the months leading up to 1 July 2000 a number of articles and 'Q&As' provided by the Commission Chairman appeared in major metropolitan daily newspapers, the rural and regional press, and industry magazines and newsletters targeting community and industry groups. The Commission also provided information and assistance to the media for numerous 'GST specials' in the lead-up to 1 July 2000.

Website

The Commission launched its GST website on 9 March 2000. The website is a dynamic resource for both business and consumers. It has a facility for sending inquiries or complaints to the Commission, media releases, frequently asked questions and all GST publications.

The overall demand for GST material from the Commission website in the month of June was 1 528 141 hits, 287 141 page views and 44 084 unique-user sessions lasting more than 15 minutes.



GST price line

Calls to the price line range from inquiries about expected price changes and how to determine cost savings to complaints about the cost of a cup of coffee and information about substantial breaches of the Act.

Complaints are analysed daily and investigated if price exploitation looks apparent.

From July 1999 to 30 June 2000 there were 79 367 complaints and inquiries logged into the Commission's reporting system. Of these, 58 794 (74 per cent) were GST matters. Of these 43 317 (74 per cent) were inquiries and 15 477 (26 per cent) were complaints. The 10 most popular industries were:

Complaints	**Percentage**
General insurance	13.3
Retailing (not elsewhere classified)	10.0
Supermarket and grocery stores	8.0
Central government administration	5.6
Specialised food retailing (not elsewhere classified)	4.8
Domestic appliance retailing	2.5
Automotive fuel retailing	2.4
Accommodation	2.4
House construction	2.2
Newspaper, book and stationery retailing	1.3

Inquiries	**Percentage**
Retailing (not elsewhere classified)	15.4
Central government administration	13.3
General insurance	6.1
Supermarket and grocery stores	3.9
Domestic appliance retailing	2.8
Wholesaling (not elsewhere classified)	2.6
House construction	1.8
Accommodation	1.6
Business services (not elsewhere classified)	1.6
Car retailing	1.5

Public compliance commitments

A public compliance commitment (PCC) is a voluntary commitment, signed by the chief executive officer of a corporation, stating that the corporation is committed to complying with the Commission's price exploitation guidelines. It shows a measure of corporate leadership and good public intent on the part of big businesses.

The main purpose of a PCC is to establish an effective liaison and information reporting regime, which gives a corporation a level of comfort by minimising the risk of breaching the price exploitation provisions of the Act. It serves as an assurance to the community and the Commission that no unfair advantage will be taken of the New Tax System changes to increase margins, although a PCC will not, in any way, indemnify the issuer from enforcement action if circumstances warrant such action.

Below is the full list of corporations whose PCCs can be viewed on the Commission's website <http://www.accc.gov.au> within the public register section:

Ansett Holdings Ltd
Australia and New Zealand Banking Group Ltd
Australia Post
Berri Ltd
BOC Gases Australia Ltd
British American Tobacco Australasia Ltd
Burns, Philp & Company Ltd
Cable & Wireless Optus Ltd
Capral Aluminium Ltd
Coca-Cola Amatil Ltd
Coles Myer Ltd
Commonwealth Bank of Australia
David Jones Ltd
Department of Infrastructure — Victoria
Ergon Energy Ltd
Estee Lauder Pty Ltd
GE Australia
Goodman Fielder Ltd
Imperial Tobacco Australia Ltd
Lend Lease Corporation Ltd
Qantas Airways Ltd
Rebel Sports Ltd
Strathfield Group Ltd
Stryker Australia Pty Ltd
Sydney Airport Corporation
Telstra Corporation Ltd
The Broken Hill Proprietary Company Ltd
Toll Holdings Ltd
Tricon Restaurants Australia Pty Ltd
Unilever Australia Ltd
United Distillers and Vintners (Aust.) Ltd

Westfield Holdings Ltd
Westpac Banking Corporation
Woolworths Ltd

Compliance and enforcement

Performance indicator

- Appropriate action taken to ensure no business takes unfair advantage of the New Tax System.

The Commission has taken enforcement action against a number of businesses for GST-related matters. Results include refunds to consumers who have been overcharged, apologies and corrective advertising by the business and publicising the action taken.

From July 1999 to 30 June 2000 the Commission investigated 1257 GST-related matters. Over half of these resulted in the Commission taking no further action because of satisfactory explanations given by the businesses concerned. The vast majority of those that proceeded further resulted in satisfactory administrative outcomes. Those that were finalised before 1 July 2000 included 15 court enforceable undertakings. The remainder were underway at the time of writing. The s. 87B undertakings can be viewed on the Commission's website <http://www.accc.gov.au> within the public register section.

On 26 May 2000 the Commission commenced court action against Video Ezy Australasia Pty Ltd in its first price exploitation case (see p. 35).

Summary of key outcomes

8 July 1999	*A New Tax System (Trade Practices Amendment) Act 1999* receives Royal Assent. Introduced part VB into the *Trade Practices Act 1974*.
12 July 1999	Commission obtains restraining order against Michael Philip Ivanoff for scheme spreading GST confusion. Ivanoff later gaoled for contempt.
13 July 1999	Commission issues guidelines under s. 75AV and begins extensive price monitoring.
29 July 1999	Wholesale Sales Tax reduces from 32% to 22% on certain items.
23 September 1999	Qantas signs first public compliance commitment.
October 1999	Commission begins monitoring tobacco product prices.
12 October 1999	Insurance industry investigated including issuing formal notices under s. 75AY.
1 November 1999	Tobacco excise change. Commission informs retailers of their legal obligations and continues price monitoring.
26 November 1999	Ansett signs public compliance commitment.
December 1999	Commission undertakes first of the major price collections.
22 December 1999	Amendments to the Act give Commission power to take action over unreasonable price rises before 1 July 2000.

14 December 1999	National consumer group conference.
January 2000	Public compliance commitments guide published.
30 January 2000	Section 75AY 'please explain' notice sent to nine general insurance companies.
3 February 2000	Forum on price display with retailers, consumers and State fair trading agencies.
16 February 2000	Big W withdraws dual price tickets after Commission intervention.
29 February 2000	Zurich refunds $50 000 after GST price line complaint.
9 March 2000	Release of the revised guidelines.
9 March 2000	GST website launched.
20 March 2000	GST price line capacity extended.
29 March 2000	Revised guidelines gazetted.
7 April 2000	First price exploitation notice issued against Video Ezy.
23 May 2000	Release of *Australia's everyday shopping guide with the GST*.
26 May 2000	Release of *GST, everyday prices and you* pricing information for Aboriginal and Torres Strait Islander people.
26 May 2000	ACCC takes court action against Video Ezy in first price exploitation case.
29 May 2000	Release of small business kit — the *Compliance guide for small business,* the *Cost savings estimator* and the *Retail price adjustor*.
13 June 2000	Release of *GST, everyday prices and you* pricing information for Australians from non-English speaking backgrounds.
15 June 2000	Australian Consumers' Association links with Commission in launch of GST interactive website.
22 June 2000	Commission officers visit small businesses throughout Australia to assist in GST transition.
June 2000	More than 30 of Australia's leading corporations sign public compliance commitments.
Ongoing	Enforcement activity including 15 s. 87B undertakings being given to the Commission.
Ongoing	Over 350 000 information bulletins distributed throughout the community.
Ongoing	Over 58 000 complaints and inquiries received by the GST price line.

Compliance with the Act

Output 1.1.1: The proper administration and enforcement of the *Trade Practices Act 1974*, the *Prices Surveillance Act 1983* and related laws.

Objective

To secure compliance with the Trade Practices Act by:

- responding to complaints and inquiries; and
- observing market conduct and initiating action where necessary.

Enforcement and investigation

Performance indicators

- Responded to complaints and inquiries.
- Appropriate enforcement action taken and goals achieved, i.e. unlawful conduct stopped, compensation gained for loss or damage, compliance with the Act, pecuniary penalty.
- Promoted competitive pricing where possible and restrained price rises in markets where competition is less than effective.
- Appropriate action taken to ensure no business takes unfair advantage of the New Tax System.

The Commission continued to actively enforce all key areas of the Trade Practices Act and focused on outcomes directed at promoting competition and fair trading. The year saw a heavy commitment to both investigation and compliance. At one stage the Commission had 55 matters before the courts.

The New Tax System, including the GST and the Commission's compliance role, greatly increased the Commission's enforcement work leading up to and after its introduction on 1 July 2000. The Commission investigated a number of matters involving GST-related misrepresentations, some of which were resolved by administrative settlements including

11 s. 87B undertakings. One matter involving alleged price exploitation, Video Ezy, was subject to court proceedings with a trial date to be fixed (see p. 35).

The Commission, through the Enforcement Committee, continues to ensure its enforcement work reflects effective outcomes, innovative approaches and the most effective use of its enforcement resources.

When selecting matters the Commission is influenced by the potential for action to have a substantial deterrent effect, promote general compliance with the Act and/or achieve redress for interests adversely affected by the conduct in question. Section 87B is an important avenue for resolution, made more effective by an Australian standard for compliance programs. Generally, offending parties who make settlements under s. 87B introduce an internal compliance program consistent with that standard.

The Commission's enforcement and compliance work also arose in both the traditional and emerging areas of commerce. Substantial penalties were awarded in hard-core, price-fixing cases, for example, in the scrap metal and fire protection industries (see p. 32). Secondary boycotts also featured in the Commission's enforcement work with unions. For example, the Commission instituted proceedings for alleged conduct by the Maritime Union of Australia covering demands on hold-cleaning by its members. It also raised concerns in the building sector about alleged boycott activity in breach of the Act.

The year saw a continuing focus on matters involving the misuse of market power. Although the Commission did not establish its case in the Boral matter (see p. 33), it has since filed an appeal before the Full Bench of the Federal Court and is awaiting judgment. An important private action was the Melways case (see p. 34), which was appealed to the High Court. The Commission was granted leave to intervene in this matter and remains of the view that the misuse of market power provision is important and needs to be increasingly tested in the courts. The Commission hopes this will provide some direction and certainty to the conduct of Australian firms, particularly those in concentrated markets and in markets subject to technological change and innovation. The provision is also important for conduct that may occur in the deregulatory sectors, such as energy. For example, the Commission acted on two matters when incumbents used their market power to pre-empt emerging competition.

The Commission also noted important developments overseas, especially the Microsoft case in the United States when Microsoft was found to have monopoly power in computer-related markets and that it used this power to thwart competition.

Global influences on Australian markets continue to affect many areas of the Commission's activities. In 1999–2000 the Commission began to investigate cartels with international features and with operations that affected Australian markets, for example, the high profile vitamin matter (see p. 33). Such investigations require effective communication and cooperation with overseas agencies, assisted by international cooperation agreements and treaties, such as the Mutual Antitrust Enforcement Assistant agreement with the US.

Competition and consumer protection issues surrounding e-commerce, especially the development in many sectors of electronic marketplace buying groups, are increasingly attracting the Commission's attention. While these groups can greatly increase efficiency and produce pro-competitive outcomes the Commission will examine any such arrangements that may have anti-competitive elements or raise entry barriers to key market segments.

The Commission has also instigated enforcement action under the unconscionable conduct provisions of the Act in three cases relating to small business on matters connected with commercial leases and franchising. On 15 June 2000 the Federal Court granted a declaration against the landlord of Adelaide International Food Plaza finding that it had engaged in unconscionable conduct towards one of its tenants (see Leelee Pty Ltd on p. 187). This was the first such declaration under the s. 51AC provision.

However, in other instances, breaches of the Act involving small businesses do not result in court proceedings and the Commission has in various instances obtained undertakings and compensation for the parties suffering detriment.

While the new legislation has only been in place for a relatively short period there are indications that the unconscionable conduct provisions are being taken seriously by larger businesses in sectors such as retail tenancy.

It is notable that for some quarters in 1999–2000, complaints to the Commission in relation to unconscionable conduct and franchising problems have reduced. However, the numbers are volatile and the trend remains unclear. A considerable challenge remains in making medium-sized businesses and some smaller businesses aware of their responsibilities under the Act, particularly in dealing with other smaller businesses.

The Commission's work in outreaching to small business, franchisees and rural and regional communities is set out in chapter 5 of this report.

In the fair trading and product safety areas major consumer problems were addressed through the coordination of enforcement action and other compliance initiatives. For example:

- investigations into misleading origin labelling reinforced the compliance message of the Commission's education campaign to help business understand recent origin labelling amendments;
- a major education initiative to help the providers of health services understand their obligations to consumers under the Act was supported by investigations into misleading health claims affecting consumers and legitimate providers of health services;
- marketplace surveys to detect non-compliance with mandatory safety standards were complemented by court action concerning motor cycle helmets, sunglasses and fashion spectacles and children's bicycles;

- earlier industry consultation and education about debt collection practices was reinforced by the Commission's first case alleging undue harassment in relation to the payment of goods or services; and
- coordination and cooperation with the Commission's international counterparts ensured more effective investigation of misleading conduct over the Internet.

The professions, particularly those in the health sectors, are an area to which the Commission devoted increasing enforcement resources. Most attention was paid to compliance programs and investigations into misleading and deceptive behaviour and anti-competitive conduct. In late July 1999 the Commission instituted proceedings against the West Australian branch of the Australian Medical Association and Mayne Nickless Ltd alleging that they were involved in price fixing and other anti-competitive conduct (see p. 33).

On 25 March 1999 the Australian Senate agreed to an order requiring the Commission to report every six months on 'anti-competitive or other practices by health funds or providers which reduce the extent of health cover for consumers and increase their out-of-pocket medical and other expenses'. The first report to the Senate for the period ending 30 December 1999 was tabled in April 2000.

Figure 3.1. Top five industries pursued 1999–2000

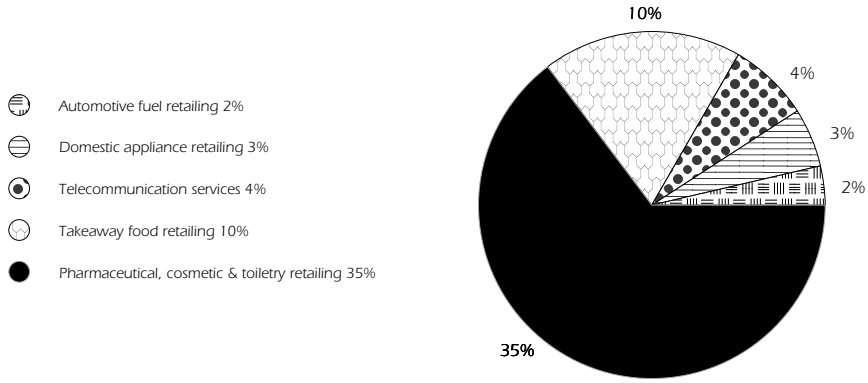


Figure 3.2. Top five conduct/issues pursued 1999–2000

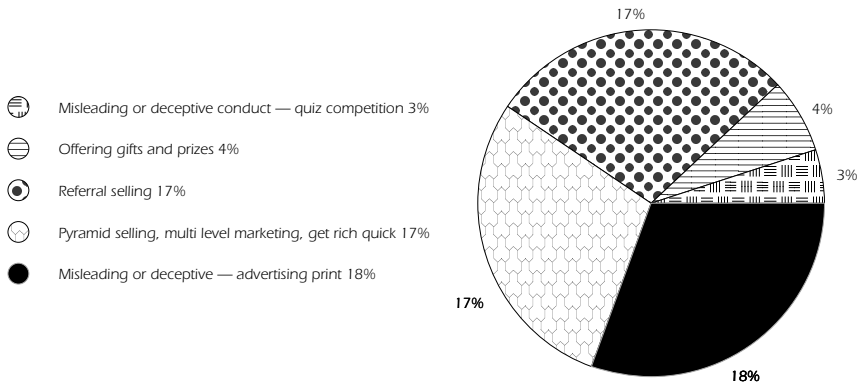
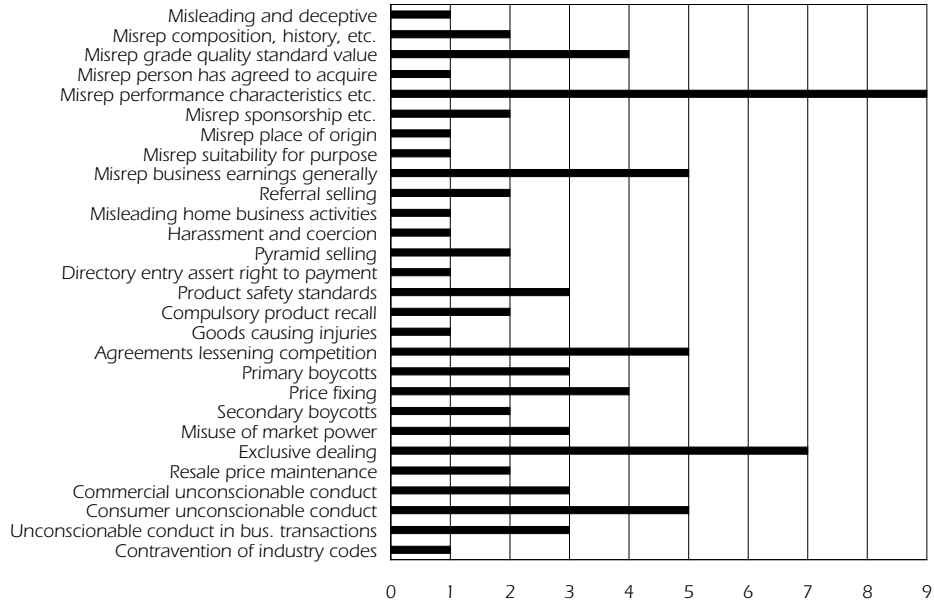


Figure 3.3. Matters at court 1999–2000



Major matters 1999–2000

The following are selected matters that the Commission investigated during the past year. For a complete list, please refer to appendix 1 and the Commission's bi-monthly publication, *ACCC Journal*.

Restrictive trade practices

Anti-competitive agreements

Queensland fire protection industry
Tyco Australia Pty Ltd (trading as Wormald Fire Systems), Grinnell Asia Pacific Pty Ltd (trading as O'Donnell Griffin), Sensor Systems (Australia) Pty Ltd, F&H Pty Ltd (formerly Matthews Fire Alarm Pty Ltd), Burmess Pty Ltd (trading as BEI) and ors

Market sharing (s. 45) and price fixing (s. 45A) (ACCC Journal 27)

On 29 September 1999 the Commission instituted proceedings against 56 respondents. The Commission alleged that a long-standing anti-competitive cartel existed in the markets for the installation of fire sprinkler systems throughout Queensland and for fire alarm systems in and around Brisbane.

On 14 December 1999 the Federal Court, Brisbane ordered companies and individuals to pay penalties totalling $5.17 million, having found the companies had engaged in price fixing and market sharing conduct. Three months later the court imposed penalties and costs of over $1 million on a further four companies and several individuals: Impact Fire Protection Pty Ltd, Enterprise Fire Protection Pty Ltd, Enterprise Fire Protection Electrics Pty Ltd and Associated Fire Systems Pty Ltd.

On 13 June 2000 the Federal Court, Brisbane imposed penalties and costs of a further $2 million on Independent Fire Sprinklers Pty Ltd, Independent Alarm Sprinklers Pty Ltd, Patrick Fire Protection Pty Ltd and Allfire Systems Pty Ltd, together with various individuals. Total penalties in the matter have now reached $8 million and proceedings against remaining parties continue.

J McPhee & Son (Australia) Pty Ltd

Price fixing (s. 45A) (ACCC Journal 27)

Following proceedings instituted three years earlier, the Federal Court, Melbourne found, in December 1995 that J McPhee & Son and three of its employees had attempted to have a competitor enter into a collusive agreement in tendering express freight services to a McPhee client. It also found that the company had entered into a price fixing arrangement with a competitor. The judge imposed penalties of $4 million. On 12 April 2000 the Federal Court dismissed appeals by J McPhee & Son but allowed appeals against the level of penalties imposed by the trial judge. The penalties were reduced to $2.7 million.

Simsmetal Ltd

Attempted market sharing arrangement (s. 45) (ACCC Journal 27)

The Commission alleged that Simsmetal Ltd attempted market sharing in the South Australian scrap steel market. A decision was handed down on 20 June 2000 and penalties of $2 million were handed down on 18 July 2000.

International vitamin cartel

Alleged market sharing (s. 45) and price fixing (s. 45A)

The Commission has been investigating collusive arrangements in Australia concerning an international price fixing and market sharing cartel involving animal nutritional vitamins A and E. The cartel arrangements in Australia involve affiliates of three major multinational vitamin corporate groups, F Hoffmann La Roche Ltd, BASF AG, and Rhone Poulenc SA (now known as Aventis SA). Record fines have been imposed in the United States on F Hoffmann La Roche Ltd and BASF AG for their US participation in the global collusive arrangements and substantial fines have also been imposed on all three parties in respect of their participation in collusive arrangements in Canada. The Commission's investigation is well advanced with all three multinational corporate groups cooperating fully with the Commission's inquiries into the collusive arrangements in Australia.

Australian Medical Association and Mayne Nickless Ltd and ors

Attempted anti-competitive agreements (s. 45), price fixing (s. 45A), and exclusionary provisions (s. 45(4D))

In July 2000 the Commission instituted proceedings in the Federal Court, Perth against the Australian Medical Association (WA branch) and Mayne Nickless Ltd and others alleging they were involved in price fixing and other anti-competitive conduct. The Commission alleged that the AMA, acting on behalf of the visiting medical practitioners (VMPs) at the old Wanneroo Hospital, negotiated with Mayne Nickless the terms and conditions under which the VMPs were to be engaged to provide medical services for the care of public patients at the new Joondalup Health Campus. The Commission alleged that this conduct fixed the prices for those medical services and substantially lessened competition in the market for medical services provided by VMPs.

The Commission also alleged that the AMA attempted to prevent, restrict or limit the supply of medical services by some or all of the VMPs to Mayne Nickless at the Joondalup Health Campus. The Commission is seeking court orders including declarations, injunctions, pecuniary penalties, costs and orders requiring the publishing of public notices, as well as the institution of trade practices compliance programs.

Boral Limited and Boral Besser Masonry Ltd

Alleged predatory pricing and misuse of market power (s. 46) (ACCC Journal 27)

In March 1998 the Commission instituted proceedings in the Federal Court, Melbourne against Boral Ltd and its subsidiary Boral Besser Masonry, alleging misuse of market power. In September the court found that Boral had engaged in below-cost pricing to deter new

entrants and drive competitors out of the market supplying concrete masonry products. However, it did not find that the company had a substantial degree of power in the market, which is essential for establishing a contravention of s. 46. The Commission appealed the matter before the Full Federal Court in February 2000 and is awaiting its decision.

Melway Publishing Pty Ltd vs Robert Hicks Pty Ltd

Misuse of market power (s. 46)

On 20 May 1999 in a private action the majority of the Full Federal Court upheld the decision of Merkel J that Melway Publishing Pty Ltd had breached s. 46 of the Act in refusing to supply Robert Hicks Pty Ltd its *Melway* street directory. On 10 December 1999 Melway was granted special leave to appeal the decision of the majority of the Full Federal Court to the High Court. The matter was heard in the High Court on 2 and 3 August 2000. Given the significance of the issues raised in this appeal the Commission sought, and was granted, leave to intervene. The High Court reserved its decision.

Resale price maintenance

Sundaze Australia Pty Ltd

Resale price maintenance (s. 48) (ACCC Journal 25)

The Commission began proceedings on 18 June 1997 against Sundaze Australia alleging resale price maintenance in relation to Oakley sunglasses. On 17 November 1999 a penalty of $500 000 was imposed in the Federal Court, Brisbane on Sundaze Australia along with restraining injunctions.

Planet Earth

Resale price maintenance (s. 48) (ACCC Journal 26)

On 8 February 2000 the Commission accepted court enforceable undertakings from Planet Earth agreeing not to engage in the practice of resale price maintenance. The Commission initially approached the company, a Sydney-based manufacturer, wholesaler and retailer of t-shirts, in July 1999 following a complaint by a customer.

Boycotts

Construction Forestry Mining Energy Union

Secondary boycott (s. 45D) (ACCC Journal 22)

The Commission alleged that the CFMEU prevented operators of crane hire services from unloading transportable buildings at a construction site in Western Australia. On 2 July 1999 Federal Court proceedings against the CFMEU in Western Australia were concluded with consent orders. They required the union to undertake not to engage in similar conduct, to contribute to the Commission's costs and to implement a trade practices compliance program.

Maritime Union of Australia

Secondary boycotts (s. 45DB(1)), harassment and coercion (s. 60) (ACCC Journal 27)

On 17 April 2000 the Commission instituted legal proceedings against the Maritime Union of Australia (MUA) and three senior MUA officials. It alleged the union had unlawfully hindered and prevented vessels sailing from various Australian ports unless the shipowner agreed to use MUA labour to clean the hold of the vessel. The Commission will be seeking injunctions, declarations, findings of fact, the implementation of a trade practices compliance program, penalties and costs.

Consumer protection

Misleading and deceptive conduct

Australian Taxation Services

Misleading or deceptive conduct (s. 52) (ACCC Journal 22)

Proceedings were instituted on 5 July 1999. The Commission alleged that the company, Australian Taxation Services, and its director, Michael Phillip Ivanoff, sent forms to businesses, which appeared to be issued by the Australian Taxation Office or some other government agency, and misled people into believing that it was compulsory to pay ATS the GST registration fee of $175 for one year or $295 for two years. The trial was completed on 11 November 1999. The respondents were found guilty of contempt, Ivanoff was jailed for three months and ATS fined $5000 with costs to the Commission.

A1 Mobile Radiator Repairs Pty Ltd

Misleading or deceptive conduct (s. 52), misleading representations about certain business activities (s. 59(2)) (ACCC Journal 23)

On 20 August 1999 the Federal Court found that an Adelaide-based franchising business operating in three States, A1 Mobile Radiator Repairs (now in liquidation) and its director, Norman Sidney Trayling, had made misleading claims in promoting the franchise business. The court granted permanent injunctions and ordered the director to pay refunds totalling $77 500 plus costs.

Video Ezy Australasia Pty Ltd

Alleged misleading or deceptive conduct (s. 52), price exploitation in relation to the New Tax System (s. 75AU) (ACCC update, issue 7)

On 25 May 2000 the Commission instituted proceedings in the Federal Court, Sydney against Video Ezy Australasia Pty Ltd alleging that it had engaged in price exploitation and had made misleading representations about the introduction of the GST. The Commission has joined an associated company and various directors and senior managers to the action. The proceedings followed the issuing of the Commission's first price exploitation notice under s. 75AW of the Trade Practices Act to Video Ezy.

Country of origin claims

National Foods Limited

Misleading or deceptive conduct (s. 52), country of origin claims (s. 65AC) (ACCC Journal 23)

After Commission investigations, National Foods Limited agreed to remove the 'Product of Australia' representation from its strawberry yoghurt and strawberry Fruche® products. The Commission accepted that National Foods made a judgment in good faith as to the meaning of 'significant ingredient' and did not intend to mislead customers. However, the Commission believed that a consumer could be misled by the representation.

YBD Pty Ltd

Misleading or deceptive conduct (s. 52), the place of origin of goods (s. 53(eb)) (ACCC Journal 26)

On 31 January 2000 YBD Pty Ltd gave the Commission a s. 87B court enforceable undertaking to change its labelling on a number of its food products, removing the words, 'Product of Australia' and replacing it with 'Australian Made Australian Owned'.

Unconscionable conduct

Acepark Pty Ltd

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53), unconscionable conduct in consumer transactions (s. 51AB), false or misleading representations about work-at-home schemes (s. 59) (ACCC Journal 23)

On 27 July 1999 the Commission accepted a s. 87B undertaking from Acepark Pty Ltd to cease legal proceedings against named customers for recovery of outstanding payments and release them from further claims, to make refund payments to certain customers, compensate customers for proven losses and set up a structured complaints handling system.

Qantas

Misleading or deceptive conduct (s. 52) (ACCC Journal 26)

Following discussions with the Commission in January 2000, Qantas Airways has adjusted its service charges on its frequent flyer accounts.

Industry codes

Mobile Computer Cleaning Pty Ltd

Contravention of industry codes (s. 51AD) (ACCC Journal 25)

On 30 November 1999 the Commission accepted a s. 87B court enforceable undertaking from Mobile Computer Cleaning in accordance with the Franchising Code of Conduct. A franchisee had complained that he had been induced to pay for a franchise which, had he been afforded proper disclosure, he may not have chosen to purchase.

Pyramid selling

World Netsafe Pty Ltd and Terence Butler

Misleading or deceptive conduct (s. 52), false representations (s. 53), referral selling (s. 57) and pyramid selling scheme conduct (s. 61) (ACCC Journal 27)

The matter involves alleged misrepresentation about the marketing of an 'ATTM' card (Asset Transfer Teleminute Manager) and that people could make money by participating in the scheme. The matter is set down for hearing on 4 December 2000.

Product safety/product liability

Lay and Sons Organisation Pty Ltd, trading as Asian Importer–Exporter and Company

Failure to comply with product information standard (s. 65D) (ACCC Journal 22)

On 30 April 1999 the Commission accepted a s. 87B court enforceable undertaking from Lay and Sons to cease supplying cigarettes which failed to meet the requirements of the Consumer Product Information Standard for Tobacco.

Dimmeys Stores Pty Ltd and Starite Distributors Pty Ltd

Non-compliance with a mandatory consumer product safety standard (s. 65C) (ACCC Journal 24)

On 26 August 1999 the Federal Court, Melbourne fined Dimmeys Stores $60 000 for supplying children's bicycles which failed to comply with the mandatory consumer product safety standard for pedal bicycles. The importer of the bicycles, Starite Distributors Pty Ltd, was also fined $30 000. Dimmeys and Starite pleaded guilty to the Commission's charges.

Hot Tuna Pty Ltd and Crumpler

Non-compliance with a mandatory consumer product safety standard (s. 65C) and misleading or deceptive conduct (s. 52) (ACCC Journal 25)

In November 1999 the manufacturers of Hot Tuna and Crumpler bean bags cooperated fully with the Commission and gave undertakings to notify retailers to withdraw remaining bean bags from sale and to make alterations to this stock to ensure compliance. They also undertook to publish product safety recall notices in major newspapers in those States where sales took place.

Both companies' bean bags failed to comply with a mandatory safety standard that requires that bean bags, bean bag covers, and packages containing the bag filling, must carry a warning. They also failed to comply with that part of the standard which requires they have a child resistant slide fastener on every opening through which the bean bag filling can be inserted or removed.

Mergers and asset sales

Performance indicators

- Merger proposals likely to have an anti-competitive effect opposed or authorised where there is sufficient public benefit.
- Granted statutory immunity from legal proceedings where there is sufficient public benefit concerning some anti-competitive practices (as prescribed by the Trade Practices Act).

Over the past few years there has been a slight increase in the number of mergers examined by the Commission, from 200 in 1998–99 to 234 in 1999–2000. Of those considered, few have been opposed by the Commission. The proportion of mergers which in the Commission's view substantially lessen competition has remained roughly constant at less than 4 per cent per year.

One recent trend has been the major increase in the number of global mergers. Mergers such as Exxon/Mobil, British American Tobacco/Rothmans and Alcoa/Reynolds have generated competition issues in many countries. Australian companies are also engaged in substantial overseas acquisitions. One consequence of this is that many companies now operate around the globe. The Commission recognises that many of these mergers and acquisitions are driven by the need to improve efficiency and remain competitive.

The Commission has a number of concerns regarding global mergers. Every proposal is examined on it own merits within the context of its impact on competition in Australia. It should not be assumed that Australia will approve a merger between Australian subsidiaries of two overseas companies because the parent companies are merging. The Commission rejected the acquisition of the Cadbury Schweppes soft drinks brands by Coca-Cola in Australia despite the acquisition being approved in a number of other countries. It is essential to the welfare of Australians that the Australian market remains competitive, and the Commission will not approve a merger if it leads to a substantial lessening of competition in Australia.

A second and related concern is that while the Commission recognises that global competition is occurring in many markets, the fact that many Australian companies earn profits from overseas does not in itself lead to the conclusion that markets are global. Many global companies operate in local and national markets. Global food companies, for example, have world brands and these brands are sold in many countries. However, there is not necessarily a global market. The goods are not traded between countries and the prices across the countries do not move to equality. Other global companies operate in truly global markets, for example, major commodity producers sell in global markets and are subject to global competition.

In merger market analysis the Commission considers the nature of competition in a local, regional, national and international context. Its merger guidelines note the importance of international competition in merger analysis. The Commission has not rejected any merger

where foreign competition via imports represented at least 10 per cent of the total market in the medium term.

It is sometimes argued by business that the merger provisions of s. 50 of the Trade Practices Act prevent mergers necessary for Australian firms to achieve a size sufficiently large to compete in global markets. This argument has often been referred to as a 'critical mass' or 'national champion' argument.

However, it is important to recognise that obstacles to export growth are not necessarily overcome by firms developing domestic market dominance. Size is not always necessary to enable firms to compete in world markets and a merger may not necessarily increase a firm's export potential. Further, there is substantial evidence that successful export performance is enhanced by domestic competition which stimulates efficiency and innovation rather than by domestic market power and monopoly.

It is also possible that the firm that gains domestic market dominance may use that dominance to price domestically at import parity and effectively use high domestic prices to subsidise its exports. Such an outcome is not an appropriate objective of Australian competition policy.

The authorisation provisions of s. 50 of the Act are available to those firms that want to ensure their international competitiveness through acquisition. Australian competition law provides for the possibility of granting authorisation to a merger that substantially lessens competition if it can be shown that there are public benefits to offset the competition concerns. Since 1993 the Act has explicitly stated that export generation, import replacement or contributions to the international competitiveness of the Australian economy are public benefits.

Consequently, the merger provisions of the Act are not an obstacle to allowing Australian firms to merge to achieve the scale needed for international competitiveness, providing that there is public benefit.

The use of s. 87B undertakings also provides flexibility to merger parties. Should the Commission take the view that a merger is likely to breach s. 50, the merger parties may offer undertakings designed to overcome the anti-competitive effects. The Commission favours structural undertakings that replicate the competitive dynamics otherwise lost by the merger. However, in 1999–2000 the Commission accepted behavioural undertakings from the Commonwealth Bank of Australia after finding that its acquisition of Colonial Limited would be likely to breach s. 50. The decision to accept such undertakings was related to some unique market circumstances, in particular geographic markets, and the Commission will monitor these behavioural undertakings very carefully.

Over the next few years the Commission expects that one of the most significant merger issues will be mergers in the deregulating sectors of the economy. In recent years the Commonwealth, State and Territory Governments have initiated a range of pro-competitive reforms involving horizontal and vertical disaggregation of government-owned monopolies

and subsequent privatisation. The Commission would be concerned should these privatised entities attempt to replicate their previous market structures via mergers and joint ventures.

The rapid growth of e-commerce based business-to-business arrangements will also generate s. 45 and s. 50 issues. The establishment of online buying groups involving competitors will require the Commission's close attention. In many circumstances these arrangements are unlikely to cause competition concerns. However, the Commission will closely examine all such buying and selling arrangements.

The last year in summary

Throughout 1999–2000 the Commission analysed 234 proposals for mergers and joint ventures. It objected to nine because they were likely to lead to a substantial lessening of competition. In the Australian Stock Exchange/Sydney Futures Exchange matter, discussed later, the parties withdrew their proposal following the Commission's indication that it would oppose the acquisition. In another one of these nine matters, the proposed acquisition by Telstra Corporation of OzEmail Limited, the Commission formed a preliminary view that there would be significant competition concerns if it was to proceed, following which the transaction did not progress. In another five of these matters, the Commission accepted court enforceable undertakings under s. 87B, following which the proposals proceeded. In two other cases, parties approached the Commission with confidential merger proposals. In both, the Commission expressed the view that it was likely to have substantial concerns if the acquisitions were to go ahead. In both cases, the acquisitions did not proceed.

The Commission did not make a final decision on 26 matters. In many of these cases the parties withdrew their proposals before the Commission expressed a final view. It is not uncommon for parties to a merger proposal to request a confidential view from the Commission about whether the proposal was likely to breach s. 50. Often when the Commission raises serious concerns at a preliminary level, the parties withdraw their proposal.

Focus over the past year

The nature of the merger and acquisition proposals considered by the Commission over the past year has largely reflected the increasing shift in the Commission's work towards sectors providing services, as opposed to traded goods. For example, the Commission has considered proposals for mergers, acquisitions and joint ventures in the financial and telecommunications sectors.

Financial sector mergers have been both in the banking and non-banking sectors. Some of these are discussed later, including the Commonwealth Bank's proposed acquisition of Colonial Limited, National Australia Bank's acquisition of the financial services businesses of Lend Lease Corporation, and the proposed acquisition of the Sydney Future Exchange by the Australian Stock Exchange.

Significant matters that the Commission looked at in the telecommunications sector were Telstra's proposed acquisition of OzEmail, and the subsequent proposal by eisa to acquire OzEmail in February 2000.

Another telecommunications issue the Commission continues to monitor is the sale of spectrum licences. The Commission regularly consults with the Department of Communications, Information Technology and the Arts on competition concerns that may arise from the auctioning of these licences. The Commission has set competition limits for the auction of the 3.4 GigaHertz band and is currently examining competition issues surrounding the 27 GigaHertz band and expects to look at datacasting and third generation mobile licences during 2000–01.

In May 2000 the Commission examined a proposed joint venture arrangement in the film exhibition industry between Hoyts, Village Roadshow and Greater Union in the Sydney central business district. After considering the matter the Commission said it would closely examine any further such proposals. The Commission also examined the proposal by Roadshow Entertainment and Warner Home Video to enter into a 50/50 joint venture for their sale and sales support services and decided not to object.

Other examples of mergers considered by the Commission in 1999–2000 include:

- Westfield Group's acquisition of the management contract for the Carindale Regional Shopping Centre in Brisbane in supplying regional shopping centre retail space;
- Leighton Holdings' acquisition of the John Holland Group in the markets for various forms of non-residential construction services; and
- Air New Zealand's proposed acquisition of Ansett Holdings in the airline services industry.

Trends within the financial services sector

During this year the trend towards consolidation within the financial services sector has grown. Rather than horizontal mergers, firms tend to seek to acquire other firms offering products complementary to their own. For example, banking institutions have shown interest in acquiring industry participants providing non-banking services, whether or not these are additional to banking services, such as the National Australia Bank/Lend Lease Corporation matter and the Commonwealth Bank/Colonial Limited matter.

Privatisation, deregulating industries and asset sales

During the past 12 months the focus of the Commission's work in privatisations and asset sales moved from Victoria to South Australia, where four businesses created from the restructuring of the electricity supply industry have been sold. Another three are to be privatised in 2000–01.

In late 1999 the Commission considered the sale of ETSA Power and ETSA Utilities, which are, respectively, the incumbent South Australian electricity retail and distribution

businesses. This was followed in 2000 by the privatisation of the two gas-fired generation businesses, Optima Energy and Synergen.

Many of the parties that approached the Commission about bidding for these assets already hold interests in Victorian electricity generation and retail/distribution sectors. Some also hold relevant interests within South Australia. Common ownership of electricity assets in Victoria and South Australia raises various issues, including the extent to which the electricity industries in the two States will integrate over time.

The Commission assessed each bid, taking into consideration information gained through market inquiries and that supplied by the South Australian Government and the bidding parties. For most, the proposed combination of assets did not raise substantial competition concerns.

Section 87B undertakings

When the Commission has had concerns over the competitive implications of a proposal it has generally been receptive to the parties providing court enforceable undertakings addressing those concerns.

Section 87B undertakings are an important tool available under the Trade Practices Act to further its goals of improved competition and efficiency in markets. Such undertakings are a flexible alternative to the Commission simply opposing an acquisition that is likely to substantially lessen competition.

Parties commonly use s. 87B undertakings to address the specific concerns raised by the Commission. Over the past year the Commission accepted s. 87B undertakings for five matters, listed below in table 3.1. The Commission keeps a public register of s. 87B undertakings granted and further details of individual undertakings are available in the *ACCC Journal*.

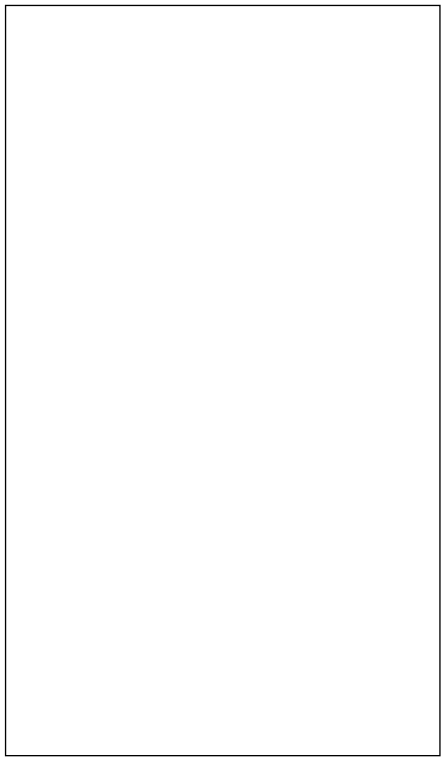
Table 3.1. Section 87B undertakings relating to mergers and acquisitions accepted by the ACCC, 1999–2000

Acquirer	Target	Date accepted
L'Air Liquide SA and Air Products & Chemicals Inc	BOC Gases Australia Limited	8 February 2000
Smorgon Steel Group Ltd	Metalcorp Limited	23 February 2000
Australian Pharmaceutical Industries Limited	Washington H Soul Pattinson & Co Ltd	16 March 2000
Joint venture proposal between Australian Stock Exchange and Perpetual Trustees Australia Limited	Joint venture proposal	8 May 2000
Commonwealth Bank of Australia	Colonial Limited	26 May 2000

Major matters considered over the year

Australian Stock Exchange/Sydney Futures Exchange

In June 1999 the Commission expressed significant concern at the proposed merger of the Australian Stock Exchange (ASX) and the Sydney Futures Exchange (SFE). Following extensive market inquiries the Commission found that, as separate entities, ASX and SFE would be likely to compete strongly in the future for new products. In contrast the merged entity would be unlikely to face significant competition from foreign companies and barriers to entry faced by possible Australian competitors, including electronic communications networks, were high.



The Commission found that although new technology would have the effect of expanding the market by making transactions quicker and more efficient, the market power of the incumbent exchanges was unlikely to be affected as there was little likelihood of foreign exchanges being able to compete effectively in the domestic market in the foreseeable future. This was due to factors such as national laws regulating entry.

The Commission was also concerned that investors can only transfer legal title to Australian equities electronically through ASX's CHESS system. In addition, investors were more likely to trade Australian equities on Australian exchanges because of lower communication costs, better liquidity for those equities and the ability to transfer legal title to those equities electronically. In light of these findings, the Commission said it was likely to oppose the acquisition if it were to go ahead, and the parties withdrew their proposal.

Telstra Corporation/OzEmail Limited

In January 2000 the Commission expressed significant concerns over the proposed acquisition by Telstra of OzEmail. After investigating the proposal it found the acquisition would give Telstra a share above 40 per cent of the national market for providing residential Internet subscriber services. If the acquisition had proceeded, the next largest Internet service provider would have had barely more than 6 per cent of all subscribers.

The Commission considered the proposed acquisition could have a detrimental impact on the competitive dynamics for Australian online content, online advertising and electronic commerce. Given that these Internet markets are still in early stages of development in

Australia, the Commission believed the emergence of a dominant Australian ISP could retard competition and stifle innovation in these evolving markets. It therefore decided the acquisition would substantially lessen competition.

Commonwealth Bank of Australia/Colonial Limited

On 26 May 2000 the Commission decided it would not oppose the proposed acquisition of Colonial Limited by the Commonwealth Bank of Australia, subject to significant undertakings.

The Commission had first conducted extensive market inquiries and analysed in detail both the banking and non-banking financial services markets. It concluded that in the product categories of retail insurance, retail investment and retirement savings, wholesale funds management and large corporate banking, the proposed acquisition was unlikely to lessen competition to any significant extent.

The Commission was concerned, however, that the merger would substantially lessen competition in the markets for deposit/term products in Tasmania, transaction accounts in both regional New South Wales and Tasmania, and small and medium enterprise banking in both regional New South Wales and Tasmania.

In view of the undertakings the Commission concluded the anti-competitive detriment, which would otherwise be caused by the merger, would be minimised and it would not oppose the merger.

Adjudication on competition issues

Performance indicator

- Granted statutory immunity from legal proceedings where there is sufficient public benefit concerning some anti-competitive practices (as prescribed by the Trade Practices Act).

The authorisation process confers on the Commission the power to authorise proposed mergers and certain anti-competitive conduct that would otherwise be in breach of the Trade Practices Act. Exclusive dealing can be notified.

Authorisation and notification provide immunity from court action. In broad terms the Commission is empowered to grant authorisation only where it believes that the conduct or merger in question delivers offsetting public benefits.

Because it exempts conduct from the law, authorisation is a very public process in which the Commission calls for submissions from interested parties and, except for mergers, must publish a draft determination and provide the opportunity for a pre-determination conference with interested parties before making its final determination. It is also required to keep a public register of all documents relating to an authorisation decision — other than commercially sensitive documents, for which confidentiality may be granted.

The Commission cannot compel parties to apply for authorisation. It does, however, have a statutory obligation to deal with the applications it receives.

The Commission's adjudication workload increasingly reflects matters arising from the impact of competition policy reform on areas once beyond the reach of the Trade Practices Act, notably the electricity and gas industries.

Table 3.2. Adjudication applications, notifications and considerations 1999–2000

Authorisation applications subject to Commission consideration — 1999–2000					
	Opening balance	**New applications**	**Applications withdrawn**	**Applications decided**	**Balance at end of year**
Authorisation applications	74	47	7	50	*64
Minor variation applications	–	29	–	21	8
Revoke and substitute authorisation applications	2	6	–	–	8
Authorisations previously granted and now under review	2	–	–	1	1
Total	78	82	7	72	81

* This figure includes 30 applications relating to electricity distribution and marketing arrangements and 10 applications relating to gas distribution and marketing arrangements.

Notifications subject to Commission consideration — 1999–2000					
	Opening balance	**New applications**	**Applications withdrawn**	**Applications decided**	**Balance at end of year**
Notifications	20	344	1	325	38

Australian Competition Tribunal applications for review — 1999–2000				
Opening balance	**New applications**	**Withdrawn**	**Decided**	**Balance**
3	1	2	1	1

Certification Trade Marks consideration — 1999–2000				
Opening balance	**New applications**	**Withdrawn**	**Decided**	**Balance**
36	20	–	14	42

Electricity

Vesting contracts

In June 1998 the Commission received applications for authorisation of a third tranche of the NSW vesting contracts. It issued a final determination in September 1999, authorising the contracts subject to conditions on strike prices and duration of contracts.

The Commission also received an application for authorisation of South Australian vesting contracts in June 1999. On 22 December 1999 the Commission issued its final determination, authorising the contracts subject to conditions on the price outcome and the right of the retail business to terminate the contracts.

In April 2000 the new owner of the retail business, AGL (South Australia), applied for revocation and substitution of the authorisation and proposed a number of supplementary conditions to the authorisation. The application is currently under consideration.

D-risk energy risk management scheme

On 16 September 1998 Energy Risk Management Pty Ltd lodged applications with the Commission for authorisation of the 'd-risk' energy risk management scheme.

The Commission considered that elements of the d-risk scheme were potentially anti-competitive, primarily because of the commitment of generation capacity to the scheme. However, the Commission also considered the scheme created public benefits through the provision of additional risk management products in the market. The Commission granted authorisation on 25 August 1999.

National Electricity Code — authorisation of amendments

Queensland MNSP derogations

On 15 November 1999 the National Electricity Code Administrator (NECA) submitted code changes on behalf of the Queensland Government to facilitate the operation of the DirectLink interconnector and to clarify typographical errors in the code provisions dealing with Queensland. To facilitate the operation of the DirectLink interconnector, the Commission granted interim authorisation on 8 December 1999.

Final authorisation was granted on 21 June 2000.

NSW derogations

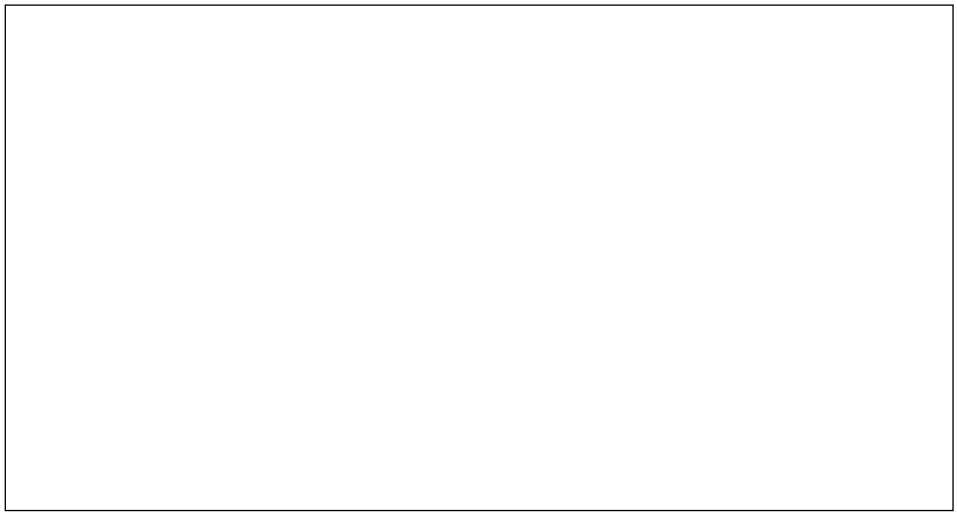
On 29 April 1999 the NSW Government requested authorisation of several derogations relating to intra-regional loss factors. Subsequent amendment of the applications added additional derogations on network-pricing arrangements in NSW during a transitional period. Authorisation of the proposed code changes was granted on 21 June 2000.

The NEC provides for the National Electricity Market Management Company (NEMMCO) to determine intra-regional loss factors. The derogation provided that intra-regional loss factors would continue to be determined by a NSW Government appointed body, the

Independent Pricing and Regulatory Tribunal (IPART), until 30 June 2000. The purpose of the derogation is to manage price risk of smaller customers who may face higher loss factors under the NEMMCO methodology.

The derogation provides:

- the Commission will become the jurisdictional regulator for the NSW transmission network from 1 July 1999, as envisaged in the code;
- during the period 1 July 1999 until 31 January 2000, the Commission administers the existing IPART revenue (and pricing) determination; and
- from 1 February 2000 the Commission's transmission decision will apply.



The objective of the derogation is to provide a smooth transition from State-based regulation to that provided by the code. It also enables the Commission's decision to be implemented by extending the time available for the Commission to make a revenue determination for TransGrid and Energy Australia.

Transmission and distribution review code changes

On 26 July 1999 NECA submitted applications for authorisation of changes to the code to allow market network service providers (MNSPs) to participate in the national electricity market (NEM). NECA also submitted an application to vary the access code to encompass changes to the network connection and network pricing arrangements. These applications were amended on 18 August 1999.

The Commission granted interim authorisation to the MNSP code changes in chapters 2, 3, 4 and 7 on 6 October 1999; and to the MNSP code changes in chapters 5 and 6 on 25 January 2000. In response to concerns about the interpretation of the conditions of authorisation imposed on 25 January 2000, the Commission regranted the interim authorisation on 23 February 2000.

The Commission is currently reviewing submissions on the applications.

VoLL and reserve trader

On 29 September 1999 NECA applied for authorisation of changes to the code. The proposed amendments dealt with were:

- the NECA review of capacity mechanisms;
- the reliability panel review of the value of lost load (VoLL); and
- the code requirement that negative spot prices be allowed within 12 months of market commencement.

On 12 November 1999 NECA requested that interim authorisation be granted to the code changes outlining the administered floor price arrangements, so that the Y2K arrangements could be implemented. On 2 December 1999 the Commission granted interim authorisation to the price floor code changes.

Typographical amendments to the applications were lodged on 26 April 2000.

On 6 June 2000 NECA requested that the Commission revoke its 2 December 1999 interim authorisation of the price floor code changes and grant a new interim authorisation covering the same provisions, but also covering the capacity mechanisms provisions. The Commission did so on 21 June 2000.

The Commission released its draft determination on 21 June 2000 proposing to authorise the code changes subject to more stringent market monitoring measures in the NEM and an annual review of the impact of the increase in VoLL.

VoLL scaling and rebidding

On 15 March 2000 NECA requested authorisation of amendments to the rebidding provisions of the code. At present, participants in the centralised spot market and dispatch can lodge bids for prices and megawatt quantities. Although the price bids cannot be altered, rebidding is permitted for megawatt quantities. NECA's proposed amendments to the code seek to ensure there is a specific, justifiable reason for a rebid, as well as alteration of the way in which rebids are published.

On 27 March 2000 NECA proposed additional code changes for VoLL scaling as well as the revision of settlement statements. The Commission began consulting the public on 7 April 2000, advertising in the press as well as on its own Internet site. The application and submissions from interested parties are currently being considered.

Settlements residue auction process

On 20 May 1999 NECA lodged applications for authorisation for code changes to enable an auction of settlements residue by NEMMCO. In its December 1997 determination of the NEC the Commission, while acknowledging the importance of inter-regional hedging instruments, did not authorise the central provision of auctioning services by NEMMCO.

The purpose of this code change was to give NEMMCO the authority to establish an auction process for the sale of a proportion of the residues that accrue because of interstate power transfers.

To permit an auction mechanism to be established, the Commission granted interim authorisation for the arrangements on 16 June 1999. It granted authorisation on 22 December subject to conditions on reserve prices, participation restrictions and time limits to the operation of the arrangements.

National Electricity Code — full authorisation

On 28 August 1998 NECA applied for authorisation of the National Electricity Code, incorporating several major amendments, including:

- SA derogations and electricity pricing order for transmission, distribution and franchise customer prices;
- Queensland ramp rate derogation;
- ancillary services with the extension of 'who pays' arrangements to a 50/50 sharing between generator and market customers;
- access arrangements, including ring fencing, connection costs and treatment of embedded generation; and
- establishment costs, credit support measures and reviewable decision criteria.

A draft determination was released on 8 October 1999 and after further submissions and a pre-determination conference, a final determination granting authorisation was issued on 22 December 1999. The determination was subject to a number of conditions relating to demand-side involvement in the market and Queensland and South Australian derogations.

Y2K, regulated interconnectors, system security compensation

On 23 July 1999 NECA submitted code changes for market operations arrangements for Y2K, provisions for a new regulatory test for new interconnectors and network augmentation, and the deferral of compensation payments for system security directions.

Authorisation was granted on 20 October 1999.

Trading limits, funding for compensation for system security directions, settlement by estimates and intra-regional loss factors

On 10 September 1999 NECA lodged code changes for:

- trading limits — determined by NEMMCO in respect of prudential requirements placed upon market participants;
- funding for compensation for system security directions — where generators are directed by NEMMCO and eligible for compensation, NEMMCO must have the ability to fund any compensation payments made;

- settlement by estimates — NEMMCO requires the ability to use estimates where failures of metering data processing, communications or settlements systems result in loss of metered data; and
- intra-regional loss factors — a process for determining intra-regional loss factors for new connection points.

The applicants requested that interim authorisation be granted for the settlements by estimates arrangements, which allow NEMMCO to put in place contingency plans to settle the market by estimates if necessary for Y2K.

The Commission granted interim authorisation to the proposed settlements by estimates arrangements on 10 November 1999 and a draft determination in respect of the applications was issued on 16 December 1999. No pre-determination conference was called and the final determination was issued on 2 February 2000.

Other adjudication matters

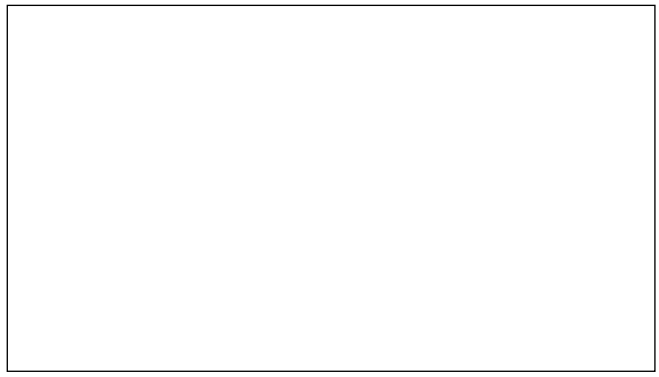
Agreement between five Queensland hospitals

On 12 June 1998 an application for authorisation was lodged by five Queensland private hospitals to enter into an agreement to:

- exchange non-fee related information;
- exchange fee-related information; and
- establish a common agent to facilitate the exchange of aggregated data and to assist in the negotiation of hospital purchaser/provider agreements.

The hospitals were the Friendly Society Private Hospital in Bundaberg, St Stephen's Private Hospital in Maryborough, St Andrew's Toowoomba Hospital, St Andrew's War Memorial Hospital in Brisbane and the Wesley Hospital in Brisbane.

The Commission concluded there were no competition issues with respect to the three regional hospitals as they operate in geographically separate markets. However, it considered the inter-hospital agreement could raise competition issues for the two Brisbane hospitals.



Australian Society of Anaesthetists

On 4 September 1998 the Australian Society of Anaesthetists (ASA) lodged an application for authorisation to negotiate and enter into arrangements with health funds for standard rates and conditions for its members. The ASA also wished to be able to inform its members whether it considered any agreement arising from negotiations to be fair and reasonable. Individual anaesthetists retained the right to negotiate individually. There was no collective boycott conduct associated with the application.

The Commission was not convinced that public benefits claimed to arise from the conduct in the form of countervailing negotiating power and the development of no gap or known gap product, would outweigh the public detriment. On 8 October 1999 the Commission issued a final determination denying the application.

Joint services agreement between Qantas Airways Limited and British Airways Plc

On 16 September 1999 Qantas Airways Ltd (Qantas) and British Airways Plc (BA) lodged an application for authorisation to enter into an agreement entitled the Restated Joint Services Agreement (Restated JSA). The Restated JSA was to replace a current JSA which the Commission authorised on 12 May 1995 and was due to expire on 11 May 2000.

The Restated JSA meant airline services could be coordinated between Qantas and BA, including scheduling, marketing, sales, freight, pricing and customer service activities, over the full networks of both airlines. It also provided for code sharing between the airlines on any part of their route networks.

On 8 March 2000 the Commission issued a draft determination proposing to approve the authorisation but, in recognition of uncertainties in the aviation market, limiting the approval period to just over three years (the applicants had sought indefinite approval). On 10 May 2000 a final determination confirmed authorisation in these terms.

Inter-hospital arrangement between three Sydney hospitals

On 21 December 1998 three hospitals — St Vincent's Private Hospital, the Mater Misericordiae Private Hospital Ltd and the Sydney Adventist Hospital — lodged an application for authorisation to enter into an arrangement under which they would act together in negotiating with health insurance funds reimbursement levels for health fund members.

On 3 December 2000 the Commission released a draft determination proposing not to authorise the arrangement. The applicants subsequently amended their application so that their proposed common agent would represent the hospitals individually rather than jointly in negotiations with health funds.

On 28 June 2000 the Commission issued its final determination denying authorisation. The Commission believed that the hospitals compete for patients and that the arrangement, to

the extent that it led to 'fixing, controlling or maintaining' prices, would ultimately lead to a lessening of competition in the hospital services–patient market.

The Commission was also of the view that the proposed conduct would result in an anti-competitive detriment in the private hospital–health insurance market through the impact of agreements on prices and increases in prices.

Real Estate Institute of Australia (REIA) Code of Conduct

On 23 November 1999 the Commission revoked its 1981 authorisation for the Real Estate Institute's code and ethics and granted a substitute authorisation for the new Code of Conduct for Real Estate Agents.

The replacement authorisation was granted subject to various conditions, including a requirement that the code make adequate provision for consumer access to the complaint handling mechanism and appeals to an independent arbitrator.

The REIA subsequently advised that it wished to withdraw its application for authorisation and sought a review of the Commission's decision.

On 16 June 2000 the Australian Competition Tribunal, by consent of both the Commission and the REIA, varied the Commission's determination so that the substitute authorisation was not granted.

Accordingly, the REIA code of ethics and the replacement code of conduct were not authorised by the Commission.

Telecommunications competitive safeguards

The Commission is responsible for administering an industry-specific regime established by part XIB of the Trade Practices Act, which empowers the Commission to deal with anti-competitive conduct in telecommunications markets and obtain information to help monitor competition in the telecommunications industry.

During 1999–2000 the Government introduced amendments to the previous competition notice regime, arising partly from the Commission's concerns that it did not facilitate prompt action. A two-part competition notice regime was established. Part A competition notices allow the Commission to identify a contravention of the competition rule faster. They also provide a more timely mechanism for court action and warn the notice recipient to cease the conduct. A part B competition notice sets out detailed particulars of the contravention, which are prima facie evidence of the matters in any proceedings arising out of alleged contraventions of the competition rule.

The Commission has a discretion to issue part A and part B competition notices. When exercising this discretion it must note any guidelines issued under s. 151AP(2). The

guidelines identify matters the Commission must consider when deciding whether to issue a competition notice, although the Commission must also have regard to any other relevant matters.

In August 1999 the Commission issued policy guidelines in accordance with s. 151AP of the Trade Practices Act. The Commission considers that in many of its anti-competitive conduct cases issuing a competition notice will be an appropriate and positive step to achieving policy goals. However, sometimes other responses could lead to a more effective or appropriate outcome.

For example, even if the Commission decides not to issue a competition notice, it may enforce the competition rule by seeking an injunction under s. 151CA. For conduct contravening those part IV provisions listed in s. 151AJ(3)(a), the Commission may seek penalties and other orders.

Part XIB does not require that the guidelines exhaustively list all matters the Commission will take note of when deciding whether to issue a competition notice. Section 151AP(1)(b) requires that the Commission have regard to other relevant matters when deciding whether to issue that competition notice.

Major anti-competitive conduct investigations

Customer transfer process (commercial churn)/competition notice

Commercial churn is the transfer of an end-user from one carriage service provider to another. Service providers use it to engage in local call resale.

In February 2000 the Commission and Telstra reached an agreement for settlement of the commercial churn litigation. The litigation originated in industry complaints about the terms and conditions of the commercial churn service and the way it had been introduced. It was alleged Telstra had unilaterally imposed the service, had not consulted with industry and had refused to negotiate on the transfer conditions.

The terms of the settlement provided that Telstra will pay $4.5 million to a fund to be called 'the online fund'. The funds will be distributed by the Commission to telecommunications service providers who use Telstra's commercial churn service to upgrade their systems and develop their technical capabilities to deal with Telstra and each other online.

In June and July 2000 the Commission canvassed industry views about the most appropriate use for the settlement funds and decided to make an initial disbursement to an Australian Communications Industry Forum (ACIF) initiative, the telecommunications online initiative (ToLI). ToLI will use the payment to progress project scoping activities. Future disbursements will be based on the outcomes achieved from this initial funding.

Telstra's interconnection processes

During the second quarter of 2000 the Commission investigated complaints that Telstra engaged in anti-competitive conduct in its provision of services connecting Telstra's public switched telephone network (PSTN) with other telephone networks.

The Commission found there were significant and unprecedented increases in interconnection forecasts from industry in late 1999 and early 2000, mainly related to increases in dial-up ISP traffic and from ISP traffic migrating from high speed digital services onto the PSTN. While Telstra had tried to meet this unanticipated demand, the Commission found a lack of transparency for wholesale customers in Telstra's forecasting, ordering and provisioning processes, particularly where capacity was constrained.

The Commission decided in June 2000 it did not have reason to suspect Telstra had contravened the competition rule in part XIB of the Trade Practices Act but has requested that Telstra establish a transparent, consultative process.

Tariff filings

Under part XIB of the Trade Practices Act the Commission has powers to obtain information on charges, terms and conditions for telecommunication services from carriers and carriage service providers. Such information helps the Commission carry out its anti-competitive conduct function and administer the telecommunications access regime.

The Commission's tariffs powers can be divided into two distinct parts, general tariff filing directions (division 4 of part XIB) and tariff filing by Telstra (division 5 of part XIB).

Tariff filing directions under division 4 of part XIB

Section 151BK of division 4 allows the Commission to require tariff filing information from a carrier or carriage service provider with a substantial degree of market power in a telecommunications market. The information can include:

- charges for the supply of the goods or services, including any discounts, allowances, rebates, commissions or similar benefits; and
- intentions, to be provided at least seven days before a carrier or carriage service provider imposes a new charge, to vary a charge or cease imposing a charge.

In 1999–2000 the Commission has not needed to use the powers defined under division 4.

Tariff filing by Telstra under division 5 of part XIB

Division 5 of part XIB requires Telstra to file information for all of its basic carriage services (BCS) with the Commission. A strict interpretation of division 5 would require Telstra to provide complete details of all offerings, both standard and individualised (non-standard), along with all variations made to them. Provision of all information under the division 5 requirements of part XIB is administratively burdensome for both the Commission and Telstra and this process could be streamlined by specifying the relevant tariff information to help identify potential anti-competitive issues.

To avoid the difficulties associated with the strict interpretation of division 5, an agreement was made with Telstra for it to file its tariffs with the Commission in accordance with previously agreed filing arrangements. These arrangements give the Commission the relevant information for certain categories of tariffs, providing an effective and efficient tariff filing process that meets the fundamental objectives of division 5.

During 1999–2000 Telstra complied with all requirements to provide tariff filing information to the Commission.

Record keeping rules

The Commission has the power to mandate specified record-keeping rules on selected carriers and carriage service providers to assist with its competition and access responsibilities. Section 151BU of part XIB of the Act gives the Commission power to make rules requiring one or more carriers or carriage service providers to retain records to assist the Commission discharge a range of functions, including in relation to its part XIB (competition) and part XIC (access) functions. Such rules could be used to implement an accounting separation of an operator's various activities.

The Commission released a draft report on the preparation of a comprehensive regulatory accounting regime using the record-keeping rule power. The report recommended reporting rules that require telecommunication carriers to provide information using fully distributed costing, and according to detailed allocation methodologies against specified telecommunication services.

The Commission received comments from industry on the draft report and started preparing a draft instrument setting out the regulatory accounting regime. The draft instrument was not finalised by the end of 1999–2000.

Facilities access code

In the third quarter of 1999 the Commission made a facilities access code (*A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities*) setting out conditions to be complied with by carriers providing access to eligible telecommunication facilities under part 5 of schedule 1 of the *Telecommunications Act 1997*.

The Commission consulted industry, regulatory agencies and community representatives. The facilities access code came into effect on 13 October 1999.

In October 1999 the Commission and the Australian Communications Authority, which is required to enforce compliance with the code, jointly released a guide to the regulation of facilities access. It covers the installation of facilities under schedule 3 of the Act, as well as the regulation of access to facilities (including compliance with the code).

Notification of access disputes

Arbitrations, mediations and procedural directions

The July 1999 amendments to parts XIB and XIC of the Trade Practices Act include new s. 152BBA, which provides that, if requested by either party to a dispute on access terms and conditions, the Commission can direct the negotiating parties in the conduct of the negotiation.

The Commission is currently considering the operation of this new provision, including the regulatory issues raised by such a power and the Commission's potential response to requests to make a direction. Preparation of an information paper on the new power has started.

Table 3.3 Telecommunications access disputes

The following table provides details of access disputes notified to the Commission by service type.

Public switched telephone network (PSTN)

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
AAPT	Telstra	Domestic PSTN originating access	11 December 1998	Interim: 14 September 1999 Variation to interim: 31 May 2000
AAPT	Telstra	Domestic PSTN terminating access	11 December 1998	Interim: 14 September 1999 Variation to interim: 31 May 2000
Primus	Telstra	Domestic PSTN originating and terminating access	5 February 1999	Interim: 4 October 1999 Variation to interim: 31 May 2000
AAPT	Optus	Domestic PSTN originating access	11 June 1999	
AAPT	Optus	Domestic PSTN terminating access	11 June 1999	
Optus (Optus Networks and Optus Mobiles)	Telstra	Domestic PSTN originating access	22 November 1999	Withdrawn: 15 May 2000

Optus (Optus Networks and Optus Mobiles)	Telstra	Domestic PSTN terminating access	22 November 1999	Withdrawn: 15 May 2000
Telstra	AAPT	Domestic PSTN terminating access — for local data calls to ISPs	22 November 1999	
Flow Communi-cations	Telstra	Domestic PSTN originating access	7 January 2000	

Digital data access service (DDAS)

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
AAPT	Telstra	DDAS	8 March 1999	Interim: 22 December 1999
Macquarie Corporate	Telstra	DDAS — price	10 May 1999	Interim: 22 December 1999 Agreement reached between the parties: 2 June 2000
Macquarie Corporate	Telstra	DDAS — non-price terms and conditions	10 May 1999	Interim: 22 December 1999 Variation to interim: 8 June 2000
Macquarie Corporate	Telstra	DDAS — means by which Telstra proposes to supply DDAS	10 May 1999	Interim: 22 December 1999

Digital mobile (GSM)

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
Telstra	Vodafone	Domestic GSM terminating access	16 June 1998	Withdrawn: November 1998
AAPT	Telstra	Domestic GSM terminating access	16 March 1999	
AAPT	Telstra	Domestic GSM originating access	19 March 1999	
AAPT	Optus	Domestic GSM originating access	15 June 1999	

AAPT	Optus	Domestic GSM terminating access	15 June 1999	
Primus	Telstra	Domestic GSM terminating access	1 October 1999	
Primus	Optus	Domestic GSM originating access	1 October 1999	Suspended: 2 April 2000
Primus	Optus	Domestic GSM terminating access	1 October 1999	
Primus	Vodafone	Domestic GSM originating access	1 October 1999	Withdrawn: 10 April 2000
Primus	Vodafone	Domestic GSM terminating access	1 October 1999	Withdrawn: 10 April 2000
AAPT	Vodafone	Domestic GSM originating access	30 November 1999	
AAPT	Vodafone	Domestic GSM terminating access	30 November 1999	

Integrated services digital network (ISDN)

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
Optus	Telstra	ISDN Originating Service	11 May 1999	Suspended: 14 April 2000
Optus	Telstra	ISDN Terminating Service	11 May 1999	Suspended: 14 April 2000

Local carriage service (LCS)

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
Optus	Telstra	LCS	13 August 1999	
MCT	Telstra	LCS	29 December 1999	
Primus	Telstra	LCS	7 March 2000	
AAPT	Telstra	LCS	21 March 2000	

Domestic transmission capacity service (DTCS)

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
Primus	Telstra	DTCS	February 1999	Withdrawn
AAPT	Telstra	DTCS	8 March 1999	Withdrawn: 7 March 2000

Broadcasting access service (BAS)

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
TARBS	Telstra	BAS	23 September 1999	

Local number portability (arbitration under the *Telecommunications Act 1997*)

Access seeker (notifier)	Access provider	Service(s)	Date notified	Determination/ status
Optus	Telstra	Local number portability routing option	30 April 1999	Final: 25 May 2000

Improving market conduct

Output 1.1.1: The proper administration and enforcement of the *Trade Practices Act 1974*, the *Prices Surveillance Act 1983* and related laws; and

Output 1.1.2: Performance of actions that promote competition and fair trading and enable well functioning markets.

Objective

- To secure improvement in market conduct by developing and implementing regulatory frameworks which maximise the potential for promotion of competition and efficient outcomes, assessing access to essential facilities, liaising widely with key stakeholders.
- To contribute at the international level to competition and consumer protection issues.

Part 1

Review of the regulatory environment

The Commission is involved in a great deal of high profile work. However, the work that usually receives the most attention — the GST and price exploitation, mergers, consumer protection and competition law — primarily involves protecting the economy and consumers from possible or actual loss through recourse to the courts or through using administrative remedies. In contrast, the Commission's regulatory role — an aspect of the Commission's work which is closely intertwined with its traditional competition law enforcement work but with a relatively lower public profile — involves increasing the economic wellbeing of all Australians through direct market intervention. In particular, through its administration of the access regimes under the Trade Practices Act, the Commission has helped to deliver substantial cost savings and efficiency gains to consumers.

The access regimes owe their creation to the proposed reforms articulated by the Hilmer Report in 1993 and later adopted by the Council of Australian Governments (COAG). COAG's basic plan was that public monopolies and certain other facilities would be opened to competition. Where competition was not possible, services would be regulated to ensure that service providers did not hinder competition in related industries by extracting monopoly rents. From this hopeful start, many reforms were initiated and rapidly embraced by the Federal and State Governments alike, but more recently the progress of these reforms has slowed.

Ultimately the most important measure of the success of any reform is the tangible benefits it brings. In relation to regulated sectors this performance has been remarkable. Significant cost savings have been delivered in many areas of the economy, and substantial economic gains have benefited all Australians through lower prices for telecommunication services, electricity and to a lesser extent gas. However, the reform process is not yet finished, although in some areas the pace of reform has slowed. It is therefore useful to consider the plan, progress and performance of regulation in Australia to date, and to examine what needs to be done in the future to ensure that the maximum possible benefits are obtained from the process.

The plan

National Competition Policy Review (the Hilmer Report)

The report of the National Competition Policy Review was released in August 1993. It indicated that regulatory restrictions impeding competition needed to be removed or modified. In particular, it determined that comprehensive reform of public monopolies was needed. The report concluded that government-created barriers to entry should be removed in all markets and that natural monopoly services should be regulated. Regulation was recommended to facilitate greater competition in the markets upstream and downstream of the natural monopoly.

The report concluded that three major structural reforms were necessary in relation to government-owned monopolies:

- separating the regulatory responsibilities of public monopoly service providers from their commercial activities;
- separating the natural monopoly elements of service providers from those parts that are contestable; and
- separating the contestable elements of service providers into different companies to encourage competition.

The report also suggested the creation of a special legal regime to provide competitors with a guaranteed right of access to the natural monopoly facilities on fair and reasonable terms. The National Competition Council was to be entrusted with the role of recommending to government when certain facilities should be declared to be subject to the access regime

and on what terms and an 'Australian Competition Commission' was to have the responsibility of arbitrating access disputes and regulating the regime.

The Council of Australian Governments (COAG)

In the communiqué issued after the COAG meeting on 25 February 1994, the Federal, State and Territory Governments announced their agreement with the competition principles expressed in the review report. They also later agreed that legislation should be enacted to ensure that all businesses could access certain facilities on fair and reasonable terms.

However, COAG did not require that all States implement these reforms in a uniform manner, and each government has been left free to pursue their own agendas for reform within COAG's broad agreement on reform.

The jurisdictions entered into an agreement to implement the national competition policy and related reforms on 11 April 1995. This agreement provided for a series of 'competition payments' from the Commonwealth to the States and Territories. These payments were conditional upon the jurisdictions meeting agreed deadlines for implementation of reforms. The reforms were both broad, such as ensuring competitive neutrality — and specific, such as detailed electricity, gas and road transport commitments. Three tranches of payments were provided for. Immediately before each, the NCC was to assess each jurisdiction's compliance with the agreed reforms and recommend to the Commonwealth whether any portion of the payment should be withheld.

The growth and revenue implications of Hilmer and related reforms

In March 1995 the Industry Commission released its report, *The growth and revenue implications of Hilmer and related reforms*. It analysed the likely benefits that would be gained from the adoption of the Hilmer report recommendations and related reforms.

The Industry Commission estimated that the proposed Hilmer and related reforms would result in an annual gain to the Australian economy of 5.5 per cent in real GDP or $23 billion a year (in 1993–94 dollars). It was estimated that electricity prices would fall significantly as a result of the reforms. In relation to gas it was estimated that more modest price reductions could be achieved.

Energy reform

The energy sector was an obvious focus for reform, as its outputs are key inputs in all manufacturing and processing industries. In relation to electricity, and to some extent gas, infrastructure was predominantly owned by State and Territory Governments. Typically this infrastructure was used inefficiently and there was little interstate interconnection. The creation of a national market was seen as an important objective in both electricity and gas.

Electricity

Reforms were already being considered in the electricity industry following an Industry Commission report in May 1991 on energy generation and distribution. The report

concluded that energy generation and distribution in Australia was extremely inefficient, and was characterised by a large amount of excess capacity and gross overstaffing. It concluded that there was scope for increased efficiency gains, and estimated these possible gains at $2.4 billion per year.

Following its meeting in Melbourne in June 1993, COAG indicated its commitment to implementing the necessary structural changes to allow for a competitive national electricity market to be in place by 1 July 1995. Among other commitments COAG:

- confirmed its commitment to the establishment of an interstate transmission network, and separating generation and distribution interests;
- indicated that a number of important issues would have to be settled, including market trading, grid pricing and regulatory arrangements;
- agreed to the establishment of an interstate transmission network to be in place by 1 July 1995; and
- reconfirmed that it wanted a competitive electricity generation market.

Gas

In a communiqué released after its meeting in Hobart in February 1994, COAG indicated that the main features of a competitive national framework for the gas industry would be:

- no legislative or regulatory barriers to both inter- and intra-jurisdictional trade in gas;
- third party access rights to both inter- and intra-jurisdictional supply networks;
- uniform national pipeline construction standards;
- increased commercialisation of the operations of publicly-owned gas utilities;
- no restrictions on the uses of natural gas (e.g. for electricity generation);
- gas franchise arrangements consistent with free and fair competition in gas markets and third party access; and
- structural separation of publicly-owned transmission and distribution activities and legislation to 'ring fence' transmission and distribution activities in the private sector by 1 July 1996.

Telecommunications

A telecommunications-specific access regime was introduced in 1991. This allowed a second licensed carrier to operate in competition with the existing incumbent. A third mobile licence was subsequently issued. In late 1996 the Government introduced into Parliament a legislative package for the deregulation of the telecommunications industry as of 1 July 1997. A new Telecommunications Act was introduced, and changes were made to the Trade Practices Act to introduce a telecommunications-specific access and competitive safeguards regime.

The amendments provided for the introduction of open competition, in accordance with national competition policy principles. Industry-specific regimes governing anti-competitive conduct and access were inserted as new parts XIB and XIC respectively. The administration and enforcement of the competition provisions were entrusted to the Commission in recognition of the need to align the regulation of the telecommunications market as closely as possible with the application of the general competition provisions of the Trade Practices Act and with the regulation of other markets, such as gas and electricity.

A Productivity Commission review of telecommunications-specific competition regulation is currently underway, and is expected to conclude next year.

The progress

Progress was slower than anticipated in many areas. The implementation of the reforms also led to greater differences in approach than was desirable. The introduction of a national access regime in part IIIA of the Trade Practices Act provided a common approach for a number of sectors. However, even within this common approach jurisdictions have tended to delay the introduction of common rules through derogations, or have even introduced significantly different approaches.

Part IIIA

The access regime suggested by the Hilmer Report and endorsed by COAG is contained in part IIIA of the Trade Practices Act.

Specifically part IIIA provides that businesses competing upstream or downstream of a declared facility can purchase the services of the declared facility on fair and reasonable terms (subject to the availability of capacity). Access to the services provided by a facility can be 'declared' by the Minister acting on the recommendation of the National Competition Council.

In general, facilities that can be declared under part IIIA are services that have natural monopoly characteristics and that occupy a strategic position in an industry that makes access to the facilities' services a prerequisite to competing effectively in markets upstream or downstream of the facility.

Depending on the circumstances the Commission may be able to determine access prices for a declared facility, facilitate negotiations between service providers and others, provide a dispute resolution process for parties that cannot agree on fair access prices and, in some cases, mandate service standards that the facility owner must meet.

Part IIIA also allows for alternative means of access being provided. State or Territory Governments can apply to the NCC to have a legislative access regime certified as 'effective' (consistent with principles set out in the competition principles agreement). Alternatively, the owner of a facility can voluntarily lodge an access undertaking with the Commission. Part IIIA also allows for industry-wide access undertakings to be approved by the Commission. The National Electricity Code was approved in this way in 1998. In

contrast, the National Gas Code was implemented by legislation in each jurisdiction, with subsequent applications to the NCC to have each jurisdiction's gas access regime certified as effective.

The approach — incentive regulation

In determining access prices and conditions for certain essential facilities, the Commission is constrained by the principles and objectives set out in the codes (for gas and electricity) and legislative requirements (for telecommunications and airports). A common element throughout is that the Commission as regulator is to strike a balance between the interests of the facility owner, users and prospective users.

Within the limitations identified above, the Commission has emphasised the use of incentive regulation. With this type of regulation tariffs or revenues are set on the basis of efficient costs incurred in providing the service, while at the same time providing scope for the facility owner to earn potentially higher returns during the specified period should its costs be lower than those reasonably forecast for the period. The service provider has an incentive to reduce its costs and become more efficient because this will allow it to increase its profit for the period above the regulated level. However, in subsequent regulatory periods the service provider may be required to share these efficiency gains with users.

Incentive regulation works on two levels. First, it encourages service providers to reduce their costs in any given regulatory period. If the provider realises cost savings in a given regulatory period it retains those savings. Second, where price caps operate if a service provider is able to increase the volume of services provided above the forecast levels it retains the benefit of that market growth.

Therefore, the overall effect of incentive regulation is to encourage service providers to maximise profits by making efficiency gains and growing the market. These gains can then be shared with consumers in the longer term.

The Utility Regulators Forum

The Utility Regulators Forum was established by the Commission in conjunction with a number of State and Territory regulators. This forum is designed to encourage best practice regulation in relation to the utility sector. The forum has determined a series of guiding principles that should be employed. These principles emphasise communication, consultation, consistency, predictability, flexibility, independence, effectiveness and efficiency, accountability, and transparency as good practice for utility regulation. The Commission believes that these principles reflect a sensible approach to utility regulation and is committed to employing these principles in its regulation of utilities.

The Commission also works with jurisdictional regulators through the forum to seek consistency in regulatory approach and to share expertise and experience. It also provides a forum for industry and other stakeholders to meet with economic regulators as a group.

Specific reforms

Electricity

Traditionally, electricity generators and suppliers have been government-owned monopolies. In order to remedy this situation, State and Territory Governments have engaged in various types of restructuring — including breaking up the monopolies into separate generation, transmission, distribution and retail companies, and in some cases privatising them.

A significant step has been the creation of the National Electricity Market (NEM) that at present operates between NSW, Victoria, SA, ACT and Queensland. The creation of the NEM was coordinated by COAG and it began operation on 13 December 1998. With the creation of a wholesale market for electricity, attention has turned to creating a competitive retail market for electricity supply. Under the present timetable, full retail competition is being phased in in most NEM states by 2003, although large customers are already free to choose their supplier.

The NEM is governed by the National Electricity Code, which consists of three major parts: an access code, market rules and administrative arrangements. The Commission accepted the National Electricity Code as an access code under part IIIA in September 1998.

A number of regulators have been established to regulate different aspects of the NEM. The Commission shares regulatory responsibility with NECA, NEMMCO and State regulators. These regulators have separate but related (and sometimes overlapping) functions. The number of regulatory bodies involved with the NEM is largely the result of federation and State sovereignty issues.

Gas

It is more difficult to generalise about the progress that has been made in relation to gas reforms. First, the Commission has been given the responsibility of regulating access to transmission pipelines under the National Gas Code in all jurisdictions except for Western Australia. This has brought consistency in the code's application to transmission pipelines throughout the eastern States. It was recognised that Western Australia's decision to have a separate regulator may result in different interpretation of regulatory principles that has the potential to create barriers to interstate trade. For this reason the intergovernmental agreement that contains the jurisdiction's commitment to implement the National Gas Code provides for a review of Western Australia's decision to have a separate transmission regulator. A review is triggered in the event that a pipeline is to be constructed connecting Western Australia with another jurisdiction or five years after the agreement (2002).

Jurisdiction-specific bodies have been established to regulate access to gas distribution networks in all jurisdictions except the Northern Territory (which nominated the Commission as its distribution regulator). Framework and interpretative differences arising from individual jurisdictional regulators is causing difficulties for companies that operate in more than one jurisdiction.

Many States have pursued separation and privatisation of their gas assets. The Victorian Government has been particularly vigorous in this respect. South Australia and New South Wales also have significant private sector ownership in this sector. Queensland has been the slowest State to embrace regulatory reform in this sector, and the Commission is concerned that a government-owned electricity corporation purchased a private gas distributor/retailer. The Queensland Government is also participating actively in the gas market through its two government-owned electricity retailers, which are proposing to aggregate gas demand across the State and commit to 20-year supply contracts with PNG producers for large quantities of gas.

The introduction of the National Gas Code has been substantially delayed in some jurisdictions. There have also been significant derogations from the application of the code. This has been the case particularly in Queensland.

Telecommunications

Telecommunications services are regulated by a specific regime. When introducing the regime, a number of services which were already being accessed, such as public switched telecommunications network (PSTN) interconnection, were deemed to be regulated under the new regime.

Initially, the focus of regulation was to determine the scope of regulation and access pricing. Between 1998 and 1999 the Commission undertook inquiries and determined to regulate a number of additional services, including:

- originating and terminating ISDN services;
- the unconditioned local loop service; and
- local call resale.

On the other hand, it declined to regulate mobile roaming services and transmission services between Melbourne, Canberra and Sydney. In each of these cases it recognised the degree of competition that existed in those services. The Commission also undertook a number of key tasks towards reducing barriers to entry and promoting competition, such as requiring local and mobile number portability and developing a facilities access code to encourage co-location of facilities.

As the market becomes more competitive the Commission's focus has moved more towards potentially narrowing the field of regulation. Specific inquiries are under way into the possible revocation of the regulation of local call resale in some central business districts and in transmission services between some capital cities and the Commission is also reviewing the declaration of redundant mobile (AMPS) services.

Airports

The high cost of building construction and of land close to major cities may make airports uneconomic to duplicate. Passengers and freight customers have little choice about which airport to use in a given destination. These monopoly characteristics may give airport

owners market power — the potential to increase prices above those that could be charged if they were operating in a competitive environment.

Historically in Australia most major airports have been government-owned. However, in 1997 and 1998 the Government privatised (using long-term leases) nearly all the airports owned by the Federal Airports Corporation (FAC). As part of the privatisation process, and in recognition of the monopoly characteristics of many airport services, the Government established a new framework for the economic regulation of airports. The regulatory provisions include a CPI-X price cap, application of the access regime contained in part IIIA of the Trade Practices Act, and transparency provisions including accounts reporting, prices monitoring and quality of service monitoring.

Rail

A key plank of the national strategy has been to develop a national rail network and promote the use of rail infrastructure in the movement of interstate freight traffic. As part of this process, the Commonwealth and State Governments signed an intergovernmental agreement (IGA) in 1997 designed to facilitate a coordinated approach to rail reform. One of the key elements of the IGA was the formation of the Australian Rail Track Corporation (ARTC) whose primary objective was to promote use of Australia's national rail network linking all capital cities by providing a single point of access for rail service providers whose operations traverse State jurisdictions. This would enable the ARTC to have sole discretion over the management of access to all tracks on the interstate network and provide the framework for the ARTC to lodge an undertaking to the Commission in respect of interstate rail services. This has not yet occurred.

At the State level the NCC has been assessing applications by State Governments for certification of access regimes. The NSW regime was certified effective in November 1999 with certification limited to 31 December 2000 to allow effective interstate arrangements to be developed. The Western Australian regime is still being considered by the NCC. The NCC has recommended certification of an access regime for the rail line from Tarcoola to Darwin. This regime covers the existing Tarcoola to Alice Springs line and the proposed new line from Alice Springs to Darwin. These lines are not considered to be part of the interstate network.

While some progress has been made in relation to intra-state services, there has been no progress in establishing a uniform access regime for the interstate network.

The performance

Professor Hilmer, in an article published on 28 February 1994 by *The Australian*, expressed satisfaction that government had embraced his report's recommendations. However, he also indicated that endorsement is not the same as successful implementation.

The Commission believes that the recommendations and objectives of the Hilmer Report are well on their way to being implemented and achieved. However, vigilance and renewed commitment to utility reform is required to both preserve the large benefits that

consumers have already obtained, and to continue to ensure that service providers of facilities with natural monopoly characteristics do not hinder the development of competition in related markets.

Tangible benefits

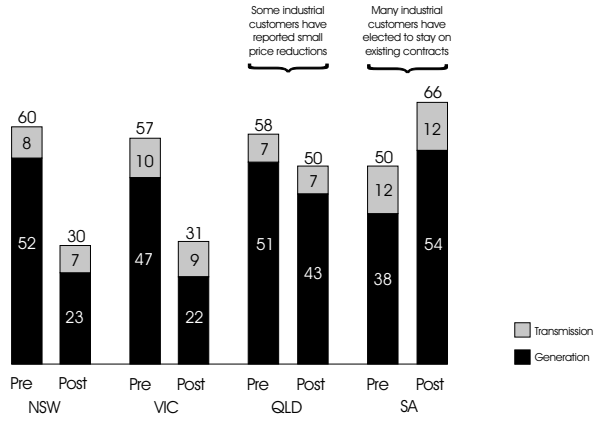
In general, the results from the implementation of the access arrangements and utility regulation have been positive. Benefits can be measured by falling access prices. However, they go beyond this measure. Greater choice and quality of service, while more difficult to measure, are additional benefits driven by the reform process. Further, what can now be observed is transparent and accountable regulation by independent regulators.

Electricity

It is clear that electricity prices have declined dramatically since electricity reform was started. As can be seen in chart 1, generally the States that have implemented reform have experienced large price reductions. Both New South Wales and Victoria have experienced price reductions of around 50 per cent at the wholesale level, while Queensland, despite achieving smaller gains, has benefited. As yet, South Australia has not experienced a reduction in price as a result of its reforms. In more recent times there has been some upward movement in wholesale electricity prices, reflecting the gradual take-up of excess capacity and in some instances, more commercially oriented bidding strategies by generators.

Chart 1

Wholesale electricity prices pre and post-reform* — $/MWh



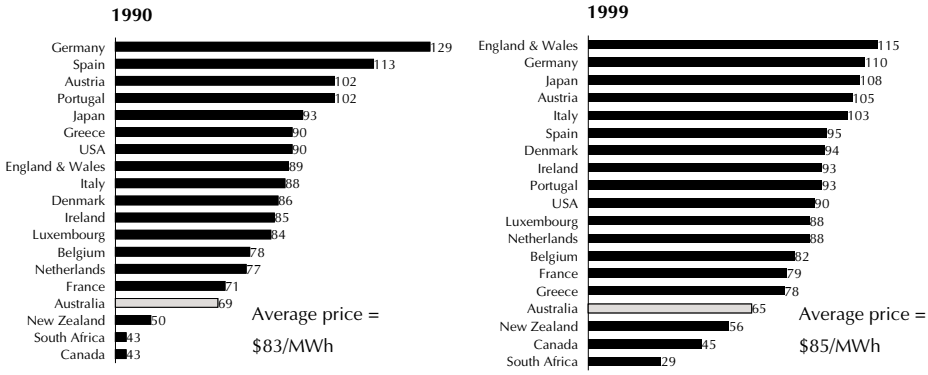
** Pre-reform data is from year directly prior to reform in respective states; post-reform data uses average 1999 price*

Source: Bardak, NEMMCO data

As can be seen in chart 2, Australia has improved its electricity prices relative to the rest of the world. Its average electricity price has decreased in absolute terms, and this has happened despite an increase in average electricity prices worldwide. Australia's electricity prices remain low compared to other industrialised nations, but some other nations are experiencing a faster decline.

Chart 2

Wholesale electrcity prices pre and post-reform* — $A Dollars/MWh



** Price for an anual maximum demand of 10MW, 80% load factor, includes all non-recoverable taxes as at 1 January*

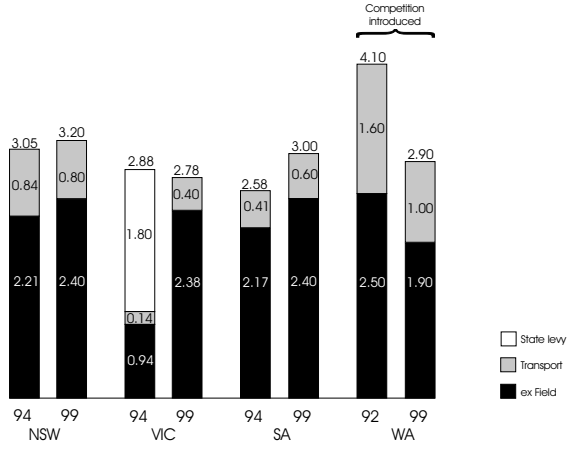
Source: International Electricity Prices, UK Electricity Association

Gas

The reform process in gas is not as far along as electricity. As can be seen in chart 3, gas prices have either increased or remained about the same from 1994 to 1999, with the exception of Western Australia. It has been suggested that the reason for the fall in price in that State is because it has a number of gas fields owned by different joint ventures competing to supply the market. The Western Australian Government's disaggregation of the single dominant supply contract with the North West Shelf joint venture was also significant. Other jurisdictions have not had the benefit of similar upstream competition.

Chart 3

Capital city gas prices, 1994 versus 1999 — $/Gigajoule

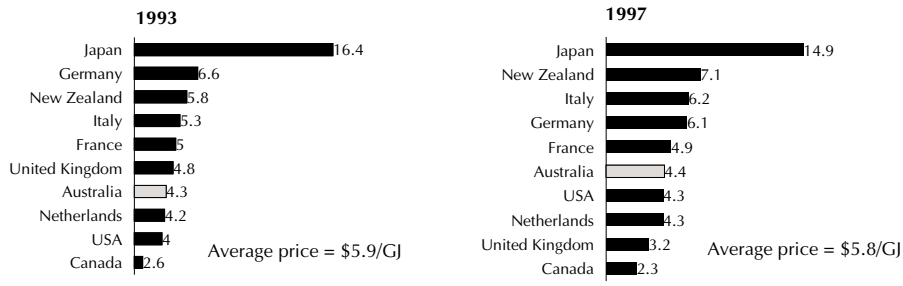


Source: Gas Industry Statistics 93/94; Bardak

However, chart 4 clearly shows that Australian gas prices remain low internationally and are still well below average prices. It is important to note that internationally the price of gas is declining (and in some countries, declining rapidly).

Chart 4

OECD industry gas prices — $/Gigajoule



Source: Gas Statistics Australia 1999, The Australian Gas Association

Telecommunications

The telecommunications industry structure has become more competitive. In 1997 fixed telephony was a protected duopoly and the mobile phone market had three players. Telstra, the incumbent firm, was vertically integrated with significant market power. By 2000 there were 44 licensed carriers and the supply of national long distance and international calls is becoming more competitive. The Commission has pushed wholesale PSTN interconnection charges to more competitive levels and to the lower end of the international range, as well as facilitating a more open and competitive environment. Long distance call prices fell by 37 per cent in real terms in the four years to June 1999. International call prices fell by nearly 40 per cent in real terms in the same period. There has been a reduction in local call and mobile prices over this period as well.

The Commission considers that the telecommunications declaration process is highly transparent. A public inquiry is held when declaration of a service is considered and decisions, and the reasons for them, are published in a report. The Commission considers that the access regime has clearly encouraged the development of competition in markets where this would not otherwise have occurred, or occurred very slowly. Where a service has been declared, retail competition has invariably increased and consumer prices have fallen.

The Australian Communications Authority has conservatively estimated that the benefit to the consumer of these price reductions for all services during 1998–1999 is about $325.7 million.

Airports

The CPI-X price cap imposed on regulated airports is providing significant benefits for users. The price cap is delivering reductions in landing charges in real terms at all of the regulated leased airports. The reductions will be as high as 22 per cent over the five years of the price cap.

The regulatory framework also provides incentives for new investment. To date the Commission has approved around $200 million in new investment at the leased airport as a 'pass through' the price cap. The pricing for services provided by such new investment is in addition to the price cap.

Looking forward

Utility regulation in Australia has reached a crucial point. While many efficiency gains have been made the reform process must continue in order to preserve the benefits obtained so far. Unfortunately the reform process appears to be losing momentum. Unless all players maintain their commitments, the Commission is concerned that the benefits obtained from previous reform will be jeopardised and further benefits will not be realised in the future. Australia has been among the world leaders in this reform but the pace of reform in other economies has also increased. Should its commitment waiver, Australia risks losing its place as an international leader in utility reform, and could quickly fall behind other industrialised countries and forfeit opportunities to grow and prosper.

Common approach

In addition to a renewed commitment to reform, it is also necessary for governments to move forward in a united fashion. At present, some States are starting to diverge from the original goals of the Hilmer report, or are using different methods to achieve these goals. This has the potential to create barriers to interstate trade in the future.

Some new steps for reform

The Commission believes that a number of issues still need to be addressed in relation to natural monopoly regulation. The more important of these include those below.

Energy reform

- Greater supply competition is needed in the gas industry. Jurisdictions need to ensure that there are no barriers to entry in gas supply. Acreage management processes are becoming more transparent and we are seeing new entrants taking up acreage in the Cooper and Gippsland basins. Governments need to ensure that the right incentives are in place to encourage new entrants to find gas and bring it to market. In some circumstances, access to gathering systems and/or processing plants will be warranted and may need to be mandated. However, it is important that investment decisions are left to be made by commercial market participants. As Australia's gas markets continue to grow and develop, the Commission believes separate marketing of gas by producers within large joint ventures will be feasible, providing a far greater number of competitors — as happens in mature gas markets all around the world.

- Moves toward full retail contestability in the electricity and gas markets have not been properly coordinated. Although retail competition is a matter for the States and Territories, coordination would prevent duplication and barriers to interstate competition. In the move towards full retail contestability, several issues still need to be resolved. These include increasing contestability in monopoly areas such as meter reading and the ownership of meters, the proposed customer transfer process, the potential use of interval metering versus profiling and ensuring that no barriers are created that will hinder the development of new technology.

- In electricity generation there is currently a significant difference in pool prices in Queensland and South Australia compared to Victoria and New South Wales. This reflects the lack of competitive pressures in the first two States. A properly operating national market will address this either through interconnection or through increased generation where appropriate.

- Any on-going impediments to construction of economic gas and electricity interconnection should be removed. In particular, the role of jurisdictional regulation and licensing should not hinder the move to the national market.

- Pricing must provide market signals for the efficient use and investment in transmission capacity. Pricing rules need to develop and provide the correct signals to the market.

- Adequate supervision is needed to address incidences of price manipulation in the wholesale electricity market.

Telecommunications reform

- In telecommunications the current market conditions require industry-specific arrangements to assist the development of competition. However, regulation can and should be used selectively as competition develops.

- The telecommunications negotiate–arbitrate model has significant drawbacks. It can be slow and resource intensive. It also gives the Commission, by default, the status of price setter for a range of input services. Given that inputs are likely to be homogenous and undifferentiated in both cost and quality, a similar unit price is often appropriate for all access seekers. To this end the Commission seeks to increase the multilateral, public aspect of price determinations. The development and publication of access pricing principles by the Commission goes some way to achieving this end.

Airport reform

- The regulatory framework covering the privatised airports will be reviewed over the next two years to assess its performance and recommend changes where appropriate. The review will assess the existence and extent of market power associated with airport services and appropriate mechanisms for dealing with any identified market power including the coexistence of a price cap arrangement under the Prices Surveillance Act in conjunction with declaration of some services under the Airports Act.

Rail reform

- Uniform access arrangements need to be developed to allow freight operators to operate interstate services across different jurisdictions.

Ultimately, continued and maintained reform will be beneficial to all of Australia. The benefits from the reforms so far are both tangible and significant. Consumers now enjoy significantly greater choice and lower prices for electricity, gas, telecommunications and other facilities as a direct result of national competition policy. However, the slowdown in reform may jeopardise existing and future gains. It is time for all parties to renew their commitment to this important element of competition reform to ensure increased economic benefits will be delivered to all Australians.

Part 2

The year under review

Despite the Commission's concerns with the overall pace of regulatory reform, it experienced a very high level of activity in its regulatory functions in the year under review. The Commission's regulatory work involved in particular the telecommunications, energy, and transport sectors.

The Commission's regulatory functions include:

- assessment of code changes and derogations in electricity (as described in chapter 3);
- declaration of services in telecommunications;
- determination of declared services in airports;
- assessment of access arrangements for natural gas transmission pipelines;
- assessment of undertakings under parts IIIA and XIC;
- determination of revenue and price arrangements;
- assessment of compliance with price caps;
- arbitrations;
- assessment of quality of service monitoring; and
- prices surveillance and monitoring activities.

The Commission also participates in various industry forums. These include self-regulatory bodies responsible for developing technical codes, the code changes panel and a number of other consultative groups.

In the past the emphasis on much of the regulatory work has been determining services subject to regulation. Increasingly, the focus of regulation is changing to determining terms and conditions of access, particularly pricing.

The Commission continues to explore the development of efficient regulation. During the past year it conducted a major conference on incentive regulation which included leading participants from Australia and overseas. It has also run a number of forums on important regulatory issues such as asset valuation and depreciation. These public workshops gave interested parties an opportunity to consult with the Commission on the Draft Statement of Principles for the Regulation of Transmission Revenues.

In discharging its regulatory functions the Commission undertakes extensive public consultation. It has released many discussion papers, draft decisions and undertaken public conferences before finalising regulatory decisions.

The Commission has also worked with other State and Territory regulators to encourage consistent and transparent regulation across jurisdictions. The Utility Regulators Forum, which is a committee of all Commonwealth, and States and Territory regulatory agencies, promotes information sharing and consistent approaches to regulation. The forum met regularly during 1999–2000 and addressed issues common to all regulators.

Electricity

Performance indicator

- Regulated electricity market as required by the National Electricity Market Code.

During 1999–2000 the reform processes in the Australian electricity industry continued. This included the Northern Territory introducing access regulation for its transmission network and Tasmania starting work needed for it to join the NEM. South Australia finalised its structural reforms and started its sale/lease program.

The Commission has played a key role in the reform process providing guidance and information to industry and government on the competition implications of electricity supply industry reforms. The Commission will have an on-going involvement in the NEM in regulating transmission company revenues, assessing NEC changes and through the oversight of electricity market conduct under parts IIIA and IV of the Trade Practices Act.

Draft Regulatory Principles

Under the NEC the Commission assumes the responsibility for regulating electricity transmission revenues in the NEM on a progressive basis from 1 July 1999. As part of this role, the Commission released its *Draft Statement of Principles for the Regulation of Transmission Revenues* (Draft Regulatory Principles) in May 1999.

The Draft Regulatory Principles outline the approach the Commission proposes to adopt as the economic regulator of transmission networks in the NEM.

To further develop the proposed principles the Commission held forums on asset valuation methodologies and depreciation, as well as a conference in December 1999 on incentive regulation to discuss the key regulatory issues confronting the regulation of network and bottleneck industries.

Work is continuing to finalise the regulatory principles document.

NSW and ACT transmission network revenue cap

As required under the NEC the Commission conducted an inquiry into the appropriate revenue cap to apply to the NSW and ACT electricity transmission network for the regulatory period 1 July 1999 to 30 June 2004.

In its final decision released on 25 January 2000 the Commission outlined the maximum revenue that may be earned by TransGrid and EnergyAustralia, the main providers of transmission services in NSW.

The final decision is the first made by the Commission as the economic regulator of electricity transmission in the NEM, and is the first regulatory decision made in a post-tax framework.

The review was held with the Independent Pricing and Regulatory Tribunal (IPART), the NSW State regulator. The Commission's decision drew on consultancy reports and analysed information from interested parties. It considered regulatory issues such as the opening asset base, return on equity and treatment of capital expenditure.

Commission regulation of Snowy Mountains Hydro-Electric Authority

At the request of the Snowy Mountains Council the Commission is reviewing the revenue cap for non-contestable elements of the transmission network of the Snowy Mountains Hydro-Electric Authority (SMHEA). The SMHEA is a statutory authority owned by the Commonwealth Government and operated on a cost-recovery basis. It serves as the interconnector between NSW and Victoria and operates in the Snowy region of the NEM. The Commission's draft decision was released on 6 June 2000.

The Commission will release its final decision after it takes into account submissions from interested parties and comments from the public forum held in Canberra on 22 June 2000.

Regulatory test for new interconnectors and network augmentation

After NEMMCO rejected the proposed NSW–South Australia interconnector in 1998 it approached the Commission to review the criteria used to assess regulated network investment. Consultants Ernst & Young were engaged in October 1998 to review the NEC test criteria. The Commission publicly released a paper in April 1999 outlining its view on the appropriate test. NECA at this time suggested changes to the NEC that would replace the existing test with one determined by the Commission. These changes took effect on 18 November 1999 with the Commission issuing the test criteria in December 1999.

The regulatory test is based on the principles of economic efficiency and competitive neutrality. While the test is based on a cost-benefit framework, it includes clarifications to limit any adverse impacts that regulated network investments might have on the competitive processes in the contestable parts of the industry.

Tasmania's entry into the NEM

The Basslink Development Board (BDB) approached the Commission to develop a light-handed approach to regulating the proposed Basslink interconnector between Tasmania and Victoria. The Commission saw merit in this proposal, provided the NEM's network planning processes were followed. On this basis the Commission developed a proposal for regulated interconnector revenues to be determined through a competitive tender. The approach was based on the Gas Code and included in the Commission's Draft Regulatory Principles.

The Commission is currently working with Tasmanian government officials on the modifications to the NEM Code and other arrangements to facilitate Tasmania's entry into the NEM once the Basslink interconnector is commissioned.

Retail competition

From 1 January 2001 Victoria, NSW, the ACT and Queensland will phase in full retail contestability, which will enable customers in the below 160 MWh market to choose their retailer.

Commission involvement has been limited to discussions with the Victorian Full Retail Competition Company (Vic FRCCo), NEMMCO and various consumer groups and to attending full retail contestability forums and holding observer status on the Electricity Choice Consultative Committee (ECCC) and National Electricity Market Settlements and Transfers Committee (NEMSAT).

However, it is anticipated that in August 2000 the Commission will be asked to authorise code changes on full retail contestability in addition to authorising derogations from the various jurisdictions.

Gas

Performance indicator

- Regulated gas market as required by the National Third Party Access Code for National Gas Pipeline Systems.

Access arrangements

Over the past year the Commission's focus has been on:

- assessing five access arrangements under the *National Third Party Access Code for Natural Gas Pipeline Systems* (National Gas Code) — of these, a final decision on the

central west pipeline access arrangement was released on 30 June 2000 and draft decisions are expected on the Moomba to Adelaide pipeline and Moomba to Sydney pipeline access arrangements;

- assessing an application to revise an existing access arrangement, the principal transmission system in Victoria, to roll-in to the capital base the interconnect assets owned by GPU GasNet — the Commission approved the application on 28 April 2000;
- assessing an undertaking lodged by Duke Energy International under part IIIA of the Trade Practices Act — a draft decision on this application is expected to be released soon;
- advising the Queensland Government on access principles relating to the proposed PNG to Queensland pipeline;
- advising the National Competition Council on the consistency with the National Gas Code of the tender processes and tariff outcomes for four Queensland transmission pipelines;
- continuing to assess proposed rule changes to the Victorian Market System Operation Rules; and
- participating in various consultative groups including the Gas Policy Forum and Natural Gas Pipelines Advisory Committee (NGPAC).

The Commission also expects to receive new access arrangements from service providers for transmission pipelines in Queensland as a result of the gas law coming into effect in Queensland on 19 May 2000. The submission date for these access arrangements, as specified by the National Gas Code, is 17 August 2000.

Central West Pipeline: AGLP

On 30 June 2000 the Commission issued its final decision under the National Gas Code on the central west pipeline (CWP) access arrangement. The pipeline is owned and operated by AGL Pipelines (NSW) Pty Limited (AGLP) which is part of the recently listed Australian Pipeline Trust. The access arrangement covers transmission of natural gas from Marsden to Dubbo, NSW.

In making this decision the Commission demonstrated that the regulatory framework under the National Gas Code can accommodate the particular characteristics of a project. A key consideration in assessing this access arrangement was to balance risk and reward for AGLP.

Moomba to Adelaide pipeline system: Epic Energy

On 1 April 1999 the Commission received an application from Epic Energy South Australia Pty Ltd for approval of the proposed access arrangement for the Moomba to Adelaide pipeline system.

Because of Epic Energy's haulage agreements with existing customers, the access arrangement proposed to provide only limited third-party access until 2006. In these circumstances access for FT (firm transportation) or IT (interruptible transportation) services would be provided if the customer funded expansions of or extensions to the system.

The Commission obtained legal advice on the existing haulage agreements and has had ongoing contact with the parties to the agreements. In response to submissions on the access arrangement by interested parties, Epic proposed to introduce a service that would be available before 2006, substituting interruptible on-the-day service for an IT service. Epic also proposed numerous changes to the terms and conditions of service. The revised arrangement was lodged with the Commission on 2 March 2000.

The Commission has been preparing a draft decision that takes into account the original and revised lodgments. The Commission expects to release its draft decision in August 2000.

Moomba to Sydney pipeline system: EAPL

On 5 May 1999 East Australian Pipeline Limited (EAPL) submitted its proposed access arrangement and access arrangement information for the Moomba to Sydney pipeline system (MSP). It describes the terms and conditions on which EAPL will make access to its pipeline available to third parties.

The Commission is finalising its draft decision.

Amadeus Basin to Darwin pipeline: NT Gas

The Commission released an issues paper in August 1999 on the proposed access arrangement submitted by NT Gas for the Amadeus Basin to Darwin pipeline (ABDP). The Commission made several requests for additional information from NT Gas to allow it to

properly consider the proposed arrangement. Additional documentation was eventually provided.

In April 2000 the Commission employed Connell Wagner, a private consulting firm, to review the asset valuation methodology and initial valuation proposed by NT Gas. The Commission received that report in May and, given the recommended significant reduction in initial asset valuation, has given a copy to NT Gas for comment.

The Commission now awaits NT Gas' comments, as well as additional information in support of NT Gas' proposed weighted average cost of capital before finalising its draft decision.

Riverland and Mildura pipelines: Envestra

Envestra Limited submitted proposed access arrangements for the Riverland pipeline system and the Mildura pipeline system on 22 November 1999.

A 1997 tender for the Mildura pipeline established a real rate of return and a price path to deliver an appropriate internal rate of return over a 30-year period. The Commission accepted the terms determined by the tender process in April 1999 and so cannot review those items in the current assessment of the access arrangement. The access arrangement for the Mildura pipeline covers items not addressed by the tender process.

The Commission released an issues paper in February 2000 seeking comments on the proposed access arrangement submitted by Envestra Limited for both the Riverland and Mildura pipelines and received no submissions from interested parties.

A draft decision is being prepared.

GPU interconnect

On 26 August 1999 GPU GasNet Pty Ltd submitted revisions to the access arrangement for the principal transmission system (PTS) to the Commission for approval under the National Gas Code with the objective of incorporating the interconnect assets into the regulated asset base. These assets comprise GPU GasNet's section of the interconnect pipeline linking the Victorian and NSW gas transmission systems and a compressor and valves installed at Springhurst. The pre-existing reference tariffs, which the Commission approved in December 1998, did not incorporate a return on these assets.

The Commission released its draft decision on 23 December 1999 and its final decision on 28 April 2000, approving the revisions proposed by GPU GasNet. The revised tariffs came into effect on 1 May 2000.

Queensland derogations

The NCC asked the Commission to advise it on whether the Queensland Gas Pipeline Access Regime as it applies to four derogated pipelines is broadly consistent with the National Gas Code. The NCC asked the Commission to assess the relevant tender processes

undertaken by Queensland against those established in the National Gas Code. If inconsistent, the Commission was asked to determine whether the reference tariffs in the respective access principles were broadly consistent with the pricing parameters set out in section 8 of the National Gas Code.

The Commission found that the tendering processes were significantly inconsistent with the competitive tender provisions contained in the National Gas Code.

In the absence of informed public consultation on the proposed tariff packages for the pipelines, the Commission based its assessments of the reference tariff outcomes primarily on estimates of the overall rate of return flowing from each pipeline's tariffs, given volume and cost assumptions.

Information disclosure

One of the fundamental differences between the approach taken by the Queensland Government to set reference tariffs and the process under the National Gas Code, is the lack of detailed information provided to interested parties. The Commission believes this is a significant issue.

The Commission understands that the NCC intends to make the Commission's report to it publicly available (subject to commercial-in-confidence claims being resolved).

PNG gas project

On 3 December 1999, following an application from the PNG gas project participants (the PNG producers), the Commission decided to revoke the previous interim authorisation granted on 5 August 1998 and grant a substitute interim authorisation.

The Commission continues to work with the Queensland Government in assessing the regulatory implications of the proposed extension of the PNG pipeline to Brisbane (the competitive tender was run for a pipeline from PNG to Gladstone). Approval of the access principles for the proposed PNG pipeline remains the responsibility of the Queensland Minister under the Queensland Petroleum Act. Once the access principles are approved, however, regulatory responsibility transfers to the Commission — with the approved access principles deemed to be an approved access arrangement under the National Gas Code.

Access undertaking: Duke Energy International

The Commission is currently assessing an access undertaking for a gas transmission pipeline. Duke Energy International submitted an undertaking under part IIIA of the Act on 18 November 1999, which outlines the terms and conditions on which it proposes to make access available to third parties on the Eastern gas pipeline (EGP). This pipeline is being constructed from Longford in Victoria to Horsley Park in NSW.

The Commission released an issues paper in December 1999 and is currently preparing a draft decision.

On 7 January 2000 the NCC received an application for coverage of the EGP under the National Gas Code and on 8 May 2000 released its draft recommendation. The NCC's final recommendation, released on 30 June 2000, was that the entire pipeline should be covered. Final approval of the recommendation by the Commonwealth Minister is required before coverage takes effect.

Australian Competition Tribunal

Victorian gas industry market and system operations rules — appeal

On 8 September 1999 BHP Petroleum Pty Ltd and BHP Petroleum (Bass Strait) Pty Ltd (collectively referred to as BHPP) applied to the Australian Competition Tribunal for leave to withdraw their application for a review of the Commission's decision made on 19 August 1998 to authorise the Victorian gas industry market and system operations rules (MSOR).

On 1 October 1999 the Tribunal granted BHPP leave to withdraw and on 4 October 1999 BHPP withdrew its application for review.

Victorian gas industry market and system operations rules — amendments

The Commission's authorisation of the MSOR came into force on 4 October 1999 after BHPP's application for review of the Commission's decision was withdrawn.

During 1999 a number of amendments to the MSOR (rule changes) were made by order in council under s. 48N of the *Gas Industry Act 1994* (Vic). A further set of amendments relating to quarterly planning reviews was gazetted on 4 November 1999.

Since the authorisation of the MSOR on 4 October 1999, most of the rule changes were not covered by the authorisation. On 13 October 1999 the Commission granted an interim authorisation to cover the rule changes pending an application for variation of the principal authorisation.

Minor variations applied for by VENCorp were granted on 10 May 2000 and 28 June 2000.

VenCorp annual statement

Under the Victorian Gas Industry Tariff Order, VENCorp is obliged to seek Commission approval of an annual statement that sets out its total annual costs and market fees for the forthcoming financial year.

Following an adjustment to the level of system security charge under recovery, the Commission approved VENCorp's annual statement for 2000–01 on 6 June 2000.

The Commission also requested further information on the pass through of savings resulting from the introduction of the New Tax System. VENCorp gave the Commission a cost savings estimate of $19 200 and a revised budget and market fee schedule to allow for the pass through of these savings to customers.

Gas Policy Forum

Much progress has been made in achieving gas reform but many matters have either not yet been settled or tested in practice. The reform process is complicated by there being so many States and Territories regulatory bodies and other stakeholders contributing to it. To maintain reform impetus, stakeholders need to cooperate on implementing existing commitments while developing future national approaches.

The Gas Reform Implementation Group (GRIG) was established in 1997 to finalise the intergovernmental agreement and the code for signature by Heads of Government, and to develop arrangements for administering the code. These requirements have been fulfilled and the group was disbanded last year. Nevertheless, it was widely recognised that GRIG's cooperative approach, with representatives from all sectors of industry and Government, was productive in achieving gas reform.

Accordingly, the Gas Policy Forum has been established: a consultative group including representatives of all jurisdictions, industry and user/consumer groups, the NCC and Commission.

Given its role in advancing the COAG objective of 'free and fair trade in natural gas', the forum will report decisions and recommendations to the Energy Markets Group for referral to COAG senior officials. The forum will report on work program and progress to the Energy Markets Group and will promote a national market by seeking endorsement of key agreements by energy Ministers.

The Commission welcomes the opportunity to participate in the forum and believes it to be an important part of the process to ensure the potential benefits from gas reform are realised.

Natural Gas Pipelines Advisory Committee (NGPAC)

The Council of Australian Governments established the National Gas Pipelines Advisory Committee (NGPAC) on 7 November 1997 to administer the National Third Party Access Code for Natural Gas Pipeline Systems. The membership of NGPAC includes an independent chair and representatives of the Commonwealth and the States and Territories, together with industry and regulator representatives, including the Commission. NGPAC meetings are held every quarter.

Section 9.1 of the code provides that it may be amended by agreement between the relevant Ministers after receiving a recommendation from NGPAC. So far NGPAC has recommended eight code change proposals to Ministers and, of these, three were not considered significant and were subsequently approved by the Ministers.

Roles of the Gas Policy Forum and the NGPAC

The roles of the Gas Policy Forum and NGPAC are quite distinct — the NGPAC's role is limited to administering and reviewing the operation of the gas access code and to recommending changes to it, while the forum addresses a broad range of high level policy

issues. If the forum identifies the need for a code change, this would be considered by NGPAC.

Telecommunications

Performance indicator

- Regulated telecommunications market.

Declaration inquiries

Local telecommunications services inquiry

During 1998 the Commission began a public inquiry into whether to declare particular services supplied by means of customer access networks (often referred to as the local loop). These services are essentially inputs used in the supply of communications services to end-users.

In July 1999 the Commission decided that declaration of the following services would promote the long-term interests of end-users of carriage services, or of services provided by means of carriage services:

- an unconditioned local loop service (ULLS), which uses unconditioned (copper) communications wire between the network boundary (on the end-user's side) and a point at which the wire terminates;
- local PSTN originating and terminating services, i.e. the carriage of communications between customer premises equipment and a point on the trunk side of the local switch; and
- a local carriage service, i.e. the supply of an end-to-end telephone call between two points within a standard zone (that is, local call resale).

Telstra is the predominant supplier of ULLS, owning the copper customer access network located throughout Australia.

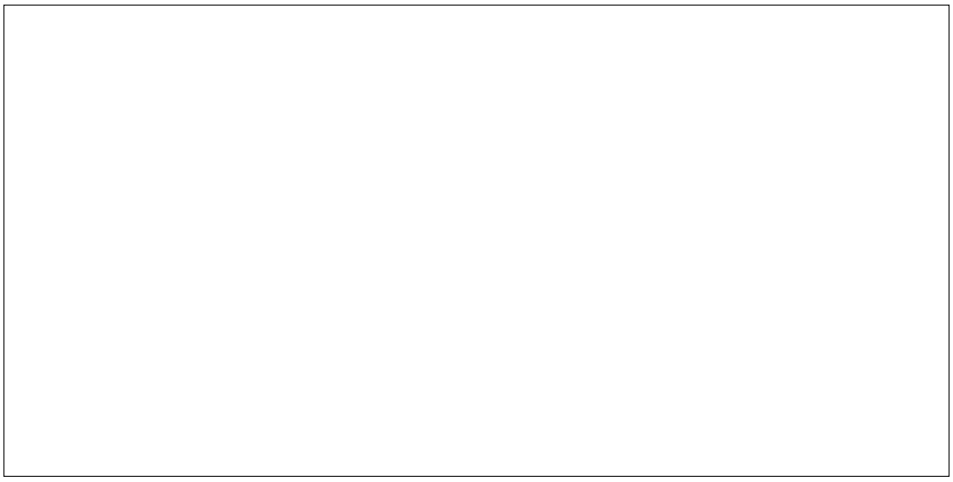
Inquiry into competition for long distance mobile services

On 8 October 1998 the Commission began a public inquiry into whether to declare a service that would allow service providers to supply the long distance transmission component of long distance and international calls made from mobile phones. The inquiry began after the TAF had considered the matter at industry level.

The Commission issued a discussion paper on the matter in December 1998, undertook market inquiries, consulted with industry and commissioned a paper on technical issues.

After issuing a draft report, expressing the view that it was not satisfied that declaration of the long distance mobile originating service would promote the long-term interests of end-users, the Commission evaluated further submissions.

On 14 January 2000 the Commission announced its decision not to declare the long distance mobile originating service. It noted that information received during the inquiry indicated that competition in the market is likely to intensify over the foreseeable future, even if the service was declared.



In particular the Commission found that it is likely there will soon be a high level of facilities-based competition. A number of resellers, such as AAPT, Hutchison and One.Tel, had entered the market. Importantly these resellers had also acquired spectrum and were starting to roll out their own mobile networks. If successful in their roll-out, Australia will have at least five mobile network operators in its main population areas and up to four operators in regional areas, one of the highest number of suppliers in the world.

Transmission inquiry

In its report *Competition in data markets* the Commission decided to declare intercapital transmission routes where new entry was less likely to occur in the short to medium term. This meant that all intercapital routes with the exception of Melbourne–Canberra–Sydney were declared. The Commission also established a monitoring program in March 1999 to assess aspects of market structure and market conduct on both the declared and undeclared routes. It collected quarterly information initially from Telstra and Cable & Wireless Optus (C&W Optus) and, subsequently, from Macrocom, GPU Powernet and Transgrid.

Results from the monitoring program suggest that competition on the Sydney–Brisbane route is increasing. On this basis the Commission decided to review the declaration relating to intercapital transmission capacity. As part of this inquiry the Commission issued a discussion paper in June 2000 seeking submissions from interested parties.

After considering submissions to the inquiry the Commission will make preliminary decisions about which intercapital routes to exclude from the declaration, if any. The Commission expects to publish a draft report setting out its preliminary findings later in the year.

Access to cable networks

In 1998 Television and Radio Broadcasting Services (TARBS) requested access to Telstra Multimedia's broadband cable television network pursuant to the Commission's declaration of broadcasting service (including pay TV). Telstra and Foxtel objected to the provision of access on grounds that the initial service declaration description was invalid because:

- the Commission incorrectly specified more than one service or the Commission specified a service that 'did not exist' on 13 September 1996; and
- the imposition of an obligation on Telstra would deprive Foxtel of a protected contractual right.

The Commission received advice on these issues and concluded that a fresh declaration under part XIC would, if it met the necessary legislative tests, clarify the situation. The Commission released a discussion paper on 22 December 1998 setting out a service description for an (analogue) broadcasting access service and also a technology neutral broadcasting access service.

The Commission announced on 30 August 1999 that it had decided to declare an analogue subscription television broadcast carriage service over cable links. It announced at the same time that it had decided not to declare a technology neutral broadcast carriage service. However, the Commission stated that it was monitoring developments in digital services, including broadcasting, to assess whether declaration was appropriate at some future point.

TARBS and Seven Cable Pty Ltd made access requests in reliance upon both the 1997 deemed service and the 1999 declared service. Telstra and Foxtel used similar arguments to deny any obligation to provide access to the cable.

In October 1999 Seven Cable Pty Ltd sought a determination from the Federal Court that Foxtel and Telstra did not have a protected contractual right. Foxtel sought declarations that both the 1997 and 1999 services were invalid. Also in October 1999 the Commission received a notification from TARBS seeking Commission arbitration for access to this service following Telstra's refusal to permit access to TARBS, citing its protected contractual right with Foxtel.

The Federal Court, in two separate decisions on 27 March and 8 May 2000, rejected Telstra and Foxtel claims that they had a protected contractual right which prevented anyone else accessing the Telstra HFC network and also upheld the validity of the Commission's pay TV declarations. Both decisions have been appealed. The appeals were

heard together between 1 June and 7 June 2000. A final judgment on the appeals is pending.

In a related case the Federal Court held that Foxtel was a carriage service provider. This makes it significantly easier for new entrants to obtain meaningful access to the broadband cable and in particular to Foxtel's set-top units and conditional access system. Foxtel has also appealed this decision.

The arbitration under part XIC continues.

Access undertakings

Telstra's access undertakings for domestic PSTN, GSM and AMPS originating and terminating access services

On 7 November 1997 Telstra submitted to the Commission three undertakings, specifying the terms and conditions by which it proposed to supply originating and terminating access (interconnection) to its public switched telephone network (PSTN), digital (GSM) mobile network and analog (AMPS) mobile network.

Under the Trade Practices Act the Commission is required to accept or reject the undertakings. The Commission made a final decision to reject Telstra's PSTN undertaking in June 1999. Final decisions were made to reject the two mobile undertakings in August 1999.

Telstra's new access undertaking

On 24 September 1999 Telstra submitted a new access undertaking relating to declared PSTN services, which proposed a headline charge for originating and terminating access services of 2.3 cents per minute for 1999–2000 and 2 cents per minute for 2000–2001. The undertaking does not cover non-price terms and conditions.

In its draft report the Commission assessed the prices against estimates of the efficient forward-looking costs of supplying PSTN services calculated using a cost model that National Economic Research Associates prepared.

On 10 July 2000, in its final decision, the Commission essentially confirmed the draft view released in April, with only minor revisions to the estimated forward-looking efficient costs of the service. Headline rates for 1999–2000 fell slightly to 1.77 cents per minute and those for 2000–2001 increased slightly to 1.53 cents per minute.

ACCC directions to the ACA on number portability

Under the *Telecommunications Act 1997* the Commission has statutory powers to direct the Australian Communications Authority (ACA) in regard to number portability. Only the Commission can direct the ACA to include rules about number portability, which must be consistent with its own directions, in the numbering plan. The numbering plan is for the numbering of carriage services in Australia and the allocation and use of those numbers.

Mobile number portability

Following a discussion paper on mobile number portability (MNP), the Commission released a final report on the issue in September 1999.

The Commission considered that a full cost/benefit study was not needed because it is clear that MNP is in the long-term interests of end-users. It promotes competition for existing customers, particularly business customers, and benefits consumers by providing incentives for carriage service providers to offer new and innovative services.

In October 1999 the Commission directed the ACA to amend the numbering plan to provide for MNP and in May 2000 the ACA announced that the earliest practicable date for its introduction would be 25 September 2001.

National and premium rate services

On 23 February 2000 the ACA wrote to the Commission seeking its consideration of mandating number portability of national rate numbers.

National rate services are global services specified in the 170X number range. They have now been incorporated into the numbering plan and are defined as a carriage service.

Telstra, which has an allocation of national rate numbers, perceives the service as complementing the uses to which freephone and local rate customers currently put their numbers — especially call centres — and that these customers may choose to utilise national rate numbers.

The Commission also considered it would be appropriate to examine whether premium rate number portability (1900 numbers) is necessary to promote the long-term interests of end-users.

Telstra and C&W Optus have been allocated numbers in the 190X number range for premium rate services. They give customers access to information, such as recorded audio, live advice, human interaction and facsimile services.

The Commission considers that the issues surrounding number portability of the national and premium rates are very similar and has structured a discussion paper accordingly. This paper was released for public comment after the end of the reporting period.

Telecommunications industry codes

During 1999–2000 the Commission was an observer on a number of code development committees organised by the ACIF (the industry body for telecommunications companies).

ACIF committees include representatives of the telecommunications industry, consumer groups and government regulators (such as the Commission, the ACA and the Telecommunications Industry Ombudsman). Codes being developed within the ACIF cover issues such as:

- mobile number portability;
- selling practices;
- billing;
- complaints handling; and
- credit management.

The Commission is also on ACIF committees examining consumer protection issues, as well as operational and network issues.

The ACIF's code administration and compliance scheme will continue to be used to monitor compliance of industry participants who are signatories to these codes. Enforcement action can be undertaken by the ACA against industry participants for failure to comply with these codes.

Air transport

Performance indicator

- Access to essential services including postal services and airport regulation is made on reasonable terms and conditions.

Airport price caps

CPI-X price caps apply at 11 privatised airports: Adelaide, Alice Springs, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and Townsville. Over the year the Commission assessed:

- price cap compliance;
- proposals for new or increased charges to fund new investment;
- proposals for new charges to recover the costs associated with government mandated security requirements; and
- the net impact of the New Tax System on aeronautical charges.

The Commission also released position papers on the new investment and security cost pass through provisions.

Price cap compliance

The CPI-X price caps allow airport operators to increase prices at the general rate of inflation, minus a productivity improvement component, 'X'. Price cap compliance is calculated on a revenue weighted average price basis. This means that adjustments to each charge are weighted by that component's proportion of revenue and summed to give the average price change compared to the previous year. The relevant CPI figure for the 1998–99 compliance test was 1.5 per cent.

Price cap compliance results are published in the Commission's airport regulatory reports. The compliance results for 1998–99 were:

- Launceston and Townsville airports complied with the price cap;
- Melbourne airport slightly over-recovered against the price cap, with prices on average 0.12 per cent higher than required under the CPI-X formula;
- aeronautical charges at Adelaide, Coolangatta and Hobart airports were 1.3 per cent to 3.0 per cent higher than required by the CPI-X formula — however, price reductions at each of the airports on 1 July 1999 should give price compliance in 1999–2000 and return 1998–99 over-recoveries; and
- Brisbane, Perth, Canberra, Alice Springs and Darwin airports did not comply with the cap. Over-recoveries were significant. At Brisbane airport, for example, over-recoveries amounted to around $1 million.

Brisbane, Perth, Canberra, Alice Springs and Darwin airports did not comply with the price cap because they introduced taxi charges without compensating reductions in other charges. Brisbane and Perth airports introduced a taxi charge of $1 per pick up, Canberra a $2 charge for use of the taxi feeder area, while Alice Springs and Darwin introduced a taxi licence fee of $480 and $600 per annum respectively.

The Commission believes that these charges fall under the definition of an aeronautical service and are subject to the price cap. Declaration number 83 requires that increases in charges for aeronautical services be notified to the Commission. Such services include landside roads, landside lighting and covered walkways.

Direction number 13 states that 'new or varied charges on existing services and charges on new or varied services, are to be factored into the price cap arrangements if the services are declared services'. The Commission considers that revenue derived from taxi charges at each of these airports should be included in the price cap and the price cap reconciliation statement.

Airport operators have two years to pass back the over-recoveries to users.

Necessary new investment

In 1998–99 the Commission received seven proposals to increase charges to fund new investment.

The price cap arrangements include a necessary new investment pass through provision, which allows airport operators to increase charges to fund new investment provided they have Commission approval. The provisions provide incentives for the timely development of necessary new aeronautical infrastructure.

In assessing proposals from airport operators the Commission has to consider criteria such as user support for the proposals and the relationship between the price increases proposed and the costs of the new investments.

One of the requirements of the new investment cost pass through provisions is that the pass through relates to 'new investment'. In April 2000 the Commission released a position paper *New investment costs pass-through — the distinction between 'necessary new aeronautical investment' and other forms of expenditure, as it relates to the price cap*. In preparing the paper the Commission conducted a consultation process and commissioned external advice.

Common user facilities — Melbourne and Sydney airports

Impulse Airlines commenced Sydney–Melbourne services in June 2000. Virgin is expected to follow. Melbourne and Sydney airports are catering for the new entrants by constructing new common user passenger terminal facilities.

Both airport operators sought to introduce new charges under the new investment pass through provisions to fund construction and operation of the passenger terminals. In May 2000 the Commission released a final decision not objecting to Sydney's proposals.

In June 2000 it released a draft decision on Melbourne airport's proposals for comments from interested parties. The draft decision did not support the level of the charge proposed by Melbourne airport.

Adelaide airport multi-user integrated terminal

In October 1999 the Commission released its final decision on Adelaide airport's proposals for a new multi-user integrated terminal (MUIT). The MUIT will comprise a new passenger terminal and associated infrastructure to service domestic and international operations. Through a charge on passengers (a passenger facility charge or PFC) the airport proposed:

- to recover the aeronautical component of terminal construction costs (around $150 million);
- a return on the investment; and
- a contribution to additional operating costs associated with the new facility.

The decision, which followed an extensive public consultation process, allows a charge of $6.00 for international passengers, $4.09 for domestic passengers and $1.00 for regional passengers applying to each arriving and departing passenger.

Brisbane airport new investments

In April 2000 the Commission approved price increases by Brisbane airport to fund $20.5 million of investments. They include apron expansions to service international and regional users of the airport, new runway signage and taxiway lighting.

Approval followed consultation between Brisbane airport and airport users. Brisbane airport's approach was consistent with that envisaged by the regulatory framework. The new investment provisions encourage airport operators and users to consult on the investment needs of the airports and the prices associated with the new investments to deliver commercially driven outcomes.

Perth airport new investment proposals

Perth airport applied for a new investment cost pass through on 21 December. The proposals covered some 37 projects, including an apron expansion, taxiway and runway overlays, road resurfacing and master plans.

The Commission's final decision in April 2000 approved price increases of $0.02 per tonne maximum take off weight (MTOW) for users of aircraft movement facilities, $0.10 per passenger for passenger processing facilities and $0.44 for general aviation users.

The price increases approved were significantly lower than the increases proposed by Perth airport because:

- some of the proposed investments did not meet the new investment test or the user support requirement — Perth sought price increases to recover the costs of $9.8 million of projects but the Commission accepted price increases for only $3.4 million; and
- the Commission adopted a lower cost of capital than proposed at 11.55 per cent nominal pre-tax compared with the 13.1 per cent sought by Perth airport.

Canberra airport apron extension

On 29 June the Commission released a draft decision on Canberra airport's proposal to increase aeronautical charges to fund a major apron expansion at the airport. The proposal was for a new common user apron available to all airlines. The apron expansion would provide additional aircraft parking bays for Impulse Airlines and other new entrants as well as catering for growth by Qantas and Ansett.

The draft decision approved a charge of $0.556 per arriving and departing passenger, which was lower than that proposed by Canberra airport because it adopted a lower rate of return and lower land rental charges than proposed and excluded master plan costs.

The Commission will release a final decision having regard to submissions provided in response to its draft decision.

Security charges

The price cap instruments include a pass through provision for direct costs of providing government-mandated airport security requirements. These requirements cover passenger screening, baggage screening and counter terrorist security.

Over the year the Commission provided guidance on the costs that can be passed through the price cap. In March 2000 it released a position paper *Government-mandated security requirements: the meaning of 'direct cost' as it relates to the price cap pass-through provisions*. The paper concluded that the avoidable cost approach to determining the cost of complying with government-mandated airport security requirements accords most closely with the Commission's understanding of the prices oversight arrangements.

Over 1999–2000 the Commission assessed 17 security pass through notifications from price-capped airports, seven of which were checked baggage screening, eight passenger screening and two APS notifications. The Commission also assessed one checked baggage and two passenger screening notifications from Sydney airport. All the decisions were made in accordance with the approach adopted in the Commission's position paper.

The New Tax System

The price cap instruments also include a pass through provision for the net impact of the New Tax System. The Commission received 12 such notifications from airport operators over the financial year — one from Sydney airport and one from each of the 11 privatised airports. In determining the net impact of the New Tax System the Commission followed the approach outlined in its price exploitation guidelines and its paper *Application of the price exploitation guidelines to regulated industries: the process*.

Regulatory reports

The Commission reports annually on Sydney airport and 11 privatised airports, Adelaide, Alice Springs, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and Townsville. The reports address requirements under the *Airports Act 1996* and the price cap and prices monitoring measures under the *Prices Surveillance Act 1983*.

The regulatory reports on each of the airport operators provide information on:

- quality of service;
- financial accounts (disaggregated to aeronautical and non-aeronautical services);
- price cap compliance; and
- prices, costs and profits of monitored aeronautically related services.

The reports aim to provide transparency about airport operator performance. The information will also be used in the Commission's 2001 review of prices oversight arrangements.

In December 1999 the Commission released the second annual regulatory reports for the phase I airports (Melbourne, Brisbane and Perth) and in March 2000 it released reports on the other airports.

Quality of service monitoring

The reports include a detailed assessment of quality of service performance at Sydney, Melbourne, Brisbane and Perth airports. Airlines and passengers were asked to rate airport performance on certain service indicators. Each of the airports performed well against the quality of service indicators used. The results were comparable to the results achieved in the 1997–98 period.

Fuel throughput levies

In December 1998 the Commission released a report on fuel throughput levies proposed by Brisbane and Perth airports, which concluded:

- the introduction of the fuel throughput levies would significantly increase the price of refuelling services;
- the price increases were not justified in terms of increases in costs or through offsetting reductions in other charges; and
- there was a strong case that airport operators have market power in the provision of refuelling services.

The report also concluded that in introducing fuel throughput levies airport operators may have taken advantage of market power. The report recommended stricter forms of prices oversight for aircraft refuelling services.

The Government is considering the recommendations.

Since then both airports have introduced the levies. At Brisbane the rate is 0.4 cents per litre and at Perth 0.35 cents per litre for international users. The 1999–2000 regulatory reports show that the levy raised $2.35 million at Brisbane airport over the financial year. At Perth airport the levy was introduced late in the financial year, raising $57 000. The Commission estimates the full year impact at around $500 000.

Review of price oversight arrangements

The Government's pricing policy paper requires the Commission to conduct a review of prices oversight arrangements applying to the leased Federal airports before the end of the first five years of leasing. The review of phase I airports (Melbourne, Brisbane and Perth) will take place in 2001 and the review of phase II airports (Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston and Townsville) in 2002.

In November 1999 the Commission released an information paper *Airports review — approach and guidelines*. The paper outlines a 12-month review process to allow full and proper consideration of the issues, adequate consultation with stakeholders and sufficient time for the release and consideration of a draft report.

The Government's pricing policy paper sets out matters on which the review will be based.

- The existence and level of market power associated with airport services. This involves identifying market power; determining its extent (or level), and identifying where the greatest potential exists for its misuse.
- The mechanisms for dealing with any identified market power. If it is determined that the existence and potential for the abuse of market power gives rise to the need for prices oversight, the next question is to determine the form of that regulation. The current arrangements are one model for prices oversight, but there are a number of alternative approaches and international examples that may be drawn upon.

While the Commission's paper did not seek submissions on the issues identified, it encouraged interested parties to focus on them in preparation for the forthcoming review.

Airport access

In July 1999 services at all of the phase II airports except Townsville were declared for purposes of part IIIA of the Trade Practices Act. Services at Townsville will be declared in July 2000. Services at Brisbane, Melbourne and Perth were declared in July 1998.

Airport services are declared by the Minister for Transport and Regional Services pursuant to s. 192 of the *Airports Act 1996*. The declaration must be made as soon as practical 12 months after the leases begin unless either the Commission has accepted an access undertaking or has granted an extension to the 12-month period.

Declaration of services gives airport users and access seekers the right to negotiate terms and conditions of access and to have the Commission arbitrate a dispute if the negotiations prove unsuccessful.

The Commission did not receive any requests for arbitration over the year.

Airservices Australia

In May 2000 Airservices Australia notified the Commission of proposed increases in aeronautical charges for terminal navigation, en-route navigation and rescue and fire fighting services. These services are declared under the Prices Surveillance Act.

The notification was for an average 3.24 per cent increase in charges, comprising increases resulting from the New Tax System and reductions to reflect non-GST cost reductions.

The Commission did not object to the proposal. The approach adopted by Airservices Australia in estimating the impact of the New Tax System followed the Commission's March 2000 guidelines for regulated industries *Application of the price exploitation guidelines to regulated industries: the process* and met the requirements set out in the Commission's price exploitation guidelines. In not objecting to the proposals the Commission also noted that Airservices Australia has progressively reduced costs and prices over the past few years, and that profitability has not been high.

Rail

Performance indicator

- Access to essential services including postal services and airport regulation is made on reasonable terms and conditions.

Under part IIIA of the Trade Practices Act, the Commission's role in the rail industry may potentially fall in two areas:

- assessing undertakings for provision of services by track owners/operators of rail infrastructure facilities; and
- arbitrating disputes over access to services declared to be essential under the terms of the Act.

These roles have not yet been exercised for rail. However, there has been a range of other initiatives at the Commonwealth and State levels.

Commonwealth initiatives

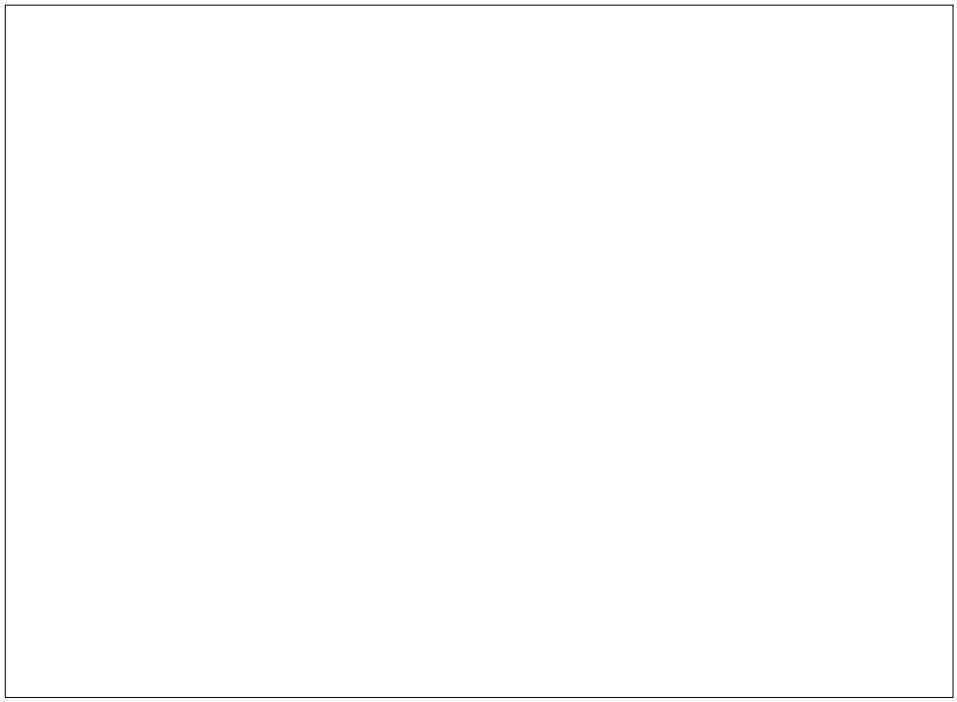
An important part of the national strategy has been to develop a national rail network and promote the use of rail infrastructure in the movement of interstate freight traffic. As part of this process the Commonwealth and State Governments signed an intergovernmental agreement (IGA) in 1997 to facilitate a coordinated approach to rail reform. One of its key elements was the formation of the Australian Rail Track Corporation (ARTC) whose primary objective was to promote use of Australia's national rail network linking all capital cities by providing a single point of access for rail service providers whose operations traverse State jurisdictions. This would enable ARTC to have sole discretion over the management of access to all tracks on the interstate network and provide the framework for ARTC to lodge an undertaking to the Commission in respect of interstate rail services.

ARTC owns the line in SA (including the track to Kalgoorlie in WA and Alice Springs in NT) and has control over the track in Victoria where it has a lease agreement. For the other parts of the network in Queensland, NSW and WA, ARTC has been negotiating wholesale access agreements. Delays in negotiations have meant that an undertaking has not yet been submitted to the Commission.

The rail industry in Australia has been the subject of a number of major reports:

- The House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform inquiry into the role of rail in the national transport network, *Tracking Australia*, 1998;
- The Rail Projects Taskforce, a private sector investigation of Australia's rail system headed by Jack Smorgon, *Revitalising Rail*, 1999; and
- The Productivity Commission inquiry, *Progress in Rail Reform*, 1999.

In response to these reports the Commonwealth Government has outlined its commitment to implement a national access regime and thus improve the efficiency of the rail sector and increase its share of Australia's transport task. The Government has expressed dissatisfaction with the pace of reform and has called on all parties to show greater commitment to the process and specifically to improving access by private operators to the nation's tracks. The Government has also said that it would consider alternative arrangements, including legislating a national regulatory regime, if the desired objectives are not achieved.



State rail reforms

The National Competition Council has been assessing applications by State governments for certification of access regimes. The NSW regime was certified effective in November 1999 until 31 December 2000 by which time the ARTC is expected to submit to the Commission an undertaking covering access to the interstate network. Since some tracks in NSW are an integral part of the interstate network, the effectiveness of the NSW regime will be reconsidered in the light of any interface issues that may arise in the context of a national access regime.

In Western Australia the Government has submitted to the NCC a regime covering access to intrastate rail services. The NCC has issued draft recommendations for certification pending resolution of some issues. The rail system in WA is owned and operated by Westrail as a vertically integrated rail track owner and provider of all passenger and freight services. The WA government has offered Westrail for sale as a complete operation.

The NCC has recommended certification of an access regime for the rail line from Tarcoola to Darwin, covering the existing Tarcoola to Alice Springs line and the proposed new line from Alice Springs to Darwin. The Tarcoola to Darwin regime includes provision for the Commission to be nominated as arbitrator. The regime is to be regulated by the South Australian Independent Industry Regulator.

Queensland Rail submitted an undertaking covering access to intrastate tracks to the Queensland Competition Authority for assessment under the Queensland Competition Act. (The interstate track in Queensland consists of a standard gauge link from Brisbane to the NSW border. Queensland's intrastate network is narrow gauge.)

In Victoria a rail access regime covering intrastate services has been established under the *Rail Corporations Act 1996*. The regime is based on a negotiate-arbitrate model. The Office of the Regulator-General is the nominated arbitrator and is presently in the process of developing a set of guidelines in relation to information requirements and access pricing principles.

Other developments

In September 1998 Robe River applied to the NCC to declare part of Hamersley Iron's rail service used to transport iron ore from mines in the Pilbara region of Western Australia to ports in the north of the State. In October 1998 Hamersley argued in the Federal Court that the NCC did not have the jurisdiction to receive an application for declaration in respect of its rail line services because it was not a service as defined under part IIIA of the Trade Practices Act. In June 1999 the Federal Court accepted the Hamersley argument. The rail line was seen to be an integral part of the process through which the final product acquired its final characteristics and not a service capable of supporting a declaration of access.

In July 1999 Hope Downs (also a potential user of the Hamersley line) and the NCC separately appealed the Federal Court decision while Robe River withdrew its application. The Federal Court issued a permanent stay of proceedings saying it would not hear an appeal on this particular decision. As part of the ensuing settlement, Hamersley agreed it

would not try to prevent Hope Downs from seeking declaration of Hamersley's line on the basis of the Robe River decision. Robe River has since announced an intention to construct its own rail link to the ports in northern Western Australia.

Utility Regulators Forum

Performance indicator

- Consulted with Federal and State Governments on competition issues arising from regulatory reforms.

Competition regulation is a new area of responsibility for many jurisdictions. In 1997 the Commission, in conjunction with other State-based regulators, established the Utility Regulators Forum — a committee of regulatory agencies — to promote information sharing and consistent policy development. Business and community organisations are invited to attend. Priority issues include:

- the role of benchmarking in regulation;
- development of incentive regulation;
- coordinating the collection of information from regulated businesses; and
- methodology for determining capital costs, asset valuation, and price regulation.

A number of meetings have been held over the last 12 months and regular issues of the newsletter, Network, have been published. Network is also posted on the Commission's Internet website.

Two more discussion papers, *Quality of service monitoring* and *Information gathering for ring fencing and other regulatory purposes*, were published in October last year to promote the exchange of information. Copies can be bought from the Commission's Melbourne office or are available on the website.

The member agencies of the forum are:

The Australian Competition and Consumer Commission (ACCC)
NSW Independent Pricing and Regulatory Tribunal (IPART)
Victorian Office of the Regulator-General (ORG)
Tasmanian Government Prices Oversight Commission (GPOC)
Office of the Tasmanian Electricity Regulator (OTTER)
Queensland Competition Authority (QCA)
WA Office of Gas Regulation (O*ff*GAR)
Office of Water Regulation — WA
SA Independent Pricing and Access Regulator (SAIPAR)
SA Independent Industry Regulator (SAIIR)
ACT Independent Competition and Regulatory Commission (ICRC)
Northern Territory Utilities Commission (NTUC)
National Competition Council (NCC)
NZ Commerce Commission

Waterfront

Performance indicators

- Appropriate action taken to ensure no business takes unfair advantage of the New Tax System.
- Access to essential services including postal services and airport regulation is made on reasonable terms and conditions.

Harbour towage

On 26 June 2000 Howard Smith Towage (HST) notified the Commission it intended to raise tariffs charged for towage services at the ports of Melbourne and Brisbane as a result of the introduction of the New Tax System.

The notifications were submitted under the notification provisions of the Prices Surveillance Act. Because the price rises are a result of the introduction of the New Tax System alone, the Commission assessment gave weight to the criteria contained in part VB of the Trade Practices Act and the price exploitation guidelines.

For HST a major component of costs is labour, which is not affected by the tax changes, and capital costs that are exempt from wholesale sales taxes (all costs associated with the purchase and operation of tugboats are sales tax exempt). The key area of saving for HST resulted from the Government decision to make marine transport and specifically towage eligible for the Diesel Fuel Rebate Scheme.

In assessing the notification the Commission determined no price increased more than 10 per cent and dollar margins appeared to be constant for 2000–01.

HST proposed to raise charges uniformly across all categories of ship sizes from 1 July 2000. Proposed increases in charges as a result of the introduction of the New Tax System are shown below.

Proposed increases in charges

Port	**% increases in towage charges due to the New Tax System**
Port Melbourne	8.08
Port Brisbane	7.94

Adsteam Marine Ltd

On 8 June 2000 Adsteam Marine Ltd notified the Commission it intended to raise tariffs charged for towage services at the ports of Fremantle, Adelaide, Jackson, Botany and Newcastle as a result of the introduction of the New Tax System.

The notifications were submitted pursuant to the notification provisions of the Prices Surveillance Act. Because the price rises are a result of the introduction of the New Tax

System alone, the Commission assessment gave weight to the criteria contained in part VB of the Trade Practices Act and the price exploitation guidelines.

As with HST a major component of costs is labour which is not affected by the tax changes. Again the key area of saving for Adsteam resulted from the Government decision to make marine transport and specifically towage eligible for the Diesel Fuel Rebate Scheme.

In assessing the notification the Commission determined that no price increased by more than 10 per cent and dollar margins appeared to be constant for 2000–01.

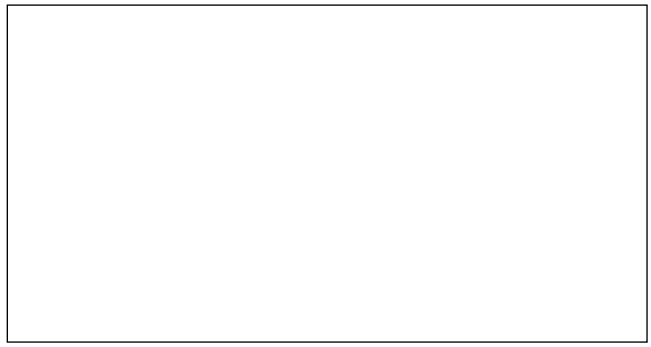
Adsteam proposed to raise charges uniformly across all categories of ship sizes from 1 July 2000. Proposed increases in charges as a result of the introduction of the New Tax System are shown below.

Proposed increases in charges

Port	**% increases in towage charges due to the New Tax System**
Port Jackson	7.26
Port Botany	7.55
Newcastle	4.79
Port Adelaide	6.84
Fremantle	8.24

Charges at Newcastle are frozen under a s. 87B undertaking put in place as part of the approval of a merger of towage operations at the port in 1999 — and will remain so for three years from June 1999 at the level that applied in December 1998. Adsteam (for Waratah Harbour Towage Pty Ltd) applied for a variation to the terms of the undertaking to allow it to apply GST pass throughs at the Port of Newcastle. The Commission accepted a variation to the undertaking, which also required additional information about cost savings for towage in the Port of Newcastle.

Adsteam had recently announced its intention to restructure manning levels on its tugboats following an agreement with the Maritime Union of Australia to introduce three-man crews. If this reform is implemented in Newcastle cost savings will be reported to the Commission.



Part X

In response to complaints by several exporters (shippers) and the Australian Peak Shippers Association (APSA) concerning recent rises in freight rates for South East Asian trades, on 16 March 2000 the Minister for Transport, the Hon John Anderson, directed the Commission to conduct an investigation under part X of the Trade Practices Act. The Minister is concerned that the conduct of the agreement does not accord with the objectives of part X as set out in s. 10.01.

Members of the Australia–South East Asia Trade Facilitation Agreement (TFA), a registered discussion agreement under part X of the Act, have increased base freight rates by more than 100 per cent in a period of nine months and have announced further increases to be implemented in September 2000.

The TFA was initially registered in December 1996 and has been subsequently varied nine times. Currently it comprises 17 shipping lines that operate on the northbound South East Asian (SEA) trade routes, specifically between Australian ports and those in Singapore, Malaysia, Indonesia, Thailand, Brunei, Vietnam and Cambodia.

On 2 June 2000 the Commission released an issues paper intended to highlight for comment and discussion issues that it has identified based on its experience to date and its preliminary round of public consultations.

The purpose of the investigation is to report to the Minister whether or not there are sufficient grounds in relation to matters referred to in s. 10.45(a)(iv) to recommend deregistration of the TFA. The final report is due in September 2000.

The nature of discussion agreements was the subject of comment by the Productivity Commission in its recent report on the shipping industry, *International Liner Shipping Cargo: A Review of Part X of the Trade Practices Act 1974, Final Report*. The Productivity Commission found that discussion agreements should be accorded no special treatment. However, in its response to the Productivity Commission's recommendations, the Commonwealth Government announced several proposed legislative amendments to part X, including the way discussion agreements operate. The Government was of the view that discussion agreements have the potential to cover a large proportion of carriers in a particular trade (as they do for the SEA trade lanes) and could consequently affect competition. The proposed legislative amendments will grant increased powers to the Minister and to the Commission to deal with concerns about the operation of discussion agreements.

The Bill amending part X was tabled in Parliament on 28 June 2000.

Container stevedore monitoring

In November 1999 the Commission released its first container stevedore monitoring report.

This follows the Federal Treasurer's direction to the Commission on 20 January 1999 to monitor prices, costs and profits of container stevedoring operators located in the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney. The aim is to inform the wider community about the progress of waterfront reform at Australia's major container terminals. The monitoring program will also inform the community about the absorption of the stevedoring levy by the stevedores.

The commencement of the monitoring program coincided with the introduction of the stevedoring levy in February 1999. The first monitoring report examines trends in prices, costs and profits of the three major stevedoring companies, P&O Ports Ltd, Patrick the Australian Stevedore, and Sea-Land (Australia) Terminals Ltd from February to June 1999, with reference to a three-month base period, November 1998 to January 1999. Subsequent reports will be released annually and will report on six-monthly trends in prices, costs and profits.

The next monitoring report is due in October 2000. The stevedores have now submitted price, cost and profit data for the six-month period July 1999 to December 1999 to the Commission.

The second annual survey focusing on questions about quality of service has now been sent to shippers and shipping lines.

Prices monitoring

Performance indicator

- Promoted competitive pricing where possible and restrained price rises in markets where competition is less than effective.

Petroleum products

Since the deregulation of petrol pricing under the Prices Surveillance Act on 1 August 1998 the Commission's main role has been to monitor petrol prices, with a particular focus on 'hot spots'. The Commission examines prices and determines notional retail margins by comparing them with an internal import parity indicator. This provides useful information on the flow through effects of international price movements and also the variation of capital cities and country indicative profit margins.

In its monitoring the Commission relies on retail price data from the independent retail price monitoring scheme which was established in September 1998, as a cooperative venture between the oil companies, represented by the Australian Institute of Petroleum (AIP), and the Australian Automobile Association. Under this scheme, Informed Sources Pty Ltd has been commissioned by the AIP to provide regular surveys of 100 country hot spots and the AIP makes this price information available on the Internet. Hence there is greater retail price transparency.

The Commission's monitoring of unleaded petrol prices from July 1999 to June 2000 indicated higher retail prices in the metropolitan and country areas. The main factors for the increase were the higher refined product price in Singapore, which is used as a benchmark for pricing in Australia and the decline in the Australian exchange relative to the American dollar. However, the indicative profit margins (difference between retail prices and the Commission's import parity indicator) over most of the financial year were lower in both the metropolitan and country areas compared to pre-deregulation. The indicative profit margin in June 2000 (post-deregulation) compared to July 1998 (pre-deregulation), decreased by about 1.00 cpl (cents per litre) in the capital cities and 1.50 cpl in the country areas. The variation in prices between the capital city and country areas declined by 0.40 cpl.

In all the capital cities there was greater discounting evident by a comparison of the Commission's import parity indicator with the market prices except in the case of Darwin and Hobart. Comparatively little discounting is evident in country areas.

The Commission also monitors the wholesale list prices of the companies that make them available and the terminal gate prices of Caltex, BP and Mobil. Only one of the oil majors appears to post prices which could be considered close to genuine terminal gate prices.

The Commission appeared before the Senate Committee on the Fair Prices and Better Access Bill 1999 introduced by Senator Fitzgibbon, at the request of the committee.

Outline of petrol/LPG monitoring program

The Commission has implemented an expanded monitoring program regarding its responsibilities under the New Tax System changes. The new program increased the number of towns in which prices are collected, the number of service station sites within those towns and the range of fuels.

The monitoring of unleaded petrol, diesel and auto LPG prices at around 2500 petrol service stations in the five largest capital cities continued through the GST transition period. This monitoring was also expanded to include Darwin, Canberra and Hobart prices on a daily basis.

Before the transition period to the GST the Commission's monitoring program was based on retail price information on unleaded petrol from about 800 sites in 100 country towns across all States and Territories on a monthly basis. This monitoring was extended before 1 July to a weekly collection in 150 country towns across all States and Territories for unleaded petrol, diesel and auto LPG. The total number of sites covered was around 1400, reflecting about 70 per cent of the rural population in Australia. Monitoring is conducted on contract by Informed Sources (Australia) Pty Ltd. The Commission also conducts additional random monitoring in remote areas.

An initial assessment of prices is made through comparisons before and after the introduction of the GST and with price expectations determined through an indicative pricing model.

Monitoring pass through of the fuel sales grant

Outline of the fuel sales grant scheme

The Government announced its plan to introduce a fuel sales grant of 1 or 2 cpl to be paid to retailers in non-metropolitan areas and remote areas, respectively, for sales of petrol and diesel after 30 June 2000. The grant was to apply to sales to consumers by retail fuel outlets and to bulk sales to final consumers. This includes industrial or commercial end users such as mines, primary producers, power stations. Sales to final consumers made through purchases on fuel cards are eligible for the grant.

The stated purpose of the grant was that the country/city differential should not increase with the introduction of the New Tax System. Specifically, the grant is intended to overcome an arithmetical quirk arising from replacing a uniform reduction in a fixed excise with an *ad valorem* tax. The amount of the grant was intended to be approximately equal to the difference between the dollar amount of GST on the fuel retail price less the amount of excise reduction. Thus the grant is greater for the more remote locations.

The Commission's role regarding the fuel sales grant

When announcing the scheme the Treasurer stated:

> Retailers of petrol and diesel will be expected to pass on to consumers the benefits of the grant. To assist in this process the grant will be prescribed under the Price Exploitation legislation administered by the Australian Competition and Consumer Commission (ACCC). The ACCC will carefully monitor petrol and diesel prices to ensure that retailers comply with this legislation. [Press Release No. 019, 11 April 2000.]

The Commission wrote to the operators who may apply for the grant, advising them of the information they had to keep to enable the Commission to determine if the grant was

passed on to consumers. The information is essentially what a business would keep for its own purposes.

Milk monitoring

Following the agreement of all State Governments to dismantle their respective regulated pricing arrangements for market milk from 1 July 2000, the Commonwealth Government introduced an 11 cent per litre dairy adjustment levy on sales of liquid milk products to apply from 8 July 2000. The levy will raise an estimated $1.74 billion over eight years and will fund a structural adjustment package for dairy farmers. Under the package, eligible dairy farmers will receive quarterly adjustment payments over eight years averaging around $118 000 per farm in total. Alternatively, milk producers have the option of a tax-free exit payment of up to $45 000 in the first two years of deregulation should they wish to leave the industry.

On 10 April 2000, in anticipation of dairy deregulation, the Minister for Financial Services and Regulation, the Hon Joe Hockey MP directed the Commission, under s. 27A of the Prices Surveillance Act to formally monitor prices, costs and profits of businesses dealing with market milk product sales. The Commission's role in monitoring the milk industry is being funded by $500 000 from the dairy adjustment levy. The monitoring period will commence three months before the introduction of the Dairy Industry Adjustment Program on 8 July 2000 and end six months later. The Commission must report on its findings within three months of the end of the monitoring period. The report should be publicly available from April next year.

Australia Post

In April 2000 the Government introduced the Postal Services Legislation Bill 2000 into the House of Representatives. The Bill implements the Government's response to the National Competition Council's review of the *Australian Postal Corporation Act 1989*.

The two key aspects of this response which are incorporated into the Bill are:

- the reduction of the reserved services; and
- the development of a postal services access regime under the Trade Practices Act.

If the Bill is passed the access regime becomes a new part XID of the Act. Under the access arrangements the Commission will have a declaration and arbitration role and will assess any undertaking by a postal service provider. The Commission will also be given the power to make record-keeping rules and disclosure rules with which specified postal providers will be required to comply.

Notifications

Australia Post notified the Commission of changes proposed within the declared postal services in accordance with the Prices Surveillance Act to accommodate the introduction of the New Tax System.

The GST is payable on all domestic postal services. Australia Post notified the Commission of proposed price changes for ordinary, local and presort small and large letters on 4 January 2000. This notification was subsequently withdrawn.

Australia Post re-notified on 14 March 2000, and for postage prepaid envelopes and reply paid services on 24 March 2000. In these two notifications there were no structural or other price increases other than those associated with the New Tax System.

In accordance with the Government's requirement, Australia Post maintained the 45 cent stamp price, preserved the concessions for greeting cards and reduced the prices for some small presort letters. Australia Post will experience a major revenue loss as a result of these decisions.

As the changes proposed in the notifications were a result of the New Tax System, the Commission assessed both notifications giving particular attention to the relevant criteria in part VB of the Act and the Commission's price exploitation guidelines. Overall, no price increases were more than 10 per cent and some were reduced. The weighted average GST price increase across the letter service was 8.2 per cent (excluding ordinary small letters and seasonal greeting cards) and 4.4 per cent across the entire letter service. Dollar margins were not increased.

The Commission did not object to the price changes proposed by Australia Post in the notifications. Although some prices will rise, most businesses will be able to claim GST price rises as an input tax. For households the price of an ordinary stamp and the stamp on seasonal greeting cards will remain the same.

Compliance coordination

Performance indicators

- ACCC policy and positions formulated — discussion documents and guidelines on competition initiatives and regulatory mechanisms be prepared, disseminated and discussions take place with Government, industry and consumers.
- Consulted with Federal and State Governments on competition issues arising from regulatory reforms.

- Responded to Government inquiries on competition and consumer protection issues including references under s. 28 of the Trade Practices Act relating to dissemination of information, law reform and research.
- Actively participated in the development of effective competition and consumer protection laws internationally.

The Commission sees its primary responsibility and its ultimate goal as being to gain compliance with the provisions of the Trade Practices Act. Compliance is encouraged through a variety of mechanisms:

- promoting an understanding of how to achieve internal compliance;
- encouraging appropriate self-regulatory responses to systemic problems;
- emphasising the commercial value of compliance;
- developing practical guidance on how to comply with the Act;
- liaising and cooperating with relevant industry and consumer stakeholders; and
- effective education and enforcement action.

Other mechanisms include targeted use of the media and contributing to reviews of self-regulatory mechanisms.

The Commission's Compliance Division answers queries and provides general trade practices compliance information to the corporate and government sectors, and industry and professional associations.

The division also supports the Commission's enforcement activities. For instance, it assesses the extent to which traders have adhered to undertakings involving compliance obligations and provides guidance to enforcement staff negotiating undertakings that contain compliance obligations. When there is systemic non-compliance with the Act, enforcement action will be taken, for example where a compliance approach has proved or is likely to be ineffective, or where there is serious, re-occurring non-compliance with the Act.

General compliance advice

The Commission favours providing compliance information through business and professional associations because it can:

- assemble a range of industry participants at a single seminar;
- allow small businesses access to resources and advice that are too expensive for them to acquire individually; and
- efficiently distribute Commission guidance to specific audiences.

The Commission liaised with a number of associations in 1999–2000. These included the Film Exhibition and Distribution Code of Conduct Administration Committee, the Ministerial Council on Consumer Affairs, the Association of Compliance Professionals of Australia, the Society of Consumer Affairs Professionals and the Health Care Complaints bodies of each of the State Governments (e.g. NSW Health Care Complaints Commission).

It also worked closely with a number of corporations and unions, offering general assistance in the development and review of compliance programs. These included the Australian Federation of Travel Agents, the Tourism Council of Australia, Lennock Motors (ACT), Quality Assurance Services (a division of Standards Australia) and Australia Post.

Compliance projects

The Commission is increasingly looking at codes of conduct, charters and voluntary standards as a light-handed, market sensitive means of gaining compliance with the Act. In 1999–2000 the Commission's role became one of providing feedback in code reviews rather than having a central place in their development. The Commission continues to facilitate interpretive work on the Act, involving all stakeholders and publishing guidelines based on this work.

Codes of conduct

Code of conduct for film distribution and exhibition

In late 1999 the Commission conducted a review of the code of conduct for film distribution and exhibition. The code management committee is considering these recommendations.

Internet Industry Association

The Commission has had considerable input into the Internet Industry Association's various codes of practice, in particular the ISP code of conduct.

Fruit juice industry

The Commission was involved with the fruit juice industry in drafting a code of conduct and supporting compliance mechanisms to ensure that endemic and persistent problems of dilution, adulteration and misleading labelling were dealt with. The Commission has undertaken investigations and court cases concerning misleading conduct in this industry. The Commission is now assisting in the review of the code.

Australian Pharmaceutical Manufacturers Association

The Commission, on request, is providing comments on proposed amendments to the APMA code. The Commission is focusing on competition issues and recent developments in the Act, such as country of origin claims.

Marketing of IVF services

In late 1999 the Commission received a request for assistance in the development of a code for the marketing of IVF services. The Commission has provided information about the development of codes. A request has been made to comment on the first draft, particularly the provisions on promotional activity.

Jewellery and timepiece industry code of conduct

The Commission, on request, is assisting the Jewellery Association of Australia to close recently identified gaps in the code. It appears that it may be possible to comply with the strict letter of the code without complying with the spirit.

Australian Communications Industry Forum

Under the *Telecommunications Act 1997* the industry is required to develop codes relating to various aspects of service delivery. The legislation provides that in order for the Australian Communications Authority to register a code, it must be satisfied that the Commission has been consulted.

The Commission has provided input through a reference panel established by ACIF. One consumer code nearing completion is the complaints handling code.

Consumer issues

Review of the energy efficiency rating system for electrical goods

In June 1999 the Commission was approached by the Australian Greenhouse Office (AGO) to conduct a review of the energy efficiency rating system for electrical goods (star rating on electrical whitegoods), specifically to examine the enforcement regime associated with the scheme. The Commission sought the views of a range of stakeholders and a report was handed to the AGO in March 2000 at the AGO Stakeholders Forum. A memorandum of understanding was subsequently negotiated between the Commission and the AGO.

Country of origin

The current provisions for country of origin representations came into effect on 13 August 1998.

A country of origin representation is any labelling, packaging, logo or advertising that makes a statement, claim or implication about which country goods come from.

The most common claims are 'Made in Australia' and 'Product of Australia'— or similar claims about goods from other countries.

The new provisions clarify the steps that firms should take to ensure that their country of origin labelling or promotions do not breach the Trade Practices Act.

A guide to the country of origin provisions was produced in conjunction with the Complementary Health Care Council after Commission investigations into 'Made in Australia' claims on products manufactured from imported cod liver oil earlier in 1999. However, there is still a degree of legal uncertainty and manufacturers could still be subject to private litigation.

Sydney Olympic Games ticket sales

The Commission has been liaising with the Sydney Organising Committee for the Olympic Games (SOCOG) on a range of consumer protection issues in relation to ticket sales.

In late October 1999 the Commission raised concerns with SOCOG regarding trade practices issues including misleading and deceptive conduct, bait advertising and third line forcing. The Commission asked SOCOG to clarify its actions in relation to the first round of ticket sales and suggested some initiatives to improve consumer confidence in their activities.

In November 1999 and February 2000 SOCOG notified the Commission of proposed conduct that may constitute third line forcing. The proposed conduct was to limit the payment methods for consumers purchasing Olympic tickets to VISA through the Olympic call centre or via the Internet. In April 2000 the Commission decided not to allow the notification to stand and issued a draft notice to SOCOG. SOCOG subsequently decided to extend sales to order forms published in News Limited newspapers.

Truth in egg carton labelling

The Commission has received a number of complaints regarding labelling on egg cartons. This follows a request from the Royal Society for the Prevention of Cruelty to Animals and a subsequent letter writing campaign by members. The Commission is currently assessing these claims to see whether they mislead consumers about the way in which hens are housed.

Y2K compliance

In anticipation of consumer concerns regarding Y2K compliance in various goods and services, the Commission developed a strategy of information and disseminated information about the rights and responsibilities of consumers and business under the Act and developed an enforcement strategy to ensure a uniform approach by fair trading agencies.

International Internet Sweep Day

The Commission's recent investigations into scams on the Internet have recognised the need for international cooperation between enforcement agencies to detect and address illegal Internet activity. The Commission, in conjunction with the International Marketing Supervision Network (IMSN), held the 3rd Internet Sweep Day on 23 September 1999.

The 1999 Sweep Day assessed e-commerce websites according to a number of key consumer protection principles. These principles were partly based on the draft OECD guidelines on consumer protection in electronic commerce that have now been finalised. The sweep provided a valuable opportunity to publicise these principles to consumers and online traders, and allowed the Commission to collect important information about the characteristics of e-commerce websites.

Participants in the sweep examined e-commerce sites and forwarded the results to the Commission for analysis. Some of the notable findings were:

- 62 per cent of sites had no information about refunds or exchanges;
- 75 per cent of sites had no statement about how they would handle a consumer's personal information (i.e. a privacy policy); and
- 90 per cent of sites did not specify the applicable law for the purchase.

The findings of the sweep were publicised widely and a report was made to the IMSN. In response to the success of the last three sweep days, the US Fair Trading Commission invited the Commission to act as the Australian liaison in their Internet surf day targeting get-rich-quick schemes in February 2000.

Internet porn scam

In September 1999 the Commission helped the US Federal Trade Commission to break a global Internet scam that took unsuspecting Internet users to pornographic sites. When users attempted to click onto legitimate sites they were 'page-jacked' to a page offering various types of pornographic material. The site's software then disabled the users' Internet browser so that if the user tried to quit the site more pornographic websites were displayed. This mousetrapping process occurred up to 20 times before the consumer was able to shut down the browser.

Sites webjacked included information about children's Internet games, folk music or movie reviews. When Internet users search for this material, the results include the copied sites that are described in the same manner as the original site on the search engine results.

The US Federal Trade Commission has gained temporary restraining orders for the deregistration of the domain names involved.

The Commission is investigating the Australian links to the US parent and believes that the conduct may breach the Act as it is misleading or deceptive. The disabling of users' Internet browsers may amount to undue harassment or coercion in connection with the supply of goods or services to consumers.

Slam a scam

The Commission has hosted an online complaints mechanism for several years on the website. This mechanism is currently being upgraded to allow for more sophisticated data capture and links to other law enforcement agencies.

Product safety in e-commerce

The Commission is currently looking at issues in relation to product safety and the Internet. It can be difficult for consumers to determine whether products meet minimum safety standards when shopping on the Internet. The Commission has initiated a project to investigate ways in which such information can be displayed and jurisdictional issues in the enforcement of mandatory standards. Part of this project will involve liasing with international and domestic agencies and the heads of Commonwealth operational law enforcement agencies.

Product safety compliance and enforcement

Product safety surveys

The Commission actively enforces mandatory product safety standards, information standards and bans on unsafe goods declared under the Trade Practices Act with manufacturers, importers and retailers. Random market surveys are conducted on a strategic risk management basis. For example, children's swim vests imported by the Zodiac Group Australia Pty Ltd were recalled from sale following a pre-Christmas survey in 1999. The survey revealed that these particular vests did not carry the required labelling in accordance with mandatory safety standard, AS 1900-1991.

In addition to the regular surveys conducted for all mandatory safety standards, several products were targeted during the year to secure a greater level of compliance.

Car jacks

This standard is given high priority due to the serious nature of potential injuries associated with non-complying products. Offices around the country surveyed retail outlets to ensure warning labels were present on products. While many products complied fully, a number of jacks were recalled from the market due to inadequate labels and some performance failures. The Commission will continue to be vigilant with these products.

Sunglasses

The sunglasses market is high in volume and ever changing with vast numbers of suppliers and retailers. While the majority of the market complies with the safety standard, the Commission is still finding samples of non-complying products. In addition to the regular market surveys, a specific industry compliance education program was conducted during the year. Importers and other suppliers are now more familiar with their obligations under this standard and compliance has improved.

Cots

The Australian Consumers' Association published an article in September 1999 *Choice* magazine reporting on its test findings on household cots. The results indicated some of the usual interpretation problems revealed in newly regulated product standards and this

provided the Commission with an opportunity to work with the ACA, industry, State and Territory regulators and Standards Australia to develop solutions.

The overall level of compliance appears to be very good and the attitude of the industry is commendable. Measures are being taken to address the few outstanding concerns with this standard, but overall implementation should be regarded as successful.

Chapter 5

Guidance, information and liaison

Output 1.1.2: Performance of actions that promote competition and fair trading and enable well functioning markets.

Objective

To inform the community at large about the Trade Practices Act and Prices Surveillance Act and their implications for business and consumers.

Introduction

While the Commission has a high profile in its enforcement responsibilities, the Act is also well served by the Commission's guidance, information and liaison activities.

Guidance remains a key strategy to encourage compliance with the Act. This is a particularly effective way to approach emerging issues or amendments that give rise to untested areas of the Act. Such guidance complements interpretations made by the courts. It also provides clarity for stakeholders in the Commission's interpretation of the Act.

The Commission takes a creative approach to the dissemination of information to achieve its objectives in compliance and education. It continues to use electronic media as well as traditional forms such as print, public speaking and hosting public forums.

The Commission has continued to engage with its industry, government and consumer stakeholders through its everyday activities and special events. Stakeholders include representatives from large business, small business, professions, unions, the consumer movement and Government.

This chapter provides a brief overview of the Commission's work in guidance, communication and in managing relationships with key stakeholders in the broader Australian and the international communities.

Small business program

Performance indicators

- ACCC policy and positions formulated — discussion documents and guidelines on competition initiatives and regulatory mechanisms be prepared, disseminated and discussions take place with Government, industry and consumers.
- Responded to Government inquiries on competition and consumer protection issues including references under s. 28 of the Trade Practices Act relating to dissemination of information, law reform and research.

The Commission's small business program consolidated its role in increasing small business' awareness and understanding of the Trade Practices Act and the role of the Commission this year. It also continued its role of integrating small business issues into the work of the Commission.

Small business managers in the Commission's State and Territory offices significantly expanded the Commission's contact with business operators and their representative bodies both in metropolitan and rural and regional areas. This expansion facilitated the process by which business operators could inform the Commission of their concerns on trade practices and related issues.

The Commission's small business managers also provided information to small business operators about their rights and responsibilities in relation to the Act.

Information programs

The small business program held 230 seminar presentations this year. Fifty-one of these were made in rural and regional areas and 139 000 publications were distributed at the various business expos and field days.

The Commission published and distributed a number of business information flyers, such as the new *Retail Flash*. Produced in conjunction with the Australian Retailers Association, *Retail Flash* informs small retailers about fair trading practices that will improve their customer relationships.

The small business information flyers provide concise, easy-to-read, information on specific trade practices matters. They are included in the Commission's regular monthly mail-out, including electronic distribution, to small business operators and associations.

The Commission maintained and developed its contact with communities of non-English speaking backgrounds and is currently developing small business information flyers in a number of languages.

These activities were complemented by the Commission's liaison with its small business advisory group which comprises representatives from a wide range of business and

professional areas. The group meets every six months to discuss trade practices issues affecting small business.

While a large proportion of the program's work in 1999–2000 continued to flow from *New Deal: Fair Deal* legislative changes to the Act, it also provided effective communication channels to better inform small business operators about emerging issues such as the Commission's role in GST pricing.

Cooperation with other agencies and associations

In 1999–2000 the small business program further developed its cooperative activities with other Commonwealth agencies and business associations which have a business information role. This cooperative approach enables the Commission to receive more feedback on its activities from the small business sector and to reach more small business operators in a cost-efficient manner.

The Commission continues to liaise regularly with the Federal Office of Small Business and to participate in consultations with counterpart agencies in all States and Territories.

Rural and regional outreach program

Small business managers initiated a number of field trips to conduct seminars and presentations to industry about the Trade Practices Act in general, the Franchising Code, unconscionable conduct and the GST. The small business program also used country field days to promote trade practices issues to rural communities. Chambers of Commerce continue to encourage businesses to attend seminars on the Act. Presentations have been made to audiences in all corners of the country for example, Kalgoorlie, Whitsunday and Shepparton.

Liaison with State and Territory Governments

The Commission's small business managers continued to collaborate with State and Territory government business help and advisory centres. These links proved valuable in the prompt provision of trade practices and related information to small business operators.

The Commission meets State and Territory agencies regularly to coordinate small business outreach and promote joint activity.

Publications

Performance indicators

- Publication of new and amended provisions of the Trade Practices Act and new ACCC procedures.
- ACCC policy and positions formulated — discussion documents and guidelines on competition initiatives and regulatory mechanisms be prepared, disseminated and discussions take place with Government, industry and consumers.

- Responded to Government inquiries on competition and consumer protection issues including references under s. 28 of the Trade Practices Act relating to dissemination of information, law reform and research.

Publications, both print and electronic, give the general public and business comprehensive access to the latest Commission guidelines, market and consumer issues, and trade practices matters. The *ACCC Journal*, published bi-monthly, details all new and continuing matters being resolved either in the courts or between the Commission and companies or individuals concerned.

The quarterly magazine, *ACCC update*, has evolved recently into an issues-based publication, the most recent covering health and consumer concerns. Previous issues have looked at GST, e-commerce and telecommunications, and are becoming increasingly relied on for the definitive word on particular sectors.

Other publications released by the Commission include reports, determinations, discussion papers and numerous leaflets. The large range of product safety leaflets have proved to be extremely popular, covering subjects such as cosmetics, elastic luggage straps, pedal bikes, bicycle helmets, balloon-blowing kits and bean bags.

The introduction of GST added a new dimension to the publications program with the release, mostly in the last six months of the financial year, of more than 30 booklets, leaflets and guidelines aimed at business and consumers.

In line with the recent Federal Government direction that all new non-commercial publications should be available electronically, the Commission now publishes all unpaid material on its website, as well as in print. Publications with a price tag can be ordered online. Some of the notable publications released in the past year are described below.

Making markets work

The definitive guide to the Commission and its future priorities was launched in October 1999 — *Making markets work*. It sets out in plain language how the Commission ensures compliance with the Trade Practices Act, its role in regulatory reform, and how it gets the message out to its stakeholders and the general public.

GST

A large range of GST publications include several series aimed at either business or consumers, or specifically designed for the website. They are: GST Snapshots, GST news for business, GST checklists, GST talks and GST Bulletins. They cover issues such as franchising, caravan parks, the trucking industry, cafes and restaurants, as well as the impact of GST on weddings, rents, electronic goods, lay-bys, holidays and many more.

Price exploitation guidelines

Price exploitation and the New Tax System, commonly known as the price exploitation guidelines, were first released in July 1999 and then revised in March 2000. They provide general principles, information and guidelines on when prices contravene s. 75AU of the Trade Practices Act.

Health

Health report

The community seeks better information from hospitals, medical and other health practitioners, as well as health funds, about the products and services they provide. This was a finding of a Commission report into anti-competitive practices by health funds or providers for the Senate. The report was released in April 2000 and received wide media interest.

Advertising of health and medical services

Health issues also sparked a lot of interest in July 2000 with the release of *Fair treatment? — Guide to the Trade Practices Act for the advertising or promotion of medical and health services*. Enforcement of the law is a high priority for both the Commission and the Health Care Complaints Commission as consumers must be fully and truthfully informed about medical and health services. Commission investigations include complaints about advertising or other promotional activity regarding impotency, proctology and weight-loss clinics; hair removal claims; laser eye surgery and 'miracle cures' including therapeutic 'ion mats'.

Debt collection

Two publications launched in June–July last year covered debt collection — *Undue harassment and coercion in debt collection and Debt collection and the Trade Practices Act*.

The Commission released the two publications in the wake of hundreds of complaints about tactics used in debt collection.

Section 60 of the Trade Practices Act forbids corporations from engaging in physical force, undue harassment or coercion in connection with the supply of goods or services to a consumer, or in connection with the payment for goods or services by a consumer.

State and Territory annual reports

The second round of State and Territory annual reports were again popular around the country. *ACCC working in …* are produced at the end of each financial year.

Internet websites

The importance of the Commission's Internet website as a major component of its information strategy continues to grow. It is now well and truly an integral part of the publishing program, meeting the public's heightened expectation of immediate access to material.

The Commission's GST website, launched in March 2000, was an instant success. From the first day it played a critical part in widely publicising the Commission's price monitoring role. The level of activity has been intense, and escalated steeply as 1 July approached.

The next step for both sites is redevelopment to meet the level of information and service delivery requested by the Federal Government in its Government Online service obligations.

Conferences

Performance indicator

- Actively participated in the development of effective competition and consumer protection laws internationally.

6th Asian and Oceanic Antimonopoly Conference

The Commission hosted the 6th Asian and Oceanic Antimonopoly Conference on 15 and 16 November 1999 at Old Parliament House in Canberra.

The event attracted a wide range of high ranking officials from competition agencies throughout the Asian and Oceanic region. The two-day conference included updates from each participant economy on the development of their competition policy and law as well as specific sessions on topical issues and a guest report from a representative of the World Bank.

This important forum provided an excellent opportunity for discussion and dialogue on domestic and international competition policy and law, fostering greater harmony, cooperation and networking between competition agencies and regulators.

ACCC regulators conference

The Commission hosted an Incentive Regulation and Overseas Developments Conference on 18 and 19 November 1999 at the Holiday Inn, Coogee Beach in Sydney.

This conference focused on regulatory issues in the telecommunications, energy and transport sectors and attracted a wide audience from government agencies, domestic and international regulatory bodies, and representatives from industry, legal, academic and consumer institutions. Speakers at the conference included high profile international and domestic experts.

The two-day conference canvassed overseas and Australian regulatory approaches and explored specific industry issues. Developments in best practice regulation, including the changing face of United States regulation and 'incentive regulation' in the UK and Australia were also discussed.

The conference focused on specific industry issues such as promoting competition in gas supply through upstream reform, benchmarking and regulation in the electricity industry, unbundling the 'local loop' in telecommunications, and the experience of price caps in airport regulation.

Asset Valuation Forum

On 16 June 2000 the Commission held a forum to discuss issues surrounding the valuation of sunk assets within the regulatory framework. More than 150 people attended including international speakers, Dr Luis Correia da Silva from Oxford Economic Research Associates (OXERA) and Dr John Small from the University of Auckland. A depreciation forum was also held in September 1999 as part of the Commission's consultation process for the finalisation of the Draft Regulatory Principles.

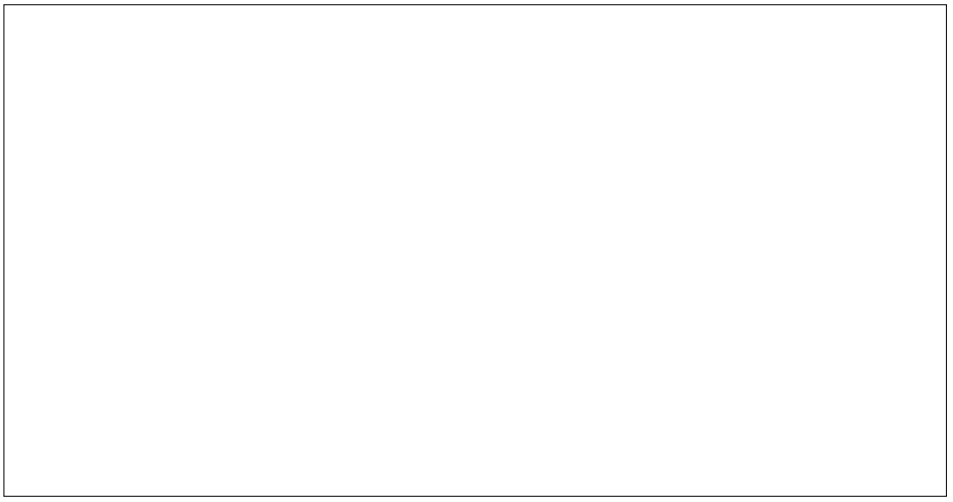
The statement of principles for the regulation of transmission revenues, which is expected to be finalised by the end of this year, will address many of the issues raised at the forum in greater detail.

International Society of Consumer and Competition Officials

The International Society of Consumer and Competition Officials (ISCCO) was created in 1997 to encourage cooperative international approaches to solving consumer and competition problems via a worldwide network of competition and consumer officials. The Commission continues to provide an interim secretariat for ISCCO.

ISSCO Conference 2000 was held in Taipei, Taiwan on 21 June 2000 in conjunction with the Taiwan Fair Trade Commission International Conference on Competition Policies/Laws for the New Millennium held on 19 and 20 June 2000.

The next workshop will be held in Durban, South Africa in November 2000. The event will be held in conjunction with the Consumers International World Congress on Consumers, Social Justice and the World Market from 13–17 November 2000.



L to R: Allan Asher, Deputy Chairman, ACCC; Madam Yang-Ching Chao, Chairperson, Taiwan Fair Trade Commission; Terry Calvani, Pillsbury, Madison & Sutro LLP, USA.

Liaison

Performance indicators

- ACCC policy and positions formulated — discussion documents and guidelines on competition initiatives and regulatory mechanisms be prepared, disseminated and discussions take place with Government, industry and consumers.
- Consulted with Federal and State Governments on competition issues arising from regulatory reforms.
- Responded to Government inquiries on competition and consumer protection issues including references under s. 28 of the *Trade Practices Act 1974* relating to dissemination of information, law reform and research.

A key aspect of the Commission's specific liaison activities with business include its work with organisations such as the Society of Consumer Affairs Professionals, the Association of Compliance Professionals of Australia, and the International Society of Competition and Consumer Officials (ISCCO). The Commission recently attended the second ISCCO conference in late June 2000, held in conjunction with the Taiwan Fair Trading Commission Conference (see p. 121).

The Commission continued to host regular meetings with the Consumers' Federation of Australia and ad hoc meetings with the Australian Consumers' Association and community and specialist legal centres. Shopfront organisations often have the capacity to identify where market failures occur, particularly as they affect disadvantaged consumers. The Commission also makes itself available to the general public — Commission work can be initiated as a result of demand directly from the public.

The Commission has ongoing liaison with academics, technical experts, the legal sector, Standards Australia and other non-government authorities.

Government liaison

The Commission has in place a series of regular liaison arrangements with a number of State, Territory and Commonwealth government agencies in order to avoid duplication and to share knowledge and experience on policy and operational matters.

Commonwealth agencies and departments with which common policy areas require cooperative arrangements include:

- Australian Securities and Investments Commission (financial services);
- Australian Prudential Regulation Authority;
- Department of Transport and Regional Services (shipping, aviation, the waterfront);
- Department of Communications, Information Technology and the Arts (broadcasting and telecommunications, postal services, electronic commerce);
- Department of Primary Industries and Energy (electricity, gas, and the rural sector);
- Australian Communications Authority (telecommunications);
- Australian Broadcasting Authority (pay TV in particular);
- Reserve Bank of Australia (access to the payments system);
- Productivity Commission (inquiries raising competition issues and/or business regulation issues);
- Australia New Zealand Food Authority (in particular food labelling and advertising issues);
- Department of Health and Aged Care (in particular the private health industry, including health insurance issues); and
- Heads of Commonwealth Law Enforcement Agencies (HOCOLEA) — the Commission is a member of this body, which aims to facilitate cooperation in national law enforcement issues.

The Commission has cooperative arrangements with State and Territory fair trading agencies. This year the Commission entered into memoranda of understanding with:

- the Health Care Complaints Commission (NSW) in July 1999;
- the Australian Prudential Regulation Authority in December 1999; and
- the Australian Greenhouse Office in March 2000.

The Commission participates in the HOCOLEA forum and its working group on e-commerce. Subsidiary to this work is participation in the ASIC-chaired sub-committee on information keeping requirements for Internet service providers. The Commission is also

involved in the various consumer affairs forums that have been established under the auspices of the Ministerial Council on Consumer Affairs. It also participates in the Standing Committee of Consumer Affairs (SCOCA), the Fair Trading Operations Advisory Committee (FTOAC) and the Consumer Product Advisory Committee (CPAC).

Submissions, collaboration and inquiries

The Commission has contributed its expertise to the work of other agencies as follows.

The taskforce on industry self regulation

In August 1999 the Minister for Financial Services and Regulation established the taskforce. The Commission provided an extensive submission and a draft report was released for comment on 6 June 2000.

The key points raised by the Commission reflected a concern to ensure recognition of a systematic and coherent approach in any consideration of industry self regulation. In the Commission's view the logical sequence would be:

- identifying the conduct or problem and making a judgment on whether or not it requires regulation;
- clearly articulating the purpose, aims and objectives for any proposed form of regulation;
- considering and deciding how best to achieve the purpose, aims and objectives;
- determining the factors and circumstances to support a decision that a proposed regulatory arrangement will be effective from a range of possible options;
- ensuring that those factors necessary for the selected method of regulation to be effective are adopted and implemented; and
- ensuring the taskforce develop and refine a guide or flow chart/checklist to assist community analysis of the issues in a systematic way and define what matters need to be considered at what point in the analysis, as well as identifying their relevance to the analysis.

Food regulation

The Commission has made submissions to a number of ANZFA-related reviews associated with the revised Food Standards Code. In particular the Commission:

- participated in the Expert Advisory Committee on Regulation and Enforcement of Health Claims; and
- provided ongoing advice on trade practices issues in relation to the draft protocol for compliance and draft amendments to standard A18 — foods produced using gene technology.

The Commission's submissions have concentrated on:

- reduced reliance on prescriptive regulation;
- support for appropriate self regulation (where that self regulation is viable, i.e. there is sufficient industry coverage and commitment); and
- the use of the Act to provide universal base level protection to consumers and food producers/suppliers.

Review of product safety policy and administration

The Minister released a discussion paper prepared by the Consumer Affairs Division of Treasury in June 2000. It raised a number of new policy initiatives and also examined the current arrangement whereby the Minister orders recalls and bans and the Commission conducts a conference to hear the position of the companies concerned. The paper proposed that the Commission has the power to order recalls and that another body, such as the AAT, provide an appeal process. As this review bears directly on the work of the Commission, a thorough examination of the issues and response will be made.

.au Domain Administration Advisory Panel

The Commission is a member of the .au Domain Administration's Advisory Panel on domain name policy. It is an industry self-regulation body that is mentored by the National Office of the Information Economy (NOIE). The panel's task is to develop recommendations in relation to the eligibility of applicants to register domain names. It will also develop policies that will apply to eligible applicants. The Commission's interest in the work of the panel is to promote the competitiveness of the domain name industry in Australia and to protect the rights of eligible applicants as consumers. The work of the panel is expected to be completed by April 2001.

Involvement in the work of other agencies included the following.

- The best practice model for e-commerce — a reference group hosted by the Consumer Affairs Division of Treasury to develop a model code as part of the Minister's policy statement on e-commerce. The code was released in May 2000.
- Development of various Australian communications industry forum codes — for the telecommunications industry as per part 6 of the Telecommunications Act.
- ASIC review of the Electronic Funds Transfer Code of Conduct.
- National tobacco strategy 1999–2003 — a work group convened by the Department of Health and Aged Care.
- International working group on a product safety framework for APEC nations — the Commission is chairing the working group.
- Online Australia forum — hosted by the National Office of the Information Economy (NOIE).

- Record-keeping by Internet service providers — a subcommittee of the Heads of Commonwealth Operational Law Enforcement Agencies.
- Seals of assurance (website seals of approval) — roundtable hosted by NOIE and the Treasury to improve consumer confidence in e-commerce.

MOU between the ACCC and the HCCC

On 20 July 1999 Commission Chairman, Professor Allan Fels and the Commissioner for the NSW Health Care Complaints Commission, Ms Merrilyn Walton, signed a memorandum of understanding on cooperation between the two agencies.

Under the memorandum the two agencies will refer complaints to the most appropriate agency, exchange information where it is permitted by law and undertake joint responses to problems in the market.

Inquiry into Australia's retailing sector

In December 1999 the Federal Government announced it would amend the Trade Practices Act in response to the report of a Joint Select Committee of Parliament, *Fair Market or Market Failure*, which reviewed Australia's retailing sector.

The Federal Government accepted some of the committee's recommended amendments such as:

- the Commission should be given the power to undertake actions on behalf of any business seeking damages for anti-competitive conduct in breach of part IV of the Act;
- an independent Retail Industry Ombudsman should be established as an alternative for costly and lengthy litigation; and
- the Act should be amended to clearly articulate that the Commission should assess mergers by explicitly looking at the effects of competition in regional markets within a particular State.

Shipping freight rates

The Commission has been asked to investigate the increase in freight rates in the south-east shipping market with special consideration to:

- does the operation of the Australia/South-East Asia Trade Facilitation Agreement (TFA) contribute to the provision of adequate outward liner shipping services at internationally competitive freight rates in accordance with the objects of part X; and
- does the conduct of shipping lines operating under the TFA provide grounds for deregistering the agreement or for seeking undertakings that would make deregistration unnecessary.

International

Performance indicator

- Actively participated in the development of effective competition and consumer protection laws internationally.

The overarching goals guiding the Commission's international activities are:

- establishment and enhancement of competition, consumer protection and economic regulatory regimes in developing economies, particularly in the Asia-Pacific region, to improve domestic efficiency and promote consumer welfare;
- effective assistance with investigations and enforcement matters;
- greater access to foreign markets for Australian exporters through proper utilisation of competition law in those markets; and
- staff development.

In 1999–2000 the Commission's international work continued to focus on the Asia-Pacific region. Over the next 12 months the Commission plans to focus more closely on the ASEAN region in its technical assistance activities but will also continue to provide assistance to economies from other regions on an ad hoc basis.

The Commission continues to work closely with other international forums, such as the Organisation for Economic Cooperation and Development (OECD), Asia-Pacific Economic Cooperation (APEC), the World Trade Organisation (WTO), the International Marketing Supervision Network (IMSN), the International Society of Consumer and Competition Officials (ISCCO), the Association of South East Asian Nations (ASEAN), the ASEAN Free Trade Area — Closer Economic Relations (AFTA-CER) link, the United Nations Conference on Trade and Development (UNCTAD) and the World Bank in all of its international activities.

The Commission's technical assistance work increasingly involves cooperation and coordination with many of these international forums.

Regulatory cooperation

The Commission signed an agency level cooperation agreement with the Consumer Affairs Council of Papua New Guinea in November 1999.

Negotiations with various other competition and consumer protection agencies around the world are currently under way. This will increase the network of formal cooperation arrangements the Commission has in place to facilitate information exchange, cooperation and assistance in enforcement matters.

The Commission expects a continuation of this trend towards such agreements to help competition and consumer protection agencies deal with the complexities of international markets.

Enforcement cooperation

Internet Sweep Day

On 23 September 1999 the Commission coordinated the third annual international Internet Sweep Day in conjunction with the IMSN. The 1999 sweep day was slightly different to the previous sweep days since it assessed websites according to a number of key consumer protection principles, instead of focusing on particular types of conduct.

International mergers and cartels

During 1999–2000 the Commission both sought and provided information on various global mergers and cartels to its international counterparts. This type of assistance is growing in line with the increasing incidence of such global transactions.

Technical assistance to economies in transition

During 1999–2000 the Commission hosted short-term study visits to Australia by officials from: Bangladesh, Cambodia, Canada, People's Republic of China, Chinese Taipei, Egypt, Fiji, France, Hong Kong, Indonesia, Japan, Korea, Malaysia, New Zealand, Norway, Pakistan, Papua New Guinea, the Philippines, Singapore, South Africa, Thailand, the United Kingdom, Vietnam and Zimbabwe.

Over the past 12 months the Commission continued to implement a capacity building program with South Africa that was originally adopted in December 1998. Various technical assistance activities have taken place to assist in the development of an effective and vigorous competition regime in South Africa. The assistance has taken place bilaterally with the South African Competition Commission which commenced operations on 1 September 1999, with funding support from AusAID.

Comprehensive technical assistance programs are currently being developed by the Commission (via funding assistance from AusAID) in conjunction with the World Bank and various other donor countries to provide capacity building assistance in both Indonesia and Thailand.

ASEAN workshop

On 6–10 March 2000 the Commission conducted an ASEAN workshop in Bangkok, Thailand on Making Markets Work. The workshop, supported by AusAID, involved participants from ASEAN countries as well as other countries in the Asia-Pacific region. The purpose of the workshop was to gauge the viability of establishing a resource network among ASEAN countries to develop effective competition and consumer protection regimes in the region. Work is continuing to further develop the proposal which will soon be submitted to AusAID for funding support.

International forums

OECD

Competition

The Competition Law and Policy Committee and the Joint Group on Trade and Competition of the OECD meet three times a year in Paris. During 1999–2000 issues considered included: combating the effects of global hard core cartels, the operation of 'whistle blower' and leniency programs, remedies for private parties, competition and trade effects of the abuse of dominance, enforcement priorities of competition agencies, vertical separation, international merger enforcement and enforcement cooperation.

Various roundtable discussions have also considered the competition issues arising from bank and financial institution mergers, airline mergers and alliances, and in the pharmaceuticals, solid waste management and natural gas sectors.

The OECD's work on regulatory reform also continued with reviews on the progress of regulatory reform in Hungary, Korea, Greece and Italy.

Consumer policy

Two OECD Consumer Policy Committee meetings were held in Paris during the year. Items discussed at these meetings included:

- OECD guidelines for consumer protection in the context of electronic commerce — these guidelines were adopted on 9 December 1999 by the OECD's Council and set out the core characteristics of effective consumer protection for online business-to-consumer transactions;
- development of an inventory of consumer law and policies;
- chargebacks;
- product safety notification system;
- consumers and the environment — sustainable consumption;
- online advertising and marketing directed towards children;
- review of the guidelines for multinational enterprises — consumer policy contribution;
- dispute resolution mechanisms;
- codes of conduct; and
- development of mechanisms for cross-border cooperation.

Energy

The Commission again participated in the work of the International Energy Agency (IEA) during 1999–2000. The IEA is an autonomous agency linked to the OECD with objectives to establish international measures to meet oil supply emergencies, share energy

information, coordinate energy policies and cooperate in the development of rational energy programs.

On 9 and 10 March 2000, Mike Rawstron, general manager of the Commission's Electricity Group, attended an IEA Regulatory Forum in London on electricity trading: trends and issues. He presented a paper comparing the Australian national electricity market (NEM) arrangements with the new United Kingdom electricity trading arrangements for England and Wales (NETA).

Asia-Pacific Economic Cooperation

The Commission continued its active participation in the Asia-Pacific Economic Cooperation (APEC) competition law and deregulation group. Work in this APEC forum focuses on regulatory reform in APEC economies, technical assistance and economic development programs, and capacity building and institutional development within the region.

From 14–16 March 2000 Warwick Anderson of the Commission's Mergers and Asset Sales Branch participated in the fourth APEC PFP (Partners for Progress) training program held in Bangkok, Thailand. Warwick acted as the moderator for one part of the program which considered how to deal with mergers, including the necessity of merger regulations, evaluation of the legality/illegality of merger, merger filing procedures and international enforcement mechanisms.

World Trade Organisation

ACCC Chairman, Professor Fels, visited Geneva, Switzerland during July 1999 to confer on trade and competition policy issues and to meet with the WTO secretariat. One of the major purposes of the visit was to highlight Australia's continuing interest in the activities of the WTO working group on the interaction between trade and competition policy.

IMSN

The International Marketing Supervision Network (IMSN) is an informal network of consumer protection enforcement agencies, of which the Commission is a member. The IMSN meets twice yearly. The issues discussed during the year included:

- the vulnerability of elderly persons in the consumer society;
- unsolicited advertising by telephone and fax;
- e-commerce enforcement;
- development of the IMSN website;
- Internet sweep days;
- privacy on the Internet;
- private labelling schemes; and
- credit card terms in car hire contracts.

The Commission has a strong involvement with the work of the IMSN and maintains cooperative relationships with members. These links are becoming increasingly important in dealing with issues arising from globalisation and electronic commerce.

International staff development programs

Staff exchange programs

- Garry Goddard, a director of the Mergers and Asset Sales Branch of the Commission, completed a 12-month exchange program with the Canadian Competition Bureau in September 2000. Glenn McDonald, a senior commerce officer with the Bureau's Mergers Branch worked with the Commission's counterpart over the same period. Arrangements are currently being made for the next staff exchange program later this year.
- Osmond Borthwick of the Commission's Sydney office is currently working in New Zealand for the New Zealand Commerce Commission (NZCC). Guy Launder of the NZCC completed a six-month work placement with the Commission in July 1999. Both placements formed part of the Commission's ongoing staff exchange program with its New Zealand counterpart.
- The second staff exchange program between the Commission and the Taiwan Fair Trade Commission took place from March to May 2000. The program involved Winnie Ching of the Commission's Sydney office and Eric Tu of the Taiwan FTC who worked in the Consumer Protection Unit of the Commission in Canberra.

Staff secondments

- Michelle Coco of the Commission's Canberra office worked with the South African Competition Commission for six months from September 1999–February 2000. Michelle worked alongside the head of the Enforcement and Exemptions Division to assist in the development, enforcement and administration of its work.
- In October 1998 Ron Cameron, a director in the Commission's Telecommunications Unit, took up a two-year secondment as Chief Trade Practices Officer with the Hong Kong Consumer Council. This secondment has recently been extended by one year.
- Col Lewis of the Commission's Canberra office, will complete a three-year placement with the Fijian Ministry of Commerce, Business Development and Investment in August 2000.
- On 17 January 2000 Kien Choong of the Commission's Melbourne office commenced a 12-month secondment to the Malaysian Communications and Multimedia Commission. Kien's main area of focus during the secondment will be access matters in the telecommunications industry.
- Mr Jung-won Song of the Korean Fair Trade Commission is currently on secondment to the Commission for two years until August 2001. To date Mr Song has been working in the Commission's Consumer Protection Enforcement Unit. He has also undertaken a

two-month placement with the Consumer Affairs Division of the Department of Treasury to gain exposure to Australia's consumer protection policy initiatives.

International internship program

In January 2000 the Commission commenced an international internship program. It has enabled Ms Gladys Fuimano, an officer from the Department of Trade, Commerce and Industry in Samoa, to work as an intern at the Commission for approximately one year.

The aims of the program are:

- to contribute to the development of international competition, consumer protection and utility regulation policies and initiatives, by providing interested, suitably qualified candidates with the opportunity to spend one year working with the Commission;
- to enhance the Commission's links with its international counterpart agencies;
- to enable participants to develop a sound knowledge of the legislation relevant to the functioning of the Commission; an understanding of competition, consumer protection, pricing and utility regulation issues; an awareness of the political, commercial and social environments and the management framework in which the Commission operates; and
- for those parties to positively contribute to the operation of the Commission through the completion of work placements in various branches of the Commission.

The program will be run again in 2001 and it is anticipated that two interns will be selected.

Consultative Committee

Twice a year the Commission convenes a consultative committee made up of representatives of consumer organisations, small and big business, the professions, trade unions and government departments. The committee is a forum for the exchange of views and information on trade practices issues from a variety of perspectives.

Corporate planning and management

Output 1.1.1: The proper administration and enforcement of the *Trade Practices Act 1974*, the *Prices Surveillance Act 1983* and related laws; and

Output 1.1.2: Performance of actions that promote competition and fair trading and enable well functioning markets.

Objective

To maintain high levels of management efficiency and cost-effective resource utilisation at both national and regional office levels.

Introduction

The Commission is a centrally coordinated organisation. Its corporate planning and management functions are carried out by the Corporate Management Branch, comprising seven sections and units: Corporate Services National, Corporate Development, Information and Projects, IT Contract and Services Unit, Publishing Unit, Corporate Services Melbourne, Records Management Unit and Library.

Functional details of the Commission (a statement required under s. 8 of the *Freedom of Information Act 1982*) are provided in appendix 4. The organisation chart as at 30 June 2000 is presented under Corporate overview at the beginning of this report (p. 16).

Major projects undertaken by the units responsible for corporate planning and management in 1999–2000 included:

- a new workplace agreement made with staff and certified by the Australian Industrial Relations Commission;
- public registers being progressively made available on the Internet; and
- a graduate program intake of 29, representing about 8 per cent of total staff.

Corporate governance

Decision-making structure

The Commission met formally on 49 occasions in 1999–2000. Most of these meetings were held in the national office (Canberra) but it is the Commission's policy to meet in other capitals where this is compatible with other commitments or offers particular opportunities for local contact. The extension of video conferencing facilities has made this considerably easier to organise.

In 1999–2000 the Commission considered 362 formal papers dealing with matters under investigation, litigation, mergers, access matters, adjudication decisions, submissions to inquiries and compliance and education strategies. Many informal submissions were also considered.

Committees

The Commission has established seven subject matter and function committees to streamline decision-making processes (see appendix 8).

Telecommunications

The Telecommunications Committee coordinates the Commission's functions in telecommunications, including matters arising under parts XIB and XIC and authorisations. It coordinates with the Enforcement Committee on the issuing of competition notices. Committee decisions are referred to the full Commission for formal decision. The committee meets as required and comprises the Chairperson, Deputy Chairperson, and Commissioners Shogren, Jones and Martin. Relevant ex-officio associate commissioners are included. This committee will sit as a division of the Commission from time to time.

Mergers

The Mergers Committee meets fortnightly and considers most merger matters, reporting its decisions to the Commission. Major matters are referred to the full Commission for further consideration. The committee comprises the Chairperson and Commissioner Jones.

Enforcement

The Enforcement Committee meets weekly to oversee the enforcement program. Its recommendations are referred to the Commission for formal decision. It comprises the Deputy Chairperson and Commissioners Bhojani, Jones, Martin and Shogren.

Energy

The Energy Committee is responsible for the Commission's decision-making functions in relation to regulatory reforms in the electricity and gas sectors. The committee meets as required and comprises the Chairperson, Deputy Chairperson, Commissioners Cousins and Shogren, and relevant ex-officio associate commissioners.

Transport

The Transport Panel meets as necessary to oversee transport issues. It comprises Commissioners Cousins, Jones, Martin and Shogren.

GST

The GST Committee meets as necessary to oversee the Commission's GST role. It comprises the Chairperson, Deputy Chairperson, full-time commissioners and Associate Commissioner King.

Corporate governance

The Corporate Governance Committee meets monthly to consider corporate governance issues. It comprises the Chairperson, Deputy Chairperson, full-time commissioners and senior staff.

Senior management conference

In March 2000 the Commission held a conference for senior management in Queensland. It was attended by commissioners, senior executive service staff, regional directors, other staff and guest speakers.

The focus of the conference was on the practical, strategic and management issues facing the organisation.

Financial management

Funding of $57 453 million was provided in the 1999–2000 budget and subsequently. This included funding for:

- tax reform price monitoring;
- monitoring of the prices of certain milk products; and
- additional functions and powers under the *Telecommunications Legislation Amendment Act 1999*.

Tax reform price monitoring

The Commission received $17.64 million for activities to ensure compliance with the price exploitation provisions of the Trade Practices Act. The Commission used this funding to design and deliver a communication and information strategy, to issues guidelines, to monitor retail prices, to respond to consumer and business inquiries through a telephone hotline, and to take enforcement action.

Monitoring prices of certain milk products

Funding of $0.5 million was provided for the Commission to monitor prices, costs and profits of businesses selling liquid milk products to ensure that the prices were being appropriately set, given the introduction of a dairy industry adjustment levy and industry deregulation.

Additional functions and powers under the Telecommunications Legislation Amendment Act 1999

The Commission received an extra $0.9 million for telecommunication activities, which was used to fund information transfer, monitoring and reporting, to allow the Commission to facilitate commercial infrastructure access negotiations.

Revenue

During the year the Commission collected the following revenue.

- Miscellaneous consolidated revenue (fines and costs, authorisations and notification fees) — $14.215 million.
- Section 31 receipts (user pays) — $0.911 million.

People management

Staffing levels

The Commission's budgeted staffing level for 1999–2000 was 372 (up from 336 in 1998–99), including seven full-time holders of public office (Commission members). In addition there are 13 associate members; eight of these are ex-officio, being economic regulators from other Commonwealth or State and Territory bodies. The actual average level of staff employed during the year was 381.71 (up from 357.6 in 1998–99) while the actual number of employees (including part-time employees) at 30 June 2000 was 518. See appendix 5 for staffing overview.

The increase in actual average staffing levels was due to the Commission's role in the introduction of the New Tax System, which required additional staffing beyond that anticipated earlier in the budgeting process.

Of the 518 employees employed at 30 June 2000, 83 were employed as public inquiry officers in the GST call centre. A further 52 staff were engaged to work on other aspects of the Commission's GST function.

Training and development

Training and development expenditure in 1999–2000 totalled $865 500 comprising salaries of staff on development activities ($374 295), salaries of the service providers ($136 517), course and conference fees and study assistance ($337 061) and incidentals ($21 450). This represents a commitment of 3.9 per cent of the annual payroll to staff development.

In addition to this recorded expenditure, on-the-job training is a major feature of the Commission's learning program. Regular video conference seminars and various regional and national office seminar sessions on contemporary issues ensured sharing of knowledge among all levels of staff. Extensive training and information sessions on the Commission's role in the implementation of the New Tax System were conducted throughout the organisation and particularly in the GST Operations Division. Another focus during the year was knowledge upgrade on the competition provisions of the Trade Practices Act with tutorials held in all offices of the Commission.

The following table shows the number of places at training courses or seminars for each training category in the last two financial years.

Table 6.1. Training provided in 1998–99 and 1999–2000

Type	Units of training	
	1998–1999	1999–2000
Economic education	53	150
Law education	158	236
IT skills	585	190
Operational skills	376	511
Management development	283	50
Personal development	55	50
SES development	78	45

The Commission believes there is significant value in maintaining the academic skill level of its staff. Staff are eligible for tertiary study assistance in the form of study leave and partial reimbursement of fees, subject to certain criteria and conditions. In 1999–2000, 64 staff members participated in the study assistance scheme, mainly for post graduate studies in economics, law or business.

Graduate program

The Commission recruited 29 graduates at the beginning of 2000, placing them throughout the organisation. Graduates complete an intensive one-week orientation program, followed by on-the-job training and assessment, and rotation in three different work areas during the 10-month training year.

This year's graduate recruitment was the last one to be managed by Recruitment Services Australia; the Commission is required to conduct its own graduate recruitment campaign for 2001. A recruitment and selection strategy has been developed to ensure the same quality of graduates are recruited for the 2001 intake.

Workplace relations

The ACCC Certified Agreement 1998–99 was replaced by the ACCC Certified Agreement 2000–01 following a 92 per cent majority vote. The agreement was certified in the Australian Industrial Relations Commission on 20 January 2000. Consultation for the replacement agreement took place with all staff although the main consultative body was

the Workplace Relations Consultative Committee. The committee comprises four representatives of staff (elected), two of unions and one of management. It has since met to further the implementation of the agreement. The agreement provides an 8 per cent pay increase over 23 months, the exploration of variable pay and remuneration strategies in the future, and a commitment to redressing unsatisfactory work performance.

During the year Australian Workplace Agreements (AWAs) were offered to SES employees, GST public inquiry office employees and two other employees. At 30 June 2000 63 AWAs had been approved by the Employment Advocate.

Workplace diversity

The introduction of the new Public Service Act resulted in some changes to the legislative framework for workplace diversity. In particular, the arrangements for workplace diversity programs in the APS have been slightly altered. The Commission's Workplace Diversity Program expires at the end of 2000 and the process of designing a new program will commence soon. The new program will incorporate all requirements of the new legislation.

During 1999–2000 Commission staff numbers increased considerably as a result of the Commission's price exploitation role in the New Tax System. This was accompanied by a proportional, as well as an absolute, increase in representation of every target group. (See survey figures in table 6.2.)

During the year the Commission conducted a workplace diversity survey of staff, the results of which are included in table 6.2, with the caveat that completion of the survey was voluntary.

Table 6.2. Comparative representation of workplace diversity target groups within classification levels

Time	APS equiv. classification	Total (actual staff)	NESB	PWD	Women	A&TSI
30 June 1998	APS 1 & 2	24 7.1%	9 2.7%	0	20 5.9%	1 0.3%
30 June 1999	APS 1 & 2	54 15.0%	5 1.4%	0	42 11.7%	0
30 June 2000	APS 1 & 2	52 10.0%	5 1.0%	1 0.2%	34 6.6%	1 0.2%
30 June 1998	APS 3 & 4	86 25.4%	14 4.1%	3 0.9%	59 17.4%	0
30 June 1999	APS 3 & 4	58 16.2%	9 2.5%	0	37 10.3%	0
30 June 2000	APS 3 & 4	156 30.1%	34 6.6%	4 0.8%	94 18.1%	1 0.2%
30 June 1998	APS 5 & 6	98 28.9%	6 1.8%	1 0.3%	50 14.7%	0
30 June 1999	APS 5 & 6	116 52.3%	9 2.5%	0	60 16.7%	0
30 June 2000	APS 5 & 6	145 28.0%	15 2.9%	0	82 15.8%	0
30 June 1998	SAPS 1 & 2	107 31.6%	15 4.4%	3 0.9%	27 8.0%	0
30 June 1999	SAPS 1 & 2	110 30.6%	10 2.8%	0	27 7.5%	0
30 June 2000	SAPS 1 & 2	142 27.4%	13 2.5%	2 0.4%	41 7.9%	0
30 June 1998	SES & POH	24 7.1%	4 1.2%	0	6 1.8%	0
30 June 1999	SES & POH	21 5.8%	4 1.1%	0	4 1.1%	0
30 June 2000	SES & POH	23 4.4%	2 0.4%	0	5 1.0%	0
30 June 1998	Total	339	48 14.2%	7 2.1%	162 47.8%	1 0.3%
30 June 1999	Total	359	37 10.3%	0	170 47.4%	0
30 June 2000	Total	518	69 13.3%	7 1.4%	256 49.4%	2 0.4%

NESB: Non-English speaking background. PWD: People with a disability. A&TSI: Aboriginal and Torres Strait Islanders.

APS: Australian Public Servant. SAPS: Senior Australian Public Servant. SES: Senior Executive Service. POH: Public Office Holder.

Note: As the target groups are not mutually exclusive there may be some double counting. The statistics cover only those people who nominated themselves to be counted in each group.

Occupational health and safety

The Commission has an occupational health and safety policy, and agreement and health and safety representatives are appointed for all designated work groups. Other policy and guidelines are established for all health and safety matters relevant to the work of staff.

During the year safe work practice/ergonomic inspections were conducted in Canberra, Sydney, Townsville, Darwin, Adelaide and Hobart. In addition to the ongoing safe work practice/ergonomic inspections in the Canberra office an occupational therapist was engaged to assist with the establishment of the GST call centre. Regular safety audits were conducted and remedial follow-up action was taken if indicated.

The Commission also conducted screen-based equipment inspections in all offices and provided flu vaccinations for staff in the Melbourne, Canberra and Sydney offices.

The Commission has a national self-referral assistance program for staff and their families. During the year there were 71 consultations provided to 19 staff and two family members.

Eight workers' compensation claims were lodged during the year: two for occupational overuse injuries; one for a strained back; one as a result of a motor vehicle accident; and four for fractured or sprained limbs.

Information and communications management

Information technology and telecommunications

On 1 July 1999 the Commission, as a member of Group 5 IT&T Market Testing and Outsourcing Group, contracted the management of its information technology and telecommunications infrastructure services to Advantra in accordance with the Commonwealth Government's IT outsourcing initiative. Group 5 includes Department of the Prime Minister and Cabinet; Department of Communications, Information Technology and the Arts; Department of Industry Science and Resources; and Department of Transport and Regional Services.

The transition to the new arrangements was devoid of major problems due to a robust infrastructure and comprehensive staff communication program detailing the new support procedures. Surveys are conducted six-monthly to monitor user satisfaction levels with the outsourced service. Monthly service levels in some areas of the contract have not been achieved during the first year. Accordingly the Commission has applied service credits at the rates specified in the contract. Advantra is working to improve the service through a process of review, consultation and resource allocation.

To support the Commission's role in the introduction of the New Tax System, its entire telecommunications network was replaced. This required the national consolidation of voice requirements into a fully integrated network. The project was undertaken through service provider Advantra and a competitive tendering process resulted in Alcatel being selected as the preferred supplier. All phone systems were replaced commencing in

February 2000 and completed in June 2000 (with the exception of the Darwin office scheduled for completion in mid-July 2000).

Key business applications such as Aurion, Finance 1 and TRIM introduced in 1999 are still being implemented. Their introduction was accompanied by the replacement of aging application servers with higher performing systems. Business systems are being reviewed and extended to realise their full potential in line with evolving business requirements.

Year 2000 compliance

In the year leading up to the year 2000 the Commission completed a comprehensive compliance program costing $1.66 million. The Commission experienced no technical problems in transition from 1999 to 2000.

Video conferencing

All regional offices, except Tamworth, have had their video conferencing systems replaced or upgraded with Polycom Video Systems. Canberra, Melbourne and Sydney have multiple systems to cater for the increasing demand for this type of communication tool within the Commission and externally.

Library

The service priority for the Commission's library is the provision and distribution of current information from print and electronic sources to staff and Commissioners. Assistance is provided with research online, Internet and CD-Rom database searching, training in search techniques and inter-library loans. Inter-library loans are requested and supplied mainly using the Kinetica Document Delivery system, with the Ariel(.gif) option added during the year. Regular displays of incoming printed material, maintenance of an internal journal article database available to all staff, and distribution and monitoring of material from the Internet and via email are all part of the library's function. The library uses the HORIZON Library system, version 5.0.3.

Materials are held in subject areas relevant to the work of the Commission, with the major collection and service point in Canberra, a branch library in Melbourne, a smaller library in Sydney and working collections in each regional office. Emphasis is placed on collecting current Australian material and selected international acquisitions.

The library added 186 original and 477 holdings records to the national bibliographic database, and 128 original items were placed on to the local catalogue only. The Commission's libraries lent 534 items to other libraries, borrowed 560 items, fulfilled 2595 requests for information and made 2611 book and journal loans to staff.

Intranet development

The Commission's Intranet service was introduced in March 1998 to improve staff access to corporate information.

A review of the Intranet was conducted this year and the recommendations from that review are now being progressively implemented. Among other things, new software and hardware have been purchased which will add functionality and speed of access to the information contained in this service.

The intention is to make the Intranet the primary source of corporate information. This is encouraged by moving all corporate information onto this service from a variety of other Commission databases and information sources.

Corporate databases

Corporate databases have developed incrementally during the year to provide efficiencies in information reporting for decision-making through the integration of systems. The project reporting system (PRISM) has been linked to the finance system (Finance 1) providing information on each project's resources. Additionally, a time recording system has been incorporated into PRISM enabling further information about the resources expended on each project. The complaint and inquiries system (MARS) has expanded to gather information on price exploitation matters in a quick but ample way. Seven times more MARS records were entered during 1999–2000 than the previous year.

Public registers

The Commission is required to create and maintain a number of public registers under the legislation it administers: the *Trade Practices Act 1974* and the *Prices Surveillance Act 1983.*

The Commission also maintains a number of voluntary public registers because it considers that the information they contain should be available to the public. The most recent voluntary register is maintained as a result of a delegation under the *ASIC Act 1989*; this is the s. 93AA enforceable undertakings register.

Currently the Commission maintains over 20 statutory and voluntary public registers, and through these registers the Commission remains transparent and accountable in its decision making.

As the result of a review of the public registers last year, an area was developed on the Commission's Internet site <http://www.accc.gov.au> for publishing public register information. This site now contains indexes of all the public registers, and in some cases electronic images of the documents from those registers. Essentially, this information is placed on the website and on hard-copy file at the same time.

This method of disseminating information to the public has proven to be especially effective. The public register site receives over 1000 hits a month, enhancing the Commission's transparency.

Records management

The records management units are responsible for the receipt, control and disposal of all information received by the Commission.

They provide information management, registration and retrieval services through an integrated computerised information database system. The system is being progressively extended to capture and manage electronic documents.

In 1999–2000 the units processed 33 200 new documents (9400 in electronic format) and created more than 5850 new files or parts.

The units are also responsible for freight and postal services.

General

Service charter

To meet the standards set out in its service charter, the Commission continues to augment systems to improve its service delivery. Important additional means of service delivery during the year was the availability of GST applications via the Internet and the creation of a GST public inquiry office.

Thirteen service-related complaints were received during the year. The Commission also received 21 compliments on its standard of service.

Conflict of interest

The Commission is mindful that public confidence in the Commission and its employees' integrity is vital. It is important that the Commission is, and is seen to be, impartial and unbiased in its work. To this end each staff member is directed to annually complete a conflict of interest self assessment. The self-assessment module is designed to ensure accountability, while maintaining privacy for each staff member.

Exercise of information powers

The Trade Practices Amendment Bill (No1) 2000 currently being considered by Parliament will, when enacted, amend s. 171 of the Act to require the Commission to report on certain specific matters in its annual report. The purpose of the amendment is to ensure the Commission is accountable for its actions and to provide greater transparency to the operation and enforcement of the Act. In compliance with the policy underlying the amendments the Commission is reporting on these matters for the year 1999–2000.

The following table summarises the information powers exercised during the year.

Table 6.3. Information powers statistics for 1999–2000

Section 155(1)(a)		Section 155(1)(b)		Section 155(1)(c)	
Conduct	**Count**	**Conduct**	**Count**	**Conduct**	**Count**
s. 45	41	s. 45	16	s. 45	14
s. 45A	10	s. 45A	19	s. 45A	11
s. 48	1	s. 48	2	s. 52	6
s. 51A	1	s. 51AC	1	s. 53(bb)	5
s. 51AC	4	s. 51AD	1	s. 53(e)	1
s. 51AD	1	s. 52	2	s. 53A	5
s. 52	1	s. 53(c)	1	s. 59(2)	5
s. 53(d)	2	s. 53(d)	3		
s. 53(e)	1	s. 53(e)	2		
s. 53(eb)	1	s. 53(eb)	1		
s. 53C	1	s. 53(f)	1		
s. 58	2	s. 53C	1		
s. 59(2)	1	s. 58	1		
s. 64(2A)	2	s. 60	1		
s. 75AU	3	s. 64(2A)	2		
		s. 75AU	3		
Total	**72**	**Total**	**57**	**Total**	**47**

Note: Notices issued under more than one conduct are counted once for each conduct.

Consultancy services, competitive tendering and contracting

Consultancy services

Policy

The Commission uses consultants when specialist expertise is required for a particular task and not available within the Commission. The Commission uses:

- for most consultancy contracts in excess of $100 000 — selective tendering; and
- for most consultancy contracts below $100 000 — direct engagement of recognised or pre-eminent experts, consultants known to have the requisite skills, or those that the Commission has successfully used before.

The Commission engaged 88 consultants during the year with a value of $6 573 978.

The main categories of purposes for which consultants were engaged were:

- price collections (GST price monitoring role);
- GST public awareness campaign;
- price exploitation hotline;
- information technology;
- internal audit; and
- enforcement work.

A list of consultants paid more than $10 000 during the year is on the Commission's website.

Advertising and market research — Commonwealth Electoral Act 1918

The following are amounts of money paid (value of contracts) to creative advertising agencies, direct mail, media advertising and market research organisations.

Table 6.4. Advertising and market research

Canberra Press: *Australia's Everyday Shopping Guide with the GST*	$3 151 259
Biddle Ogle Anderson & Co: GST public awareness advertising	$4 147 822
Australian Consumers' Association	$200 314
Thinkbank	$32 400
Worthington Di Marzio	$350 000
AIS Media	$171 283
Chevron Advertising: small business	$4 500
AusInfo Gazette	$8 665
Newsnet	$3 000
Tamworth radio	$1 500

Office accommodation

The Commission maintains 10 offices: in Canberra, each State capital, Tamworth and Townsville.

Planning is under way to relocate the Sydney and Brisbane offices during the 2001–02 financial year. Brisbane office will relocate to another floor in the same building in October; Sydney office will move to another building in approximately the middle of next year.