



Australian Competition & Consumer Commission

PO Box 1199  
Dickson ACT 2602

470 Northbourne Ave  
Dickson ACT 2602  
Australia

Ph (02) 6243 1123  
Fax (02) 6243 1122

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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 sixth annual report, covering the Commission's operations for the year ended 30 June 2001.

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

Suresh 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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# Glossary and Abbreviations

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AAT	Administrative Appeals Tribunal
ABDP	Amadeus Basin to Darwin Pipeline
ACA	Australian Consumers Association
ACCC	Australian Competition and Consumer Commission
ADFF	Australian Dairy Farmers' Federation
AFJA	Australian Fruit Juice Association
AHC	Australian Hospital Care
A New Tax System change	A New Tax System change is defined by the legislation as the ending of Wholesale Sales Tax, the introduction of the GST, and changes to other taxes, excises, subsidies and rebates prescribed (and to be prescribed) in regulations.
ANZFA	Australian and New Zealand Food Authority
APCA	Australian Payments Clearing Association
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Performing Rights Association Limited
APRA	Australian Prudential Regulation Authority
ARTC	Australian Rail Track Corporation
ASIC	Australian Securities and Investment Commission
ATO	Australian Tax Office
ATSI	Aboriginal and Torres Strait Islander
AuDA	au Domain Administration



BML	Boral Masonry Limited	GSM	Global system for mobile communications
B2B	Business to business	GST	The GST is a broad based indirect tax, introduced by the Government to replace the Wholesale Sales Tax and a number of State indirect taxes. Generally, the GST taxes the consumption of most goods, services or anything else in Australia, including things that are imported.
B2C	Business to consumer		
CASE	Consolidated Application Server Environment		
CECS	Consumer Electronic Clearing System		
CHH	Carter Holt Harvey		
Commission, the	The Australian Competition and Consumer Commission		
CPI	Consumer Price Index	Guidelines, the	The price exploitation guidelines
CSBP	Cuming Smith British Petroleum		
CTDA	Commerce (Trade Descriptions) Act	HOCOLEA	Heads of Commonwealth operations law enforcement agencies
CTMs	Certification trade marks		
CWO	Cable & Wireless Optus	IAMA	International Food and Agribusiness Management Association
CWO: C & M	Cable & Wireless Optus Limited: Consumer and Multimedia	IATA	International Air Transport Association
CWO: D & B	Cable & Wireless Optus Limited: Data and Business	IFSA	Investment and Financial Services Association
Diesel Fuel Rebate Scheme	An existing scheme whereby part of the Commonwealth component of customs and excise duty is paid on diesel for certain eligible off-road uses. Under the New Tax System this scheme will be extended to cover 100 per cent of the Commonwealth customs or excise duty paid.	IIP	International Internship Program
DISR	Department of Industry Science & Resources	IMSN	International Marketing Supervision Network
Dual ticketing	Where two prices are displayed on the good (usually a pre 1 July 2000 price and a price from 1 July 2000)	Input tax credits	A credit received by a supplier (who is registered for GST purposes) for GST paid on creditable acquisitions.
EAPL	East Australian Pipeline Ltd	IRPC	Inter-regional Planning Committee
EPO	Electricity Pricing Order (South Australia)	MIA	Medical Imaging Australasia
EU	European Union	MNL	Mayne Nickless Limited
FID	Financial institutions duty	MSORC	Market System Operations Review Committee
FRC	Full retail competition or Full retail contestability	MSP	Moomba to Sydney Pipeline
FTC	Federal Trade Commission	NAB	National Australia Bank
		NCC	National Competition Council
		NECA	National Electricity Code Administrator
		NEM	National electricity market
		NESB	Non-English-speaking background

Net dollar margin	The price of a good or service less cost of goods sold/services supplied, operating costs and selling costs.	RoE	Return of equity
		SBAG	Small Business Advisory Group
Net dollar margin rule	Net dollar margins should not increase as a result of the New Tax System changes alone. Changes in volumes are not taken into account when calculating the net dollar margin.	Section 75AW notice	A notice of price exploitation which constitutes prima facie evidence in Part VB proceedings.
		Section 75 AZ notice	A notice which specifies a maximum price that in the ACCC's opinion may be charged for a product.
NGPAC	Natural Gas Pipelines Advisory Committee	SMHEA	Snowy Mountains Hydro-Electric Authority
NOIE	National Office for the Information Economies	SNK	Simply No Knead Franchising Pty Ltd
NZCC	New Zealand Commerce Commission	TCC	Trade Competition Commission
OECD	Organisation for Economic Cooperation and Development	TFTC	Taiwan Fair Trade Commission
OFTEL	UK Office of Telecommunications	TGA	Therapeutic Goods Administration
PASA	projected assessment of systems adequacy	TGAC	Therapeutic Goods Advertising Code
PCC	public compliance commitment	TGACC	Therapeutic Goods Advertising Code Council
PDL	Pacific Dunlop Limited	TNZ	Telecom Corporation New Zealand
PKI	price key indicators	The Act	Trade Practices Act 1974
PML	Pocket Money Limited	Transition period	During the New Tax System transition period the Commission has oversight of pricing responses to the New Tax System changes. This transition period began on 8 July 1999 and ends on 30 June 2002. Part VB of the Trade Practices Act will operate during this period and will run from 8 July 1999 to 1 July 2002.
Price exploitation	An offence defined in s. 75AU of the Trade Practices Act		
Price exploitation guidelines	The guidelines required to be prepared by the ACCC under subs. 75AV(1) of the Trade Practices Act.		
PSA	Prices Surveillance Act 1983	TUOS	transmission use of system
PSTN	public switched telecommunications network	VoLL	Value of lost load
QNI	Queensland–New South Wales Interconnector	WACC	weighted average cost of capital
RACS	Royal Australian College of Surgeons	WIPO	World Intellectual Property Organisation
RBA	Reserve Bank of Australia	WST	Wholesale Sales Tax
Rebates	Structural discounts often given by suppliers that reduce the cost of the good to retailers as well as the base for calculating Wholesale Sales Tax.	WTO	World Trade Organisation



# Review by the Chairman

The welfare of all Australians is greatly enriched by having a competitive and fair business environment, and appropriate consumer protection. In our changing world, characterised by rapid technological change and globalisation, this mandate becomes increasingly challenging. The Australian Competition and Consumer Commission has sought to meet the challenges in a very demanding year. It has continued its extra responsibilities surrounding the implementation of the New Tax System in addition to its enforcement, regulatory and compliance activities. The Commission believes it has maintained the high standard expected of it by business, government and the community.

## Highlights of the year's activities

### **Enforcement**

The Commission welcomed several significant court judgments, particularly in price fixing, domestic and international cartel activity, unconscionable conduct and the misuse of market power.

In two important cases, which clarified the interpretation of section 46 of the Trade Practices Act, the Federal Court found that both Boral Ltd and Rural Press had misused their market power in breach of the Act.

The Commission was also successful in proceedings against three multinational vitamin companies for engaging in price fixing and market sharing. Penalties imposed totalled a record \$26 million. The case sent a strong warning to any businesses proposing similar conduct.

During 2000–01, the Commission was in court in 85 matters regarding Parts IV, IVA, V and VB of the Trade Practices Act. These included 43

new court actions, of which 12 alleged breaches of Parts IV and IVA related to price fixing, resale price maintenance, secondary boycotts, the misuse of market power and unconscionable conduct. The remaining 31 relate to breaches of Parts V and VB concerning consumer protection and price exploitation in respect of the New Tax System.

The enforcement section of the Commission has investigated a range of complaints under the industry-specific competition rule.

The Commission also maintained its education and information role, reminding the business community that complying with the law is ultimately best for business and consumers.

## **Professions**

Some of the additional funding provided in the 2001–02 Budget will be used for a dedicated team to work on the application of the Trade Practices Act to the professions. The unit will determine the level of compliance achieved by the various professions since the Act was extended in the mid-1990s to cover all professions. The unit will ensure that the Commission's approach to the professions is consistent and coordinated.

This team has completed the Commission's third report to the Senate on anti-competitive practices by health funds in regard to private health insurance.

## **The New Tax System**

The Commission's role was to ensure that the benefits of the New Tax System were passed on to consumers, and that businesses did not engage in price exploitation or misleading and deceptive conduct in relation to the New Tax System changes. It also monitored the implementation of the Commonwealth Fuel Sales Grant Scheme and the reduction in the Commonwealth excise on petrol, diesel and draught beer during the year. Over 64 000 inquiries were handled, including about 24 000 complaints.

The results of the Commission's price surveys this year, together with Consumer Price Index outcomes, confirm that the tax changes affected prices mostly in the September 2000 quarter.

Average price changes were within the Commission's estimates and there was no evidence of significant opportunistic pricing to increase margins. Although some prices have risen since the initial impact during the September 2000 quarter, average increases have generally been in line with inflation trends that existed before the New Tax System.

Average price changes resulting from the New Tax System were fairly consistent across geographical locations, even though price levels may have been different. The results also showed no substantial differences in the price changes between the States and Territories, although again prices may have been at different levels. The differences between small and large businesses were also insignificant.

After one year of the GST the Commission found that most businesses have fully complied with its pricing guidelines. Businesses generally acted correctly in adjusting prices to take account of the tax changes. However, there were instances of inappropriate pricing and price representations. Commission staff investigated approximately 6000 matters and took five cases to court this year, resolving a further 31 matters with court enforceable undertakings.

## **Regulatory activities**

The Commission has many roles in the regulation of utilities, including administration or approval of access arrangements. These arrangements are designed to ensure that owners of essential facilities, such as telecommunications networks, make their infrastructure services available to access seekers. This needs to be on terms that encourage investment by owners of facilities while allowing the access seekers to compete in industries upstream and/or downstream of the regulated services.

In addition, long-standing powers to authorise conduct that would breach the competition provisions of the Trade Practices Act have particular application in moulding the regulatory framework — and price monitoring has been supplemented by the administration of price caps to lessen the impact of monopoly power.

The Commission's regulatory activities have continued to grow over the year.

The Commission released five draft access assessments under the national gas code and approved the Marsden to Dubbo pipeline. It also completed an assessment of an application for GPU GasNet to revise its existing access arrangements to incorporate the South West pipeline in Victoria. It is currently considering proposed rule changes to the Victorian Market System Operation Rules.

Many electricity code changes were assessed, including the entry of Tasmania into the national electricity market. On 1 January 2001 the Commission commenced regulation of South Australian and Victorian transmission networks. In Queensland this begins on 1 January 2002, and the Commission released a draft determination of the network revenue caps assessment.

In telecommunications, the Commission has expended considerable resources on its dispute resolution functions. In association with the resolution of 25 arbitrations, the Commission has released detailed pricing principles for access to fixed (PSTN) and mobile (GSM) networks. A further 21 arbitrations were still current at the end of the year. The Commission continues to review the extent of regulation as competition develops.

In transport, the Commission completed a report on a proposed price increase at Sydney airport and assessed price cap compliance for regulated airports. It is currently assessing access undertakings from the Australian Rail Track Corporation covering the terms and conditions of access to tracks owned or leased by ARTC.

In fulfilling its price-monitoring role, the Commission monitored unleaded petrol prices from July 2000 to June 2001. It also released a report about market milk product sales in April 2001, which demonstrated that during the monitoring period, the falls in farm-gate prices for raw milk brought about by deregulation were passed on to consumers.

There have been reviews by the Productivity Commission of the Prices Surveillance Act, the general access arrangements under Part IIIA, and the regulatory arrangements in telecommunications and airports. The Commission has provided submissions to these reviews.

In a number of deregulating utility sectors there has been greater competition with an increased number of participants. For example in telecommunications there are now around 70 carriers and over 100 telephony service providers. Consumers have benefited from lower prices and greater choice in a number of sectors. A report by BIS Shrapnel has shown strong growth in investment in telecommunications. In the gas pipeline sector, plans totalling some \$9 billion to build thousands of kilometres of pipelines have been reported. In electricity regulated networks have proposed to significantly increase investment in their networks.

## **Mergers**

The Commission assessed 265 merger and acquisition proposals of which 13 raised major competition concerns. Ten proceeded after the parties signed section 87B undertakings to lessen any anti-competitive effects and three were withdrawn.

Merger activity was lively in the health, building materials, airline, agribusiness and retail sectors. The number of mergers also rose in deregulated industries, such as dairy and energy, and in global industries including the media, finance, pharmaceutical and resources.

Some major mergers that the Commission did not oppose in 2000–01 included the acquisition of Impulse Airlines by Qantas Airways; the sale of Franklins supermarkets to a number of supermarket entities including Woolworths; and the acquisition of Australian Hospital Care by Mayne Nickless. Each of these mergers involved significant analysis and public inquiry by the Commission. They were only concluded after each of the parties provided section 87B undertakings to the Commission to lessen any anti-competitive detriment.

## Consumer protection

The Commission's focus on traditional consumer protection, such as misrepresentation and misleading and deceptive conduct, continued. In September 2000, the Commission took action against Target Australia for false, misleading and deceptive advertising. This was upheld by the Federal Court, which ordered Target to review its trade practices compliance program, broadcast corrective advertisements, and pay the Commission's costs. It also issued an injunction restraining Target from advertising in the same way for four years.

The Commission examined health insurance and petrol issues, and matters of undue harassment, pyramid selling and coercion. It also developed its cooperation with other government agencies and finalised eight matters regarding breaches of product safety standards.

## E-commerce

Extra funding for work in e-commerce and computer forensics has prompted investigations into possible trade practices breaches in Internet markets, B2B (business to business), B2C (business to consumer) transactions and online marketing.

The Commission has undertaken significant research into the potential competition issues surrounding e-commerce transactions, and the impact this may have on Australian consumers.

In April 2001 the Commission launched Slam-A-Cyberscam to enable consumers to lodge complaints against online traders. The Commission also led an Internet Sweep Day evaluating websites with overseas regulatory agencies for their level of compliance with the *OECD Guidelines on Consumer Protection in E-commerce*.

*Fair.com* was one of several new Commission publications to educate Internet service providers and businesses regarding fair dealing in domain name registration and website advertising.

## Small business

The Small Business Unit, now in its third year, continued to build its outreach program to inform small businesses about dealing with the Trade Practices Act. It launched the Competing Fairly forums, which involve satellite broadcasts to over 60 towns throughout Australia. The forums inform rural businesses and consumers of their rights and obligations under the Trade Practices Act. They aim to build connections between the Commission, industry and community organisations and have been very effective in reaching the bush.

The corporate video, *Fair Game or Fair Go*, explains the meaning of unconscionable conduct to small businesses while several publications, some written in cooperation with other agencies such as the Australian Retailers Association, take up similar themes.

## Adjudication

The Commission received 53 applications for authorisation, 345 notifications for exclusive dealing and made 30 determinations. It also took part in a joint study with the Reserve Bank of Australia on access and interchange fees in Australia's debit and credit card schemes. As a result the interchange scheme is now subject to the regulatory processes of the RBA.

Since the coverage of the Trade Practices Act was extended in the mid-1990s, more matters have been coming before its Adjudication Branch. They cover industries where the Act did not previously apply, because of its limited jurisdictional reach or overriding legislation, and include the Royal Australasian College of Surgeons authorisation application and various determinations concerning the rural sector.

## International unit

Activity between regulators and competition authorities at the international level has grown, particularly regarding international airline agreements and e-commerce issues. The Commission has attended meetings about establishing new forums for discussing global competition policy and law enforcement. The Commission is also helping several countries introduce competition laws.

## Summary of financial report

The Commission's budget for 2000–01 was \$75.6 million, which included a once-off injection of approximately \$25 million to fund the GST activities and \$10 million to boost its legal resources.

The budget for 2001–02, after removing the once-off funding of \$35 million, is an increase of about 27 per cent on 2000–01. The increase will fund the Commission's activities in a number of existing areas as well as new activities such as in e-commerce. A litigation reserve fund, initially of \$10 million, will assist court actions. The fund will build to a reserve of \$20 million and will strengthen the Commission's ability to deal with major litigation. The budget for 2001–02 is \$73.4 million.

A funding review by the Department of Finance and Administration evaluated the Commission's key operating environment and costing systems. It interviewed various stakeholders and benchmarked strategic functions against other Australian and overseas agencies. It is not uncommon for such a review to lead to reduced funding. However, in the Commission's case, after rigorous evaluation, it was found that a substantial increase was warranted. This was done in the May 2001 Budget.

With the additional funding the Commission can maintain its current high standard of service delivery and meet emerging priorities such as e-commerce and rural and regional issues.

## ACCC staff

Mr Allan Asher's term as Deputy Chairman expired on 3 November 2000. He left to take up a new position at Consumer International's headquarters in London, as the global director of campaigns. Mr Asher was appointed to the Trade Practices Commission in 1988, and when the Australian Competition and Consumer Commission was established in 1995, he was appointed Deputy Chairman. During his term he chaired the Enforcement Committee, the Energy Committee and the OECD Consumer Policy Committee. Mr Asher made a major contribution to all aspects of Commission activities, driven by his deep-seated personal values and concern for the welfare of others.

The Commission also thanks ex officio member Mr Graham Scott for his contributions. Mr Scott's term expired on 1 April 2001. He was replaced by Mr Lew Owens, the South Australian Independent Industry Regulator, from 29 June 2001. Mr Alan Tregilgas, the Utilities Commissioner in the Northern Territory, was appointed on 18 October 2000.

The Commission recruits high quality employees and 2000–01 was no exception. From a highly competitive field, the Commission recruited 29 graduates and two international interns, who are presently completing rotations throughout various work areas. Skills at the middle and senior ranks were also developed through training courses and seminars. The Commission prides itself on its highly attractive work environment, study assistance scheme and support for staff at all levels.

## Liaison

The Commission's activities greatly benefited this year through effective liaison with community organisations, businesses, consumers and Federal, State and Territory agencies. It works with many overseas agencies in promoting trade practices compliance.

## Amendments to the Trade Practices Act

On 26 July 2001 amendments to the Trade Practices Act relating to small business and strengthening the enforcement provisions came into effect. These amendments (see appendix 1, page 179 for greater detail) include:

- raising penalties for breaches of the consumer protection provisions to \$1.1 million for corporations and \$220 000 for individuals;
- extending the protection for small businesses to transactions up to \$3 million in value from unconscionable conduct by a stronger party;
- broadening the powers for the Commission to take representative actions and seek declarations; and
- altering the 'market' definition in the mergers and acquisitions test to include a substantial market in regional Australia.

The Commission believes the amendments will increase protection for consumers and small businesses against unscrupulous business practices.

## Outlook

The last 10 years have seen substantial change in competition law both domestically and internationally. The Australian Competition and Consumer Commission was formed by a merger of the Prices Surveillance Authority and the Trade Practices Commission in 1995. Codes regulating access to essential facilities have been formulated and improved. Penalties have increased sharply, the consumer protection provisions are more vigorously enforced, merger law has been strengthened and the protection for small businesses against anti-competitive behaviour is more robust. The Commission has conducted more cases under both Parts IV and V in the 1990s than in the 1980s. These cases have generated a great deal more publicity and public discussion regarding the Act and competition policy.

As a result of the Hilmer Report, broader reforms in competition policy have occurred under the *Competition Policy Reform Act 1995*. Responsibility for the Trade Practices Act has been transferred from the Attorney General to the Treasurer. These changes have lifted the profile of the Act and the Commission and its ability to promote the welfare of all Australians.

## Looking forward: future challenges for the Commission

Three major forces are driving change in the modern economy: globalisation, the emergence of new technology and progressive liberalisation of markets, both local and international. All have major implications for the future of competition law and will have a substantial impact on the work and focus of the Commission. For example, when globalisation leads to increased international competition, this is taken into account by the Commission in assessing questions about competition in Australia.

These forces, while generally beneficial for consumers and businesses, may require some scrutiny by competition and consumer protection regulators.

## Globalisation

The increasing interdependence between nations generally benefits competition and consumers. However, in some cases globalisation can be associated with anti-competitive behaviour such as international cartels. Recently in such a case, the Federal Court of Australia imposed record fines on three subsidiaries of overseas animal vitamin suppliers for price fixing and market sharing in breach of the Trade Practices Act. The conduct in Australia was a manifestation of arrangements made overseas by the parent companies, and its resolution reflected the cooperation between the Commission and international regulatory agencies.

The number of global and multi-jurisdictional mergers has also grown. Usually, the global character of mergers has not caused major difficulties in Australia. Most are not anti-competitive.

However, when they have anti-competitive effects in Australia, the Commission has opposed the merger. In some circumstances, it has been possible to find a solution to the anti-competitive effects. For example, the worldwide merger of British American Tobacco PLC and Rothmans Holding would have led to a substantial lessening of competition in the Australian cigarette market. The divestiture of certain brands to another international cigarette company enabled the merger to proceed. However, in other circumstances, such as the proposed acquisition by The Coca Cola Company of Cadbury Schweppes international soft drink brands, the anti-competitive effects of the proposal were not able to be resolved by the merger parties and the deal was blocked in Australia (and a number of other countries).

The international dimension to competition policy has expanded, with greater cooperation, and more agreements and treaties between countries. Multilateral activity at the OECD, World Trade Organisation, APEC and other regional groupings has increased. During the year the establishment of a global competition initiative was discussed, instigated by the International Bar Association. The OECD has also set up a global competition forum and the WTO has established a working party to study the interaction of trade and competition policy.



Perhaps the most important global development in competition policy in the next 20 years will be the emergence of competition policies in developing countries. Australia is helping to train regulators in other countries in applying competition law. Australian business will gain through better access for exports to these countries. The adoption of competition law will help reduce restrictive practices that currently hinder Australian exports and foreign investment.

### **New technology and e-commerce**

The Commission has devoted increased resources to the study of B2B, B2C and other related issues. Most e-commerce developments benefit consumers through greater efficiencies, wider choice and improved purchasing systems. It also aids competition because lower entry barriers increase the field of competitive suppliers. However, some B2B arrangements could involve competitors reaching anti-competitive agreements or the creation of new sources of market power. These require the scrutiny of regulators.

There are concerns that consumers have less protection in Internet transactions, especially where cross border transactions occur. The provisions of the Act regarding misleading and deceptive conduct, implied warranties, product safety, as well as privacy and fraud, may not apply or be easily enforced in these situations.

One view is that competition law should not apply in the same way in high technology sectors, as any market power will soon be displaced by further advances in new technology itself. It is said that regulators and courts cannot foresee the effects of technology, and therefore their decisions are likely to be wrong.

Others believe new technology can lead to a large accumulation of market power in a short period and that the scope for consumer exploitation and anti-competitive conduct is immense. The counter is a fast and effective application of competition law to stop the conduct before it spills over into related markets.

The accumulation of market power in some network industries appears to be large. This has affected competition policy in the utilities, high technology and financial sectors and will be

central to the Commission's policy work in future years.

### **Liberalisation**

Liberalisation of international trade, foreign investment, and domestic deregulation is generally beneficial to competition.

When governments liberalise markets, businesses sometimes resist. The sharp increase in international cartels in recent years reflects efforts by some corporations to counter lower trade and investment barriers. As barriers fall, businesses that have had domestic monopolies or near monopolies face competition from overseas as well as easier entry to overseas markets. One response can be the formation of international cartels to fix prices and share markets. This calls for attention by regulators and often requires coordinated action across national borders.

Such conduct also occurs domestically. While deregulation generally promotes competition, it also provides incentives for anti-competitive behaviour such as cartel activity, the misuse of market power or anti-competitive mergers. Anti-competitive activity that follows in the wake of deregulation is high on the Commission's agenda.

### **Other forces — regional and rural Australia**

While the impact of globalisation has triggered much debate, the other end of the spectrum is equally crucial — where strong demand exists for the Commission to be more active in regional and rural Australia.

Additional funding has been earmarked for regional and rural programs. In July 2001 the Australian Parliament amended the merger provisions in section 50 to explicitly refer to regional markets. The Commission itself is more active in reaching regional and rural Australia and will continue to be so in coming years.

### **The Commission's approach**

To tackle these challenges, the Commission needs to examine and alter, where necessary, its own approach to the analysis of competition. When, for example, globalisation causes greater import competition in Australia, this is taken into

account. The Commission has not rejected a merger proposal where imports have been more than 10 per cent of the market.

In some cases institutional arrangements need to change. For example, when anti-competitive behaviour crosses national boundaries, a combined international effort is required. It is vital that Australia participates to ensure its voice is heard.

If we are to have an internationally competitive economy we must apply a vigorous competition law to respond to these new market imperatives.

## **Proposed changes to the Trade Practices Act**

To tackle such a dynamic environment, the Commission believes the Trade Practices Act should be changed. While its basic structure is sound, the Commission believes that scope exists for several amendments. The three key changes needed are:

### **1. The introduction of criminal sanctions for hardcore acts of collusion by big business**

The Commission believes that criminal sanctions should apply to price fixing, bid rigging, market sharing, and possibly, collective exclusionary boycotts by big business. These can include the most serious, flagrant and profitable acts of collusion. These acts that infringe sections 45A and 4D are not only dishonest but they directly affect prices and seriously impair the operation of free markets. Collusion is rightly compared with fraud, insider trading and other white-collar crime. Criminal sanctions to deter and properly punish such behaviour, such as imprisonment, would bring the Trade Practices Act into line with several of our major trading partners, including Germany, USA, Canada, Japan, Korea and the UK. This change would contain the usual safeguards for businesses, such as the requirement to prove the conduct beyond reasonable doubt before a court of law, and the discretion of the judiciary to determine the most appropriate remedy.

Such a change in the law would not apply to small businesses or trade unions.

### **2. A revision of s. 46 regarding the misuse of market power**

The Commission believes two major impediments hinder the proper functioning of section 46 which relates to the misuse of market power.

The first is the 'purpose' test that can unduly limit the range of anti-competitive behaviour covered by the Act. The Commission sees merit in adding an 'effects' test. The amended test would then determine whether the proscribed anti-competitive behaviour had the 'purpose or effect' of eliminating or damaging a competitor; preventing entry; or preventing competitive conduct in a market. The Commission (and the courts) could then examine the actual impact of the conduct as opposed to being limited to examining its intent.

The Commission is also concerned about the length of time it normally takes to deal with issues of market power. To overcome this, the Commission recommends cease and desist powers to order a temporary halt to conduct it considers a breach of section 46 (and possibly, other sections of the Act) pending court review. Expanding the Commission's investigation powers will enable it to better detect and prosecute cartels and other anti-competitive behaviour, as in New Zealand and some other jurisdictions.

### **3. The introduction of civil penalties into Part V of the Act**

Breaches of the consumer protection provisions in Part V of the Act do not currently attract the civil penalties that apply to the restrictive trade provisions in Part IV. While criminal penalties (such as fines) are available, the Commission believes that Part V should contain the option of civil penalties.

Sometimes a breach of Part V involves a failure of compliance so serious that it requires a pecuniary penalty but not criminal action. Civil penalties will ensure that would-be offenders are deterred, victims are compensated and justice is prompt, effective and at the lowest possible cost to the taxpayer.

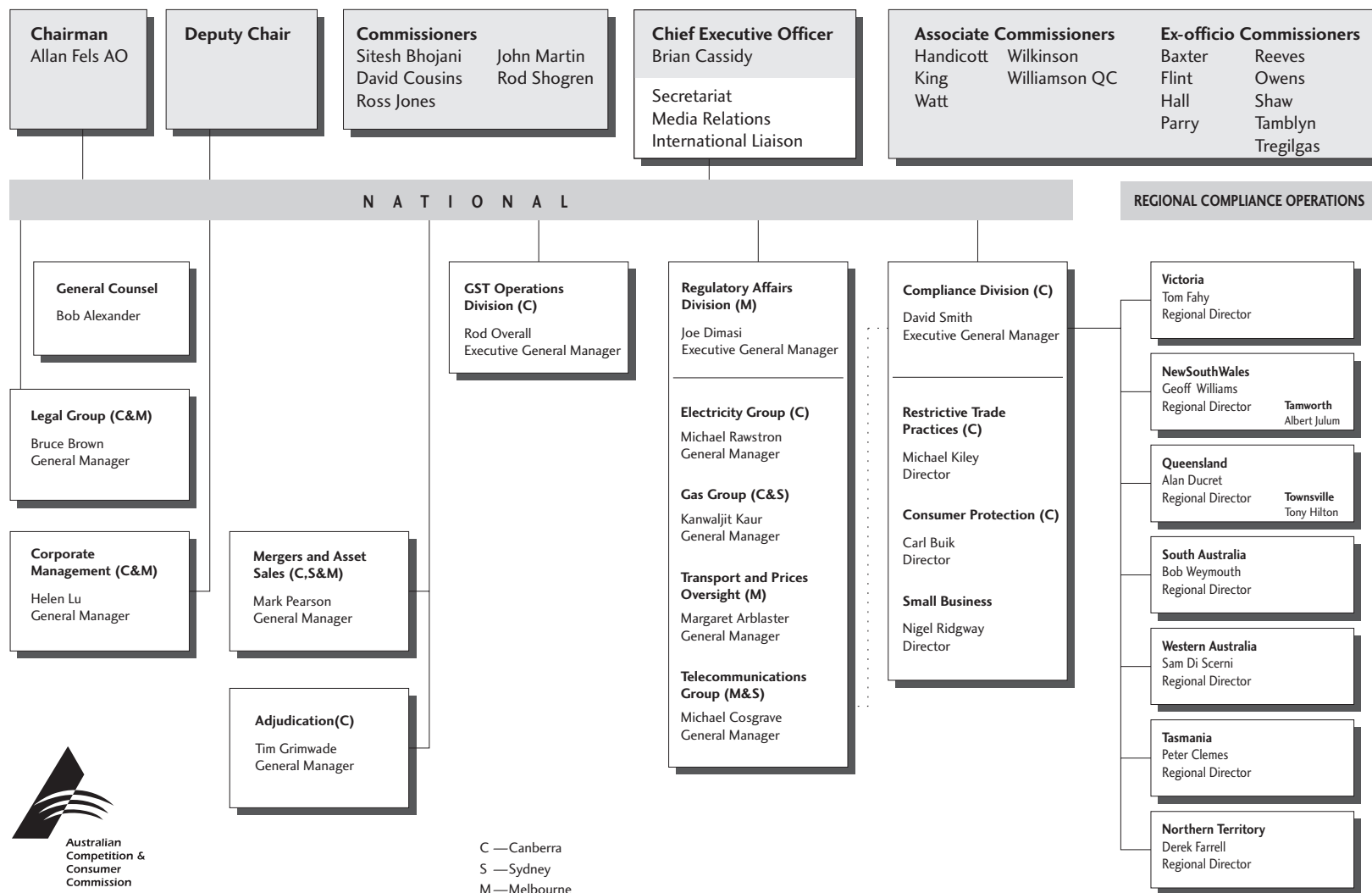
These changes will further deter big businesses from engaging in anti-competitive behaviour and increase compliance with the Trade Practices Act to the benefit of Australian consumers.

The Commission has recorded strong results this past year in fighting anti-competitive conduct and ensuring a fairer marketplace. This would not have been possible without dedicated and highly competent staff. I would like to thank the Commission staff as well as my fellow Commissioners for their creativity, professionalism and tireless work over the past year in tackling the challenges presented.

Professor Allan Fels AO

Chairman

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION ORGANISATION



# Chapter 1 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);
- 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 1992* — 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.

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

## Outputs and performance indicators for 2000–01

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 and performance indicators, as published in the Portfolio Budget Statements in 2000–01, are:

### Output 1.1.1 — The proper administration and enforcement of the Trade Practices Act 1974, the Prices Surveillance Act 1983 and related laws

#### Performance 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 A 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 — Performance of actions that promote competition and fair trading and enable well functioning markets

#### 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.

## Structure of the Commission

During the reporting period the Commission comprised seven full-time commissioners, reducing to six on 6 November 2000 when the appointment of deputy chairman Allan Asher ended.

The remaining six full-time commissioners were: Chairman Professor Allan Fels, Commissioners Sitesh Bhojani, Dr David Cousins, Ross Jones, John Martin and Rod Shogren.

Five part-time associate commissioners served during the reporting period: Teresa Handicott, Yasmin King, Warwick Wilkinson AM, Don Watt and Professor Douglas Williamson QC.

The nine ex-officio members are: Paul Baxter, Professor David Flint AM, John Hall, Dr Thomas Parry, Andrew Reeves, Alan Tregilgas, Tony Shaw, Dr John Tamblyn and Lew Owens. Graham Scott's appointment ended on 1 April 2001 and he was replaced by Lew Owens from 29 June 2001.

*Biographies and photographs can be found in appendix 5.*



**Table 1.1.** Financial and staffing resources 2000–01

Reporting by outcome	Outcome 1		Total	
	Budget \$'000	Actual \$'000	Budget \$'000	Actual \$'000
Total net administered expenses	-	101	-	101
Add: Net cost of entity outputs	70 643	67 894	70 643	67 894
Net cost to budget outcome	70 643	67 995	70 643	67 995
Outcome specific assets deployed as at 30 June 2001	-	-	-	-
Assets that are not outcome specific deployed as at 30 June 2001	-	-	7 462	13 180

Major agency revenues and expenses by outcome	Outcome 1			Total	
	Output 1.1	Output 1.2	Total Outcome 1		
	Actual \$'000	Actual \$'000	Actual \$'000	Budget \$'000	Actual \$'000
<b>Operating revenues</b>					
Revenue from government	65 349	10 338	75 687	75 627	75 687
Sale of goods and services	799	246	1 045	468	1 045
Other non-taxation revenues	229	18	247	55	247
<b>Total operating revenues</b>	<b>66 377</b>	<b>10 602</b>	<b>76 979</b>	<b>76 150</b>	<b>76 979</b>
<b>Operating expenses</b>					
Employees	27 323	2 383	29 706	28 804	29 706
Suppliers	35 065	2 281	37 346	41 533	37 346
Other	2 024	110	2 134	829	2 134
<b>Total operating expenses</b>	<b>64 412</b>	<b>4 774</b>	<b>69 186</b>	<b>71 166</b>	<b>69 186</b>

Major administered revenues and expenses by outcome	Outcome 1		Total	
	Budget \$'000	Actual \$'000	Budget \$'000	Actual \$'000
<b>Operating revenues</b>				
<b>Taxation</b>				
Fines and costs	9 975	42 807	9 975	42 807
Authorisation fees	-	432	-	432
Other	25	6	25	6
<b>Total taxation</b>	<b>10 000</b>	<b>43 245</b>	<b>10 000</b>	<b>43 245</b>
<b>Total operating revenues</b>	<b>10 000</b>	<b>43 245</b>	<b>10 000</b>	<b>43 245</b>
<b>Operating expenses</b>				
Net write-down of assets	-	101	-	101
<b>Total operating expenses</b>	<b>-</b>	<b>101</b>	<b>-</b>	<b>101</b>

Staff years	2000–01 438	1999–2000 382
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## 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 publications program dealing with the specifics and rationale of its work. Discussed in chapter 7 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

During the year the financial operations of the Commission were audited by the Auditor-General. The audit of the financial statements was satisfactory and an unqualified audit report was issued. The Commission appeared before the Senate Legislation Committee (Economics) three times; and the Standing Committee on Economics, Finance and Public Administration (Review of annual report 1999–2000) twice.

## Freedom of information

The Commission received 21 formal freedom of information requests during 2000–01. The requests were for access to a wide range of documents relating to investigations and complaints involving the Commission.

In nine cases access was granted in part. Access was granted in full in two cases and refused in two. Four requests were not proceeded with and in respect of one the Commission had no relevant documents. Three requests had not been finalised by the end of the year. It is Commission policy to provide information wherever 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.

Two requests to have processing charges waived were granted. Both were on the grounds of public interest.

There were no requests for internal review and no applications were made to the AAT for review during 2000–01.

## 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.

### Year in review

During 2000–01 substantial Commission resources continued to be used to ensure that the benefits of the New Tax System were passed on to consumers and that businesses did not exploit consumers in implementing the tax changes. This involved providing information to business and consumers, liaison with individual businesses and business and consumer organisations, national monitoring of prices and investigating complaints and appropriate enforcement action.

After one year of the GST the Commission found that most businesses have fully complied with its pricing guidelines. Businesses generally acted correctly in adjusting prices to take account of the tax changes. The changes affected prices mostly in the September 2000 quarter and were within the Commission's estimates of their effect. The overall impact on prices was less than forecast by the Commonwealth Treasury and economic commentators generally. Most companies that completed public compliance commitments have advised the Commission they will not increase prices further as a result of the tax changes. Price rises that have occurred since then have generally been consistent with underlying inflation evident before the tax changes were implemented.

From early July 1999 the Commission has investigated potential non-compliance with the pricing guidelines, handling more than 120 000 inquiries (64 000 during 2000–01), including about 40 000 complaints (24 000 during 2000–01). Many were found not to be breaches of the Trade Practices Act and many were multiple complaints about the same business. Since July 1999 the Commission has investigated in detail about 6200 GST-related matters. As a result numerous businesses took corrective action to remedy contraventions related to the tax changes. They have refunded nearly \$10.1 million on behalf of approximately 990 000 consumers.

## The Commission's role

### PERFORMANCE INDICATOR

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

The Commission's responsibilities under Part VB of the Trade Practices Act require it to issue guidelines on pricing responses to the New Tax System changes, to check prices and take action against businesses that increase prices unreasonably. The law against price exploitation operates until 30 June 2002 and reflects Federal and State Parliaments' desire to address consumers' concerns about the possibility of some businesses taking advantage of the tax changes to charge unreasonably high prices.

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 advisers found to be knowingly concerned in, or aiding and abetting, contraventions of the law.

Under the law the Commission can issue a notice to a corporation or person it considers has contravened the prohibition against price exploitation. In any court proceedings for injunction or penalty, a notice constitutes prima facie evidence that the price charged is unreasonably high, and cannot be attributed 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 is up to the corporation or person to show that they did not engage in price exploitation.

A second type of notice can 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. A maximum price notice effectively warns the business that a supply above the maximum price specified constitutes price exploitation.

The Commission has additional New Tax System responsibilities in relation to:

- the Commonwealth Fuel Sales Grants Scheme providing a grant, generally of 1 or 2 cents per litre, to fuel retailers and distributors for petrol and diesel sold to consumers in regional and remote areas of Australia;
- the reduction in Commonwealth excise on petrol and diesel from 2 March 2001; and
- the reduction in Commonwealth excise on draught beer from 4 April 2001.

To ensure that the benefits of the grant and excise reductions were passed on to consumers, these measures were prescribed under the price exploitation legislation administered by the Commission.

The Commission's promotion of compliance emphasised the role of informing and educating businesses and consumers about their rights and obligations under the price exploitation provisions of the Act. Its education strategy, which includes wide distribution of the Commission's guidelines on price exploitation, has been highly effective in raising business awareness. It has also increased consumer knowledge about expected price changes.

In its oversight role, the Commission sought to achieve the aims of the legislation cost-effectively. Central to meeting its responsibilities was obtaining information about prices and pricing decisions and providing information to market participants. In assessing price movements the Commission focused on price **changes** as a result of the New Tax System, rather than price levels.

The Commission has investigated many allegations of price exploitation. It addressed offending behaviour and sought to prevent it from occurring again, to ensure consumers received restitution and to instigate court action, if required.

The Commission is 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.

## Promoting compliance

### 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 guidelines

The Commission's price exploitation guidelines give businesses the basic information needed to comply with the New Tax System. Revised guidelines were published in March 2000, as required under Part VB, to provide greater certainty for business in setting prices on the introduction of the New Tax System.

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.

### Communications strategy

The Commission ran a comprehensive communications strategy to promote compliance with the law during the transition to the New Tax System. The aim was to raise awareness and understanding among consumers and businesses

of their respective rights and obligations under the legislation. This was achieved by providing information through printed publications, radio and print media advertisements, a dedicated website (<http://gst.accc.gov.au>) and the GST Price Line (1300 302 502).

This strategy also targeted businesses owned and run by people from non-English-speaking backgrounds. Aboriginal and Torres Strait Islander business enterprises also received special attention from the Commission. The Commission distributed appropriately tailored information to consumers in these diverse communities.

The Commission's communications strategy involved anticipating issues likely to be of concern or interest to consumers and business. As new issues emerged, explanatory materials were quickly developed and disseminated.

The key elements of the business strategy were:

- small business compliance guide;
- small business cost savings estimator;
- small business retail price adjustor;
- GST News for Business brochures;
- GST Checklist fact sheets;
- a business information network; and
- industry association liaison and presentations.

The key elements of the consumer strategy were:

- blanket distribution of *Australia's Everyday Shopping Guide with the GST* booklet;
- an extensive advertising campaign;
- the National GST Consumer Consultative Group;
- a consumer information network;
- GST Talk fact sheets;
- the consumer newsletter GST Snapshots;
- GST Bulletins; and
- a *How to make a complaint* brochure.

## Media activities

The Commission's media activities are a key tool for promoting compliance. Media releases, print and radio advertisements, press articles, question and answer columns and press interviews all provided opportunities to inform large audiences about GST pricing issues as they arose.

## Media releases

The Commission issued 64 media releases related to the New Tax System during the year. They promoted compliance by example, illustrating to the wider business community the consequences of possible price exploitation and misleading or deceptive conduct with respect to the New Tax System.

## Advertising program

The Commission's advertising program informed customers and small businesses about the likely price impacts of the New Tax System and aimed to raise awareness of the Commission's role.

An eight week print and radio advertising program was launched in June 2000 and continued throughout July. To reach a wide audience, the advertisements were run in the major metropolitan media, rural and regional media, specialised Aboriginal and Torres Strait Islander media and media targeting multicultural communities, as well as magazines and radio for the vision impaired.

The key message was that the Commission intended to prevent price exploitation and to ensure that businesses passed on all cost savings from the tax changes to their customers. The Commission publicised the likely price movements and where people could get further information. Consumers were advised they could call the Commission's GST Price Line in cases of price exploitation and that action would be taken.

The number of calls to the GST Price Line increased substantially during July 2000, demonstrating consumers' interest and willingness to question businesses about price increases.

## Press articles

In addition to the series of print advertisements the Commission continued to provide articles and question and answer columns in newspapers throughout the year. These were mainly used in the major metropolitan daily newspapers, but also in industry journals and other publications.

## Publications

To date the Commission has produced around 5.7 million GST publications since starting its New Tax System role. This does not include the *Everyday Shopping Guide with the GST*, which was delivered to every household in the country and was also available in newsagencies and post offices.

## GST Bulletins

During the year 27 electronic GST Bulletins regularly alerted consumers and businesses to emerging GST pricing issues. They dealt with topical issues identified from calls to the GST Price Line as well as from the Commission's enforcement activities. They were produced quickly and distributed through the GST information network.



### **GST Talk series**

The *GST Talk* fact sheets gave consumers detailed information about issues of public concern that emerged from inquiries and complaints to the GST Price Line and the Commission's other compliance activities. They dealt with issues such as accommodation charges in commercial residential premises (caravan parks etc.) and the abolition of financial institutions duty and stamp duty on quoted marketable securities.

### **News for Business**

These fact sheets addressed specific business and industry topics dealing with such issues as franchise fees, pricing hints for operators of cafés, takeaways and restaurants, commercial and retail property leases, commercial contracts with rent review or price escalation clauses with reference to the CPI, and the abolition of financial institutions duty and stamp duty on quoted marketable securities. They were distributed through relevant business, industry and professional associations.

### **Poster for the retail sector**

In response to continued inquiries about displaying and advertising prices, the Commission produced a poster for the retail sector to reinforce the message that prices should include GST. Over 200 000 were distributed through business and industry groups, local government councils and other agencies and carried the message 'No one likes to be misled — Prices should include GST'. Several organisations inserted the poster into their newsletters or industry journal.

### **Reports**

In addition to publications containing general information, the Commission published quarterly reports for the Minister on its operations under Part VB as required by s. 75AZ of the Trade Practices Act. Three price monitoring survey reports were also published during the year.

### **GST information network**

The GST information network is a Commission database network containing over 1800 consumer and community groups, business organisations, industry associations, libraries and other agencies and groups. The Commission used this network mainly to distribute information about the New Tax System both electronically and in hard copy. This material was also available from the Commission's GST website or by calling the GST Price Line.

During the year over 150 consumer and community organisations, representing around 1.9 million people, received material through this network. Information for businesses was sent to more than 900 business and industry organisations, representing just under two million people. Around 100 libraries and more than 100 government and other agencies also received this information. The members of the network represent around eight million Australians.

### **Electronic information**

#### **GST website**

The GST website at <<http://gst.accc.gov.au>> provides easy access to relevant business and consumer publications and answers to frequently asked questions. Reports on retail price changes since the introduction of the New Tax System are also available on the site.

Information is available on the website for Aboriginal and Torres Strait Islanders and in 11 languages other than English: Arabic, Chinese, Greek, Italian, Spanish, Vietnamese, Croatian, Macedonian, Serbian, Russian and Turkish.

Over the year there were almost three million hits, with 160 000 individual sessions. The most popular areas on the site were the publications and the *Pricing kit for small business*.



### **GST Price Line**

The GST Price Line (1300 302 502) — now called the ACCC infocentre — is a telephone information and complaints line for businesses and consumers. GST Price Line staff answered inquiries about the Commission's pricing guidelines and price changes, handled requests for the Commission's GST publications and accepted and logged complaints about possible price exploitation and misleading or deceptive conduct relating to the New Tax System. The Price Line also referred callers to other agencies where appropriate, such as the Australian Tax Office, the GST Start-Up Assistance Office and Centrelink.

From 1 May 2001 the GST Price Line became part of the ACCC infocentre, which is the initial response centre for all inquiries and complaints to the Commission on competition and consumer issues throughout Australia. Calls to this 1300 302 502 service can be made from anywhere in the country for the cost of a local call.

During the reporting period 64 030 GST-related complaints and inquiries were logged into the Commission's reporting system. Of these, 40 027 (62.5 per cent) were inquiries and 24 003 (37.5 per cent) were complaints. The 10 industries most commonly referred to were:

<b>COMPLAINTS</b>	<b>PERCENTAGE</b>
Supermarket and grocery stores	9.4
Automotive fuel retailing	8.0
Cafés and restaurants	5.1
Takeaway food retailing	4.7
Telecommunication services	4.3
Retailing (not elsewhere classified)	4.1
Pubs, taverns and bars	2.7
Domestic appliance retailing	2.7
Newspaper, book and stationery retailing	2.5
General insurance	2.0

<b>INQUIRIES</b>	<b>PERCENTAGE</b>
Retailing (not elsewhere classified)	11.1
Supermarket and grocery stores	9.5
Central government administration	8.6
Automotive fuel retailing	5.3
Telecommunication services	3.1
Real estate agents	2.7
Takeaway food retailing	2.6
House construction	2.5
General insurance	2.4
Domestic appliance retailing	2.1



### **Choice Price Watch website**

During the year the Commission continued to provide information and assistance to the Australian Consumers Association (ACA) for its Choice Price Watch website. This included providing the results of the Commission's price surveys.

A special feature of the site was that consumers could record pre- and post-GST prices on it. The ACA monitored these prices and gave the Commission regular reports about the operation and use of the site.

Corresponding with the general trend observed by the Commission, traffic to this site decreased significantly over the course of the year. This indicated that, after the first few months of the GST's introduction, very few consumers were seeking information on the effects of the New Tax System on the prices of goods and services. After consulting with the Commission, the ACA closed the website in June 2001.

### **Working with consumers**

In addition to the media activities, publications and electronic information for consumers generally, the Commission also addressed the needs of those who may have been subject to further disadvantage in the transition to the New Tax System.

### **Aboriginal and Torres Strait Islander information strategy**

In June 2000 the Commission mailed out more than 20 000 specially produced GST information kits to indigenous community organisations and other relevant agencies and groups working with indigenous communities.

Follow-up presentations on GST and general trade practices issues began in September 2000 with visits to indigenous communities in Northern Queensland, Cape York and the Torres Strait and later to communities across northern Western Australia and Central Australia. The visits dealt with GST price changes and issues such as misleading or deceptive conduct, debtor harassment and unconscionable conduct.

The Commission's dedicated ATSI information line (1300 303 143) provided GST-related information to indigenous people and recorded their complaints relating to prices under the New Tax System.

### **Information strategy for people from non-English-speaking backgrounds**

In June 2000 the Commission distributed information kits on GST pricing in Arabic, Chinese, Greek, Italian, Spanish and Vietnamese. They contained the *Everyday Shopping Guide with the GST*, fact sheets, business compliance information, a check list on price displays and a point-of-sale poster for retailers. The kits were mailed to over 10 000 community organisations as well as being available from the Commission's website. Key publications were also translated into Croatian, Macedonian, Russian, Serbian and Turkish and were available from the website.

Following the mailout over 500 community organisations were contacted by phone and letters were sent to another 330 organisations offering further information. As a result, 5000 more GST information kits in the six main languages other than English were sent out. In July an ongoing advertising program was run in each of the six main languages other than English. Major multicultural newspapers carried the advertisements, and the general radio campaign was translated for broadcast on ethnic radio. The Commission also prepared articles on price changes with the GST and the Commission's role for various multicultural community media and journals.

The Commission had staff able to take calls to the GST Price Line in languages other than English. The Commission also used the telephone interpreter service.

### **Information for the vision impaired**

The Commission worked with Vision Australia to provide GST pricing information to those with vision impairment. Various articles on topical and emerging GST pricing issues were provided for broadcast on radio.

## **National GST Consumer Consultative Group**

The National GST Consumer Consultative Group consists of representatives from consumer organisations from each State and Territory.

The group continued to assist the Commission in its consumer protection strategies including providing better access to Commission information for people from NESB and ATSI communities and those with vision impairment. The Commission reported on enforcement and monitoring activities, and received feedback from the group on the effectiveness of the Commission's activities.

## **Working with business**

The Commission continued to work closely with industry and business associations, other government agencies and individual operators to ensure understanding of the New Tax System and compliance with the price exploitation guidelines. The Commission's Small Business Unit continued its outreach program, working with small business operators around the country.

## **Abolition of financial institution duty and stamp duty on quoted marketable securities**

Financial institutions duty (FID) and stamp duty on quoted marketable securities were abolished on 1 July 2001 as part of the New Tax System changes. The Commission ran a comprehensive education campaign to inform consumers and the affected industry sectors of the effect of these tax changes.

## **Liaison with industry sectors**

### **Retail industry**

The Commission liaised extensively with the retailing industry to ensure compliance with the Commission's pricing guidelines. Particular focus was given during July 2000 to pricing displays, including dual ticketing, grace periods for dual price displays and the scanning code of conduct.

Discussion with the industry covered business practices such as supplier rebates. Before the introduction of the New Tax System, supplier rebates were used to reduce the amount paid

for a good by a retailer — this would lead to a reduction in the Wholesale Sales Tax (WST) that applied to the good. Retailers were concerned that the effect of the rebate before 1 July 2000 (including the WST benefit) should be included when calculating the net dollar margin. The Commission accepted this view and the pricing guidelines were amended to specifically address this issue.

### **Financial services industry**

The Commission held discussions with all national and major regional banks about price changes including proposed broad changes to fees and charges, especially merchant service fees. The Commission sought to ensure that the extent and incidence of any changes to fees and charges were consistent with the price exploitation guidelines and that consumers received the full benefit of any indirect tax reductions.

### **Commercial and retail leasing**

Liaison with representatives of the commercial and retail lease market promoted practical solutions to issues raised. These included long-term contracts and the passing on of cost savings, rentals linked to the consumer price index and the treatment of outgoings. The Commission released two publications: *News for Business 16* and *17*, addressing some of the major issues facing the sector.

### **Road transport**

The road transport industry is one in which significant savings from the New Tax System were expected resulting from direct and indirect tax changes. The Commission was especially concerned that repriced haulage fees reflected cost savings from the introduction of the Diesel and Alternative Fuel Grants Scheme (the on-road scheme).

To ensure compliance with the pricing guidelines, the Commission held discussions with the industry, including the Australian Trucking Association, State-based industry groups and independent trucking operators and sub-contractors. The Commission also produced *News for Business 7 — Pricing issues for the trucking industry* to help operators identify the savings and how to treat them under the pricing guidelines.

### Commercial residential accommodation

The amount of GST payable by users of commercial residential accommodation, which includes hotels, motels, hostels, boarding houses, caravan parks and similar premises, depends on whether the stay is short-term or long-term. To help people understand this the Commission produced *GST Talk 9 — Commercial residential premises — accommodation charges*. The Commission also attended industry seminars.

The Commission is currently completing an audit into the pricing structures of caravan parks, mobile home parks and boarding houses to determine whether operators have increased their profit margins as a result of the tax changes.

### Government

The Commission liaised with State and Territory Treasury departments to promote compliance with the pricing guidelines in government controlled business activities. The Commission sought commitments from State and Territory governments that New Tax System savings would be monitored on an ongoing basis. When these savings are greater than those adjusted for under the *Intergovernmental Agreement on the Reform of Commonwealth-State Relations*, the benefit of the savings are to be passed on as lower prices to consumers.

### Industries subject to pricing regulation

Many industries are subject to Commonwealth or State regulation that affects their ability to alter prices, for example electricity, gas, telecommunications and postal services. The Commission worked closely with State and Territory regulators to ensure that the pricing guidelines were applied to pricing decisions in these industries.

### Public transport

Public transport is generally regulated by either State or Territory Departments of Transport or by independent State and Territory regulators. The Commission met with regulators across Australia to ensure that the benefits of the New Tax System and the Diesel Fuel and Alternative Grants Scheme were offset against the GST payable on fares.

### Taxis

The Commission worked closely with State and Territory tax regulators to ensure that the guidelines were followed when determining GST-inclusive taxi fares. As a result, price changes were less than 10 per cent in all jurisdictions because of the embedded savings that the taxi industry received following the abolition of WST on vehicles, tyres and parts, and the availability of input tax credits for fuel.

The Commission also participated in the ATO Industry Partnership (taxi industry) and produced *News for Business 4 — taxi industry* which addressed industry specific issues in the context of the New Tax System.

## 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 is an important element in the promotion of compliance generally as big business can often influence market prices and provide a lead for smaller businesses.

The statement is the culmination of the company's discussions with the Commission about the application of the pricing guidelines and its re-pricing methodology. This process aimed to identify and address potential problems and increase public confidence that a company's behaviour was consistent with the guidelines.

A PCC establishes an effective liaison and information reporting regime, which minimises a corporation's risk of breaching the price exploitation provisions of the Act. It assures 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 indemnify the issuer from enforcement action if circumstances warrant such action.

By the end of July 2000, 35 companies from many industry sectors had public compliance commitments on the Commission's Public Register. The Commission regards this as a major achievement in its efforts to encourage compliance with the New Tax System legislation. Below is the full list and their PCCs can be

viewed on the Commission's website  
<<http://www.accc.gov.au>> in the public  
register section.

Ansett Holdings Ltd  
Australia & 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  
National Australia Bank Limited  
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

The commitments generally require the companies to report to the Commission every six months or upon request. Such reports may include independent verification of the information provided.

The total number of inquiries and complaints relating to these companies during 2000–01 was about 9300. About 5400 of these, or nearly 60 per cent, were received in the September quarter of the year. This was fewer than expected given the size of the companies concerned and the consumer market focus of many of them. Inquiries and complaints have stayed at lower levels since September 2000.

The reports confirmed that the companies had complied with the Commission's price exploitation guidelines and no compliance issues arose from the review of the reports.

A common theme in discussions with the companies was that the tax changes were no longer a factor in their pricing decisions and that pricing had returned to a normal commercial basis. Most indicated that there would be no further price increases for their products as a result of the New Tax System.

The benefits of the public compliance commitments include:

- heightened corporate awareness and understanding of their obligations and responsibilities in relation to pricing under the New Tax System;
- greater overall compliance with the New Tax System price exploitation legislation and the Commission guidelines due to the influential position of the companies in their industries;
- the resolution of emerging issues in a timely and cost-effective manner with a high degree of compliance from participating organisations;
- consistency in the complaints handling process, with a Commission liaison officer appointed to each company with a public compliance commitment; and
- assistance with the Commission's price monitoring role.

## Price monitoring

### PERFORMANCE INDICATOR

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

The Commission has an extensive price-monitoring program in place. It also draws on many other sources of information about price changes and pricing behaviour. These include the consumer price index (CPI) and Australian Bureau of Statistics' wholesale price indexes, commercially provided price information databases for specific products at the wholesale and retail levels, large corporations with public compliance commitments and the authorities that regulate industries such as electricity, gas and public transport. Complaints by consumers and businesses through the GST Price Line also contributed to the Commission's information on price changes associated with the New Tax System.

Information gathered about price changes and pricing behaviour provided the basis for the Commission's estimates on price movements and helped identify where price exploitation occurred.

### The general survey

The Commission undertook several retail price surveys on price changes and trends across a wide range of household goods and services. They also helped identify cases of potential price exploitation.

The general survey involved collecting prices on identical products at different times. The size of the survey was substantial. For example, about 320 000 price comparisons were made between the survey in May 2000 (the pre-GST base) and the latest survey in May 2001. Prices were collected from around 10 000 retail outlets in 115 locations (capital cities, major regional cities and towns) in all States and Territories. The Commission conducted the general survey seven times during the GST transition period, including four during the reporting year — August and October 2000 and February and May 2001.

The results (see table 2.1) indicate that repricing associated with the New Tax System occurred predominantly in the September quarter 2000 and was broadly within the Commission's estimates. Comparing the change in prices between the May and August 2000 surveys provides the best indication of the effects of the tax changes alone as it was long enough to allow retail prices to be adjusted for the tax changes, but not long enough for non-tax factors to have much influence. Nevertheless, other factors were expected to contribute to changes in some product prices during the period.

The weighted average price change over the three months between the May 2000 and August 2000 surveys was +2.6 per cent. Weighted on the same basis, the Commission's estimate of the effects of the New Tax System by the end of 2000 was an increase of 3 per cent. The weighted average price change over 12 months between the May 2000 and May 2001 surveys, by which time non-tax factors were generally determining prices outcomes, was +5.7 per cent.

The 'fresh food' and 'alcohol and tobacco' product groups show the largest price increases since the May 2000 survey. Prices of fresh food products — untaxed under both the WST and the GST — increased by 13.4 per cent on average from May 2000 to May 2001. Factors unrelated to tax changes affected the supply prices of fresh food products, including floods in growing areas during November 2000, extreme heat conditions over summer 2000–01 creating poor growing conditions for many crops, and increased domestic meat prices following strong export demand.

The prices of alcohol and tobacco products in the survey increased by 11.9 per cent on average from May 2000 to May 2001, mainly reflecting the initial price increases associated with the tax changes and the impact of the August 2000 and February 2001 excise indexation adjustments.

**Table 2.1. Average price changes, May 2000 to August 2000 and to May 2001**

Product group	Estimated New Tax System-effect on prices by end 2000	Survey's average 3 months	Change 12 months
	%	%	%
Clothing and footwear	7.5	3.2	5.7
Fresh/unprocessed food	-1.1	3.2	13.4
Household furnishings and equipment	2.2	1.5	3.4
Household services and operation	2.2	2.3	4.9
Personal care	1.5	-1.3	1.2
Recreation — audio visual	-3.6	-5.0	-7.1
Recreation — other	3.2	2.2	1.4
Processed food and beverages	-0.3	0.2	3.4
Meals out and takeaway food	9.2	7.9	10.2
Miscellaneous goods and services	3.6	3.1	6.4
Medical and health	5.4	5.4	7.8
Motor vehicle expenses	1.9	1.0	7.2
Alcohol and tobacco products	6.0	7.1	11.9
<b>All groups weighted average</b>	<b>3.0</b>	<b>2.6</b>	<b>5.7</b>

The samples in the general survey are large enough to analyse differences in price changes between metropolitan (capital city) and regional areas. The data indicates that price changes resulting from the New Tax System were fairly consistent across geographical locations even though price levels may be quite different. The results also showed no substantial differences in the average price changes between the States and Territories, although again prices may be at different levels.

The Commission was also interested in how smaller businesses changed their prices compared with larger retailers and retail chains.

There was some evidence from monitoring the WST rate reduction in 1999 that the level of compliance was higher among large businesses. The Commission responded to this perceived discrepancy with an information campaign and issued the *Pricing kit for small business* to help the sector better understand repricing and comply with the law. The differences in price changes between small businesses and chains in the reporting year were insignificant. This suggests the information campaign was effective in assisting small businesses better understand the pricing implications of the 1 July 2000 tax changes.

## Monthly supermarket survey

The Commission conducted monthly surveys of supermarket prices from January 2000, covering more than 300 supermarkets nationwide, with a product basket of over 100 commonly purchased items.

Comparisons were based on changes between prices averaged over two months. This reduced volatility from month to month resulting from changes in supermarkets' price 'specials'. The weighted average price change over the three months between May/June (the pre-GST base) and August/September 2000 was -0.1 per cent. If fresh fruit and vegetable items which have volatile supply and demand characteristics are excluded, the average change was zero. Over the 12 months between May/June 2000 and the last survey of 2000-01 in May/June 2001, the weighted average price change was +6.0 per cent. When prices of fresh fruit and vegetables were removed, the increase was 4.1 per cent. With the passing of time since 1 July 2000 non-tax factors have increasingly determined price changes.

## Consumer price index

The Commission analyses official statistics produced by the Australian Bureau of Statistics. In particular, data from the CPI measures price movements in a basket of goods and services consumed by capital city households.

While the methodology used by the ABS to measure CPI price changes is different to that used by the Commission in its retail price surveys, movements in prices of products in the CPI 'basket' have been broadly consistent with the Commission's estimates of the effects of the tax changes on prices. The change in the CPI 'All Groups' in the September 2000 quarter was +3.7 per cent — followed by +0.3 per cent in the December 2000 quarter — consistent with the bulk of the effect of the tax changes occurring in the September quarter. The CPI increased by 6 per cent over the four quarters ending June 2001 by which time non-tax factors were clearly influencing general price outcomes.

## General impact of the New Tax System on prices

The results of the Commission's surveys since the September quarter 2000, together with CPI outcomes, confirm that the impact on prices occurred mainly in the first quarter of 2000-01. This is consistent with the Commission's estimates. No evidence of significant opportunistic pricing to increase margins was found.

Although prices have risen since the initial impact during the September 2000 quarter, average increases have generally been in line with inflation trends that existed before the New Tax System. An analysis of CPI data shows that the increase in the CPI 'All Groups excluding Food' index over the three quarters ending June quarter 2001 (after the primary impact of the tax changes) was 1.7 per cent.<sup>1</sup> The average increase in this index over the corresponding three-quarters for the two years before 1 July 2000 was 1.4 per cent and for the previous six years was 1.6 per cent.

## Industry-specific monitoring

### Motor vehicles

Before the New Tax System, nearly one quarter of all WST revenue came from the sale of new motor vehicles. Accordingly, passing on the abolition of WST on vehicles has been a major monitoring issue. Notices were issued under s. 75AY(2)(a) of the Act to a sample of motor vehicle retailers to obtain data about post-GST pricing and to help assess whether savings were reflected in their prices.

The Commission concluded that NTS savings were reflected in new motor vehicle prices. No evidence of price exploitation in relation to new motor vehicle prices was found.

### Road freight transport

The Commission continued to monitor the impact of the New Tax System on the road freight transport industry. It obtained information from major road transport firms on the pricing of services to major customers. Initially this involved an analysis of July 2000

<sup>1</sup> Food is excluded because of the volatility of fresh food prices due to the effects of climatic events and seasonal factors on supply.



pricing structures, which the Commission assessed as reflecting NTS savings. Additional information was sought in November 2000 after several road freight transport businesses had increased or were about to increase charges to customers.

Since July 2000 freight rates have risen because of increases in diesel fuel prices. Analysis of information provided by major firms suggests that NTS savings are still reflected in pricing structures.

## Enforcement

### PERFORMANCE INDICATORS

- Responded to complaints and inquiries.
- Appropriate action taken to ensure no business takes unfair advantage of A New Tax System.
- Appropriate enforcement action taken and goals achieved, i.e. stopped unlawful conduct, compensation gained for loss or damage, compliance with the Act, pecuniary penalty.

Price exploitation remains a Commission enforcement priority throughout the prescribed transition period for the New Tax System. The principle aim of the Commission's enforcement activities is to promote compliance. During the year the Commission's enforcement work concentrated on the following major areas:

- GST being charged on GST-free items;
- businesses not passing on indirect tax benefits, such as the abolition of WST or the reduction in petrol excise, in full;
- businesses misrepresenting the total price of goods or services (GST-exclusive price display);
- changes in prices outside the Commission's estimates of the effects of the tax changes; and
- increases in prices which reflect the full impact of the tax changes on the CPI where the GST also was previously imposed (CPI-based increases may need to be discounted for the effect of the GST to comply with the Commission's rule that businesses should not increase their net dollar margin as a result of New Tax System changes alone).

The Commission aims to quickly resolve GST-related matters to minimise confusion and consumer losses. The Commission therefore accepted court enforceable undertakings, rather than taking direct court action, when the conduct was not obviously deliberate or blatant. When businesses made inadvertent mistakes and volunteered this information to the Commission, this was taken into account in determining any enforcement action and, if appropriate, the remedies.

Since July 1999 the Commission has investigated over 6200 GST-related matters, obtaining refunds of nearly \$10.1 million on behalf of approximately 990 000 consumers. Since 1 July 2000 the Commission has instituted court proceedings in five GST related matters and has accepted 31 court enforceable undertakings. These matters are reported in detail in the *ACCC Journal* throughout the year. Summaries of major matters are outlined below. Commission staff investigated another 6000 matters, most of which are now resolved with 575 in the process of being resolved.

## Court cases and undertakings

### Video Ezy and ors

On 25 May 2001 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 also joined an associated company and various directors and senior managers to the action. On 27 April 2001 the Commission and Video Ezy settled these proceedings. Video Ezy consented to Federal Court orders in which the court made declarations, granted permanent injunctions, ordered Video Ezy to offer discounts and refunds in Townsville, implement a trade practices compliance program and contribute to the Commission's costs. The Commission agreed to discontinue its price exploitation claims.

### Clarendon Homes (NSW) Pty Ltd

The Commission received several complaints from customers of Clarendon Homes (NSW) that sales staff had advised them in mid-1999 to early 2000 that their contracts for the construction of new homes were GST-inclusive.



The customers alleged Clarendon subsequently invoiced them for an additional GST amount. The Commission was concerned that such conduct may be misleading or deceptive and raised its concerns with Clarendon. The company agreed to waive the charges totalling about \$1.09 million for 208 new homebuyers. Clarendon provided the Commission with a court enforceable undertaking to write to affected customers advising them that their GST charges had been waived and that it would enter into a trade practices education program.

#### **Gift deductible entities**

Following a revision by the ATO of the means for assessing the application of GST to supplies by several charities and gift deductible entities (GDEs), it was found they had collected GST on supplies that were subsequently deemed GST-free.

The Commission established guidelines for these entities to adopt when managing the refund process. Refunds of over \$2.5 million have been disbursed including approximately \$218 000 by the Victorian Museum and \$393 000 by the Victorian Zoo.

#### **Franklins Supermarkets**

Franklins offered discounts valued at more than \$150 000 after inadvertently charging GST on 17 GST-free goods, including No-frills orange juice.

Franklins agreed to discount the normal retail prices of the relevant products by 11 per cent for three weeks, which was equal to the period of the overcharge. Franklins also agreed to provide a full refund of the GST incorrectly charged to all consumers who had retained receipts for their purchases of these products.

#### **Gateway Pty Ltd**

Gateway Pty Ltd provided refunds totalling \$27 900 to consumers who bought certain Gateway personal computers in early May 2000, after the Commission raised concerns about pre-GST advertising.

In May 2000 Gateway ran a newspaper promotion for personal computers which offered savings 'before the GST'. The Commission believed that consumers may have been misled that prices would be higher after the GST.

#### **Oasis Credits Pty Ltd**

Oasis Credits Pty Ltd (trading as Holdfast Finance Corporation) provided court enforceable undertakings after charging GST on hire purchase contracts entered into before 1 July 2000. Under ATO tax provisions such contracts are GST-free as the GST liability arises on the supply of the physical goods. Therefore, payments made after 1 July under these agreements do not attract GST.

In providing the undertaking Oasis Credits refunded or credited over \$30 000 to 170 customers and agreed to implement a trade practices compliance program.

#### **Goldy Motors**

The Commission instituted proceedings in the Federal Court of Australia alleging misrepresentations and false and misleading conduct after Goldy Motors ran an advertisement encouraging consumers to buy vehicles before 30 June 2000 because it was their 'Last chance to buy ... GST FREE !!'. The Commission believed this advertisement may have misled consumers because the price of new vehicles was expected to, and subsequently did, fall with the introduction of the GST on 1 July 2000.

The Federal Court found in favour of the Commission and granted orders including declarations that Goldy Motors had breached the Act; injunctions preventing Goldy Motors from engaging in similar conduct in the future; corrective advertising; refunds or an alternative form of appropriate compensation for consumers induced by the advertisement into purchasing a car and/or applying for finance before 30 June 2000 as a result of the advertisement; and costs against Goldy Motors.

The Commission also received court enforceable undertakings for similar 'Beat the GST!' motor vehicle campaigns from Lennock Phillip Pty Ltd, Werribee Motor Traders Pty Ltd, Relyt Pty Ltd and S&S Thomson Investments Pty Ltd. The Commission also accepted an administrative settlement from Lander Toyota after the company miscalculated the effect of the abolition of WST, resulting in consumer refunds and other compensation of \$40 000.

### **Electrodry Carpet Dry Cleaning**

The Commission instituted proceedings against A Whistle and Co (1979) Pty Ltd, trading as Electrodry Carpet Dry Cleaning, alleging misrepresentations and false and misleading conduct under ss. 52 and 53(e) of the Trade Practices Act.

The allegations concerned a brochure distributed by Electrodry in Queensland, New South Wales, Victoria, South Australia and Western Australia, promoting the GST-exclusive component of the price in very large prominent print with the total price including GST in much smaller print. The Commission alleged that the brochure was likely to mislead consumers about the total price payable for Electrodry Carpet Dry Cleaning services.

The Commission obtained consent orders providing declarations, corrective advertising, injunctions preventing future similar conduct, and an injunction directing Electrodry to implement a trade practices compliance program.

### **Australian Leisure & Hospitality Group**

Between 1 July 2000 and 28 July 2000 the Australian Leisure & Hospitality Group (ALH Group) incorrectly applied the Wine Equalisation Tax to approximately 20 alcohol products, resulting in consumers being overcharged.

In accordance with its trade practices compliance program, the ALH Group immediately notified the Commission of the conduct and confirmed that it had removed all affected products from sale. ALH Group undertook to provide a full compensation package and a four-week discount period during which the affected products were marked down by 15 per cent. The total cost of the conduct for the 28-day period to consumers was \$12 322. The direct benefit to consumers of the settlement was estimated to be more than \$30 000.

### **Islander's Board of Industry & Service (IBIS)**

The Islander's Board of Industry & Service (IBIS) operates 14 general stores in the outer Torres Strait Islands, selling general items including groceries. The Commission was concerned that when implementing the New Tax System changes, IBIS had increased some of its prices more than it should have (up to 22 per cent, including on GST-free items).

IBIS reviewed prices to ensure all tax savings were correctly passed on to its customers. It also undertook to provide refunds to customers, discounts of 5 per cent on all items for one month, corrective apologies in all stores, and to implement a trade practices compliance program.

### **Rod Turner Consulting Pty Ltd**

The Commission instituted legal proceedings on 3 July 2000 in the Federal Court alleging that Rod Turner Consulting Pty Ltd wrote to a client's tenant stating that from 1 July 2000 an extra 10 per cent would be payable on rent but the landlord was including a GST component in the increased rent from 20 June 2000. The firm also represented that water rates for the rented premises would carry a GST cost to the landlord. The Commission alleges these were false or misleading statements about the price of services. It also alleges misleading and deceptive conduct because residential rents and water rates are GST-free.

The Commission seeks declarations that the conduct is unlawful, injunctions restraining the respondents from making similar statements and orders that the respondents take corrective action and apologise to the tenant concerned. This matter is still waiting for a trial date.

### **Discount Electrical Centre (Australia) Pty Ltd**

Discount Electrical placed an advertisement and issued a catalogue containing the statement 'Beat the GST' when the televisions and DVD players in the advertisement and catalogue were previously subject to WST of 22 per cent and the Commission believed prices would decrease as a result of the tax changes.

The Commission instituted proceedings on 16 June 2000 in the Federal Court. On 13 July 2000 Discount Electrical gave undertakings that it would not make representations that the price of televisions and DVD players would increase. The company also agreed to compensate customers who suffered any loss as a result of the representations, to place corrective advertising and to institute a trade practices compliance program. Discount Electrical was ordered to pay the Commission's costs.

#### **Cuisine Courier Pty Limited**

On 21 September 2000 Cuisine Courier Pty Limited, a restaurant delivery service operating in Sydney and Melbourne, gave the Commission court enforceable undertakings to stop advertising prices that did not include GST and to carry out other corrective measures such as corrective advertising. In September 2000 some menu booklets still did not contain GST-inclusive prices and associated fees. It also undertook that future advertising and promotional material will contain GST-inclusive menu prices and associated fees and that it would implement a trade practices compliance program.

#### **Sun Imports Pty Ltd**

In December 2000 the Commission accepted an s. 87B undertaking from Sun Imports Pty Ltd to amend its post-GST pricing so that it reflected savings resulting from New Tax System changes; to issue new invoices to its wholesale customers with the correct pricing; to ensure that consumers who had paid higher prices were refunded; and to place corrective notices in two of its stores. Sun Imports had increased the price of tanning products by a full 10 per cent despite the removal of a 22 per cent wholesale sales tax which, in the absence of other factors, should have resulted in a reduction in price.

#### **Signature Security Group Pty Limited**

Proceedings were instituted on 19 March 2001 in the Federal Court, Sydney, alleging the company advertised prices of security systems excluding GST. The Commission is seeking court orders including injunctions restraining Signature from making similar misrepresentations in the future; compensation for consumers and declarations that Signature contravened the Act. Directions hearings were held on 11 April and 15 June 2001 in the Federal Court, Sydney. The matter is continuing.

#### **Commodore Homes (WA) Pty Ltd**

On 5 April 2001 in the Federal Court, Perth, the Commission alleged that in the lead up to the GST, Commodore Homes represented to potential homebuyers that their homes would be built by 1 July 2000 and they would therefore avoid having to pay GST. The Commission also alleges that the manner in which Commodore Homes tried to recover the GST from some of the homebuyers breached the unconscionable conduct provisions of the Act.

The Commission is seeking declarations, orders restraining Commodore Homes from engaging in such conduct in the future, corrective public notices, implementation of a trade practices compliance program, and refunds to those affected.

#### **DCH Legal Group**

On 10 July 2000 the Commission accepted enforceable undertakings from DCH Legal Group over advertisements in a Perth newspaper regarding the effect of the New Tax System on legal fees for divorce proceedings. The ads were potentially misleading and deceptive. The undertakings included an acknowledgment the representations may have misled consumers; terms that the group would avoid engaging in similar conduct in the future; corrective notices; compensation to consumers; and implementation of a trade practices compliance program.

#### **Aus-Care Townsville, Aus-Care Cairns, Aus-Care Upper Mt Gravatt, Aus-Care Indooroopilly**

On 25 September 2000 the Commission accepted court enforceable undertakings from four medical centres in Queensland. The undertakings provide refunds and apologies to any patients who were charged GST on hepatitis B vaccinations for children in circumstances that meant they should not have been. The four medical centres undertook to ensure that the price of hepatitis B vaccinations would not include a GST component when they should not and to review their billing practices to ensure there is no GST component on any GST-free services.

**Ferry Real Estate (Qld) Pty Ltd, Ferry Property Management Pty Ltd, Castorina Investments Pty Ltd**

On 30 November 2000 the corporate owners of Ferry Real Estate (Townsville) provided court enforceable undertakings to the Commission after investigations into management fee increases to client landlords in May 2000.

The complaints were about a rise in Ferry's total property management fees from 7.5 per cent to 8.8 per cent. The undertakings included sending corrective letters of apology to landlord clients enclosing credits of amounts equivalent to 1/11 th of the fees paid for the two months before 1 July 2000.

# Achieving compliance

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**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.

### PERFORMANCE INDICATORS

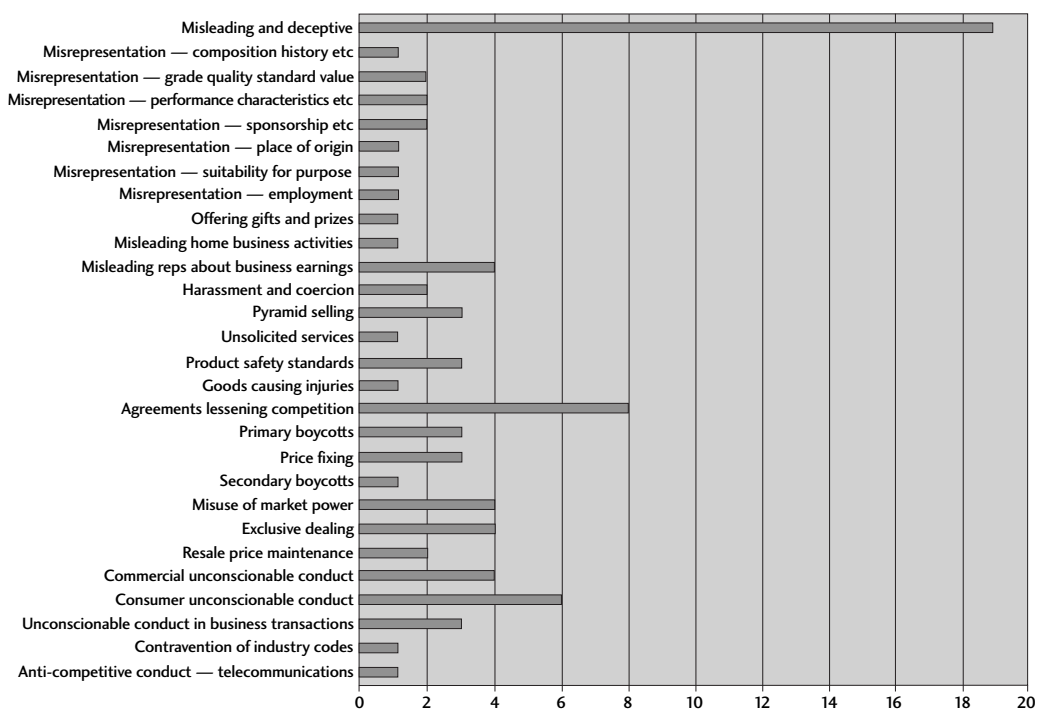
- Responded to complaints and inquiries.
- Appropriate enforcement action taken and goals achieved, i.e. unlawful conduct stopped, compensation gained for loss or damage, compliance with the Act, pecuniary penalties.
- Promoted competitive pricing where possible and restrained price rises in markets where competition is less than effective.
- Publication of new and amended provisions of the Trade Practices Act and the new ACCC procedures.
- 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's compliance and enforcement activities during the year were heavily influenced by its role under the New Tax System (see chapter 2). Within that environment the Commission still remained focused on its key enforcement and compliance work directed at promoting competition and fair trading. The Commission maintained a strong litigation workload with some 40–50 matters before the courts over the year.

This chapter outlines the various compliance and enforcement activities undertaken during the year. They are grouped according to the type of activity: restrictive trade practices, consumer protection and small business. Because the

professions and e-commerce issues are of increasing importance to the Commission, and because they cross jurisdictions, they are discussed separately within the consumer protection section.

**Figure 3.1. Matters at court 2000–01**



**Figure 3.2. Top five industries pursued 2000–01**

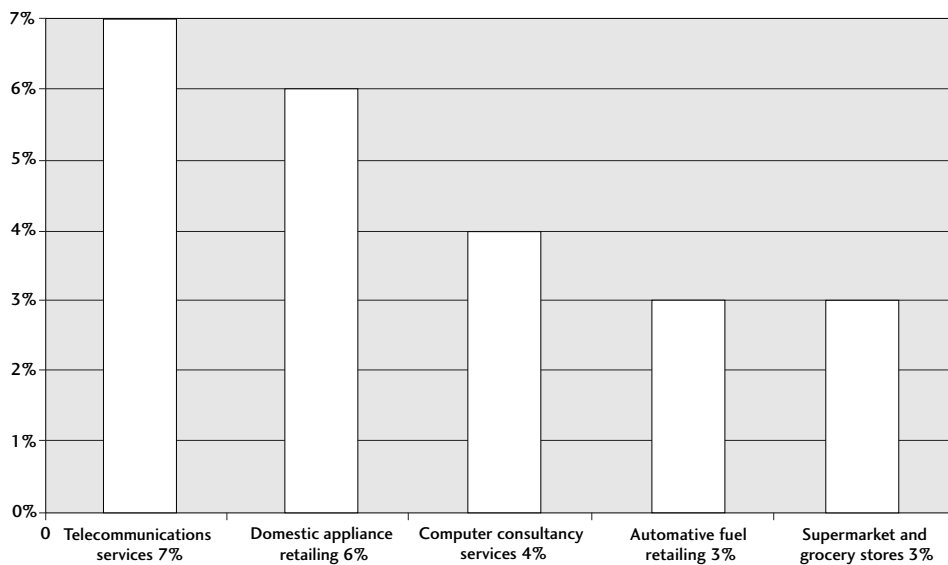
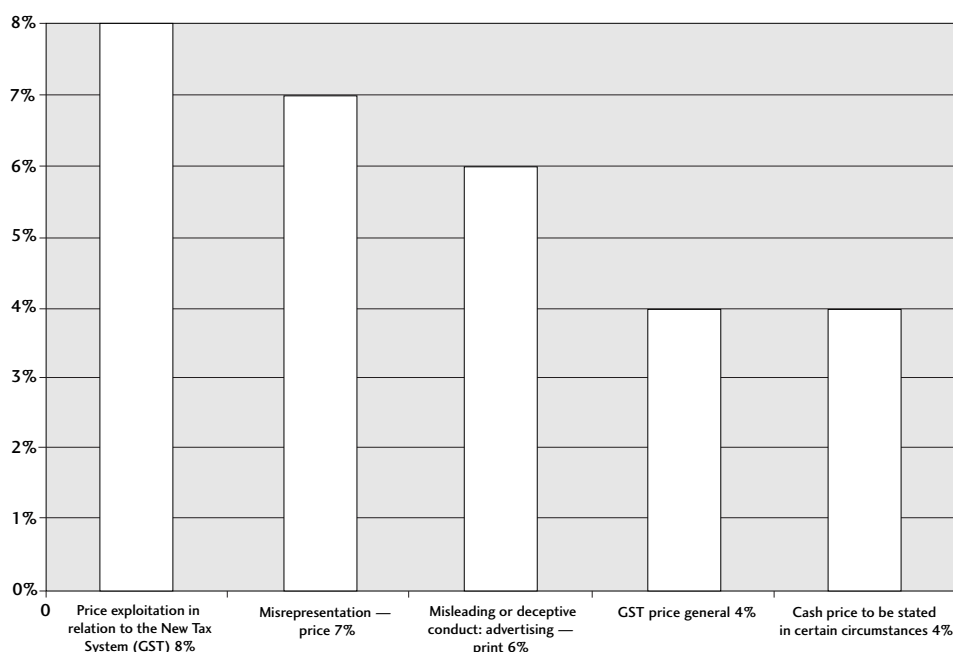


Figure 3.3. Top five conduct issues pursued 2000–01



## Restrictive trade practices

Several court judgments were particularly significant for the Commission in the areas of misuse of market power, price fixing and cartel activity, and unconscionable conduct.

Two judgments were matters instituted by the Commission — Boral Ltd and Rural Press Ltd — where the Federal Court found that both companies had misused their market power in breach of the Act. See full reports on p. 40 and 41. In the Boral case the Full Court found that its below-cost pricing breached s. 46 of the Act. The court endorsed the Commission's approach and recognised that below-cost pricing can be a misuse of market power. The Full Court also rejected the need for recoupment of losses as a necessary element in establishing predatory pricing. Boral is currently seeking leave to appeal to the High Court.

An important private action was the Melways Publishing Pty Ltd case. As recorded in last year's annual report the Commission was granted leave to intervene in this matter. The court accepted in principle the Commission's submissions about the application of s. 46 and in particular how the courts should interpret taking advantage of market power. The Commission believes this gives a clearer direction about how the misuse of market power provision should be interpreted.

Global cartel activity was also a major focus of the Commission's enforcement work during the year. The Commission has publicly proposed that hard core cartel activity by large corporations should be subject to criminal as well as civil sanctions. Criminal sanctions apply in many overseas jurisdictions, including some of Australia's major trading partners such as the United States, Korea, Japan and Canada.

The Commission was successful in proceedings against three multinational vitamin companies who, through a global cartel, set prices for animal feed vitamins in the Australian market. The Federal Court awarded record penalties totalling \$26 million against Roche Vitamins Australia Pty Ltd, Aventis Animal Nutrition Pty Ltd and BASF Australia Ltd. The Commission is currently investigating other global cartels, some concurrently with overseas regulators. The Commission's approach to cartels will be aggressive and its cooperative efforts with overseas agencies will help detect and prosecute them when they affect the Australian market.

The Commission was also successful in pursuing a fire protection equipment cartel in Queensland where the Federal Court imposed fines totalling \$15 million against a large number of corporations and individuals, including Tyco Australia Pty Ltd. Another domestic cartel investigated was an electrical distribution and power generation cartel. The Federal Court imposed fines of \$7 million against one respondent, Alstom, and \$150 000 against a senior executive. Further corporations and individuals involved will appear before the Federal Court in coming months.

The Commission took action for price fixing against the National Australia Bank in relation to credit card interchange fees. This action was withdrawn when the Reserve Bank designated credit card interchange fees under the Payment System Regulation Act.

An important decision by the Full Federal Court in Sydney upheld a claim by the Commission that its powers under s. 155 to gain access to documents should extend to certain documents subject to legal professional privilege. This means that a person or company being investigated by the Commission cannot refuse to provide information by relying on legal professional privilege.

The Commission's commitment to ensuring that the benefits of trade liberalisation are passed on to consumers is apparent in its handling of the 1998 amendments to the Copyright Act allowing parallel importation. In its proceedings against Universal Music Australia Pty Ltd and Warner Music Australia Pty Ltd, the Commission alleges

the corporations tried to prevent retailers, and ultimately consumers, gaining access to legitimate parallel compact disc imports. The Commission recently applied to the Federal Court to be heard on whether the new anti-circumvention provisions of the Copyright Act prevent consumers from having their Playstation consoles modified to permit the playback of imported games and legitimate backup copies. The Commission's application was made in response to proceedings by Sony Computer Entertainment Australia and other related Sony companies against an individual involved in modifying Playstation consoles.

## **Court actions**

### **Price fixing and cartels**

#### **Vitamin suppliers**

On 1 March 2001, following proceedings instituted by the Commission, the Federal Court imposed recommended penalties totalling \$26 million against three animal vitamin suppliers for price fixing and market sharing in breach of the Trade Practices Act. Penalties were imposed against Roche Vitamins Australia Pty Ltd (\$15 million), BASF Australia Limited (\$7.5 million) and Aventis Animal Nutrition Pty Ltd, formerly known as Rhone-Poulenc Animal Nutrition Pty Ltd (\$3.5 million).

The companies' conduct activated a global anti-competitive agreement between their multinational parent corporations. The Commission's investigation followed action by overseas competition agencies. The Commission and the Australian companies jointly recommended that the court impose penalties in the amounts set out above.

#### **Queensland fire protection industry**

In September 1999 the Commission instituted proceedings in the Federal Court against 18 companies and 38 individuals for price fixing and market sharing in the fire protection industry in Queensland.

The Commission alleged that anti-competitive arrangements were made at regular meetings between competitors over many years. At these meetings, which were referred to by participants as the Coffee Club, the companies agreed which of the installation projects out to tender each would win, and at what price.



The proceedings involved almost all of the Brisbane-based companies that provided fire alarm installation services and fire sprinkler installation services between 1992 and 1997, ranging from large multinational corporations to small local operators.

The series of proceedings were concluded in February 2001 when the last of the respondents were ordered to pay pecuniary penalties and received court injunctions. The total penalties came to \$14.79 million, and costs of \$596 000 were awarded against the respondents.

#### **Alstom Australia Limited**

In April 2001 the Federal Court imposed corporate penalties totalling \$7 million against Alstom Australia Limited and an individual penalty of \$150 000 against its managing director, Mr RG Elliot, for price fixing and market sharing. The penalty imposed on Mr Elliot is the equal highest individual penalty awarded by the court for contravening the Trade Practices Act.

The court penalties related to the company's admitted participation in a cartel of transformer manufacturers to fix or maintain prices and prevent competitive conduct in the markets for power and distribution transformers. This matter went before the court in late July and early August. In respect of the respondents heard at that time, the judge reserved his decision. The matter continues against remaining respondents.

#### **National Australia Bank**

On 19 April 2001 the Commission's proceedings on credit card interchange fees against the National Australia Bank were discontinued. The Commission had commenced proceedings against NAB in September 2000. Although the Commission took action only against NAB, it alleged that the price fixing behaviour involved all the major banks and the credit card associations.

The decision to discontinue proceedings was made after the Reserve Bank of Australia decided to use its powers under the *Payment Systems (Regulation) Act 1998* to 'designate' the credit card schemes in Australia. By doing so the Commission considered merchants and consumers would benefit by greater certainty and faster responses.

#### **SIP Australia Pty Limited and Baker Bros (Aust) Pty Ltd**

On 29 June 1999 the Federal Court awarded penalties of \$60 000, injunctions and declarations against Baker Bros and its directors for alleged primary boycott, price fixing and resale price maintenance in relation to the supply of ABAC compressors. Baker Bros agreed to implement a corporate compliance program under an enforceable undertaking. The Commission is awaiting judgment in respect of SIP.

#### **DICL fittings and valves industry**

In November 1999 Tubemakers of Australia Limited and Coastline Foundry (Qld) Pty Ltd were penalised a total of \$1.75 million for their part in price fixing and market sharing in the market for fittings and valves for use with ductile iron cement lined pipe. In March 2000 Associated Water Equipment Pty Ltd was penalised \$1 million. The case was finalised in July 2000 when Geoff Clegg Enterprises was penalised \$100 000 for their part in the conduct. Injunctions were also granted against each respondent.

#### **Visy Paper Pty Ltd**

In the Federal Court, Sydney, on 18 November 1998 the Commission sought orders against Visy Paper alleging Visy had tried to induce Northern Pacific Paper to enter into a market sharing agreement in the collection of recyclable waste paper. The court dismissed the Commission's application with costs and the Commission appealed on 29 November 2000. On 10 August 2001 the Full Federal Court upheld the Commission's appeal that Visy had contravened the Act. This is a significant decision as it ensures businesses cannot escape a liability for collective exclusionary behaviour by invoking a technicality in s. 45(6) of the Act.

#### **Queensland ice industry**

In August 1999 the Commission instituted proceedings against three corporations and eight individuals for price fixing and market sharing in the supply of ice in south-east Queensland.

The Federal Court imposed penalties of nearly \$200 000. The Commission's application against Ansonguard Pty Ltd, Leo Grevis and

Gary Grevis was dismissed. The Commission has appealed against the penalties handed down to Ithaca Ice Works Pty Ltd and Anthony Mee.

**Trevor Davis Investments Pty Ltd, Mans Davis Holdings Pty Ltd, Trevor Davis and Daniel Mans**  
A penalty of \$5000, injunctions and declarations were awarded against Trevor Davis on 28 June 2001 for alleged attempted price fixing and attempted inducement to enter a price fixing arrangement for supplying casual Internet access.

#### **Port Hedland panel beaters**

On 9 July 2001 the Commission instituted proceedings in the Federal Court, Perth, against four panel beating and spray painting businesses (two companies and two sole traders) in the Port Hedland region alleging that the businesses were involved in price fixing.

The Commission is seeking declarations, injunctions, orders requiring the implementation of trade practices corporate compliance programs and attendance at trade practices seminars, and costs.

#### **Quickcat Cruises (QLD) Pty Limited**

In proceedings on 30 March 2001 in the Federal Court, Brisbane, the Commission alleged that Quickcat Cruises had entered into a price fixing agreement with one of its competitors. On 9 April 2001 the Federal Court, Brisbane, made orders by consent against Quickcat Cruises (QLD) Pty Limited, including declarations, injunctions and costs.

### **Secondary boycotts**

#### **Maritime Union of Australia**

In proceedings instituted in the Federal Court, Sydney, on 14 April 2000, the Commission alleged that the union and certain officials unlawfully hindered and prevented vessels sailing from various Australian ports unless the shipowner agreed to use MUA labour to clean the holds. The trial is set down for three weeks from 15 October 2001.

### **Misuse of market power**

#### **PolyGram (now Universal Music), and Warner Music**

In proceedings begun on 30 August 1999 in the Federal Court, Sydney, the Commission alleged that the respondent record companies, as well as some senior personnel, breached the Act in attempting to prevent the importation of recorded music after the Copyright Act was changed to allow for parallel imports.

Proceedings were discontinued against Music Industry Piracy Investigation Pty Ltd, Michael Speck and Adrian Fitz-Alan in March 2001.

Trial commenced on 2 April 2001 and proceedings were discontinued against Sony Music Entertainment (Australia) Ltd and Sony Music Entertainment Holdings (Australia) Pty Ltd. Sony provided undertakings to the court without admitting liability. Sony also undertook to implement a trade practices compliance program. The trial resumes in September 2001.

#### **Boral Ltd and Boral Masonry Ltd (formerly Boral Besser Masonry Ltd)**

In March 1998 the Commission instituted proceedings against Boral Ltd and Boral Masonry Ltd (BML) alleging that BML reduced the prices for supplying concrete masonry products in Melbourne below its manufacturing costs and continued to do so to drive out an efficient new independent operator, C&M Bricks Pty Ltd (C&M). After the Federal Court held that BML had not contravened s. 46, the Commission appealed to the Full Court of the Federal Court in November 1999. The appeal was heard in February 2000. This time the Full Court unanimously held that BML had contravened s. 46 but dismissed the appeal against Boral Ltd. The Full Court found that BML had a substantial degree of power in the concrete masonry products market in Melbourne, had taken advantage of that power in pricing below manufacturing costs, and that this had been done for the purpose of deterring new entrants and driving competitors out of the market.

Boral Masonry Ltd has now applied for special leave to appeal to the High Court of Australia. A hearing date is yet to be set.

### **Rural Press Limited**

On 1 March 2001 the Federal Court, Adelaide, found that Rural Press Limited and its subsidiary, Bridge Printing Office Pty Limited, had misused their market power against a smaller regional publisher, Waikerie Printing House Pty Limited.

Justice Mansfield found that Waikerie Printing House, Rural Press and Bridge Printing had entered into an arrangement to withdraw *The River News* published by Waikerie, from the Mannum area, thus breaching the Trade Practices Act.

He found that Rural Press and Bridge Printing had substantial market power in the Murray Bridge market for regional newspapers because of their financial resources and strength and their capacity to immediately carry out the threat, and had misused their market power by making the threat to Waikerie Printing House.

On 7 August 2001 penalties totalling \$600 000 were awarded against Rural Press Group. A total of \$70 000 was awarded against the general manager of Rural Press' regional publishing division, Mr Ian Law, and its South Australian state manager, Mr Trevor McAuliffe. Penalties of \$75 000 were imposed against Waikerie Printing House and its director, Mr Paul Taylor, for entering into a market sharing arrangement with Rural Press.

### **Melways Publishing Pty Ltd**

The Commission was granted leave by the High Court to intervene in a private action concerning the refusal by Melways Publishing Pty Ltd to supply a retailer, Robert Hicks Pty Ltd, with copies of the popular Melway Street Directory for resale. The court concluded that the characteristics of the particular market in question did not preclude firms, with or without market power, from implementing exclusive distribution systems.

In coming to that conclusion the High Court accepted the Commission's submission that a firm takes advantage of a substantial degree of market power where its action is facilitated, or made easier, by possessing that market power, even though the action may not have been impossible without the power. In this respect the High Court confirmed and enhanced the

interpretation of s. 46 initially set down in its 1989 decision, *Queensland Wire Industries v BHP*.

## **Resale price maintenance**

### **Colgate-Palmolive Pty Ltd**

On 15 November 2000 the Commission instituted proceedings in the Federal Court, Melbourne, against Colgate-Palmolive Pty Ltd alleging that between 1994 and 1998 Colgate tried to stop Tasmanian retailer, Chickenfeed Bargain Stores, from advertising various Colgate lines at cheap prices. The Commission is seeking court orders including pecuniary penalties and injunctions restraining Colgate from engaging in similar conduct.

## **Other**

### **The Daniels Corporation International Pty Limited and Meerkim & Apel**

On 16 March 2001 the Full Federal Court unanimously upheld the Commission's claim that its powers to gain access to information and documents under s. 155 of the Trade Practices Act, are unfettered by any legal professional privilege applying to such information and documents. On 11 April 2001 the company and law firm concerned applied for special leave to appeal to the High Court of Australia. A hearing date for that application is yet to be set.

## **Consumer protection**

In addition to the traditional consumer protection problem areas of product safety, scams and other misleading conduct, and country of origin issues, the Commission focused on five more areas during the year: expanded cooperation with other government agencies, health issues, fine print advertising, e-commerce, and undue harassment and coercion.

### **Expanded cooperation with other government agencies**

The Commission worked closely with other agencies responsible for consumer protection policies and regulation to encourage a more consistent and efficient message to business and consumers about both their rights and

obligations. In Australia these agencies include the State and Territory Fair Trading agencies, ANZFA, the Therapeutic Goods Administration, and the Department of Health and Aged Care. International cooperation involved the members of the following international organisations: International Marketing Supervisory Network (e-commerce), the Consumer Protection Committee of the OECD, and APEC.

The Commission continued its industry education program on the country of origin amendments (*Trade Practices Amendment (Country of Origin Representations) Act 1998*) by expanding its web-based and printed explanatory materials and conducting training seminars in metropolitan and regional locations.

### Health

The Commission undertook several investigations into dubious or unsupportable claims about the health benefits of a range of devices and products. For more information about health issues, see p. 53.

### Fine print advertising

The Commission's focus on the inappropriate use of small print has prompted greater industry education and investigation of misleading advertisements causing significant consumer detriment. The Commission has instituted court proceedings in four matters and accepted undertakings in two others during the year in areas as diverse as health insurance, general retailing, car rentals and bread retailing. Consistent with the Commission's established approach that corrective notices should appear in the same media as the offending misleading advertisement, the Commission sought and obtained corrective television advertisements in the recent Target case (see p. 45).

### Undue harassment and coercion

After running education programs for undue harassment and coercion, culminating in the publication of the guide to undue harassment and coercion in 1999, the Commission investigated several cases. On 1 August 2000 the Federal Court found for the Commission against Cash Return Mercantile Pty Ltd and Mrs Sharyn McCasky in the first case taken under s. 60 (see p. 49). Since then the Commission has instituted proceedings in

two other s. 60 matters: Esanda Finance Corporation Ltd & Ors and Lux Pty Ltd (p. 48–49). It also accepted enforceable undertakings in a third matter involving Khad Pty Ltd, trading as Professionals Edge Hill.

The Commission has continued to encourage industry self-regulation using codes of conduct where the necessary pre-conditions for viable self-regulation exist.

### E-commerce

The Commission has further developed its expertise and capacity to investigate online conduct and is rapidly expanding the content of its own website to communicate more effectively to stakeholders. The Commission has contributed to e-commerce policy debates both domestically and internationally. Enforcement initiatives have included its leadership of international Internet sweep days and participation in several cross-jurisdictional investigations, as well as domestic cases.

With its increased funding the Commission has lifted its resources and work in areas involving e-commerce and computer forensics to assist investigations in Internet markets and marketing. For more information about e-commerce see p. 57.

### Country of origin

The Department of Industry Science and Resources (DISR) provided funding of \$410 000 to the Commission for publications, promotional activities, an Internet presence, legal advice and enforcement action.

About \$180 000 has been spent.

The \$230 000 balance will be used to do the following:

- Convene and lead working parties to visit manufacturers and produce guides for these industries: textile, clothing and footwear; electrical and whitegoods; foods and beverages; furniture and furnishings; and toys.
- Set up a separate interactive webpage on the ACCC website. The page is up and running and includes a frequently asked questions site and an interactive facility that allows inquirers to enter information about their products to determine how they rate in terms of the defences.

- Include inserts in trade journals covering the above targeted industries.
- Monitor investigations and undertake enforcement against breaches of 'Product of' claims. Special funding has been made available for mounting several cases over the next year and the Commission has already instituted proceedings for false country of origin claims in the fruit juice industry.

### **Frequent flyer inquiry**

The Commission commenced an investigation into frequent flyer schemes offered by the main Australian airlines in response to consumer complaints about:

- the limited availability of frequent flyer award seats;
- the airlines' cancellation with limited notice of specific reward offers;
- frequent flyer program customer service levels and standards; and
- the blackout periods for flight awards.

Offering rewards without intending to supply them as represented risks misleading consumers and subsequent action under the Trade Practices Act.

The aim of the inquiry is fairer and more transparent frequent flyer programs. The Commission report is scheduled for release by the end of 2001.

### **Education, liaison and advice**

#### **Consumer communications strategy**

The Commission established an internal communications committee to coordinate its general communication activities with consumers and consumer organisations and to further develop reporting systems both internally and to the Commission's stakeholders.

#### **Advertising and selling**

The publication, *Advertising and selling*, helps businesses selling goods or services and their advertisers identify and avoid common problems and pitfalls. Recent real life examples are used to explain how the law applies and it also includes advertising on television and the Internet as well as recent amendments to the Trade Practices Act. It does not cover the responsibilities

of businesses in relation to the Goods and Services Tax.

Advertising and selling will also be the main theme for the Competing Fairly Forum in October 2001.

### **ACCC Digest**

The *ACCC Digest* is published quarterly by the Law Book Company. The Commission provides the material to LBC. It is a subscriber publication for Australian and international corporations, medium to small business, government, law firms and compliance professionals.

### **Commerce (Trade Descriptions) Act (CTDA)**

The Commission is a member of the Committee of Officials reviewing the CTDA administered by the Australian Customs Service. The CTDA, which has operated since 1905, states that all goods imported or exported must be truthfully described.

The CTDA is scheduled for review under the Commonwealth Legislation Review Schedule established by the Competition Principles Agreement. The review is being undertaken by a committee including representatives from Customs, Industry Science and Resources, Treasury and the Commission. It will focus on those parts of the legislation that restrict competition, impose costs or confer benefits on business including country of origin claims. It is expected to report by February 2002.

### **Petrol**

The Commission liaised with Environment Australia about a compliance regime for the proposed mandatory motor vehicle fuel standards. This will help consumers know if petrol they are buying contains additives and their effect on vehicles and engines.

### **Financial services**

#### **Code of Banking Practice review**

The Commission provided comments to the independent Review of the Code of Banking Practice — the first review since the code began in 1996. The main issues covered in the Commission's submission were undue

harassment and coercion, unconscionable conduct, interchange fees, convergence and shadow ledgers.

#### **Comparison interest rates**

The Commission provided comments to the NSW Department of Fair Trading on the development of the Mandatory Comparison Rate Bill. The bill proposes to amend the *Consumer Credit (NSW) Act 1995* to require mandatory disclosure of an average annual interest rate.

#### **Senate Select Committee on Financial Services and Superannuation**

The Commission made written and oral submissions to the committee providing information on regulatory gaps and overlaps, complaints and enforcement figures and examples of recent enforcement matters and compliance activities.

### **Industry codes**

#### **Australian Entertainment Industry Association**

The Commission was asked to participate in a working party on developing a National Code for Event Ticketing. The Commission was also asked by the NSW Department of Fair Trading to comment on the review of the current NSW Entertainment Industry Code of Conduct. As these two codes relate to the same matters the Commission is liaising with Consumer Affairs Division of Treasury about each agencies' role in the working party and the review of the respective codes. This matter was raised at the Ministerial Council of Consumer Affairs meeting.

#### **Fertility Society of Australia advertising code of practice**

The Fertility Society approached the Commission for its opinion on an advertising code of practice for the IVF industry. This code was drafted to ensure that IVF clinics were engaging in ethical and medically responsible practices in advertising their services and the Commission needed to examine the potential anti-competitive effect of some of the code's clauses. Work on this code is continuing.

#### **Digital TV marketing code**

The Commission participated in the code development working party that comprised industry members, consumer advocacy groups and government agencies. The code will counter potential misleading labelling issues with the transition from analogue to digital television. Work on this code is continuing.

#### **Code of practice for collecting societies**

An initial discussion panel consisting of the Commission and other relevant agencies convened to discuss developing a code of practice to cover collecting societies. These are organisations that collect royalties on behalf of performers and copyright owners from businesses that use the material in the course of their business. The Commission made an initial submission on the codes of conduct and the relevance of the Trade Practices Act.

#### **Australian Fruit Juice Association**

The Commission and the AFJA held regular meetings about the Fruit Juice Industry Code of Conduct. The AFJA made several submissions to the Commission on matters relating to country of origin, 100%, Pure, Fresh and Freshly Squeezed labelling claims. The AFJA referred a number of breaches of the code to the Commission for investigation.

#### **Proposed trucking industry code**

The Commission was involved in the working party to develop a code of conduct for the above 5-tonne freight trucking industry. The Commission discussed with various members of the industry and government the terms of the proposed code and advised on how the Trade Practices Act affected codes.

#### **Compliance programs**

The Commission audits and vets compliance programs that are submitted as part of s. 87B undertakings, consent orders or other court orders. The audit and vetting process is important to ensure compliance programs are consistent, effective and have integrity. The Commission vetted numerous compliance programs throughout the year. A nominated



independent auditor conducts the actual audit and the Commission then reviews the audit reports. The Commission conducted audits on companies such as Hugo Boss Pty Ltd, Sims Metal, Design Plus Textiles Limited and Golden Circle.

## **Court actions and undertakings**

### **Country of origin**

#### **Taj Food Sales Pty Limited**

On 10 July 2000 the Federal Court, Sydney, found that Taj Food Sales Pty Limited and its managing director, Mr Sah Dev Varma, had made false representations about the country of origin of its basmati rice. The Commission alleged that for the past four years Taj Food Sales had been importing basmati rice from Pakistan and packaging it in one-kilogram bags marked with the words 'Produce of India'. Taj Food Sales sold the packaged rice to Woolworths Limited who was unaware that the rice was from Pakistan. Taj Food Sales and Mr Varma agreed to injunctions preventing the offending conduct in the future, and also published corrective newspaper advertising.

#### **Keith Harris & Co Ltd t/a Orchy**

The Commission accepted court enforceable undertakings from Keith Harris & Co Ltd on 4 June 2001. Keith Harris represented that several of its fruit juices were a 'Product of Australia' when they contained imported juice. Keith Harris withdrew offending labels and agreed to implement a trade practices compliance program.

### **Pyramid selling schemes**

#### **Guardian Finance & Insurance Consultants Pty Ltd**

The Commission instituted proceedings on 5 April 2001 in the Federal Court, Brisbane, alleging that Guardian Finance and Insurance Consultants Pty Ltd promoted a scheme that amounted to an illegal pyramid selling scheme or referral-selling scheme. The Commission is also alleging that its sole director, Mr Peter Martin James, was knowingly concerned.

## **Fine print advertising**

#### **Quality Bakers Australia Ltd (Buttercup)**

In May 2001 the Commission instituted proceedings against Quality Bakers Australia Limited (Buttercup) in relation to its promotion 'Help Buttercup to Help Our Babies'. Buttercup's advertisements stated that 30 cents would be donated to the Canberra Hospital 'for each additional Buttercup product purchased' between certain dates. However, the fine print qualification stated that the donation would apply only to products sold over and above the average sales for a defined period. Following Commission intervention Buttercup honoured its promotion by giving a donation to the Canberra Hospital, but the matter remains before the court for final resolution.

#### **Target Australia Pty Ltd**

The Commission instituted proceedings in the Federal Court, Perth, on 5 September 2000 alleging that certain Target television and newspaper advertisements breached the Act. Its 'Every Stitch of Clothing' promotion stated in large print that substantial percentage price reductions applied to a broad category of goods but also used fine print to exclude items from the discount sales.

On 25 June 2001 the court declared that the advertisements, which appeared nationally in early 2000, were false, misleading and deceptive. The court ordered Target to broadcast a corrective advertisement nationally on 88 television stations and to publish corrective notices in 37 newspapers across metropolitan, regional and rural Australia. The orders were made with Target's consent. The court also issued injunctions restraining Target from advertising in the same way for four years, ordered Target to review its trade practices compliance program, and ordered Target to pay Commission costs of \$65 000.

#### **Pocket Money**

Pocket Money Limited (PML) traded in the promotion and sale of phonecards. The Commission considered that its advertising could breach the Trade Practices Act.

PML provided a s. 87B undertaking to correct its advertising and promotions in future and honour its previous offer.

## **False, misleading or deceptive conduct**

### **National Australia Bank**

The Commission accepted a court enforceable undertaking from the National Australia Bank for a breach of s. 52 of the Trade Practices Act when promoting its Wheat Advance product in full-page newspaper advertisements. The NAB advertisements offered wheat farmers a better deal including underwriting costs around 17.5 per cent lower than its competitor. In this case the comparison was not accurate. NAB knew that its underwriting costs were not 17.5 per cent lower. NAB undertook to implement a trade practices compliance program to ensure future breaches of the Act do not occur.

### **Bob Jane T-Marts Pty Ltd**

Following proceedings begun by the Commission on 6 December 2000 Bob Jane T-Marts Pty Ltd gave court enforceable undertakings and provided compensation to affected consumers via public notice. Eleven Bob Jane stores had offered a thrust wheel alignment at a higher cost than a cheaper front two-wheel alignment when the machinery used for both gave the same level of service.

### **Loyalty Pacific Pty Ltd (Fly Buys)**

On 1 January 2001 the Commission accepted court enforceable undertakings from Loyalty Pacific Pty Ltd, the operator of the Fly Buys loyalty scheme, for alleged misleading terms and conditions of a special promotion in mid-2000. The promotion offered members 2000 bonus Fly Buys points for shopping at Shell and Best Western. However, it was not clear that expenditure was required at both Shell and Best Western to qualify for the bonus points.

Loyalty Pacific acknowledged that the terms and conditions of the promotion were ambiguous and agreed to credit the affected Fly Buys members with the 2000 bonus points. This gave 34 000 members bonus points valued at about \$700 000.

### **Sony Australia Limited**

On 1 March 2001 the Commission accepted court enforceable undertakings from Sony Australia Limited for alleged false and misleading

representations in several Sony handycam sales brochures. Sony accepted the Commission's concerns and agreed to determine who may have relied on the representations in the brochures when buying Sony handycams; provide appropriate compensation to those consumers identified as relying on the representations in the brochures; and conduct an independent review of Sony's trade practices compliance program.

### **Billbusters Pty Limited**

In 1998 the Commission obtained interim restraining orders against Billbusters Pty Limited and its director Miles Kendrick-Smith restraining them from making certain representations in the supply of telephone bill-paying services and dealing with their assets. Those orders were discharged in November 1999. The date of the next directions hearing is to be advised by the court.

### **Top Snack Foods Pty Limited**

In proceedings instituted in 1996 the Federal Court, Sydney, found that Top Snack Foods had engaged in misleading and deceptive conduct and that George Manera, a director and manager of Top Snack Foods, and Nick Kritharas, general manager, were knowingly concerned. Damages of over \$400 000 were awarded to franchisees of Top Snack Foods.

In early 2000 a liquidator was appointed to some of the parties. Two individuals were also declared bankrupt. The Commission has secured, through the NSW Supreme Court, access to \$400 000 acting as creditor, although an appeal to this has been lodged.

### **McDonald's Australia Limited**

On 9 March 2001 the Federal Court found that the 34 claimants who presented evidence in a private representative proceeding regarding the 1999 McMatch & Win Monopoly competition had not made out their claim. At a directions hearing in Brisbane on 27 April 2001 Justice Dowsett determined a timetable for hearing be set for the Commission's matter, and the matter is continuing.



**Black on White Pty Ltd trading as the Australian Early Childhood College**

The Commission alleged that Black on White Pty Limited (trading as the Australian Early Childhood College) misled consumers about accreditation associated with courses offered in 1997; the existence of a deferred payment scheme for tuition fees; and had engaged in unconscionable conduct by signing students up to contracts without disclosing the onerous nature of some of the clauses in those contracts. The Commission considered this conduct breached the Act.

The Federal Court made orders that Black on White Pty Limited had contravened the Act by engaging in misleading and deceptive conduct, and unconscionable conduct. The court also found that Mr James Nicholas Poteri was knowingly concerned in misleading and unconscionable conduct and that his son, Mr Nicholas James Poteri, was knowingly concerned in the contraventions with respect to the accreditation representations.

**MT Marketing, One.Tel & Ors**

Moore Talk Communications Pty Ltd, trading as MT Marketing, promoted mobile phone and access plan packages by way of telemarketing activities across Australia. The company failed to provide customers with a full copy of the terms and conditions before asking the customer to sign the application. The Commission also alleged that the company misled consumers about the nature of the 'free phone' promotion as the first approach was by survey. Consent injunctions were obtained from the Federal Court and Moore Talk Communications provided s. 87B undertakings.

**Michigan Group**

In October 2000 the Commission instituted proceedings in the Federal Court against various respondents for alleged false and misleading or deceptive conduct in relation to the promotion, sale and distribution of commercial orange juice machines.

The Commission alleges that from about early 1998 the respondents promoted a scheme where investors would buy a business of one or more commercial orange juicing machines from

Michigan Group Pty Ltd, Imobiliare Pty Ltd and/or Yeppoon Pty Ltd. The Commission alleges that the promoters promised that business would take very little time to operate, the machines were 'state of the art', would be installed in nominated stores very quickly and would make significant profits.

The Commission is seeking court orders, including declarations and injunctions. This matter is continuing.

**inthebigcity.com**

Advertisements in rural and regional areas throughout Queensland and northern New South Wales gave a guarantee of employment and discounts on removal and accommodation costs for callers to a 1900 number. The Commission alleged that there were no guarantees of employment, no discounts available and the information provided is inaccurate, dated or totally false.

On 9 April 2001 the Federal Court made interim orders stopping inthebigcity.com Pty Ltd and its directors from operating or promoting this or any other 1900 employment service.

**Khad Pty Ltd, trading as Professionals Edge Hill**

On 6 September 2000 the Commission accepted undertakings from a real estate agent in Cairns regarding representations made to tenants about the effects of being listed on a defaulting tenancy database. The undertakings included admissions and undertakings not to repeat misrepresentations about the effect of being listed on a defaulting tenancy database together with corrective apologies to affected tenants.

**C7 Pty Ltd**

On 7 February 2001 C7 Pty Ltd provided undertakings in response to the Commission's concerns about representations made by C7 about its Olympic basketball coverage. The undertakings included C7's future programming representations, a form of refunds for affected customers and a donation to charity.

#### **Back to Basics Worldwide Education Aids Systems Pty Ltd**

On 17 May 2000 the Commission filed criminal proceedings in the Federal Court in Adelaide against Queensland-based Back to Basics Worldwide Education Aids Systems Pty Ltd, Hartwich Pty Ltd, and company directors John Moon and Wayne Baker.

It alleged that the companies and their directors placed advertisements in newspapers in several States inviting investments of up to \$65 000 in a business opportunity selling a range of educational aids to schoolchildren and their parents. At least seven distributors were recruited. The Commission alleges that representations about the profitability and risk of the business were false or misleading.

The defendants pleaded guilty and penalty submissions have been made. Justice Spender has reserved judgment.

#### **Stephen Frederick Grant, director Furniture Wizard Pty Ltd (in liquidation)**

On 29 October 1999 proceedings were instituted in the Federal Court, Adelaide, against Stephen Frederick Grant, director of Furniture Wizard Pty Ltd (in liquidation) for misrepresenting to a number of franchisees about the existence of guaranteed work from national contracts, potential income, training and support offered.

On 9 November 2000 the court granted injunctions against Mr Grant ordering that for three years he be restrained from making false or misleading representations in businesses the same or similar to Furniture Wizard Pty Ltd. It made orders for refunds totalling \$169 000 plus interest and the Commission's costs.

#### **Anthony Robert Hassett, director of Commercial & General Publications Pty Ltd**

On 17 January 2001 the Commission instituted proceedings in the Federal Court, Hobart, against Anthony Robert Hassett, director of Commercial & General Publications Pty Ltd (CGP) alleging that he made payment demands on Tasmanian small businesses for unsolicited and unauthorised advertising in CGP publications.

It was also alleged that Mr Hassett accepted payment from a number of Tasmanian small businesses for advertising in a proposed publication when he was aware, at the time of accepting payment, that CGP would be unable to supply the advertising services.

The Commission is seeking orders for fines, injunctions, and damages for advertisers.

#### **Tattersall's Hobart Aquatic Centre**

In March 2001 the Commission investigated advertisements placed by the Hobart Aquatic Centre offering consumers free pairs of cross trainer shoes valued at \$179 on taking out a 12-month membership in February 2001, but did not disclose that the offer was limited to new members only. Following the Commission's intervention, the centre placed corrective advertising, and contacted all existing members who renewed in February offering them the same benefit.

#### **Will Writers Guild Pty Ltd**

On 27 March 2001 the Commission instituted proceedings in the Federal Court, Hobart, against Will Writers Guild Pty Ltd (WWG) and its director Sidney Murray alleging that WWG failed to provide prospective franchisees with disclosure documents as required by the mandatory Franchising Code of Conduct, and misled franchisees about their rights and the risk involved in carrying on a business of writing wills for reward.

The Commission is seeking declarations and orders for penalties, injunctions and damages for losses suffered by franchisees.

### **Undue harassment and coercion**

#### **Esanda Finance Corporation Ltd and Ors**

On 12 April 2001 proceedings were instituted in the Federal Court against Esanda Finance Corporation Ltd, Capalaba Pty Ltd trading as Nationwide Mercantile Services, and several individuals for breaching the Act. The Commission alleged that a consumer who obtained a loan, secured by a chattel mortgage over a motor vehicle, from Esanda was subjected to physical force, undue harassment and coercion, and unconscionable conduct. The Commission also alleged a number of

individuals breached s. 23 of the *Western Australian Fair Trading Act 1987* which mirrors s. 60 of the Trade Practices Act.

The Commission is seeking declarations; injunctions restraining Esanda, Capalaba and the individuals from engaging in or being otherwise involved in similar conduct; orders; compensation for loss or damage; and costs.

#### **Lux Pty Ltd**

On 27 July 2000 the Commission instituted legal proceedings in the Federal Court against Lux Pty Ltd, and one of its door-to-door sales agents for being knowingly concerned, alleging that the parties had engaged in unconscionable conduct. It also alleged they had used undue harassment or coercion by selling a Lux vacuum cleaner to an intellectually impaired couple who could not read or write.

The Commission is seeking declarations, injunctions, a corrective notice, the implementation of a trade practices compliance program, and a declaration that the contract the couple entered into with Lux was void, and costs.

#### **Cash Return Mercantile Pty Limited and Sharyn McCaskey**

On 1 August 2000 the Federal Court, Perth, held that Cash Return Mercantile Pty Ltd (Cash Return) and its former agent Ms Sharyn McCaskey engaged in undue harassment, coercion and misleading conduct while collecting debts from consumers. This was the first case taken by the Commission under s. 60.

The court granted injunctions restraining Cash Return and Ms McCaskey from engaging in similar conduct in the future. It also ordered Ms McCaskey to attend a trade practices compliance seminar; Cash Return to publish a corrective notice in *The West Australian* newspaper; and both parties to pay the Commission's costs.

### **Administrative resolutions**

#### **Who Weekly magazine (Time Inc)**

In mid-1999 Time Inc offered 200 000 customers on their mailing list throughout Australia four weeks of *Who Weekly* magazine free of charge, along with the option to take up a subscription.

The 8467 people who responded 'maybe' were sent four 'free' issues and a letter restating the subscription offer with issue 1 and a subscription invoice with issue 4.

Complainants alleged Time Inc continued over many months into February 2000 to issue magazines and invoices which asserted a right to payment for an unsolicited 26-issue subscription, in breach of s. 64 of the Trade Practices Act.

Time Inc denied that the wording of the invoices was in breach. However, it was admitted that there were some contradictions and in October 2000 the matter was resolved when the Commission agreed to an administrative resolution.

### **Product safety**

The Commission has expanded networks for product safety knowledge and information to raise public and industry awareness of current product safety issues. Over the past year the Commission has attended conferences and seminars and has made presentations on product safety matters.

Several product safety guides have been published and a number of proposed new standards and bans developed (see below). Also detailed in this section are the products that were surveyed by the Commission during its annual product safety survey program. At the end of this section are the product safety matters the Commission took to court or accepted undertakings, some of which proved to have very significant enforcement outcomes for the Commission.

### **Proposed new standards**

#### **Bunk beds**

Injury statistics confirm that bunk beds have been associated with a high incidence of child injuries for some years in Australia. On 15 January a new draft Australian/New Zealand standard for bunk beds (*Draft Australian/New Zealand Standard for Bunk Beds — revision of AS/NZS 4220:1994*) was issued for comment by the Standards Australia/Standards New Zealand Committee (no. CS/3). It is proposed that this standard will be made mandatory.

## Baby walkers

Baby walkers have long been associated with a range of injuries to infants. A regulation to introduce a set of mandatory safety requirements has been drafted for introduction under the Trade Practices Act. It will be based on an existing US standard.

## Trampolines

In March 2001 the Standards Australia Committee (no. CS-005) for Playground Equipment prepared a draft standard (Trampolines — Consumer) for components, packaging information, warnings and maintenance instructions for trampolines. It aims to address safety risks and prevent injuries to consumers who use trampolines. The Commission is participating as a member of the Standards Committee in case the standard becomes mandatory.

## Amended existing standard

### Children's household cots

This standard was amended in April 2001 to take account of antique and collectable cots. The standard now exempts coverage of antique or collectable cots provided they are supplied with a certificate that warns against placing a child in such a cot.

## Bans

### Tinted head light covers

A temporary ban under s. 65L of the Act is likely to be introduced by the end of 2001 for motor vehicle headlight covers which allow less than 85 per cent luminous transmittance (tinted headlight covers).

### Candles with lead wicks

The temporary ban on candles with lead wicks expired on 2 March 2001 and on 28 March 2001 another new unsafe goods notice (temporary ban) under s. 65L was published in the *Commonwealth of Australia Gazette* on candles with lead wicks, for a further 18 months. Whereas the previous temporary ban did not allow for any lead to be present in candles, the new temporary ban allows for some lead to be present — up to 0.06 per cent by weight.

## Information and liaison

### Guides

During the year the Commission issued guides to standards for bean bags, exercise cycles, pedal bicycles, paper patterns for children's nightwear, elastic luggage straps, balloon-blowing kits and cosmetics. These guides contain information about standards that apply to each product, as well as guidance for retailers and suppliers to ensure that the goods they stock comply. They are also available on the Commission's website.

### Conferences, seminars and speeches

*National Injury Prevention Conference* — The fourth National Conference on Injury Prevention was held in Canberra on 23 and 24 November 2000. For the first time the conference program included a consumer safety stream, co-planned by the Commission. In addition to the presentations, two open forums about product safety were held.

*Enforcement and compliance seminar* — The Commission hosted a seminar on enforcement and compliance in Melbourne on 27 and 28 March 2001. It brought together staff from all offices of the Commission and from State, Territory and New Zealand consumer and fair trading agencies, in the consumer protection and product safety fields. It was the first time operational staff from these agencies had come together and another is planned for late 2002.

*Kidsafe Awards 2000* — In February 2001 the Chairman was the keynote speaker at the annual Kidsafe Awards 2000 Luncheon. In his address the Chairman said product safety was the responsibility of government, consumers and industry. He also outlined the Commission's role in promoting and enforcing the product safety provisions of the Trade Practices Act.



**Keith Manch, CEO,  
NZ Ministry of  
Consumer Affairs,  
at ACCC seminar  
in March 2001.**

## International activities

### Visiting international graduate

During the year an international graduate from Samoa came to work in the Product Safety Section under the Commission's International Internship Program for 2000. At the end of her stay she commented on the usefulness of the knowledge she had gained and said she would attempt on her return home to implement many of the work practices and systems she was introduced to during this time.

### Visit to Durban, South Africa

The Manager, Product Safety attended the Consumers International World Congress and a workshop of the International Society of Consumer and Competition Officials in Durban, South Africa in November 2000. These events provided an excellent opportunity to learn about regional systems and developments in consumer product safety.

### Liaison with international bodies

Staff took part in discussions and made submissions to the US Consumer Product Safety Commission (CPSC) which has links and contacts with international bodies. Staff also attended a presentation given by Mr Ronald Medford, Assistant Executive Director, Office of Hazard Identification and Reduction, CPSC.

### Product safety surveys

The Commission enforces mandatory product safety standards, information standards and bans on unsafe goods declared under the Trade Practices Act. Random market surveys are conducted on a strategic risk management basis — products are selected for surveys according to their relative level of hazard and market penetration.

Several products were targeted during the year and the following outlines the surveys conducted. Compliance was generally found to be good; however, several breaches were detected and pursued.

*Balloon blowing kits* — A survey was carried out around the country for the presence of benzene, a known carcinogen in balloon-blowing kits. Balloon-blowing kits usually comprise a tube of synthetic substance and a straw. The user blows through the straw into a plug of the synthetic

substance thus expanding it and forming a balloon. The main hazard of these kits results from the inhalation or ingestion of benzene.

*Bean bags* — Because bean bags appear to be back in vogue Commission offices carried out Australia-wide surveys on the traditional bean bag, and a range of new related products such as bean bag chairs, sofas and ottomans.

*Cosmetics* — Compliance surveys were carried out to ensure the appropriate ingredient labelling is provided for these products at the point of sale. This survey focused on discount stores, smaller non-departmental stores and chemist outlets.

*Disposable cigarette lighters* — The key focus of this survey was to ascertain whether the lighters are resistant to operation by a child under five years. Survey staff were aware of the variety of child resistance features that lighters can have and looked out for devices that disable the child resistant mechanisms on lighters. Special attention was paid to tobacconists, general and discount merchandise stores, supermarkets, convenience outlets and service stations during the survey.

*Elastic luggage straps* — Elastic luggage straps were surveyed at hardware shops, automotive aftermarket suppliers, camping stores, cycle and sports stores, service stations, luggage shops, chain and discount stores, and department stores. Any elastic luggage straps that were not appropriately labelled with warnings as required by the information standard on these products, were removed from sale.

*Exercise cycles* — Random surveys were carried out on exercise cycles in various States. They checked the performance and safety levels of each bike under the requirements of the standard including chain guard checks, flywheel checks and finger entrapment tests.

*Pedal bicycles* — This survey of toy and discount stores was to ensure that only bicycles that comply with the new mandatory standard were being supplied. Survey staff looked for serious safety defaults in bikes such as back-pedal brake failure, sharp edges on children's bikes and protective guards. Survey staff also looked for useful and informative labelling on bikes and whether the bike came with an owner's manual.

*Vehicle and trolley jacks* — Given the extensive surveys carried out on these products in previous years, survey staff targeted trouble areas in this industry.

*Vehicle support stands and portable ramps* — This survey examined the adequacy of marking and instructions for use on these products. In most cases ramps and stands were surveyed at the same time and in the same outlets as vehicle and trolley jacks.

## **Court actions and undertakings**

The Commission has increasingly used court enforceable undertakings under s. 87B of the Act in the product safety area. Many undertakings contain trade practices compliance programs specific to product safety.

### **Dimmays Stores Pty Ltd**

Following criminal proceedings instituted by the Commission against Dimmays in November 2000 the Federal Court, Brisbane, fined Dimmays Stores Pty Ltd \$160 000 for supplying children's nightwear that did not comply with the mandatory consumer product safety standards for children's nightwear. The breaches related to six charges concerning the supply of children's nightwear in Townsville in July 2000 and one further charge for the supply in Melbourne in November 2000. Dimmays pleaded guilty to the seven charges. The court also imposed an injunction which will operate until 2004.

### **MHG Plastic Industries Pty Ltd**

After proceedings were instituted on 13 May 1999 the Federal Court, Sydney, ordered a recall of all helmets and that consumers be given a full cash refund. MHG appealed and the Full Federal Court heard the appeal arguments in November 1999. The Full Federal Court overturned the decision of the lower court in August 2000, holding that the tests relied upon by the primary judge had not been properly performed by the testing agency and thus could not be relied upon.

### **Spotlight Promotions Pty Limited**

In November 2000 the Commission accepted a court enforceable s. 87B undertaking from Spotlight Promotions Pty Limited, a Queensland-based promotional merchandise supplier for

supplying sunglasses that failed to comply with the mandatory safety standard. The undertaking required Spotlight to implement a trade practices corporate compliance program. Spotlight, after being asked, recalled the sunglasses from consumers and offered them a refund or replacement pair. The sunglasses were supplied by Spotlight to Carlton and United Breweries (CUB) for promotional purposes.

### **Jutco Pty Limited, Shinn Fu (Australia) Pty Limited and Super Cheap Auto Pty Limited**

During a national product safety survey in May and June 2000 three companies in separate matters were found to have supplied vehicle and trolley jacks that did not comply with the relevant mandatory product safety standards. All provided court enforceable s. 87B undertakings to the Commission and implemented a trade practices compliance program.

### **ZG Pty Limited**

On 12 October 2000 an Adelaide-based wholesaler agreed to recall a vehicle trolley jack after testing by the Commission found it failed the mandatory standard. The jack which was labelled Macho Pty Ltd was primarily supplied to wholesalers and retailers in South Australia and Victoria. The jack failed to meet some performance characteristics, in one instance becoming unstable when subjected to a load test, as well as failing mandatory requirements for labelling. ZG Pty Limited published recall notices asking consumers to return the jacks to the place of purchase for a full refund. ZG Pty Limited also provided a court enforceable s. 87B undertaking to the Commission and implemented a trade practices compliance program.

### **Regency Importing Company Australia Pty Limited (t/a Leisure World)**

On 12 March 2001 Regency Importing Company Australia Pty Ltd provided the Commission with an enforceable s. 87B undertaking to recall the DT900 Lifestyler exercise cycle after the cycle failed safety tests and was considered to be a safety hazard. The cycles, imported from the United States, were sold exclusively over the past year through Rebel Sport stores around Australia. The undertakings also provided full refunds to consumers and an



agreement to implement a trade practices compliance program.

#### **Apollo Bicycle Co. Pty Limited**

During a routine retail product safety survey staff helmets supplied by Apollo Bicycles were found not to comply with the mandatory standard. The labelling on the helmets claimed they were suitable for cycling; however, they are known as street helmets and are commonly used by skateboarders and scooter riders. Apollo Bicycles provided a court enforceable s. 87B undertaking and implemented a trade practice compliance program.

#### **Pacific Dunlop Limited (PDL) Ansell**

On 21 January 2000 the Commission instituted proceedings in the Federal Court, Melbourne, against PDL Ansell seeking compensation for a consumer who has allegedly suffered a serious

form of latex (rubber) allergy through using PDL's Ansell brand of household rubber gloves. This matter is still before the court.

## **The professions**

Before 1996 unincorporated professional practices were partially excluded from the anti-competitive provisions of the Act. But now all non-employed professionals are liable if they engage in anti-competitive conduct. They are also liable under the consumer protection provisions for misleading and deceptive conduct. Since advertising restrictions were lifted, professionals must be extremely careful in how they represent themselves to the public. The Commission has investigated several cases that potentially have breached the Trade Practices Act.



The Commission continued to investigate allegations that some Royal Australasian College of Surgeons' (RACS) processes restrict entry to advanced medical and surgical training in breach of the Act.

The investigation concentrated on RACS' role in determining how many trainees received advanced training in orthopaedic surgery and how it assesses overseas-trained specialists referred to RACS by the Australian Medical Council. The Commission decided that RACS' procedure and conduct may breach some of the competition provisions of the Act. In November 2000 RACS applied for authorisation of its processes in:

- selecting, training and examining surgical trainees in each of the nine specialities in which it conducts training;
- accrediting hospital posts as being suitable for training surgeons; and
- assessing the qualifications of overseas-trained practitioners.

Since the introduction of the Government's Lifetime Health Cover, which triggered a rapid rise in health fund membership, the Commission has paid particular attention to advertising and promotional campaigns by health funds. As a result the Commission has instituted proceedings against Medibank Private and MBF for misleading and deceptive advertising of health insurance products (see p. 56).

The Commission has continued to monitor the contracting process between hospitals and health funds for potential breaches of the Act. The Commission obtained court enforceable undertakings from Medibank Private over unconscionable conduct concerns about including a unilateral contract variation clause in a proposed contract with an independent specialist psychiatric hospital.

The Commission's second report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance was tabled in the Senate on 8 November 2000. The Commission prepared the report in response to an order agreed by the Australian Senate on 25 March 1999. The Commission is currently finalising the third report to the Senate.

Following concerns raised about the impact of the Trade Practices Act on general practitioners, the Commission has been working closely with the Department of Health and Aged Care and various GP groups on a communication strategy about the implications of the Act for GPs.

It released a draft general practitioners guide to the Trade Practices Act for limited consultation on 6 March 2001. On 30 March 2001 the Commission released a revised draft reflecting some of the initial feedback for broader consultation. The Commission travelled to rural and metropolitan areas of NSW, Victoria and Western Australia to discuss the issues in the revised draft guide with GPs, practice managers and their representative associations. The Commission is considering further submissions and will finalise the guide in the near future. It will be distributed to all GPs around Australia, as well as their advisers and practice managers.

## **Liaison**

### **Tobacco and the Department of Health and Aged Care**

The Commission continues its liaison with the Department of Health and Aged Care. It is a member of the Commonwealth Cross-Government Tobacco Liaison Meeting which meets several times a year to discuss issues relating to tobacco products including advertising, labelling, health effects and overseas developments.

The Commission has made a submission to the Department of Health and Aged Care about its continuing negotiations on the World Health Organisation's Framework Convention on Tobacco Control.

### **Food and ANZFA**

The Commission continues to work closely with the Australia New Zealand Food Authority, negotiating a memorandum of understanding to help manage false and misleading claims where the Joint Food Standards Code and the Act overlap.

It has lodged submissions to ANZFA on various food standards proposals. The Commission was a member of the External Advisory Group for ANZFA Proposal P237 relating to Country of Origin Labelling of Food. It has also provided



comments on Standard A18 (food produced using gene technology) and Proposal P234 (nutrient content and other related claims).

The Commission began work on genetically modified labelling and the Act — an emerging issue of concern to consumers because of the increasing range of GM foods in the marketplace and the new mandatory labelling regime that will begin in December 2001.

In providing guidance to the food industry the Commission spoke at two food industry conferences and published an article in the *ACCC Journal*. The Commission has also spoken with several industry participants about labelling and certification schemes. It expects to release a discussion paper on GM food labelling and the Act in late 2001.

### **Therapeutic Goods and the TGA**

The Commission has worked closely with the Therapeutic Goods Administration (TGA). This has involved sharing information and investigating on the TGA's behalf potential misleading claims about products that fall outside the TGA's jurisdiction. The two agencies decided to finalise a memorandum of understanding to formalise this working arrangement. They met in March 2001 and negotiations on the agreement are continuing.

In January 2001 the TGA invited the ACCC to nominate a representative as Observer on the Therapeutic Goods Advertising Code Council (TGACC).

In Australia all advertisements and generic information about therapeutic goods must comply with the *Therapeutic Goods Act 1989*, the Therapeutic Goods Regulations 1990, the Therapeutic Goods Advertising Code (TGAC) and the Trade Practices Act. A new TGAC came into effect on 19 April 2000.

### **Court actions and undertakings**

#### **Price fixing**

Australian Medical Association & Mayne Nickless Ltd and Ors

On 21 July 2000 the Commission instituted proceedings in the Federal Court, Perth, against the Western Australian branch of the Australian Medical Association (the AMA(WA)) and Mayne

Nickless Ltd (MNL) alleging that they were involved in price fixing and other anti-competitive conduct in breach of the Trade Practices Act.

The Commission also alleges that the AMA(WA) executive director, Mr Paul Boyatzis, and former president, Dr David Roberts, were knowingly concerned in the contraventions, and that former general manager (Western Australia and Asia) of Health Care of Australia (a division of MNL), Mr Martin Day, and former JHC chief executive, Mr Ian MacDonald, were knowingly concerned in the contraventions by MNL.

The Commission is seeking court orders including declarations, injunctions, pecuniary penalties, costs and orders requiring the publishing of public notices and the institution of trade practices compliance programs.

### **Misleading or deceptive conduct**

Listen Systems Pty Ltd, Mr Stephen John Alexander

On 7 April 2000 the Federal Court made declarations and orders relating to misleading and false representations made by Listen Systems Pty Ltd about alternative health therapy devices known as the EQ4 system. The court also found that Mr Stephen Alexander, a director of Listen Systems Pty Ltd, had aided or abetted these breaches of the Act.

Nine months later the Commission instituted contempt of court proceedings against Listen Systems Pty Ltd and Mr Alexander for failing to comply with the orders made against it. Following the contempt action, Mr Alexander took steps to comply with the two orders and within 90 days of return of the EQ4 system paid a full refund to the one purchaser who had sought a refund.

Centrebuy Direct Pty Ltd and Peter Edgar Riley

In proceedings instituted in the Federal Court, Sydney, on 21 March 2001 against Centrebuy Direct Pty Ltd and Peter Riley a director of the company, the Commission alleged that advertisements for the BodyTone machine implied the user could obtain benefits from its use without further effort on their part.

The Commission is seeking declarations and injunctions restraining Centrebuy Direct Pty Ltd

and Peter Riley from making false and misleading representations about electro-muscular stimulation machines generally, an order for corrective advertisements and an offer of refunds to purchasers of the machine.

#### **Emerald Ocean Distributors Pty Ltd, Slendertone Health and Beauty Pty Ltd**

In proceedings in the Federal Court, Perth, against Emerald Ocean Distributors Pty Ltd, Slendertone Health and Beauty Pty Ltd and their director, Mr Sean O'Donoghue, on 19 July 2000 the Commission alleged that Mr O'Donoghue made false and misleading representations about the benefits of using electronic muscle stimulation products, generally referred to by the trade name, 'Slendertone'.

The Commission is seeking declarations, corrective advertisements, refunds for affected consumers, a compliance program, costs and injunctions restraining Mr O'Donoghue and the companies from promoting the supply of Slendertone products using these claims.

#### **Paul and Linda Storer**

On 23 April 2001 the Federal Court, Perth, found that Mr Paul Storer and Mrs Linda Storer, who operated the Perth Chronic Fatigue Advisory Centre, engaged in false and deceptive conduct and made misrepresentations about chronic fatigue syndrome which breached the Trade Practices Act.

The court also handed down orders restraining the Storers from engaging in similar conduct in the future; to offer refunds to consumers who were misled by the representations; to participate in a trade practices compliance program seminar; and to publish corrective notices in prominent newspapers to inform the public of the decision.

### **Fine print advertising**

**Medical Benefits Fund of Australia Ltd (MBF)**  
MBF and advertising agency John Bevins Pty Ltd are currently defending a matter filed by the Commission in the Federal Court in February 2001. The Commission alleged that MBF advertisements were misleading and deceptive because of the inappropriate use of fine print disclaimers. They contained pregnancy-related

images in an endeavour to entice consumers to transfer and/or join MBF private health insurance. However, the advertisements also contained fine print disclaimers that a 12-month waiting period for pregnancy-related services would not be waived. The matter is continuing.

#### **Medibank Private**

On 26 October 2000 the Commission instituted proceedings against Medibank Private in the Federal Court, Melbourne, alleging false, misleading and deceptive advertising of its health insurance products in two advertising campaigns in breach of the consumer protection provisions of the ASIC Act.

In the first advertising campaign for Medibank Private's Package Plus products, the Commission alleges that, among other things, from early March 2000 Medibank Private advertised 'no rate increase in 2000' when the rates on these products increased on 1 July 2000.

In the second advertising campaign in major newspapers around Australia in August 2000, Medibank Private offered consumers who switched from another fund 'any waiting periods waived' and 'get 30 days free if you change to Medibank Private'. However, it is alleged the advertisements failed to disclose, or adequately disclose, that only the 2-month general waiting period and the 6-month optical waiting period were waived. This was only indicated in very small print at the bottom of the ads. It is alleged the advertisements also failed to disclose, or adequately disclose, that conditions applied to the offer of 30 days free health insurance. Again a mention that 'conditions apply' appeared at the bottom of the ads.

Medibank Private lodged a strike out application which was heard on 13 March 2001. The judge reserved his decision.

Health insurance, as it falls within the definition of financial product, is regulated through the ASIC Act. However, ASIC has formally delegated the regulation of all consumer protection aspects of health insurance to the Commission.

### **Pyramid selling schemes**

#### **Giraffe World Australia**

In proceedings in the Federal Court, Sydney, three years ago, Giraffe World gave undertakings

that it would not represent that the 'negative ion' mat it marketed produced negative ions, relieved health ailments or promoted health. However, in 1999 the court found that Giraffe World had breached that undertaking having engaged in misleading or deceptive conduct, promoted a pyramid selling scheme and engaged in referral selling. The court also found that founder and director of Giraffe World, Mr Akihiko Misuma, and its president and chief executive officer, Mr Robin Han, were party to the contraventions by Giraffe World.

The representative action started by the Commission on behalf of customers was adjourned in February 2000 pending the outcome of the liquidator's recovery action against the directors. This matter is continuing.

## E-commerce

### Electronic complaints

The Commission has developed a system to give consumers quicker, easier access to lodge complaints. *Slam-a-Cyberscam* allows consumers to complain online about Internet traders that may be breaching the Trade Practices Act. Since its launch in April 2001 it has received over 100 complaints, some of which Commission staff have investigated.

The International Marketing Supervisory Network (IMSN) has developed and launched a consumer complaints portal for use by any consumer in the world. Complaints may be entered about any business in the world, and will be accessed by enforcement agencies that are members of the IMSN. The site can be found at <<http://www.econsumer.gov>>.

### International Internet Sweep Day

The Commission was lead agency for the third IMSN sweep held on 14 and 15 February 2001. Websites all over the world were evaluated for their level of compliance with the *OECD Guidelines on consumer protection in electronic commerce*. This was rated as the most uniformly high priority issue for all IMSN members.

The 2001 sweep day tested the level of adoption of Best Practice (OECD Guidelines) by online businesses since they were released a year ago.

Over 3300 sites were swept by 48 agencies in 19 countries.

The Commission has established itself as the sweep coordinator and plans to lead the proposed Sweep Day for 2002. This will test websites all over the world that make claims about health products, another priority for many IMSN agencies.

### Domain name registration

The Commission has investigated many recent cases of consumers renewing their domain name registration after receiving an unsolicited renewal notice. These consumers have also paid a higher price than if they had renewed their registration directly through the registrar. Many are confused because their current service provider gives them a package, which includes renewal of the domain name and many other support services. The Commission issued a press release in January 2001 to raise public awareness.

The Commission has been involved in developing the domain name system in Australia as a member of the .au Domain Administration (auDA). In addition to this ongoing work, the Commission also made a submission to the World Intellectual Property Organisation (WIPO) in June 2001, suggesting firmer discouragement of bad faith registrations of domain names, and measures to ensure accuracy of registration information on WHOIS databases.



## Internet access services

Following a number of actions involving Internet service providers and their marketing practices, the Commission released a publication *Fair.com* in February 2001 to educate ISPs and businesses about fair dealing in regard to websites and Internet access services.

## International liaison

The IMSN includes consumer protection agencies from 30 countries. They meet twice yearly to:

- further international cooperation through sharing information and joint investigations;
- analyse latest developments in cross-border enforcement actions; and
- explore non-enforcement alternatives for gaining redress for consumers.

The IMSN met in Berlin in October 2000 and in New York in April 2001. Most recently they agreed that Australia be appointed President of the IMSN for the year 2002–03. The Commission has close cooperative relationships with the IMSN members, and especially the Federal Trade Commission in the USA.

The Commission was involved in meetings of the Consumer Policy Committee of the Organisation for Economic Cooperation and Development (OECD) in September 2000 and March 2001. At the March meeting the Commission presented a paper giving the results of the Internet Sweep Day on compliance with the OECD guidelines, which was well received. The OECD has been working on alternative dispute resolution, codes of conduct, and implementing their guidelines. It has established an electronic discussion group (accessed by password) to facilitate further development of projects.

## APEC Electronic Commerce Steering Group

The Commission participated in the 2<sup>nd</sup> meeting of the APEC Electronic Commerce Steering Group (ECSG) held in Canberra on 17 March 2001. The group was formed in 1999 to discuss consumer protection in the context of e-commerce in the APEC region.

The New Zealand Ministry of Consumer Affairs is coordinating the group's major project for the short to medium term: a survey of consumer protection laws, voluntary or prescribed codes, charge-back laws and MOUs or other agreements in 10 APEC economies. The survey will later be expanded to include other APEC economies.

## Domestic liaison

The Commission has cooperative relationships with many organisations including the Australian Federal Police, the Australian Customs Service, the Federal Director of Public Prosecutions, the Attorney-General, as well as State and Territory Fair Trading authorities.

These relationships share information where appropriate, undertake joint investigations, examine emerging issues, and avoid duplication of effort.

The Commission has taken part in regular meetings of the Action Group into Electronic Commerce to discuss the law enforcement implications of e-commerce, including public key infrastructure, account aggregation, email monitoring, computer crime such as intrusion and denial-of-service attacks, mutual assistance and information sharing, encryption, and record-keeping requirements to assist investigations.

The Commission made submissions on the proposed Cybercrime Bill 2001 and the *Telecommunications Legislation Amendment Act 2000*. These relate to computer crime, investigative powers, and regulation of electronic addressing, including domain names.

## Forensic investigations

The Commission has further developed its forensic capacity in 2001. Officers have attended training conducted by other organisations, including the FTC. The Commission made presentations at a training seminar in March 2001, endorsed by the Standing Committee of Officials of Consumer Affairs and attended by investigators from consumer protection agencies from States and Territories within Australia.

Already the Commission has used its forensic capacity to successfully prosecute several businesses for online breaches of the Trade Practices Act.

## Competition and B2B activities

The main focus of the Commission's activities in the B2B (business to business) area has been to identify and assess new competitive conduct issues arising in e-commerce.

During 2000–01 the electronic commerce industry grew substantially, and in particular many B2B electronic marketplaces developed in Australia.

The Commission recognises that in many cases, electronic marketplaces can deliver cost savings and greater efficiencies for both buyers and sellers, as well as providing access to a wider range of trading partners. At the same time, the Commission has identified that an increasing number of electronic marketplaces are being established through collaborative ventures between competitors, especially in the banking, health, airline and indirect supplies industries. These may raise issues under Part IV of the Act.

The Commission encourages parties to consult with it on an informal basis about particular proposals that could raise competition issues.

The Commission has liaised with other regulatory bodies including the National Office for the Information Economies (NOIE), ASIC and APRA and international competition authorities (US Federal Trade Commission and the US Department of Justice) to identify potential emerging issues in B2B arrangements. It has also participated in two OECD roundtables on competition issues in e-commerce.

## Court actions and undertakings

### Misleading or deceptive conduct

Stephen Henry Wayt, t/a COM.AU.REGISTER

The Commission instituted proceedings on 5 April 2001 in the Federal Court, Brisbane, alleging that a fax sent by Mr Wayt was likely to mislead or deceive recipients into believing that COM.AU.REGISTER was responsible for registering Internet domain address registration and that it had dealt with those businesses and organisations previously.

Purple Harmony Plates Pty Ltd

On 6 August 2001 the Federal Court in Victoria found that Purple Harmony Plates had misled consumers about the benefits of anodised aluminium discs, claiming they have a protective effect against electromagnetic radiation as well as other unsubstantiated properties. The court orders included interactive corrective advertising on the company's website, refunds for consumers and cessation of the misleading conduct.

### Institute of Taxation Research

For several years both the Institute of Taxation Research (ITR) and Wayne Levick instituted over 35 cases in the Federal and High Courts in an attempt to argue that the various Income Tax Acts, including the recent GST legislation, were illegal. Not one of these cases was successful.

Despite repeated warnings from the courts and heavy costs ordered against them, both ITR and Levick continued to represent that their constitutional arguments could be relied on by Australian businesses and taxpayers to avoid paying tax.

The Commission instituted proceedings in the Federal Court alleging that the representations by ITR and Levick were misleading and deceptive. On 21 February 2001 the Commission obtained final orders in the Federal Court, Brisbane, to prevent ITR and Levick from engaging in misleading and deceptive conduct in providing taxation advice. ITR lodged an appeal against the court's decision. However, ITR was placed into liquidation only days after the appeal was lodged. This matter is continuing.

### Australian Institute of Permanent Make Up

The Commission obtained consent orders in January 2001 against the Australian Institute of Permanent Make Up including orders for the business to amend its website. This business advertised on the Internet offering micro-pigmentation services (tattooing) for cosmetic purposes. The use of the word 'permanent' was considered misleading given that the make-up faded after three to 10 years. The consent orders also included refunds for those who considered they were misled, declarations under both the Trade Practices Act and Queensland fair trading legislation and costs.

#### **David Zero Population Growth Hughes, t/a Crowded Planet**

The Commission was successful in obtaining orders to restrain Mr David Hughes, trading as Crowded Planet, from supplying oral contraceptives to consumers within Australia and ordering him to publish on his website a notice stating that Crowded Planet cannot and will not supply oral contraceptives to consumers within Australia. The Federal Court found Mr Hughes guilty of contempt of court for failing to comply with these orders. The court issued a warrant for his arrest and committal but allowed him 30 days to comply with the orders. The matter is continuing.

#### **The Australasian Institute**

In proceedings instituted in the Federal Court, Sydney, in May 1999 the Australasian Institute undertook to stop promoting the Global Master of Business Administration degree, and to provide the Commission with the names and addresses of students enrolled in the course. Following mediation between the parties, the court ordered that the Australasian Institute display a corrective notice on its website for six months, provide refunds to certain students and contribute \$24 000 to the Commission's costs. On 15 March 2001 a liquidator was appointed.

#### **Info4pc.com Pty Ltd**

On 23 January 2001 the Commission instituted proceedings in the Federal Court, Adelaide. On 24 January the matter was transferred to the Federal Court, Perth. The Commission is seeking an interim injunction against a Perth-based computer retailer, Info4pc.com Pty Ltd, for allegedly advertising, including through the Internet, but not delivering very cheap computers.

An ex parte interim injunction restrains the company from, among other things, advertising and accepting orders for computers and/or upgrades, and freezes the company's business bank account. One motion for contempt of court, dated 31 January 2001, for alleged breaches of the injunctions was heard on 15 June 2001. The hearing for the other motion for contempt of court, dated 7 May 2001, will be heard on 7 September 2001. Judgment for these motions will be handed down together.

### **Pyramid selling schemes**

#### **Golden Sphere**

In proceedings begun in 1996 against Golden Sphere International Incorporated, the Federal Court found the company, Victor Michael Cottrill and Pamela Reynolds had breached the Trade Practices Act and ordered them to pay \$550 000 into a fund to provide refunds to consumers who had invested in its pyramid selling scheme. Over \$250 000 was recovered and paid into the trust fund. The Commission obtained evidence that money had been transferred to Vanuatu and it was successful in enforcing the Australian court orders in the Supreme Court of Vanuatu, and a further \$12 500 was recovered.

#### **World Netsafe and Terence Butler**

On 8 December 2000 the Federal Court ruled that the International ATTM Card Scheme marketed and promoted by World Netsafe Pty Ltd and Terence Butler was an illegal pyramid and referral selling scheme. The court made extensive orders for breaches of various consumer protection sections of the Trade Practices Act. Thousands of consumers in many different countries paid \$2389 to join the ATTM Card Scheme. Among other things, the court ordered that the respondents post an apology on their website and that within 28 days, World Netsafe and Terence Butler return money to all consumers who paid to participate in the scheme.

Permanent injunctions are now in place which restrain both World Netsafe and Terence Butler from making false representations in connection with this scheme or a similar scheme in the future.

#### **Greenstar Cooperative Ltd**

The Commission instituted legal proceedings on 5 June 2001 in the Federal Court alleging that Greenstar had engaged in an illegal pyramid and referral selling scheme during the promotion of an organic fertiliser product and transaction card, and misleading and deceptive conduct and false representations regarding the transaction card.

On 14 June 2001 the Federal Court granted interim injunctions against Greenstar Cooperative Ltd and four of its directors until the



matter is settled. Specifically, a mareva injunction freezing the assets of Greenstar and one of its directors, Kevin Robert Smith, except for limited business and living expenses, was given. Ancillary Anton Piller-type search orders allowing the Commission to inspect the company's accounts and financial records were also made by consent. Notably, the injunctions also prevent Greenstar from inducing any further members joining the scheme. The matter is continuing.

#### Skybiz 2000 Scheme: Mr Kevin Ryan

On 4 August 2000 the Commission instituted proceedings in the Federal Court, Perth, against Mr Kevin Ryan of Perth, a participant in a scheme called Skybiz 2000 Home Based Business. The Commission alleged that Mr Ryan attempted to induce others to become participants in the trading scheme promoted by Skybiz.Com.Inc, and to pay Skybiz.Com.Inc US\$100 per website to obtain the prospect of participating in the scheme.

## Small business

In its third year of operation the Commission's small business program explored some innovative ways to deliver information to the small business sector.

It launched the Competing Fairly Forums, a series of satellite broadcasts to rural and regional towns around Australia. The forums build connections between the Commission, industry and community organisations through local government and business leaders.

The Commission's small business managers in every State and Territory continued to develop networks of contacts in the business community. This provided a two-way flow of information — enabling the Commission to get its message out to the small business sector and, at the same time, learn which trade practices issues were relevant to small business operators.

The small business program also produced a corporate video, *Fair Game or Fair Go*, to explain the concept of unconscionable conduct. It was sent out to convenors as an introduction before the Competing Fairly Forum held in May 2001, which had unconscionable conduct as its topic.

These new high impact ways of information dissemination complemented the small business



program's existing work. The Commission's small business managers in each State and Territory conducted numerous seminars and presentations to industry on the Trade Practices Act in general, and the Franchising Code, unconscionable conduct and the GST in particular. Many of these field trips were in rural and regional areas, reflecting the program's push to increase awareness of the Act in those areas.

## Information programs

### Competing Fairly Forums

The Commission successfully produced two Competing Fairly Forum satellite broadcasts to rural and regional towns throughout Australia.

The broadcasts provided people in regional communities with the opportunity to participate directly with the Commission's Chairman and Commissioners, and other trade practices experts, to have their concerns heard directly. Both broadcasts incorporated a session in which the panel responded to questions put by participants in the regional towns.

The first broadcast, on 8 November 2000, was received in 28 towns and addressed broad trade practices issues. The second broadcast, on 1 May 2001, was received by 62 towns and addressed the issue of unconscionable conduct (a topic on which further information was sought by the participants in the first forum).

Future forums will explore other trade practices issues which are relevant to the rural and regional sectors.

The forums are supplemented by information available at the website  
<<http://forums.accc.gov.au>>.

### **Corporate videos**

In early 2001 the Commission produced a corporate video, *Fair Game or Fair Go*, to explain the legal concept of unconscionable conduct.

The video was released ahead of the May Competing Fairly Forum to assist the audience develop an awareness of the key issues that arise in unconscionable conduct.

Both Competing Fairly Forums were also made available as videos.

### **Communications and publications**

During 2000–01 the small business program gave 95 presentations and seminars, and attended 19 expos and trade shows. Field trips covered over 70 towns in the first part of 2001. Over 100 000 publications were distributed at expos, trade shows, presentations and through the program's regular mailout.

The second edition of *Retail Flash* was published and distributed in time for Christmas trading. *Retail Flash* is produced in conjunction with the Australian Retailers Association and provides small retailers with concise information on trade practices issues useful for improving customer relations.

The communication network of the program was extended to include rural press and trade magazines where articles and advertisements were placed on a regular basis. This included regular columns by the Small Business Commissioner, John Martin.

The small business program continued its regular mailout to small businesses and industry associations, providing accessible information on specific trade practices matters for inclusion in newsletters and magazines.

The program also produced and distributed a number of small business flyers, providing trade practices information in a concise and easy-to-read format. This included four flyers focusing on recent developments in unconscionable conduct law and the effect of those changes on specific industry sectors (retail tenancy, franchising, financial services and retail supply chain).

Small business flyers have been produced in a number of languages. As well as being distributed at festivals and presentations they are now available on the Commission's Small Business website.

### **Cooperation with other agencies and associations**

The small business program further developed its cooperative activities with other Commonwealth, State and Local Government agencies and industry associations that have a business information role.

The Commission liaised regularly with the Federal Office of Small Business, particularly in relation to the Franchising Code of Conduct.

The Commission also continued to liaise with its Small Business Advisory Group (SBAG) 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.

The success of the Commission's Competing Fairly Forums was largely due to the support and cooperation of business and industry associations, community groups and local governments.

Building upon the enthusiasm shown in the forums the small business program will be exploring partnership relationships with local authorities in regional areas.

### **Rural and regional outreach program**

The small business managers in each State and Territory continued to organise regular seminars, presentations and field trips to increase awareness and understanding of the Trade Practices Act in rural and regional areas.

They attended local trade shows, festivals and business expos giving them further opportunities to meet with small business owners.

In the early part of 2000–01 the main area of concern to small business was the introduction of the New Tax System. The small business managers worked closely with the Commission's GST unit and the Australian Taxation Office to ensure that small businesses understood their rights and obligations under the new GST provisions of the Act.



## Industry codes of conduct

The Commission continued in its role of administering and enforcing the mandatory Franchising Code of Conduct.

In October 2000 the Government announced its response to the review of the code. The review's findings revealed that the majority of participants in the franchising industry support the continuation of the mandatory code. The Government accepted the review's finding and the code continues to apply to franchising activities in Australia as a single generic code.

In responding to other recommendations and conclusions in the review's findings, the Government foreshadowed that several modifications would be made to the code to make it more flexible.

The legislative amendments were announced on 29 June 2001 and they will become operative on 1 October 2001.

In early 2001 the small business program began to take a role in relation to other industry-to-industry codes, including the Code of Conduct for Film Exhibition and Distribution.

## Court actions

### Franchising Code of Conduct

**Australian Industries Group (Half Price Shutters)**  
Proceedings were instituted in the Perth Federal Court on 4 September 2000 against Australian Industries Group (Half Price Shutters), Tony Gulloti (the national manager) and Robert Keirle (a former director). The matter relates to alleged breaches of the Franchising Code of Conduct. There were also allegations of false representation about profitability and unconscionable conduct.

The Commission is seeking court orders including declarations, injunctions, orders requiring the payment of compensation, institution of a trade practices compliance program and costs.

### Unconscionable conduct

**Cheap as Chips Franchising Pty Ltd and anor**  
Proceedings were instituted on 30 June 1999 in the Federal Court, Melbourne. The Commission alleged that Cheap as Chips Franchising Pty Ltd and its director, Mr Peter Hudousek, engaged in unconscionable conduct and contravened the mandatory Franchising Code of Conduct. On 14 March 2001 the Federal Court made orders by consent against the company and the director in relation to their dealings with three franchisees.

### GB Berbatis and Ors t/a Farrington Fayre Shopping Centre

Proceedings were instituted in the Federal Court, Perth, in March 1998 but the trial was adjourned in October 1999 because of concerns about the constitutional validity of s. 51AA. The section was found to be constitutional on 14 January 2000. In September 2000 the court found that the landlord and its representatives had engaged in unconscionable conduct against one of the tenants but had not done so in two other instances. The owners appealed and the Commission launched a cross-appeal. On 27 June 2001 the Full Federal Court upheld the appeal by the owners and dismissed the Commission's cross appeal. The Commission has sought special leave to appeal the decision to the High Court.

### Samton Holdings Pty Limited

Proceedings were instituted in the Federal Court, Perth, in February 1999. On 24 December 1999 proceedings were deferred pending the decision in the Farrington Fayre matter as to the constitutional validity of s. 51AA. On 29 November 2000 the judge concluded that while the company had struck a hard bargain it fell short of being unconscionable. The court dismissed the Commission's application against the company and the six landlords. An appeal was heard before the Full Federal Court on 28 May 2001. The decision is reserved.

### Simply No Knead Franchising Pty Ltd

The Commission instituted proceedings on 16 June 1999 in the Federal Court, Melbourne. On 17 May 2000 the Supreme Court of Victoria ordered that SNK be wound up in insolvency.

In September 2000 Justice Sundberg of the Federal Court concluded that the conduct by SNK disclosed 'an overwhelming case of unreasonable, unfair, bullying and thuggish behaviour' against five franchisees that amounted to unconscionable conduct for the purposes of s. 51AC of the Act.

#### **Avanti Investments Pty Ltd/Barbaro**

On 27 April 2001 the Commission instituted proceedings in the Federal Court in Adelaide seeking injunctions, declarations, findings of fact, and orders to vary the market gardeners' agreements so that they are no longer responsible for the cost of excess water. The first directions hearing is set down for September 2001.

#### **National Australia Bank**

On 3 November 2000 the Commission instituted proceedings in the Federal Court, Hobart, against the National Australia Bank (NAB) and a business banking manager in Tasmania, Carlton Dixon. The Commission alleged that the NAB had engaged in unconscionable conduct in obtaining and enforcing a personal guarantee for \$200 000 from a Tasmanian woman as security for a business loan to a company of which the woman's husband was a director. At the time the guarantee was executed, the woman's husband was seriously incapacitated with amnesia after an accident.

On 5 June 2001 the court made orders by consent declaring NAB had acted unconscionably in obtaining and enforcing the guarantee; restraining the bank in Tasmania and its manager Carlton Dixon from obtaining guarantees without properly explaining their nature and the need to obtain independent legal advice before the guarantee is signed; requiring the bank to notify all lending staff in Australia of new lending requirements. NAB also annulled the guarantee, paid \$28 500 in damages to the Ashtons, and repaid monies recovered in excess of amounts owing on the Ashtons' home mortgage.

## **International activities**

The Commission's international activities are targeted to help other countries achieve effective competition and consumer protection regimes and to develop a 'culture' of competition to develop more competitive and fair overseas markets, while improving access for Australian exporters.

The international impact of the Commission's initiatives is substantial given the wide range of activities currently undertaken by staff. The focus on this work is also increasing as the Commission is more often faced with competition and consumer protection issues with an international dimension.

### **Formal cooperation agreements**

On 17 July 2000 the Commission signed a bilateral cooperation arrangement with the US Federal Trade Commission (FTC) to facilitate information exchange and enforcement cooperation on consumer protection matters. A second agreement gave the Commission access to the US FTC's complaints handling database 'Consumer Sentinel'.

On 26 October 2000 the Commission entered into its first tripartite cooperation arrangement with the Canadian Competition Bureau and the New Zealand Commerce Commission. The arrangement established a framework for notification, coordination and cooperation on competition and consumer protection enforcement activities, exchange of information and avoidance of conflict.

Negotiations with several other competition and consumer protection agencies around the world are currently under way. Positive outcomes of these negotiations will significantly increase the Commission's network of formal cooperation arrangements to facilitate information exchange, cooperation and assistance in enforcement matters, and provide technical assistance to emerging economies.

### **Cooperation in enforcement matters**

The Commission is increasingly cooperating with its international counterpart agencies on competition, consumer protection and regulatory matters to effectively enforce laws in Australia and overseas. In an environment where illegal conduct is increasingly of a cross-border

nature, the Commission places enormous importance on establishing and utilising its international networks to achieve positive outcomes for consumers in Australia and overseas.

Common examples of matters involving enforcement cooperation over the past year have included merger and cartel cases, and international lottery and marketing scams.

## International forums

### OECD

The OECD Competition Law and Policy Committee (CLP) and the Joint Group on Trade and Competition meet three times a year in Paris. One of the priority work areas over the past year has been hard core cartels and the use of sanctions, leniency policies and other investigative tools, and cooperation between competition authorities to combat the effects of global cartels.

During 2000–01 round-table discussions were held in relation to joint ventures; e-commerce; road transport; compliance programs; transnational mergers; intellectual property rights; subsidies and state aid; training programs and telecommunications.

### APEC

The Commission continued its active participation in the Asia–Pacific Economic Cooperation (APEC) Competition Law and Deregulation Group. Meetings in 2001 have taken place under the presidency of the People's Republic of China. Work within this group continues to focus on regulatory reform in APEC economies, technical assistance and development programs, and capacity building and institutional development in the region.

### WTO

The Commission continues to take a keen interest in developments in the World Trade Organisation (WTO) Working Group on the Interaction Between Trade and Competition Policy. The future of the group is likely to be determined at the next WTO ministerial meeting in Doha, Qatar in November 2001.

### ISCCO

On 15 and 16 November 2000 the International Society of Consumer and Competition Officials (ISCCO) conducted its second workshop for the year in Durban, South Africa. The meeting titled, *Governments Delivering Consumer Welfare*, was co-chaired by outgoing ISCCO President, Mr Allan Asher and by the new acting President, Dr David Cousins. The workshop also drew delegates from Argentina, Fiji, Hong Kong, India, Malaysia, Papua New Guinea, South Africa, St. Lucia, Swaziland, Sweden, Trinidad and Tobago, the United Kingdom, the United States, Vietnam, Zambia and Zimbabwe.

The workshop centred around the discussion of four main themes:

- challenges for new competition and consumer protection agencies;
- taking advantage of network tools;
- addressing issues currently confronting government regulators; and
- educational strategies — examining tactics for educating consumers, business and governments on competition and consumer protection issues.

### Technical assistance

The Commission has been involved in several technical assistance activities in the past year, making available its resources and expertise in competition, consumer protection and utility regulation to countries with less developed regimes. One example was the Commission's involvement in a high level briefing on electricity reform in Russia in May 2001 that was coordinated by the OECD. Mr Michael Rawstron, General Manager of the Commission's Electricity Unit, represented the Commission at the meeting.

Another major aspect of the Commission's liaison and technical assistance work involves hosting visits to Australia by our international counterparts. During 2000–01 the Commission hosted short-term visits to Australia by government officials from a range of economies including: Argentina, Canada, the People's Republic of China, Chinese Taipei, Egypt, Fiji, Germany, Hong Kong, India, Japan, Korea, Lebanon, Macau, Malaysia, New Zealand, Papua New Guinea, Peru, the Philippines, Singapore,

Sri Lanka, South Africa, Sweden, the United Kingdom, the United States of America, and Vietnam.

The Commission has also conducted more extensive 'in country' training in a number of emerging economies, as outlined below.

### **Indonesia**

The Commission has participated in an ongoing consultancy project, with funding assistance from AusAID, to provide technical assistance to the Directorate of Consumer Protection of the Indonesian Ministry of Industry and Trade in the implementation of the Prohibition of Monopoly Practices & Unhealthy Competition Law. The assistance has included 'in country' consultancies to develop and define short-term and long-term objectives for the work of the Directorate.

### **India**

In April 2001 the Commission hosted a visit to Canberra by Mr Pradeep Mehta, Director-General of the Consumer Unity and Trust Society (CUTS), India. The visit explored and assessed possible future assistance between Australia and India on the implementation of a competition regime in India. Funding for the visit was received from the Australia-India Council and also for a consultant to provide comprehensive comments on India's draft competition legislation.

### **Thailand**

A consultancy project in the form of a scoping mission in Thailand was undertaken to assess the needs of the Trade Competition Commission (TCC), Department of Internal Trade, and to ascertain future work that could be undertaken by the Commission regarding the implementation and enforcement of new trade competition law. Funding assistance for the project was received from AusAID and future technical assistance work is currently being considered by the Commission.

### **Papua New Guinea**

The Commission has been working with the PNG Consumer Affairs Council, again with funding support from AusAID, to assist in the development of existing staff and organisational structures and resources to cope with the implementation and administration of proposed new trade practices legislation. Discussions have been held with PNG Treasury and the National Planning Office on the implementation of a national competition policy and introduction of a PNG competition and consumer law.

### **South Africa**

Over the past year the Commission has had officers from the South African Competition Commission and Competition Tribunal attend several of its investigations training courses in Canberra. This training assistance is part of a broader program of support from the Commission to assist in the development of an effective competition regime in South Africa.

### **Philippines**

With funding assistance from AusAID, the Commission is currently undertaking an extensive consultancy project for the development of a consumer movement in the Philippines. The project involves a diverse range of deliverables including the purchase of extensive IT equipment; development of a website; work placements in Australia to learn how the consumer movement operates here; preparation of position papers on issues of concern for Filipino consumers; conducting press campaigns on consumer issues; and holding regional conferences for consumer groups throughout the Philippines.

An important output of the project is the drafting of legislation for the Philippines. Amendments to the existing Consumer Act have been drafted to allow consumers to take action at a local court level for possible contravention of the Consumer Act. The project has also initiated the drafting of the country's first comprehensive competition legislation.

## Mergers

**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.

### 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).

### Why is the Commission concerned about mergers?

Mergers perform an important role in the efficient functioning of the economy. They allow firms to achieve efficiencies such as economies of scale, synergies and risk spreading. They also encourage an active 'market for corporate control' in which under-performing firms and managers are replaced by better ones.

However, in some cases mergers may also have anti-competitive effects by altering the structure of markets and hence the incentives for firms to behave competitively. This is the concern of the Act and the Commission.

The primary reason for this concern about mergers and joint ventures, especially between direct competitors, is that they increase the likelihood that the merged firm could set prices above the competitive level, or otherwise distort competitive outcomes, either alone or in coordination with other firms in the same market.

Merger and acquisition analysis constitutes an important part of the Commission's work. The Commission's role in mergers and acquisitions arises from s. 50 of the Trade Practices Act, which prohibits an acquisition if it has the effect, or would be likely to have the effect, of substantially lessening competition in a market.

This test explicitly recognises the link between market structure and market power, and the need to respond to potential threats arising from the exercise of unilateral or coordinated market power. The Commission also examines joint venture arrangements within the same conceptual framework.

## National champions argument

It is often argued that Australian industries need to develop the critical mass necessary to compete internationally. However, obstacles to export growth may face industry participants of all sizes. It is not apparent that, simply by entering a collaborative arrangement like a merger or joint venture, a participant's ability to compete internationally is enhanced. Size is often not necessary to be able to compete on world markets.

Internationally competitive businesses are more likely to develop when there is effective domestic competition, rather than national dominance.

In many cases, domestic rivalry rather than national dominance is more likely to breed businesses that are internationally competitive. When firms merge with the aim, for instance, of enhancing exports, domestic prices may rise until they reach import parity (if the goods were previously priced below import parity) while exports are at a lower price. A merged entity may use its market power to increase domestic prices and so subsidise its export price. Ultimately, Australian consumers and industry may be forced to pay a higher price to underpin the merged entity's export sales.

It is more likely that intense domestic competition leads to dynamic gains as firms are forced to improve and innovate while actions that limit competitive pressure may actually lead to poorer export and international performance.

The Commission's publication, *Exports and the Trade Practices Act*, identifies the arguments that the Commission considers most relevant to claims for mergers that will enable Australian firms to operate effectively in world markets. The Act is a flexible piece of legislation that allows for the use of s. 87B undertakings, authorisation, or the formation of collaborative arrangements for export that fall within the protection of s. 51 (2)(g) of the Act.

Sometimes the trade off between loss of competition in the home market and benefits to Australia from a firm playing a role in world markets is unfavourable in terms of the public interest. And while in some cases mergers create monopolies or 'home champions' in the home market, they are not necessarily firms well prepared to compete in world markets.

The Commission takes full account of real and potential import competition and does not oppose mergers when imports can be shown to provide effective discipline on domestic businesses. The Commission also assesses the dynamic market factors affecting a particular entity, including the international environment in which the company operates. Examples include the marketing arrangements between Bega Cheese, Bonlac Foods and the New Zealand Dairy Board; the acquisition of North Forest Products by Gunns; and Southcorp Wines, acquisition of Rosemount Estates.

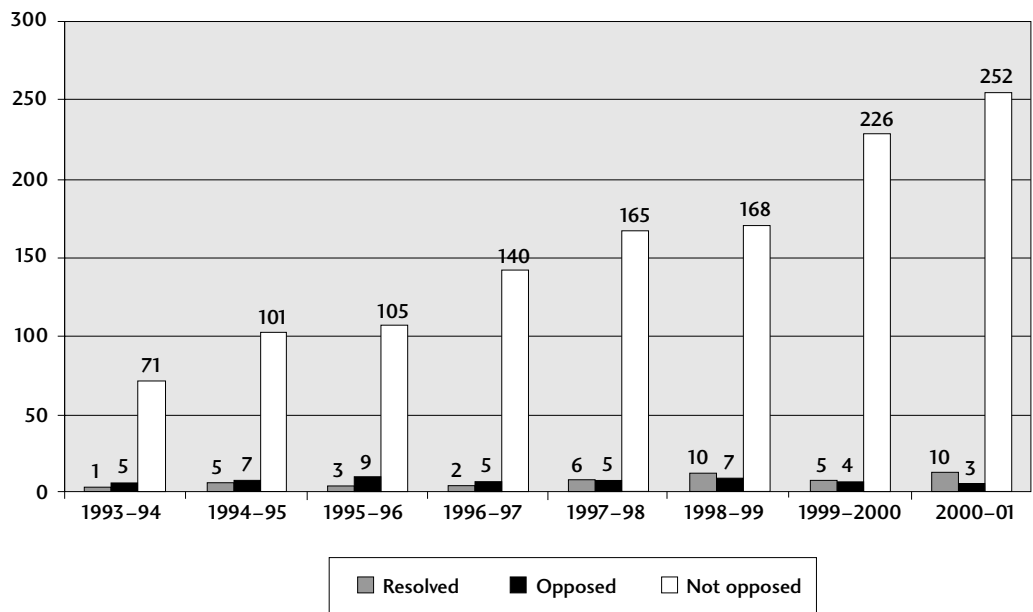
## Year in review

### Key statistics

In 2000–01 the Commission considered 265 mergers, asset sales and joint ventures. Of these it objected to 13 on the basis that they were likely to substantially lessen competition. Ten of these proceeded following the provision of enforceable undertakings under s. 87B of the Act. The remaining three were withdrawn following Commission objection. Another major matter was withdrawn before decision following expressions of Commission concern.

As the chart illustrates below the number of merger matters examined by the Commission has steadily risen over the past few years. The chart also shows that the Commission only opposes a small percentage of mergers brought to its attention. In fact the proportion of mergers which the Commission believes substantially lessen competition has remained roughly constant at 4–5 per cent a year.

**Figure 4.1. Mergers not opposed, opposed and resolved with the ACCC**



The past year saw major activity in the resources, building materials, airlines, agribusiness and supermarket sectors. Most mergers in the resource sector raised little concern given its global nature. High levels of imports or internationally set prices mitigated many of the concerns about increased concentration.

The building material industry continues to achieve efficiencies and maintain competitiveness through mergers and joint ventures. The Commission considered several proposals, some of which were not completed because of commercial considerations. There remains considerable activity in the concrete and associated quarrying and aggregates sectors. Tolling and other joint arrangements continue to be proposed and this activity is likely to continue.

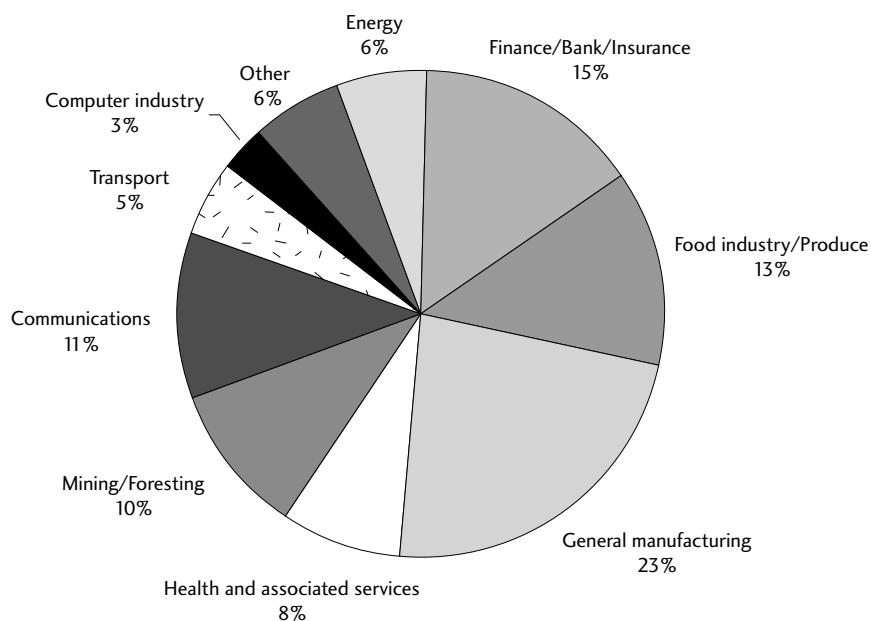
The airline industry was shaken by the problems encountered by regional airlines and new entrants to interstate routes. The outcome is higher concentration in the hands of the two major airlines. The Commission obtained s. 87B undertakings to ameliorate competition concerns, especially regarding slot access at Sydney airport.

The agribusiness sector is also being influenced by structural change, international trading pressure and deregulation. The milk industry (fresh and manufactured product), grain handling, storage and trading, timber, and rural merchandise wholesaling, distribution and retailing were all areas in which the Commission was involved in the past year.

The demise of Franklins was of major concern to many in the supermarket industry, as its competitive impact, along with the independent sector, has always been viewed as an important counter and alternative to the major chains. The Commission accepted undertakings to address concerns about the competitive effect of the sale of Franklins stores. Major chains in the wine and liquor retailing sector have attempted to consolidate their positions. Several smaller independent chains have been acquired by the majors and this activity shows no signs of abating.

A breakdown of mergers by industry is outlined below. The highest number of mergers occurred in general manufacturing (23 per cent) and second highest was finance, banking and insurance with 15 per cent. Although health and associated services accounts for only 8 per cent, this is higher than previous years and is expected to continue to rise.

**Figure 4.2. Percentage of mergers by industry**





The Commission is pleased to note the four star rating of its merger handling by the Global Competition Review. The rating endorses the Commission's approach to its merger responsibilities — the general consensus being that staff are well prepared and the overall process is handled efficiently and speedily.

### **International liaison**

Another recent trend has been a major increase in the number of global mergers, with commentators forecasting this continuing, particularly in sectors driven by technological change or when economies of scale need to be achieved. Examples include resource-based industries, pharmaceutical industries and media and finance. Mergers such as De Beers/Ashton Mining, Metso/Svedala, Glaxo Wellcome/Smithkline Beecham and Warner Music/EMI have generated competition issues in many countries. Australian companies have also engaged in substantial overseas acquisitions, such as BHP/Billiton.

Consequently, the level of contact between the Commission and overseas agencies on merger matters has grown. Agencies have also discussed mergers which may not have been transnational in character, but about which they have been able to provide information, especially regarding market definition. The Commission has particularly valued information about the gas, electricity and telecommunications industries from EU, UK and US authorities.

In assessing De Beers, proposed acquisition of Ashton Mining Limited, the Commission liaised with the Canadian, United States and European Union competition authorities. Liaison with the EU was particularly extensive and useful, allowing the Commission to develop a better understanding of the global trade in diamonds.

Contact with overseas jurisdictions was also used extensively in assessing the global rock and mineral processing equipment merger between Metso and Svedala. In this case the EU obtained divestiture orders from the parties which greatly reduced the anti-competitive impact of the transaction worldwide and on Australian markets.

### **Future outlook and priority areas**

The Commission expects the increase in merger activity to continue. Many factors, largely outside the direct control of the Commission, have driven this growth and will continue to do so. They relate mainly to the commercial domestic and international business environment and include the effect of continuing deregulation, privatisations and asset sales, the impact of a more liberal trading environment and rapid, sometimes extreme, technological change.

There is likely to be a push for increased consolidation in several already concentrated industries and in the recently disaggregated utilities. Pressure is likely to continue arising from convergence and cross ownership in many industries, with the utilities again prominent.

Industry areas of particular priority to the Commission are likely to be financial services, telecommunications and broadcasting, electronic commerce, transport and energy. The health sector, which is currently undergoing significant structural change, is also of major interest. Consolidation is likely to accelerate in areas such as medical practices, ancillary services (pathology, radiology) and private hospitals, with vertical arrangements in the broader industry more likely to come under closer scrutiny.

Agribusiness continues to experience considerable pressure to restructure and, in many instances, consolidate.

### **Section 87B undertakings**

When the Commission has had concerns about the competitive implications of a proposal it has generally accepted court enforceable undertakings addressing those concerns. Section 87B undertakings are an important tool under the Trade Practices Act to improve competition and efficiency in markets. They are a flexible alternative to the Commission simply opposing an acquisition that is likely to substantially lessen competition.

The Commission looks most favourably on proposed undertakings that address structural issues in the relevant market. Structural solutions can promote long-term competitive markets. Regulatory costs are one-off and do not require a permanent or semi-permanent role for the

Commission. The divestiture of particular assets or divisions of the merged company may sometimes remove competitive concerns.

Over the past year the Commission accepted s. 87B undertakings for 10 matters, listed below in table 4.1. The Commission keeps a public register of s. 87B undertakings granted and further details are available in the *ACCC Journal*.

**Table 4.1. Section 87B undertakings relating to mergers and acquisitions accepted by the ACCC in 2000–01**

Acquirer	Target	Date accepted
Glaxo Wellcome Australia Pty Ltd	Smithkline Beecham Holdings (Australia) Pty Limited	6 July 2000
BP Australia Ltd	Burmah Castrol Australia	7 December 2000
Mayne Nickless Ltd	Australian Hospital Care	29 January 2001
PaperlinX	Spicers Paper Ltd	30 January 2001
Wesfarmers Dalgety Limited	IAMA Limited	8 February 2001
Ansett	Hazelton Airlines Limited	8 March 2001
Smorgon Steel Group Ltd	Email Limited	20 March 2001
Qantas Airways Limited	Impulse Airlines	21 May 2001
Woolworths Limited	Dairy Farm/Franklins	7 June 2001
Gunns Ltd	North Forest Products	21 June 2001

## Major merger matters assessed

### Smorgon Steel Group Limited and Email Limited

On 1 June 2000 the Commission announced it would not oppose Smorgon Steel Group Limited's proposal to acquire Email Limited.

Smorgon and Email are major distributors of metal products in Australia. Together they account for about 50 per cent of all metal products distributed. BHP accounts for another 25 per cent and small, independent distributors the remaining 25 per cent.

In assessing the likely competitive effects of the acquisition the Commission considered the effect that importers and imported product play in the market, the relatively homogeneous nature

of the commodities involved and the barriers to entering the metals distribution market.

Although the Commission considered that the acquisition would result in a high degree of concentration, it concluded that the continued presence of a large, vertically integrated competitor in BHP, together with the existing and potential import competition, was likely to ensure that the merger did not result in a substantial lessening of competition.

### Joint bid by Smorgon Distribution Limited and OneSteel Limited for Email Limited

Following the Commission's acceptance of Smorgon Steel Group's bid for Email the proposal was varied when Smorgon entered

into an agreement with OneSteel Limited in October 2000. The agreement involved breaking up Email's metals distribution businesses between Smorgon and OneSteel and the sale of Email's other businesses (whitegoods, metering and security).

In response to the Commission's concerns about this proposal, the parties offered undertakings limiting their ability to exchange information, setting deadlines for the division of assets and requiring some assets to be sold rather than divided between the parties. On the basis of the undertaking offered, the Commission decided on 16 January not to oppose the acquisition. The undertaking was finalised on 21 February 2001.

#### **Mayne Nickless Limited and Australian Hospital Care**

On 30 January 2001 the Commission announced that it had decided not to intervene in the proposed acquisition of Australian Hospital Care (AHC) by Mayne Nickless Limited (MNL) on the basis of undertakings provided by Mayne Nickless to divest four of the AHC hospitals.

The Commission had already informed Mayne Nickless that the acquisition, as it was originally proposed, was likely to result in a substantial lessening of competition. After the acquisition MNL would have had almost 90 per cent market share on the Gold Coast and 40 per cent in Melbourne. Without it, AHC would remain as a competitor to MNL with equivalent capacity and coverage in the relevant regions. The Commission considered that the merged entity could increase prices or reduce the level of service quality.

MNL subsequently offered undertakings to the Commission to divest four hospitals: Allamanda on the Gold Coast and Northpark, Mitcham and South Eastern in Melbourne. On the Gold Coast the undertaking will maintain current market concentration levels. In Melbourne the proposed divestiture will reduce the merged entity's market share of private hospital beds in metropolitan Melbourne to about 30 per cent and prevent high concentration levels in localised areas.

The divestitures mean that health insurers will have an option other than Mayne Nickless when negotiating hospital purchaser provider

agreements, constraining the ability of the merged firm to increase prices. The Commission considered that the proposed divestiture satisfactorily addressed its competition concerns.

#### **BP Amoco and Burmah Castrol**

On 6 July 2000 the Commission announced that it would not oppose BP Amoco's acquisition of Burmah Castrol.

The main competitive overlap between BP Amoco and Burmah Castrol was in the manufacture and supply of lubricant products and in fuel retailing.

The Commission found that numerous other lubricant manufacturers competed with BP Amoco and the other domestic oil refiners. It concluded that competition in the retail market for automotive lubricants is quite intense and was unlikely to be diminished by this merger as BP Amoco had not aggressively marketed its own brand lubricant products in Australia.

Most of the business of Burmah Castrol's retail fuels business, Burmah Fuels, had been transferred to other parties before the acquisition was completed. Its wholesale fuels business had been sold to international oil trader, Trafigura. Control of around half of the retail fuels network had been transferred to 7-Eleven, and various other retail outlets had been sold.

However, the Commission had concern about BP Amoco's continuing interest in a number of Burmah Fuels' retail service station sites. BP Amoco agreed to an undertaking relating to divestiture of those sites. By the end of June 2001 BP Amoco had divested its interest in 25 former Burmah Fuels sites.

#### **Wesfarmers and IAMA**

On 8 February 2001 the Commission announced that it would not oppose Wesfarmers' proposed acquisition of IAMA but only after significant undertakings were provided by the parties.

Wesfarmers Dalgety is a fully owned subsidiary of Wesfarmers. IAMA and Wesfarmers Dalgety are two of the largest rural merchandise wholesalers and retailers in Australia.

The Commission had concerns that the proposed merger would substantially lessen competition in several markets for farming inputs in Western Australia.

The distribution of fertiliser in Western Australia was a primary concern. CSBP was the dominant supplier of fertiliser to grain farmers in WA. CSBP along with Wesfarmers Dalgety was owned by Wesfarmers. CSBP was distributed through the Wesfarmers Dalgety, Elders and RTC rural merchandise retail networks. CSBP's main competitor in the market for fertiliser in WA was Summit Fertilisers. The primary distributor for Summit in WA was IAMA, which until August 2000 had also been Summit's exclusive distributor.

The Commission had serious reservations about allowing the situation to develop whereby Wesfarmers not only owned the dominant brand of fertiliser in CSBP, but also took majority ownership of IAMA, the primary distributor of CSBP's main competitor in Summit.

The Commission accepted an undertaking from the parties that the new business in the next two years would take no steps to constrain the terms on which the agents and affiliates of the new business deal with fertiliser suppliers and would continue the existing distribution agreement between IAMA and Summit.

The Commission was also concerned by the high level of market concentration that a merged Wesfarmers Dalgety and IAMA would have in herbicides and animal health and nutrition products and the possible ramifications this could have on competition for these products in Western Australia.

These concerns were addressed through an undertaking by the new business to sell one of the two rural merchandise outlets that it would have had in Esperance, Katanning, Merredin, Narrogin and Geraldton. The new business was required to sell to another retailer of rural merchandise unaffiliated to the new business.

#### **Woolworths Limited and Franklins Limited**

On 22 May 2001 the Commission announced that it had reached in-principle agreement with Franklins Limited and Dairy Farm Management Services Limited for the sale of stores in the

Franklins supermarket chain. The Commission agreed, subject to being given appropriate undertakings, not to intervene in the sale of 67 stores to Woolworths Limited and the balance of 200 stores being offered to the independent sector. The Commission considered that the proposal would facilitate the entry of two new players, Foodland Associated Limited and Pick 'n Pay, into the eastern Australian supermarket industry. The Commission believed the proposal gave independent grocery retailers in Australia a major boost and provided a strong competitive force in the supermarket industry.

On 7 June 2001 the Commission announced that it had accepted s. 87B undertakings from Dairy Farm, Franklins and Woolworths. They primarily deal with issues such as the utilisation of brands owned by Franklins, the number of stores to be acquired by various purchasers and a requirement for Woolworths to divest a number of stores. The Commission therefore decided not to oppose the proposal.

#### **Qantas Airways Limited and Impulse Airlines Holdings Limited**

Qantas Airways Limited and Impulse Airlines Holdings Limited publicly announced a proposal to enter into a commercial arrangement on 1 May 2001.

Impulse claimed that it was a failing firm and would become insolvent on 14 May 2001. The Commission independently evaluated this claim and concluded that the withdrawal of support by certain investors had prevented Impulse from remaining viable.

The likely failure of Impulse and the lack of alternative buyers led the Commission to consider the impact of two alternatives on longer term competitiveness in domestic aviation. These alternatives were to allow Impulse to go into receivership or allow Qantas to acquire the company.

After extensive evaluation the Commission concluded that while the acquisition would lessen competition, the competition concerns could be addressed by undertakings. Under the other alternative, that is a receivership for Impulse, a less competitive outcome was likely.

The undertakings accepted from Qantas address the Commission's concerns by including assurances on access to peak slots (7 a.m. to 9 a.m. and 5 p.m. to 7 p.m.) to enable new and emerging airlines to compete more effectively on interstate trunk routes.

On routes operated only by Qantas and Impulse, Qantas provided an undertaking about maintaining services (with regard to frequency and capacity) and restrictions on airfare increases.

The Commission also welcomed the commitment made by Qantas to the Tasmanian Government to maintain services to Tasmania.

After taking into consideration the undertakings, the Commission decided not to oppose the proposed merger.

#### **PaperlinX Limited and Spicers Paper Ltd**

On 30 January 2001 the Commission accepted a court enforceable undertaking from PaperlinX to address concerns about its proposed acquisition of Spicers.

The undertakings include the divestiture of the Edwards Dunlop and Commonwealth Paper merchant businesses. It also secures the transfer of a major brand name to the Edwards Dunlop business. PaperlinX has also agreed in the undertakings to a process for assessing future anti-dumping complaints.

The undertakings follow the Commission's decision late last year that the original proposed acquisition was likely to breach s. 50 of the Trade Practices Act by substantially lessening competition in the market for the supply of fine paper by merchants.

For the next three years the undertakings stipulate that before PaperlinX can lodge an anti-dumping application, it has to obtain an opinion from an independent adviser on the application's prospect of success. The independent adviser must certify that the proposed anti-dumping application is not frivolous or vexatious.

The Commission has sought these undertakings to ensure that the divested entity will be a viable and vigorous competitor in the fine paper industry.

#### **Medical Imaging Australasia (MIA) and Benson Radiology**

On 23 May 2001 the Commission announced that it would oppose the bid by Medical Imaging Australasia (MIA) to acquire Benson Radiology.

Benson Radiology is one of three main private radiology practices in the Adelaide region along with Perrett Medical Imaging and Dr Jones & Partners. MIA already owns Perrett Medical Imaging.

Overall, the Commission found that the proposed acquisition would lead to a substantial lessening in competition for the provision of radiology services to private patients in the Adelaide region.

The proposed acquisition would have given MIA more than 50 per cent market share for private patients in Adelaide.

The Commission was concerned that barriers to entry for the provision of radiology services are high.

During market inquiries the Commission found there was limited competitive overlap between private radiology practices and public hospital radiology departments. The Commission therefore believes that public hospital radiology departments would not provide an effective competitive constraint against the conduct of the merged entity.

Ultimately the Commission was concerned that the proposed acquisition would result in higher prices for radiology services for private patients in Adelaide. The Commission decided to oppose this acquisition.

#### **Cable & Wireless Optus Limited**

C&W Optus announced a strategic review of its business in mid-2000. In early 2001 three bidders emerged for its business: Singapore Telecom, Vodafone Pacific and Telecom New Zealand.

#### **Singapore Telecom**

On 26 March 2001 SingTel announced it had reached agreement on the terms of an offer to acquire C&W Optus. The Commission decided on 10 April 2001 that it would not oppose the acquisition. Given that SingTel's acquisition of C&W Optus essentially represents new entry

into the Australian telecommunications industry replacing the company, and consequently will not change the structure of any market in which C&W Optus currently competes, the acquisition is unlikely to substantially lessen competition in any Australian telecommunications market.

#### *Vodafone Pacific*

Vodafone proposed to retain Optus Mobile division, on-sell Optus' other business divisions, and divest mobile subscribers and assets to Hutchison. While the Commission did not reach a final view on Vodafone's proposal, it did have significant competition concerns about the proposal. In particular, the Commission was concerned that Vodafone's acquisition of Optus' mobile business would substantially lessen competition in the national market for mobile telephony services because the acquisition would:

- remove one of only three national mobile network operators from the market;
- result in a market structure whereby together Vodafone and Telstra would jointly control more than 98 per cent of all subscribers while One.Tel and Hutchison, the only other mobile network owners in Australia, would account for less than 2 per cent of all subscribers; and
- remove the most vigorous provider of wholesale mobile services from the market.

Before the Commission reached a final view on Vodafone's proposal, Singapore Telecom and Optus announced agreement on the terms of an offer to acquire Optus. Singapore Telecom's acquisition does not raise competition concerns under s. 50.

#### *Telecom Corporation New Zealand*

TNZ proposed to acquire C&W Optus' three business divisions: Optus Mobile, Data and Business (D&B), and Consumer and Multimedia (C&M), and on-sell D&B and C&W, while retaining Optus Mobile.

The Commission acknowledged that TNZ proposed to on-sell D&B. At the same time the Commission also noted that, because of the nature of the transaction, TNZ would for a period of time, own the whole of CWO, including the D&B division. The Commission was concerned about the potential for a significant degree of overlap between the D&B businesses

of TNZ and AAPT. Although the Commission did not oppose the proposed acquisition, it did express the opinion that these concerns could potentially require s. 87B undertakings. However, since Singapore Telecommunications subsequently made an offer for CWO on 26 March 2001, further analysis of TNZ's offer was no longer necessary.

#### **Howard Smith Limited and OPSM Protector Limited**

The Commission found that within the industrial safety equipment market, the merged entity — if Howard Smith Limited acquired OPSM Protector Limited — would hold a market share of about 42 per cent.

However, the market is characterised by substantial levels of imports and the barriers to entry are not high. The Commission also found there were many alternate suppliers who could access increased volumes of product from foreign suppliers if the merged entity raised prices.

The Commission also found that direct supply by manufacturers provided a significant competitive constraint and that the large number of major customers possessed a significant countervailing power.

The Commission concluded that the proposed acquisition would not substantially lessen competition and decided not to intervene in the proposed acquisition.

#### **PMP and IPMG**

PMP and IPMG, two companies involved in commercial printing, magazine publishing and magazine distribution, approached the Commission in February 2001 proposing to merge their companies.

After extensive market inquiries the Commission decided that the merger would lead to a substantial lessening of competition in the national markets for heat-set web printing services and for distribution of consumer magazines to retail outlets.

Heat-set web printing is used to print large circulation and glossy magazines, retail catalogues and many newspaper inserts. The two companies had a combined market

share of over 75 per cent. Heat-set web printing is the only form of commercial printing that can quickly produce large circulation retail catalogues and consumer magazines of the required quality in sufficient volume.

Entry barriers to this market are high and imports are generally unviable. Substitutes such as cold-set web printing or sheet-fed printing are relevant only at the margin. Moreover there was evidence that the merging parties competed vigorously with each other, and appeared to be each other's greatest competitive constraint.

In magazine distribution the merging parties had a combined market share in excess of 50 per cent, with much of the remainder controlled by a subsidiary of Australia's largest magazine publisher, ACP.

Distribution involves functions such as allocation, packaging, billing and merchandising. Scale was found to be a major barrier to entry. Comprehensive new entry involving these functions would have to occur instantaneously across all of Australia, or else publishers would not be interested in using a new distributor. New entry would probably also involve substantial costs.

The merged entity's vertical integration of publishing and distribution posed significant problems for publishers. This was because the entity would be a major competitor to many smaller publishers that may have to rely on it to distribute their magazines.

The Commission therefore decided to oppose the merger.

**Adsteam Marine Limited and Howard Smith**  
In March 2001 Adsteam Marine Limited announced that it proposed to acquire the towage interests of Howard Smith Limited.

Based on the view that Australian ports generally represent separate markets, the acquisition of Howard Smith's Victorian towage operations transferred market power from Howard Smith to Adsteam in the ports of Melbourne, Westernport and Geelong.

In the other relevant ports where Adsteam and Howard Smith had joint venture operations, Adsteam was already the managing shareholder of most of these towage operations. The Commission considered it was unlikely that the change in the shareholding of the joint venture towage operation in each relevant port would cause a substantial lessening of competition.

Accordingly, the Commission concluded in April 2001 that the acquisition was unlikely to substantially lessen competition.

#### **Amatek Limited and WESFI Limited**

On 9 January 2001 the Commission decided that it would not oppose the acquisition of WESFI Limited by Amatek Limited.

WESFI's principal activities are the manufacture and distribution of particleboard, medium density fibreboard and high-pressure laminates. The Amatek Group is a diversified building products manufacturer involved in decorated products, raw boards, concrete construction products, roll-formed steel products, insulation and glass fibre products.

The Commission decided that the proposed acquisition was unlikely to result in a substantial lessening of competition in any Australian market. The main reasons for the Commission's decisions were:

- Carter Holt Harvey (CHH) would potentially provide a significant constraint to the merged firm — it is relevant that Amatek has sourced a substantial part of its particleboard requirements from CHH and this may be met, post-acquisition, by WESFI;
- following the particleboard supply agreement between CSR (acquired by CHH in May 2000) and Amatek, Amatek's only manufacturing operations involved laminating of raw particleboard into decorative particleboard;
- low entry barriers exist into the laminating of raw into decorative particleboard; and
- likely expansion of capacity by Henderson who is also a manufacturer of particleboard.





## Assessing the public benefit

**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.

### 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 welfare of Australians may be enhanced in some cases by anti-competitive conduct, when the public benefits outweigh the costs of that conduct.

The adjudication process involves assessing the public benefits and detriments resulting from certain anti-competitive practices. When there is a net public benefit the Commission may grant statutory immunity from legal proceedings under the Act. As such, the adjudication role is essential in achieving the Commission's objective to improve market processes.

The Commission is responsible for processing and examining authorisation applications (those relating to electricity and gas distribution and marketing are dealt with in the Regulatory Affairs chapter), notifications of exclusive dealing and the rules for certification trade marks. The Commission aims to:

- assess applications and notifications in a timely and informed manner;

- provide a high level of quality in analysis; and
- ensure decision making is undertaken in a transparent and consultative manner.

## Authorisation

Authorisation provides protection from court action by the Commission or any other party for potential breaches of the competitive conduct provisions of the Act. The Commission can only grant authorisation if it is satisfied that there is a net public benefit from the conduct, and only after it has conducted public consultation and assessment.

The Commission cannot compel parties to seek authorisation but it does have a statutory obligation to rule on the applications it receives. It can revoke or review any authorisation it believes was granted on the basis of false or misleading information, or that contains conditions that have not been complied with, or when circumstances have changed materially since the authorisation was granted.

## Notifications

The notification process applies only to exclusive dealing conduct. It provides similar protection to an authorisation although the procedure is different. Immunity takes effect from the time when the notification is lodged (or soon after in the case of third line forcing). The Commission can revoke this immunity if it considers the public detriments are not outweighed by the public benefits.

## Certification trade marks

The Commission is also responsible for assessing the rules for the use of certification trade marks (CTMs) under the Trade Marks Act. In assessing CTMs the Commission must be satisfied that:

- the owner or approved certifiers are competent to certify that the goods or services meet the required standard; and
- the rules governing the use of the CTM:
  - (i) would not be to the detriment of the public; and
  - (ii) are satisfactory having regard to the principles relating to: restrictive trade practices in Part IV of the Act; unconscionable conduct in Part IVA; and unfair practices and product safety information in Part V.

**Table 5.1. Authorisation applications, notifications and CTMs 2000–01**

### Authorisation applications

	Opening balance	New applications	Applications withdrawn	Applications decided	Balance at end of year
Authorisation applications	24 (64)	24 (53)	5 (5)	15 (30)	28 (82*)
Minor variation applications	4 (8)	29 (32)	-	27 (34)	6 (6)
Revoke and substitute authorisation applications	2 (8)	3 (3)	-	- (6)	5 (5)
<b>Total</b>	<b>30 (80)</b>	<b>56 (88)</b>	<b>5 (5)</b>	<b>42 (70)</b>	<b>39 (93)</b>

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

\* Total figure includes 43 applications relating to electricity distribution and marketing arrangements and 11 applications relating to gas distribution and marketing arrangements.

## Notifications

Opening balance	New notifications	Withdrawn	Decided	Balance
38	345	2	318	63

## Australian Competition Tribunal applications for review

Opening balance	New applications	Withdrawn	Decided	Balance
1	-	-	1	0

## Certification trade marks

Opening balance	New applications	Withdrawn	Decided	Balance
39	19	2	11	45

## Year in review

During 2000–01 the Commission received 53 applications for authorisation and 345 notifications for exclusive dealing. It made 30 determinations, none of which were appealed to the Australian Competition Tribunal.

The Commission has continued to receive applications relating to distribution and marketing arrangements in the gas and electricity industries, especially those relating to the national electricity market. These are discussed in chapter 6.

Excluding gas and electricity the Commission received 24 new authorisation applications, 29 applications for minor variations of authorisations and three applications for revocation and substitution of authorisations previously granted.

The Commission's adjudication workload has become increasingly complex reflecting the impact of industry deregulation and competition policy reform on areas once beyond the reach of the Act. The main adjudication issues that emerged during 2000–01 resulted from authorisation applications and are outlined below. Some of the major authorisations considered by the Commission are discussed at the end of this chapter.

## Rural and regional

Many businesses, particularly in the rural sector, have used the authorisation process to adjust from a regulated to a more competitive environment. Applications for authorisations from the rural sector, especially collective bargaining arrangements by producers with their processors, have generated substantial work for the Commission this year, and this trend is expected to continue.

For example, the Commission received two applications for authorisation last year following full deregulation of the dairy industry in July 2000. The first, lodged by Premium Milk Supply and given draft approval by the Commission, involved the collective negotiation of farm gate milk prices and milk quality standards by five cooperatives representing 430 dairy farmers with Pauls Limited in Queensland. A second, and potentially much broader reaching application, was lodged by the Australian Dairy Farmers' Federation (ADFF), and is currently being considered. The ADFF application is seeking authorisation to allow:

- the ADFF to undertake contractual negotiations with a dairy company on behalf of groups of dairy farmers, at their request; and
- any group of producers to negotiate collective contractual terms and conditions (including price) for the supply of milk to a dairy company without the ADFF's involvement.

During the year the Commission also granted authorisation to allow for collective negotiations between Victorian chicken growers and the individual processors to whom they supply in accordance with a code of conduct, following an application by Marven Poultry. Authorisation was also granted for agreements for the collective supply of sugar cane by CSR-contracted growers to CSR mills in Northern Queensland.

## Health and the professions

As the Commission focuses more on anti-competitive conduct in the professions, the number of applications for authorisation has increased from organisations involving professional or occupational associations, particularly in the health sector.

On 1 November 2000 the Commission received two applications from the New South Wales Department of Health relating to its policy for providing pathology services in public hospitals.

On 24 November 2000 the Royal Australian College of Surgeons (RACS) applied for authorisation of its processes in:

- selecting, training and examining surgical trainees in each of the nine specialities in which it conducts training;<sup>1</sup>
- accrediting hospital posts as being suitable for training surgeons; and
- assessing the qualifications of overseas-trained practitioners.

RACS lodged a supporting submission on 30 March 2001. On 2 May the Commission granted interim authorisation to RACS until it issues a draft determination on 31 December 2001, whichever is the earlier, at which time the interim authorisation will be reviewed.

## RBA/ACCC joint study

In October 2000 the Commission and the Reserve Bank of Australia published the results of a joint study of interchange fees and access in Australia's debit and credit card schemes. Interchange fees are the fees banks charge each other to process ATM, EFTPOS and credit card transactions between financial institutions.

The report found that the price signals and competitive responses that would be expected to keep interchange fees in line with costs have not worked effectively. Interchange fees for ATM, EFTPOS and credit card transactions were all significantly above the costs of providing these services.

Credit card interchange fees were of particular concern to the Commission because of the way in which these fees are collectively set by the credit card schemes' Australian member financial institutions.

The Commission and the RBA both have legislative responsibilities for competition issues in Australia's payments system. In March 2001, following extended negotiations with Australia's major banks about a possible authorisation of reformed credit card interchange fee arrangements, the Commission recommended that the RBA consider using its regulatory powers to reform credit card scheme interchange and membership arrangements. The Commission believed this was the most timely and effective way to reform the arrangements.

Consequently, in April 2001 the RBA 'designated' the Visa, MasterCard and Bankcard schemes in Australia as being subject to the RBA's regulatory powers under the *Payment Systems (Regulation) Act 1998*. The Commission will continue to liaise closely with the RBA to promote an efficient and competitive payments system.

## Review of past authorisations

The Commission also reviews past authorisations, many of which were not time limited. Since many of the early authorisations were granted, microeconomic reform, industry concentration and technological change have significantly altered the operating environment of many industries.

In consultation with the International Air Transport Association (IATA), the Commission has begun a review of authorisations granted 15 years ago covering IATA's activities. One outcome was an application in May 2001 by IATA for revocation of an existing authorisation dealing with resolutions made by IATA's airline members about the relationship between airlines and travel agents in Australia and the issue of

<sup>1</sup> The nine RACS specialities are: general surgery; cardiothoracic surgery; neurosurgery; orthopaedic surgery; otolaryngology-head and neck surgery; paediatric surgery; plastic and reconstructive surgery; urology; and vascular surgery.



a substitute authorisation. The Commission is currently undertaking public consultation on this application.

### **Australian Competition Tribunal decision — Australasian Performing Rights Association Limited**

In February 1998 APRA, a voluntary copyright collecting society, applied to the Australian Competition Tribunal for a review of a Commission determination denying authorisation and revoking notification protection of APRA's licensing arrangements.

APRA, the Commission and the Federation of Australian Commercial Television Stations participated in the hearing in November 1998. On 16 June 1999 the tribunal adjourned the proceedings for nine months to enable APRA to design rules both for a non-exclusive licence back system, and for a simplified alternative dispute resolution procedure. APRA's proposed amendments were not opposed by the Commission and FACTS, and on 20 July 2000 the tribunal granted authorisation and reinstated the notification.

### **Major authorisations and notifications finalised during 2000–01**

The Textile, Clothing and Footwear Union of Australia and The Council of Textile and Fashion Industries Limited

On 15 November 1999 the Council of Textile and Fashion Industries and the Textile, Clothing and Footwear Union of Australia applied for authorisation of arrangements that comprise the Homeworkers Code of Practice. The code is a voluntary self-regulatory scheme which accredits parties along the garment manufacturing and retail chain. The code also provides for commercial sanctions against people who breach the provisions.

The code aims to redress difficulties encountered by outworkers or homeworkers, including occupational health and safety issues, reducing the risk of exploitation of a disadvantaged group and providing information to homeworkers so they can better understand their entitlements.

The code supplements the outworker provisions of the Clothing Trades Award 1982, which is an award of the Australian Industrial Relations Commission in accordance with the *Workplace Relations Act 1996*.

The Commission concluded the arrangements would not substantially affect participating parties' ability to compete. On 31 July 2000 the Commission issued a final determination authorising the code based on a net balance of public benefits.

#### **Consumer Electronic Clearing System**

In August 2000 the Commission granted authorisations to the Australian Payments Clearing Association (APCA) in respect of the regulations and procedures for the Consumer Electronic Clearing System (CECS). The CECS arrangements aim to coordinate minimum standards and procedures for ATM and EFTPOS payment instructions between CECS members, and all aspects of the clearing cycle. In granting authorisation the Commission concluded that the minimum standards and procedures would result in net benefit to the public by enhancing the security and integrity of the ATM and EFTPOS network.

However, the Commission granted the authorisation on the condition that the CECS regulations be amended to ensure that:

- CECS members cannot require non-members to meet interchange standards and procedures other than those set out in the CECS manual; and
- no CECS member is able to refuse to engage in ATM or EFTPOS interchanges with either a member or a non-member acquirer or a merchant principal that has APCA certification, on technical, operational or security grounds.

#### **Investment and Financial Services Association**

On 30 August 1999 the Investment and Financial Services Association (IFSA) applied for authorisation for its draft policy on genetic testing. IFSA is an industry association that represents the retail and wholesale funds management and life insurance industries.

The Commission became involved in this issue because the proposed agreement between life insurance companies involved a likely reduction in competition between them in premiums.

Following a draft decision proposing to deny authorisation, and a pre-decision conference,

IFSA amended its application in October 2000 to seek authorisation for only two clauses of its draft policy.

These proposed an agreement by IFSA members that they will not require applicants for life insurance to undergo genetic testing, and will not induce applicants to undergo such testing by offering discounts off standard premium rates based on favourable test results.

The Commission considered that there would be public benefit in avoiding insurer-initiated coercion to undertake genetic testing, and that government policy making would be more difficult if compulsory genetic testing was introduced now. The Government had announced in August 2000 that the Australian Law Reform Commission and the National Health and Medical Research Council were to inquire jointly into human genetic information privacy and discrimination issues. Submissions on the application from interested parties indicated that there was considerable community concern about the adequacy of existing legislation to deal effectively with the issues of access to, and use of, individuals' genetic tests results including by life insurers.

The Commission concluded that there was benefit in authorising the proposed agreement for two years so the issues surrounding testing can be debated and government policy developed. In view of anticipated rapid advances in gene technology, and likely further development of self-regulatory and legislative safeguards, the Commission granted authorisation in respect of the two particular clauses of the draft policy until 13 December 2002.

#### **Marven Poultry Pty Ltd**

On 29 June 2001 the Commission granted authorisation to allow collective negotiations between Victorian chicken growers and their individual processors in light of proposed industry deregulation. The authorisation allows growers contracted to each processor to negotiate collectively and give effect to standard growing contracts with their processor in accordance with minimum standards and

conditions outlined in a proposed code of conduct.

At the time of considering the application, the chicken meat industry in Victoria was regulated by the *Broiler Chicken Industry Act 1978* and *Broiler Chicken Industry Regulations 1992*. However, a national competition policy review found this legislation unnecessarily restricts competition and recommended its repeal. The application for authorisation was lodged in anticipation of industry deregulation and represented a compromise between the current arrangements and full industry deregulation.

The Commission considered that while the collective negotiating arrangements may reduce the scope for competition over rates of payment and other terms and conditions between growers, the nature of the arrangements and industry structure significantly limit the extent of any anti-competitive detriment. The Commission also found that the collective negotiation arrangements would produce public benefits, in particular as transaction cost savings, relative to a fully deregulated environment, and in facilitating the transition to deregulation.

The Commission granted authorisation for five years, subject to certain conditions, including that the proposed code of conduct be amended to clarify the rights of growers to form negotiation groups.

#### **CSR Ltd collective cane supply and expansion agreements**

On 2 May 2000 CSR Ltd applied for authorisation to collectively negotiate cane supply and expansion agreements at its Invicta and Pioneer Sugar Mills in North Queensland.

The Commission was satisfied that the agreements would deliver public benefits by increasing mill throughput and farm output, associated new investment and efficiency gains from the improved use of infrastructure. Related public benefits included export growth and increased international competitiveness, and associated economic gains to the Burdekin cane-growing region.

In assessing the application the Commission had to weigh up the likely detriment from the agreements against the situation without the

agreements but with considerable restrictive State legislation in place. In that context the Commission considered the anti-competitive detriment arising from the agreements to be minimal and was outweighed by the benefits to the public. The Commission therefore granted authorisation.

**Aerial Taxi Cabs Co-Operative Society Limited**  
Aerial Taxi Cabs Co-Operative Society Limited lodged a notification on 20 April 2001 in relation to proposed third line forcing conduct. That conduct involved the supply of taxi services, through the radio-telephone booking dispatch system, on the condition that the operator acquire a specific type of Sigtec security camera. Aerial submitted that it tested three types of security camera and that the restriction to the Sigtec camera was the result of practicality and compatibility issues.

At the time of consideration, Yellow Cabs (Canberra) Pty Ltd was about to enter the ACT taxi services market in competition to Aerial. However, for Yellow Cabs to successfully enter the market it would have to attract operators from Aerial as all taxi licenses for the region were currently held by Aerial affiliated operators and the ACT government did not intend to issue any new taxi cab licenses. Yellow Cabs advised that it was introducing a dispatch system that was incompatible with the Sigtec camera required by Aerial. Therefore, operators transferring from Aerial to Yellow Cabs would be required to acquire a new security camera, in addition to any Sigtec camera they would have been required by Aerial to purchase.

The Commission considered that the installation of security cameras in taxi cabs would be in the public interest. However, the Commission was concerned, given the current nature of the ACT taxi services market, that the requirement that all operators acquire and install the Sigtec camera as opposed to a substitute camera that was compatible with the Yellow Cabs dispatch system may have public detriment implications. The notified conduct would have the likely effect of requiring those operators who had recently installed the Sigtec camera system, to incur

additional expense acquiring an alternative camera compatible with the Yellow Cabs system. These additional costs over a short period, especially for fleet operators, might be an impediment to operators transferring from Aerial to Yellow Cabs and hinder the ability of Yellow Cabs to establish itself as a viable competitor in the market.

After receiving advice that either of the two alternative cameras tested by Aerial (which are compatible with the Yellow Cabs system), could be accommodated with the Aerial system with minimum cost, the Commission suggested an amendment to the notification. Operators should be able to install any of the cameras trialed by Aerial. In response, on 7 June 2001 Aerial withdrew its notification.



## Chapter

# 6

## Regulatory affairs

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**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.

### PERFORMANCE INDICATORS

- Promoted competitive pricing where possible and restrained price rises in markets where competition is less than effective.
- Consulted with Federal and State Governments on competition issues arising from regulatory reforms.
- 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.
- Appropriate enforcement action taken and goals achieved.
- Responded to complaints and inquiries.
- 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.

## Overview

The Commission seeks to promote competitive conduct in network industries and, if competition is not possible, to restrain monopoly pricing and other abuses of market power. The principal barrier to competition and the source of market power in these industries is their reliance on facilities with natural monopoly characteristics. These are the essential infrastructure facilities such as telecommunications networks, transmission and distribution wires, and pipelines and airports.

The Commission is responsible for the economic regulation of services provided by some of these facilities. Under Part IIIA of the Trade Practices Act, and associated codes, the Commission regulates third party access to some essential facilities. This involves procedures so that access seekers, such as telecommunications carriers, electricity generators and retailers and airport users, can gain access to the infrastructure necessary to compete in upstream and/or downstream markets.

The Commission also administers Part XIB which deals with anti-competitive conduct in the telecommunications industry and, Part XIC, which sets out rules and procedures for guaranteeing access to network services for telecommunication carriers and service providers. The Commission also administers the Prices Surveillance Act.

The Commission's regulatory functions include:

- assessing code changes, derogations and access arrangements in electricity;
- assessing revenue caps in respect of electricity transmission businesses;
- declaring services in telecommunications;
- determining declared services in airports;
- assessing access arrangements for natural gas transmission pipelines;
- assessing undertakings under Parts IIIA and XIC;
- determining revenue and price arrangements;
- assessing compliance with price caps;
- arbitrations;
- assessing 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.

The Commission continues to explore the development of efficient regulation. During the past year it hosted a major conference on regulation and investment attended by leading participants from Australia and overseas. It also ran public forums on regulatory issues such as network pricing. These workshops gave people an opportunity to consult with the Commission on its draft determination for the authorisation of the network pricing and market network service provider code changes.

The Commission undertakes extensive public consultation, and has released discussion papers, draft decisions and run public conferences before finalising regulatory decisions.

During the year the Commission made submissions to several Productivity Commission (PC) inquiries into the regulatory arrangements under Part IIIA, Parts XIB and C of the Trade Practices Act, the Airports Act and associated instruments. Submissions were also provided to the PC inquiry into the Prices Surveillance Act.

The Commission has 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, State and Territory regulatory agencies, promotes information sharing and consistent approaches to regulation.

# Electricity

## PERFORMANCE INDICATOR

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

During 2000–01 several code changes were assessed by the Commission. These included changes to the VoLL (value of lost load), transmission and distribution network pricing, full retail competition (FRC), and the entry of Tasmania into the NEM (national electricity market).

The Commission's regulatory role increased with the almost completed transfer of transmission regulation from jurisdictional regulators to the Commission. On 1 January 2001 the Commission commenced regulation of the South Australian and Victorian transmission networks, and from 1 January 2002 will begin regulation of the Queensland transmission network operated by Powerlink.

The Commission will also review the regulatory test used to determine whether an interconnector should be regulated in the second half of 2001, after concerns were expressed that the test placed too high a threshold on regulated transmission investment in interconnectors between the regions.

## Authorisations

### Amendments to the National Electricity Code

The Commission received several applications for authorisation from the National Electricity Code Administrator (NECA) proposing amendments to the National Electricity Code. These are discussed in the following section.

#### Transmission and distribution network pricing

On 12 December 2000 the Commission issued its draft determination of changes to the network pricing arrangements in the code. The decision followed a NECA review of the code's network pricing arrangements.

These are a key component of the NEM design and affect the code's ability to deliver public benefits through efficient utilisation of, and investment in, network assets, as well as optimal

electricity production and consumption decisions. In assessing the changes put forward by NECA, the Commission considered some issues would detract from the public benefits the changes would provide. Two of these were the beneficiary pays system for funding new investments and the transmission usage charge, which was based on three methods and was to be payable by customers only. The Commission's draft determination required the beneficiary pays system be deleted and transmission usage pricing be applied to all network users, depending on whether they add to or relieve congestion.

Other changes to the code include improved information disclosure by network businesses, transmission network service providers to recover the cost of discounts from other customers and the introduction of rules to allow market network service providers to participate in the NEM.

The Commission held a pre-determination conference on 15 March 2001.

#### VoLL code changes

On 20 December 2000 the Commission released its final determination authorising code changes to increase the price cap for spot prices in the market from \$5000 to \$10 000. The determination also approved a negative price floor for spot prices, changes to the cumulative price threshold and the introduction of new capacity mechanisms.

VoLL is a cap on regional reference prices in the NEM. In situations where determination of dispatch prices would otherwise result in a price greater than VoLL at any regional reference node, it must be reduced to VoLL. The level of VoLL therefore represents the maximum spot price for wholesale electricity in the NEM and is currently set at \$5000 per megawatt hour (MWh). The price of electricity most often sits between \$20/MWh and \$60/MWh.

NECA proposed to increase VoLL in two steps — to \$10 000/MWh in September 2001 and to \$20 000/MWh in April 2002. NECA also proposed to impose a cap on the market price if the cumulative effect of high spot prices exceeds a threshold level of \$300 000.



The Commission acknowledged that the proposed increase in VoLL would provide public benefit, as it would encourage investment in peaking capacity in circumstances when demand peaks occur for only a few hours a year (as is currently the case in Victoria). However, the Commission considered NECA did not demonstrate that the increase in VoLL provides public benefits of reliability of supply through improved demand-side response. As such, it did not believe that an increase in VoLL to \$20 000/MWh delivers sufficient public benefit.

In the final determination the Commission therefore limited the increase in VoLL to \$10 000/MWh but proposed delaying the increase until April 2002 to allow market participants sufficient lead-time to accommodate the increase in risk.

The Commission further reduced the cumulative price threshold to \$150 000 rather than \$300 000 proposed by NECA.

#### **Full retail competition**

On 11 August 2000 the Commission received applications for authorisation of amendments to the code from NECA. These changes would bring about the introduction of full retail competition (FRC), and amend the procedures for registering code participants.

On 20 September 2000 the Commission granted conditional interim authorisation to the proposed arrangements. In response to concerns regarding the conditions of authorisation, the Commission revoked and regranted the interim authorisation on

27 October 2000. The Commission released its draft determination on 11 April 2001.

The Commission held a pre-determination conference in May before releasing its final determination in August 2001.

#### **Victorian FRC derogations**

On 19 March 2001 NECA applied for authorisation of amendments to the derogations contained in chapter 9 of the code on behalf of the Victorian Government. The proposed changes to the derogations will:

- introduce transitional arrangements for metering services in the wholesale electricity market; and
- provide the local network service providers with a monopoly for providing metering services.

The Commission released its draft determination on 4 July 2001, and granted conditional interim authorisation. The conditions related to the end date of the derogation.

On 20 July 2001 a pre-determination conference was held. The Commission released its final determination on 8 August.

#### **Ancillary services**

On 23 August 2000 NECA applied for authorisation to introduce new ancillary services arrangements in the NEM. These arrangements introduce a market-based system to procure ancillary services, and where possible, introduce a 'causer pays' regime for cost allocation among market participants.

The Commission released its draft determination on 2 April 2001, held a pre-determination conference on 3 May 2001 in Canberra and released the final determination on 11 July 2001.

#### **Extension of schedule 9G**

On behalf of the participating jurisdictions, NECA lodged authorisation applications for changes to the code on 21 November 2000 to extend the operation of schedule 9G.

Schedule 9G sets out derogated arrangements for ancillary services, from 31 December until 31 August 2001. The application also sought to modify clause 9.35.7, which currently varies the application of schedule 9G in Queensland.

The Commission granted interim authorisation to the proposed code changes on 29 November 2000.

#### **Tasmanian NEM entry**

The Tasmanian Government has developed an energy reform framework comprising two major infrastructure projects and market reforms. An undersea electricity cable (Basslink) and a natural gas pipeline will link Tasmania to the mainland. Tasmania is expected to join the NEM in 2003, accompanied by the subsequent phased introduction of retail contestability for all electricity consumers.

As part of these arrangements, Hydro Tasmania has entered into an agreement with Basslink Pty Ltd relating to the operation of the Basslink interconnector. After discussions with the Commission, the two parties decided not to apply for authorisation of that agreement.

On 13 September 2000 NECA applied to the Commission to authorise amendments to the code facilitating the Inter-Regional Planning Committee's consideration of the technical network issues associated with the Basslink interconnector. The Commission released a draft determination on 6 December 2000 and, in the absence of a request for a pre-determination conference, released its final determination on 24 January 2001.

On 22 November 2000 the Commission received an application to authorise a vesting contract between Hydro Tasmania and Aurora Energy for the non-contestable load and derogations to the code. On 18 July 2001 the Commission released draft determinations proposing to authorise the applications, subject to several conditions.

#### **Other code changes**

##### *Network and distributive resources*

On 20 December 2000 the Commission received applications from NECA to authorise the network and distributed resources code changes concerning network planning and development.

The code changes propose that Transmission Network Service Providers (TNSPs) will be allocated more responsibility to justify and bring forward new network investments. Alongside

this, NECA argues that the proposals introduce greater transparency and information disclosure about the TNSP's investment program, and encourage viable non-network investments, such as local generation, as an alternative to a regulated network solution.

The Commission will release its draft determination in August 2001.

*Inter-regional TUOS, PASA, end-user advocacy and pricing under extreme conditions*

On 8 December 2000 the Commission received applications from NECA to authorise a package of code changes that include:

- extending the current moratorium on inter-regional transfer of transmission use of system (TUOS);
- improvements to PASA (projected assessment of system adequacy) regarding the availability of network and generator availability information;
- clarifying pricing under extreme conditions; and
- changes to demand-side participation and the funding of end-user advocacy.

The Commission released a draft determination on 6 June 2001 and a pre-determination conference was held on 19 July 2001.

*Snowy Hydro Trading Pty Ltd (Snowy) derogation*

On 13 February 2001 NECA applied to the Commission to authorise changes to the code, to extend an existing chapter 8 derogation for Snowy to bid its generation capacity as five notional generating units, rather than having to place separate bids for each of its 31 individual generating units, or bids for a number of aggregated units.

The extension is for a six-month period from 31 March 2001 to 30 September 2001 to allow the Snowy to upgrade its communication and control systems so that the derogation will no longer be necessary.

The Commission granted interim authorisation on 29 March 2001 and released its draft determination. The final determination authorising the extension of the derogation was released on 9 May 2001 and expires on 30 September 2001.

*Averaging loss factors in distribution networks*

On 20 March 2001 NECA applied to authorise changes to the code to allow distribution network service providers to assign smaller contestable customers to non-physical transmission connection points using an averaged transmission loss factor. The proposal will replace the existing obligation on distribution networks to assign all such customers to physical connection points.

On 6 June 2001 the Commission released its draft determination outlining its analysis and views. A pre-determination conference was held on 19 July 2001.

*Queensland technical derogations*

On 24 October 2000 NECA applied to authorise amendments to the code to extend the end dates of eight derogations to 31 December 2002. The derogations originally terminated on the date of the commissioning of the Queensland–New South Wales interconnector (QNI). The Commission was asked to consider these applications as soon as possible, ready for Queensland's increased energy demands over the 2000–01 summer period.

The Commission granted conditional interim authorisation to the applications on 6 December 2000.

*Rebidding, VoLL scaling and settlements statements*

On 15 March 2000 NECA applied to authorise amendments to the code to introduce modified rules for rebidding in the centralised spot market operated by NEMMCO. The amendments included modified rules for information disclosure regarding the rebids.

On 27 March 2000 that application was amended to include changes to the code relating to VoLL scaling and revision of settlements statements.

The Commission released a draft determination on 3 November 2000 proposing a number of conditions of authorisation and released its final determination on 6 December 2000.

#### *Code amendments to accommodate the GST*

On 6 December 2000 the Commission released its determination in relation to applications for authorisation of changes to the code to reflect the introduction of the GST. The changes proposed to allow prices in the electricity wholesale spot market to be quoted exclusive of GST. The Commission commented that GST-exclusive electricity spot prices are consistent with the Commission's GST guidelines, provided NEMMCO made it clear to market participants and others that prices are quoted on a GST-exclusive basis.

### **Other electricity authorisations**

#### **South Australian vesting contracts**

On 22 December 1999 the Commission issued a determination to authorise the South Australian vesting contracts. The determination imposed two conditions: first, to require the average price outcome, for electricity supplied under the contracts, to be \$40 MWh or below; and second, to require that the franchise retailer has an option to terminate its swap and price cap contracts. The contracts were authorised until December 2002.

On 14 April 2000 the Commission received an application from the South Australian franchise retailer, AGL(SA), to revoke and re-authorise the South Australian vesting contract. AGL(SA) proposed that three new conditions be added to the authorisation, including: a look-back mechanism to rebate AGL(SA) to the extent its average electricity acquisition price paid under the vesting contracts exceeds \$40 MWh; rebates to customers where the average acquisition price falls below \$40 MWh; and other changes to the contract between itself and Optima Energy.

The Commission conducted public consultations before releasing a draft determination in November 2000 rejecting the proposed changes. The Commission released its final determination on 20 December 2000.

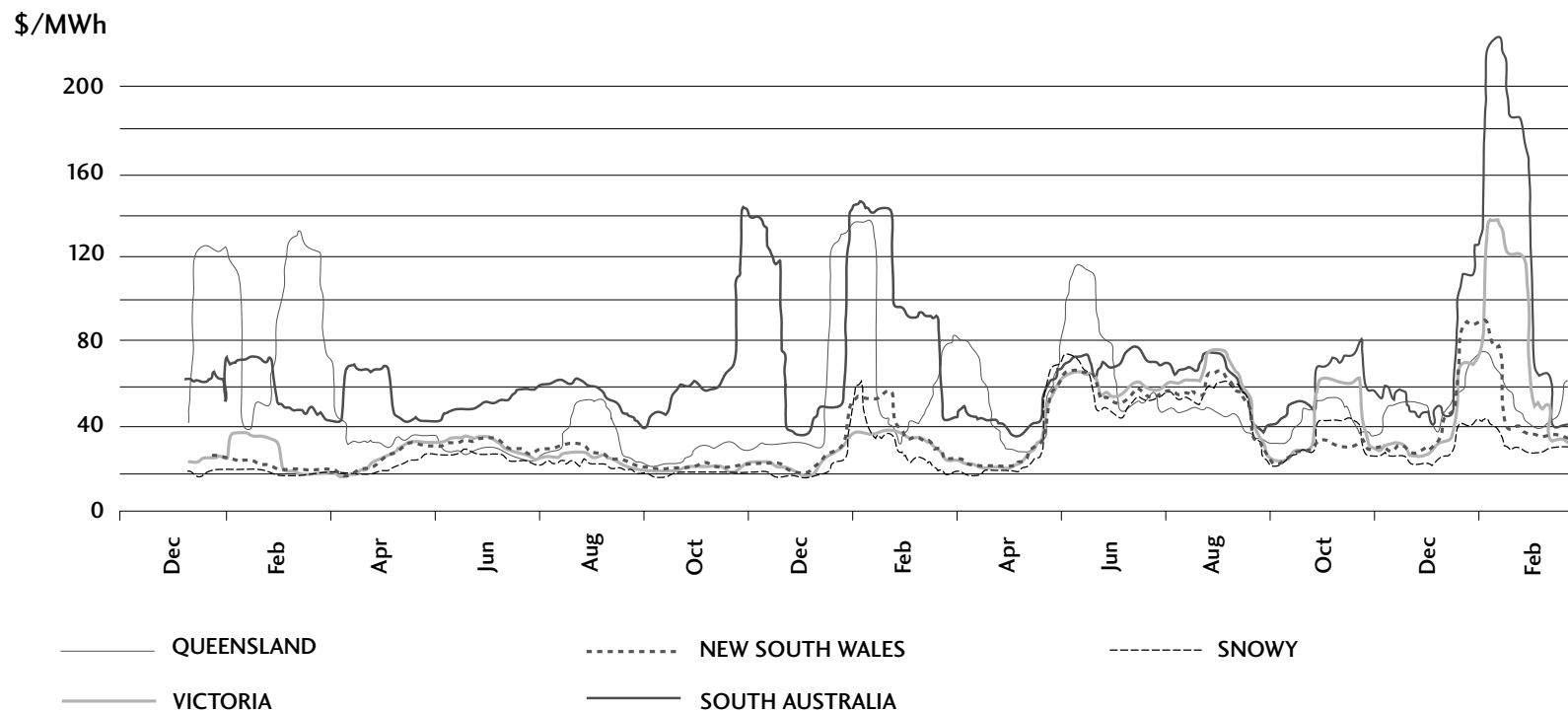
### **Year in review**

Many code changes were assessed by the Commission during 2000–01, which have been discussed from page 89. The revenue requirement for the Snowy Mountains transmission network was finalised and the process for determining the revenue requirement for Powerlink commenced. Preparatory discussions were held with ElectraNet and PowerNet on their forthcoming revenue determinations.

The Commission was also involved in forums and working groups about the operation of the national electricity market. These included the Market System Operations Review Committee (MSORC), the review of the scope for the integration for the energy market and network services (RIEMNS) working group, the network issues working group, the jurisdictional liaison group and NECA's steering committee for its review of the code.

Concerns were raised during 2000–01 about the perceived high level of price volatility in the spot market, increases in the average spot market price and price increases in wholesale and retail electricity contracts. The following graph indicates average spot market prices since the market began in December 1998.

Figure 6.1. Spot price — 28-day volume weighted average since market start



Source: National Electricity Code Administrator May 2001



Price volatility was most noticeable in the summer periods. In the 2000–01 summer, volume weighted average prices increased in a number of states. The following table shows changes in prices over the last three summers.

**Table 6.1. Summer price comparison volume weighted average**

	QLD	NSW	VIC	SA
summer 2000–01	52.80	49.17	69.66	112.05
summer 2000–01 (adjusted)		43.97	50.42	76.73
summer 1999–2000	63.04	32.83	26.62	85.24
summer 1998–99	71.36	22.09	26.90	59.01
% change from 1999–2000	↓ 16%	↑ 34%	↑ 89%	↓ 10%
% change from 1998–99	↓ 26%	↑ 99%	↑ 87%	↑ 30%

Source: National Electricity Code Administrator May 2001 Summer 2000–01 adjusted price removes the market intervention events of 7 and 8 February 2001.

Energy issues were raised at the 8 June meeting of the Council of Australian Governments (CoAG) and at a meeting of the NEM Ministerial Forum on 26 June 2001 particularly relating to South Australia. An outcome of the CoAG meeting was a three-person review to undertake a strategic study of the electricity market, including identifying impediments stopping energy market reform benefits being fully realised. The review is expected to report in September 2002. The NEM Ministerial Forum is also undertaking work on priority NEM issues including impediments to transmission interconnection, regulatory overlap and market behaviour.

NECA has begun a review of the price cap in the market (the value of lost load) and the bidding and rebidding rules in the code. NECA is considering imposing limitations on the rate of change in spot prices caused by rebidding.

### Regulatory work

With the transfer of transmission regulation from jurisdictional regulators to the Commission now nearing completion an increasing emphasis has been given to the regulatory role of the Commission under the code's access provisions.

From 2003 all transmission networks in the NEM will be under Commission revenue regulation with several revenue determinations due on 1 January 2003. Apart from preparing to undertake this work, the Commission recognises transmission networks need a degree of regulatory certainty. Consequently, it will finalise its draft regulatory principles and associated ring fencing and information disclosure rules by the first half of 2002. It will also resolve any remaining uncertainty concerning the operation of the regulatory test for regulated investment through an upcoming review.

### Regulation of Queensland transmission networks

Under the code the Commission begins regulation of the Queensland transmission network operated by Powerlink from 1 January 2002.

On 14 February 2001 the Commission received Powerlink's application outlining its proposed revenue cap. To help consider the application, the Commission engaged PB Associates to review the assumptions, methodology and findings of a 1999 valuation of Powerlink's asset base and analysed and commented on Powerlink's proposed capital expenditure

(capex), operating expenditure (opex) and service standards.

The Commission's draft decision released in July 2001, draws on Powerlink's application, PB Associates' reports, submissions from interested parties and other information presented during its deliberations.

The draft decision provides a revenue allowance for the Powerlink of \$318.50 million from 1 January 2002, which increases to \$485.31 million by June 2007. The revenue path has been smoothed to provide a degree of price predictability for customers. This is based on a post-tax nominal return on equity of 11.70 per cent and an opening asset base of \$2279 million. The increase in revenues is largely attributable to Powerlink's extensive proposed capex program.

The Commission is proposing to finalise its revenue cap determination in September 2001.

#### **Regulation of Snowy Mountains Hydro-Electric Authority (SMHEA)**

The Commission finalised its revenue cap decision for the non-contestable elements of the SMHEA's transmission network on 7 February 2001. The Commission's decision, in accordance with code principles, was conducted at the request of Snowy Mountain Council members.

Taking into consideration a consultant's review of the SMHEA's transmission assets, the Commission set the opening asset value at \$62.45 million. The Commission also accepted the prudence of the SMHEA's proposed capex program and allowed capex of \$7.06 million over the regulatory period.

Based on market conditions, the Commission considered that the appropriate rate of return to apply to SMHEA was a post-tax nominal rate of return on equity of 11.25 per cent. This equated to a post-tax nominal WACC of 6.81 per cent.

Based on the building block approach, the Commission derived a smoothed revenue allowance for the SMHEA, using a positive X factor of 3.54, which decreases slightly from \$10.79 million in 1999–2000 to \$10.66 million in 2003–04.

#### **Regulation of South Australian transmission network**

On 1 January 2001 the Commission commenced regulation of the South Australian transmission network, ElectraNet SA (ElectraNet).

The revenue cap and transmission network prices for ElectraNet are outlined in the South Australian Electricity Pricing Order (EPO). The EPO was established before the privatisation of the electricity assets and therefore, until 1 January 2003, the Commission's role is limited to administering transmission related functions under the EPO. It will not become responsible for setting ElectraNet's revenue cap until 1 January 2003.

On 12 January 2001 and 28 June 2001, ElectraNet submitted applications to pass-through discounts relating to its regulated transmission charges for 1 January 2001 to 30 June 2001 (\$18.1 million) and 1 July 2001 to 31 December 2001 (\$4.9 million). The Commission approved both applications.

Additionally, on 7 May 2001 ElectraNet submitted an application to the Commission relating to its transmission charge applying from 1 July 2001 to 30 June 2002. The Commission approved the new charges as outlined in chapter 6.5 of the EPO.

#### **Regulation of Victorian transmission network**

On 1 January 2001 the Commission commenced regulation of the Victorian transmission network, SPI PowerNet and the Victorian Energy Network Corporation (VenCorp).

The revenue cap and transmission network prices for PowerNet are outlined in the Victorian Tariff Order (VTO). Until 1 January 2003, the Commission's role is limited to administering transmission-related functions under the VTO. It will not become responsible for setting PowerNet's and VenCorp's revenue requirements until 1 January 2003.

In accordance with one of the Commission's responsibilities, PowerNet submitted an application for a maximum allowed revenue of \$268.88 million. This represents a decrease of 5 per cent from the previous year. VenCorp submitted an application for a maximum allowed revenue of \$222.72 million, representing a

decrease of around 7 per cent on the previous year. The Commission approved both applications.

The Commission has also commenced discussions with SPI PowerNet concerning the revenue reset for the period commencing 1 January 2003.

#### **Draft regulatory principles**

The Commission released its draft regulatory principles in May 1999. Since then there have been various developments in the approach to the regulation of network industries. The Commission proposes to finalise the regulatory principles by the first half of 2002.

#### *Draft information requirements guidelines*

On 27 May 1999, in accordance with the code, the Commission released its Draft Statement of Principles for the Regulation of Transmission Networks (Draft Regulatory Principles). The principles included the Commission's initial views on information disclosure requirements.

Following its release the Commission received submissions from interested parties outlining their concerns. In addition, the Commission has finalised revenue caps for three transmission networks: Transgrid, EnergyAustralia and SMHEA. As a result, the financial model and information needs have been refined.

The Commission engaged KPMG Consulting to review the proposed revenue information requirements and annual compliance reporting principles in the Draft Regulatory Principles and develop a revised set of information guidelines.

On 9 May 2001 the Commission released its draft information requirements guidelines and invited written submissions in response to its document.

#### *Proposals for national guidelines on service standards and network performance*

Proposed code changes provide for the Commission to establish service standards and performance incentives for transmission networks. The Commission proposes to begin development work within the next 12 months with transmission network service providers on developing service standards and incentive mechanisms.

#### *Ring-fencing guidelines*

Draft ring-fencing guidelines for transmission network service providers were included in the draft regulatory principles in May 1999. Revision of the guidelines has been undertaken following work by the Office of the Regulator-General Victoria and the Independent Pricing and Regulatory Tribunal in NSW. The Commission proposes to release the revised guidelines in August 2001.

#### *Review of regulatory test for interconnectors*

The code provides that the test for determining whether an interconnector is to be regulated is based on a test determined by the Commission. The current regulatory test was developed in 1999 and there have been no determinations completed to date by the Inter-regional Planning Committee (IRPC) using the criteria developed by the Commission. However, some concerns have been expressed that the Commission's regulatory test places too high a threshold on regulated transmission investment in interconnectors between the regions and this may be having an adverse impact on the development of an integrated transmission network across the NEM.

Consequently the Commission will review the regulatory test in the second half of 2001.

## Gas

### PERFORMANCE INDICATOR

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

Over the past year the Commission assessed 10 access arrangements under the National Third Party Access Code for Natural Gas Pipeline Systems (national gas code) — of these, a final approval of the access arrangement for the Marsden–Dubbo pipeline was released on 19 September 2000. The Commission released draft decisions for the Moomba–Adelaide, Moomba–Sydney and the Amadeus Basin–Darwin proposed access arrangements and is considering the proposed access arrangement for the Riverlands–Mildura pipeline. Access arrangement applications were also received for the Ballera–Mt Isa, Wallumbilla–Brisbane, Ballera–Wallumbilla and Wallumbilla–Gladstone via Rockhampton pipelines in Queensland. Draft decisions were released for the latter two Queensland pipelines.

The Commission also assessed an application from GPU to revise an existing access arrangement, the Principal Transmission

System in Victoria, to incorporate the Southwest Pipeline. In addition the Commonwealth completed an access undertaking assessment submitted under Part IIIA by Duke Energy International. The Commission is continuing to consider proposed rule changes to the Victorian Market System Operation Rules.

The Commission also participated in: preliminary discussions relating to proposed new pipelines, in particular discussing the probable regulatory regimes; and various consultative groups including the Gas Policy Forum and Natural Gas Pipelines Advisory Committee (NGPAC).

### Access arrangements

#### Central West Pipeline: APT Pipelines (NSW)

The Commission released its final decision on the Central West Pipeline proposed access arrangement on 30 June 2000, not approving the arrangement. It set out 19 amendments that would have to be made before it would approve the arrangement.

In response APT Pipelines (NSW) submitted a revision on 31 August 2000. The Commission is satisfied that it incorporates the amendments and approved the access arrangement, issuing a final approval on 19 October 2000.



The access arrangement came into effect on 6 November 2000, with an expected initial access arrangement period of 10 years.

### **Moomba to Adelaide Pipeline System: Epic Energy**

On 16 August 2000 the Commission issued its draft decision on Epic Energy South Australia Pty Limited's proposed access arrangement for the Moomba to Adelaide Pipeline System.

The Commission was concerned that the access arrangement would provide a revenue stream that was higher than the efficient costs of providing services and therefore it proposed amendments that would reduce the proposed tariff by up to 11 per cent.

The Commission was also concerned that the terms and conditions of service were too restrictive and did not adequately balance the interests of Epic and users of the pipeline and proposed amendments to redress this imbalance.

The Commission held a public consultation forum attended by more than 40 participants in Adelaide on 2 November 2000 to discuss the major issues arising from the draft decision.

Following the forum, Epic indicated that it wished to amend its proposed access arrangement and did so on 18 May 2001. The Commission released an issues paper on 25 May 2001 to seek comments on the major revisions and is now preparing its final decision.

### **Moomba to Sydney Pipeline System: EAPL**

The Commission released its draft decision on East Australian Pipeline Ltd's (EAPL) proposed access arrangement for the Moomba to Sydney Pipeline System (MSP) on 19 December 2000. The Commission did not propose to approve the access arrangement, but outlined the amendments that would have to be made for it to do so.

The Commission proposed an asset valuation of \$502 million compared with EAPL's proposed valuation of \$666 million, and a return on equity of 13.0 per cent compared with the proposed range of 13.1 to 14.6 per cent. Under the incentive mechanisms contained in the access arrangement, EAPL can exceed this rate of return

if it outperforms its forecasts of market demand or reduces costs below the projected levels.

As a result of the amendments, tariffs on the MSP would be around 34 per cent less than those proposed by EAPL.

On 5 June 2001 EAPL applied to the National Competition Council (NCC) for revocation of coverage of certain sections of the MSP (the Moomba to Sydney mainline and the Canberra lateral). This follows the Australian Competition Tribunal's decision of 4 May 2001 that the Eastern Gas Pipeline (owned by Duke Energy International) is not to be a covered pipeline under the code. On 14 June 2001 EAPL requested that the Commission postpone releasing its final decision on the MSP pending resolution of its application for revocation lodged with the NCC. The Commission agreed subject to a review in six months time.

### **Amadeus Basin to Darwin Pipeline: NT Gas**

On 2 May 2001 the Commission issued a draft decision on the proposed access arrangement submitted by NT Gas Pty Ltd for the Amadeus Basin to Darwin Pipeline (ABDP). The Australian Pipeline Trust holds a 96 per cent share in NT Gas, which is the operator of the ABDP.

NT Gas proposed a reference tariff of \$3.46/GJ, which the Commission considered to be unreasonably high. The Commission calculated a substantially lower capital base, largely due to a difference in the treatment of depreciation since 1986. In its draft decision the Commission proposed a reference tariff of \$1.90/GJ.

The Commission established a revenue stream with a post-tax return on equity of 12 per cent over the next five years. NT Gas could achieve a return on equity of over 12 per cent via lower than forecast operations and maintenance costs and through the sale of non-reference services.

The Commission granted the NT Government and the Power and Water Authority a three month extension (to 7 September 2001) to lodge a joint submission on the draft decision.

The Commission will prepare its final decision following receipt of all submissions.

### **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 30 years. The Commission accepted the terms determined by the tender process in April 1999 and so cannot review them when assessing the access arrangement. The access arrangement for the Mildura Pipeline covers items not addressed by the tender process.

The Commission assessed the proposed access arrangements during 2001 but requires further information from Envestra to complete the draft decision.

Envestra requested that the Commission postpone the release of a draft decision pending the resolution of a coverage revocation application currently before the NCC.

### **Queensland Gas Pipelines**

As reported last year, the NCC asked the Commission to advise whether the Queensland gas pipeline access regime as it applies to four derogated pipelines is consistent with the code. Specifically, the NCC requested that the Commission assess the relevant tender processes against those established in the code. If they were inconsistent, the Commission was then asked to determine whether the reference tariffs in the respective access principles were consistent with the pricing parameters set out in section 8 of the code.

The Commission found that the tendering process conducted by the Queensland Government to determine access principles for the Wallumbilla to Gladstone via Rockhampton, Ballera to Mt Isa and Ballera to Wallumbilla pipelines were significantly inconsistent with the code.

The Commission then estimated the return on equity (RoE) for the derogated pipelines. For the Ballera to Wallumbilla and Ballera to Mt Isa pipelines the RoEs were estimated to fall

within a reasonable range. In the case of the Wallumbilla to Gladstone via Rockhampton pipeline, the estimated RoE was at the high end of a reasonable range. Finally, for the Wallumbilla to Brisbane Pipeline the estimated RoE was higher than could reasonably be expected in the circumstances and may be inconsistent with the code.

The Commission also expressed concern at the lack of provision of access arrangement information and the significant length of most non-review periods.

In February 2001 the NCC made its recommendation to the Commonwealth Minister regarding the certification application of the regime as an 'effective' regime. The Minister has yet to make a decision.

This year the Commission assessed proposed access arrangements for these four pipelines. However, the Queensland Government derogated some elements of the code as it would have applied to the pipelines. For example, the derogation provides for reference tariffs to be set by the Queensland Minister for Mines and Energy. As a result, most of the typically contentious aspects of the access arrangements were not open to Commission consideration for any of the four pipelines.

### **Wallumbilla to Gladstone via Rockhampton Pipeline: Duke Energy International**

Duke Energy International submitted a proposed access arrangement for the Wallumbilla to Gladstone via Rockhampton pipeline on 17 August 2000. As this pipeline is subject to the Queensland Government derogation, the Commission did not consider reference tariffs or reference tariff policy in its draft decision.

One contentious aspect of this decision and for the Ballera to Wallumbilla pipeline, is the issue of review triggers. Both pipeline owners argue that review dates were established in the derogation and that the Commission cannot require earlier review. The Commission is concerned that the review date of 2016 does not allow for review of the non-tariff elements of the arrangements if a major shift in the market were to occur. Both draft decisions propose an amendment so that

the companies submit a list of specific major events that would trigger a review of the non-tariff elements under section 3.17 of the code.

The Commission is preparing a final decision that, pursuant to legal advice, requires Duke to submit a list of review triggers.

#### **Ballera to Wallumbilla Pipeline: Epic Energy**

Epic Energy (Queensland) submitted a proposed access arrangement for this pipeline on 17 August 2000. The Commission released a draft decision on 13 June 2001 and a final decision is expected in September 2001. As described above, the Queensland Government determined the reference tariffs for this pipeline and set the review date at 2016.

#### **Ballera to Mt Isa Pipeline: Carpentaria Gas Pipeline Joint Venture**

The Commission received a proposed access arrangement for this pipeline, owned by the Carpentaria Gas Pipeline Joint Venture on 5 November 2000. The Commission expects to release a draft decision in August 2001. The Queensland Government has determined the reference tariff, and set the review date at 2023.

#### **Wallumbilla to Brisbane Pipeline: APT**

APT submitted its proposed access arrangement for the Wallumbilla to Brisbane pipeline (also known as the Roma to Brisbane Pipeline) on 6 November 2000. The Commission sought legal advice about the extent of the derogation, which appears to only apply to the pipeline up to a certain level of capacity. The Commission also sought legal advice on whether the code allows the Commission to require a reference tariff for additional capacity. The legal advice stated that no additional reference tariffs can be set for a pipeline that is subject to a derogation under the *Gas Pipelines Access (Queensland) Act 1998*.

The Commission will release a draft decision in August 2001.

Reference tariffs for this pipeline have also been determined by the Queensland Government; the review date has been set at 2006.

#### **Revisions to the Principal Transmission System access arrangement: GPU GasNet**

GPU GasNet submitted proposed revisions to the Commission on 12 September 2000. It proposed to roll-in its \$75.5 million investment in the Southwest Pipeline to the access arrangement for the Victorian Principal Transmission System (PTS) and to increase tariffs on average by 12.8 per cent in net present value terms.

The Southwest Pipeline links the PTS with the Western Underground Gas Storage facility, the Otway Basin gas fields and the Western Transmission System. The Victorian Government directed its construction after the September 1998 explosion and fire at the Longford processing plant, as part of a broader project to supplement gas deliveries for the winter of 1999.

GPU GasNet submitted that the pipeline would not pass the code's economic feasibility test as the anticipated incremental revenue would not exceed the amount of the investment, but it contended that it provides system-wide benefits that justify a higher reference tariff for all users. It argued that substantial system security and competition benefits arise from the creation of a link with the underground storage facility and with existing and prospective gas fields in the Otway Basin, by reducing reliance on Esso/BHP's Bass Strait gas supplied from Longford.

The Commission concluded that some system security benefits and competition benefits do arise from the investment, but that there was insufficient evidence of these benefits to justify the proposed increase in the reference tariff. It also concluded that the proposed tariff structure would be inconsistent with the principles of the code. The Commission also had reservations about the prudence of the investment.

The Commission issued a final decision on 29 June 2001 not to approve the proposed revisions. It recommended that GPU GasNet submit a revised proposal as part of the 2002 scheduled review of its access arrangement when there would be firmer evidence of the likely use of the pipeline and its benefits.



## Access undertaking: Duke Energy International

Duke Energy International submitted an undertaking under Part IIIA of the Trade Practices Act on 18 November 1999 outlining the terms and conditions on which it proposed to make access available to third parties on the Eastern Gas Pipeline (EGP). This pipeline runs from Longford in Victoria to Horsley Park in NSW.

The Commission released a final decision on 28 August 2000 in which it decided that, because of the lack of available information and having regard to the matters in subs. 44ZZA(3) of the Act, it was not appropriate to accept the undertaking.

On 7 January 2000 the NCC received an application for coverage of the EGP under the code. The NCC's final recommendation, released on 30 June 2000, was that the entire pipeline should be covered. On 16 October 2000 the Minister decided to cover the EGP. In October 2000 Duke appealed and on 4 May 2001 the Australian Competition Tribunal upheld the appeal and decided that the pipeline should not be covered.

## Victorian market and system operations rules

### Victorian gas industry market and system operations rules — amendments

After the Commission's authorisation of the MSOR came into force in 1999 VenCorp applied for minor variations that were granted on 2 August 2000, 31 January 2001, 18 April 2001 and 16 May 2001.

The Commission also approved VenCorp's continued role in relation to the liquid natural gas (LNG) reserve and its entitlement to the

LNG storage capacity, pending a further review of VenCorp's requirements.

### VenCorp annual statement

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

After the level of system security charge under recovery was adjusted, the Commission approved VenCorp's annual statement for 2000–01 on 6 June 2000.

The Commission also requested further information on savings being passed on to consumers, 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 these savings.

## Liaison activity

### Retail contestability

Full retail contestability (FRC) is being developed in New South Wales and Victoria. The time frame for NSW is July 2002 and for Victoria 1 October 2002. Other States are taking a great interest as they approach their own targets for FRC.

The Commission has liaised with the NSW Government and the Legal and Regulatory Advisory Group in Victoria to establish requirements for the Commission's authorisation of the arrangements, including possible exclusivity of services and compliance with business rules.

All jurisdictions have developed slightly different timetables; however, the table below outlines the general evolution of FRC.

**Table 6.2. The evolution of full retail contestability**

Tranche	Usage	Description
1 from 1.10.99	>500TJ pa	Major industrial
2 from 1.3.00	100–500TJ pa	Large commercial
3 from 1.09.00	10–100TJ pa	Small commercial
4 from 1.07.02	>1TJ	Residential



Victoria has a market carriage system of operation, therefore implementation in Victoria will differ from other States which have a contract carriage system.

NSW has an industry-driven body called the Gas Market Company to oversee the FRC market operating rules. In contrast, Victoria is planning to establish a Victorian Gas Retail Rules Committee composed of gas industry participants and stakeholders to provide recommendations to the VenCorp Board.

With respect to national consistency, each jurisdiction is trying to meet their contestability timetable commitments; some local variations may arise between jurisdictions in elements of the FRC arrangements. It is important that jurisdictions maintain consistency so that a national energy market can evolve.

#### **Regulatory arrangements for prospective pipelines: preliminary discussion**

During the year the Commission held preliminary discussions with several proponents of prospective pipelines including:

- Duke regarding the construction of a pipeline from Longford in Victoria to various parts of Tasmania. On 9 April 2001 Duke announced it had signed a contract for the manufacture of pipe with which to construct the pipeline;
- Epic Energy regarding the planned 2200 km pipeline from Darwin to Moomba, to bring Timor Sea gas to markets in southern and eastern Australia. The project was granted major project facilitation status by the Commonwealth Government in November 2000. Discussions between Epic and the Commission have focused on Epic's plan to submit an access undertaking under Part IIIA of the Act rather than under the code. Epic is yet to submit an access undertaking; and
- proponents, including SeaGas' planned pipeline between Victoria and South Australia.

#### **Natural Gas Pipelines Advisory Committee**

CoAG 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. Membership includes an independent chair and

representatives of the Commonwealth, States and Territories, together with industry and regulator representatives, including the Commission. Meetings are held every quarter. The code may be amended by agreement between the relevant ministers after a recommendation from NGPAC.

The code was amended to explicitly allow across-period incentive mechanisms from 11 November 2000.

NGPAC also recommended two significant code changes. The first was to allow regulators to administer the approval of tariff variations during the term of an access arrangement. The second was to remove the possibility that third party access to a new pipeline could be regulated under both the code and Part IIIA of the Act. This change was initially proposed by the Australian Pipelines Industry Association (APIA) on behalf of Epic Energy in the context of its proposed new gas transmission pipeline between Darwin and Moomba as an interim measure pending the outcome of reviews of Part IIIA of the Act and the code.

#### **Gas Policy Forum**

The Gas Policy Forum was formed last year as the principal body in CoAG to provide high level policy and advice to governments on the progress in implementing gas sector reforms. This includes priorities for future gas policy to encourage 'free and fair trade' in the natural gas market.

The forum is composed of senior officials from each jurisdiction, including the Commonwealth. Also included are the Australian Gas Association, the Australian Pipeline Industry Association, the Australian Petroleum Production and Exploration Association, the Business Council of Australia Energy Reform Task Force and the Electricity Supply Association of Australia. The Commission and National Competition Council are also represented.

# Telecommunications

## PERFORMANCE INDICATOR

- Regulated telecommunications market.

A Productivity Commission review of telecommunications competition regulation is expected to conclude in September 2001. The Commission has made a series of submissions to this review during the year.

The Commission began investigating about 60 matters regarding alleged anti-competitive conduct in telecommunications markets during the year. By the end of June 2001 the Commission was still investigating eight, having assessed the remainder as not raising issues under Part XIB of the Act or having resolved the complaint.

The Commission also introduced a regulatory accounting framework under its record keeping rules. These rules will provide important information to the Commission from carriers, to assist in achieving effective regulation under Part XIC of the Act, and in Part XIB investigations.

At the end of 2000–01 the Commission had 21 current arbitrations of which 11 interim determinations had been issued. Of the 21, four concerned the public switched telecommunications network (PSTN), two concerned freephone and local number portability, three concerned global system for mobile communications (GSM), six concerned the local carriage service, two concerned analogue subscription broadcasting and four concerned the unconditioned local loop service. By the end of the year, a total of 25 arbitrations had been finalised, six by determinations, two by termination, and 17 settled (i.e. withdrawn).

The Commission also enforced the consumer protection provisions of the Act as they apply to the participants in the telecommunications industry.

## Telecommunications competitive safeguards — Part XIB

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.

## Tariff filings

Under Part XIB the Commission can obtain information on charges, terms and conditions for telecommunication services from carriers and carriage service providers.

The Commission's tariff powers can be divided into two distinct parts:

- general tariff filing directions (Division 4 of Part XIB); and
- Telstra-specific tariff filing (Division 5 of Part XIB).

## Tariff filing directions under Division 4

Section 151BK allows the Commission to issue a tariff filing direction for specified carriage services, ancillary goods and services, if it is satisfied the carrier or carriage service provider has a substantial degree of market power in a telecommunications market. Under such a direction the Commission can obtain information:

- about charges for the supply of the goods or services, including any discounts, allowances, rebates, commissions or similar benefits; and
- about intentions, to be provided at least seven days before it imposes a new charge, varies a charge or ceases imposing a charge.

In 2000–01 the Commission did not find it necessary to use the powers defined under Division 4.

## Tariff filing by Telstra under Division 5

Division 5 of Part XIB requires Telstra to file information for all of its basic carriage services (BCS) with the Commission. A strict interpretation would require Telstra to provide complete detail of all offerings, both standard and individualised (non-standard), along with all variations. However, both the Commission and Telstra saw providing all information under Division 5 as administratively burdensome. Accordingly, a streamlined process was developed by identifying the relevant BCS and charging information to help the Commission detect potential anti-competitive behaviour.



The Commission and Telstra agreed that in June 1998 relevant information should be provided for certain BCS while not causing practical and resource difficulties. The agreement also requires an effective and efficient tariff filing process that meets the objectives of Division 5.

During 2000–01 Telstra complied with the requirements to provide tariff filing information to the Commission except on one occasion. On this occasion Telstra failed to act within the spirit of the tariff filing arrangements by not notifying the Commission of an increase in line rental until the afternoon before the increase was announced publicly.

### **Record keeping rules**

The Commission has the power to mandate specific record-keeping rules on selected carriers and carriage service providers. Section 151 BU of Part XIB of the Trade Practices Act gives the Commission power to make rules requiring one or more carriers or carriage service providers to retain records.

The rules have been used to implement an accounting separation of an operator's various activities. In May 2001 the Commission released the Telecommunications Industry Regulatory Accounting Framework. It is a vertical and horizontal accounting separation model that requires revenue and cost information for wholesale and retail services to be reported to the Commission every six months. Telstra, Cable & Wireless Optus, Primus, Vodafone and AAPT must report under the framework.

The framework replaces the previous reporting requirements set out in the Chart of Accounts and Cost Allocation Manual.

### **Record keeping rules — ULLS**

After the Commission declared the unbundled local loop in August 1999, Telstra announced it was rolling out its digital subscriber line (DSL) services. The Commission was concerned that other providers who planned to roll out services in competition with Telstra were not ready to launch their products. The Commission therefore issued two record keeping rules.

The first issued in August 2000 to Telstra means Telstra must give the Commission details of exchange access arrangements. The second, issued in November 2000, requires Telstra to report on the deployment and fault handling of xDSL technology. This increased transparency will help the Commission identify anti-competitive behaviour.

### **Major anti-competitive conduct investigations**

The Commission began investigating about 60 matters alleging anti-competitive conduct in telecommunications markets. By the end of the year the Commission was still investigating eight of them, having assessed the remainder as not raising issues under Part XIB of the Act or of having resolved the complaint. Following are some matters finalised during the year.

#### **Unauthorised customer transfer (slamming)**

##### **One.Tel and Primus**

The Commission investigated many complaints by consumers that they had been transferred to other telecommunications networks without their consent. Most concerned the transfer of telephone services by the agents of One.Tel and Primus. The Commission instituted proceedings against One.Tel and Primus in December 2000.

On 13 December 2000 the Commission obtained orders by consent in the Federal Court that included injunctions that restrained One.Tel and Primus from:

- engaging in misleading or deceptive conduct;
- fraudulently obtaining signatures or consent over the telephone;

- coercing or harassing potential customers into transferring their phone services; and
- failing to notify consumers of applicable cooling off periods.

One.Tel and Primus also gave undertakings to the Commission that they would:

- write to all affected customers and provide compensation and engage an independent assessor to review business practices, including marketing and complaint handling practices;
- adopt all relevant industry codes; and
- contribute a significant amount to the establishment of a community awareness and education initiative specifically targeted at raising consumers' level of understanding of their rights when choosing telecommunications providers.

The Commission worked closely with the Telecommunications Industry Ombudsman (TIO) in relation to this investigation. More recently, the Commission has utilised the services of the Australian Communications Industry Forum (ACIF), TIO, the Australian Communications Authority (ACA) and other interest groups and stakeholders to identify and implement the consumer education and awareness campaign funded via settlement monies.

#### Axxess Australia Pty Ltd

Following further complaints in early 2001 about slamming the Commission instituted proceedings against door to door sales agent Axxess Australia Pty Ltd in May 2001. The Commission alleges that Axxess employees made false and misleading representations and engaged in unconscionable conduct.

The Commission alleges that Axxess and its agents illegally obtained signatures from consumers. The next hearing before the Federal Court of the matter is set down for August 2001.

#### Pre-paid GSM mobile services

In August 2000 Telstra introduced a short message service (SMS) to prepaid GSM customers. The billing platform for the service was delayed, in some instances up to 48 hours. Complainants alleged that as a consequence of the delayed billing cycle they incurred negative balances, or debts to Telstra that were only discovered when they went to recharge their services.

Telstra responded to the concerns of the Commission by ensuring that the balances of prepaid customers cannot fall below zero and crediting those customers who recharged their cards while they had a negative balance.

**Table 6.3. Telecommunications access disputes — Part XIC**

Summary information on the arbitrations currently before the Commission is provided in the tables below.

#### Summary statistics

Number of current arbitrations	21
Of these, number of interim determinations	11
Number of other arbitrations being progressed	10
Number of arbitrations finalised	25
• by ACCC final determination	6
• terminated by ACCC	2
• settled by the parties (withdrawn)	17

## Current arbitrations

Category	Number of current arbitrations
Public Switched Telecommunications Network (PSTN)	4
Freephone and Local Number Portability	2
Global System for Mobile Communications/ Groupe Speciale Mobile (GSM)	3
Local Carriage Service (LCS)	6
Analogue Subscription Broadcast Carriage Service	2
Unconditioned Local Loop Service (ULLS)	4

**Total number of current arbitrations — 21**

## PSTN

Access seeker	Access provider	Service/s	Date notified	Interim decisions
Telstra	AAPT	Domestic PSTN Terminating Access — for data calls to ISPs	22.11.99	4 November 2000
Telstra	Primus	Domestic PSTN Terminating Access — for data calls to ISPs	7.7.00	21 November 2000
Telstra	PowerTel	Domestic PSTN Terminating Access — for data calls to ISPs	5.12.00	2 April 2001
Optus	Telstra	Domestic PSTN Originating and Terminating Access	3.04.01	

Notifications are typically made by the access seeker, unless indicated otherwise.

## Number portability

Access seeker	Access provider	Service/s	Date notified	Interim decisions
Cable & Wireless Optus	Telstra	Freephone and local rate portability	12.3.01	
Cable & Wireless Optus	Telstra	Local number portability	20.4.01	

## GSM

Access seeker	Access provider	Service/s	Date notified	Interim decisions
AAPT	Telstra	Domestic GSM Originating & Terminating Access	16.3.99	
AAPT	Vodafone	Domestic GSM Originating & Terminating Access	30.11.99	
WorldxChange	Telstra	Domestic GSM Terminating Access	22.12.00	

## Local carriage service

Access seeker	Access provider	Service/s	Date notified	Interim decisions
Optus	Telstra	Local Carriage Service	13.8.99	20 June 2000 23 Oct 2000 (variation)
MCT	Telstra	Local Carriage Service	29.12.99	20 Dec 2000
Primus	Telstra	Local Carriage Service	7.3.00	29 January 2001
dingo blue	Telstra	Local Carriage Service	30.8.00	
WorldxChange	Telstra	Local Carriage Service	8.12.00	
people Telecom	Telstra	Local Carriage Service	28.5.01	

## Analogue subscription broadcast carriage service

Access seeker	Access provider	Service/s	Date notified	Interim decisions
TARBS	Telstra	Broadcasting Access Service	23.9.99	24 April 2001
C7	Telstra, Foxtel and related parties	Broadcasting Access Service	31.8 & 1.9.00	5 April 2001

## ULLS

Access seeker	Access provider	Service/s	Date notified	Interim decisions
AAPT	Telstra	Unconditioned Local Loop	24.7.00	22 December 2000
CWO & XYZed P/L	Telstra	Unconditioned Local Loop	27.7.00	22 December 2000
One.Tel	Telstra	Unconditioned Local Loop	4.8.00	22 December 2000
Primus	Telstra	Unconditioned Local Loop	9.10.00	

## Matters finalised

Access seeker	Access provider	Service	Date resolved
AAPT	Telstra	PSTN	9 December 1997 — withdrawn
Telstra	Vodafone	GSM Terminating	11 November 1998 — withdrawn
Optus	Telstra	PSTN	21 December 1998 — withdrawn
Primus	Telstra	DTCS	2 April 1999 — withdrawn
AAPT	Telstra	Domestic Transmission Capacity Service	7 March 2000 — withdrawn
Cable & Wireless Optus (Optus networks & Optus mobiles)	Telstra	PSTN	15 May 2000 — withdrawn
Optus	Telstra	Local Number Portability Routing Option	Final determination 25 May 2000
Optus	Telstra	Integrated Services Digital Network	4 September 2000 — withdrawn
AAPT	Telstra	PSTN Originating & Terminating Access	Final determination 13 September 2000 Appeal to ACT
Primus	Telstra	PSTN Originating & Terminating Access	Final determination 18 September 2000 Appeal to ACT
Flow Communications	Telstra	PSTN Originating Access	Final determination, 27 November 2000
RSL COM	Telstra	Local Carriage Service	4 December 2000 — withdrawn
Primus	Vodafone	GSM Originating & Terminating Access	5 December 2000 — withdrawn
Primus	Optus	GSM Originating Access	5 December 2000 — withdrawn
Macquarie Corporate	Telstra	Digital Data Access Service Price * Non-price terms and conditions * Means by which Telstra proposes to supply DDAS	Final determination — 22 December 2000
AAPT	Telstra	Digital Data Access Service	2 January 2001 — withdrawn
AAPT	Optus	Domestic PSTN Originating & Terminating Access	14 March 2001 — withdrawn
AAPT	Telstra	Local Carriage Service	30 March 2001 — withdrawn
One.Tel	Telstra	Local Carriage Service	30 April 2001 — withdrawn
AAPT	Optus	GSM Originating & Terminating Access	2 May 2001 — withdrawn
WorldxChange	Telstra	Domestic PSTN Originating & Terminating Access	Final determination — 4 May 2001
Telstra	The Internet Group (lhug) — notifier	Domestic PSTN Terminating Access Service — for data calls to ISPs	ACCC terminated 6 June 2001
Telstra	Chime Communication (iiNet) — notifier	Domestic PSTN Terminating Access — for data calls to ISPs	ACCC terminated 6 June 2001
Primus	Telstra	Domestic GSM Terminating Access	Withdrawn — 7.6.2001
Primus	Optus	Domestic GSM Terminating Access	Withdrawn — 15.6.2001

Total matters finalised: 25

## Arbitrations

### Unconditioned local loop service (ULLS)

An unconditioned local loop service (ULLS) uses unconditioned (copper) communications wire between the network boundary (on the consumer's side) and a point where the wire terminates. The ULLS is used by access seekers to provide high bandwidth carriage services and local telephony services to consumers. Telstra is the main supplier of the ULLS, owning the copper customer access network throughout Australia.

In July 1999 the Commission decided that declaration of the ULLS would promote the long-term interests of consumers of carriage services, or of services provided by means of carriage services. The Commission released a discussion paper in August 2000 on the pricing of the ULLS and submissions were received in September 2000.

Consideration of ULLS pricing has coincided with the Commission being notified of several disputes between Telstra and access seekers about the terms and conditions of this service. In particular, the Commission was notified of disputes by:

- AAPT on 25 July 2000;
- Cable & Wireless Optus (subsidiaries) on 27 July 2000;
- One.Tel on 4 August 2000; and
- Primus on 9 October 2000.

The major issue is price and the Commission issued three interim decisions on 22 December 2000. Since then, the Commission has engaged consultants to report on the appropriate size of Telstra's ULLS specific costs, as part of the Commission's determination of the price at which this service should be supplied. The Commission is working towards a final determination.

### Domestic public switched telephone network (PSTN) originating and terminating access

To supply long distance, fixed-to-mobile and mobile-to-fixed call services to consumers in Australia, service providers will often acquire

input services from Telstra known as domestic PSTN originating and terminating access services (the declared PSTN services). These involve carrying calls between a consumer's premises and a point of interconnection, at which point another carrier may carry the call.

Telstra submitted an undertaking on 24 September 1999 containing its terms and conditions for supplying the declared domestic PSTN services, especially the proposed charges for these services. In July 2000 the Commission released a final report on the assessment of Telstra's undertaking rejecting the undertaking on the grounds that the proposed charges were unreasonable.

The Commission was notified of several disputes between Telstra and access seekers about the terms and conditions under which Telstra supplies this service. They were:

- AAPT on 11 December 1998;
- Primus on 5 February 1999;
- Flow on 7 January 2000; and
- WorldxChange on 28 December 2000.

The Commission issued final determinations and concluded the arbitrations on 11 September 2000, 18 September 2000, 27 November 2000 and 4 May 2001 respectively. The AAPT, Primus and Flow determinations related to pricing of the service for 1999–2000 and 2000–01. The WorldxChange determination dealt with charges for the 2000–01 period.

Telstra subsequently appealed to the Australian Competition Tribunal about the Commission's final determinations for AAPT and Primus. The review of the Commission's access charges by the Tribunal has commenced and is unlikely to be decided until mid-2002 at the earliest. The Commission provided its preliminary views to the tribunal in June 2001.

On 20 March 2001 the Commission was also notified of an access dispute between Cable & Wireless Optus and Telstra about the price for domestic PSTN services for the period after 1 April 2001. This relates primarily to a period (2001–02) for which no previous determination has been made by the Commission.

Telstra proposed to offer access seekers a headline rate of 1.3 cents per minute for



domestic PSTN access in 2001–02. This offer is based on Telstra's estimate of the price the Commission's PSTN costing model would generate for 2001–02.

On 18 May 2001 the Commission considered the provisional headline rate of 1.3 cents per minute for access to Telstra's domestic PSTN in 2001–02 seemed reasonable. The Commission's views on this matter however, can not bind the Commission or any parties in the exercise of its statutory power, in the event that an access dispute is subsequently notified by any industry participant or an access undertaking is lodged for approval.

### **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 on the grounds that the initial service declaration 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 announced on 30 August 1999 that, partly because of these doubts, it had decided to declare an analogue subscription television broadcast carriage service over cable links. It also 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 see whether declaration was appropriate in future.

TARBS and Seven Cable Pty Ltd made access requests relying on both the 1997 deemed service and the 1999 declared service. Telstra and Foxtel used similar arguments to those made to TARBS to deny access to the cable.

In September 1999 TARBS sought Commission arbitration for access to this service following Telstra's refusal to permit it, citing its protected contractual right with Foxtel. In October 1999

Seven Cable Pty Ltd sought a declaration 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.

The Federal Court rejected Telstra and Foxtel claims that they had a protected contractual right preventing anyone else accessing the Telstra network and also upheld the validity of the Commission's pay TV declarations. Both decisions were appealed and the Full Court decided that the 1999 service declaration was valid and that neither Foxtel nor Telstra had a protected contractual right. Foxtel has sought special leave to appeal to the High Court.

In a related case, the Federal Court held that Foxtel was a carriage service provider. The Full Federal Court rejected Foxtel's appeal in this matter. This decision potentially makes it 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.

In September 2000, C7 Pty Ltd notified the Commission of access disputes with Telstra and Foxtel over access to Telstra's cable network in providing pay TV services. The Commission issued interim decisions for both the C7 and TARBS disputes in April 2001.

### **GSM mobile telephony pricing principles**

Following notification of several access disputes in 1999 about GSM originating and terminating services, the Commission decided to consider the appropriate pricing principles for these services.

The Commission engaged external economic consultants and released a discussion paper based on their advice in December 1999. Subsequently submissions from industry were sought and an industry round-table held. After issuing a draft report on its preliminary pricing principles in December 2000, the Commission sought further submissions.

The final Commission report, *Pricing Methodology for the GSM Termination Service*, was released in July 2001. The report established that there are particular characteristics of the GSM terminating service

requiring it to be regulated at this time. A retail benchmarking approach where access prices for the GSM terminating service fall at the same rate as retail price movements for each carrier's overall mobile package, was the preferred regulatory approach.

It was found that the competitive forces on the GSM terminating service were limited and that integrated mobile carriers had some ability to restrict price competition in the downstream market for fixed-to-mobile calls. However, the retail element of the mobile market is increasingly competitive with falling retail prices and a wide variety of retail products on offer. Pegging access prices to retail price movements ensures that the GSM terminating service reflects the competitive elements of the retail mobile services market.

The Commission intends to use these pricing principles to finalise the access disputes in relation to the GSM terminating service.

### **Exemption applications**

Part XIC of the Act provides that a carrier or CSP may apply to the Commission for a written order exempting it from any or all of the standard access obligations that apply to a declared service. These require an access provider to supply the declared service to the access seeker if requested. If the Commission believes that an order for an individual exemption is likely to have a material effect on the interests of a person, it must publish the application and invite submissions on whether the application should be accepted.

### **Local carriage service exemption applications**

On 7 June 2000 Telstra applied to the Commission for an exemption from its obligations to supply the local carriage service to its competitors in the CBD areas of Melbourne, Sydney, Brisbane, Adelaide and Perth. The application noted that it is to be one of several applications designed to phase out Telstra's standard access obligations for the local carriage service, over twelve months.

Telstra lodged a second application in November 2000 for an exemption from its obligations to supply the local carriage service to its competitors in the CBD areas of Hobart,

Canberra and Darwin, metropolitan areas of all capital cities, and three regional centres, Newcastle, Wollongong and Geelong.

The Commission also decided to consider class exemptions in the areas covered by the applications, and sought comment on these as well.

### **A facilities audit of telecommunications infrastructure**

In December 2000, the Commission engaged BIS Shrapnel to prepare a facilities audit of telecommunications infrastructure in Australia. The report, *Telecommunications infrastructures in Australia 2001*, was released in July 2001. It details telecommunication technologies, market participants, capital expenditure, stage of roll-out, planned coverage and issues surrounding investment in infrastructure. It is based on research by BIS Shrapnel and a survey of over 50 telecommunications carriers in Australia.

The report was commissioned to address the absence of reliable and up-to-date information on investment and competition in the Australian telecommunications market. It will be a valuable reference for industry participants, commentators, and the Commission itself.

The Commission intends to commission regular updates of the report to keep track of ongoing infrastructure development.

### **Mobile number portability**

During 2000–01 the Commission assisted in overseeing the introduction of mobile number portability (MNP). The ACA has the primary regulatory responsibility. Commission staff regularly attended meetings convened by the ACIF to devise the network arrangements and technical solutions for MNP. The ACIF developed an industry code for MNP that details the step-by-step processes to be used by carriers and carriage service providers. Industry has agreed that this code will be registered by the ACA making it enforceable.

The ACIF has prepared numerous documents to help put MNP into practice (e.g. MNP framework; a network plan for voice, data and fax; an interconnection implementation plan; a network plan for SMS and IT systems specifications).

Implementation of MNP is on track for 25 September 2001.

### **Pricing principles**

In May 2001 the Commission released its pricing principles for MNP. They are the principles the Commission will generally apply if it has to arbitrate a dispute over the terms and conditions of mobile number portability between the service providers involved.

### **Local number portability**

In November 2000 the ACIF decided to review its industry code on local number portability (LNP), including the IT specifications and operations manual. This decision met concerns that the code required updating to reflect recent changes such as the introduction of the unconditioned local loop service. Several carriers and carriage service providers are also affected by LNP.

The revised LNP code and associated documents should be completed by the end of 2001.

### **Portability of national and premium rate service numbers**

At the request of the ACA, the Commission commenced its consideration of mandating portability for national rate and premium rate services.

National rate services are non-geographic services specified in the 170X number range. The charge for them must not exceed the highest rate charged by the national provider for a call from a standard service to an Australian geographic number. National rate services are not currently available and no carrier holds an allocation of national rate numbers.

Premium rate services are non-geographic services specified in the 190X number range. These are charged at a premium rate, independent of content or delivery technology. Telstra is currently the sole carrier providing them.

After consulting widely with a discussion paper issued in June 2000, the Commission began drafting its preliminary view which will be available early in the new financial year for further comment.

### **Transmission inquiry**

As part of the inquiry into the declaration of intercapital transmission capacity, the Commission issued a discussion paper in June 2000 seeking submissions. The Commission released a report in May 2001 containing its decision to vary the transmission capacity service to exclude intercapital transmission capacity from the declaration. Consequently the transmission capacity service between Brisbane, Sydney, Canberra, Melbourne, Adelaide and Perth is no longer subject to access regulation as from 31 May 2001.

The Commission believes that varying the service description to remove the remaining intercapital transmission routes from declaration will be in the long-term interests of consumers. The intercapital transmission market appears to be moving towards greater competition. Market entrants to date have focused on the busy eastern seaboard routes (Melbourne, Canberra, Sydney and Brisbane). However, new entry appears likely between Melbourne and Perth.

The level of new entry and discussions with new entrants suggests that declaration has not adversely affected efficient investment. Access seekers are already receiving lower prices for transmission and for larger access seekers, more flexible terms and conditions for the service. With the entry of new carriers, access seekers will receive even more competitive prices which should benefit consumers with greater choice of suppliers, lower prices and new services.

The Commission will still continue to monitor the intercapital transmission capacity service.

The monitoring program will include major new entrants, such as Macrocom, PowerTel, Amcom and Soul Pattinson Telecommunications, as well as Cable & Wireless Optus and Telstra.

### **Telstra carrier charges — price control arrangements**

Price control arrangements with Telstra were first introduced in 1989. Since then, the Government has conducted periodic reviews, the most recent being in February 2001 which extended the present price control arrangements to June 2002. Under the arrangements, the Commission is responsible for assessing the accuracy and completeness of Telstra's audited report.

The price control arrangements cover price caps on telecommunications services including local call, line rental, mobile, STD and IDD services as well as particular services. The latter include a 22 cent price cap for local calls and a requirement for local call charges to be broadly the same for both metropolitan and non-metropolitan consumers. There are also sub-caps relating to 'low-spend' consumers.

The Commission is satisfied that Telstra has complied with the price cap requirements for the 1999–2000 financial year, including the metropolitan/non-metropolitan pricing parity requirement for residential and business customers.

### Price control review — other

On 21 August 2000 the Commission was directed by the Minister for Communications, Information Technology and the Arts under the *Telecommunications Act 1997* to review the Telstra price controls which the Commission administers.

The Commission held a public inquiry into whether price control arrangements on Telstra should continue after the expiry of the Telstra Carrier Charges — Price Control Arrangements, Notifications and Disallowance Determination No.1 of 2000 on 30 June 2001. The inquiry would also determine what form they should take, if the Commission considered there was still a need. This includes the duration, means of implementation and mechanisms for their review.

The Commission's final report on 14 February 2001 concluded that competition is still not sufficiently developed to warrant the full removal of price control arrangements. To address the form of future price control arrangements, the Commission made the following recommendations.

- A broad CPI–X per cent price cap should be retained for the next price control period (although mobile services — with the exception of fixed-to-mobile services — and leased line services should be removed from the cap).
- The level of X for the broad basket of services should be about 5 per cent, and should apply for three years.

- All other existing sub-caps in the price control arrangements (other than the 22 cent sub-cap on local calls) and the local call parity requirement should be removed.
- The revenue weights used to determine whether Telstra has complied with its price control arrangements should be based on past year revenue levels.
- Targeting of low-income groups should be based on measures of income rather than usage levels for telecommunications services.
- Targeted assistance or other equity measures recommended in this report should be funded from government or industry-based sources.
- There should be an adjustment period over which rebalancing of line rental price can occur.

### Telecommunications industry codes

#### Australian Communications Industry Forum (ACIF)

During 2000–01 Commission staff participated as observers on several code committees organised by the ACIF, the industry body for telecommunications companies.

ACIF committees comprise representatives of the telecommunications industry, consumer groups and government regulators (such as the ACCC, the ACA and the Telecommunications Industry Ombudsman). A number of codes are currently being developed to cover issues such as:

- mobile number portability;
- customer transfer;
- handling of life threatening and unwelcome calls;
- call charging and billing accuracy;
- end-to-end network performance; and
- high capacity local loop (copper).

The Commission considers consumer protection issues as well as operational and network issues.

The ACIF's Code Administration and Compliance Scheme will continue to monitor compliance of industry participants who are signatories to these codes.

If codes are registered with the ACA, it can take enforcement action against industry participants for failing to comply.

### Telecommunications Access Forum

The Commission considered during 2000–01 proposed variations to the TAF code covering service descriptions and model terms and for the standard access obligations for the local carriage service and the unconditioned local loop service. The Commission is still considering them.

### AuDA Competition Policy Panel

The Commission was also involved in developing new structures and standards for the issuing and registration of Internet names. An advisory panel was established by the National Office for the Information Economy (NOIE) to provide a framework for the self regulatory body, Australian Domain Names Administration (AuDA), to implement competition among registrars and registries in providing Internet addresses or domain names that end in '.au'.

During July 2001 the panel presented its recommendations and it is expected that NOIE and the Government will shortly consider the adoption of this industry self-regulation model.

## Air transport

#### PERFORMANCE INDICATOR

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

The Commission is responsible for economic regulation of Sydney airport and 11 privatised airports: Adelaide, Alice Springs, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and Townsville. It assesses proposals by Airservices Australia to increase charges for terminal and en route navigation services and rescue and fire fighting services.

Over the year the Commission's focus in administering the arrangements has been to:

- assess proposed price increases at Sydney airport;
- provide input into the Productivity Commission's inquiry into price regulation of airport services;
- assess proposals for new or increased charges to fund new airport investment; and
- assess airport price cap compliance and monitor quality of service.

The Commission also assessed a price notification submitted by Airservices Australia.

### Sydney airport

On 11 May the Commission issued its final decision on Sydney Airports Corporation Limited's (SACL) proposal to increase aeronautical charges at Kingsford Smith airport by around 130 per cent. The proposals related to aircraft landing charges, international terminal charges, apron use charges, helicopter charges and general aviation parking charges.

The Commission objected to the increase proposed, but not to a lower increase. The prices accepted will increase SACL's annual revenue from around \$93 million to \$183 million, an increase of 97 per cent. The higher charges apply to airlines. If passed on to passengers, the increases will add around \$3 to a domestic return flight from Sydney airport and around \$14 to an international return flight from Sydney airport.

The decision followed extensive public consultation. It approved a substantial part of the increases sought by SACL. The Commission considered that the increases would give SACL a reasonable return on its investments and would compensate SACL for major new investments undertaken leading up to the Olympics.

However, the Commission considered that the land valuation used was too high and that SACL's proposals did not take into account the impact of future cost reductions.

The Commission also expressed concern about how SACL applied the 'dual till' approach to pricing, even though it accepted that basic methodology. Details follow.

## Land valuation

SACL valued aeronautical land by estimating the site's market value in its best alternative use, that is, mixed residential, commercial and industrial uses.

The Commission supported the broad principles SACL used in valuing land but questioned their application. The Commission accepted advice from independent consultants to use the historic cost of the site indexed by CPI. Historic cost has the advantage that it is readily identifiable and less subjective than the principles proposed by Sydney airport. It provides compensation to SACL for investments into land already undertaken. It also offers incentives for the airport operator to acquire additional land.

## Operating and maintenance costs

Based on the experience of the privatised airports it can be assumed that Sydney airport will achieve significant savings in operating and maintenance costs over time. The Commission's decision factored real reductions of four per cent per annum into its draft decision, reflecting the average saving achieved by Melbourne, Brisbane and Perth airports since privatisation in 1997.

## 'Dual till' pricing

SACL's proposal for a 'dual till' approach to pricing conceptually separated aeronautical services from other services provided at the airport. The proposal then set aeronautical charges on the basis of the cost (including a rate of return on assets) of providing the services.

The approach differs from the 'single till' adopted in the past by the previous operator, the Federal Airports Corporation. The FAC adopted a rate of return target for the airport as a whole, and set aeronautical charges to meet the rate of return. Since profitability on non-aeronautical services was high, and typically well above the target rate of return for the airport as a whole, this meant that returns on the aeronautical side of the business were low.

The Commission adopted a dual till methodology as distinct from the single till methodology proposed by airport users. The Commission considered focused regulation on areas where the airport has market power

and is more likely to promote efficient pricing outcomes. Those services which are relatively contestable, such as duty free, are not subject to prices oversight.

However, the Commission had reservations about SACL's **application** of the dual till methodology. In its draft decision the Commission took SACL's financial performance in providing 'aeronautical-related' services into account, believing the resulting aeronautical prices would yield better economic efficiency outcomes and more effectively constrain market power than SACL's proposals. The aeronautical-related services taken into account included aircraft refuelling, check-in counters and car parks.

The Commission's final decision moved away from this position, after the Minister for Financial Services and Regulation issued a new direction on 19 April 2001 under s. 20 of the *Prices Surveillance Act 1983*. While such directions do not bind the Commission to a particular approach, it must give them special consideration in making its decisions. In this case the Commission considered that the direction warranted a departure from the approach taken in the draft decision.

In effect the stated policy applies the dual till approach on a narrower basis than proposed by the Commission in its draft decision. In practical terms this means that aeronautical-related services should not be taken into consideration in setting aeronautical charges at Sydney airport. Implementation of the policy resulted in higher price increases than proposed by the Commission in its draft decision.

## Inquiry into price regulation of airports

On 1 June the Commission provided its submission to the Productivity Commission's inquiry into price regulation of airports, giving a detailed assessment of the need for regulation of airport services. It also examines what form any regulations should take. The submission concludes that there is a strong case for continued regulation of Australia's large airports because these airports are regional monopolies. Except for smaller regional services travellers have no alternative to flying into cities such as Sydney, Melbourne or Brisbane. The submission



argues that deregulation is likely to result in large increases in airport charges. These would be borne by airport users and could also damage Australia's tourism industry.

Currently CPI-X price caps apply to all of Australia's larger privatised airports. The Commission's submission recommends continued price cap regulation, but with some changes. The main proposals are as follows.

- Price cap major airports but not some of the smaller airports currently regulated such as Alice Springs, Coolangatta and Launceston airports. Monitor prices at these airports as a transitional measure.
- Introduce new provisions to further encourage airport operators to undertake investment.
- Continue to include taxi charges in the price cap.

The Commission also proposes including aircraft refuelling services in the services covered by the price cap. Failure to do so risks 'regulatory bypass'. There is already evidence of this. The current price cap aims to reduce airport landing charges over time. The introduction of fuel throughput levies at some of the airports has offset a substantial part of those reductions.

In developing its submission the Commission sought advice from KPMG on the profit performance of the privatised airports, NECC on incentives for new investment and Professor Stephen King on market power.

## Price cap

### Price cap compliance

CPI-X price caps apply to the larger privatised airports. The compliance results for 1999–2000 were as follows.

- Brisbane and Perth airports did not comply with the cap. Brisbane airport's cumulative over-recovery in 1999–2000 was over \$1 million. Perth airport has over-recovered for the past three years amounting now to \$560 000.
- Melbourne, Adelaide, Alice Springs, Canberra, Darwin, Launceston and Townsville airports all complied with the price cap.
- Coolangatta and Hobart airports have over-recovered against the price cap, but are expected to have complied by the end of this year.

Brisbane and Perth airports did not comply with the price cap because they introduced taxi



charges without compensating reductions in other charges.

### Airport taxi charges

The Commission believes that charges levied by airport operators on taxis fall under the definition of an aeronautical service and are subject to the price cap. This view was contested by Canberra airport in a Commission decision about the \$2 taxi charge introduced by Canberra in mid-2000. Canberra airport instigated an action in the Federal Court against the Commission under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

On 23 March 2001 the Federal Court ruled in the Commission's favour, concluding that taxi fees at Canberra airport are covered by the price cap on aeronautical services. The effect of the decision is that the Commission must take the proceeds of the taxi charge into account when assessing Canberra airport's compliance with the price cap. The decision is relevant to taxi charges at other privatised airports, including the charges introduced at other airports.

### Security charges

The price cap instruments include a pass through provision for direct costs of providing compulsory airport security such as passenger screening, baggage screening and counter terrorist security.

During 2000–01 the Commission assessed five security pass through notifications, one relating to checked baggage screening, one to passenger screening and three to CTFR (counter-terrorist first response).

### New investment

The price cap arrangements include provisions to pass on the costs of necessary new investment. They allow airport operators to increase charges to fund new investment provided they have Commission approval.

In assessing proposals from airport operators the Commission must consider several criteria such as user support for the proposals and the relationship between the proposed price increases and the costs of the new investments. The Commission's assessment typically involves public consultation.

In 1999–2000 the Commission assessed eight new investment proposals.

- *Brisbane airport*. On 18 May Brisbane airport applied to increase landing charges to fund investments in new taxiways, aprons, the international passenger terminal and the common user domestic terminal. The Commission agreed to the increases on 22 June. The Commission has now passed through the price cap charges covering \$47 million in new investments at Brisbane airport.
- *Melbourne airport*. In June 2000 Melbourne airport proposed increases in general and international landing charges to fund projects including road works, environmental works and an apron extension. In October the Commission decided to pass through less than half of the increase sought because APAM did not have user support for many of the proposals. Some related to investments already completed by the FAC before privatisation while others did not relate to new investment but instead covered ongoing operating and maintenance expenditures.
- *Melbourne airport — taxi charges*. On 30 March Melbourne airport sought approval to pass a new taxi charge of \$1.40 through the price cap. The Commission released its decision on 25 May, agreeing to a charge of \$0.66. There were three main reasons for adopting a lower price. The first was that a significant part of the proposed charge related to pre-existing ongoing operating expenses not related to new investment. The second was that the Commission considered some of the costs did not relate to aeronautical services. The third was that some of the costs related to replacement of assets rather than new investment.
- *Coolangatta airport*. On 18 April Coolangatta airport proposed charges to recover the cost of a \$2 million new passenger terminal to service international flights from New Zealand and to accommodate new entrant airlines. The Commission released a final decision on 10 May which allowed Coolangatta airport to pass the charge through the price cap.
- *Canberra airport — new apron and passenger walkway*. These two projects cater for traffic growth at the airport and the operations of



new airline entrants. The Commission did not object to price increases to recover the costs of both projects. Canberra airport submitted its proposal on the apron extension on 25 May 2000. The Commission released its final decision on 2 August 2000. Canberra sought approval for a passenger walkway servicing the apron on 11 December 2000. The Commission released its final decision on 28 March.

- *Canberra airport — passenger terminal redevelopment works.* Canberra airport proposed price increases to fund the terminal works on 12 February 2001 and the Commission released a draft decision on 27 February. Canberra then sought an extension to conduct further consultation and resubmitted a proposal on 29 May.

The Commission's final decision was on 5 July. While the Commission agreed to most of the proposed increases, it objected to a charge to recover the cost of a covered walkway through the car parks. The Commission decided this part of the project should be funded from the revenue Canberra airport derives from the car park. The decision means that the Commission has now passed through charges covering \$9 million in new investments at Canberra airport.

- *Northern Territory airports (Darwin and Alice Springs).* On 25 May Northern Territory airports proposed increased landing charges to fund projects at Darwin and Alice Springs airports including environmental works, an apron extension, new taxiways and investment into airport security. On 3 October the Commission released its decision which did not object to increases in charges to fund about \$1.3 million in new investment but did not pass through all of the increases sought. The two reasons for this were first, users did not support some of the proposed projects, and second, several projects did not relate to new investment but instead covered operating and maintenance expenditures.

## Regulatory reports

Each year the Commission releases regulatory reports covering Sydney airport and 11 privatised airports: Adelaide, Alice Springs, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and

Townsville. The reports provide information on quality of service, financial accounts, price cap compliance and prices, costs and profits of monitored aeronautically related services.

The Commission released the 1999–2000 reports in April.

## Quality of service

Under the *Airports Act 1996* the Commission monitors airport quality of service, collecting information from airport operators, Australian Customs Service and Airservices Australia. The information includes data from customer perception surveys. The Commission also conducts airline surveys.

Over the year quality of service for the three Phase I airports and Sydney airport was generally rated as satisfactory. Brisbane airport achieved high quality service ratings from passengers and airlines for the second year in succession. Perth airport users and passengers also provided a good rating for quality of service. Although passengers at Melbourne and Sydney airports were very satisfied with the quality of service at these airports, airlines were less satisfied overall than the previous year with service quality. However, both airports undertook significant construction works during 1999–2000, which would have affected operations.

## Financial accounts

The regulatory reports indicate that all of the privatised airports (except Townsville) made losses in 1999–2000 after interest and tax were taken into account. However, advice from KPMG shows that pre-tax operating returns on non-current tangible assets at the airports averaged 9.6 per cent and a respectable 13 per cent at the Phase I airports. KPMG also noted that profit performance is in line with expectations.

## Prices monitoring outcomes

The Prices Surveillance Act requires the Commission to monitor prices, costs and profits of aeronautical-related services such as aircraft refuelling, car parks and airline check-in services.

The monitoring shows that revenues raised from fuel throughput charges introduced by Brisbane airport in July 1998 and Perth airport in June

1999 are disproportionate to the costs incurred in providing refuelling services. In Brisbane the levy raised over \$2.5 million in 1999–2000. In Perth it raised over \$700 000 over the year.

The Commission reported on the introduction of fuel throughput levies in a December 1998 report to the Government, concluding that airport operators have taken advantage of market power. The report recommended that stricter prices oversight should be considered in aircraft refuelling services.

The Government has asked the Productivity Commission to consider the report's recommendations as part of its inquiry into price regulation of airport services.

### Airservices Australia

On 8 June Airservices Australia notified for a new terminal navigation charge at Hamilton Island. Airservices did not increase any other charges. On 25 June the Commission released a decision not objecting to the proposed new charge.

## Rail

#### PERFORMANCE INDICATOR

- Access to essential services is made on reasonable terms and conditions.

Australian Rail Track Corporation (ARTC) was established under an intergovernmental agreement signed by all governments in 1997. One of its key elements was to realise a coordinated approach to rail reform. ARTC's primary objective is to promote use of Australia's national rail network linking all capital cities by providing a single point of access to providers of rail freight services whose operations traverse State jurisdictions. ARTC owns the line in SA (including the track to Kalgoorlie in WA and Broken Hill in NSW) and has control over the track in Victoria where it has a lease agreement in place.

The Commission received an access undertaking under Part IIIA of the Trade Practices Act from ARTC which covers terms and conditions of access to rail tracks owned or leased by ARTC. The tracks are part of the interstate mainline

standard gauge track linking Kalgoorlie in Western Australia, Adelaide, Wolseley and Crystal Brook in South Australia, Broken Hill in New South Wales and Melbourne and Wodonga in Victoria.

The Commission must go through a public consultation process before accepting the undertaking and has distributed an issues paper inviting comments and submissions on the ARTC access undertaking. The Commission intends to publish a final decision by the end of 2001.

The regime covering the proposed rail line from Tarcoola in South Australia to Darwin in the Northern Territory has been certified effective, and in Victoria, a rail access regime covering intrastate services became operational on 1 July 2001 with the Office of the Regulator General the nominated arbitrator.

### The rail reform process

Establishing a national regime requires cooperation from States which they have given in varying degrees. The process has been difficult — ARTC was not able to lodge an undertaking for tracks in NSW, WA and Queensland because of uncertainty about whether the agreements with these States gave ARTC the necessary control over the infrastructure. The submission by ARTC of an undertaking covering access to tracks under its direct control in SA and Victoria reflects these difficulties.

The concern was that under the proposed access arrangements with Queensland, NSW and WA, ARTC would not be an access provider under Part IIIA, and would therefore have no basis to submit an undertaking on its own behalf. ARTC would be unlikely to be considered to have a significant degree of control over the operation of the facilities and would thus not be a provider under s. 44G.

Access to parts of the interstate network owned by Queensland, NSW and WA are subject to State access regimes. However, no State regime covering intrastate services is certified 'effective' under Part IIIA of the Act.

The NSW regime was certified effective by the NCC in November 1999 but certification expired on 31 December 2000. Tracks in NSW are an integral part of the interstate network.



The WA government has submitted and since withdrawn an application to the NCC for certification of its access regime. ARTC has negotiated a wholesale access agreement with the consortium successful with the bid for Westrail's freight business in WA, Australian Railroad Group (ARG). Existing access agreements between operators and Westrail were transferred to ARG. ARTC has the right to sell access to new operators and existing operators wishing to re-negotiate their present agreements with ARG. Under this agreement, ARTC does not have control over the interstate track from Kalgoorlie to Perth, but merely the right to sell excess capacity up to a stipulated maximum capacity on the track. ARG manages and controls the network.

Queensland Rail has applied to the Queensland Competition Authority to approve its access arrangements for intrastate services and is then expected to apply to the NCC for certification.

The regime covering the proposed rail line from Tarcoola in SA to Darwin in NT has been certified effective. ARTC presently owns the existing line from Tarcoola to Alice Springs. Under the regime ARTC will hand over ownership of the line to the operator of the Tarcoola–Darwin project when the link from

Alice Springs to Darwin is completed. ARTC will negotiate access to on-sell to interstate operators.

In Victoria, a rail access regime covering intrastate services established under the *Rail Corporations Act 1996* became operational on 1 July 2001. The regime is based on a negotiate-arbitrate model. The Office of the Regulator General is the nominated arbitrator and has issued guidelines for information requirements and access pricing principles. The intrastate tracks and freight business have been sold to Freight Australia. Freight Australia has applied to the NCC for declaration of its own track services.

## Utility Regulators' Forum

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:

- incentive regulation, benchmarking and utility performance;

- comparison of regulated rates of return;
- transmission — regulating new jurisdictions; and
- transmission and distribution pricing.

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

The forum released a discussion paper, *Incentive regulation, benchmarking and utility performance*, in November 2000 and copies can be bought from the Commission's Melbourne office or are available on the Commission's website. In response to this paper, Citipower published two discussion papers, *Incentive regulation, benchmarking and utility performance — Citipower's response to the Utility Regulators' Forum discussion paper* in March 2001 and *Incentive regulation and external performance measures: operationalising TFP — Practical Implementation issues* in June 2001. Copies are available from Citipower.

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 (OffGAR)

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

## Prices monitoring

### PERFORMANCE INDICATOR

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

### Review of the Prices Surveillance Act 1983

The Commonwealth Government asked the Productivity Commission to review the *Prices Surveillance Act 1983* as part of the Competition Principles Agreement requirement to review all legislation that restricts competition.

The Commission made a submission to the review in June 2000. It presented a supplementary submission in February 2001 in response to the review's interim report. The Commission made a further submission in May 2001 in response to the release of the review's draft report.

The submissions argued that a generic prices oversight regime is still justified and should contain price notification, price monitoring and public inquiry functions. The Commission's experience with the Prices Surveillance Act, however, leads it to argue for changes to the existing regime to improve its effectiveness, consistency and transparency. The Commission has already adopted some of these changes in its own procedures.

Some of the key changes to the existing regime that the Commission suggested are:

- legislative criteria to ensure that prices oversight is applied in a consistent and transparent manner;
- prices oversight of oligopolistic industries in certain circumstances;
- implementation of prices oversight without a prior public inquiry in certain circumstances to maintain flexibility and to minimise administration costs;
- full responsibility for the implementation of the regime by the regulator, including selecting appropriate indicators and/or method for setting price, including incentive based regulation; and

- mandatory compliance with the regime by regulated firms. Prices oversight would focus on monopolistic firms with market power. Such firms can afford to ignore voluntary prices oversight and therefore strong powers are needed to ensure they comply with the regime.

## **Parallel imports of books and computer software**

The Copyright Amendment (Parallel Importation) Bill 2001 was introduced into Parliament in February 2001. The bill amends the *Copyright Act 1968* to allow the parallel importation of computer software products, books, periodical publications and sheet music.

In its April 2001 report on the issue, the Commission found that the importation provisions of the Copyright Act restrict competition to the detriment of consumers. Consumers often pay too much for books and computer software and are not always able to access them quickly.

The Commission's own surveys suggested that some titles of both books and computer software are priced competitively with overseas although other areas aren't. Price differentials are sensitive to relative movements in the Australian currency. The recent depreciation of the Australian dollar against the UK and US currencies has reduced the price differentials. Over the longer term, however, positive, and often large, differentials have been the norm, to the detriment of Australian consumers.

The Commission recommended in its report that the parallel importation provisions of the Copyright Act be repealed as they apply to books and computer software.

## **Petroleum products**

### **Outline of price monitoring program**

Since petrol pricing was deregulated on 1 August 1998 the Commission's main role has been to monitor petrol prices in the capital cities and country areas, particularly 'hot spots'. The Commission examined prices and determined notional retail margins by comparing them with an internal import parity indicator. The Commission also monitored the wholesale list price and the terminal gate price of some of the oil majors.

In June 2000 the Commission expanded its monitoring program to more effectively assess prices under the New Tax System. Average retail prices for unleaded petrol, diesel and automotive LPG in 150 country towns across all States and Territories were collected on a weekly basis. Around 1500 retail sites were covered, reflecting about 70 per cent of the rural population in Australia.

The Commission continued its monitoring of unleaded petrol prices in the five largest capital cities (covering around 2500 retail sites) and expanded its coverage to include Darwin, Canberra and Hobart.

With the implementation of the GST on 1 July 2000 there were concerns that petrol prices may increase as a result of the New Tax System. The Commission used an indicative pricing model to assess prices before and after the introduction of the GST.

### **Monitoring outcome**

The Commission's monitoring of unleaded petrol prices from July 2000 to June 2001 indicated that average retail prices in metropolitan and country areas were quite volatile. This was mainly because of movements in the international product price (the spot price for Singapore Mogas 95 unleaded) and the Australian/US dollar exchange rate. The international average monthly product price rose from \$US36.0 per barrel in July 2000 to \$US37.7 in August 2000. It declined over the next four months to \$US29.8 in December 2000 before rising again to \$US32.9 in May 2001. The price fell substantially in June 2001 to \$US26.8. Between July 2000 and June 2001, the monthly average Australian/US dollar exchange rate declined by over seven cents.

In line with these price movements, the average monthly five capital city unleaded petrol price rose from 88.1 cents per litre (cpl) in July 2000 to a peak of 93.6 cpl in September 2000. Prices gradually declined over the next four months to a low of 84.4 cpl in January 2001. They then rose again over the next four months to the year's peak of 94.7 cpl in May. In June 2001 the price fell to 86.7 cpl.

Petrol price movements in the 150 country towns monitored by the Commission showed a similar pattern. The average price across these

towns increased from 96.3 cpl in July 2000 to 102.6 cpl in September 2000. It then gradually declined over the next four months to a low of 94.8 cpl in January 2001. The average price rose again over the next four months to the year's peak of 103.6 cpl in May 2001. In June 2001 the price fell to 99.0 cpl.

The differential in average petrol prices between the five major metropolitan cities and country areas was 7.8 cpl in June 2000. In the subsequent 12 months the differential fluctuated but the average over the year to June 2001 was 7.2 cpl — that is, 0.6 cpl lower than in June 2000.

The Commission reported on the movement in fuel prices in the September quarter 2000. The report outlined the determinants of fuel prices in Australia and discussed the factors that influenced the increases. A combination of factors (international prices, the Australian/US dollar exchange rate, Federal and State excises and taxes, and discounting in the market) affect fuel prices. The report concluded that actual fuel prices had not increased as much as expected on the basis of movements in underlying factors.

In 2000–01 the Commission received over 6000 inquiries and complaints relating to fuel pricing issues. These were examined and follow-up action taken where appropriate.

### **Fuel sales grant scheme**

The Government introduced the fuel sales grant scheme from 1 July 2000. Under this scheme, 1 or 2 cents per litre is paid to retailers of petrol and diesel in non-metropolitan and remote areas. The purpose of the scheme was that the country/city differential should not increase as a result of the introduction of the New Tax System. The Commission monitors the passing on of the grant and ensures compliance under the price exploitation provisions of the Act.

In July 2000 the Commission wrote to approximately 3700 retail outlet owners in regional and remote Australia (covering around 10 000 retail sites) advising them of the information that might be required during the transition period to the end of June 2002. The Commission asked about 2200 of these owners to send price information for June and July for all their retail sites. Some of the

information gathered as part of this excise contributed to the Commission's investigation into the operation of the fuel sales grant scheme.

### **March 2001 excise reduction**

Excise on unleaded petrol and diesel increased by 1.52 cpl on 1 February 2001. This was part of the twice-yearly indexation of excise rates. On 1 March 2001 the Government announced that it would reduce the excise on petrol and diesel by 1.5 cpl from 2 March 2001. Incorporating the effect of the GST, this reduction in excise should have led to a reduction in retail prices of 1.65 cpl. The Commission was given the responsibility of monitoring the passing on to consumers of the excise reduction. The Commission therefore increased the frequency of its fuel price monitoring during this period.

It found that on 2 March 2001, petrol prices fell by an average of 1.7 cpl in the five major capital cities. In country areas prices fell by an average of 1.8 cpl in the two weeks after the excise reduction. The Commission is continuing to examine a number of complaints that specific service stations failed to pass on the excise reduction.





## **Inquiry into reducing fuel price variability**

In early March 2001 the Government asked the Commission to examine the feasibility of placing limitations on petrol and diesel price fluctuations throughout Australia. The Commission held preliminary discussions on this issue with industry participants and other interested parties and released a discussion paper on 14 June 2001.

It noted that retail petrol price volatility is generally confined to the major capital cities and some strategically located rural towns on major highways. Retail diesel prices in metropolitan areas do not display short-term volatility. The paper identified possible causes of the local price cycles, such as the characteristics of the demand for petrol, competition for market share, excess refinery capacity, oil company price support for their franchisees, short-term excess product at the refineries, changes in demand and the current regulatory structure.

The paper put forward possible options to limit price fluctuations, including educating consumers about the price cycle, to allow prices to be changed only once in 24 hours, limiting price increases to only a certain amount each day, retail price regulation, reintroducing wholesale price regulation, and terminal gate pricing accompanied by open access and no price discounting. The Commission invited submissions and will prepare a final report for the Government.

## **Milk monitoring**

In April 2000 the Commonwealth Government directed the Commission to monitor prices, costs and profits of businesses dealing with market milk product sales. The Commission was to determine whether the falls in farm-gate prices for raw milk brought about by deregulation were being passed on to consumers.

Data was collected from all 27 processing companies that produce leivable milk products although most milk processed in Australia is by the three majors — National Foods, Dairy Farmers and Pauls/Parmalet. Retail data was collected from the major supermarket chains, petrol convenience stores and other retail outlets, while the Commission's GST division

surveyed retail prices. Additional survey work was also commissioned.

The monitoring covered the period before deregulation (April–July) and for a further six months. The report was released on 9 April 2001.

## **Milk monitoring report findings**

### **Price changes**

Australian supermarket prices for plain, reduced fat and low-fat milk decreased by an average of 22 cents, 6 cents and 9 cents per litre respectively across all pack sizes and brands from the June quarter to the December 2000 quarter. These products make up 81 per cent of total milk sold in supermarkets. However, prices for UHT, flavoured and specialty milk increased an average of 10 cents, 14 cents and 3 cents per litre respectively over the same period. Across all categories of milk, the average price decrease in the six months to December 2000 was 12 cents per litre.

Price reductions for milk were greatest in Victoria, where plain milk fell by an average of 32 cents per litre in supermarkets. Price decreases in States which previously had low retail prices for milk, such as New South Wales, declined to a lesser extent.

In convenience stores, the price per litre of milk remained relatively stable.

### **Impact on margins and sales revenues**

From the June quarter to December 2000 quarter the gross margin on aggregate milk sales in supermarkets declined by 19 per cent with retail prices falling at a greater rate than wholesale prices. Despite sales volumes increasing by around 6 per cent, substantial reductions in per litre revenue led to an overall decrease in aggregate revenue derived from supermarket milk sales during this period.

In convenience stores, sales volumes declined by around 24 per cent in the September quarter. With the per litre cost of milk remaining relatively constant in convenience stores, aggregate revenue decreased by around 24 per cent as consumers sought an increasing volume of their milk requirements from supermarkets. Although prices and margins in convenience stores were largely unchanged when averaged

across all milk categories following dairy deregulation, reduced sales volumes resulted in lower overall revenue.

The average net profit margins of Australian milk processors decreased by around 12 and 18 per cent respectively on a per litre basis for the September and December 2000 quarters relative to the June 2000 quarter. As the total volume of milk sold in Australia was relatively constant over this period, the overall profitability of milk processors decreased following deregulation. Although price discounting of branded milk products fell away in the December 2000 quarter, net profit margins remained considerably lower than before deregulation.

#### The demand response to price changes

Demand appeared to respond to the price changes and subsequently milk sales shifted to the supermarket sector, towards plain milk (away from UHT milk), generic products (away from branded products) and the largest pack size (3-litre) where discounting has been greatest. Of these shifts in demand, the movement in supermarket sales away from branded plain milk to generic-labelled plain milk was the most dramatic.

Although average milk prices fell in all States following the removal of farmgate price controls, some milk prices increased in the Australian Capital Territory and in the Northern Territory. This was because the additional costs of the dairy industry adjustment levy could not be offset by lower farmgate prices for raw milk. Prices for milk sold in traditional corner stores were found to be highest in metropolitan areas and small towns. This suggests that consumers who buy their milk from non-supermarket outlets in metropolitan cities may be less price sensitive than regional and rural milk consumers and more willing to pay a premium for convenience. For small towns, higher distribution costs and a lack of direct competition from supermarkets are likely to contribute to higher milk prices. As expected, milk prices in remote localities tended to be more expensive than milk sold in more accessible areas due to higher transport costs.

Following deregulation the total volume of milk sold in Australia was largely unchanged.



However the total value of milk sales contracted when measured across all categories, pack sizes and brands. In supermarkets, the increased revenue from a higher turnover because of discounting was insufficient to offset revenue losses from price reductions. In non-supermarket outlets, average milk prices were reduced to a lesser extent across all milk products but sales volumes declined as consumers purchased more milk from supermarkets.

Since deregulation, most Australians have access to lower-priced milk because of standard priced generic-labelled milk in the major supermarket chains.

## Waterfront

### PERFORMANCE INDICATOR

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

### Part X

In October 2000 the Commission reported to the Minister of Transport on the results of its investigation into a liner shipping agreement registered under Part X of the Trade Practices Act. The Commission recommended against deregistration of the agreement.



In November 2000 and March 2001 certain amendments to Part X became effective. The key changes from the Commission's perspective were:

- the power to investigate agreements in the context of providing liner shipping services;
- the power to investigate agreements when member lines unreasonably refuse another line entry to the agreement; and
- the extension of coverage of Part X to inbound trades.

The amendments give the Commission new powers to initiate an investigation without a ministerial directive or a complaint but are conditional upon the existence of the specified 'exceptional circumstances'.

### **Container stevedore monitoring**

On 20 January 1999 the Federal Treasurer directed the Commission under the Prices Surveillance Act to monitor prices, costs and profits of container stevedoring operators in the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney. The aim is to inform the community about the progress of some aspects of waterfront reform at the major container terminals, as well as the absorption of the stevedoring levy.

The Commission released its second container stevedoring monitoring report in December 2000. It 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 for the two periods, July to December 1999 and January to June 2000. The average industry wide cost per twenty-foot equivalent unit (TEU) for the five months February to June 1999 was \$161, which fell to \$148 for the first six months to June 2000. Average unit revenue also fell from \$182 per TEU in the five months to June 1999 to \$173 in the first six months of 2000. Significant productivity improvements were also recorded. In long term trends, industry wide average revenue (indicative prices) and average costs are significantly lower than 1995, when the previous stevedoring monitoring program conducted by the Prices Surveillance Authority ended.

During 1999–2000, P&O Ports Ltd undertook a major restructuring which resulted in a 34 per cent reduction in its permanent workforce. This followed the action undertaken by its competitor Patrick to reduce its workforce in 1998.



On the evidence available to the Commission the stevedore levy was not passed on as higher charges. Rather the cost of the levy appears to be offset against other cost reductions made by P&O Ports and Patrick.

The next monitoring report is due in October 2001. The stevedores have now submitted price, cost and profit data for the six-month period July–December 2000 to the Commission.

## Prices oversight of harbour towage

### Adsteam Marine Ltd acquisition of Howard Smith Towage

Before 1 May 2001 Adsteam Marine Ltd and Howard Smith Towage were both declared companies under the Prices Surveillance Act.

During the year, Adsteam Marine Ltd announced that it had entered into an agreement to buy the Australian and United Kingdom harbour towage and related marine businesses of Howard Smith Towage for \$500 million.

This makes Adsteam Marine Ltd the sole provider of towage services at the following ports in Australia: Port Jackson, Port Botany, Port Adelaide and the ports of Newcastle, Fremantle, Melbourne and Brisbane.

Adsteam Marine Ltd remains a declared company under the Prices Surveillance Act.

## International forums

### PERFORMANCE INDICATOR

- Actively participated in the development of effective competition and consumer protection laws internationally.

The Commission is increasingly cooperating with its international counterpart agencies on competition, consumer protection and regulatory matters to effectively enforce laws in Australia and overseas.

## OECD

### Competition

The OECD Council adopted the Competition Law and Policy Committee's 'Recommendation Concerning Structural Separation in Regulated

Industries' on 26 April 2001. The council endorsed the recommendation that governments consider structural separation of regulated industries, i.e. separation of the ownership of the monopoly and competitive parts of such industries, particularly during the process of privatisation or liberalisation. Without such separation, strong incentives to resist the growth of competition remain.

## APEC

### Competition

This year has also seen the implementation of new joint initiatives to draw together regulatory reform work being done in the APEC and OECD forums. This work, in the form of a series of workshops and seminars, will continue into 2002.

From 13–15 March 2001 Mr Paul Bilyk, a Director in the Commission's Electricity Unit, participated in the fifth APEC Partners for Progress training program held in Thailand. Mr Bilyk acted as the moderator for one program stream on the promotion of competition in regulated sectors and state enterprises.

### Energy

Over 17–18 May 2001 Mr Mike Rawstron, General Manager of the Commission's Electricity Unit, participated in the 9th meeting of the APEC Energy Regulator's Forum (ERF). The ERF, which is a component of the Energy Working Group of APEC, provides an opportunity for APEC member economies to discuss more detailed issues about reforms to the energy sector, as well as emerging regulatory and market development matters. The focus of the latest meeting was the fall out from the Californian energy crisis, as well as presentations on network pricing and country reports. Australia made presentations to the group on congestion pricing and on the design of the Australian electricity market.

# Corporate governance 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.

To maintain high levels of management efficiency and cost-effective resource utilisation at both national and regional office levels.

## Introduction

The Commission's management is centrally coordinated through its Corporate Management Branch. The branch comprises Human Resource Management and Corporate Projects; Finance and Services; IT Contract and Services Unit; Information Services; Publishing Unit; Corporate Services Melbourne; and Library.

Functional details of the Commission (a statement required under s. 8 of the *Freedom of Information Act 1982*) are set out in appendix four. The organisation chart as at 30 June 2001 is in the Corporate overview at the beginning of this report (p. 10).

Major matters undertaken during 2000–01 included:

- an output pricing and funding review with the Department of Finance and Administration;
- a new corporate plan, *Corporate Plan and Priorities 2001–02*;
- implementation of an integrated costing and accounting system;
- a national first-point-of-contact centre, ACCC infocentre, established;
- relocation of the Brisbane and Sydney offices to new premises; and

- a graduate intake of 30, representing about 7 per cent of total staff.

## Corporate governance

### Decision-making structure

The Commission held 47 formal meetings during 2000–01. Most were held in the national office in Canberra but it is the Commission's policy to meet in other capitals when this is compatible with other commitments or offers opportunities for local contact.

During 2000–01 the Commission considered 379 formal papers dealing with matters under investigation, litigation, mergers, access matters, adjudication decisions, submissions to inquiries, and compliance and education strategies. It also considered many informal submissions.

### Committees

The Commission has seven subject matter and function committees to streamline decision-making (see appendix 6).

#### Telecommunications

The Telecommunications Committee oversees the Commission's functions in telecommunications, including matters arising under Parts XIB and XIC and authorisations. It coordinates with the Enforcement Committee on issuing 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 sits as a division of the Commission from time to time.

#### Mergers

The Mergers Committee meets weekly 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 functions 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 and comprises the Chairperson, Deputy Chairperson, full-time commissioners, the Chief Executive Officer and senior staff.

## Output pricing and funding review

The Department of Finance and Administration conducted an output pricing and funding review of the Commission. It found that the Commission was under-resourced and the Government agreed to increase the Commission's funding.

While the Commission had received funding for specific roles and tasks, a comprehensive review of its funding base had not been conducted since it was established in 1995. In the meantime, the Commission had faced a major increase in its regulatory activities, increased

complexity of markets, technological changes such as electronic commerce, and rapidly increasing international challenges including the impact of globalisation. The Commission's workload continues to increase in both volume and complexity.

The review involved an evaluation of the Commission's strategic operating environment, its costing systems, interviews with various stakeholders and extensive benchmarking of some strategic functions against other Australian and international agencies.

The four elements of the funding increase are:

- \$5.6 million, for activities in telecommunications, gas and small business that would have lapsed, has been extended;
- \$15.8 million to enable the Commission to maintain its current workload, and to meet emerging priorities such as e-commerce and rural and regional issues;
- \$20 million litigation reserve fund, to assist the Commission to meet unusual litigation costs. In the first year, \$10 million will be provided for this fund, and a further \$1 million in each subsequent year until the reserve builds to \$20 million; and
- a \$3 million loan has been converted to equity.

The Commission will improve its costing systems and report against agreed key performance indicators.

## Senior management conference

In April 2001 the Commission held a conference for senior management in South Australia. It was attended by commissioners, senior executive service staff, regional directors, other staff and guest speakers. Senior representatives of the Canadian Competition Bureau attended.

The conference focused on the practical, strategic and management issues facing the organisation, especially the new corporate plan, and the planning and budgeting cycle.

## Financial management

Funding of \$75.627 million was provided in the 2000–01 budget. This included funding for:

- tax reform price monitoring;
- legal services;
- airport regulation; and
- additional functions and powers under the *Telecommunications Legislation Amendment Act 1999*.

### Tax reform price monitoring

The Commission received \$24.979 million for activities to ensure compliance with the price exploitation provisions of the Trade Practices Act. With it the Commission designed and delivered a communication and information strategy, monitored retail prices, responded to consumer and business inquiries through a telephone hotline, and took enforcement action.

### Legal services

The Commission received an additional \$10 million to meet increased legal costs and thereby maintain compliance and enforcement activity.

### Airport regulation

The Commission received \$0.9 million to improve airport access arrangements, assess compliance with airport price caps including pass through of necessary new investment, and monitor prices of aeronautical-related services at airports.

### Additional functions and powers under the Telecommunications Legislation Amendment Act 1999

The Commission received an extra \$0.9 million for telecommunication activities to administer a number of powers in relation to competition notices in Part XIB of the Trade Practices Act, and the processing of arbitration and associated legal issues under Part XIC.

## Revenue

During the year the Commission collected the following revenue:

- miscellaneous consolidated revenue (fines and costs, authorisations and notification fees)  
— \$43.2 million
- section 31 receipts (miscellaneous income)  
— \$1.3 million

## People management

### Staffing levels

The Commission's budgeted staffing level for 2000–01 was 465 (up from 372 in 1999–2000), including six full-time holders of public office (Commission members). In addition there are 14 associate members, nine of whom are ex-officio, as economic regulators from other Commonwealth or State and Territory bodies. The average level of staff employed during the year was 438.1 (up from 381.71 in 1999–2000) while the actual number of employees (including part-time employees) at 30 June 2001 was 482. See p. 142 for staffing overview.

The increase in average staffing levels arose from the Commission's role in the introduction of the New Tax System and the establishment of the ACCC infocentre.

Of the 482 employees employed at 30 June 2001, 43 were engaged in work relating to the Commission's GST function (down from 135 at 30 June 2000). This is mainly because fewer employees were employed in the GST Price Line in the second half of the year.

### Training and development

Spending on training and development in 2000–01 totalled \$986 513 comprising salaries of staff on development activities (\$366 643), salaries of the learning and development unit employees (\$143 606), course and conference fees and study assistance (\$427 888) and incidentals (\$48 376). This represents a commitment of 3.5 per cent of the annual payroll to staff development.

In addition, on-the-job training is a major feature of the Commission's learning program. Regular videoconference seminars and various regional and national office seminar sessions on contemporary issues ensured sharing of knowledge among all staff.

Four investigation techniques courses were run during the year, with 92 participants attending. Eleven participants were from overseas competition authorities and five were from State government agencies.

The following table shows the units of training courses/seminars in each category listed in the last two financial years.

**Table 7.1. Training provided in 1999–2000 and 2000–01**

Type	Units of training	
	1999–2000	2000–2001
Economic education	150	106
Law education	236	161
IT skills	190	114
Operational skills	511	466
Management development	50	48
Personal development	50	45
SES development	45	25

The Commission believes there is significant value in its staff increasing their professional skills and academic learning. Employees are eligible for tertiary study assistance in the form of study leave and partial reimbursement of fees, subject to certain criteria and conditions. During the year 55 staff members participated in the Commission's study assistance scheme, mainly for postgraduate studies in economics, law and business.

### **Graduate program**

The Commission recruited 29 graduates and two international interns at the beginning of 2001, placing them throughout the organisation. Graduates complete an intensive one-week orientation program, followed by on-the-job training and assessment, and rotation to three different work areas during the 10 months training.

This year's graduate recruitment was the first to be managed entirely by the Commission, Recruitment Services Australia having ceased operations. The Commission received about 600 applications for the 30 available positions, and the quality of applicants was particularly high. A recruitment and selection strategy has been developed to ensure the quality of graduate recruits is maintained for the 2002 program.

### **International staff development programs**

#### **Staff exchange programs**

Mr Konrad Chmielewski, a Director in the Commission's Small Business Unit in Melbourne, started on a 12-month exchange in November 2000 with Mr Larry Bryenton, a senior commerce officer from the Canadian Competition Bureau, who is working in the Commission's Victorian regional office.

Mr Cyril Loa from the Commission's Sydney office took part in the third staff exchange with the Taiwan Fair Trade Commission (TFTC). Mr Loa spent three months in Taipei in early 2001. In recognition of the value of the exchange, Ms Rita Wang of the TFTC Legal Unit, took a six-month placement in the Commission's Canberra office in March. Ms Wang spent three months respectively in the Commission's Enforcement Division and the Legal Unit.

Ms Margaret McPherson, an investigator in the Fair Trading Division of the New Zealand Commerce Commission (NZCC), started work with the Commission's Consumer Protection Unit in February 2001, on exchange from the Christchurch office of the NZCC for a period of six months.

#### **Staff secondments**

Mr Osmond Borthwick of the Commission's Sydney office will return to Australia in October 2001 after working with the New Zealand Commerce Commission. Mr Borthwick participated in the regular exchange program for a period of six months in 1999 and then stayed with the NZCC on secondment.

In January 2001 Mr Kien Choong of the Commission's Melbourne office completed a 12-month secondment to the Malaysian Communications and Multimedia Commission. Mr Choong's main area of focus during the secondment was access matters in the telecommunications industry.

Mr Jung-won Song of the Korean Fair Trade Commission completed a two-year secondment to the Commission in June 2001. Mr Song spent time studying the operations of the Commission's Consumer Protection, Mergers and Electricity Units. He also spent some time studying trade practices law at the Australian National University.

Mr Ron Cameron, a Director in the Commission's Telecommunications Unit, continues to work with the Hong Kong Consumer Council as their Chief Trade Practices Officer, after taking up the position in October 1998. Mr Cameron will return to the Commission in October 2002.

Mr Shane Adams from the Commission's Sydney office took up a 12-month secondment in August 2000 with the UK Office of Telecommunications (OFTEL) in London.

#### **International Internship Program**

In January 2001 the Commission started the second year of its International Internship Program (IIP). The 2000 program involved one intern from the Department of Trade, Commerce and Industry in Samoa. The 2001 program involves two interns, the first from the Zambian



Competition Commission and the second from the Consumer Affairs Council of Papua New Guinea. The IIP program is a strategic part of the Commission's broader technical assistance and capacity building regime.

The goals of the internship program are:

- to contribute to the development of competition, consumer protection and utility regulation policies and initiatives by providing interested, suitably qualified overseas parties with the opportunity to spend one year working at the Commission, a recognised world leading competition and consumer protection agency;
- to enhance the Commission's links with its international counterpart agencies;
- to equip participants with the knowledge of the relevant legislation necessary for 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 contribute to the operation of the Commission by completing work placements in three separate operational units of the organisation.

## Workplace relations

The Commission employs non-SES staff under the ACCC Certified Agreement 2000–01. It provides an 8 per cent pay increase over 23 months, undertakes to explore variable pay and remuneration strategies in the future, and expresses a commitment to redressing unsatisfactory work performance.

The Commission's formal employee consultative body is the Workplace Relations Consultative Committee with four staff representatives (elected by staff), two union representatives and one from management. It meets quarterly and will be consulted for the next workplace agreement.

During the year Australian Workplace Agreements (AWAs) were offered to SES employees, GST public inquiry office employees and four other non-SES employees. Fifty-three

AWAs were approved by the Employment Advocate during the year.

## Workplace diversity

### Equity and Diversity Plan 2001–03

In 2001 the Commission commenced a complete review of its existing Workplace Diversity Plan 1998–2001, in accordance with the *Public Service Act 1999*. The review began with a staff survey seeking comments on the existing plan. The ACCC Equity and Diversity Plan 2001–03 is expected to be released in August 2001, incorporating new legislative requirements, new initiatives by the Commission and findings from a staff survey.

### Commitment to equity and diversity

The Commission has contact officers throughout the organisation who distribute equity and diversity information, and offer support to staff. National and State office equity and diversity officers have been appointed to:

- support and promote the workplace diversity plan;
- raise awareness of the principles of the plan; and
- help prevent and resolve workplace harassment.

Contact officers are encouraged to attend regular training courses to assist in their role.

Awareness of the principles is maintained by:

- presenting the Commission's workplace diversity program to graduates during their orientation week;
- circulating information on equity and diversity issues through the internal staff bulletin.

### New policies and initiatives

Policies and initiatives that are being developed or reviewed to support the plan include:

- internal webpage dedicated to equity and diversity issues;
- information brochures on workplace harassment and equity and diversity principles;
- review of sexual harassment and harassment policies; and
- policies to support flexible working arrangements.



**Table 7.2. Comparative representation of target groups within the classification level**

Date	APS equiv. classification	Total	NESB	PWD	Women	A&TSI
30 June 1999	APS 1 & 2	54 15.0%	5 1.4%	0	42 11.7%	1 0.2%
30 June 2000	APS 1 & 2	52 10.0%	6 1.2%	0	34 6.6%	1 0.2%
<b>30 June 2001</b>	<b>APS 1 &amp; 2</b>	<b>53 10.2%</b>	<b>11 2.1%</b>	<b>1 0.2%</b>	<b>35 6.8%</b>	<b>1 0.2%</b>
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%	10 1.9%	2 0.4%	94 18.1%	1 0.2%
<b>30 June 2001</b>	<b>APS 3 &amp; 4</b>	<b>106 20.5%</b>	<b>14 2.7%</b>	<b>3 0.6%</b>	<b>68 13.1%</b>	<b>1 0.2%</b>
30 June 1999	APS 5 & 6	116 32.3%	9 2.5%	0	60 16.6%	0
30 June 2000	APS 5 & 6	145 28.0%	9 1.7%	0	82 15.8%	0
<b>30 June 2001</b>	<b>APS 5 &amp; 6</b>	<b>148 28.6%</b>	<b>16 3.1%</b>	<b>2 0.4%</b>	<b>82 15.8%</b>	<b>2 0.4%</b>
30 June 1999	EL 1 & 2	110 30.6%	10 2.8%	0	27 7.5%	0
30 June 2000	EL 1 & 2	142 27.4%	11 2.1%	0	41 7.9%	0
<b>30 June 2001</b>	<b>EL 1 &amp; 2</b>	<b>153 29.5%</b>	<b>17 3.3%</b>	<b>4 0.8%</b>	<b>47 9.3%</b>	<b>0</b>
30 June 1999	SES & POH	21 5.8%	2 0.6%	0	4 1.1%	0
30 June 2000	SES & POH	23 4.4%	4 0.8%	0	5 1.0%	0
<b>30 June 2001</b>	<b>SES &amp; POH</b>	<b>22 4.2%</b>	<b>1 0.2%</b>	<b>0</b>	<b>5 0.8%</b>	<b>0</b>
30 June 1999	Total	359	35 7.7%	0	170 47.4%	1 0.3%
30 June 2000	Total	518	40 9.7%	2 0.4%	256 49.4%	2 0.4%
<b>30 June 2001</b>	<b>Total</b>	<b>482</b>	<b>59 11.4%</b>	<b>10 1.9%</b>	<b>237 45.8%</b>	<b>4 0.8%</b>

**NESB:** Non-English-speaking background. **PWD:** People with a disability. **A&TSI:** Aboriginal and Torres Strait Islanders.

**APS:** Australian Public Servant. **EL:** Executive Level. **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 employees who nominate themselves to be counted in each group.

## Occupational health and safety

The Commission has an occupational health and safety policy and agreement, and has appointed health and safety representatives 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 information sessions on safe work practices and ergonomic inspections were held in Canberra, Brisbane and Perth. As well as regular safe work practice/ergonomic inspections in the Canberra office an occupational therapist assisted with the establishment of the ACCC infocentre. A pilot wellness program was run in the Perth office and included an employee health survey and health information sessions by medical professionals. The Commission made influenza vaccinations available to all staff.

The Commission has a national self-referral assistance program for staff and their families. During the year 77 consultations were provided to 23 staff and four family members.

Eight workers' compensation claims were lodged: one for occupational overuse injuries; two as a result of motor vehicle accidents; two for injured limbs; one for a head injury; one for a wound/lacerations; and one for stress.

## The legal group

The Legal Group is the Commission's in-house legal team. It is responsible for the provision of legal and legal policy advice and the coordination of Commission legal resources generally. The group consists of three substantive units. Apart from elements of the Regulatory Affairs Legal Unit, who are based in Melbourne, the majority of Legal Group staff are based in Canberra.

The **Regulatory Affairs Legal Unit** provides advice on legal issues arising under Parts IIIA, X, XIB and XIC of the Trade Practices Act, the Prices Surveillance Act and a number of other enactments and codes (State and Federal) which, in aggregate, represent the ACCC's regulatory functions. The unit also manages tribunal and other litigation matters arising out of the exercise of those regulatory functions.

The **Advisings and Policy Unit** provides legal advice on a range of general non-regulatory matters, and coordinates the use of legal resources across the ACCC, including the use of ACCC Legal Panel firms. It provides much of the legal advice from its own resources and also has responsibility for administrative law issues including FOI, and the coordinating of legal policy.

The **Litigation Unit** manages and provides legal advice on litigation matters, primarily in the enforcement area — and particularly when new or complex issues are involved. It also settles the more complex notices and other legal instruments of an enforcement nature. The team is comprised of lawyers and paralegals on retainer from the Australian Government Solicitor.

Attached to the Legal Group is the **General Counsel**, who provides specialist legal advice on complex legal issues and takes a role in the strategic oversight of major litigation involving the ACCC.

A panel of legal firms conduct litigation on behalf of the ACCC. The following firms are currently appointed to the ACCC Legal Panel — Corrs Chambers Westgarth, Phillips Fox, Deacons, Slater & Gordon and the Australian Government Solicitor. The firms are operating under deeds of standing offer for a period of two years which expire on 20 September 2001. Tenders have been called for the establishment of the new Legal Panel and those tenders are still being considered as at the date of this report.

## Information and communications technology and service

### 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 second year of the Commission's five-year IT outsourcing contract with Advantra was largely devoted to assessing performance levels and refining service delivery processes. User satisfaction has gradually improved over the year and is now approaching pre-outsourcing levels. With the continuing refinement of processes and maintenance of client service, improvements in service delivery are likely to continue.

As a member of Group 5 the Commission was involved in the IT audit and review by ANAO and Richard Humphry, respectively.

The more significant IT-related activities during the year included:

- relocation/refurbishment of the Brisbane, Sydney, Darwin and Perth offices, with technological changes implemented satisfactorily and minimal disruption to staff;
- replacement of over 200 aging PCs with higher performing Pentium-based systems;
- progressive replacement of printers and purchase of additional scanners for the expanded use of the TRIM application;
- doubling of the Wide Area Network carrying capacity to all State offices which improved the performance of business applications in regional offices; and
- migrating the Internet link to a high-speed fibre optic connection.

Advantra initiated infrastructure changes for a consolidated application server environment (CASE). The first applications in this new environment were our development server and Finance 1 Server. The migration of our business applications to CASE should improve support, performance, stability and expandability.

### **Internet communications**

On 19 May 2001 the Commission renewed its contract for Internet services with SGE Pty Ltd (a subsidiary of 90East Pty Ltd) for three years after a restricted tendering process as a member of HOCOLEA. This link provides encrypted and secure email communications between HOCOLEA agencies to the highly protected level. It also offers desktop access to the

Internet while protecting the internal network from unauthorised access.

### **Database development**

Database development during the year focused on supporting the Commission's GST role. The corporate systems were enhanced to cater for the extra workload and small databases were developed to support investigations and to promote communications with public interest groups.

All key business systems were upgraded during the year. These include Aurion, Finance1, TRIM, Pinnacle and Horizon. The MARS and PRISM application systems were upgraded to support the changing business needs. A system to monitor FBT payments was implemented, and several ad hoc systems to support the Commission's investigative work were developed.

Work began on an integrated mailing list system to replace a variety of small ad hoc systems used throughout the Commission.

### **Videoconference equipment**

All the Commission's offices except Tamworth have videoconference systems. Canberra, Melbourne and Sydney have multiple systems. Videoconferencing has become an important communication tool in the Commission.

## **Information management and services**

### **Establishment of Information Services Section**

An Information Services section was created during the year to ensure the Commission's information resources are properly managed, and the opportunities provided by technology are fully exploited. This will improve access, availability and efficiency in the Commission's operations, to related agencies and to the public.

Information and documents in electronic form, available through the Internet and Intranet, will increasingly become the backbone of the Commission's information, process and workflow for all its functions. This is a primary responsibility of the Information Services Section.

## Redevelopment of the Internet and Intranet

This project began in the previous financial year. All user and technical reviews were completed in preparation for the tendering process.

The Intranet is becoming the 'desktop' for staff to take advantage of the seamless workflow, information sharing, online discussion and the ability to manage their own sites. The Federal Government's new Government Online legislation has imposed additional functionality and performance requirements for Government sites. This project's final tendering will be completed by 1 November 2001.

## Records management

The records management team is successfully using the TRIM software to electronically store all Commission files, correspondence and public registers. The TRIM system enables staff to find and view all logged documents from their PCs, as well as log electronic documents including emails.

A training program has educated users and regional office staff in the use of TRIM and that program is ongoing. The TRIM technology means staff can take personal responsibility for managing Commission records.

About 44 800 documents were processed and entered into TRIM (25 per cent increase over last year) and 7136 new files or parts created (19 per cent increase). About 4700 files were sentenced.

## Public registers

The Commission is required to create and maintain several public registers under the *Trade Practices Act 1974* and the *Prices Surveillance Act 1983*.

The Commission also maintains voluntary public registers because it believes the information they contain should be available to the public. The most recent voluntary register was created as a result of a delegation under the *ASIC Act 1989* — the s. 93AA enforceable undertakings register.

Currently the Commission maintains over 20 statutory and voluntary public registers, and through them the Commission's decision making is transparent and accountable.

Public register information is published on the Commission's Internet site at <<http://www.accc.gov.au>>. This site now contains indexes of all the public registers, and in some cases electronic images of the relevant documents. 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 received an average of 2100 hits per month during 2000–01 (up from 1000 hits a month during 1999–2000).

## Library

The library provides a research and information service to all Commission staff. The service is managed from the national office library in Canberra. There is also a library in the Melbourne office, and a small collection of print materials in the Sydney office.

The library Intranet site includes links to relevant websites and information about library services. In accordance with the Commission providing user-friendly online data access, the library home page has become the principal gateway to external information, particularly free and paid access websites, of use to Commission staff. Library staff update the site daily.

The library produces several current awareness services. A recent initiative was a weekly Library Services Alert containing links to online versions of major current awareness services provided by the library and other agencies, as well as developments in library services.

Current awareness services include the Library Information Bulletin, an in-house database containing over 3000 abstracts of articles dealing with trade practices, consumer protection and competition law and policy, and Current Contents, a weekly compilation of scanned contents pages of new print journals received.

The library participates in Kinetica and regularly contributes original cataloguing and holdings to the National Bibliographic Database. Bibliographic records are downloaded into the Horizon Library Management System (version 5.0.3).

Interlibrary loans are obtained for Commission staff and supplied to other government libraries and private organisations.

## Publications

The Commission's publications — produced in print, electronic and audio visual form — provide guidance to business and the community, disseminate information to them, and inform them about the Commission's functions and objectives.

The Commission's in-house publishing unit produces an extensive range of publications related to the Commission's work and functions. They include technical reports, parliamentary reports and papers, guides to legislation, consumer leaflets and magazines, product safety brochures, small business booklets and videos.

As part of the Commission's campaign to ensure compliance with the price exploitation provisions of the Trade Practices Act, many GST publications were produced over the two years since 1999. During the past year 25 were produced (hard copy and electronic form), making a total of 61 GST publications altogether. A further series, *GST Bulletin* (issues 1–27), were produced for online consumption only.

The distribution of the Commission's regular publications, *ACCC Journal* and *ACCC update*, continues to expand. The Journal, available by subscription, is distributed to about 800 business, professional and consumer organisations. It is published bi-monthly and outlines all matters resolved either in the courts or between the Commission and companies or individuals concerned. It is also now available on CD-ROM. *ACCC update*'s circulation is now close to 10 000 copies. It is largely an issues-based publication, the most recent edition covering consumer issues including the impact of market reform on the consumer. It is available without charge, and is distributed to industry and business organisations, consumer groups, educational institutions, businesses and individuals.

A full list of publications published this year is at appendix 7. The highlights of the year's publishing program include:

- brochures on Internet auctions and Internet advertising;
- a guide on health treatments and health funds;
- videos of the November 2000 and May 2001 Competing Fairly Forums;
- a video explaining unconscionable conduct; and
- product safety leaflets covering pedal bicycles, cosmetics, elastic luggage straps, bean bags, exercise cycles, paper patterns and balloon blowing kits.

The Commission also published a report commissioned from Karen Yeung, Fellow in Law at Oxford University, entitled *Public Enforcement of Australia's Competition Law*.

## General

### Service charter

The Commission continues to review and augment its systems to improve its service delivery. An important initiative during the year was the establishment of a national first-point-of-contact centre, the ACCC infocentre. It is accessible to the public from anywhere in Australia via a 1300 telephone number and the Internet.

The Service Charter will be revised during the next financial year to reflect the *Corporate Plan and Priorities 2001–02*.

The Commission received 12 compliments and seven complaints from the public on its standard of service during the year.

### Conflict of interest

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. Each staff member is asked to complete a conflict of interest self-assessment at least annually.

The self-assessment module is designed to ensure accountability, while maintaining privacy for each staff member.

## Commonwealth Disability Strategy

The Commission is preparing a plan as required by this Commonwealth initiative.

## Consultancy services, competitive tendering and contracting

### Consultancy services

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 115 consultants during the year with a value of \$9.7 million.

The main categories for which consultants were engaged were:

- price collections (GST price monitoring role);
- GST public awareness campaign;
- price exploitation hotline;
- information technology;
- expert economic advice on adjudication and mergers;
- regulatory matters;
- 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.

Mitchell Media: GST public awareness	\$2,643,803
Whybin TBWA & Associates: GST public awareness	\$104,635
Retailers Association of Australia: GST public awareness	\$6,400
Cultural Partners Australia: GST public awareness	\$329,334
Yaffa Publishing Group: Country of origin business education	\$7,417
Furnishing Publications Pty Ltd: Country of origin business education	\$4,000
AIS Media: Employment, and general business information	\$168,306
Media Research Group: GST public awareness	\$32,142
Newsnet: Media releases	\$112,430
Starcom: Employment advertising	\$98,827
APN Newspapers: Information for Small Business	\$1,814
Albany Advertiser Pty Ltd: Information for Small Business	\$612
Agriculture Publishers Pty Ltd: Information for Small Business	\$485
Eryl Morgan Publishing Pty Ltd: Information for Small Business	\$2,750
Nicholas Media Group Pty Ltd: Country of origin business education	\$2,200
Australasian Textiles Publishers: Country of origin business education	\$2,600
Intermedia Group Pty Ltd: Country of origin business education	\$4,400
Advertiser Newspapers Ltd: Information for Small Business	\$1,358
Vertical Markets: Country of origin business education	\$3,000
PSMPC: Gazette subscription	\$8,693

## Office accommodation

The Commission maintains 10 offices: in Canberra, each State capital, Tamworth and Townsville.

During the year a number of leases expired and new arrangements were put in place.

Brisbane office relocated to another floor in the same building. A new fitout was completed in December 2000 and the office relocated to Level 3 in the AAMI Building at 500 Queen Street.

Sydney office relocated to Level 7 Angel Place, 123 Pitt Street, in June 2001.

Perth office lease was renewed for another three years in March 2001, and a refurbishment was undertaken in June 2001.

Tamworth office lease was renewed for another two years from December 2000.

In Darwin and Hobart, the Commission exercised options to extend current leases.

Table 7.3. Total staff by gender, classification and location as at 30 June 2001

Classification	ACT		NSW		VIC		QLD		WA		SA		TAS		TVL		TAM		NT		Total		Total
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	All
<b>Public Service Act staff</b>																							
GAPS	4	9	2		3	5	1		2										1		12	15	27
APS 1	2	2				1											1				2	4	6
APS 2	2	5	1	4	1	2		2	2						1						4	16	20
APS 3	4	14	1	1		6		3	1		1				1				1		5	28	33
APS 4	19	23	3	3	3	6	3	5	1	2	2	1	2								33	40	73
APS 5	8	12	5	3	7	14	1	5	2	3	2	2	1	1	1				1		27	41	68
APS 6	11	21	5	5	14	7	3	2	1	1	2	2	3						3		39	41	80
EL 1	19	16	4	3	16	10	1	4	2	1		1			1		1		1		45	35	80
EL 2	30	8	8	2	17	2			1		2		1						1		60	13	73
SES Band 3	1																				1	0	1
SES Band 2	2				1																3	0	3
SES Band 1	5	2		2	2	1	1														8	4	12
<b>Total Public Service Act staff</b>																							<b>476</b>
<b>Non-Public Service Act staff</b>																							
Chairman	1																				1	0	1
Deputy Chairman																					0	0	0
Commissioner	4				1																5	0	5
<b>Total Non-Public Service Act staff</b>																							<b>6</b>
<b>Total M/F</b>	<b>112</b>	<b>112</b>	<b>29</b>	<b>23</b>	<b>65</b>	<b>54</b>	<b>10</b>	<b>21</b>	<b>9</b>	<b>10</b>	<b>8</b>	<b>7</b>	<b>7</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>6</b>	<b>245</b>	<b>237</b>	<b>482</b>
<b>Total</b>	<b>224</b>		<b>52</b>		<b>119</b>		<b>31</b>		<b>19</b>		<b>15</b>		<b>8</b>		<b>4</b>		<b>2</b>		<b>8</b>		<b>482</b>		



**Part-time staff as at 30 June 2001**

	ACT	NSW	VIC	QLD	WA	SA	TAS	TAM	TVL	NT	Total
Male	4	1	1	1	1						8
Female	12	7	4	2		3		1	1		30
<b>Total</b>	<b>16</b>	<b>8</b>	<b>5</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>38</b>

**Temporary staff as at 30 June 2001**

	ACT	NSW	VIC	QLD	WA	SA	TAS	TAM	TVL	NT	Total
Male	19	1	7	2							29
Female	10		6	6	1			1	1	1	26
<b>Total</b>	<b>29</b>	<b>1</b>	<b>13</b>	<b>8</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>55</b>

**SES staff by gender, location and band as at 30 June 2001**

Band	Gender	Total	ACT	NSW	VIC	QLD	Gains/Losses	Comments
1	Male	10	5	2	2	1		
	Female	2	1		1			
2	Male	3	2		1			
	Female	0						
3	Male	1	1					
	Female	0						
<b>Total</b>		<b>16</b>	<b>9</b>	<b>2</b>	<b>4</b>	<b>1</b>		

**Non-Public Service Act staff — total by gender, classification and location as at 30 June 2001**

		Chairperson	Deputy Chairperson	Commissioner	Total M/F	Total by region
ACT	Male	1		4	5	5
	Female				0	
VIC	Male			1	1	1
	Female				0	
<b>Total</b>		<b>1</b>	<b>0</b>	<b>5</b>	<b>6</b>	<b>6</b>

