Chapter

6

Regulatory affairs

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.

CONTENTS

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 toVoLL 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.

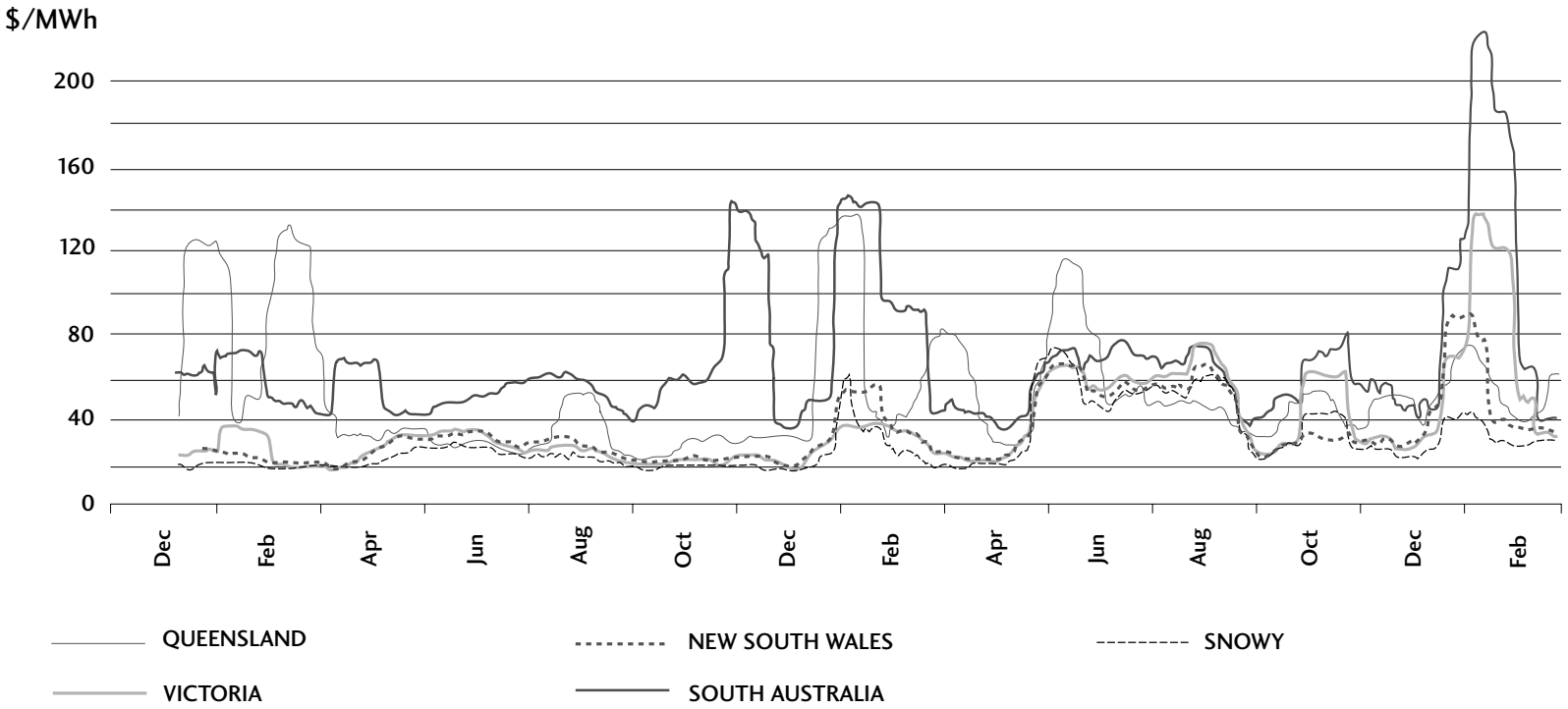
Year in review

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 prudency 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 151BU 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 (Ihug) — 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, NECG 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 leviable 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.