

part one

overview of the ACCC

It is the task of the ACCC to bring about greater competitiveness in every sector of the economy. We do this not just because the Trade Practices Act requires us to do so, but because we believe in the fundamental principle that competition is crucial to the economic wellbeing of this nation, and the quality of life for all Australians.

Graeme Samuel

Chairman

The year has been a challenging one for the ACCC.

The composition of the Commission has changed substantially over the last twelve months or so. While the objectives and priorities of the ACCC remain the same such changes inevitably meant some changes in emphasis and in the methods of achieving our objectives and priorities.

There has also been continuing discussion and debate about various aspects of the Trade Practices Act. The basic role of the ACCC is to administer the law as determined by parliament. However, as the regulatory agency, it also has a role in the relevant parliamentary forums to express its views about the law. Discussion and debate about the Act does create some uncertainty about its future shape and this has added to the challenges for the ACCC in administering the law during the year.

Globalisation and the breaking down of national barriers in world trade and commerce continue. An increasing share of the ACCC's activities is focused on compliance and enforcement across national boundaries. To respond to this new paradigm the Commission needs to coordinate its activities more with other national competition and consumer protection agencies. It also raises issues of the adequacy of national laws and the cross-border enforceability of court judgments in this increasingly borderless world of commerce.

The ACCC has also been faced with severe financial problems. It had an operating deficit of \$10.2 million in 2002–03 and another operating deficit of \$7.0 million in 2003–04. These deficits and some large payments for other party costs in a few complex and expensive cases that were lost meant that the ACCC's financial position was fairly tenuous. Despite the efforts of the Commission and staff to ensure that these financial problems did not prejudice the ACCC's effectiveness in promoting and enforcing the laws it administers there was inevitably some impact.

In spite of these challenges the ACCC has had a year marked by a number of accomplishments.

compliance

The ACCC is convinced that it is more sensible to encourage business to comply with the law in the first place rather than trying to undo the damage after the law has been broken. Litigation is not undertaken lightly and most of our efforts are directed at education, advice and persuasion.

The ACCC gets little joy from winning cases some years down the track when consumers and business customers have already suffered harm. It would have been better if the companies had done the right thing in the first place.

The ACCC believes that educating business about its rights and obligations under the law will reduce potential breaches of the Trade Practices Act and the need for legal proceedings. The ACCC makes no apology for using the media to highlight its successes, publicise campaigns and keep business and consumers aware of their rights and responsibilities. It has deliberately achieved a high public profile through media releases, press conferences and media articles that highlight actions taken against those breaching the law by misleading advertising, cartel activity, selling unsafe products, scams and other types of unlawful behaviour. The ACCC believes that publicity warns those contemplating illegal conduct that the adverse consequences of such behaviour can affect their profits and reputations.

A good example is the real estate industry where it became evident that the property boom had encouraged a range of misleading and deceptive practices such as dummy bidding, dubious property investment seminars and schemes.

The ACCC's announcement that allegations of misleading and deceptive behaviour in the property market would be a priority created a lot of media interest. The publicity, coupled with enforcement activity, produced a marked behavioural change. In addition, some states and territories have outlawed dummy bidding and consumers are more on guard when buying and selling property.

During the year the ACCC issued 261 news releases. Of these, 113 explained the outcome of enforcement activities, and 23 were educational. The Chairman, Commissioners and senior staff undertook 157 speaking engagements and briefings, both public and private.

In 2003–04 we released 81 new publications covering such issues as compliance with the law, competition, fair trading and consumer protection. Over 306 000 copies were printed and distributed. Our website received over one million visits by people seeking information and publications. Videos and CDs were produced on compliance issues and the Competing Fairly Forums continued to play a vital role in reaching small business especially in rural areas.

The ACCC liaises closely with business and consumer groups in promoting a fairer economy and has an Infocentre that handles inquiries and complaints from consumers and business owners. During the year the Infocentre received 63 695 inquiries and complaints, by telephone and email. Over 43 500 were recorded in the ACCC's national complaints and inquiry database, as well as a further 6000 that arrived through the Commission's regional offices, by mail, or direct to staff and commissioners. Nearly 90 per cent of the telephone calls to the Infocentre were answered within 20 seconds.

The *ACCC Consumer Express* is emailed monthly to 1500 recipients and *ACCC Briefing* goes to around 1700 small businesses. *Retail Flash*, a newsletter for retailers, has a distribution of 20 000 copies.

The above clearly demonstrates the considerable effort that the ACCC puts into educating business and consumers about their rights and obligations. This effort will not slacken.

enforcement

While the ACCC puts a lot of effort into its compliance and education activities, and would prefer to have business comply with the law, it does not hesitate to litigate when there are clear breaches of the law. This is important in its own right as the ACCC is a law enforcement agency and if the law is broken the community and the legislature expect it to be enforced. It is also important to the ACCC's compliance and education activities since these will be more effective if business clearly perceives that appropriate sanctions are imposed if the law is broken.

The seriousness of illegal cartel conduct was underlined by the record \$35 million penalties imposed by the Federal Court against companies and executives involved in price fixing and market sharing in the electricity transformer industry. During the year the court handed down penalties of \$14 million against the remaining company and executive defendants in the case. Penalties of \$21 million had been imposed last year against other members of the cartel. This investigation began following an email to the ACCC by an anonymous whistleblower. Price fixing conduct in the NSW fire protection industry attracted penalties of \$3.5 million.

The High Court found that an arrangement between suppliers of regional newspapers constituted an illegal boycott and was anti-competitive. In another important case for the ACCC, the court also affirmed the decision of the Full Federal Court that the conduct of a waste paper collection company in attempting to reach an agreement to prevent a competitor from taking its customers was illegal.

The Full Federal Court dismissed appeals by two major music companies against a Federal Court decision that they had engaged in illegal exclusive dealing when responding to the parallel importation of CDs by small business. Penalties of more than \$2 million were affirmed.

Successful compliance programs can ensure companies operate lawfully. It is not only regulators that promote their adoption but also courts and corporations. Legislators have incorporated compliance obligations in laws such as the federal *Managed Investments Act 1998*. The ACCC supports initiatives that bolster risk management through effective compliance systems.

The ACCC considers voluntary industry codes an important part of its strategy to encourage fair trading and during the year was involved with developing and reviewing more than 30 industry and consumer codes.

cartels and the leniency policy

Cartels are an insidious example of anti-competitive activity. The perpetrators meet in private to fix prices and share markets. They keep no minutes of meetings and hide or destroy smoking gun documents. Often the existence of a cartel is unknown to regulators until an insider blows the whistle. This is where the ACCC's leniency policy becomes important. Put simply, the first corporation or individual to blow the whistle is guaranteed leniency except for the prime movers in setting up the cartel.

The ACCC has a 24-hour dedicated fax line to receive confessions—conspirators may not sleep so peacefully worrying if a colleague is using the fax line overnight. A recent example of whistleblowing occurred in the Western Australian brick industry. The Federal Court ordered Metro Brick to pay a penalty of \$1 million for making price fixing arrangements with Midland Brick for the supply of bricks to builders while a senior Metro manager was ordered to pay \$25 000 for his involvement. On the other hand, Midlands (a Boral subsidiary) escaped a penalty when two Boral executives approached the ACCC and provided a detailed statement.

The ACCC expects more whistleblowers to emerge, especially if the legislators grant the courts the option of prison for conspirators involved in hard core cartel activity. The ACCC believes that the prison option, in place in the United States and several other countries, will generate fear among those in cartels or planning them. The conspirators can do their own cost-benefit analysis—the cost of going to prison with its loss of reputation, loss of income and deprivation of freedom as opposed to the benefits gained from market rigging. The prospect of prison would turn off many potential cartel operators especially as long-term costs outweigh benefits.

mergers

Mergers, acquisitions and asset sales continued to be assessed for compliance with the Act. In total 189 matters were examined with six opposed outright because the ACCC believed they were likely to lead to a substantial lessening of competition. Two were allowed to proceed after the companies gave undertakings to address anti-competitive detriment that may have resulted.

Transport and communications industry mergers were above those of the previous year but there were fewer merger applications from finance, banking and insurance.

The ACCC opposed the acquisition by Coca-Cola Amatil Limited of Berri Limited and AGL's acquisition of a 35 per cent interest in Loy Yang Power. The Federal Court declared that the AGL acquisition did not amount to a contravention of the mergers provisions of the Trade Practices Act subject to the applicant and respondent entering into appropriate undertakings.

international cooperation

Globalisation and freer world trade have encouraged competition and consumer protection regulators from many countries to cooperate to combat international cartels and scammers who have no respect for national borders.

The ACCC coordinated 76 agencies in 24 countries in the 'Too good to be true' international sweep of the internet. Sweepers tagged 1847 sites for extra scrutiny. The ACCC has participated in a range of international forums including the International Competition Network and the International Consumer Protection and Enforcement Network. We received 167 requests from 38 countries for information and made 112 requests to 18 countries on issues including enforcement.

A positive outcome of international cooperation was the Federal Court declaring that the Swiss-based company IT&T AG had contravened Australian consumer protection law by sending invoices to Australian companies for listing them in an international fax directory without authority. In the IT&T case the exchange of information between the ACCC and agencies in Switzerland, Britain and the United States was vital in getting the matter before the court.

regulation

The ACCC is responsible for regulating the non-competitive sectors of the electricity and gas industries; the transmission wires and pipelines. It oversees the terms and conditions for competing businesses to gain access to transmission wires and pipelines and constrains monopoly pricing. It cooperates with state and territory regulators who are generally responsible for regulating the wires and pipelines.

In regulating the electricity industry in 2003–04 decisions by the ACCC included finalising Transend's revenue cap; approving Murraylink's conversion to a regulated network service provider network and finalising its revenue cap; approving Energy Australia's ring fencing waiver application; and commencing the review of the regulatory principles for transmission regulation.

The task confronting the ACCC in its electricity regulation is to ensure that the terms and conditions for access to the transmission wires are not excessive while at the same time ensuring that the returns to the owners of the transmission wires are adequate so that new investment in transmission occurs on a timely basis. Over the last five years more than \$4.6 billion will have been invested in electricity transmission. This includes both new and replacement investment and amounts to 30–40 per cent of the current transmission asset base in the National Electricity Market.

The gas industry has come a long way from the time when local authorities took supplies from monopoly producers under long-term contracts that left little room for competition from third parties. Regulation now seeks to ensure that gas pipeline operators which could otherwise exercise market power are required to provide access to third parties at prices that are reasonable while still encouraging further investment. Requiring pipelines to provide access on reasonable terms constrains monopoly prices and its adverse effects on downstream markets.

Some pipeline operators believe regulation has been too heavy handed and claim that investment is discouraged by low returns. However, they appear to ignore the fact that not only is gas consumption increasing strongly but investment in transmission infrastructure has risen. Twenty-four pipelines totalling 5000 kilometres have been constructed since 1997. This has improved security of supply and increased competition. The evidence shows that regulation has not inhibited investment.

In 2003–04 the ACCC approved the Moomba to Sydney pipeline access arrangements. That was the final decision in the first round of access arrangements for all pipelines regulated by the ACCC. The pipeline owner, however, appealed aspects of the access arrangement to the Australian Competition Tribunal and the tribunal found in favour of the pipeline owner. The ACCC is appealing that decision to the Federal Court.

It is no secret that the ACCC is disappointed with the current state of competition within the telecommunications sector. Competition has developed unevenly across different regions. Outside central business districts and some metropolitan areas, widespread competition remains elusive. The reason is clear: Telstra remains one of the most vertically integrated telecommunications companies in the world. Telstra's market power across a range of services provides it with the ability and, importantly, the incentive to impede entry of other companies into new and emerging markets.

It is not the aim of the ACCC to try and stop Telstra competing vigorously in either emerging markets or by legitimately exploiting its economies of scale and scope. What the ACCC wants is to see more effective competition between Telstra and other companies providing customers with better and more affordable services.

There are, however, technological developments that offer the prospects of serious challenges to Telstra's dominance. They include lowering the costs of existing infrastructure, such as telephone exchange switchgear which improves the economic viability of competing infrastructure, and the fact that technology is improving the viability of new communications modes, such as fixed

wireless and satellites. While technology may improve competition we must ensure that this serious challenge to Telstra's current market power is not impeded.

These emerging markets, networks and technologies will only survive if they are supported by effective regulation designed to promote sustainable competition in which there is less reliance on Telstra's infrastructure.

During 2003–04 the ACCC undertook nine investigations into anti-competitive conduct within the telecommunications sector. One of these investigations—into Telstra's wholesale and retail broadband prices—resulted in the ACCC issuing Telstra with a Part A competition notice in March 2004. The competition notice remained in force as of the end of the financial year.

In some areas, the ACCC elected to extend regulation in 2004–05, including the mobile terminating access service. In others, access regulation was removed, including the mobile originating access service and certain capital-regional telecommunications transmission routes.

Following its release of model terms and conditions of access for the core telecommunications services, the ACCC began its assessment of revised undertakings for these services. Other access undertakings considered this financial year include those lodged for the line sharing service and the analogue subscription television service. Anticipatory exemptions were also accepted by the ACCC in relation to the digital subscription services.

The ACCC continued its implementation of the enhanced accounting separation for Telstra, releasing three rounds of reports. More broadly, the ACCC released select information provided by five carriers under the regulatory accounting framework to improve the level of information in the marketplace.

Amendments to the Australian Postal Corporation Act give the ACCC the right to require Australia Post to keep records relevant to assessing proposals for price increases, dispute inquiries and testing for cross subsidy. Record keeping for various parts of its business will enable the ACCC to assess allegations raised by competitors that Australia Post is competing unfairly by subsidising competitive services with revenue raised from its monopoly services.

During the year the ACCC monitored the retail prices of petrol, diesel and automotive liquefied petroleum gas in the capital cities and about 110 country towns. It monitored international crude oil prices and refined product prices, published terminal gate prices of the oil majors and the city–country price differential. It also dealt with 1171 inquiries and complaints on fuel pricing.

The monitoring of unleaded petrol prices indicated that average prices increased mainly because of movements in international prices and the Australian/United States dollar exchange rate.

adjudication

The adjudication process is a fundamental and unique feature of the ACCC's work. It involves assessing the public benefits and detriments resulting from certain anti-competitive practices. If there is a net public benefit, the ACCC may grant immunity from legal proceedings under the Trade Practices Act. There are two ways immunity is available: by applying for an authorisation or lodging a notification of exclusive dealing.

Over the year the ACCC received 39 new applications for authorisation and 16 for minor variations of an existing authorisation. There were 15 applications to revoke an existing authorisation and grant a substitute authorisation while notifications for exclusive dealing totalled 543. The ACCC made 34 final determinations from the 84 applications for authorisation, including gas, electricity, mergers and other authorisations.

Final decisions included authorising a collective agreement to reduce EFTPOS interchange fees to zero and allowing certain petrol discount shopper docket exclusive dealing arrangements to stand. The ACCC denied authorisation for Qantas and Air New Zealand to form a strategic alliance whereby they would have coordinated, among other things, pricing, capacity, scheduling and purchasing on nominated routes. Both these decisions were appealed to the Australian Competition Tribunal. The tribunal overturned the EFTPOS decision and its decision on Qantas/Air New Zealand is still pending.

Collective negotiation arrangements have comprised a significant proportion of decisions. This reflects a growing awareness by businesses that collective negotiations can be authorised if they deliver public benefits and has been granted to TAB agents, hotels, newsagents, lottery agents, showmen and private hospitals.

product safety

The ACCC takes product safety very seriously. It cooperates with other agencies in efforts to substantially reduce the annual number of accidents involving consumer products by educating manufacturers, suppliers and retailers about product safety and the liability of those who breach the Trade Practices Act by selling unsafe products. Many accidents are avoidable and the strategy is not only to insist that products conform to set safety standards but that they are labelled correctly for safe use.

The vast increase in the range of products over recent years and the development of mega stores selling virtually everything has increased pressure on the safety watchdogs. It is up to retailers and distributors to be aware of mandatory safety standards and that when ordering goods they must stipulate that they comply with standards and check on delivery that they do. Stocking a product for the first time is no excuse for neglecting safety.

Children are often the victims of accidents involving unsafe products. Following ACCC surveys 31 children's cosmetics were withdrawn from sale because they were not properly labelled and could pose risks to children allergic to certain ingredients. Minmetals Australia Pty Ltd stopped supplying banned children's toy dart guns after action by the ACCC and Consumer Affairs Victoria. Children were at risk of choking if the darts lodged in their throats. The dart guns were found during a survey by the two agencies and the first priority was to remove them from sale.

During 2003–04 the ACCC completed survey and complaint investigations that led to the withdrawal from sale and/or recall of 39 different products. Five court enforceable undertakings resulted from the investigations while enforcement for minor breaches required administrative action for 33 separate products.

disadvantaged and vulnerable consumers

The ACCC, in cooperation with its Consumer Consultative Committee, launched a campaign and set up a task force to protect disadvantaged consumers. In its relatively short life the task force has considered 234 complaints, with over-aggressive debt collection activities by some companies a major issue.

The ACCC is determined to protect the disadvantaged and it has instigated legal proceedings against a company that allegedly signed an intellectually handicapped man for 15 rental agreements and 17 service agreements. Recently the Federal Court found that a company, thought its door-to-door salesman, acted unconscionably in signing up an illiterate woman to buy a \$949 vacuum cleaner. She did not get the opportunity to obtain independent advice beforehand.

Businesses must make every effort to ensure representations can be understood by all consumers. If it is apparent a consumer has limited capacity to understand, they should be advised to get assistance. If things go wrong a business should be open to resolve complaints and, where appropriate, set contracts aside.

The ACCC will not hesitate to take legal action against those who deliberately take unfair advantage of disadvantaged consumers.

indigenous artists

The ACCC took court action against two connected companies to protect the interests of indigenous artists, honest retailers and consumers. Products labelled 'Australian Aboriginal Art' and 'authentic' Aboriginal art included works by non-indigenous artists. The ACCC considered the representations misleading and court action resulted in re-labelling and attendance at a trade practices compliance seminar. The ACCC is working with various groups, including indigenous communities, to help educate the wider community about the false labelling of art and its adverse impact on indigenous artists.

legal

Over the year the ACCC spent over \$19 million on external legal services, primarily to our panel legal firms and to counsel. In addition, the ACCC has a significant in-house legal capacity. During the year the ACCC reviewed its provision of internal and external legal services. The report will provide the blueprint for the future use of legal services by the ACCC.

On 24 June 2004 the government introduced the Trade Practices Legislation Amendment Bill 2004 (Dawson Bill) into the House of Representatives.

funding

The ACCC received \$74.2 million for 2003–04 an increase of \$11.7 million on the \$62.5 million for the previous year. The increase included \$1.4 million to implement the government's response to the findings and recommendations of the Wilkinson report on the impact of Part IV of the Trade Practices Act on the recruitment and retention of medical practitioners in rural and regional Australia.

The ACCC received \$1 million over two years to monitor medical indemnity premiums to ensure they are actuarially and commercially justified. Additional funds were provided for the ACCC to continue its regulatory role in the telecommunications sector and for an increased role in the oversight of Australia Post.

Following the government's decision to remove price controls from airports, funding of \$0.9 million was no longer required for administering price regulation of airport services. This funding was withdrawn.

staffing

With the new appointments of Ms Louise Sylvan, Mr David Smith and Dr Stephen King, the ACCC now has seven commissioners and is in even better shape to protect business and consumers from unfair practices.

The total number of staff employed (including part-time, employees on leave and secondments) at 30 June 2004 was 501 compared with 490 a year earlier. Total full-time equivalent employees during the year was 449 compared with 468.7 for 2002–03. Full-time staffing levels were reduced due to budgetary constraints. Eleven graduates were recruited. Ten remain and have been promoted to permanent positions.

looking ahead

The May Federal Budget allocated additional funding of \$77 million to the ACCC for the four years 2004–08, including \$25.2 million to replenish the Litigation Contingency Fund that is used to meet the other side's costs in cases where the ACCC loses a matter in the courts.

The new funding is a sign of confidence in the commitment of the ACCC to uphold competition and consumer protection law. However, there is also a message for those in corporate Australia who may have believed that the ACCC had been weakened by recent court losses and would not have the inclination or funds to take on difficult cases. That is not the situation and the ACCC will not be deterred by firms with deep pockets that seek to test its resolve.

The quest by the ACCC for a more competitive economy and greater consumer protection can seem like a never ending struggle because of businesses that refuse to play by the rules and the scammers that are out to make a quick dollar at the expense of consumers. However, the ACCC is vigorous in its pursuit of those who ignore the Trade Practices Act.

The breaking of cartels will continue to be a high priority for the ACCC. International cooperation is proving a powerful weapon in detecting and breaking up cartels while the ACCC's leniency policy is enticing whistleblowers to come forward.

The ACCC will continue to use campaigns, such as that in the real estate industry, to address what seem to be systemic unlawful conduct in particular sectors of the economy.

The ACCC is concerned about the behaviour of companies and individuals that target disadvantaged and vulnerable consumers and is determined to protect them. The ACCC is also seeking to bring about a more responsible attitude by media outlets to the publishing of misleading and deceptive material.

It is improving online trading, working to secure competition in broadband internet and ensuring those involved in misleading or deceptive advertising are held responsible.

The ACCC will continue to build its cooperation with other national competition and consumer protection agencies, not only in relation to breaking cartels but also on other competition and consumer protection issues. Increasingly our focus needs to be on national and international areas of unlawful conduct so we will continue close liaison and coordination with state and territory fair trading agencies so that they can pursue more regional and local instances of unlawful conduct.

Later this year a new statutory authority, the Australian Energy Regulator (AER), will take over responsibility for regulating electricity transmission, with gas to follow in 2005. Subject to inter-governmental agreement it also expects to regulate retail and distribution for electricity and gas (except for retail pricing) by 2006. Western Australia, however, will retain responsibility for regulating its electricity and gas businesses while the Northern Territory will regulate its electricity distribution. While being a separate legal entity the AER will be a constituent part of the ACCC. The ACCC is committed to ensuring that the AER is successfully established and meets the aspirations of the Commonwealth and state governments involved.

While those operating unlawfully face prosecution the ACCC is continuing its education programs and consultations to increase knowledge of the Trade Practices Act and compliance with it. It prefers compliance to prosecution. The ACCC is encouraging industry associations and businesses to consider voluntary codes of conduct to raise business standards and behaviour. The ACCC will also continue its efforts to make the ACCC, and the law that it administers, more accessible to small businesses and those in rural and regional Australia.

The staff of the ACCC is dedicated to achieving a fairer and more competitive economy and enhancing consumer welfare. The Commissioners gratefully acknowledge the hard work and expertise of their supporting staff. They are the engine room that drives the ACCC's efforts towards achieving a fairer and more competitive Australia. They deserve our sincere thanks.

who we are



what we do

The Australian Competition and Consumer Commission is an independent statutory authority, set up in 1995 as part of the national competition policy reform program. It is the only national agency dealing with competition matters.

The primary responsibility of the ACCC is to ensure that individuals and businesses comply with competition, fair trading and consumer protection laws, in particular the Trade Practices Act.

The ACCC applies these laws without fear or favour, helping to make sure that competition in the marketplace is efficient and fair.

As an integral part of its work the ACCC:

- promotes effective competition and informed markets
- encourages fair trading and protects consumers
- regulates infrastructure service markets and other markets where competition is restricted

promoting effective competition and informed markets

- prevent price fixing, market sharing, bid rigging and boycotts
- prevent the misuse of market power, anti-competitive exclusive dealing and resale price maintenance
- protect the interests of small business against anti-competitive conduct and unfair trading
- assess mergers, asset sales, joint ventures
- authorise anti-competitive conduct in the public interest
- assess export agreements
- ensure compliance by the professions
- assess certification trade marks
- improve compliance through education and information
- maintain public and confidential information registers

encouraging fair trading and protecting consumers

- prevent misleading and deceptive conduct and misrepresentation
- ensure products comply with mandatory safety standards and bans
- improve business and consumers' understanding of their rights and obligations

regulating infrastructure service markets and other markets where competition is restricted

[promote competition in the network industries:
electricity, gas, telecommunications, aviation and airports,
waterfront and shipping, rail and post]

electricity	<ul style="list-style-type: none"> ensure access to wire networks set revenue caps for the transmission network service providers authorise changes to the national electricity code
gas	<ul style="list-style-type: none"> implement the national gas code determine conditions of access to gas transmission pipelines arbitrate access disputes
telecommunications	<ul style="list-style-type: none"> maintain competitive and consumer safeguards across the industry determine which services should be subject to access regulation consider access undertakings and arbitrate disputes between industry members
aviation and airports	<ul style="list-style-type: none"> assess proposals for price increases for air traffic control services by Airservices Australia monitor prices, quality of service and administer financial reporting requirements for major private airports
waterfront and shipping	<ul style="list-style-type: none"> monitor stevedoring prices and administer liner cargo shipping arrangements
rail	<ul style="list-style-type: none"> ensure access to interstate rail track cap freight rail prices
post	<ul style="list-style-type: none"> approve changes to charges of postal services operated exclusively by Australia Post
petrol prices	<ul style="list-style-type: none"> monitor the prices of petrol, diesel and liquefied petroleum gas
insurance	<ul style="list-style-type: none"> check costs and premiums in the public liability and professional indemnity sectors of the insurance market and monitor medical indemnity premiums

what we don't do

The ACCC deals with competition and consumer protection matters of national and international significance and therefore does not:

- pursue issues such as the pricing of particular goods or services, warranties and refunds that are more effectively dealt with at local or state level
- mediate disputes between individuals and the suppliers of goods and services
- advise whether a company or individual is honest
- approve individual business conduct
- disclose the number or nature of complaints received about a company or individual
- give legal advice
- settle employment disputes
- register business names

The ACCC also does not handle complaints about misleading or deceptive conduct in relation to financial transactions. The Australian Securities and Investments Commission (ASIC) has this responsibility.

The Trade Practices Act promotes competition and fair trading and provides for consumer protection to enhance the welfare of Australians.

The Prices Surveillance Act was repealed and replaced with a new Part VIIA in the Trade Practices Act. Part VIIA updates the prices surveillance legislation while generally preserving the ACCC's existing powers. The aim of Part VIIA is to have prices surveillance applied only in those markets where competitive pressures in an industry are not sufficient to achieve efficient prices and protect consumers. Typically it is used in industries where there is little effective constraint on a business' pricing power, and is normally applied in response to a direction from the Australian Government. Under the prices surveillance regime the ACCC can monitor prices, review price increase applications, and conduct broader pricing inquiries into specified goods and services.

effective competition and informed markets

parts of the Trade Practices Act deal with competition

IV	anti-competitive conduct: price fixing, market sharing, boycotts, agreements substantially lessening competition, misuse of market power, exclusive dealing, resale price maintenance, mergers substantially lessening competition
XIA	the competition code

enforcement | Anti-competitive conduct is dealt with only by the ACCC and is illegal for all businesses in Australia. It conducts merger and acquisition analysis. To enforce the provisions of the Trade Practices Act the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > adverse publicity orders
- > corrective advertising, public notices and disclosure

For breaches of anti-competitive conduct:

- > pecuniary penalties of up to \$10 million for companies and \$500 000 for individuals

fair trading and consumer protection

parts of the Trade Practices Act deal with fair trading and consumer protection

IVA	unconscionable conduct in commercial and consumer transactions
IVB	industry codes of conduct; the franchising code of conduct is a mandatory code prescribed under Part IVB
V	unfair practices, misleading and deceptive conduct, pyramid selling, country of origin representations, product safety and information, conditions and warranties in consumer transactions
VA	liability of manufacturers and importers for defective goods
VC	criminal conduct in fair trading and consumer protection

enforcement State legislation largely mirrors the fair trading and consumer protection provisions of the Trade Practices Act. To enforce the provisions of the Trade Practices Act the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > adverse publicity orders
- > corrective advertising, public notices and disclosure

For breaches of fair trading and consumer protection:

- > fines of up to \$1.1 million for companies and \$220 000 for individuals may apply.

infrastructure service markets

parts of the Trade Practices Act deal with regulated industries and prices surveillance

IIIA	access to the services of essential national infrastructure facilities, such as access to transmission wires networks, natural gas pipelines, rail tracks and airport facilities
VIIA	price monitoring and surveillance in relation to industries or businesses declared by the Australian Government
X	establishes limited exemptions in relation to international liner cargo shipping
XIB	anti-competitive conduct in telecommunications
XIC	access to services for telecommunications

regulation

Regulatory functions of the ACCC include: authorisation of the national electricity market rules (National Electricity Code) and gas supply arrangements under Part VII, the regulation of transmission revenues for both electricity and gas and administering access regimes under Part IIIA, services in telecommunications and airports, arbitration, audits and direct monitoring of prices.

In 2004 a new statutory authority, the Australian Energy Regulator, will take over responsibility for regulating electricity transmission, and gas transmission in 2005. It will also regulate retail and distribution in electricity and gas (except for retail pricing) by 2006 following an inter-governmental agreement on a national framework. The AER will be a constituent part of the ACCC.