

part one

overview of the ACCC



For more than a decade
Australia has experienced
consistently strong rates
of economic growth,
outstripping that of most
other OECD countries by
a significant margin.

Graeme Samuel, ACCC chair, credits this
performance to the introduction, 30 years ago,
of the *Trade Practices Act 1974*.

review



This report marks a milestone in the protection of consumers and the promotion of competition in Australia. It is 30 years since the enactment of the *Trade Practices Act 1974*.

Underlining the fact that the Act never stands still and the job of the Australian Competition and Consumer Commission (the ACCC) is never static, the past financial year was of one of consolidation and preparing for considerable legislative change. It included:

- > the strengthening of the informal merger assessment process to enhance transparency and timeliness while preserving the benefits of the current system
- > a review of the ACCC's policy granting conditional immunity from prosecution with the specific aim of exposing cartel conduct
- > significant changes to the ACCC's internal processes and enforcement case management, in particular the management of the ACCC's legal services
- > government commitment to the introduction of new legislation to criminalise hard core cartel behaviour and toughen penalties for breaches of particular parts of the Act
- > the creation of the Australian Energy Regulator (AER) within the ACCC to take responsibility for regulating electricity and gas.

The 2004–05 budget provided additional funding of \$77 million for the ACCC over the next four years. This included \$53.1 million for agency expenses and \$23.9 million for capital funding. These additional funds have placed the ACCC in a much stronger financial position than in previous years.

The litigation contingency fund, from which adverse cost orders are met, has an end-year balance of \$17 million.

The 2005–06 budget provides the ACCC with \$85.5 million for operating expenses and \$1 million for capital funds. Within this, the ACCC received \$4.8 million to fund the ongoing operations of the AER for 2005–06 and \$20 million over the next four years to fund the implementation and administration of legislative amendments arising from the recommendations of the Dawson review into the competition provisions of the Act.

enforcing the law

The ACCC remains committed to confronting any business or cracking down on any behaviour in a sector that flouts the clear obligations of all businesses to comply with the Act.

This was underscored by the Federal Court ordering \$23.3 million in penalties against eight companies and eight individuals for petrol price fixing in the Ballarat region in Victoria. These arrangements maintained higher petrol prices for consumers in the Ballarat region. Apco and its director were found by the Full Federal Court to have not demonstrated a necessary commitment to the price fix and were absolved.

In another significant case a \$4.75 million penalty was levied against Liquorland, a member of the Coles Myer group, for five contraventions of s. 45 of the Act in its response to liquor licensing applications by smaller competitors.

An important consumer case in the Northern Territory was the ACCC's prosecution of Ramon Lal Keshow, a promoter of educational materials to indigenous people. The ACCC alleged and the court agreed that Mr Keshow had engaged in unconscionable conduct. The court banned Mr Keshow from entering indigenous communities in the NT and also barred him from receiving automatic payments in the Northern Territory for goods or services without full disclosure of their effect. The ACCC has taken representative action on behalf of eight consumers who were victims of the conduct.

In a case that sparked considerable national interest, the ACCC finalised its investigation into the use of 'light' and 'mild' descriptors on tobacco packaging. This work included investigations both here and overseas, and ultimately led to the ACCC obtaining court enforceable undertakings from two of the three major Australian tobacco manufacturers and distributors to remove these descriptors from their tobacco packaging. As part of the undertakings, the companies agreed to contribute \$8 million to a fund supervised by the ACCC towards educating consumers about the risks associated with smoking 'light' and 'mild' cigarettes.

Companies which seek to illegally maintain prices by banning discounting prevent both consumers and business from taking advantage of competitive markets. Following action taken by the ACCC, a prestige skin care product company Dermalogica Pty Ltd was penalised \$250 000 for attempting to force two retailers to stop discounting. The Federal Court indicated that the penalties would have been considerably higher but for the company's cooperation.

A significant setback for the ACCC was the Federal Court decision that Baxter Healthcare Pty Ltd had not contravened the Act because it was dealing with various state government departments which were not carrying on business. The Federal Court found that because Baxter was supplying state purchasing authorities which were not carrying on a business and therefore entitled to Crown immunity, the Crown immunity extended to protect Baxter from the proceedings brought by the ACCC. Without this protection, the Federal Court indicated it would have held Baxter had breached the exclusive dealing provisions of the Act and would have found one contravention of the misuse of market power provisions of the Act. The ACCC has appealed the decision. This case raises important issues of derivative Crown immunity and its effect on competition.

The ACCC's enforcement processes have undergone substantial changes within the past year. These changes are aimed at making best use of ACCC resources by imposing greater discipline on our enforcement and litigation activities. These reforms ensure our enforcement activity is better targeted, is timely and undertaken in a rigorous and efficient manner. These internal process changes have concentrated on three key areas:

- > better data management and information systems to identify trends, prioritise investigations and promote efficient use of our resources
- > systems and processes to ensure greater control over our management of legal services, legal costs and our relationship with law firms
- > better management and control of legal expenditure on litigation to ensure our legal resources are focused on more important and complex matters

These changes enable the ACCC to focus its resources on complex matters; matters of national importance and significance, or where there is widespread consumer detriment.

The ACCC has also given more serious consideration to the alternative processes available under the Act, including, in appropriate cases, criminal prosecutions for breaches of the consumer protection provisions and deliberate fraudulent activity in the area of small business franchising.

An advantage of taking a criminal action is the ability to obtain financial penalties which is not available under the current civil regime. The ACCC took criminal action against Chubb Security Australia and secured penalties of \$1.51 million for criminal breaches over its failure to provide contracted security services.

cartels and immunity

Over the past 12 months, the ACCC has embarked on a clearly defined and calculated campaign to raise community awareness of cartels. This has included the development of an information package directed, initially, towards government agencies which are the largest purchasers of services and at risk of being targeted by cartels.

The Federal Government's commitment to introduce significantly increased financial penalties for cartels plus the possibility of jail sentences for executives involved in such activities has reinforced this campaign.

The number of serious cartel investigations has escalated since the introduction of the ACCC's policy to grant conditional immunity to cartel conspirators just over two years ago. As a result of our experiences to date the policy has undergone significant review.

compliance

Compliance with the law remains a primary focus of the ACCC. It is more sensible to have businesses comply with the law rather than have them damage consumers and other businesses, and then having the ACCC undoing that damage later. A culture of compliance with the Trade Practices Act should not be an optional extra, but an essential element of doing business.

The ACCC sees a clear obligation to publicise the work it does, and the successes it has in targeting such blatantly harmful and illegal conduct.

During the year the ACCC issued 365 media releases. Of these, 126 explained the institution and/or outcome of enforcement activities and 19 related to educational activities, such as speeches and seminar appearances. Commissioners and senior staff made 172 speeches around the country.

The ACCC produced 85 new publications covering the scope of its work, distributing more than half a million hard copy publications. Other material produced included videos and CDs for small business on compliance issues. *ACCC Infolink* was distributed by email to 1800 subscribers in rural and regional areas.

Among the major publication initiatives by the ACCC this financial year were the Medical Info Kit to help medical practitioners better understand their rights and responsibilities under the Act. We also updated our guide to unconscionable conduct and worked with the Australian Securities and Investment Commission to update our guidelines for the debt collection industry. The ACCC's eighth Competing Fairly Forum helped educate the small business community about franchising. Initially viewed by 1200 people at forum screenings, it has been made available on the ACCC's website and distributed to industry associations for wider screening to their members nationwide.

product safety

The ACCC has always placed a high priority on protecting consumers from unsafe or dangerous products. Its role in this area was expanded with the transfer from Treasury to the ACCC in late 2004 of the product safety advisory function.

As a result, the ACCC is now responsible for not only enforcing product safety regulations, but in advising government about what regulations are needed, and what form they should take.

The first mandatory standard developed by the ACCC under this new role was the Consumer Product Safety Standard for Baby Bath Aids, launched in May 2005. The ACCC will remain vigilant and will act swiftly where it detects consumer safety is at risk.

mergers

In October last year, the ACCC adopted a new series of merger guidelines to provide for greater transparency and accountability in the conduct of informal merger clearance processes (particularly for complex matters which involve some significant investigation by the ACCC) while preserving the benefits of the informal system.

In particular, the new informal guidelines seek to establish more definitive timelines, establish a new public register, and allow for the issue, where applicable of a Statement of Issues (when competition issues require further information and consideration) and Public Competition Assessments (providing comprehensive reasons for its decisions in significant or contentious matters).

During 2004–05, a total of 189 mergers were considered by the ACCC. Of those, 32 complex matters were examined and decided under the new informal merger guidelines; 5 Statements of Issues and 19 Public Competition Assessments were released. The remaining matters were not considered complex and were dealt within short timeframes.

Of the 32 completed complex matters under the informal merger guidelines, many were concluded in considerably less than the eight weeks established assessment period; with 50 percent completed in less than six weeks and 84 per cent in less than the eight weeks. Only five assessments of these complex matters required more than the first phase eight-week assessment period. It is significant that each of these five matters resulted in the release of a Public Competition Assessment (indicating that the matters were complex) and in the longest matter (90 days) a Statement of Issues was issued and a second phase investigation conducted.

The guidelines have had the desired effect—that is, they have produced significantly greater transparency and, as a result, significantly more accountability not only on the part of the ACCC but also on the part of merger parties in the way in which the informal merger process is conducted. Despite some early teething difficulties concerning this new process, most parties are now welcoming the process of transparency and accountability and the greater degree of certainty that it provides as to the manner in which we conduct our informal merger clearance process.

The ACCC has undertaken to retain the informal process post the introduction of the formal merger assessment process due to be introduced with the Dawson legislative amendments. The ACCC will work hard to make the informal system work well, unless it is deliberately gamed in a way that undermines the operation of s. 50 of the Act.

Some of the more substantial mergers assessed this year fell within the electricity, childcare, food and beverage and manufacturing sectors.

- > The ACCC did not oppose the acquisition of certain assets of Singapore Power, including the TXU retail business, by China Light & Power (CLP). An important issue in the assessment was the horizontal aggregation of the control of generation capacity.
- > The ACCC opposed the acquisition of the foam business of Joyce Corporation Limited by Pacific Brands Limited. Pacific Brands, through Dunlop Foams and Joyce are the largest manufacturers of foam in Australia. A merged entity would be the only foam supplier in the industry with national coverage and the ACCC considered the proposed acquisition would be likely to substantially lessen competition in a number of state-based markets for foam.
- > Following an offer to divest a number of child care centres and not to acquire any further child care licences in certain geographic areas the ACCC allowed the acquisition of Peppercorn Management Group Ltd by ABC Learning Centres.
- > The ACCC decided not to oppose the proposed acquisition of SouthCorp Limited by Foster's Group Limited. The ACCC noted that the merged firm's market shares in the production of wine and the wholesale supply of bottle wine were below merger concentration thresholds, and that there were a number of other competitors.

regulation

The aim of the ACCC's regulatory activities is to improve the provision of essential services such as energy, telecommunications and transport to the Australian community, by encouraging competition and stimulating investment.

In the electricity industry in 2004–05 decisions by the ACCC approved substantial increases in transmission investment at around \$1.4 billion in NSW and the ACT alone.

The ACCC released the Statement of Principles for the regulation of electricity transmission revenues. This statement set out an incentive form of regulation which aims to encourage efficiency while balancing the provision of adequate service quality to consumers. It also reviewed the electricity regulatory test to promote further interconnection between states, which will in turn increase competition between generators.

The ACCC also expressed some concerns about trends towards re-aggregation in the national electricity market and in particular a risk that relying on s. 50 of the Act alone may not act to prevent the creation and exacerbation of market power problems in electricity generation.

Investment issues have also been raised within the gas sector, despite the impressive record of increased transmission pipeline infrastructure. According to the Australian Pipeline Industry Association's own figures, 14 000 km of new transmission pipelines have been laid in Australia since 1997. This amounts to a doubling of transmission pipelines to 28 000 km in just seven years, improving security of supply and increasing competition.

The ACCC has authorised retail market rules for the South Australian and West Australian markets, facilitating the implementation of full gas retail competition.

Judgments by the Australian Competition Tribunal (the ACT) varied three areas of the access arrangement drafted and approved by the ACCC for the Moomba Sydney pipeline system. The methodology applied by the ACT to value the assets was not supported by the ACCC or the pipeline's owner during the assessment process. The ACCC has lodged an application with the Federal Court of Australia seeking a judicial review of the ACT's decision.

Legislative reform is anticipated in the regulatory arena with the introduction of Trade Practices Amendment (National Access Regime) Bill 2005 into Parliament on 2 June 2005. This Bill aims to amend the *Trade Practices Act 1974* regarding regulation of access to strategic infrastructure services.

In telecommunications, the ACCC's principle concern remains the copper local access network. In most of Australia, Telstra is the sole provider of this network which connects virtually every home and business. Companies seeking to compete must rely on some form of access to Telstra's network. The competitive markets which have emerged since 1997 have been those where there is more infrastructure based competition, for example corporate and business in metropolitan areas have benefited to a greater degree than residential consumers following the roll out of competitive infrastructure by new players.

To date, much of the ACCC's activities have been directed towards ensuring competitors are able to get access to critical parts of Telstra's network, where they need it, on reasonable prices and on reasonable terms.

In light of technological developments in the telecommunications industry, the way in which people access information and entertainment is likely to be determined by those who control the telecommunications networks. Control over the production and distribution of content will itself become a central factor in a provider's success. However, content rights are having an increasingly important role in the development of effective broadband competition.

A major telecommunications investigation in 2004–05 was concluded regarding Telstra's wholesale and retail pricing of broadband services. The ACCC had previously issued Telstra with a Part A competition notice after forming a reason to believe that Telstra had engaged, or was engaging, in at least one instance of anti-competitive conduct. Following ACCC action, Telstra reduced its wholesale prices, accepted a formal notification arrangement and acknowledged its pricing changes may have adversely affected the competitive position of its wholesale broadband customers. In light of this, the ACCC revoked the competition notice on 21 February 2005.

This investigation was one of 14 anti-competitive conduct inquiries conducted this financial year, 7 of which were concluded.

Following ministerial direction, the ACCC reviewed the price control arrangements to apply to Telstra from June 2005. After issuing a draft report in November 2004 the ACCC completed its review with a final report to the minister in February 2005.

Over the course of 2004–05, 11 mobile terminating access service disputes were notified to the ACCC. In all cases Optus and Vodafone were the access providers. Two disputes were withdrawn and the remainder are currently being arbitrated under the dispute resolution procedures under the Act.

To further the objective of promoting vigorous, lawful competition and informed markets, the ACCC undertook extensive assessment and analysis in a number of areas. These included:

- > medical indemnity insurance premiums were monitored to assess whether they are justified with the second of three annual reports to government completed in December 2004
- > Airservices Australia's proposal for a long-term price path for air navigation (en route and terminal) and rescue and fire fighting services was assessed
- > an Australia Post price notification for impact mail was assessed
- > maintaining and refining the consumer awareness initiative on petrol price cycles on the ACCC website
- > continued monitoring of trends in prices, costs and profits of container stevedoring of the three major companies, P&O Ports Pty Ltd, Patrick Stevedores Operations and CSX World Terminals Pty Ltd.

adjudication

The ACCC has continued to improve its timely consideration of authorisation applications and notifications. A large number of authorisations were finalised within or around six months. The ACCC has also completed a large number of determinations, twelve in the final quarter of 2004–05. The ACCC was able to respond to urgent business requests with a number of interim decisions being made within three weeks.

Authorisations covering the rural sector have comprised a significant proportion of decisions. These have included allowing chicken growers and vegetable growers to collectively negotiate with processors and decisions to allow a joint venture for exporting grain logistics.

Considerable resources were allocated to assessing authorisation applications for systems to reduce the vessels queues at Port Waratah and Dalrymple Bay, two major coal export ports.

A number of matters came before the Australian Competition Tribunal (ACT) including the decision in October 2004 to grant authorisation to a proposed strategic alliance between Qantas and Air New Zealand. Reasons for the decision were handed down in May 2005. The key difference between the ACCC's findings, which proposed to reject the alliance and the ACT's views, was that the ACT believed the presence of Virgin Blue and Emirates on the trans-Tasman market would constrain the alliance's conduct. It should be noted that the ACT made its decision on information not available to the ACCC and the ACCC is satisfied with its decision not to grant authorisation.

The ACCC continues to prepare for the implementation of the Dawson reforms, namely the introduction of a six-month time limit for non-merger authorisations and the establishment of a collective bargaining process for small business. We have noticed an emerging trend, particularly in the rural sector, for collective bargaining applications to include the ability to boycott under certain conditions.

corporate

During 2004 the ACCC reviewed its legal services needs and has established a new panel of legal firms to supplement in-house staff. The panel, which consists of four providers, will meet all of our litigation needs, in both enforcement, and non-enforcement areas—particularly regulatory, mergers and adjudication. The firms have been appointed to the panel for an initial period of three years.

The recruitment and retention of high calibre staff remains a challenge for the ACCC. The skill sets developed by staff are often highly prized by other organisations in both the public and private sectors.

Funding for 2004–05 provided for 457 full-time equivalent staff compared to 449 for 2003–04. The actual number of staff employed at 30 June 2005 was 519. This included 19 graduates recruited in 2004–05.

The 2005–06 budget provides funding for 511 FTEs. The increase in staff numbers reflects the transfer to the ACCC of responsibility for developing product safety standards, additional staff for the implementation of the Dawson legislative amendments and the creation of the AER.

looking ahead

30 years on, the ACCC is embarking on a new era in the enforcement of the Trade Practices Act; the commencement of the AER; amendments to assist small business in collective bargaining; reforms to merger clearance processes and increased penalties for anticompetitive conduct as well as the announcement by the government of the introduction of jail sentences for hard core cartel activity.

The challenges for the organisation are fourfold:

- > help to ensure Australia does not turn back from the fundamental culture of promoting competition and a vigorous competitive environment as enshrined in the Act by seeking to protect certain sectors from competition
- > to develop the regulatory framework, particularly for telecommunications to protect emerging new technologies and enable them to develop and strengthen competition
- > to protect access to crucial national infrastructure and so promote competition in areas like gas, electricity, ports and rail
- > to strengthen the effectiveness of competition and consumer protection law through international co-operation to ensure consumers and business operating in a global environment receive the same level of protection abroad, as they do at home.

After 30 years, the *Trade Practices Act 1974* remains Australia's principal legislative weapon for ensuring all Australians benefit from a vigorous, lawful, competitive business environment.

The ACCC operates on the basis of five principles—confidentiality of information, transparency of process, predictability, timeliness and fairness. This could not be achieved without the incredible commitment of all the staff at the ACCC. I highly value their contribution, loyalty, intellectual power and rigour and their belief that by promoting the objectives of the Trade Practices Act, vigorous competition and honest fair dealings in business, we are making a vital contribution to the welfare of all Australians.



... the Bill is of great importance. It represents a great advance in areas of restrictive trade practices and consumer protection and attends to a wide variety of problems. This is intended to promote efficiency and competition in business, to reduce prices and to protect all Australians against unfair practices. I commend the Bill to the Senate.

Senator Lionel Murphy, 30 July 1974

who we are

Australian Competition and
Consumer Commission

chairman | Graeme Samuel, AO
deputy chair | Louise Sylvan
commissioners | Stephen King, John Martin, Teresa Handicott, Don Watt, Warwick Wilkinson AM
ex-officio commissioners | Steve Edwell, Geoff Swier

chief executive officer | Brian Cassidy
enforcement and compliance
executive general manager | Mark Pearson
general managers | compliance strategies, Nigel Ridgway |
criminal enforcement and cartel, Lee Hollis | enforcement and
coordination, Rose Webb | policy and liaison, Robert Anich
regional managers | New South Wales, Geoff Williams | Victoria, Tom Fahy |
Queensland, Alan Ducret | Western Australia, Sam Di Scerni |
South Australia, Bob Weymouth | Tasmania, Peter Clemes |
Northern Territory, Derek Farrell | Townsville, Kim McBey

regulatory affairs | executive general manager | Joe Dimasi
general managers | regulatory development, vacant | telecommunications,
Michael Cosgrave | transport and prices oversight, Margaret Arblaster
office of the Australian Energy Regulator
chief executive officer | Michelle Groves
general managers | access, Mike Buckley | markets, vacant |
transition, Sebastian Roberts

adjudication | Scott Gregson
mergers and asset sales | Tim Grimwade
corporate | Helen Lu
finance and services
chief finance officer | John Bridge
legal group | general counsel | Robert Alexander |
legal services manager | Margaret Micallef
trade practices and litigation unit |
Robert Alexander
corporate and regulatory law |
Bruce Brown

media relations | Lin Enright

Australian Energy Regulator

chairman | Steve Edwell

members | Geoff Swier, Ed Willett

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 market place 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
- assess mergers, asset sales and 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 protect consumers

- prevent misleading and deceptive conduct and misrepresentation
- ensure products comply with mandatory safety standards; advise government on product recalls, bans and warning notices
- improve business and consumers' understanding of their rights and obligations
- support the ability of small business to trade with larger firms in a fair environment

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	<p>ensure access to wire networks</p> <p>set revenue caps for the transmission network service providers</p> <p>authorise changes to the National Electricity Code</p>
gas	<p>implement the national gas code</p> <p>determine conditions of access to gas transmission pipelines</p> <p>arbitrate access disputes</p>
telecommunications	<p>maintain competitive and consumer safeguards across the industry</p> <p>determine which services should be subject to access regulation</p> <p>consider access undertakings and arbitrate disputes between industry members</p>
aviation and airports	<p>assess proposals for price increases for air traffic control services by Airservices Australia</p> <p>monitor prices, quality of service and administer financial reporting requirements for major private airports</p>
waterfront and shipping	<p>monitor stevedoring prices and administer liner cargo shipping arrangements</p>
rail	<p>ensure access to interstate rail track</p> <p>cap freight rail prices</p>
post	<p>approve changes to charges of postal services operated exclusively by Australia Post</p>
petrol prices	<p>monitor the prices of petrol, diesel and liquefied petroleum gas</p>
insurance	<p>check costs and premiums in the public liability and professional indemnity sectors of the insurance market, monitor medical indemnity premiums and bank fees and charges</p>

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 financial transactions. The Australian Securities and Investments Commission (ASIC) has this responsibility.



After the federal election in **May 1974**, the amended Murphy Bill was passed into law. The *Trade Practices Act 1974* contained prohibitions with the possibility of clearances and authorisations as well as consumer protection provisions.

the law

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

The *Prices Surveillance Act 1983* was repealed and replaced with a new Part VIIA in the *Trade Practices Act 1974* in 2004. Part VIIA updated 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 federal 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 dealing 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

The ACCC is the only government agency that deals with anti-competitive conduct—which 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 dealing 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 parts of 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.



In Australia, agreement between competitors is remarkably pervasive.

Ron Bannerman,
Commissioner of Trade Practices, 1968



infrastructure service markets

parts of the Trade Practices Act dealing 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

The regulatory functions of the ACCC have included: regulating the electricity, gas telecommunications and transport sectors to ensure equality of access to infrastructure, and monitoring of services and prices.

From 1 July 2005 a new statutory authority, the Australian Energy Regulator (AER), will have direct responsibility for the regulation of revenues in the electricity transmission networks. Responsibility for regulating the gas transmission networks will also be transferred to the AER in 2006–07.

It is expected that the AER will also eventually have responsibility for the retail and distribution networks in the energy sector. The AER is a separate statutory authority established by the *Trade Practices Act 1974*. It is a constituent part of the ACCC.



The Productivity Commission estimates that Australia's GDP is now about 2.5 per cent higher than it would otherwise have been, and Australian households' annual incomes are on average around \$7000 higher as a result of competition policy.

OECD economic surveys 2002–03