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# Research and information

## First ACCC Annual Report

In its first Annual Report, tabled in Parliament on 16 October 1996, the Commission says that Australia now has the legislative and institutional framework within which to develop an economy benefiting from improved competitiveness internationally and domestically. The passage of the Competition Policy Reform Act and agreement by all States and Territory governments to its reforms signalled a strong commitment to the development of a competitive economic culture, operating as one national market, with uniform rules and rights for consumers and business, regardless of State borders and ownership.

By the end of 1995–96, the Commission was well established as a truly national enforcement agency, the National Competition Council had been set up, the access regime was operative, and all but one State Parliament had enacted the legislation to extend the Trade Practices Act to previously insulated sectors of the economy.

The report says the new ACCC is more than a sum of its parts, the former Trade Practices Commission and the Prices Surveillance Authority. Although of different legislative origin, the two former agencies were essentially complementary in object and function — both being concerned ultimately with the potential of competitive markets to deliver benefits to the economy. Their merger makes possible a better balance between trade practices and pricing work and the progressive integration of pricing skills and experience across the whole range of the Commission's activities.

The report highlights the extended work now covered by the Commission, including its role in public utility markets. The Commission's involvement comes about from the fact that structural reform, corporatisation and privatisation in public utility sectors often raise complex competition and public benefit issues which touch on matters that are either potential contraventions of the Act or concern the efficiency or effectiveness of competition in the delivery of goods and services.

In some cases the primary focus of the Commission's involvement has been the question of access to the services of natural monopoly facilities. The Commission is involved in such issues because of its general experience in dealing with issues of market power and also in recognition of the operation of Part IIIA of the Act, access to the services of essential facilities.

Despite its new responsibilities, the Commission's 'traditional' enforcement work in the corporate sector is no less important or demanding. The report records a greater number and greater diversity of enforcement matters than for any preceding year — and more successes. These included a large number of matters under Part V (consumer protection), reflecting a disappointing tendency for familiar forms of misleading and deceptive conduct to emerge in new markets.

The report notes that, with the introduction of greatly increased pecuniary penalties for breaches and of enforceable undertakings under s. 87B, the Act became a more powerful and more flexible tool. The continuing challenge for the Commission is to find more innovative, and productive, ways to use it.

The report says the new legislative environment has the potential to have an even more profound effect on the Australian economy than the introduction of the Act 22 years ago. The latest reforms represent a major step forward in the country's micro-economic reform program and in economic policy more generally, but are just the beginning of the implementation of the Australian competition policy reforms. Much more remains to be done in the area of public utility reforms, while implementation of the new access arrangements and the regulatory review programs are largely matters for the future.

The Annual Report is available for \$19.95 from Government Info Shops.

## ACCC home page

Internet users can now browse the Commission's Internet home page for up-to-date information on trade practices matters and the Commission's activities.

In addition to information about the work of the Commission and how to contact it, the page includes:

- on-line versions of the Commission's major guidelines and other publications;
- on-line text of media releases;
- public register material;
- an up-to-date list of the Commission's publications and an order form;
- a search engine operating across the whole site; and
- links to a number of other home pages of relevance to the Commission's work.

The page has been designed for viewing with advanced browsers, such as Navigator 3.0, but is equally accessible to others. There is provision for the public to email comments and suggestions about the site, and the Commission encourages this.

The Commission's home page address is:  
**<http://www.accc.gov.au>**.

# ACCC's submission to the Wallis inquiry

## Co-regulation

In its submission to the Wallis inquiry into the financial system, the Commission proposes the development of a new system for consumer protection in the financial services sector. This would involve the harmonisation and standardisation of existing industry-based schemes, which deal with complaints handling and dispute resolution, by bringing them together under an industry-wide umbrella body. It would also involve the creation of a small independent statutory body within the Treasury portfolio to oversee the activities of the industry body.

Under this co-regulatory system, the industry body would be responsible for accreditation, compliance, complaints handling and public education, while the statutory body would be responsible for policy-setting, auditing the activities of the industry body and conducting compliance inspections of individual financial service providers.

## Consumer protection

Certain problems faced by consumers are more pronounced in the financial services market than in others. For example, information imperfections and asymmetries between buyers and sellers leave consumers open to potential exploitation through misleading and deceptive conduct.

The submission strongly argues that the misleading and deceptive conduct provisions of the Act should continue to apply to the financial services sector.

## Competition and prudential issues

The Commission believes that the financial services sector should continue to be 'Hilmerised'; that is, all laws and regulations in the financial services sector which restrict

competition should be reviewed or repealed unless justifiable. The principle of competitive neutrality, together with the competition and consumer protection parts of the Trade Practices Act, should continue to apply to the financial services sector.

The Commission sees a pro-competitive advantage in bringing banks, building societies, credit unions and friendly societies under a single prudential supervision regime.

### **Mergers**

In the Commission's view, mergers in the financial services sector should continue to be covered by the substantial lessening of competition (mergers) test. Mergers in the sector will continue to be considered by the Commission on a case-by-case basis. This allows the Commission to fully take account of changes in product design and delivery, the structure of the market, new technology and consumer behaviour.

### **Banking and other legislation**

The Commission recommends a review of all anti-competitive legislation, regulation and trade practices in the financial services sector.

It also recommends the removal of restrictions which may be shielding banks from global competition, such as the foreign ownership restrictions in the *Foreign Acquisitions and Takeovers Act 1975*, as far as they apply to the financial service providers, and the shareholding restrictions in the *Banks (Shareholding) Act 1972*.

The Commission also recommends that the *Banking Act 1959* be amended to make it explicit that the Treasurer's consent shall not be withheld on competition grounds.

Similarly it argues that regulation and laws restricting competition between building societies, credit unions and banks should be reviewed.

### **Other recommendations**

The submission also recommends that:

- the competition principles endorsed by the Council of Australian Governments (COAG) be extended to the financial services sector;
- there be increased reliance on industry codes to achieve consumer protection outcomes;
- mergers between banks and insurance companies be subject only to the Trade Practices Act and prudential requirements;
- the prohibition of anti-competitive mergers, unless authorised under Part VII of the Act, remain;
- the authorisation process under the Act continue to apply to the financial services sector; and
- new mechanisms to monitor and address the impact of globalisation on the sector be considered.

Copies of the submission, which includes the Commission's revised merger guidelines as an appendix, are available for \$25.00 from Commission offices.

## **National Electricity Market — Code of Conduct**

On 9 October 1996 the Commission received the final draft of the Code of Conduct for the proposed new National Electricity Market (NEM). The code was presented to Professor Allan Fels, ACCC Chairman, and signed by Mr John Landells, Chairman of the National Grid Management Council (NGMC), Mr John McMurtrie, Executive Chairman of the National Electricity Code Administrator Company and Mr Olaf O'Duill, Chairman of the National Electricity Market Management Company.

The code was accompanied by a draft submission and a draft application for authorisation of the market arrangements and acceptance as an access code. However, the NGMC has requested that the draft submission

and draft application not be publicly released at this stage. Once lodged, the formal application and submission will be released for public comment and the Commission will begin its public consultative process. The Commission will invite interested parties to comment and make submissions.

Professor Fels said that the finalisation of the draft code was a welcome step in the development of the NEM. The code covers all aspects of the NEM, including market operation rules, system security, network connection, network pricing, metering, dispute resolution, monitoring of compliance and reporting, and will provide for transitional arrangements for jurisdictions to move to a fully competitive national market.

The code is available on-line at the Commission's Internet web site at <http://www.accc.gov.au>. It is also available from Cathy Loschiavo at Burson-Marsteller (03) 9242 9476 and on-line at <http://electricity.net.au>.



From left to right: Professor Allan Fels, Chairman, ACCC; Mr Neville Henderson, General Manager Projects, NGMC; Mr Sitesh Bhojani, Commissioner, ACCC; Mr John Landells, Chairman, NGMC; Mr John McMurtrie, Executive Chairman, NECAC.

## Submission to fair trading inquiry

On 23 August 1996 the Commission lodged its submission to the House of Representatives

Standing Committee on Industry, Science and Technology Inquiry into Fair Trading. The submission focuses on problems faced by small business, particularly unreasonable exploitation by large suppliers in their commercial relationships with small business.

While the submission canvasses some legislative changes to help small businesses when conduct goes beyond what is considered normal hard bargaining, the Commission believes that what is often at the core of many small business problems is the lack of adequate and clear information from the outset.

The Commission believes that many problems involving small businesses could be prevented by the use of codes of conduct which set down minimum disclosure requirements and contain dispute resolution schemes that meet agreed benchmarks. It said that while there are existing codes of conduct or regulations covering disclosure in the oil and retailing industries and the franchise sector, these codes need to be reviewed to ensure that they meet the benchmarks suggested by the Commission.

It also believes that further legislative reform is necessary, to increase access to remedies for small businesses and to form the basis of a culture of compliance for large firms involved in a relationship with small business. For example, the submission suggests the inclusion of a new provision in the Trade Practices Act requiring compliance with a code of conduct, which can be used where voluntary codes have not achieved sufficient coverage of an industry.

The submission made the following recommendations.

### Information disclosure through codes

- Research should be undertaken to identify common information problems involving small businesses, to form the basis for benchmarks for code rules for existing and future codes covering better disclosure to small business entrants and small businesses involved in existing relationships with large businesses.
- Existing disclosure codes should be reviewed to ensure that their rules meet benchmarks

for adequate disclosure to franchisees/lessees.

### **Dispute resolution**

- Existing dispute resolution schemes covering disputes between small and large businesses should be reviewed to ensure that they meet the benchmarks for effective alternative dispute resolution schemes.

### **Legislative remedies**

- Further research should be undertaken with a view to examining the benefits arising from the inclusion of a section in Part IVA of the Trade Practices Act covering economic duress in trade or commerce.
- The representative actions provisions of the Trade Practices Act, giving the Commission the power to bring representative actions for breaches involving the unfair trading provisions of the Act, should be extended to allow the Commission to bring representative actions for breaches involving the competition provisions of the Act.
- Section 82 of the Trade Practices Act should be amended to allow recovery of damages under Part IVA, including the proposed 'economic duress provision', of the Trade Practices Act to give parties similar rights and access to remedies as are currently available under s. 52 of the Act.
- Civil penalties should be made available in Divisions I and IA of Part V of the Trade Practices Act, in addition to the regime of criminal penalties. If each element of the prohibited conduct is present, the contravener should be liable to a civil penalty, subject to the operation of statutory defences. If each substantive element is engaged in knowingly, intentionally, or recklessly, the conduct should constitute an offence.
- Civil penalties should also be made available for breaches of the unconscionable conduct provisions of the Act.
- A new provision which could require compliance with a code of conduct should be included in the Trade Practices Act.

## **Survey of mandatory standards**

The Commission has completed its survey program of mandatory product safety and information standards and bans for the first half of 1996. In line with its role of promoting compliance with the standards, the Commission has surveyed retail outlets throughout Australia on a random basis. The survey program involved the visual inspection and laboratory testing of goods, including children's nightwear; exercise bikes; bicycles; vehicle jacks, ramps and stands; cosmetics; and luggage straps.

Between January and June 1996, Commission staff visited 180 stores in capital cities as well as Townsville. Of the more than 2000 products inspected, 68 were found to be non-complying. Unlabelled cosmetics accounted for 60 of these non-complying goods. The Commission resolved 67 of these matters administratively, and pursued litigation in only one matter. As a result of the survey, 31 goods were withdrawn and 26 recalled.

All mandatory product safety standards are currently being reviewed by the Federal Bureau of Consumer Affairs. It is expected that a number of standards considered outdated or no longer relevant will be deleted or amended as a result of the review.

## **Government service charters**

The Commission will be represented on the Government Service Charters Task Force, set up by the Commonwealth Minister for Small Business and Consumer Affairs, the Hon. Geoff Prosser, MP, to report on how the public service can best implement service charters.

Mr Prosser said that while the Federal Government was promoting codes of conduct

to protect consumers in the private sector, it was also moving to ensure that they received the service they expected from the public sector. The development of a framework for service charters across the Commonwealth is part of the Government's wider public service reform agenda.

The task force includes consumer and business representatives, senior Commonwealth officers, and people with expertise in developing service charters. It will report to the Minister for Small Business and Consumer Affairs by 31 October 1996.

## Prices surveillance reform welcomed

The Commission has welcomed the Treasurer's decision to end price surveillance of major beer and cigarette manufacturers and of other products (see 'Policy developments', pp 1-3).

The Commission believes that continued declaration may not be the most appropriate way to limit the room for the companies concerned to exercise market power. It believes there is evidence of increasing competitive behaviour and moderation in price setting in the industries.

Surveillance is a costly process for companies and the Commission, requiring formal notifications in advance of any proposed higher prices. For beer and cigarettes, this entails separate notifications for general price increases, new product launches, excise recovery price increases and for any other price change.

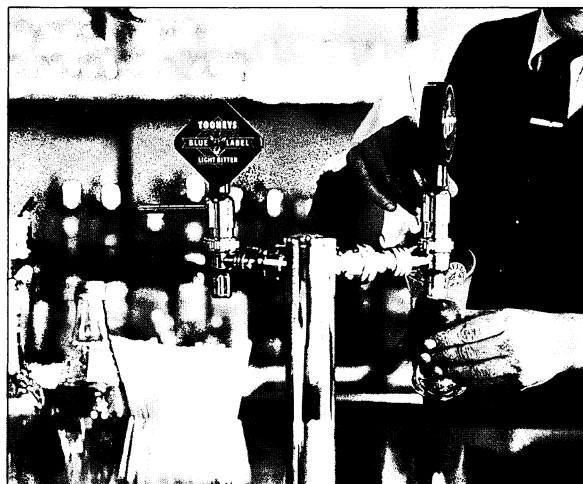
The Commission said that, while the declarations have been rescinded, the companies have provided appropriate assurances to exercise price restraint. For the brewers, this takes the form of price capping arrangements that limit their price increases to slightly less than overall inflation, but without unnecessary paperwork. The cigarette

manufacturers have also switched to such schemes.

In respect of competition, the cigarette companies, in particular, engaged in an extensive 'price war' following the 1995 May Budget excise increase. The brewers have also continued to compete by introducing new products.

The declarations of Carlton and United Breweries, Lion Nathan, W.D. and H.O. Wills, Rothmans and Philip Morris were due to expire on 18 November 1997.

The Commission said the decision highlighted that, with a combined competition/prices surveillance administration, the greater emphasis was on competition rather than price regulation in most sectors.



## Airport charges

On 13 September 1996 the Commission denied the Federal Airports Corporation (FAC) the full extent of the increases it claimed for airport charges related to services covering the landing of aircraft and passenger processing (aeronautical services).

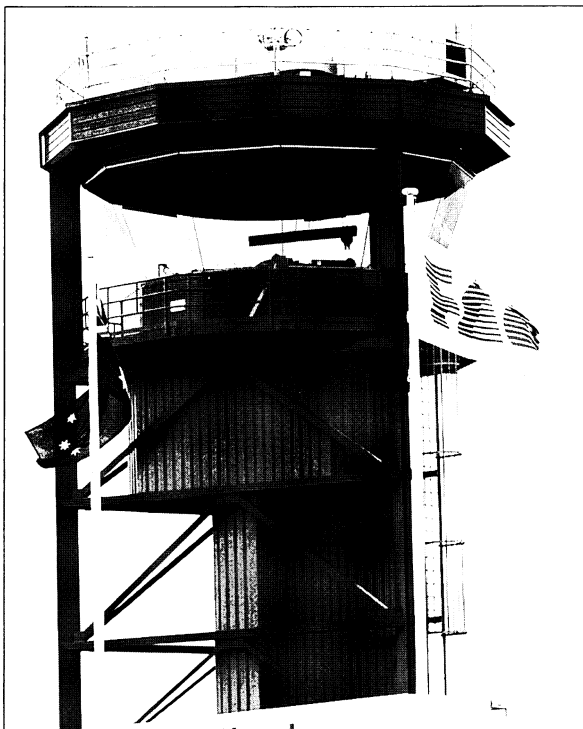
These charges are declared under the Prices Surveillance Act and the FAC must notify the Commission of any increases. The Commission had only 21 days to consider the proposed

charges, which limited the extent and depth of inquiry it could undertake.

The FAC was seeking approval of an average price increase of 13.8 per cent across its airports. However, actual increases were planned only at Sydney, Melbourne, Brisbane, Adelaide and Perth airports. The Commission approved an average network increase of 10.8 per cent.

The Commission found that operating costs had increased sufficiently to warrant some price increases, but it had some concerns about the approach the FAC had taken to the pricing of these airport services. These included the loading of all price increases onto the five major airports and the use of a rate of return measure to justify the overall size of the increase. In reaching its decision the Commission noted that the assessment of aeronautical charges was complicated when there was no operational or formal accounting separation of the services from other non-aeronautical services.

The Commission believes the price increases allow aeronautical operating costs to be substantially recovered and that the airports where the FAC proposes price rises would continue to be profitable.



## Commission to study LPG prices in Geelong

On 1 October 1996 the Commission initiated a study of LPG pricing in Geelong following concerns expressed about the high levels of Geelong's autogas prices relative to those available in Melbourne and at many locations on the road to Geelong. The study was foreshadowed in the Commission's recent report on the inquiry into the petroleum products declaration. The RACV also recently called for such a study.

Before 1992, autogas users in Geelong used to benefit from discount price cycles, paying prices similar to those charged in Melbourne. For example, surveys show that the average retail price in Geelong for autogas in November 1991 was 21.2 cents per litre, and in Melbourne for the same month it was 22 cents per litre.

During 1992 and most of 1993, while retail prices for autogas in Geelong were relatively stable, average prices remained comparable with average levels in Melbourne. However, in September 1993, retail prices in Geelong jumped about 4 cents per litre and have since remained relatively stable but at higher levels, well above average prices in Melbourne. The average price in August 1996 in Geelong was 29.9 cents per litre while in Melbourne it was 23.4 cents per litre.

The Commission said that the change in pricing behaviour and the resultant price differences between parts of Melbourne on the way to Geelong had created the most concern with Geelong LPG users.

The Commission's study will concentrate on competition issues in Geelong, including those relating to relevant aspects of the Trade Practices Act. The views of wholesalers and distributors will be sought as to what impetus to competition used to prevail and why this appears to have decreased with the change in local pricing behaviour.

## Woolworths plans for petrol retailing

The Commission has hailed as 'pro-competitive' the planned move by Woolworths into petrol sales. Woolworths had sounded out the move with the Commission, which saw no objections.

The Commission said that the move would see greater choice for consumers about where they buy their fuel and should lead to lower prices. It noted that in the United Kingdom supermarkets have led petrol prices down by significant amounts and major oil companies have been forced to respond.

Country areas, where competition is often weak, could especially benefit. Woolworths plans to launch one of its first such operations in Dubbo and a significant number of other NSW country towns. The Commission re-iterated an important conclusion of its recent inquiry report on the declaration of petrol prices: that it is very important that local councils do not hinder such important developments by refusing planning approvals.

It also noted that Woolworths will receive its petrol supplies from imported sources, which it said augured well for competition.



## Paper on consumer protection policy

Professor Michael Trebilcock is a Professor of Law at the University of Toronto in Canada and Director of the University's Law and Economics Programme. On a visit to the Commission earlier this year he addressed staff on 'Rethinking consumer protection policy' (see *ACCC Journal* 4, pp. 13-15).

His teaching and research interests in the area of law and economics include a long-standing interest in the economics of consumer protection. He is currently involved in a major research project on rethinking consumer protection policy in Canada.

Since his visit to the Commission, he has co-authored a paper titled 'Rethinking consumer protection policy'. Copies of the paper produced by the Faculty of Law, University of Toronto, are available from Fiona Aichinger, ACCC, on (06) 264 2908.

## New publications

### Authorisations and notifications

The Commission has revised a booklet explaining the authorisation and notification provisions under the Trade Practices Act.

Authorisation and notification provide protection from action by the Commission or any other party for potential breaches of certain restrictive trade practices provisions of the Act.

The booklet explains the procedures involved in authorisation and notification, fees payable, reviews and revocation by the Commission, and appeal to the Australian Competition Tribunal.



Copies of the booklet are available free from Commission offices. A more detailed *Guide to authorisations and notifications* is also available for \$10.00 from Commission offices.

## **National Electricity Market: Network Pricing Forum**

On 11 July 1996 the Commission held a forum in Canberra to discuss the issue of network pricing in the National Electricity Market. The proceedings of this forum are now available.

Key issues discussed at the forum included asset valuation, regulatory certainty and regulatory flexibility.

The publication provides an insight into network pricing in New South Wales, Victoria and Tasmania and National Grid Management Council proposals in relation to the National Electricity Market.

Copies of the proceedings are available for \$35.00 from Commission offices.