

# The ACCC and the Prices Surveillance Act 1983

*This article by Anne Plympton and Kristina Dishon of the ACCC's Regulatory Affairs Division Melbourne office outlines the Commission's role under the Prices Surveillance Act and how this role has changed in the past few years.*

## Introduction

In September 1996 the Treasurer, the Hon. Peter Costello MP, announced significant reform in the scope of prices surveillance activity undertaken by the Commonwealth Government. The Treasurer announced a reduction in the number of companies/industries subject to declaration under the *Prices Surveillance Act 1983*. The Treasurer also made it clear that in the new pro-competitive regulatory environment price oversight was only to be used in markets where competitive pressure was unable to achieve effective pricing outcomes. Details of the Treasurer's comments were published in the *ACCC Journal* (No. 5, October 1996) and an article outlining the new scope for the Commission's work under the Act was in the *ACCC Journal* No. 7.<sup>1</sup>

As it is now three years since the Treasurer's announcement, the Minister for Financial Services and Regulation the Hon. Joe Hockey has had to decide whether to extend declarations for those companies subject to three-year sunset clauses. It is therefore timely to produce an updated list of companies/industries declared or subject to monitoring under the Act. It is also an opportunity to outline other changes — the procedures now used by the Commission to assess notifications as well as some of its decisions under the Act during the past three years.

## Functions of the Act

With the amalgamation of the Trade Practices Commission and the Prices Surveillance

Authority in 1995, the Prices Surveillance Act came under the jurisdiction of the Australian Competition and Consumer Commission. At the same time the Act was amended to incorporate a monitoring function. The main functions of the Act are to:

- scrutinise the proposed price rises of any business organisation placed under prices surveillance by the Government (s. 22);
- hold inquiries into pricing practices and related matters, and to report the findings to the responsible Commonwealth Minister (s. 18); and
- monitor prices, costs and profits of an industry or business and to report the results to the Minister (s. 27A, 27B).

During the past three years the prices oversight and monitoring function have been used but since the Commission was formed the petroleum products inquiry is the only one that has been held.<sup>2</sup>

## Companies/industries subject to prices oversight

The Minister determines which organisations, goods or services should be subjected to prices surveillance, and these are formally declared. The Minister must nominate how long the declaration is to remain in effect. A declared organisation cannot raise the price of a declared product beyond its peak price of the previous 12 months. If it wishes to raise prices of the declared product, the Commission must be notified. The Commission will then give consideration to the proposal, and make a decision as to whether it considers that the price increase is justified.

The Commission's current price surveillance role covers areas of economic activity which have substantial market power or monopoly power. The following areas of economic activity/organisations are currently monitored:

- **Harbour towage** — Harbour towage in the major ports: Melbourne, Sydney, Newcastle, Fremantle, Brisbane and Adelaide. A single provider in all these

<sup>1</sup> Issue No. 5, pp. 1-3 and Issue No. 7, pp. 36-39.

<sup>2</sup> *Inquiry into the Petroleum Products Declaration*, ACCC, Canberra, August 1996.

ports supplies harbour towage services. The companies involved are Adsteam Marine and Howard Smith Pty Ltd. At some, for example, the Sydney ports (Jackson and Port Botany) the towage company is a joint venture between Adsteam Marine and Howard Smith.

In September 1999 Minister Hockey decided to extend the harbour towage declaration for a further three years.

- **Australia Post** — Under the Prices Surveillance Act, Australia Post must notify the Commission of any proposed price increases for letter items within the 'reserved services' (those areas where Australia Post has a legislated monopoly). The reserved services include standard and large letters weighing up to 250 grams or for which the fee is up to four times the standard letter rate (\$1.80). They also include discount products linked to the price of standard products (pre-sort discounts for example) as well as mail with special services attached (e.g. reply paid).

It should be noted that the announced government policy is to reduce the scope of the 'reserved services' to letters weighing 50 grams or less.

- **Airservices Australia** — Airservices Australia (AA) is a Government-owned commercial authority responsible for the management of air traffic control. AA services include airspace management, aeronautical information, radar and communication, radio navigation aids, search and rescue alerting and airport rescue and fire fighting services.



- **Airports** — The Government has implemented a prices oversight regime on newly privatised Commonwealth airports. Price regulation is by a price cap, which aims to prevent prices rising above levels that could be expected if the airports operated in a competitive market.<sup>3</sup> The arrangements have been designed to promote efficient and commercial operation, but still protect airport users from any potential abuse of market power by airport operators. These arrangements have been put in place as part of the transition process from public ownership to regulated private airports with long term leases. The arrangements cover aeronautical services at Adelaide, Alice Springs, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and Townsville airports.

Sydney Airport Corporation, which is yet to be privatised, is a declared company for the purposes of the Act.

The major change that has occurred during the past three years is for petrol. In July 1998 the Government issued its reform package for the petroleum industry. The package signalled the end to the Commission's role in prices oversight. This role concluded on 1 August 1998.

Recently, Minister Hockey decided **not** to continue the declaration for ACI glass containers given that there is now more competition in the glass container market. The declaration had covered wine bottles and medium to large (300–600 ml) food containers.

### Monitoring

The Act gives the Commission the power to monitor prices, costs and profits of a company/industry when so directed by the Minister. This monitoring power is used infrequently and is currently restricted to:

- **Stevedoring** — In January 1999 the Treasurer directed the Commission to monitor the prices, costs and profits of the container stevedoring companies in the major ports of Adelaide, Brisbane, Burnie,

3 CPI — X. Prices can increase at the general rate of inflation (CPI), minus a productivity component (X).

Fremantle, Melbourne and Sydney. The monitoring program will provide information to the Government and to the community about the progress of future waterfront reform and show that the costs of the stevedoring levy are absorbed by the industry and not passed on to the community. A monitoring report is to be provided to the Minister annually and within four months of the end of the financial year. It will then be released to the public.

- **Airport services** — As part of the regulatory regime covering the newly privatised airport the Commission has monitoring powers under s. 27A to collect information on costs, profits and prices of certain airport services that are not covered by the price cap but where airport operators could be expected to exert significant market power. Regulatory reports covering the requirements of s. 27A were released for the phase 1 privatised airports (Melbourne, Perth and Brisbane) in March 1999.

In July 1998 the Treasurer also directed that the services at the Sydney (Kingsford Smith) Airport be formally monitored.

In keeping with Minister Hockey's decision not to maintain the declaration for some of ACI glass containers, the Commission will no longer provide monitoring reports on ACI Glass Packaging Australia.

Quite separate from its formal monitoring powers the Commission can, from time to time, monitor markets informally. Sometimes it is to gain information about market trends in newly de-regulated markets. At other times markets for which there is considerable consumer concern about pricing outcomes may be monitored informally.

As part of the Government reform package for the petroleum industry the Commission was given an informal monitoring role. In conjunction with various motoring organisations the Commission monitors prices in the capital cities and in selected country towns and rural areas, specifically those referred to as 'hot spots'.<sup>4</sup>

<sup>4</sup> Bank fees and charges and sound recordings are two other areas where the Commission informally monitors price trends.

## Price notification decisions and the decision-making process

In the past three years the Commission has made a range of pricing decisions under the Act. For newly privatised airports pricing decisions are made with reference to a price cap. However, for the other declared companies the Commission assesses notifications from a cost-based approach. These decisions made during the past three years include Harbour Towing in Sydney (1997) and Melbourne (1999), Australia Post (1997, 1999), Air Services (1998) and Aeronautical services at Sydney Airport (1998). Details of these decisions can be found in the relevant Commission annual reports and the statements on the public register.<sup>5</sup>

What has become clear is that these pricing decisions are increasingly complicated and certainly difficult to achieve within the 21-day period specified by the Act. Also, the economic environment in which the Act is administered has radically altered from the time of its inception. Therefore the criteria which the Commission are to consider when assessing a notification need to be interpreted in the economic context of the late 1990s.

Given these circumstances and the Commission's belief that it requires significant input from interested parties before a more complex pricing decision can be made, the Commission developed, early in 1998, a new statement of its approach to price notifications.<sup>6</sup> For complex and significant notifications, the Commission is likely to use a similar process to that involved in its reasons for decisions under the authorisation process under the Trade Practices Act.<sup>7</sup>

## Conclusion

The Prices Surveillance Act was designed to operate in an economic and political climate

<sup>5</sup> ACCC Annual Report 1996-9 harbour towing, pp. 113-114. Annual Report 1997-98, harbour towing, p. 117. Australia Post, p. 118. Air Services, p. 114; Sydney Airport, p. 113.  
<sup>6</sup> The Commission released the *Draft Statement of Regulatory Approach to Price Notifications* for comment in February 1998.  
<sup>7</sup> This was the process used in the decision made earlier this year in which the Commission agreed to a weighted average increase of 10 per cent for towing services in the Port of Melbourne. Howard Smith Towing, the declared company had notified the Commission for a weighted average increase of 17.5 per cent.

quite different from today's. Consequently there are now few companies declared under the Act and those that are tend to be monopoly providers. Price oversight is used as a last resort and only for markets for which other pro-competitive reforms are unlikely to be useful. Also, to align the workings of the Act more closely with other Commission processes the Commission has developed a more transparent and consultative regulatory approach to assessing notifications.

## Consumer policy in the European Community



*The following article by Nicola Howell, a former ACCC project officer, reflects the Commission's continuing interest in monitoring overseas developments in consumer protection.*

In recent years, consumer policy has

increased in importance and stature within the European Community. Consumer policy now has its own chapter in the treaty establishing the European Community (Title XIV). The relevant policy agency within the European Commission grew from a consumer policy service in 1989 to a fully-fledged Directorate-General (DGXXIV) in 1995.

This article provides an overview of consumer policy within the Community and the European Commission, as well as a summary of the European Commission's responses to some specific consumer policy issues.

The next challenge to be met by the Commission in applying the Act is the Goods and Services Tax (GST). If declared companies expect to raise their prices as a result of the GST they will be required under the Act to submit a

price notification to the Commission. Similarly, for the Commission's monitoring activities under the Act, careful scrutiny will be made of the GST related price changes. The Commission thus expects its administration of the Act to be more resource intensive in the next year than it has been for the past three years.

### The legal basis for consumer policy activities

*Relying on powers to establish the internal market*

In 1975 the Council of Ministers adopted a preliminary action plan for the protection and information of consumers.<sup>1</sup> However, at this time there was no legal base (or jurisdiction) for the European Community to undertake consumer protection activities.

Until recently the consumer protection directives issued by the council took their legal base from articles 94 and 95 (ex articles 100 and 100a) of the treaty establishing the European Community (the treaty). These articles allow the council to issue directives to harmonise member state laws that directly affect the establishment or functioning of the common market. Among others, directives harmonising consumer legislation on labelling of foodstuffs, misleading advertising, consumer credit, and product liability, rely on articles 94 and 95 for their legal base.

*An explicit legal base for consumer protection activities*

In 1993 the treaty was amended to specifically include 'a contribution to the strengthening of consumer protection' as one of the activities of the European Community.<sup>2</sup> A consumer protection chapter, providing an explicit legal base for consumer policy initiatives (article 129A) was also introduced for the first time.<sup>3</sup>

In 1997 the treaty was amended again and article 129A was expanded and renumbered as article 153. Article 153 now provides:

1 T. Bourgoigne, *European Community consumer law and policy: from Rome to Amsterdam*, paper given at 1999 Summer Programme in European Community consumer law, Louvain-la-Neuve University, Belgium.

2 Article 3(t).

3 Since 1993, however, only one text has been adopted based on article 129A (Directive 98/6/EC of the European Parliament and of the Council on 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers).