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DAF/COMP(2006)21/23



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

05-Oct-2006

English text only

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

DAF/COMP(2006)21/23
Unclassified

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN AUSTRALIA

-- July 1, 2005 through June 30, 2006 --

This report is submitted by the Australian Delegation to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 18-19 October 2006.

JT03215054

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Executive Summary

1. This report addresses events that have occurred in the past Australian financial reporting year (1 July 2005 until 30 June 2006). However, significant developments after 30 June 2006 have been included where appropriate.

2. A significant review of Australia's National Competition Policy (NCP) was undertaken during 2005-06 in order to determine the success of competition related reforms, and to explore ways of increasing the gains from such reforms going forward. In response to the findings of the review, the Australian Commonwealth and State governments have agreed to a new National Reform Agenda.

3. The Government has focused on introducing two major bills into the Parliament in the last financial year. These bills include amendments relating to the existing competition provisions of the *Trade Practices Act 1974* (TP Act) and their administration, and amendments to the national access regime.

1. Part I.—. Changes to competition laws and policies

1.1 National Reform Agenda

4. In 2005, the Council of Australian Governments (COAG) conducted a review of NCP, assessing the effectiveness of the existing NCP arrangements, but particularly focusing on a possible new national reform agenda. The review took into account the recommendations of the Productivity Commission (PC) report, *Review of National Competition Policy Reforms*, released in April 2005. The PC's report is available at <http://www.pc.gov.au/inquiry/ncp/index.html>.

5. On 10 February 2006, COAG announced its commitment to deliver a substantial new National Reform Agenda, embracing human capital, competition and regulatory reform streams. The competition stream is a substantial addition to, and continuation of, the highly successful NCP reforms. It will further boost competition, productivity and the efficient functioning of markets by focusing on further reform and initiatives in the areas of energy, transport and infrastructure regulation and planning.

6. In the energy sector, these reforms include the establishment of a high-level Energy Reform Implementation Group that is scheduled to report back to COAG before the end of 2006 on structural issues affecting the efficiency and competitiveness of the electricity sector, as well as the establishment of a national electricity grid.

7. In terms of reforms in the transport sector, COAG agreed to a review by the PC, which will result in recommendations to COAG by the end of 2006, on methods and possible implementation timeframes for achieving efficient pricing of road and rail freight infrastructure. Other reforms agreed to in this area include harmonisation of rail and road regulation and a reduction in current and projected urban transport congestion.

8. As part of its reform package, COAG also signed a Competition and Infrastructure Reform Agreement that aims to: reduce regulatory uncertainty and compliance costs for owners, users and investors in significant infrastructure; and support the efficient use of national infrastructure. Furthermore, COAG noted progress made in implementing previously agreed commitments on infrastructure regulation and planning, such as: the completion of all 24 corridor strategies under the Australian Government's \$15 billion land transport infrastructure programme (AusLink) by 30 June 2007; and the establishment of 'one-stop shops' in each jurisdiction by 30 June 2006 for significant development projects.

9. The regulatory reform agenda focuses on reducing the regulatory burden imposed by all three levels of government. This includes agreeing to a range of measures to ensure best-practice regulation

making and review, and action to address specific regulation ‘hotspots’ where cross-jurisdictional overlap is impeding economic activity. In addition, COAG agreed that all governments will establish effective arrangements to avoid unnecessary compliance costs and restrictions on competition; undertake targeted public annual reviews of existing regulation; identify further reforms that enhance regulatory consistency across and operations of regulatory bodies; and in principle, aim to adopt a common framework for bench-marking, measuring and reporting on the regulatory burden across jurisdictions.

10. The human capital agenda focuses on improving health and education as well as encouraging and supporting work. COAG has agreed that the first tranche of work on the human capital agenda should be to develop specific reforms in the areas of: early childhood; diabetes; literacy and numeracy; and child care.

11. The COAG communiqué and the report of the NCP review are available at: <http://www.coag.gov.au/meetings/100206/index.htm#related>

1.2 Energy Market Reform

12. The new Australian Energy Regulator (AER) and Australian Energy Market Commission (AEMC) began operations on 1 July 2005. They have assumed functions previously performed by the National Electricity Code Administrator (NECA) and the Australian Competition and Consumer Commission (ACCC). The AER is a new legal entity with independent decision making power, while being a constituent part of the ACCC. The AER has economic regulatory, enforcement and monitoring functions in relation to the wholesale electricity market and electricity transmission networks in the National Electricity Market (NEM). The AEMC has responsibility for the National Electricity Rules in relation to these functions under the new National Electricity Law. The ACCC retains responsibility for regulation of competition matters. As a result of recently agreed reforms, the AER and AEMC are scheduled to assume further functions. In June 2006 COAG endorsed amendments to the Australian Energy Market Agreement which provide for these bodies to assume economic regulatory functions in relation to gas transmission, gas and electricity distribution and retail markets (except for retail pricing) by 1 January 2008. These energy market reforms will strengthen the national character of energy markets, reduce regulatory complexity and streamline and enhance the quality of economic regulation across energy markets.

1.3 Telecommunications

13. On 23 June 2006, the Australian Government approved Telstra’s plans for the operational separation of its wholesale, retail and network units. Operational separation is designed to increase the transparency of Telstra’s internal operations and require Telstra to demonstrate that it provides its wholesale customers equivalent treatment to its own retail businesses. This should enhance the scope for competition, bringing benefits for consumers in terms of more competitively priced products and enhanced choice and access to services.

14. A revised price control regime was also imposed on Telstra from 1 January 2006, expiring on 30 June 2009. The updated regime narrows the scope and increases the flexibility of the price controls, in particular removing large business customers from the regime, reflecting the increased competition for these services. Since 1989 Telstra has been subject to price control arrangements, aimed at stimulating competitive outcomes by requiring Telstra to pass on productivity gains to consumers through lower prices for services where price reductions are unlikely to be achieved by effective competitive pressure. These controls apply to elements such as line rentals, local, long-distance, international and fixed to mobile call services.

1.4 Shipping

15. On 4 August 2006, the Commonwealth Government announced its response to the PC's 2005 public inquiry into Part X of the TP Act. The Government agreed to amend Part X, which regulates the conduct of international liner cargo shipping and provides it with an exemption from the restrictive trade practices provisions in Part IV of the TP Act. Amendments will be made to Part X to clarify its objectives, remove discussion agreements from its scope, protect individual confidential service contracts between carriers and shippers, and introduce a range of penalties for breaches of its procedural provisions. The Government is currently drafting legislation to give effect to its response.

1.5 Water reform

16. Water reform has been a significant policy issue since 1994, when COAG agreed to a 'Water Reform Framework' which was subsequently incorporated within the NCP Agreement in 1995. In 2003, COAG agreed to reinvigorate water reforms through the National Water Initiative (NWI) which in essence reiterates, and builds, on the elements of the 1994 Framework. The NWI was agreed between jurisdictions at the June 2004 Council of Australian Governments meeting. All jurisdictions have signed the NWI.

17. The overall objective of the NWI is to achieve a nationally compatible market, regulatory and planning-based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes. The NWI provides a framework for water reform, with policy commitments of:

- the establishment of nationally compatible and secure water access entitlements which can be traded;
- the implementation of water accounting systems to monitor trading, environmental management and on-farm management;
- the return of all currently over-allocated water systems to environmentally-sustainable levels of extraction; and
- the removal of jurisdictional barriers to trade in water – including restrictions on tradeable amounts and on who can trade.

18. Consistent with the NWI, the National Water Commission, an independent statutory agency established in 2004, is responsible for managing the implementation of the NWI and is required to report to COAG regarding progress.

1.6 National Access Regime

19. On 20 February 2004, the Australian Government released its final response to the PC's report on the Review of the National Access Regime for 'nationally significant' infrastructure services. The Government's response supports most of the PC's proposed reforms, and in developing its response, it consulted with State and Territory governments. The Bill to give effect to the Government's response was passed on 10 August 2006.

1.7 Dawson Review

20. On 16 April 2003, a report on the competition provisions of the TP Act and their administration (Dawson Review) was released, along with the Australian Government's response. The Dawson Review

concluded that while the competition provisions of the TP Act have served Australia well, the TP Act should be amended to improve its operation by providing for greater accountability, transparency, and timeliness in decision making by the ACCC and on review by the Australian Competition Tribunal (ACT). The reforms will also reduce the regulatory burden on business, including by simplifying the mergers assessment and collective bargaining processes. A Bill to implement the Government's response is currently before Parliament.

1.8 *Misuse of Market Power*

21. In March 2004, a Senate Economics References Committee reported on the effectiveness of the TP Act in protecting small businesses. The report considered a range of issues including those relating to section 46 (misuse of market power), unconscionable conduct (particularly section 51AC) and administration of the TP Act. The Australian Government announced its response to the report on 23 June 2004, accepting 8 of the 17 recommendations. It intends to introduce legislation to implement its response in the near future.

1.9 *Criminal Penalties for Cartel Conduct*

22. On 2 February 2005, the Australian Government announced that it intends to introduce criminal penalties for serious cartel conduct, which was a recommendation of the Dawson Review. The proposed criminal cartel offence will prohibit a person from making, or giving effect to, an agreement between competitors that contains a provision to fix prices, restrict output, divide markets or rig bids, where the agreement is made or given effect to with the intention of dishonestly obtaining a benefit. In developing its response to the Dawson Review recommendation, the Australian Government had regard to the OECD's *Recommendation of the Council Concerning Effective Action Against Hard Core Cartels*. The Australian Government intends to introduce legislation to implement its response in the near future.

1.10 *New Guidelines*

23. The ACCC produced 85 new publications including new guidelines for informal merger review aimed at providing greater transparency and accountability, an updated guide to unconscionable conduct, 18 new compliance publications, 6 corporate publications, 36 about effective competition and informed markets, and 25 about fair trading and consumer protection. The ACCC also distributed in total 500,598 copies of publications and produced videos and compact disks on compliance issues.

24. On 26 August 2005, the ACCC issued the revised 'first-in' Immunity Policy for Cartel Conduct. The new policy replaces the 2003 leniency policy and follows a review to ensure that the policy was operating effectively. The Immunity Policy began operation on 5 September 2005. The 2003 policy will continue to apply to applications made before this time.

25. On 9 August 2006, the ACCC issued a paper providing guidance on its approach to the assessment of media mergers as required by the Australian Government's media policy reform package of 11 July 2006. The guidelines discuss the approach the ACCC might take in considering such issues as defining media markets in their various dimensions (products, geographic and functional) and the relevant time frames for considering media mergers. There are three main markets the ACCC will consider as part of its assessment: the supply of advertising opportunities to advertisers; the supply of content to consumers; and the acquisition of content from content providers. The ACCC has noted that the individual circumstances and competitive implications of any media merger proposals will need to be considered during a comprehensive and public clearance process.

26. In most cases, publications are available from the ACCC's web site.¹

2. Part II.—. Enforcement of competition laws and policies

27. The TP Act prohibits a wide range of anti-competitive practices, including cartel conduct, arrangements that substantially lessen competition, secondary boycotts, misuse of substantial market power, and mergers or acquisitions that may substantially lessen competition and resale price maintenance. The TP Act also contains telecommunication-specific competition rules.

28. In addition to the ACCC's enforcement function under the TP Act, provision is also made for any person to independently seek a remedy from a court. This right of private action generally enables persons who consider that the TP Act has been contravened, to approach a court directly, irrespective of the view of the ACCC.

2.1 *Anti-competitive Conduct Matters*

29. During 2005-06, the ACCC investigated around 110 competition matters. Nine competition proceedings were concluded during the year. Fourteen competition matters were continuing before the courts as at 30 June 2006.

2.1.1 *Bread retailing*

30. The Federal Court imposed penalties totalling \$A8.9m against Australian Safeway Stores and \$50,000 against one individual for price fixing and misuse of market power in relation to bread retailing. Safeway, a major supermarket chain, was found to have refused to accept supplies of bread from bakers who were supplying smaller retailers offering discounts. It was also found that Safeway had entered into an agreement to fix the price of bread at a local market.

2.1.2 *Barge services*

31. A penalty of A\$900,000 was levied against Eurong Beach Resort Limited and others following settlement of proceedings relating to predatory pricing, anti-competitive agreements and exclusive dealing by a supplier of vehicle ferry services between Rainbow Beach and Fraser Island.

2.1.3 *Chaste Corporation Pty Ltd and Mr Peter Foster*

32. The Federal Court imposed penalties totalling more than \$A1 million against Chaste Corporation Ltd, Mr Peter Foster and other individuals, for engaging in resale price maintenance in conducting a weight loss business. Agreements between the company and distributors of the weight loss products had contained provisions preventing the sale of the products at a discount.

2.1.4 *Telstra*

33. In April 2006, the ACCC issued Telstra with a Part A competition notice in relation to Telstra's wholesale and retail line rental pricing. The ACCC formed a reason to believe that Telstra had engaged, or was engaging in, at least one instance of anti-competitive conduct. This followed an increase in Telstra's wholesale line rental prices to its wholesale customers.

¹ <http://www.accc.gov.au>

34. The issuance of a Part A competition notice allows parties such as carriers and internet service providers to take action to seek damages and compensation for the specified anti-competitive conduct that occurs while the notice is in force.

35. In May 2006, Telstra instituted proceedings against the ACCC in the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* in relation to the ACCC's decision to issue the Part A competition notice.

2.2 Mergers and Acquisitions

36. A merger or acquisition is prohibited under the TP Act where it has the effect, or would be likely to have the effect, of substantially lessening competition in a market.

37. In 2005-06, the ACCC considered 272 mergers, asset sales and joint ventures. Of these, 231 were not opposed, five were initially opposed following the ACCC's review (including three in which concerns were expressed on a confidential basis), and six were resolved during their review with court enforceable undertakings. The remaining matters were withdrawn before a decision was made by the ACCC, or consisted of reviews of variations to existing undertakings.

38. Table 1 shows the number of merger matters the ACCC has not opposed, opposed and resolved through court enforceable undertakings. Table 1 shows that the number of merger matters considered in 2005-06 increased relative to recent years.

Table 1.—Mergers not opposed, opposed and resolved with the ACCC

	Matters not opposed	Matters opposed	Matters resolved through court enforceable undertakings	Matters decided (total)
1996-97	140	5	2	147
1997-98	165	5	6	176
1998-99	168	7	10	185
1999-00	226	4	5	234
2000-01	252	3	10	265
2001-02	219	9	9	228
2002-03	180	9	2	191
2003-04	183	4	2	189
2004-05	178	2	9	189
2005-06	261*	5	6	272

* This includes matters which were withdrawn before a decision was made by the ACCC, or consisted of reviews of variations to existing undertakings

39. The ACCC communicates with international counterpart agencies when assessing the implications of international mergers and acquisitions. These discussions relate to technical aspects, such as the appropriate market definition, barriers to entry, and emerging market dynamics.

40. Four major merger matters considered by the ACCC in 2005-06 are discussed below.

2.2.1 *Toll Holdings Ltd and Patrick Corporation Ltd*

41. On 11 March 2006 the ACCC announced its decision not to oppose the proposed acquisition of Patrick Corporation Ltd (Patrick) by Toll Holdings Ltd (Toll) after Toll provided comprehensive court enforceable undertakings to the ACCC.

42. On 18 January 2006 the ACCC announced it was opposing the proposed merger, and on 9 February 2006, the ACCC instituted proceedings in the Federal Court to prevent the proposed acquisition on the basis that it had significant concerns about the proposed transaction in several markets, primarily:

- acquiring 100 per cent ownership of Pacific National may have provided Toll with additional ability and incentive to engage in foreclosure strategies against rival freight forwarders via Pacific National and would therefore have been likely to result in a substantial lessening of competition;
- the acquisition of Patrick's Bass Strait shipping business may have reduced competition in the provision of Bass Strait shipping services and was therefore likely to result in a substantial lessening of competition;
- the acquisition of Patrick's Bass Strait shipping business may have reduced competition in the provision of freight forwarding services related to Tasmania and was therefore likely to result in a substantial lessening of competition; and
- the acquisition of Patrick's autologistics business was likely to reduce competition in relation to land vehicle logistics and pre-delivery inspection (PDI) services and therefore was likely to result in a substantial lessening of competition.

43. These undertakings contained, among other things, a commitment to divest 50 per cent of the shares in Pacific National, and a suite of assets to facilitate competition in East-West non-bulk rail line haul services including train paths and locomotives. This undertaking also contained a number of behavioural commitments to counter potential discrimination issues. Accordingly, the ACCC decided to withdraw its opposition to the proposed acquisition. The ACCC is actively monitoring the implementation of Toll's undertakings.

2.2.2 *Australian Stock Exchange Ltd and Sydney Futures Exchange Ltd*

44. The ACCC did not oppose the proposed merger between the Australian Stock Exchange (ASX) Ltd (ASX) and the Sydney Futures Exchange Ltd (SFE). Local and overseas experience strongly suggested that network effects in exchange markets mean that the ASX and the SFE were only in minimal competition with each other. It was not evident that the presence of SFE as a potential entrant acted as a constraint on the ASX or vice versa.

45. In contrast, there was strong evidence that the ASX and the SFE acted as separate monopolies. For example, each exchange earned much larger returns on capital than what was generally found in competitive markets.

46. There was very little evidence that the expectation, when the ACCC rejected a similar proposal in 1999 that the ASX and SFE were likely to compete strongly in the future, had eventuated.

2.2.3 *The Australian Gas Light Company (AGL) and Alinta Ltd*

47. The ACCC did not oppose AGL's proposed acquisition of Alinta Ltd (Alinta), after accepting court-enforceable undertakings from AGL. The ACCC considered three different proposals relating to AGL and Alinta. The first is Alinta's proposed acquisition of AGL, the second is the joint merger proposal reflecting the signed *Merger Implementation Agreement* between the AGL and Alinta, and finally there is AGL's proposed acquisition of Alinta. The decision to accept undertakings announced on 16 June 2006 related only to the third proposal.

48. The undertakings offered by AGL commit it to a demerger that separates the key gas transmission assets and infrastructure management assets where the ACCC found competition concerns. If for any reason the demerger cannot occur, AGL is required to divest its interests in the Australian Pipeline Trust and associated management contracts. The undertakings ensure that the interest in the Eastern Gas pipeline and the Moomba to Sydney Gas pipeline will be held separately, including the management contracts in relation to those pipelines. The undertakings also ensure that in Western Australia, the Parmelia pipeline and Goldfields Gas pipeline will be held separately from the key Dampier to Bunbury pipeline. Furthermore, AGL's undertaking separates out many pipeline management contracts so that concerns in relation to aggregation of pipeline management assets are minimised.

2.2.4 *Patrick Corporation Ltd and FCL Interstate Transport Services Pty Ltd*

49. On 7 September 2005 the ACCC announced it would oppose Patrick Corporation's proposed acquisition of FCL Interstate Transport Services Pty Ltd (FCL). It considered the acquisition likely to cause a substantial lessening of competition in the market for the provision of Australia-wide freight forwarding services through foreclosure of the merged entity's freight forwarding rivals, through the raising of entry barriers in the market for east-west rail line-haul of non-bulk freight, and by reducing competition between Patrick and Toll. Subsequently the ACCC accepted a section 87B undertaking from Patrick and decided not to oppose the proposed acquisition. The undertaking contemplated FCL being held separate and the ACCC having broad powers to order divestment of FCL if Patrick's attempts at splitting up the Pacific National joint venture were not successful. The undertaking also required Patrick to quickly divest FCL through an agent should Toll acquire a controlling interest in Patrick shares. The transaction never eventuated as Toll successfully acquired Patrick.

2.3 **Pricing Matters**

2.3.1 *Airports*

50. Under Part VIIA of the TP Act, the ACCC monitors and reports annually on the prices, costs and profits relating to aeronautical and aeronautical-related services at Australia's seven major airports, and under the Airports Act it reports on their financial accounts and quality of service.

51. In February 2006, the ACCC reported that, following the removal of price caps on aeronautical charges in 2000-01, average aeronautical revenue per passenger increased by between 50 and 228 per cent between 2000-01 and 2004-05, with increases in average revenue for 2004-05 ranging between 2.6 and 11 per cent. The ACCC also reported that a range of factors, including greater security requirements imposed on airports since 11 September 2001, contributed to increases in average aeronautical expenses.

52. With the ACCC's current price monitoring arrangements due to expire in June 2007, the PC is undertaking a public inquiry into airport price regulation and will report to the Government in early 2007.

2.3.2 *Airservices Australia*

53. On 14 December 2005, Airservices Australia provided the ACCC with a proposed path of prices for its aviation rescue and fire fighting services to apply from 1 January 2006 to 30 June 2009. On 21 December, the ACCC formed the view not to object to the proposal.

2.3.3 *Australia Post*

54. Amendments to the *Australian Postal Corporation Act 1989* have recently been enacted, giving the ACCC the ability to require Australia Post to keep records that are relevant to the ACCC's functions of testing for cross-subsidisation, assessing proposals for price increases and dispute inquiry. One of the key reasons behind the requirement on Australia Post to keep records about different parts of its business is to enable the ACCC to assess allegations raised by competitors that Australia Post is competing unfairly by subsidising competitive services with revenues raised from its monopoly services. On 1 August 2006, the ACCC released its first annual report *Assessing cross-subsidy in Australia Post* which found no evidence of any breaches of the Act.

2.3.4 *Insurance premium monitoring*

55. The ACCC currently has two monitoring roles with respect to the insurance industry:

- monitoring of public liability costs and professional indemnity costs and premiums to assess the impact on premiums of the measures taken by governments to reduce the cost of these classes of insurance. The third of four six-monthly reports was released by the Australian Government in August 2004. The fourth report was released in February 2005; and
- monitoring medical indemnity insurance premiums to assess whether they are actuarially and commercially justified. The second of three annual reports was released by the Australian Government in March 2005.

2.3.5 *Petrol monitoring*

56. The ACCC monitors the retail prices of petrol, diesel, automotive liquefied petroleum gas and ethanol blended fuel in the capital cities and around 110 country towns. It also monitors international crude oil and refined petrol prices, published terminal gate prices of the refiner/marketers and some independents, and the city-country retail price differential. The ACCC's price monitoring is used to provide information to consumers through its publications and on its website, and to assist in the ACCC's role in administering the TP Act. It also assists the ACCC in preparing analysis and reports for the Australian Government and Parliament.

57. The ACCC provides information on its website on petrol price cycles in the five largest metropolitan cities, the purpose of which is to increase consumers' understanding of petrol price cycles and how to take advantage of them. The website also includes information on what determines petrol prices, country petrol prices and provides answers to some frequently asked questions. It also has links to a number of other websites that have information about petrol prices and petrol pricing issues.

58. The petroleum industry in Australia has experienced significant changes over recent years including the entry of supermarkets into petrol retailing. The ACCC has been closely monitoring the effects that these developments are having on prices and the level of competition in the market.

2.3.6 *Container stevedoring monitoring*

59. The ACCC released its seventh container stevedoring report in November 2005 examining trends in prices, costs and profits of the three major stevedoring companies, P&O Ports Pty Ltd, Patrick Stevedores Operations Pty Ltd, and CSX World Terminals Pty Ltd for 2004-05. Increases in container throughput and increases in unit revenue continued to rise during 2004-05. However, industry average costs increased for the second consecutive year, indicating that capacity constraints may be emerging, with new investment in additional capacity may give rise to improved productivity and lower unit costs in future monitoring periods. The significant productivity improvements made since 1999 showed signs of levelling off on average across the five mainland Australian sea ports during 2004-05.

2.4 *Access to Infrastructure Facilities*

60. Under NCP, all Australian governments agreed to the introduction of an economy-wide access regime for essential infrastructure services. The National Access Regime, which was established in 1995 through Part IIIA of the TP Act, provides an avenue for firms to access certain essential infrastructure services on reasonable terms and conditions in cases where commercial negotiations on access are unsuccessful. The regime provides three regulatory routes for access, with administration of the arrangements being carried out by a number of Commonwealth bodies. In addition to the (generic) National Access Regime, there are also a number of industry-specific access regimes. —. for example, access to telecommunications services is provided for under Part XIC of the TP Act.

2.4.1 *Natural gas pipelines*

61. NCP commitments on natural gas aim to remove all legislative and regulatory barriers to the free trade of gas, both within and across state boundaries and to provide for third party access to gas pipelines.

62. The ACCC released seven final decisions for access arrangements to four gas transmission pipelines, and also assessed annual ring fencing reports for compliance with the national gas code from 19 service providers, reflecting their interests in nine transmission pipelines.

2.4.2 *Electricity*

63. NCP commitments on electricity aim to facilitate trade across and within state boundaries, and provide for third party access to transmission and distribution infrastructure.

64. In 1998, the national electricity access code was approved by the ACCC as an industry access code, under Part IIIA of the TP Act. There have been a number of subsequent amendments to the access code that have been accepted by the ACCC. All transmission and distribution network service providers operating in the national electricity market have submitted undertakings to the ACCC, specifying compliance with the access code.

2.4.3 *Telecommunications*

65. On 10 August 2005, the ACCC issued a draft decision that rejected Telstra's Unconditioned Local Loop Service (ULLS) undertaking on the basis that its proposed geographically de-averaged wholesale access prices were too high. The ACCC reaffirmed this stance on 22 December 2005 with its final decision. Telstra later submitted a revised averaged ULLS undertaking. On 15 June 2006, the ACCC issued a draft decision rejecting the revised undertaking.

66. There are currently six ULLS access arbitrations before the ACCC. All the major competitors to Telstra have sought arbitration. On 11 August 2006, the ACCC informed Telstra and an unnamed

counterparty that it had made an Interim Determination on one of the disputes, setting wholesale access prices in metropolitan areas at \$17.70 per month (down from the current \$22.00), compared to Telstra's proposal for a fee of \$30.00 per month throughout Australia.

2.4.4 Aviation

67. On 29 January 2004, the Parliamentary Secretary to the Treasurer of the Australian Government (the Minister) decided, under Part IIIA of the TP Act, not to declare the airside services at Sydney Airport provided by Sydney Airports Corporation Limited (SACL) in response to an application by Virgin Blue Airlines Pty Ltd. In making this decision, the Minister accepted the recommendation by the National Competition Council (NCC) that relevant statutory criteria were not satisfied. On 18 February 2004, Virgin Blue applied to the ACT for a review of the Minister's decision. The matter was heard by the ACT in October 2004.

68. On 9 December 2005, the ACT decided to declare airside services at Sydney Airport, setting aside the decision of the Minister not to declare the service. On 6 January 2006, SACL applied to the Federal Court seeking judicial review of the Tribunal's decision. The Federal Court heard the matter on 1 and 2 May 2006, judgement was reserved.

2.4.5 Rail

69. On 15 June 2004, the NCC received an application from Fortescue Metals Group (FMG), under Part IIIA of the TP Act, for declaration of certain rail track services owned by BHP in the Pilbara region of Western Australia. On 24 March 2006, the NCC forwarded its final recommendation to the designated Minister. As the designated Minister did not publish a decision by the expiry of the 60-day statutory deadline on 22 May 2006, he was deemed to have decided not to declare the service.

70. On 13 June 2006, FMG applied to the ACT for a reconsideration of the matter. The ACT held preliminary hearings on 27 June and 14 July 2006.

2.5 Adjudication

71. The ACCC assesses the public benefit and detriment resulting from certain anti-competitive practices prohibited by the TP Act through adjudication processes. The ACCC will authorise parties to engage in these practices where there is a net public benefit, providing immunity from legal proceedings under the TP Act. A simpler process known as notification provides immunity for exclusive dealing conduct.

72. In addition, the ACCC assists the ACT in its consideration of applications for the review of adjudication decisions.

73. In 2005-06, the ACCC introduced a streamlined collective bargaining authorisation process and has undertaken to have applications of this type assessed on a preliminary basis within 28 days and finalised within three months. The ACCC is also in the process of releasing a series of revised publications on its adjudication functions.

74. The ACCC considered a number of authorisation applications including relating to:

- a range of collective bargaining arrangements including: dairy farmers with dairy producers; professional swimmers with Swimming Australia Ltd; international airlines with airport operators; licensed premises with nominated broadcasting and wagering service providers; and truck owner-drivers with CSR Building Products Ltd;

- various levy arrangements including: clay brick and paver industry training; test promotion of wool products; oyster grower research; and the collection of used chemical containers;
- a number of codes of conduct relating to: architects; home workers; and the direct marketing industry;
- a queue management system for coal export loading at the Dalrymple Bay Coal Terminal;
- licensing/royalty arrangements relating to the performance of copyrighted music and the growing of various fruit trees;
- a joint venture for the mining, processing and transport of iron ore in north-west Australia.

75. During 2005-06, the ACT heard and made decisions in relation to the Victorian Farmers Federation application for collective boycott arrangements in the chicken growing industry and 12 separate authorisations relating to exclusive dealing conduct by various taxi networks. The ACT set aside the ACCC's decision to allow collective boycott arrangements and revoked the authorisation relating to the taxi networks.

76. At the end of the year, the ACT had no appeals awaiting authorisation or notification decisions.

3. Part III.—The role of competition authorities in the formulation and implementation of other policies

77. The role of competition authorities in Australia has underpinned a broad based reform agenda that was developed to provide a consistent approach and address reforms across markets.

78. The principal government departments/agencies involved in the development, implementation, administration and enforcement of competition policy and laws are:

3.1 *The Treasury*

79. Among other functions, Treasury has primary policy responsibility for the competition provisions of the TP Act and NCP, which includes the provision of policy advice in relation to international aspects of competition policy, and oversight and administration of key agencies, including the ACCC, the NCC, the ACT and the PC.

3.2 *The Australian Competition and Consumer Commission*

80. The ACCC was formed in 1995 and is an independent statutory authority that administers the TP Act. Under the NCP program, the TP Act has been amended so that its prohibitions of anti-competitive conduct apply to virtually all businesses in Australia.

3.3 *The Australian Energy Regulator*

81. The AER was formed in 2005 under Part IIIA of the TP Act and is both a separate legal entity and a constituent part of the ACCC. The AER comprises three statutorily appointed members, consisting of a full-time chair, one member who is also Commissioner of the ACCC, and a part-time member. The ACCC and the AER have a single body of staff that support and advise both the ACCC and the AER in their respective electricity and gas regulation work. While the ACCC has retained responsibility for the application of competition law to the energy sector, the AER performs economic regulation in relation to the National Electricity Market (NEM).

3.4 *The National Competition Council*

82. Established in 1995, the NCC acts as a policy advisory body to oversee the implementation of NCP. The NCC does not however, set reform agendas or implement reforms, which are the responsibility of governments.

3.5 *The Productivity Commission*

83. The PC, an independent statutory authority, is the Australian Government's principal review and advisory body on microeconomic policy and regulation, and undertakes public inquiries in response to terms of reference provided by the Australian Government.

3.6 *The Australian Competition Tribunal*

84. Until 1995, the ACT was known as the Trade Practices Tribunal (originally established in 1965). The ACT is a review body that, amongst other things, hears applications for review of determinations of the ACCC.

3.7 *Other reforms*

3.7.1 *Regulatory reform*

85. In October 2005, the Government announced the establishment of a Taskforce (the Banks Taskforce) to identify practical options for alleviating the compliance burden on business from Commonwealth Government regulation and report on areas where regulatory reform can provide significant immediate gains to business. The Taskforce reported to Government on 31 January 2006 and on 15 August 2006 the Government released its final response to the report, accepting the majority of the Taskforce's recommendations. A key element of the Government's final response to the Banks Report is enhanced 'gatekeeping' arrangements within the Australian Government to ensure that proposed regulation has passed an appropriate level of analysis prior to introduction and to ensure that new regulation is not unnecessary, overly burdensome, unduly costly or restrictive. The Taskforce report is available at <http://www.regulationtaskforce.gov.au> and the Government's final response is available at <http://www.treasury.gov.au/contentitem.asp?ContentID=1141&NavID=>.

86. The Government also announced the introduction of a new annual review process to examine the cumulative stock of regulation and identify an annual red tape reduction agenda to be undertaken by the PC.

87. The above regulatory reform is in addition to the regulatory stream of the National Reform Agenda (please see paragraph 1.1 National Reform Agenda).

4. *Part IV.—Resources of competition authorities*

88. The total number of staff employed by the ACCC at 30 June 2006 was 596 compared with 519 on 30 June 2005. It should be noted that in addition to competition matters, the ACCC has a role in regulating national infrastructure services and it is therefore difficult to provide a breakdown of staff resources. The number of ACCC staff which predominantly deal with traditional competition law issues, when compared with other OECD members, consist of the following main three areas: mergers 26 staff; enforcement 213 staff; and advocacy 73 staff. It should also be noted that ACCC enforcement staff along with investigating anticompetitive matters also investigate breaches of consumer protection law. The ACCC consists of seven full-time members, and seven associate members; two of these are ex-officio, being economic regulators from other federal or state and territory bodies.

89. The ACCC's total funding for 2005-06 was A\$99.3 million, comprising the original appropriation of A\$85.5 million², additional appropriation of A\$4.3 million³ and other revenue of A\$9.5 million. The ACCC's total appropriation in 2006-07 is A\$105.0 million⁴. This includes additional funding in 2006-07 of A\$19.7 million as part of a total increase of A\$32.8 million over four years.

90. The NCC employed 15 staff at 30 June 2006. The NCC's total funding increased slightly to A\$4.0 million in 2005-06.

Table 2.—Annual Budget (\$ million)

	ACCC		NCC	
	2006-07	2005-06	2006-07	2005-06
A	105.6	99.3	4.0	4.0
US ⁵	80.7	75.8	3.1	3.1

5. Part V.—Studies and reports

5.1 Telecommunications sector

91. In its competitive safeguards report⁶ the ACCC found that the telecommunications industry continued to progress towards a more competitive environment in 2004-05, signalling that the industry is on the verge of making significant advancements in service delivery. However, the ACCC remains concerned that various threats to existing and future competition exist, mainly involving the copper local access network.

92. During the reporting period, the ACCC also released its report on the changes in prices for telecommunications services report⁷, which found that, overall, average prices paid by telecommunications consumers decreased in real terms by 6.6 per cent during 2004–05. This overall decline was driven by a decrease of 13 per cent in prices paid for mobile telephony services.

² Treasury Portfolio Budget Statements 2004-05, Agency Budget Statements – ACCC, pg 74 available at <http://www.budget.gov.au/2004-05/>

³ Treasury Additional Estimates Statements 2004-05, pg 51 available at <http://www.budget.gov.au/2004-05/>

⁴ Treasury Portfolio Budget Statements 2004-05, Agency Budget Statements – ACCC, pg 85 <http://www.budget.gov.au/2005-06/pbs/html/index.htm>

⁵ Calculated at rate A\$1 = USD0.77, 16/8/05

⁶ Telecommunications competitive safeguards for 2004-05, Report to the Minister for Communications, Information Technology and the Arts, April 2006, <http://www.accc.gov.au/content?idex.phtml?itemId=743985>

⁷ Changes in the prices paid for telecommunications services in Australia 1997-98 to 2004-05, Report to the Minister for Communications, Information Technology and the Arts, April 2006 <http://www.accc.gov.au/content/index.phtml/itemId=743985>

5.2 *Productivity Commission inquiries, reports and publications*

5.2.1 *Government-commissioned projects*

93. In the past year, the PC completed a number of public inquiries and commissioned research studies⁸. Completed inquiries included:

- Conservation of Historic Heritage Places (report released in July 2006) — The Australian Government is developing its final response to the report;
- Australian Pigmeat Industry (report released in August 2005) — The Australian Government announced its final response with the release of the report in August 2005;
- Smash Repair and Insurance (report released in August 2005) — The Australian Government announced its final response with the release of the report in August 2005;
- Energy Efficiency (report released in October 2005) — The Australian Government announced its final response in February 2006; and
- 2004 Review of Part X of the Trade Practices Act 1974: International Liner Cargo Shipping (report released in October 2005) — The Australian Government announced its final response in August 2006;

94. The PC also completed four commissioned research studies during the year. These involved examinations of:

- Economic Impacts of Migration and Population Growth;
- Consumer Product Safety;
- Health Workforce; and
- Medical Technology.

5.2.2 *Other research*

95. The PC also undertakes a variety of research studies. Projects completed in 2005-06 include:

- Estimating Armington trade elasticities for the Monash and USAGE models;
- Australia's agricultural sector — a changing profile;
- Quantitative Tools for Microeconomic Policy Analysis;
- Experimental measures of productivity change in the education sector;
- Measuring the Contributions of Productivity and Terms of Trade to Australia's Economic Welfare;

⁸ PC inquiry and research reports are available at www.pc.gov.au

- Implications of the Armington assumption for trade models;
- The State of Non-Traditional Employment in Australia;
- The preference for imports — Armington elasticities and terms of trade effects in GE models;
- R & D: changing patterns and implications for growth;
- Incorporating externalities into the pricing of irrigation water; and
- Productive Reform in a Federal System — 2005 Productivity Commission Roundtable.

5.2.3 *Current work program*

96. The PC is currently undertaking inquiries into:

- waste generation and resource efficiency;
- road and rail freight infrastructure pricing;
- Tasmanian freight subsidy arrangements; and
- price regulation of airport services.

97. The PC is also undertaking commissioned research studies into:

- standards and accreditation;
- science and innovation; and
- performance benchmarking of Australian business regulation.

Glossary

ACCC	Australian Competition and Consumer Commission
ACT	Australian Competition Tribunal
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
COAG	Council of Australian Governments
CPA	<i>Competition Principles Agreement</i>
NCC	National Competition Council
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NWC	National Water Commission
NWI	National Water Initiative
PC	Productivity Commission
TP Act	<i>Trade Practices Act 1974</i>
USO	Universal Service Obligation