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**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

## **Annual Report on Competition Policy Developments in Australia**

**-- 2017 --**

**27-28 November 2018**

This report is submitted by Australia to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

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## 1. Executive summary

1. This report addresses events that have occurred in the financial reporting year (1 July 2017 to 30 June 2018) and, where appropriate, significant developments since then.
2. The report primarily covers the activities of the Australian Competition and Consumer Commission (ACCC). The ACCC is responsible for enforcing the *Competition and Consumer Act 2010* (CCA), which is the primary instrument of Australia's competition policy. A range of other agencies are responsible for developing and implementing Australia's competition policy. The roles of these agencies are outlined in Item 3 below.
3. Significant legislative developments were the commencement of the *Competition and Consumer Amendment (Misuse of Market Power) Act 2017* and the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* on 6 November 2017. These Acts amended the CCA to implement many of the competition law reforms recommended by the Australian government's 2015 Competition Policy Review.
4. A number of significant court decisions were handed down during 2017-18:
  - The Full Federal Court upheld the ACCC's appeal on penalty in the Yazaki case relating to cartel conduct, and increased the penalties imposed at first instance from \$9.5 million to \$46 million.
  - In April 2018, the Full Federal Court ordered Flight Centre to pay penalties totalling \$12.5 million for attempting to induce three international airlines to enter into price fixing arrangements between 2005 and 2009. The \$12.5 million in penalties was an increase from the original \$11 million that the trial judge imposed in March 2014.
  - In August 2018, the Federal Court declared (by consent) that Palram Australia and Ampelite Australia had engaged in exclusive dealing conduct with the purpose of substantially lessening competition, and ordered them to pay penalties of \$3.5million and \$2.1 million respectively. In September 2018, another company, Oakmoore Pty Ltd and its director Mr Rodney Horwell were ordered to pay penalties totalling \$6.35 million for being knowingly concerned in the same exclusive dealing conduct.
5. Also during 2017-18, but mentioned in last year's Annual Report:
  - In August 2017, the Federal Court convicted Japanese shipping company Nippon Yusen Kabushiki Kaisha (NYK) of criminal cartel conduct and ordered it to pay a fine of \$25 million.
  - On 5 October 2017, the Full Court of the Federal Court dismissed an appeal by Cement Australia Pty Ltd and ordered Cement Australia to pay penalties totalling \$20.6 million for anti-competitive agreements for the acquisition of flyash.
6. The ACCC considered 281 merger matters, including conducting 28 public reviews.
7. Over 2017-18, the Government directed the ACCC to conduct inquiries into:
  - digital platforms (December 2017)
  - electricity market monitoring (August 2018).

- The ACCC concluded government-directed inquiries into:
  - retail electricity pricing
  - the Australian dairy industry.
- 8. The ACCC completed self-initiated market studies into the:
  - new car retailing industry
  - communications sector.
- 9. The ACCC also initiated a market study into the Australian Wine Grape Industry (September 2018).

## 2. Changes to competition laws and policies, proposed or adopted

### 2.1. Competition law reforms

10. The second half of 2017 saw landmark amendments to Australia’s competition law with sweeping changes to the misuse of market power (dominance) provisions, the merger review processes and adding the new prohibition of anti-competitive concerted practices.
11. These reforms mark a new era in competition law following recommendations from the Australian government’s 2015 Competition Policy Review, which led to the introduction of the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* and the *Competition and Consumer Amendment (Misuse of Market Power) Act 2017*.
12. The changes include:
- An amended section 46 of the CCA to prohibit corporations with substantial power from engaging in conduct with the purpose, effect or likely effect of substantially lessening competition
  - A new prohibition on anticompetitive ‘concerted practices’
  - Amendments to compulsory information-gathering powers under s 155
  - Expanding the options available to merger parties to have their transactions cleared on either competition or net public benefit grounds
  - The merger authorisation and formal clearance processes being combined and streamlined, with the ACCC as the first-instance decision-maker
  - Reforms to the misuse of market power prohibition and new prohibitions on anti-competitive concerted practices will improve the ACCC’s ability to target conduct that harms the Australian economy.
13. The ACCC has issued guidelines on the new misuse of market power, concerted practices and authorisation provisions. The guidelines set out how the ACCC proposes to act against concerted practices that substantially lessen competition and how it will take action when a business with a substantial degree of market power has engaged in anti-competitive conduct. The guidelines should help business comply with their obligations

under the CCA. The ACCC also updated its public guidance on the use of s 155 powers to incorporate the legislative changes.

### 3. Enforcement of competition laws

#### 3.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

14. The CCA prohibits a wide range of anti-competitive practices, including cartel conduct, contracts, arrangements or understandings that substantially lessen competition, exclusive dealing that substantially lessens competition, secondary boycotts, misuse of substantial market power, mergers or acquisitions that are likely to substantially lessen competition, and resale price maintenance. The CCA also contains telecommunication specific competition rules.

15. The ACCC's current competition priorities, set out in its Compliance and Enforcement Policy, include:

- Competition issues in the financial services sector
- Competition and consumer issues in the provision of energy as an essential service
- Competition and consumer issues concerning the use of digital platforms, algorithms and consumer data
- Competition and consumer issues in the agricultural sector
- Competition issues in the commercial construction sector.

16. Some forms of conduct, such as cartel conduct, anti-competitive agreements, and the misuse of market power, are so detrimental to consumer welfare and competition that the ACCC will always assess them as a priority.

##### *3.1.1. Anti-competitive conduct matters*

17. The ACCC made eight new competition enforcement interventions in 2017–18 which include:

- The first criminal cartel prosecution of an Australian corporation and two individuals under the criminal cartel provisions, with the Commonwealth Director of Public Prosecutions (CDPP) commencing proceedings against Country Care Pty Ltd
- Criminal cartel charges against Citigroup Global Markets Australia Pty Ltd (Citigroup), Deutsche Bank Aktiengesellschaft (Deutsche Bank) and Australia and New Zealand Banking Group Ltd (ANZ), as well as against six senior executives and former executives of those companies
- Court enforceable undertakings against BHP Billiton Petroleum (Bass Strait) Pty Ltd and Esso Australia Resources Pty Ltd requiring them to separately market their share of gas produced under the Gippsland Basin Joint Venture from 1 January 2019.

18. All of the competition enforcement interventions were within the priority areas or demonstrated the priority factors as outlined in the Compliance and Enforcement Policy.

19. The ACCC achieved significant outcomes in competition matters in 2017–18, including the following penalties or fines:

- Yazaki Corporation Pty Ltd—penalty of \$46 million (on appeal)
- Nippon Yusen Kabushiki Kaisha Pty Ltd—fine of \$25 million
- Cement Australia Pty Ltd—penalty of \$20.6 million
- Air New Zealand—penalty of \$15 million
- Flight Centre Ltd—penalty of \$12.5 million.

20. The ACCC completed 28 in-depth investigations in the period, less than the annual target of 40. This primarily reflected disruption, resourcing and operational challenges related to an organisational restructure, and the establishment of new units and functions during the period. For example, in 2017 the ACCC established the Substantial Lessening of Competition Unit following the reform to the CCA’s misuse of market power and concerted practices provisions, effective from 6 November 2017. A Financial Services Unit was also established following the 2017–18 budget to consider specific competition issues in Australia’s financial sector, commencing with the Residential Mortgage Product Price Inquiry. Fewer in-depth investigations in the period also reflected the continuing significant competition litigation and investigations workload.

21. Throughout the 2017-18 period, the ACCC has continued to prioritise investigations of cartel conduct, an enduring priority under the Compliance and Enforcement Policy. Resources have been dedicated to increasing the ACCC’s capability and working with the CDPP to prosecute criminal cartel conduct.

22. There were a number of longstanding and ongoing cases dealt with during the period that continued to require resourcing, including a number of important appeals to the Full Federal Court and High Court. These included Prysmian, Yazaki, PZ Cussons, Cement Australia, PT Garuda Indonesia Ltd, Air New Zealand Ltd and the Flight Centre appeal. In some of these cases, the litigation has been ongoing and involved the continued expenditure of significant resources for many years. In the case of the air cargo proceedings involving Air New Zealand, Garuda and other airlines, it has now involved expenditure for over a decade.

23. Challenges ahead for the ACCC’s competition work include continued efforts to achieve higher penalties for breaches of competition law, to provide both specific and general deterrence, particularly in relation to the conduct of larger companies. We are continuing our criminal cartel work, and to balance competition advocacy and law reform work with investigations, and market studies and inquiries. The ACCC will also be looking for appropriate opportunities to test new legislative provisions in the CCA including the new misuse of market power with a substantial lessening of competition test and concerted practices provisions.

**Box 1. Case study – Enforcement action to remedy damage from a cartel  
Yazaki Corporation and Australian Arrow Pty Ltd**

In December 2012 the ACCC instituted proceedings against Yazaki Corporation, a Japanese company, and its Australian subsidiary, Australian Arrow Pty Ltd. This matter relates to cartel conduct in connection with the supply of wire harnesses to Toyota and its related entities in Australia between 2003 and at least late 2009.

Wire harnesses are electrical systems that facilitate the distribution of power and the sending of electrical signals to various components of a motor vehicle.

The ACCC's action follows similar enforcement action against Yazaki and other cartel participants by competition regulators in the US, Canada, and Japan. It arose from an immunity application which reported the conduct.

In November 2015, the Federal Court of Australia found that Yazaki Corporation engaged in collusive conduct with its competitor. The Court held that this conduct was in breach of the CCA and the Competition Code of Victoria (the Code). The Court found that Yazaki's conduct was subject to the CCA and the Code, even though much of the conduct occurred in Japan. The Court imposed penalties of \$9.5 million against Yazaki.

The ACCC noted it will seek to enforce Australian cartel laws to protect Australian consumers and industry, even when the collusive arrangements are made outside of Australia.

The ACCC appealed the decision because it believed that the penalties imposed were insufficient to adequately deter Yazaki or other businesses from engaging in cartel conduct in the future. It submitted to the Court that Yazaki should be ordered to pay a penalty of between \$42 million and \$55 million to reflect both the size of Yazaki's operations and the very serious nature of its collusive conduct.

In May 2018, the Full Federal Court ordered Yazaki to pay increased penalties of \$46 million. This is the highest penalty ever imposed under the CCA.

Yazaki has sought special leave to appeal to the High Court.

### ***3.1.2. Merger review***

24. Section 50 of the CCA prohibits mergers and acquisitions that would have, or are likely to have, the effect of substantially lessening competition in any market in Australia.

25. The ACCC considered 281 mergers of which 28 were subject to a public review during the year. Significantly, and in accordance with our stated objectives, we cleared 90 per cent of mergers without the need for a public review (well above the target of 70 per cent). The ACCC unconditionally cleared 17 mergers that underwent a public review, and one was approved subject to undertakings.

26. While the number of mergers considered by the ACCC has declined marginally over the past year, down from 288 in 2016–17, those mergers that have undergone a public review have been increasingly complex and, in many cases, have been more contentious compared with previous years. A Statement of Issues, which outlines the key competition issues arising from a merger identified by the ACCC, was released in relation to eight of the publicly reviewed mergers. While the ACCC only opposed one merger outright, it is significant to note that seven reviews were discontinued either because the

transactions did not proceed or because the parties withdrew their request for clearance. In two of these matters we released a Statement of Issues identifying issues of significant concern or that may raise concerns.

**Box 2. Case study – BP’s proposed acquisition of Woolworths’ network of service stations**

On 14 December 2017, the ACCC announced its decision to oppose BP’s proposed acquisition of Woolworths’ network of retail service station sites.

The ACCC considered that BP acquiring the Woolworths service stations would be likely to substantially lessen competition in the retail supply of fuel.

Woolworths operates 531 service station sites across Australia, and has 12 sites in development. BP supplies fuel to approximately 1400 branded service stations throughout Australia, setting fuel prices at around 350 of these.

The ACCC considered that Woolworths is a vigorous and effective competitor which has an important influence on fuel prices and price cycles in many markets throughout the country. The ACCC considered that the removal of Woolworths’ vigorous pricing strategy from the market and its replacement with BP’s premium pricing strategy was likely to have a substantial impact on the competitive process, reducing the competitive constraint on remaining market participants.

The ACCC also considered that the proposed acquisition would be likely to affect metropolitan price cycles by making the price jumps faster, larger and more coordinated. Reduced competition would also mean that prices will not fall as far, or as quickly, in the discounting phase of the cycle.

In forming its view, the ACCC conducted an extensive investigation of information and documents from both the companies concerned and from third parties. In particular, the ACCC conducted very extensive data analysis of all major retailers’ fuel prices to determine the effect that BP and Woolworths have in both local and metropolitan areas. The ACCC determined that the underlying concerns arising from the proposed acquisition would not be addressed by the divestments that BP proposed.

In its review of the proposed acquisition, the ACCC took into account a large number of submissions, information and documents from a broad range of market participants, including motoring groups, competitors, and corporate and individual consumers.

**3.1.3. Adjudication – authorisation applications and notifications**

27. The authorisation and notification provisions of the CCA allow businesses to obtain protection from legal action for certain conduct that might otherwise raise concerns under the competition provisions in the CCA, where that conduct delivers public benefits.

28. The authorisation and notification provisions reflect a recognition that, in certain circumstances, arrangements which restrict competition can nonetheless be in the public interest, principally by addressing market failure and increasing efficiency.

29. The ACCC can, upon application, grant an authorisation that imposes restrictions on competition where the likely public benefit outweighs any likely public detriment. With the revisions to the CCA which came into effect on 6 November 2017, the ACCC

may now also grant authorisation for certain forms of conduct if it is satisfied that no substantial lessening of competition is likely.

30. During 2017–18, we issued 27 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were aviation, financial services, agriculture, energy, waste services, transport and retailing. Applicants sought authorisation for conduct such as collective bargaining, coordination agreements, joint tender or buying processes, industry codes and other price or fee agreements.

31. Notification is an alternative to authorisation for certain arrangements such as exclusive dealing. Like authorisation, the notification process provides protection from legal action under the CCA if the conduct is in the public interest.

32. The ACCC received and assessed 268 exclusive dealing notification matters in 2017–18, 34 per cent fewer than in the previous year.

33. Changes to the CCA from 6 November 2017 mean that it is now possible to obtain protection from legal action for resale price maintenance conduct by lodging a notification. Before this date, ACCC authorisation was the only way to obtain legal protection for resale price maintenance conduct. There has been one notification of resale price maintenance conduct since the revisions to the CCA came into effect, lodged by Tooltechnic Systems (Aust) Pty Ltd.

34. Collective bargaining is an arrangement where two or more competitors come together to negotiate with a supplier or a customer over terms, conditions and prices. The CCA generally requires businesses to act independently of their competitors when making these decisions. Competitors who act collectively in these areas are at risk of breaching the competition provisions of the CCA. However, small businesses can seek legal protection from the ACCC to engage in collective bargaining by lodging a notification or by applying for authorisation.

35. In 2017–18, we issued 12 determinations authorising collective bargaining arrangements and allowed notifications involving three collective bargaining arrangements. The collective bargaining arrangements considered during the year include arrangements in the aviation, energy and waste services industries.

**Box 3. 4. Case study: Conditional authorisation to preserve potential competition  
Port of Brisbane and Carnival**

Port of Brisbane Pty Ltd (PBPL) and cruise operator Carnival sought authorisation for arrangements to support the construction of a new cruise ship terminal in Brisbane.

PBPL is proposing to build a new terminal that is purpose-built for cruise ships and is able to berth mega cruise ships of more than 270 metres in length. These cruises are becoming increasingly popular. However, currently only a limited number of mega ships are able to berth in Brisbane at PBPL’s multi-user terminal (which is a cargo terminal and is not designed for use by cruise ships).

To support the development of the new terminal, Carnival agreed to be bound by take-or-pay obligations (meaning Carnival has agreed to pay PBPL a significant amount each year, regardless of whether it uses the new terminal). In exchange, Carnival will receive certain preferential berthing rights from PBPL.

Passengers and operators place a high value on cruises that arrive or depart on a weekend day (Friday, Saturday or Sunday). They are the most popular and profitable days for cruise ship operators. Therefore, the ACCC considered that a potential competing cruise operator must be able to obtain at least some weekend berthing days. Otherwise, competitors could be deterred from entering or expanding to a degree that could constrain Carnival.

On 10 May 2018, the ACCC decided to grant authorisation subject to two conditions designed to reduce the agreement's anti-competitive effect and to promote competition and choice for cruise customers.

Under the first condition, Carnival will still get its choice of four days each week, but it cannot initially book more than two of the three weekend days in any given week.

The second condition is that, if the terminal is expanded in the future to provide a second berth, Carnival cannot be given first right of refusal for an agreement which would give it first choice of days at that berth too.

These conditions are designed to ensure that competing cruise operators are able to gain sufficient access to the new facility so that consumers can benefit from competition.

#### *3.1.4. Market studies—improving the transparency of Australia's markets*

36. Under the CCA the ACCC can be directed to conduct formal inquiries, which can include the use of compulsory information-gathering powers. The ACCC can also initiate informal market studies without being given a government direction, as detailed below:

- The ACCC announced a market study into the wine grape industry on 26 September 2018. The study will examine competition, contracting practices, transparency, and risk allocation issues in the wine grape supply chain.
- On 21 August 2018, the Federal Government directed the ACCC to monitor and report on prices, profits and margins in the supply of electricity in the National Electricity Market. The first report is due by 31 March 2019. Under the direction the ACCC may make recommendations to Government on how to improve outcomes for electricity customers.
- In April 2017, the Treasurer directed the ACCC to hold an inquiry into improving the transparency of gas supply in Australia and an interim report was released on 2 August 2018. Based on current projections for the supply-demand balance, there will likely be sufficient gas in 2019 to meet demand. While there will likely be sufficient gas in 2019, prices remain two to three times higher than historical levels. The lower forecast demand and increased southern production in 2019 is unlikely to be sufficient to lower gas prices.
- The ACCC concluded its inquiry into the supply of retail electricity and the competitiveness of retail electricity prices in the National Electricity Market on 11 July 2018. The inquiry, which commenced in March 2017, began by identifying the root causes of high electricity prices across the entire electricity supply chain, and has now made 56 recommendations detailing ways to fix the National Electricity Market. The ACCC estimates its recommendations, if adopted, will save the average household between 20 and 25 per cent on their electricity bill, or around \$290 to \$415 per annum.

- The ACCC released an update report on 8 June 2018 on its inquiry into the supply of home, contents and strata insurance in Northern Australia, commenced in July 2017. Early analysis shows that while northern Australia makes up only five per cent of the number of policies, it accounts for about 10 per cent of premium revenue.
  - On 30 April 2018, the ACCC released the final report arising from its dairy inquiry, which includes a key recommendation that a mandatory code of conduct be implemented to improve contracting practices between dairy processors and farmers. The inquiry was initiated in response to large and retrospective reductions in milk prices imposed by two major dairy processors in April 2016. The inquiry involved extensive investigations, consultation and data analysis over a period of 18 months.
  - The ACCC published the final report of its communications sector market study on 5 April 2018, which includes 28 recommendations and actions on competition and consumer issues. The report has found that the markets for broadband and voice services are operating competitively under the current regulatory arrangements, despite the levels of concentration.
  - In June 2016, the ACCC commenced a market study into the new car retailing industry. A final report was released on 14 December 2017. The final report's three key observations are: car manufacturers need to update their complaint handling systems and improve their approach to the handling of consumer guarantee claims; a mandatory scheme should be introduced for car manufacturers to share technical information with independent repairers; new car buyers need more accurate information about their cars' fuel consumption and emissions.
  - On 4 December 2017, the Treasurer, the Hon Scott Morrison MP, directed the ACCC to conduct an inquiry into digital platforms. The inquiry will look at the effect that digital search engines, social media platforms and other digital content aggregation platforms have on competition in media and advertising services markets. In particular, the inquiry will look at the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers.
37. Annex A provides a high level summary of the ACCC's competition activities during the period 2017–18.

### **3.2. Infrastructure Regulation**

38. The ACCC has a number of duties and functions in relation to the economic regulation of infrastructure and natural monopoly assets. Key developments in relation to these functions for 2017-18 are outlined below. More information can be found at [acc.gov.au](http://acc.gov.au).

39. During 2017–18 the ACCC undertook a number of major regulatory activities including:

- a major regulatory decision not to declare a domestic mobile roaming service (a second expected major regulatory decision was made outside the reporting period)
- commencement of a public inquiry into National Broadband Network (NBN) wholesale service standards

- the publication of multiple monitoring reports on different infrastructure sectors, including airports, bulk wheat ports, container stevedoring and telecommunications, and our first fuel industry report under a new ministerial direction, which provide transparency for consumers and businesses about competition and market conditions.
40. The ACCC's other key activities during the year include:
- delivering on new monitoring and inquiry roles in gas, insurance and financial markets, following directives from the Government
  - concluding a broad-ranging market study of the communications sector
  - investigations into potential breaches of rules in the communications, water and wheat sections
  - a number of successful public forums in which consumers, industry and government representatives engaged on important issues, including those affecting rural and regional Australia.

### 3.3. Access to infrastructure facilities

41. The National Access Regime, which was established in 1995 under Part IIIA of the now CCA, provides an avenue for firms to access certain essential infrastructure services on reasonable terms and conditions. Effective access to these essential services promotes competition in upstream and downstream markets that rely on that infrastructure.

#### 3.3.1. Rail

42. The ACCC has a role in assessing, and monitoring compliance with, access undertakings submitted by the Australian Rail Track Corporation (ARTC), a provider of "below rail" track access services.

43. On 21 December 2017, ARTC submitted an application to vary the 2011 Hunter Valley Access Undertaking (HVAU) to incorporate path-based pricing, allocate incremental capital costs on the basis of contracted capacity and apply a dual ceiling limit.

44. On 28 June 2018, the ACCC issued a draft decision proposing to accept ARTC's December 2017 variation to the 2011 HVAU, subject to amendments for clarity and certainty. The ACCC's draft decision noted that although there remain significant concerns with elements of ARTC's proposal, the ACCC's preliminary view is to consent to the variation in light of support by a majority of stakeholders who submit that the 'package' of proposed amendments is preferable to the current HVAU.

#### 3.3.2. Telecommunications

45. The telecommunications access regime contained in the CCA supports the development of a competitive telecommunications industry by allowing services to be 'declared'—a process that determines which services are regulated by the ACCC.

46. Under the NBN Co special access undertaking (SAU), the ACCC must make annual determinations specifying the amount of revenue that NBN Co is allowed to earn for each financial year. In making its determination, the ACCC must review NBN Co's

submission of regulatory information and decide whether NBN Co has complied with the relevant criteria set out in its SAU.

47. On 31 October 2017 NBN Co submitted regulatory information for the 2016–17 financial year. On 27 April 2018 the ACCC published its draft determination. Our draft decision was to accept that the regulatory information that NBN Co had submitted complied with the requirements in the SAU. On 29 June 2018 we published the final determination for the 2016–17 financial year, which confirmed our view that the requirements of the SAU had been met.

48. As mentioned in last year’s annual report, the ACCC released its final report for the mobile roaming declaration inquiry in October 2017. The ACCC decided not to declare a mobile roaming service as it is not satisfied that declaration would promote the long-term interests of end-users.

49. The ACCC commenced a public inquiry on 5 March 2018 to review the declaration of the domestic transmission capacity service (DTCS). The DTCS is the regulated transmission service. The inquiry will examine the scope and adequacy of the DTCS regulation and competition and market developments, particularly those associated with the rollout of the NBN.

#### **4. The role of government departments and agencies in the formulation and implementation of competition policy**

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

##### **4.1. The Treasury**

51. Amongst other functions, the Treasury advises the Government on competition law and policy, including advice on the economic regulation of infrastructure and broader product markets.

52. More information can be found at <http://www.treasury.gov.au/>.

##### **4.2. The Australian Competition and Consumer Commission**

53. The ACCC was formed in 1995 and is an independent statutory authority that enforces the CCA. The CCA prohibitions of anti-competitive conduct apply to virtually all businesses in Australia.

54. The ACCC has responsibilities in industry regulation that include promoting efficient investment and access to monopoly rail infrastructure, access to wheat ports, monitoring prices and service quality for Australia’s four major airports, providing information on the performance of Australia’s container stevedoring industry, regulating and monitoring a range of water charges, and monitoring and enforcing compliance with water market and charge rules.

55. More information can be found at <http://www.accc.gov.au/>.

### 4.3. The Australian Energy Regulator

56. The Australian Energy Regulator (AER) is the economic regulator of the electricity transmission and distribution networks and is responsible for monitoring the wholesale electricity market and enforcing the National Electricity Law and National Electricity Rules in the National Electricity Market (NEM). The AER is also responsible for the economic regulation of gas transmission and distribution networks and enforcing the National Gas Law and National Gas Rules in all jurisdictions except Western Australia. The AER also regulates retail markets (other than retail pricing) in all states that have adopted the National Energy Customer Framework.

57. More information can be found at <http://www.aer.gov.au/>.

### 4.4. The National Competition Council

58. The National Competition Council (NCC) considers applications in relation to third party access to major infrastructure services under Part IIIA of the CCA, and makes recommendations to the relevant decision making Ministers. The NCC has a similar role under the National Gas Law.

59. More information can be found at <http://www.ncc.gov.au/>.

### 4.5. The Productivity Commission

60. The Productivity Commission (PC), an independent statutory authority, is the Australian Government's principal review and advisory body on microeconomic policy and regulation, and undertakes public inquiries and other research in response to terms of reference provided by the Australian Government. The PC also undertakes self-initiated research.

61. More information can be found at <http://www.pc.gov.au/>.

### 4.6. The Australian Competition Tribunal

62. The Tribunal is an independent statutory tribunal whose primary role is to review decisions of the ACCC, the AER and responsible Ministers under Part IIIA of the CCA.

63. More information can be found at <http://www.competitiontribunal.gov.au/>.

## 5. Resources of competition authorities

64. In 2017-18, the ACCC had seven full time members, one part-time member, and five associate members. The AER had three full-time members.

65. The total average number of staff employed by the ACCC over the 2017-18 year was 874.

66. In addition to competition matters, the ACCC has consumer protection (including product safety) and national infrastructure services regulatory functions. Staff from the ACCC infrastructure area may assist with competition enforcement in relevant sectors.

67. The ACCC's investigative and regulatory functions are supported by specialist advisers in the Legal and Economic Division. The division comprises two groups: the Legal Group and the Economic Group.

- The Legal Group consists of general and special counsel, and four core units that provide in-house legal services to the ACCC and AER: regulatory, corporate, mergers and authorisations, and competition and consumer law. It assists the ACCC and AER to make legally informed decisions and manage litigation, including by facilitating, as an informed purchaser, external litigation services. It also assists in managing the agency's corporate legal obligations.
- The Economic Group consists of the Chief Economist, and two core units that provide in-house strategic economic advice and related services to the ACCC and AER: regulatory and competition economics. It aims to facilitate the consistent use of economic principles in decision making, increase the quality of economic analysis and contribute to economics-related learning and development initiatives.

68. The ACCC's total funding for the period 1 July 2017 to 30 June 2018 was \$202.57 million, comprising the original appropriation of \$197.95 million and other revenue of \$4.62 million.

**Table 1. ACCC funding appropriations**

	2017-18 \$m	2016-17 \$m
AUD	197.95	173.4
USD	146.57	133.3

*Note:* Exchange rate at 30 June 2018 – A\$1 = US\$0.74046 = €0,6334.

69. The cost of administering the ACCC's telecommunications specific regulatory functions are recovered from telecommunications carriers through carriers' annual licence fees.

## 6. Summaries of or references to new reports and studies on competition policy issues

### 6.1. Productivity Commission inquiries, reports and publications

70. In the past financial year the PC completed a number of public inquiries and commissioned research studies. These can be accessed at [www.pc.gov.au](http://www.pc.gov.au). These include:

- Telecommunications Universal Service Inquiry
- National Disability Insurance Scheme (NDIS) Costs
- Productivity Review
- Collection Models for GST on Low Value Imported Goods
- Transitioning Regional Economies
- Human Services
- Australian Hearing

- National Water Reform

71. Competition-related inquiries and research studies underway as at 30 June 2018 include:

- Superannuation
- Economic Regulation of Airports.

## Annex A. Summary of ACCC activities – competition matters

### 7. Cartel conduct proceedings finalised

**Table 2.**

Air New Zealand Ltd		Conduct
Commenced	18 April 2016	The cartel conduct concerned price fixing of surcharges on air cargo services.
Concluded	27 June 2018	
Jurisdiction	Federal Court Sydney	
Outcome	Penalties of \$15 million	
Australian Egg Corporation Ltd (AECL) and others		Conduct
Commenced	26 May 2014	An alleged attempt by the company and individuals to induce members of the corporation into an arrangement for the purpose of reducing the available egg supply
Concluded	25 September 2017	
Jurisdiction	Federal Court Adelaide	
Outcome	The ACCC appeal was dismissed against AECL. Penalty of \$120 000, a compliance program, orders and a contribution to costs against one individual.	
Nippon Yusen Kabushiki Kaisha Pty Ltd		
Commenced	14-Jul-16	The cartel conduct concerned the international shipping of cars, trucks and buses into Australia between 2009 and 2012.
Concluded	03-Aug-17	
Jurisdiction	Federal Court NSW Criminal Division	
Outcome	Fine of \$25 million.	

## 8. Cartel conduct proceedings commenced

**Table 3.**

Country Care Pty Ltd and others		Conduct
Commenced Jurisdiction	14 February 2018 Magistrate's Court of Victoria	It is alleged that Country Care and employees were engaged in cartel conduct involving assistive technology products used in rehabilitation and aged care, including beds and mattresses, wheelchairs and walking frames.
Australia and New Zealand Banking Group Ltd (ANZ) and others		Conduct
Commenced Jurisdiction	5 June 2018 Downing Centre Local Court Sydney	It is alleged that ANZ and one of its employees were knowingly concerned in cartel arrangements involving trading in ANZ shares following an ANZ institutional share placement in August 2015.
Citigroup Global Markets Australia Pty Ltd and others		Conduct
Commenced Jurisdiction	5 June 2018 Downing Centre Local Court Sydney	It is alleged that Citigroup and certain current and former employees engaged in cartel conduct involving trading in ANZ shares following an ANZ institutional share placement in August 2015.
Deutsche Bank Aktiengesellschaft (Deutsche Bank) and others		Conduct
Commenced Jurisdiction	5 June 2018 Downing Centre Local Court Sydney	It is alleged that Deutsche Bank and certain current and former employees were involved in cartel conduct involving trading in ANZ shares following an ANZ institutional share placement in August 2015.

## 9. Cartel cases ongoing

Table 4.

Cascade Coal Pty Ltd and others		Conduct
Commenced Jurisdiction	25 May 2015 Federal Court Sydney	The ACCC alleges that Cascade and individuals engaged in bid rigging conduct involving mining exploration licences in the Bylong Valley, New South Wales (NSW). Note: On 6 July 2018, the Federal Court dismissed the ACCC's case with costs in a suppressed ruling. On 7 August 2018, the ACCC appealed this decision to the Full Federal Court.
Kawasaki Kisen Kaisha Ltd		Conduct
Commenced Jurisdiction	2 November 2016 Federal Court Sydney	The ACCC alleges that Kawasaki engaged in cartel conduct concerning the international shipping of cars, trucks and buses to Australia between 2009 and 2012.
Oakmoore Pty Ltd		Conduct
Commenced Jurisdiction	23 June 2016 Federal Court Brisbane	The ACCC alleges that Oakmoore engaged in cartel conduct in the supply of polycarbonate roof sheeting to retailers in Australia. Note: This was finalised in September 2018.
Prysmian Cavi e Sistemi Energia SRL (High Court appeal)		Conduct
Commenced Jurisdiction	10 April 2018 High Court of Australia	The ACCC alleges that Prysmian engaged in cartel conduct in the supply of high-voltage land cables to a Snowy Mountains Hydro Electric Scheme project. Note: On 8 August 2018, the High Court dismissed Prysmian's appeal with costs.
PT Garuda Indonesia Ltd (High Court appeal)		Conduct
Commenced Jurisdiction Status	18 April 2016 Federal Court Sydney  On 14 June 2017, the High Court dismissed the appeal by PT Garuda and other airlines and the matter was remitted to the Federal Court for consideration of penalty and other orders.  On 22 & 25 June 2018, the penalty hearing took place. The matter is now awaiting judgment.	The ACCC alleges that Garuda Indonesia engaged in cartel conduct involving price fixing of surcharges on air cargo services.
PZ Cussons Australia Pty Ltd (appeal)		Conduct
Commenced Jurisdiction	20 February 2018 Full Federal Court Sydney	The ACCC alleges that Cussons was engaged in cartel and anti-competitive behaviour in supplying laundry detergent.
Yazaki Corporation and Australian Arrow Pty Ltd (High Court appeal)		Conduct
Commenced Jurisdiction Status	13 June 2018 High Court of Australia  Following the Full Federal Court decision on 16 May 2018 and the \$46 million penalty ordered against Yazaki, Yazaki and APL have filed an Application for Special Leave to appeal to the High Court.	The ACCC alleges that Yazaki engaged in price fixing and market sharing in relation to the supply of wire harnesses to Toyota.

## 10. Anti-competitive agreements and practices proceedings finalised

**Table 5.**

Cement Australia Pty Ltd and others (appeal)		
Commenced	6 June 2016	The conduct concerned anti-competitive arrangements relating to flyash contracts between Cement Australia and power stations in south-east Queensland.
Concluded	5 October 2017	
Jurisdiction	Full Federal Court	
Outcome	Penalties of \$20.6 million.	
Flight Centre Ltd		
Commenced	11 March 2016	The conduct concerned anti-competitive arrangements with three international airlines to eliminate differences in international airfares offered to customers.
Concluded	4 April 2018	
Jurisdiction	Full Federal Court	
Outcome	Penalties of \$12.5 million.	
Construction Forestry Mining and Energy Union (CFMEU)		
Commenced	20 November 2014	This matter concerned secondary boycott conduct which hindered or prevented the acquisition of concrete from Boral and its subsidiary Alsafe.
Concluded	14 February 2018	
Jurisdiction	Federal Court Melbourne	
Outcome	Penalty of \$1 million.	

## 11. Misuse of market power proceedings ongoing

**Table 6.**

Pfizer Australia Pty Ltd (High Court appeal)		Conduct
Commenced	22 June 2018	The ACCC alleges that Pfizer was involved in misuse of market power for the purpose of substantially lessening competition in relation to particular cholesterol-lowering products by offering to supply its originator brand of atorvastatin, Lipitor, and its own generic atorvastatin product to community pharmacies in early 2012.
Jurisdiction	High Court of Australia	
Ramsay Health Care Australia Pty Ltd		Conduct
Commenced	1 May 2017	The ACCC alleges that Ramsay Health Care was involved in anti-competitive conduct involving misuse of market power and exclusive dealing in the day surgery market in the Coffs Harbour region.
Jurisdiction	Federal Court Sydney	

## 12. Merger review - Statement of Issues issued

- **BP** - proposed acquisition of Woolworths' retail service station sites
- **Camp Australia Pty Ltd** and Junior Adventures Group Pty Ltd
- **Moly-Cop**—proposed acquisition of Donhad
- **MYOB Group Ltd**—proposed acquisition of Reckon Ltd's Practice Management Group
- **Pacific National Pty Ltd / Linfox**—proposed acquisitions of Intermodal assets from Aurizon
- **Platinum Equity**—proposed acquisition of OfficeMax Australia

- **Saputo Dairy Australia Pty Ltd**—proposed acquisition of Murray Goulburn’s operating assets
- **Sydney Transport Partners Consortium (including Transurban)** - proposed acquisition of WestConnex interest

### 13. Public competition assessments issued

- **Saputo Dairy Australia Pty Ltd** - proposed acquisition of Murray Goulburn’s operating assets.