

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

Annual Report on Competition Policy Developments in Australia

-- 2019 --

This report is submitted by Australia to the Competition Committee FOR INFORMATION.

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Table of Contents

Australia	4
Executive Summary	4
1. Changes to competition laws and policies, proposed or adopted	5
1.1. Summary of new legal provisions of competition law and related legislation	5
1.2. Other relevant measures, including new guidelines.....	5
1.2.1. ACCC Immunity and Cooperation Policy for Cartel Conduct.....	5
1.3. Government proposals for new legislation	6
1.3.1. Consumer Data Right (CDR) legislation.....	6
2. Enforcement of competition laws and policies.....	6
2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions	6
2.1.1. Anti-competitive conduct matters	7
2.2. Mergers	8
2.2.1. Case study - Saputo Dairy Australia Pty Ltd (Saputo) proposed acquisition of the cheese business of Lion Dairy & Drinks Pty Ltd (Lion)	10
2.3. Adjudication – authorisation applications and notifications	10
2.3.1. Authorisations	11
2.4. Market studies and Inquiries	12
2.5. Infrastructure regulation.....	14
2.5.1. Access to essential facilities	14
3. The role of government departments and agencies in the formulation and implementation of competition policy	17
3.1. The Treasury	17
3.2. The Australian Competition and Consumer Commission	17
3.3. The Australian Energy Regulator	17
3.4. The National Competition Council.....	18
3.5. The Productivity Commission	18
3.6. The Australian Competition Tribunal.....	18
4. Resources of competition authorities.....	18
5. Summaries of, or references to, new reports and studies on competition policy issues	19
5.1. Productivity Commission inquiries, reports and publications	19
Annex A. Summary of ACCC activities – competition matters	20
Merger review - Statements of Issues issued.....	23
Public competition assessments issued.....	23

Tables

Table 1. ACCC funding appropriations.....	19
Table A.1. Cartel conduct proceedings finalised.....	20
Table A.2. Cartel conduct proceedings commenced	21
Table A.3. Cartel undertakings accepted.....	21
Table A.4. Cartel cases ongoing.....	22
Table A.5. Anti-competitive agreement proceedings ongoing.....	22
Table A.6. Misuse of market power proceedings commenced.....	22
Table A.7. Resale price maintenance undertakings accepted.....	22

Australia

Executive Summary

1. This report addresses events that have occurred in the previous calendar year (1 January 2019 to 31 December 2019).
2. The report 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 Section 4 of this report.
3. In 2019 there were a number of legislative changes proposed in relation to the competition provisions of the CCA that were influenced by ACCC advocacy.
4. A number of significant court decisions were handed down during 2019:
 - In February 2019 the Federal Court ordered, by consent, Cryosite Limited to pay \$1.05 million in penalties for engaging in cartel conduct in its asset sale agreement with Cell Care Australia Pty Ltd.
 - In May 2019 the Federal Court ordered PT Garuda Indonesia Ltd (Garuda) to pay penalties of \$19 million for colluding on fees and surcharges for air freight services. This case is a long-running one for the ACCC and part of the ACCC's court action against a global air cargo cartel. Action against this cartel has now resulted in penalties of \$132.5 million against 14 airlines, including Air New Zealand, Qantas, Singapore Airlines and Cathay Pacific.
 - In August 2019 following a guilty plea, the Federal Court convicted Kawasaki Kisen Kaisha Ltd (K-Line) of criminal cartel and ordered it to pay a fine of AU\$34.5 million. This followed an extensive criminal investigation by the ACCC, which found that K-Line was part of a cartel that had operated since at least 1997, and impacted the price of shipping vehicles to Australia from several countries in North America, Asia, and Europe.
5. In 2019, the ACCC assessed 310 mergers, of which 26 underwent an informal public review, 283 were pre-assessed as not requiring a public review, and one public review of an application for merger authorisation.
6. In 2019, the Government directed the ACCC to conduct inquiries into:
 - Murray-Darling Basin water markets (August 2019)
 - home loan prices (October 2019)
7. The ACCC concluded the following government-directed inquiries:
 - Digital Platforms Inquiry (June 2019)
 - Foreign Currency Conversion Services Inquiry (July 2019)
8. An interim report on the supply of insurance in Northern Australia was also released in December 2019.

9. The ACCC also commenced a review into customer loyalty schemes (February 2019) and completed price monitoring of the removal of GST from menstrual products (March 2019).

1. Changes to competition laws and policies, proposed or adopted

1.1. Summary of new legal provisions of competition law and related legislation

10. In 2019 there were a number of legislative changes made in relation to the competition provisions of the CCA that were influenced by ACCC advocacy. These include:

- In December 2019 the Government introduced a mandatory dairy code of conduct. This followed the ACCC's key recommendation of the Dairy Inquiry final report, released in April 2018, that Government should introduce a legally enforceable code of conduct to:
 - improve the governance of commercial relationships between dairy farmers and processors through simplified written contracts
 - remove barriers to switching that limit farmer choice between processors and soften farmgate competition
 - improve transparency to help farmers make informed choices between offers made by competing processors.
- The Australian Parliament passed legislation including the Treasury Laws Amendment (Consumer Data Right) Bill 2019, which will introduce the Consumer Data Right to the banking sector in 2020, and later in other sectors starting with energy and telecommunications. The Consumer Data Right will give consumers greater access to and control over their data. It will improve consumers' ability to compare and switch between products and services, and will encourage competition between service providers, leading not only to better prices for customers but also more innovative products and services.
- In 2019 the Parliament passed the Treasury Laws Amendment (2018 Measures No. 5) Bill 2018 which removed a limited exemption for some conduct relating to intellectual property rights from certain anti-competitive conduct prohibitions in the CCA. From 12 September 2019, conduct involving intellectual property rights is now subject to the anti-competitive conduct provisions in the CCA in the same manner as other conduct.

1.2. Other relevant measures, including new guidelines

1.2.1. ACCC Immunity and Cooperation Policy for Cartel Conduct

11. In September 2019 the ACCC updated its Immunity and Cooperation Policy for Cartel Conduct.

12. This policy encourages businesses and individuals to disclose cartel behaviour, which in turn assists the ACCC to stop the harm arising from this illegal conduct and to take action against participants. Given the importance of the immunity program, the ACCC continuously seeks to improve the effectiveness of the policy.

13. The key revisions to the policy were the scope of its application, the use of information where immunity is and is not granted, conditional immunity agreements, derivative immunity, clarification of the policy's application to concerted practices and parties who attempt to cause others to engage in cartel conduct, and a review of wording contained in the Memorandum of Understanding between the ACCC and Commonwealth Director of Public Prosecutions.

14. The Policy continues to cover cartel conduct such as price-fixing, market sharing, bid rigging and customer allocation, and does not cover anti-competitive concerted practices. Under the revised policy, applicants seeking immunity will now be asked to enter into a cooperation agreement early in the immunity process, which will clearly set out the steps required for conditional civil and criminal immunity under the policy. The policy also clarifies a number of issues related to eligibility for immunity, the level of cooperation required, how information is used, and confidentiality.

1.3. Government proposals for new legislation

1.3.1. Consumer Data Right (CDR) legislation

15. On 26 November 2017, the Australian Government announced the introduction of a consumer data right (CDR) in Australia. The CDR will give consumers greater access to and control over their data. It will improve consumers' ability to compare and switch between products and services, and will encourage competition between service providers, leading not only to better prices for customers but also more innovative products and services.

16. The CDR will be introduced into the banking sector in phases, with consumer data relating to credit and debit cards, deposit accounts and transaction accounts will be made available from 1 July 2020. Consumer data relating to mortgage and personal loan data will be able to be shared after 1 November 2020.

2. Enforcement of competition laws and policies

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

17. 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 telecommunications-specific competition laws.

18. The ACCC's competition priorities in 2019, set out in its Compliance and Enforcement Policy,¹ included competition and consumer issues regarding:

- customer loyalty schemes
- the supply of essential services, including energy and telecommunications

¹ <https://www.accc.gov.au/publications/2019-compliance-and-enforcement-priorities>

- digital platforms, algorithms and consumer data
- the financial services sector, including issues with respect to foreign exchange services
- the agricultural sector.

19. 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.

2.1.1. Anti-competitive conduct matters

20. The ACCC instigated directly or through the Commonwealth Director of Public Prosecutions (CDPP) four new competition enforcement cases in 2019:

- Vina Money Transfer Pty Ltd & Ors for alleged cartel conduct
- BlueScope Steel Limited & Anor for alleged cartel conduct
- Wallenius Wilhelmsen Ocean AS for alleged cartel conduct
- Tasmanian Ports Corporation Pty Ltd for alleged misuse of market power

21. Further detail about these cases is available in Annex A below.

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

23. The ACCC achieved significant outcomes in competition matters in 2019, including the following penalties or fines for cartel conduct:

- Cryosite Ltd (\$1.05 million) (for ‘gun-jumping’ cartel conduct)
- Garuda Indonesia Ltd (\$19 million)
- Kawasaki Kisen Kaisha Ltd (\$34.5 million).

24. Throughout the 2019 period, the ACCC continued to prioritise investigations of cartel conduct, an enduring priority under the Compliance and Enforcement Policy. In addition to two ongoing criminal cartel proceedings in the financial services sector, and another in the assistive technology products industry, the ACCC is also managing an ongoing criminal cartel proceeding against the CFMMEU and its ACT Divisional Branch Secretary.

25. There were a number of longstanding and ongoing cases dealt with during the period that continued to require considerable resourcing, including a number of important appeals to the Full Federal Court and High Court. Longstanding matters included Yazaki Corporation, PZ Cussons Australia Pty Ltd, PT Garuda Indonesia Ltd, Cascade Coal Pty Ltd and Kawasaki Kisen Kaisha. In addition, significant resourcing is being allocated to supporting ongoing criminal prosecutions by the CDPP against ANZ, Citigroup, Deutsche Bank and Country Care Group Pty Ltd.

26. Challenges ahead for the ACCC’s competition work include continued efforts to achieve higher penalties for breaches of competition law, which are more likely to provide both specific and general deterrence, particularly for larger companies. This push for higher penalties follows a March 2018 OECD report finding that penalties in Australia for contraventions of the competition laws are significantly lower than those imposed in

comparable OECD jurisdictions. Recent penalty judgments including the \$46 million penalty judgment against Yazaki Corporation in 2018, and 2019's \$34.5 million Kawasaki Kisen Kaisha Ltd demonstrate progress on this front, but given the importance of significant penalties to deter unlawful conduct, the ACCC will continue to prioritise seeking higher penalties.

Case study - Further penalties in the ACCC's case against a global air cargo cartel

27. In May 2019 the Federal Court ordered PT Garuda Indonesia Ltd (Garuda) to pay penalties of \$19 million for colluding on fees and surcharges for air freight services. Garuda has since filed a Notice of Appeal against this decision. This case is a long-running one for the ACCC and part of our court action against a global air cargo cartel. Action against this cartel has now resulted in penalties of \$132.5 million against 14 airlines, including Air New Zealand, Qantas, Singapore Airlines and Cathay Pacific.

28. This is an important outcome, with decisions in the air cargo cartel investigation sending a strong warning to overseas and domestic operators that the ACCC can and will continue to defend competition and the rights of Australian customers and businesses by taking action against anti-competitive conduct. The ACCC has since entered formal agreements with the Federal Bureau of Investigation on cooperation and information sharing and has strong links to other competition regulators worldwide. This means our scope is much broader than Australian businesses.

Case study - Addressing cartel conduct in the financial services industry

29. The ACCC has taken action to address issues identified by our Foreign Currency Conversion Services Inquiry.

30. Criminal charges have been laid against a money transfer business and five individuals for allegedly fixing the Australian dollar / Vietnamese dong exchange rate and fees they charged their customers. The charges arose from a joint ACCC and Australian Federal Police investigation of alleged price-fixing by several Sydney and Melbourne money transfer businesses. The charges relate to exchange rates and transaction fees charged when sending money from Australia to Vietnam between 2011 and 2016. Vina Money Transfer Pty Ltd was charged with making and giving effect to contracts, arrangements or understandings that contain a cartel provision in relation to exchange rates and fees for money transfers to Vietnam.

31. Money transfers are an important aspect of international trade and travel and are also used by people sending money outside of Australia. Our action aims to protect consumers and other businesses, allowing the market to work freely to set prices based on healthy competition.

32. In 2019 the ACCC continued to assist the CDPP in its prosecution of ANZ, Citigroup and Deutsche Bank and current and former employees for cartel conduct involving trading in ANZ shares following an ANZ institutional share placement in August 2015.

2.2. Mergers

33. 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.

34. In Australia, there is no compulsory pre-merger notification process. However, parties are encouraged to approach the ACCC on a voluntary basis to seek the ACCC's view on whether a proposed merger or acquisition is likely to substantially lessen competition – this clearance option is commonly referred to as 'informal review process' as the decision is not underpinned by legislation.

35. An alternative clearance option is for merger parties to apply for merger authorisation, which enables claimed public benefits and detriments to be assessed. Following a change to the legislation in November 2017, applications can be made to the ACCC for merger authorisation of a proposed merger which, if granted, provides immunity from legal action under the mergers law.

36. As at 31 December 2019, the ACCC has assessed one application for merger authorisation since the revisions to the CCA came into effect in 2017. This application was authorised in July 2019 subject to a condition of divesting certain businesses.

37. Where the ACCC has concerns that a proposed merger or acquisition may, or may be likely to, substantially lessen competition in contravention of section 50 of the *Competition and Consumer Act 2010* (CCA), it may accept a court enforceable undertaking from the merger parties under section 87B of the CCA to remedy those concerns.

38. We considered 310 mergers under section 50 of the CCA in 2019. Of the 310 mergers considered:

- 283 mergers were pre-assessed as not requiring a public or confidential review
- 26 mergers were subject to an informal public review
- one merger was subject to a public review.

39. In 2019, the following six mergers were cleared subject to remedies accepted from the merger parties:

- ANZ Terminals Pty Ltd - proposed acquisition of GrainCorp Liquid Terminals Australia Pty Ltd
- Brookfield/GIC - proposed acquisition of Genesee & Wyoming
- Landmark - proposed acquisition of Ruralco
- Bingo Industries Limited - proposed acquisition of Dial-a-Dump Industries Pty Ltd
- Gebr. Knauf KG - proposed acquisition of USG Corporation and Armstrong World Industries Pty Ltd
- AP Eagers Limited - proposed acquisition of Automotive Holdings Group Limited.

40. In 2019, the following four merger investigations did not proceed after the release of a Statement of Issues because the acquirers decided not to proceed with the proposed acquisitions:

- Bis Industries Holdings Limited - proposed acquisition of Cougar Mining Group
- Assa Abloy Australia Pacific Pty Ltd - acquisitions of the Seal Doors Group and E Plus Building Products Pty Ltd
- New Forests Asset Management managed forestry investment fund - proposed acquisition of Resource Management Service LLC's Tasmanian Hardwood Plantations

- Siemens AG and Alstom S.A. – proposed combining of Siemen's mobility business with Alstom.

2.2.1. Case study - Saputo Dairy Australia Pty Ltd (Saputo) proposed acquisition of the cheese business of Lion Dairy & Drinks Pty Ltd (Lion)

41. On 26 September 2019 the ACCC announced that it would not oppose Saputo Dairy Australia Pty Ltd's (Saputo's) proposed acquisition of Lion Dairy & Drinks Pty Ltd's (Lion's) Tasmanian-based cheese business. The proposed acquisition included Lion's cheese processing plants in Burnie and King Island, Lion's cheese brands (including King Island Dairy, Tasmanian Heritage, South Cape, Mersey Valley and Heidi Farm) and two Lion-owned farms on King Island.

42. Saputo produces dairy products. In Tasmania, Saputo has one existing dairy processing plant in Smithton (producing milk powders, bulk cream and other fats). Lion is a food and beverage company, and in Tasmania it operates the Burnie and King Island cheese plants and a fresh milk processing plant in Hobart.

43. The ACCC investigated the effects of the proposed acquisition on competition for the acquisition of raw milk in Tasmania, and consulted with many Tasmanian farmers and other interested parties. The proposed acquisition would combine processing plants of the second and third largest buyers of raw milk in Tasmania. However, the ACCC found that Saputo's closest competitor in Tasmania is Fonterra, the largest milk buyer in that state, and that it does not compete as closely with Lion.

44. Post-acquisition, Saputo and Fonterra would be likely to continue to compete closely with each other and also with other smaller processors. The smaller processors include Mondelez-Cadbury, Lactalis-Parmalat and Lion's fresh milk processing plant in Hobart.

45. The ACCC also investigated the effects of the proposed acquisition on competition in the supply of cheese in Australia. While both Saputo and Lion manufacture and supply cheese in Australia, Saputo supplies predominately 'everyday' cheeses and Lion supplies predominately 'specialty' cheese varieties. The ACCC considered that the combined Saputo-Lion would continue to face constraints from other domestic cheese producers, supermarket private labels and cheese importers.

2.3. Adjudication – authorisation applications and notifications

46. 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 net public benefits.

47. 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.

48. The ACCC can, upon application, grant an authorisation that imposes restrictions on competition where the likely public benefit outweighs any likely public detriment. The ACCC may now authorise certain forms of conduct if it is satisfied that no substantial lessening of competition is likely.

2.3.1. Authorisations

49. In 2019, the ACCC issued 18 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were infrastructure, agriculture, waste services, banking, airlines, and retailing. Applicants sought authorisation for conduct such as collective bargaining, joint tender or buying processes, industry codes and other price or fee agreements.

Case study - to enhance consumer protection —Australian Banking Association – Banking Code Authorisation

50. On 21 November 2019 the ACCC authorised changes to the Australian Banking Association's (ABA) Banking Code of Practice for five years, subject to conditions. The ABA, on behalf of its 23 members, sought ACCC authorisation for changes to update its Banking Code in response to recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission).

51. The updated Banking Code prohibits informal overdrafts on low or no fee basic accounts held by eligible customers, unless agreed to by the customer, and it prohibits overdrawn fees and dishonour fees. It also codifies the concept of a basic bank account product, including that it will have no minimum deposits, free direct debit facilities, access to a debit card at no extra cost and free unlimited domestic transactions. In addition, the updated Banking Code will prevent default interest and fees being charged on agricultural loans in areas affected by drought and other natural disasters.

52. The ACCC considered that there was a likely public benefit from improving the accessibility and affordability of banking services for low income customers and providing relief from default interest for farmers in times of drought and other natural disasters. However the ACCC had concerns that some aspects of the proposed Banking Code changes would not effectively address the Royal Commission's recommendations meaning that the claimed public benefit would be illusory or unlikely to arise in practice.

53. The ACCC therefore imposed conditions requiring:

- ABA member banks either not to charge interest or to refund any interest charged on informal overdrafts on basic accounts held by eligible low income customers if the customer has not agreed to an overdraft facility
- ABA member banks to proactively identify customers who may be eligible for a basic account
- the ABA to report regularly to the ACCC on relevant aspects of the member banks' activities, with the reports to be made available on the ACCC's public register.

54. The ACCC considered that these conditions would ensure the public benefits associated with the ABA implementing the Royal Commission's recommendations and the ABA's other Banking Code changes were likely to occur.

55. The ACCC considered the proposed Banking Code changes were likely to have a limited impact on competition. It considered that the conditions of authorisation would reduce the likelihood of any public detriment occurring to the extent that the Banking Code changes failed to meaningfully address the harms identified by the Royal Commission.

Notifications

56. 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.

57. Notification remains in place unless the ACCC revokes it. At any time, the ACCC can review the public benefit and detriment arising from the notified conduct to assess whether it should continue.

58. Changes to the CCA from 6 November 2017 mean that it is now possible for businesses to obtain protection from legal action for resale price maintenance conduct by lodging a notification, but legal protection only comes into effect if the ACCC does not move to revoke the notice. Before this date, ACCC authorisation was the only way to obtain legal protection for conduct amounting to resale price maintenance.

59. In 2019, the ACCC assessed five exclusive dealing notification matters, approved 13 collective bargaining notifications, and revoked one resale price maintenance notification and allowed one to stand.

2.4. Market studies and Inquiries

60. 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:

1. On 29 March 2019 the ACCC released its first report on its new electricity monitoring inquiry. The report provides an update on market and policy developments since the release of the ACCC's earlier Retail Electricity Pricing Inquiry and also sets out:
 - the analytical framework for the ACCC's ongoing role, including our expectations of market outcomes and participant behaviour
 - the measures we will use to monitor and analyse prices, profits and behaviour
 - how we will monitor the impact of policy developments, and
 - the processes and timing for the collection of information, including what data will be required.
2. On May 30 2019 the ACCC released its interim report on the Gas Inquiry, revealing that high prices remain a critical issue for domestic gas users and could result in more businesses relocating or closing in the east coast in the medium to longer term.
3. On 26 July 2019 the ACCC published the final report of its Digital Platforms Inquiry, which looked at the impact of digital search engines, social media platforms and digital content aggregation platforms on competition in the media and advertising markets.
4. On 30 July 2019 the ACCC released an update on Northern Australia Insurance Inquiry. The report finalised 13 recommendations, which were included in its December 2018 report, aimed at boosting price transparency and consumer choice in northern Australia, whose residents pay considerably higher premiums for home, contents and strata insurance.

5. On 8 August 2019 the ACCC commenced an inquiry into markets for tradeable water rights in the Murray–Darling Basin, as directed by the Government. This inquiry involves consultation with a wide range of water market participants and other stakeholders. The ACCC has been directed to provide recommendations on the operations, transparency, regulation, competitiveness and efficiency of water trading markets.
 6. On 22 August 2019 the ACCC released the seventh interim Gas Inquiry Report. The report revealed that the east coast gas market is less likely to experience a shortfall in 2020 compared to 2019, but supply remains tight and more development and production is needed.
 7. On 2 September 2019 the ACCC released the Final report of the Foreign Currency Conversion Services Inquiry. The report revealed that Australian consumers are paying too much for foreign currency conversion (FX) services because of confusing pricing and a lack of robust competition.
 8. On 24 September 2019 the ACCC released the Wine grape market study final report. The study examined competition, contracting practices, transparency and risk allocation in wine grape supply chains.
 9. On 3 December 2019 the ACCC released the final report of its Customer Loyalty Schemes market study. The report recommended that loyalty schemes, such as frequent flyer, supermarket and hotel operators' loyalty programs, better inform consumers, improve data practices and stop automatically linking members' payment cards to their loyalty scheme profiles. The report also called for broader changes to consumer and privacy law in Australia.
 10. On 14 October 2019 the Treasurer directed the ACCC to conduct an inquiry into home loan pricing. This inquiry investigates a number of issues including differences between advertised prices and prices actually paid, differences in the rates paid by new and existing customers, and the pricing responses by home loan suppliers following cuts by the RBA to the official cash rate.
 11. On 2 December 2019 the ACCC released an electronic conveyancing (e-conveyancing) market reform paper to assist the Australian Registrars National Electronic Conveyancing Council (ARNECC) and the relevant state and territory policy makers in their consideration of e-conveyancing and the design of this emerging market.
 12. On 3 December 2019 the ACCC released its Customer loyalty schemes - final report. The release of the report followed consultation on its draft report released in September 2019.
 13. On 22 December 2019 the ACCC released its third report as part of its inquiry into the prices, profits and margins in relation to the supply of electricity in the National Electricity Market (NEM).
61. Annex A provides a high level summary of the ACCC's competition activities during the period 2019.

2.5. Infrastructure regulation

62. 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 2019 are outlined below. More information can be found at acc.gov.au.

63. During 2019 the ACCC undertook a number of major regulatory activities including:

- accepting a court enforceable undertaking from NBN Co to make changes to its wholesale terms to support positive consumer experiences, including providing that NBN Co pays a rebate for every late connection and fault rectification and establishing a missed appointment rebate, as part of a public inquiry into National Broadband Network (NBN) wholesale service standards
- undertaking a number of inquiries into the continued regulation and appropriate access settings for certain key wholesale communications services, including for mobiles and legacy fixed-line and transmission services
- the publication of multiple monitoring reports on different infrastructure sectors, including water, airports, bulk grain ports, container stevedoring, telecommunications and petrol industries. These reports provide transparency for consumers and businesses about competition and market conditions.

64. The ACCC's other key activities in infrastructure regulation during 2019 included:

- investigations of potential breaches of rules leading to market improvements in the communications and water sectors
- assisting broader government and industry initiatives to address consumer issues with NBN migration and establishing measures to promote transparency and positive consumer outcomes, acting on many of the key findings from our 2018 Communications market study final report
- engaging with government and policy reform processes to promote efficient and pro-consumer outcomes in privatisation processes as well as seeking to refine regulatory frameworks in existing regulated sectors including water, communications and airports.

2.5.1. Access to essential facilities

65. 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.

66. The ACCC has a role under Part IIIA of the CCA to arbitrate access disputes where a service has been 'declared'. When an access seeker and the provider cannot agree on the terms and conditions of access to the declared service, either party may request the ACCC to arbitrate the dispute.

Rail

67. 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.

68. In 2019 the ACCC made a number of decisions:

- On 5 April 2019 the ACCC released its final determination on the Australian Rail Track Corporation’s (ARTC’s) compliance with the Hunter Valley Access Undertaking (HVAU) for the 2015 calendar year. Under the HVAU, ARTC is required to annually submit documentation to the ACCC for an assessment of its compliance with the HVAU financial model
- On 23 August 2019 the ACCC issued a consultation paper on ARTC’s 2016 Annual Compliance documentation. Two submissions were received, from Glencore and from Pacific National
- On 8 November 2019 the ACCC gave written guidance to assist the Australian Rail Track Corporation (ARTC) in preparing its next access undertaking for the Interstate rail track network.

Ports

69. The ACCC has a role under Part IIIA of the CCA to arbitrate access disputes where a service has been declared. When an access seeker and the provider cannot agree on the terms and conditions of access to the declared service, either party may request that the ACCC arbitrate the dispute.

70. On 28 November 2019 the ACCC announced that it had applied to the Federal Court for a review of the Australian Competition Tribunal’s (the Tribunal) October 2019 decision on the terms of access by Glencore Coal Assets Australia Pty Ltd (Glencore) to certain services at the Port of Newcastle (operated by Port of Newcastle Operations Pty Ltd (PNO)). The ACCC is seeking review of the Tribunal’s treatment of user funding at the port.

71. A significant part of the dispute is about whether the costs that PNO is allowed to recover should include the costs for dredging the shipping channel that were historically funded by various users of the port. The ACCC excluded these user-funded amounts in its original arbitration while the Tribunal included these amounts. The Tribunal’s decision allows PNO to recover the user funded amounts in its access charge.

72. The ACCC does not consider it to be economically efficient for a service provider to be allowed to charge any user for costs of assets that have already been funded by users. The ACCC’s appeal will argue that there are errors in the way the Tribunal has approached the principles of user funding, which could have implications for other regulatory matters.

Airports

73. Under the *Competition and Consumer Act 2010* (the Act) and under the provisions of the *Airports Act 1996*, the ACCC has a role in monitoring prices, costs and profits and quality of aeronautical services and car parking at Brisbane, Melbourne, Perth and Sydney airports.

74. On 25 February 2019 ACCC released its Airport Monitoring Report for 2017-18. The report found that profits at three of Australia's four biggest airports continued to grow during 2017-18, while the quality of service rose.

75. On 25 March 2019 the ACCC provided a supplementary submission to the Productivity Commission's inquiry into the economic regulation of airports, in response to the draft report. The submission's key points were:

- Airports are natural monopolies that are likely to exercise their market power unless it is constrained.
- The current monitoring framework, which comprises ACCC monitoring, periodic review by the Productivity Commission and possible declaration under Part IIIA, is ineffective in constraining airports' market power for a number of reasons.

76. The ACCC submitted that the existing monitoring regime for airports is not effective in constraining the airports' market power, and the ACCC recommended alternative regulatory options for various airport services. In particular, effective information disclosure, coupled with provision of independent commercial arbitration, would help constrain airports' market power and promote negotiated outcomes between airports and airlines.

Stevedoring

77. Under Part VIIA of the *Competition and Consumer Act 2010*, the ACCC monitors the prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney.

78. On 6 November 2019, the ACCC released its annual container stevedoring report. The report revealed that higher infrastructure charges imposed on trucks and rail operators at ports helped the container stevedoring industry increase average revenue per container lift for the first time in seven years.

Telecommunications

79. 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.

80. 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. The ACCC must review regulatory information submitted by NBN Co and determine whether NBN Co has complied with the relevant requirements set out in the SAU.

81. In 2019 the ACCC's priorities in telecommunications were strongly influenced by the findings of the Communications sector market study final report (concluded in April 2018), which identified 28 recommendations and actions on competition and consumer issues for the ACCC and other agencies.

82. The key immediate issues of concern related to NBN Co moving from the build to operational phase of deployment. This increased the focus on service levels and consumer experience and led to us pursuing a wide-ranging regulatory response at the wholesale and retail levels to promote better consumer outcomes,

3. The role of government departments and agencies in the formulation and implementation of competition policy

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

3.1. The Treasury

84. 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.

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

3.2. The Australian Competition and Consumer Commission

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

87. 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.

88. The ACCC was established in 1995. Prior to this, the Australian Trade Practices Commission had overseen Australia's competition and consumer laws since 1974.

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

3.3. The Australian Energy Regulator

90. 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.

91. While separate agencies with specific functions that vary according to their legislated responsibilities, the ACCC and AER share many common objectives, both working to protect, strengthen and supplement competitive market processes. Recognising this, the ACCC and AER work closely together, including by being co-located and utilising shared resources including staff and systems.

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

3.4. The National Competition Council

93. 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.

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

3.5. The Productivity Commission

95. 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.

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

3.6. The Australian Competition Tribunal

97. 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.

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

4. Resources of competition authorities

99. On 1 January 2019, the ACCC had six members – the Chair, two Deputy Chairs and three Commissioners. In July 2019 Stephen Ridgeway was appointed Commissioner, replacing Roger Featherston, who stepped down after his five-year term. As at 31 December 2019, the ACCC had six members.

100. The total average number of staff employed by the ACCC over the 2019 calendar year was 1,105.

101. 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.

102. 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.

103. The ACCC's funding is provided on an Australian financial year, 1 July – 30 June. Therefore we are unable to identify funding appropriations for the 2019 calendar year. Table 2 outlines the funding appropriations for the 2018-19, and 2019-20 financial years.

Table 1. ACCC funding appropriations

	2018-19 \$m	2019-20 \$m
AUD	228.941	259.215
USD	160.934	182.215

Note: Exchange rate at 31 Dec 2019 – A\$1 = US\$ 0.70295= €0,62613.

5. Summaries of, or references to, new reports and studies on competition policy issues

5.1. Productivity Commission inquiries, reports and publications

104. As the Australian government's principal review and advisory body on microeconomic policy and regulation, the Productivity Commission conducts research and completes inquiries that examine competition policy issues. In 2019, the Productivity Commission completed a number of public inquiries and commissioned research studies. These can be accessed at www.pc.gov.au. These include:

- Economic Regulation of Airports
- Murray-Darling Basin Plan: Five-year assessment
- Superannuation

105. Competition-related inquiries and research studies underway as at 31 December 2019 include:

- National Transport Regulatory Reform
- Resources Sector Regulation

Annex A. Summary of ACCC activities – competition matters

Table A.1. Cartel conduct proceedings finalised

Cryosite		Conduct
commenced	16 July 2018	The ACCC alleged that Cryosite engaged in cartel conduct when it signed an agreement to sell the assets of its private cord blood and tissue banking business to Cell Care with a clause requiring Cryosite to refer all customer enquiries to Cell Care before the sale was completed, and when it subsequently gave effect to that provision.
concluded	February 2019	
jurisdiction	Federal Court Melbourne	
outcome	Penalties of \$1.5 million	
PZ Cussons Australia (ACCC Federal Court appeal)		Conduct
commenced	December 2013	The ACCC alleged that Cussons, Colgate-Palmolive Pty Ltd and Woolworths Ltd agreed to stop supplying standard concentrate detergent in favour of ultra-concentrate detergent.
concluded	May 2019	
jurisdiction	Federal Court	
outcome	Penalties upheld (\$27 million)	
PT Garuda Indonesia Ltd		Conduct
commenced	18 April 2018	The ACCC alleged that Garuda colluded with other airlines on charges for fuel, security, insurance surcharges and a customs fee for the carriage of air freight from origin ports in Hong Kong and Indonesia to destination ports in Australia.
concluded	30 May 2019	
jurisdiction	High Court of Australia	
outcome	Penalties upheld (\$19 million)	
Cascade Coal (ACCC Federal Court appeal)		Conduct
commenced	20 February 2018	The ACCC alleged that bid rigging conduct occurred during a 2009 tender process conducted by the NSW Department of Trade and Investment (then the Department of Primary Industries) for exploration licences over the Mount Penny and Glendon Brook coal tenements areas in the NSW Bylong Valley.
concluded	24 May 2019	
jurisdiction	Full Federal Court Sydney	
outcome	ACCC appeal dismissed	
Kawasaki Kisen Kaisha Ltd (K-Line)		Conduct
commenced	15 November 2016	In August 2019 Japanese shipping company Kawasaki Kisen Kaisha Ltd (K-Line) was convicted of criminal cartel conduct.
concluded	2 August 2019	
jurisdiction	Federal Court Sydney	
outcome	Penalties of \$34.5 million	

Table A.2. Cartel conduct proceedings commenced

Vina Money Transfer Pty Ltd & Ors		Conduct
commenced jurisdiction	11 April 2019 Magistrates Court of Victoria	In April 2019 the Commonwealth Director of Public Prosecutions (CDPP) laid criminal cartel charges against a money transfer business and five individuals for allegedly fixing the Australian dollar / Vietnamese dong exchange rate and fees they charged their customers.
BlueScope Steel Limited & Anor		Conduct
commenced jurisdiction	30 August 2019 Federal Court Melbourne	In August 2019 the ACCC instituted civil proceedings in the Federal Court against BlueScope Steel Limited (BlueScope) and its former sales and marketing general manager, Mr Jason Ellis, for alleged cartel conduct in relation to the supply of flat steel products. Separately, in October 2019, the CDPP charged Mr Ellis with two counts of inciting the obstruction of a Commonwealth official in the performance of their functions. These charges relate to actions allegedly taken by Mr Ellis during the ACCC investigation into alleged cartel conduct by BlueScope.
Wallenius Wilhelmsen Ocean AS		Conduct
commenced jurisdiction	23 August 2019 Federal Court Sydney	The ACCC alleges that Wallenius Wilhelmsen Ocean AS participated in alleged cartel conduct concerning the international shipping of certain vehicles to Australia between June 2011 and July 2012.

Table A.3. Cartel undertakings accepted

ANZ Roofing Pty Ltd & Ivy Contractors Pty Ltd		Conduct
Accepted	9 December 2019	In December 2019 the ACCC accepted court-enforceable undertakings from two Sydney roofing companies relating to the use of industry social media groups to discuss pricing in a manner that was likely to contravene s. 45AJ of the CCA (attempted price fixing). This type of conduct could also in some circumstances raise concerns under s. 45(1)(c) of the CCA, which prohibits anti-competitive concerted practices. The companies, as well as individual directors involved in the conduct, have undertaken not to repeat the behaviour and for the individual directors to receive compliance training in competition and consumer law. ANZ Roofing will also publish a post on one of the social media groups about prohibited anti-competitive conduct.

Table A.4. Cartel cases ongoing

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 ANZANZ, Citigroup and Deutsche Bank (including certain employees) were involved or knowingly concerned in cartel arrangements involving trading in ANZ shares following an ANZ institutional share placement in August 2015.
Country Care Pty Ltd & Ors		Conduct
commenced jurisdiction	14 February 2018 Magistrates Court of Victoria	The alleged cartel conduct involves assistive technology products used in rehabilitation and aged care, including beds and mattresses, wheelchairs and walking frames.
Construction Forestry Mining and Energy Union (CFMEU) & Anor		Conduct
commenced jurisdiction	16 August 2018 ACT Magistrates Court	The alleged conduct involves attempted inducements to suppliers of steel-fixing services and scaffolding services to reach contracts, arrangements or understandings containing cartel provisions in relation to services provided to builders in the Australian Capital Territory

Note: Cases instituted before 1 January 2019, and ongoing as at 31 December 2019.

Table A.5. Anti-competitive agreement proceedings ongoing

Pacific National Pty Limited & Ors		Conduct
commenced jurisdiction	19 July 2018 Federal Court Melbourne	The ACCC alleges that in July 2017 Pacific National and Aurizon reached an understanding that would lead to Aurizon exiting its intermodal business through a combination of closure and transactions with Pacific National. The effect of the understanding was that Aurizon would stop competing with Pacific National to supply intermodal and steel rail linehaul services throughout Australia. The ACCC also alleges that Pacific National's acquisition of the Acacia Ridge Terminal from Aurizon would have the likely effect of substantially lessening competition in breach of section 50 of the CCA. In May 2019 the Federal Court dismissed the ACCC's case. In June 2019, the ACCC appealed the Court's decision on the acquisition aspect of the case. The appeal is currently before the Full Federal Court.

Note: Cases instituted before 1 January 2019, and ongoing as at 31 December 2019.

Table A.6. Misuse of market power proceedings commenced

Tasmanian Ports Corporation Pty Ltd		Conduct
commenced jurisdiction	9 December 2019 Federal Court Melbourne	The ACCC alleges that TasPorts, which owns all but one port in northern Tasmania, misused its market power to stop a new entrant, Engage Marine Tasmania Pty Ltd (Engage Marine), from competing effectively with TasPorts' marine pilotage and towage businesses, with the purpose, effect and likely effect of substantially lessening competition.

Table A.7. Resale price maintenance undertakings accepted

Bromic Pty Ltd		Conduct
Accepted	16 October 2019	In October 2019 the ACCC accepted a court-enforceable undertaking from Bromic Pty Ltd, a national distributor of outdoor heating products, after it admitted to engaging in resale price maintenance when it introduced a 'minimum advertised pricing' policy. Bromic has undertaken to advise retailers that its minimum advertised pricing policy is no longer applicable and to ensure Bromic executives and staff receive practical legal training on the requirements of the CCA, including retail price maintenance.

Merger review - Statements of Issues issued

iNova Pharmaceuticals (Australia) Pty Ltd – proposed acquisition of Juno PC Holdings Pty Ltd - iNova Juno PC

Bauer Media Pty Limited – proposed acquisition of Pacific Magazines Pty Ltd

Asahi Group Holdings – proposed acquisition of Carlton & United Breweries (owned by Anheuser Busch InBev SA/NV)

Cengage Learning – proposed merger with McGraw-Hill Education

Assa Abloy Australia Pacific Pty Ltd - acquisitions of the Seal Doors Group and E Plus Building Products Pty Ltd

Global Forest Partners LP - proposed acquisition of Resource Management Service LLC's Tasmanian Hardwood plantations

New Forests Asset Management - proposed acquisition of Resource Management Service LLC's Tasmanian Hardwood Plantations

Emergent Cold - proposed acquisition of AB Oxford Cold Storage Company

Bis Industries Holdings Limited - proposed acquisition of Cougar Mining Group

Saputo Dairy Australia Pty Ltd – proposed acquisition of Lion Dairy and Drinks Pty Ltd's cheese business

Qantas Airways Ltd - acquisition of a 19.9 per cent interest in Alliance Aviation Services Ltd

ANZ Terminals Pty Ltd - proposed acquisition of GrainCorp Liquid Terminals Australia Pty Ltd.

Landmark – proposed acquisition of Ruralco Holdings Limited

Public competition assessments issued

ANZ Terminals Pty Ltd - proposed acquisition of GrainCorp Liquid Terminals Australia Pty Ltd

Landmark - proposed acquisition of Ruralco

Gebr. Knauf KG - proposed acquisition of USG Corporation and Armstrong World Industries Pty Ltd

Bingo Industries Limited - proposed acquisition of Dial-a-Dump Industries Pty Ltd

Thales SA - proposed acquisition of Gemalto NV