



**Working Party No. 2 on Competition and Regulation**

**REGULATION AND COMPETITION ISSUES IN ROAD TRANSPORT**

**- Australia --**

*This note is submitted by the Delegation of Australia to the Working Party No. 2 FOR DISCUSSION at its next meeting on 27 October 2000.*

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## **ROUNDTABLE ON ROAD TRANSPORT REGULATORY REFORM**

### **SUBMISSION BY AUSTRALIA**

#### **Introduction**

1. Road transport regulation in Australia is primarily the responsibility of State and Territory governments, with the Australian Commonwealth Government's role being largely confined to coordination and the development of national harmonised policies. Specific arrangements and titles of organisations vary between these jurisdictions. The following responses have been generalised to cover the range of arrangements applying, and examples have been included from two States (South Australia and Victoria) to provide more detail.

#### **Regulatory Regime**

##### ***1.1 Regulatory agencies***

##### *Road Freight*

2. The National Road Transport Commission (NRTC) is responsible for developing national policies for regulation of road freight. Individual State and Territory government agencies (road authorities) are responsible for implementing these policies and developing local policies in relation to road freight. In most cases, these road authorities are also responsible for the provision and maintenance of road infrastructure. The Federal government, through the Department of Transport and Regional Services is responsible for implementing national policies as they relate to vehicles registered as only involved in interstate trade. It is also responsible for developing policies solely related to these vehicles which are not covered by the national approaches. Local government does not have a role in regulating road transport.

3. This structure is a result of the breakdown of powers under the Australian Constitution, under which State and Territory governments are primarily responsible for regulation of road transport. The NRTC receives its powers from an inter-government agreement between the State, Territory and Federal governments. However, this agreement specifically restricts the NRTC from developing economic regulations governing road transport.

4. The NRTC is responsible to a council of the State, Territory and Federal transport ministers. State, Territory and Federal road departments are each separately responsible to their respective ministers, who are ultimately responsible to the relevant Parliaments.

5. In broad terms, the objective of these bodies in relation to road freight can be summarised as ensuring that the Australian community has a safe, efficient road freight sector that operates under the lowest possible administrative burden and has minimum environmental impacts. However, State, Territory and Federal government bodies also have objectives relating to the provision and maintenance of road infrastructure and the provision of transport services to other road users, such as private motorists.

6. There are associations of truck operators in all States and Territories. These associations are members of a peak industry lobby group titled the Australian Trucking Association.

7. State, Territory, Local and Federal governments do not have any ownership interest in firms providing road freight services, with the exception of some continuing (although reduced) government ownership interest in rail operations, some of which provide a small amount of ancillary road transport services to connect with rail services. The Federal government also has an ownership interest in Australia Post, a wholly government owned corporation, which operates ancillary road freight services as part of its function in delivering mail and parcels.

### *Passenger and Taxi Services*

8. Passenger and taxi services are regulated by State and Territory government agencies. Federal and Local governments do not have a role in regulating these services. For example, in South Australia, the Passenger Transport Board is responsible for land passenger transport, including bus services and including the regulation of taxis under the *Passenger Transport Act 1994*. Whereas in Victoria, the Victorian Taxi Directorate (VTD), which is an agency of the State Department of Infrastructure, regulates the taxi industry. The Victorian Department of Infrastructure is also responsible for directly regulating bus passenger services.

9. These State and Territory government agencies are responsible either to the government department responsible for transport (the titles of which vary between jurisdictions) or directly to the government Minister responsible for transport.

10. The peak taxi industry body in the State of Victoria is the Victorian Taxi Association Inc. Similar bodies operate in other States and the Territories. There is no national association of taxi operators.

11. There are bus and coach industry associations in all jurisdictions representing private bus and coach operators. These associations are members of the peak representative body, the Australian Bus and Coach Association. A separate association also represents government owned bus services.

12. State, Territory, Local and Federal governments have no ownership interest in firms providing taxi services. However, some State and Territory governments have a continuing ownership interest in some bus passenger services, although a combination of private and publicly owned firms provide bus services in all jurisdictions.

## **1.2 Recent Regulatory Developments**

### *Road Freight*

13. During the 1970s, 80s and 90s Australian governments moved to de-regulate the road freight industry. In the majority of cases, regulation took the form of reservations of specific freights to rail transport. Pockets of economic regulation in the form of operator licensing for road freight operators existed but were not universal. These regulations have now been removed, in almost all cases.

14. However, there are ongoing concerns about the safety performance of road freight operators, particularly in relation to long distance freight services. These concerns are evidenced by a current inquiry into the long distance road freight operations in the State of New South Wales by the Motor Accidents

Board. Concerns are based on suggestions that economic returns in the long distance road freight sector are so small as to provide significant incentives to operators to violate safety and infrastructure protection regulations such as controls on speed, driving hours and mass limits. As a result, there are some suggestions from within industry to introduce economic regulation in the form of operator licensing or accreditation systems that place controls on industry entry and rate protection, in order to improve safety performance.

### *Passenger and Taxi Services*

15. In contrast, passenger and taxi services in Australia have been the subject of regulation for a long period. In particular, most States and Territories restrict the total number of taxis by requiring each taxi to have a licence and limiting the number of licences issued.

16. Some recent changes have included:

- The introduction of bus operator accreditation schemes in some States. These schemes include probity checks, compulsory education programs and controls over bus age and standards.
- The removal of taxi regulation in one state, South Australia.
- The requirement for all jurisdictions to review their regulatory regimes for taxis as part of the National Competition Policy legislation review process.

17. For example, Victoria is reviewing the *Transport Act 1983* and subordinate legislation relating to small commercial passenger vehicles (seating capacity for up to twelve people including driver) in accordance with the National Competition Principles Agreement between all States and Territories and the Commonwealth Government.

18. The essence of the Agreement is that legislation should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs; and the objectives of the legislation can only be achieved by restricting competition.

19. This principle leads to a presumption under National Competition Policy guidelines that restrictions on competition are not in the public interest and if such restrictions are to be retained, they must be demonstrated to generate public benefits which outweigh their associated costs.

20. The review process has not yet been completed. Consequently the results, and any recommendations concerning future licensing arrangements for small commercial passenger vehicles including taxis in Victoria, are unlikely to be known until late in 2000 or early in 2001.

21. In November 1999, the Productivity Commission released a research paper on the Regulation of the Taxi Industry. The paper is intended to complement individual reviews by providing policy makers in different jurisdictions with a common framework for assessing key issues in taxi regulation, including: safety and quality; taxi numbers and fares; and compensation and adjustment assistance in the event of deregulation. The paper is available at <http://www.pc.gov.au/research/otherres/taxiregulation/index.html>.

22. This research paper built on the work contained in the 1994 Industry Commission Inquiry into Urban Transport. In the TPC's<sup>1</sup> submission to that inquiry, it called for across the board deregulation of

the taxi industry in Australia. It argued that regulation in the industry has resulted in competition being hampered and consumer choice being unduly limited.

23. The two major instruments of regulation have been strict control over entry and control over both maximum flagfall and distance charges. There are also other regulatory requirements relating to factors such as cab age, safety and cleanliness, and driver training and competence. In defence of regulation it has been argued that in the absence of regulation average prices would be too high, there would be unacceptable risks associated with the mechanical quality of the taxi and the skills of the driver, passengers would not be able to distinguish between good and bad taxis/drivers, standards and quality of service would be lower, average taxi waiting times would be longer, and the number of taxis on the road may be less than is socially optimal.

24. However while the existing regulations are said to be required to address these potential impediments in the market, the regulations themselves restrict competition in the market and therefore contribute to other costs and inefficiencies which must be borne by taxi passengers.

25. The TPC therefore recommended in its submission to the inquiry that all regulatory controls by State Government on entry into the taxi industry be removed, with the obvious exception of some remaining regulation regarding driver competence and vehicle safety.

### **1.3 Regulatory Requirements**

#### *Road Freight*

26. A firm wishing to provide road freight services is not subject to any specific regulation other than those applying to all businesses and safety and infrastructure protection standards applying to the design and operation of heavy vehicles. No licence is required to operate road freight services.

#### *Passenger and Taxi Services*

27. Regulatory requirements applying to passenger and taxi services differ between the various States and Territories.

28. Bus operators are required to be accredited in some States (such as New South Wales and Victoria). There are no limits on the number of bus operators that can be accredited under these schemes. Instead the regulations are intended to provide minimum standards of service and business practices. They include limits on the average age of buses operated, compulsory education programs and requirements for probity checks on bus drivers. Existing market operators have no role in approval of new entrants. There is no restriction on what services can be provided once an operator is accredited, and hence no need for operators to hold multiple licenses.

29. Regulations on taxi services vary considerably between jurisdictions. For example, South Australia has undertaken considerable deregulation of taxi services, to remove requirements for taxi licenses. Regulations remain in most other jurisdictions.

30. For example, taxi operators in Victoria must hold an operator licence for each taxi vehicle they operate. Licences are issued on the basis of demonstrated public demand. In major population centres, licence issue would be undertaken in consultation with existing licence holders. The quantity of licences to be issued would be predetermined based on public demand for increased service levels. Licence issue can

be by “fixed price” or by tender from eligible applicants. Applications must be determined within twelve months. Licensees are subject to character/probity checks and must be financially stable. Taxi licences are perpetual but may be subject to restrictions on transfer of ownership within the first few years from issue. The majority of licences are transferable on the open market, subject to approval by the Victorian Taxi Directorate of the transferee.

31. In the case of passenger services no distinction is made between regular or scheduled and occasional passenger services in relation to bus operator accreditation requirements.

32. No information is available on how the coordination between different routes and time schedules is achieved at the local level.

#### ***1.4 Regulatory Restrictions***

33. In relation to bus passenger services, no specific limits on the provision of new services are believed to exist. However, in a number of cases, bus passenger services are subsidised by State and Territory governments and availability of additional subsidies may influence the provision of new services, where this occurs.

34. As an example, a description of arrangements applying to provision of new taxi licences in Victoria are included. The details of these arrangements will differ in other jurisdictions.

35. Licence numbers in Victoria are regulated to match demand with supply and to ensure the ongoing viability of the service provider. Geographic restrictions apply to street/rank hirings, but geographic restrictions generally do not apply to pre-booked/phone hirings. Victoria has one State Regulatory body, not municipal based. Taxis must comply with comfort and quality standards including a mandatory colour/livery scheme, vehicle age limits and frequent inspections for safety and comfort standards compliance. The taxi industry is obliged to provide 24-hour service. There is no restriction on driving hours or other limitations on drivers. Some special (metropolitan) taxi licences have compulsory hours of operation to target late night demand in the CBD.

#### ***1.5 Regulatory Controls on Prices and/or Quality of Services***

##### *Road Freight*

36. No price or quality controls apply to road freight services.

##### *Passenger and Taxi Services*

37. Details of price and subsidy arrangements for bus passenger services are not available, although both price controls and subsidy arrangements of differing forms exist in each of the States and Territories.

38. As an example of taxi price and subsidy arrangements, the Victorian State government sets taxi fares. Only prescribed rates may be charged for trips within an 80km radius. Long distance trips (beyond 80km) must be quoted and agreed in advance. In most cases, the trigger for taxi fare increases are proven increased costs to industry in providing services, eg, increased fuel prices. The Victorian Taxi Association is involved in this process by making submissions to the State government, but there are no restrictions on who may make such submissions.

## **1.6 *Controls on international trade in road freight/passenger services***

39. Controls on international trade in relation to road freight and passenger services are not relevant to Australia as, being an island nation, it has no international land borders. However, international harmonisation issues arise in relation to vehicle standards. Harmonisation also occurs within Australia between the various States and Territories in relation to operational regulations intended to protect safety, the environment and infrastructure as well as for heavy vehicle (truck and bus) registration charges. The NRTC develops national regulations and registration charges for approval and implementation within each of the individual States and Territories.

## **Market Outcomes**

### **1.7 *Market Structure***

#### *Road Freight*

40. There are approximately 200,000 road freight fleets in Australia operating trucks over 4.5 tonnes. Some firms operate more than one fleet to undertake different tasks. More than 90 per cent of fleets comprise only one or two trucks, with around 70 per cent of fleets comprising a single vehicle.

41. More than 60 per cent of trucks are operated by businesses whose prime activity is not road transport, and use their trucks to transport their own products or inputs. For example, farmers operate a large proportion of the total Australian truck fleet to transport goods onto their farms and to move their products to market.

42. The hire and reward transport sector operates only a little over 20 per cent of the individual truck fleets, but these fleets comprise around 40 per cent of vehicles and undertake around half the freight task. These companies operate as commercial enterprises to transport goods for others. A large proportion (around 80 per cent) of hire and reward fleets also only comprise a single vehicle. These vehicles are frequently sub-contracted to larger companies, either on a semi-permanent or casual basis. Complex vertical market structures exist, with links and ownership overlaps between freight forwarders, firms providing warehousing and logistics services, rail operators, prime contractors and sub-contractors. Ownership links between the road freight sector with air, shipping and road passenger services are minimal.

43. There are no limitations on the market share of any road freight operators. Nor are there limits on foreign ownership.

#### *Passenger and Taxi Services*

44. The passenger transport sector has a much smaller number of operators than the road freight sector, but is similarly predominated by small businesses with one or two vehicles. Overlaps in ownership with other modes are minimal. There are no limits on the market share of passenger transport operators and no limits on foreign ownership.

45. A similar situation applies in the taxi industry. For example, of the 3996 taxi licences on issue in Victoria at June 2000:

- 2372 entities each owned one licence;
- 410 entities owned more than one licence but less than five;
- 58 entities owned between 5 and 9 licences;
- 6 entities owned between 10 and 20 licences;
- 2 entities owned between 21 and 25 licences;
- 1 entity owned between 26 and 49 licences;
- 1 entity owned between 50 and 55 licences; and
- 1 entity owned 86 licences.

46. Melbourne's 3202 metropolitan taxi-cab licences were held by 2358 entities, whereas 1827 metropolitan licences were assigned (leased) to 1000 entities.

### **1.8 Outcome of liberalisation**

47. No data is available to assess the impact of liberalisation over the past decade. The market share of road transport compared to air and rail does not appear to have varied significantly. There has been constant growth in the freight market, with significant increases in rail traffic associated with improvements in rail productivity being matched by expansion of the road freight sector in line with economic growth over the period.

## **Competition Law Enforcement**

### **1.9 Application of Australia's competition law to the road transport sector**

48. Australia's competition law, the *Trade Practices Act 1974* (TPA) applies in full to the road transport sector without exemption or exception. Although specific exemption can be granted under the TPA to conduct that might otherwise breach the law if the public benefits from the conduct would outweigh the anti-competitive detriments also arising from the conduct. The TPA is administered by Australia's national competition regulator - the Australian Competition & Consumer Commission (ACCC).

### **1.10 Mergers**

#### *Toll Holdings / Finemores*

49. In August 2000 the ACCC announced that it would not intervene in the proposed acquisition of Finemore Holdings Limited by Toll Holdings Limited. Toll and Finemores are providers of transport and logistics services. They operate across a broad range of transport segments, including refrigerated transport, bulk liquid transport, car carrying, petroleum transport and general freight. In logistics, they provide warehousing, tracking and inventory control.

50. The ACCC conducted extensive market inquiries during its investigation and found that there were a large number of small operators providing transport and logistics services but a relatively small number of large, national providers. For example, it is estimated that there are around 40,000 transport providers and of that roughly 70 per cent operate a single vehicle. While the merger proposal was considered to result in further concentration at the top tier of providers, there was very little concern among competitors and customers as to the potential lessening of competition as a result of the merger.

51. The ACCC found that competition among transport and logistics providers is fierce. The reasons for this include the relatively low barriers to small-scale entry and the countervailing power that resides with customers. For example, large customers control substantial volumes of business as well as the option of providing transport and logistics services in-house rather than contracting them out. Small customers do not require the sophisticated logistics services provided by the top tier providers and have access to a large number of small providers.

*McCaffertys / Greyhound Pioneer*

52. The ACCC announced in March 2000 that it would not intervene in the proposed merger between McCafferty's Holdings Limited and Greyhound Pioneer. The merger involved the combination of the only two national coach operators in Australia. However, market inquiries indicated that there was sufficient scope for smaller operators to enter the interstate coach market and provide competition to the merged entity. The market was defined as that for long distance coach transport.

53. Further, other modes of transport, such as rail and air travel, were considered by the ACCC to offer effective alternatives for consumers.

54. The ACCC conducted extensive market inquiries in relation to this matter. It spoke to a number of interstate and intrastate express, tour and charter operators, and industry representatives. These discussions indicated that the merger would be unlikely to result in a significant reduction in competition in the industry.

*Brisbane Cabs / Black & White Cabs*

55. The ACCC announced in February 1996 that it would not oppose the proposed merger between Brisbane Cabs and Merrywell Pty Ltd (trading as Black & White Cabs).

56. At the time of the merger proposal, Black & White Cabs operated the second largest taxi depot service in the Brisbane metropolitan area, while Brisbane Cabs operated the smallest.

57. Regulations are in place in Queensland that require all taxi booking service providers operating in South-East Queensland to enter into service contracts which set minimum service levels. These include a requirement that taxi booking service providers comply with auditing standards which are likely to necessitate the use of computerised dispatch systems.

58. Inquiries indicated that while Brisbane Cabs was an effective competitor when it first entered the five years previously, this competition has not been maintained particularly in the area of dispatch system technology. This had affected its ability to attract taxi operators to its depot and also its ability to satisfy the regulatory requirements. Black & White Cabs had also experienced difficulties in retaining its taxi numbers, losing a significant number of taxis through transfers in the previous year.

59. It was considered unlikely that individually Black & White Cabs or Brisbane Cabs would have continued to be vigorous and effective competitors in this market in the future. The merged entity would continue to experience strong competition from the largest depot in the market, Yellow Cabs, who has been a vigorous and growing player in the market. The merger was therefore not opposed.

*North Suburban Taxis / Silver Top Taxis*

60. In 1995 the then Trade Practices Commission (the ACCC's predecessor) opposed an acquisition of North Suburban Taxis by Silver Top Taxis in Melbourne.

61. At the time of the proposal, Silver Top Taxi Services was the largest Melbourne metropolitan taxi company with around 1,300 taxis using its depot and communications facilities. North Suburban Taxis also operated a depot and communications network, which was used by around 260 taxis. North Suburban was the third largest Melbourne depot and concentrated mainly in the northern suburbs.

62. Under the acquisition Silver Top would have raised its market share to 50 per cent. In the northern suburbs of Melbourne, Silver Top and North Suburban held a very large share of work.

63. After market inquiries, the ACCC formed the view that the acquisition would adversely affect both consumers and drivers. North Suburban's regional focus was considered a real alternative for consumers in metropolitan Melbourne, especially in the northern suburbs where it was the strongest.

64. The merger would have reduced patrons' choice about services, such as response times, cleanliness of taxis and passenger safety issues. The ACCC was also of the view that there would be fewer companies competing for, and providing, radio booking services to taxi drivers with the loss of the North Suburban communications network, particularly given the significant barriers preventing a new company seeking to set up a new depot and radio network.

65. Following the ACCC's refusal to allow the merger, the proposal was abandoned.

**1.11 Horizontal arrangements & 1.12 Misuse of Market Power**

*J McPhee & Son<sup>2</sup>*

66. On 27 March 1998 the Federal Court of Australia imposed penalties totalling \$A 4 million against J McPhee & Son (Australia) Pty Ltd and four of the company's executives for breaches of Part IV of the TPA. The Federal Court found that McPhee and its executives had attempted to reach a collusive tendering arrangement with a competitor, Discount Freight Express (DFE), in 1995.

67. After McPhee had sought to increase the price of its freight services to one of its customers, Just Jeans, the customer sought tenders from other freight companies, including DFE. McPhee approached DFE and attempted to induce them into submitting a tender at prices which would not succeed. DFE did not agree to the approach and ultimately Just Jeans awarded the contract to Ipec, a rival of both companies.

68. A penalty of \$A 3 million was ordered against McPhee for this incident. Mr Richard Forde, a Director of the company, was penalised \$A 100,000; Mr Craig Holland, General Manager, was penalised \$A 60,000 and Mr Doug Morton, Business Development Manager, was penalised \$A 80,000.

69. In another incident the Court found that in 1994 Mr Guy Webb, McPhee's Gippsland Manager, had heard that a DFE manager had approached one of McPhee's customers during a visit to the region. Mr Webb arranged a meeting with the DFE manager and verified that he was intending to submit a quote to the McPhee client (ACI Florapak). Mr Webb asked him to 'cover' the rates which McPhee was charging ACI. The DFE manager was provided with McPhee's quoted rates by Mr Webb and then submitted prices which were calculated to exceed McPhee's rates and be unacceptable to ACI. ACI rejected the offer by DFE and continued to obtain freight services from McPhee.

70. The Court found McPhee had engaged in price fixing and ordered a penalty of \$A 750,000. Mr Webb was penalised \$A 15,000 for his involvement in the arrangement.

*TNT / Ansett / Mayne Nickless<sup>3</sup>*

71. This case involved proceedings against the three major companies in Australia's overnight freight express industry - TNT Australia Pty Ltd ('TNT'), Ansett Transport Industries (Operations) Pty Ltd ('Ansett') and Mayne Nickless Ltd ('Mayne Nickless') and 19 of their current and former senior executives.

72. In what has become known as 'the freight case', the Commission alleged that TNT, Ansett and Mayne Nickless had formed, and given effect to, an arrangement to fix prices and regulate market shares in the express freight market in contravention of the TPA. Numerous meetings were held to operate the cartel and illegally agree on prices and market sharing arrangements.

73. The arrangement continued for many years and was held together by meetings between senior executives of each of the companies, ranging from General Manager level to Sales Manager level. Those meetings thrashed out conflict over 'ownership' of particular customers and resolved disputes over which companies had breached the arrangement. Where it was agreed that a customer had been acquired in breach of the agreement, customers were 'offered up' to the other carrier as settlement of the debt. In those cases, the offending carrier would simply raise the prices being charged to that customer (or another customer of equal value) with the result that the customer would try to 'shop around' for a better deal. The acquiring carrier would then approach the customer and offer a seemingly better rate. Thus the debt was cleared.

74. There were also other even more damaging ways of forcing a customer to return to his original carrier. In one particular case a customer's sensitive freight (which had to be delivered in 24 hours and was packed in ice) was simply placed in the corner of a transport depot until the customer became so dissatisfied about his 'lost' freight that he returned to his original transport carrier. The term in the industry for this conduct was 'burning a customer'. Another example of 'burning' was to routinely delay the delivery of a customer's freight to late in the day and, when the customer complained, to ignore them.

75. When a carrier sought to increase the prices being generally charged to its customers, they would ring the other carriers to advise them and obtain assurances that, in the event that any of those customers were to approach those other carriers for a competitive quote, they would refuse to quote or would quote rates which exceeded the first carrier's increased prices. The other carriers were even informed of the rates that they needed to quote to ensure that the quote was unacceptable. This practice was known as 'covering', but we know it better as 'collusive tendering'.

76. As these three companies accounted for approximately 90 per cent of all sales in the industry and total industry turnover was estimated at between \$A 1 to \$A 2 billion annually, the economic significance of such an arrangement is obvious. Almost everyone using air and road express freight services during the period of the collusion had been adversely affected.

77. The Federal Court ordered that TNT pay a penalty of \$A 4.1 million, Ansett \$A 900,000, and Mayne Nickless \$A 6 million. In addition, a long list of individual executives within the companies were personally fined between \$A 40,000 and \$A 75,000. Total penalties and costs ordered by the Court amounted to over \$A 14.1 million. Just as important, the cartel came to an end.

78. This case was regarded as a watershed in the history of trade practices law in Australia as it marked the coming of age of competition law as a law requiring the utmost serious compliance by all corporations, large and small. The penalties awarded in this case were based on the scale that applied until the TPA was amended in 1993 – penalties for corporations increased from \$A 250,000 maximum per offence to \$A 10 million per offence, and for individuals increased from \$A 50,000 maximum per offence to \$A 500,000 per offence. Prior to this case, the Federal Court had never awarded penalties in excess of \$A 250,000, even where multiple offences occurred.

#### *Darwin Radio Taxis*

79. In June 1997 the Federal Court of Australia issued permanent injunctions to restrain Darwin Radio Taxi Cooperative Limited from making or enforcing anti-competitive agreements, from misusing its market power to hinder or prevent competition, and from attempting to induce its members to make their lessees operate with Darwin Radio Taxis rather than a rival.

80. The cooperative, through its rules and its power in the Darwin taxi market, put in place and gave effect to, anti-competitive arrangements where members were effectively prevented from leaving Darwin Radio Taxis. This had damaged competition. Members who tried to leave the cooperative to join a rival taxi network were threatened with the loss of up to \$A 10,000 they had paid for their shares, and also with having to pay base fees to the cooperative even though they were no longer using its services.

81. Darwin Radio Taxis were ordered to allow current members to leave Darwin Radio Taxis without penalty and that it pay the ACCC's legal costs. In addition Darwin Radio Taxis agreed to issue public apologies and implement a trade practices compliance program.

#### *Lismore Taxis Cooperative Ltd and Radio Cabs (Wagga) Co-operative Society Ltd*

82. In July 1998 Lismore Taxis Co-Operative Ltd provided a court enforceable undertaking over by-laws which the ACCC believed were in breach of ss 45 (anti-competitive agreements) and 46 (misuse of market power) of the TPA. In December 1998 the ACCC also obtained a court enforceable undertaking from Radio Cabs (Wagga) Co-operative Society Ltd after the ACCC expressed concern that its by-laws were also in breach of these sections.

83. The ACCC was particularly concerned with the cooperatives' ban on privately arranged taxi bookings, the 'point' or 'trip board' systems used to share out of town trips among drivers, and the roster system which rationed work time available to drivers.

84. Both cooperatives gave undertakings to the ACCC that:

- no taxi operator would be penalised for making a private booking;
- they would not introduce any system which prevents taxi cabs from competing for out of town jobs; and

- they would not introduce a roster system which kept cabs off the road at any particular time; and
- they would introduce a trade practices compliance program to help it comply with the TPA in the future.

*Garden City Cabs*

85. The ACCC reached a settlement with the Garden City Cabs Cooperative Limited of Toowoomba in October 1997 resolving proceedings in relation to its anti-double shift policy known as the ‘five-day’ rule.

86. Proceedings were instituted against Garden City Cabs by the-then Trade Practices Commission alleging breaches of sections 45 and 46 of the TPA concerning Garden City Cabs’ implementation of the ‘five-day’ rule.

87. Under the ‘five-day’ rule, once a driver began to work a taxi, that driver would be the sole person allowed to operate that taxi for a period of five days. This effectively prevented double-shifting of taxis as the taxi was only able to be operated for as long as that one person could drive it. If Garden City Cabs’ taxi operators did not comply with the ‘five-day’ rule, their radio services would be suspended.

88. The settlement was facilitated by Garden City Cabs’ withdrawal of the ‘five-day’ rule in December 1996. As part of the settlement, Garden City Cabs consented to injunctions restraining it from refusing to supply communication and dispatch services to its members and commission drivers for the reason that its members have engaged a commission driver for a particular number of consecutive days. The consent injunctions effectively restrained Garden City Cabs from re-introducing the ‘five-day’ rule or introducing any rule of similar effect in the future.

89. Garden City Cabs paid the ACCC’s legal expenses in the matter and also provided the ACCC with an enforceable undertaking to implement a trade practices compliance program.

90. Radio Cabs of Wollongong Co-Operative Society

91. Rules banning the use of mobile telephones by Wollongong cab drivers was overturned in March 1997 following ACCC intervention. Radio Cabs of Wollongong Co-Operative Society had inserted the ban into its rules, stating that any driver found using or carrying a mobile phone in their cab risked suspension from the radio network. In 1990 the-then Trade Practices Commission refused an authorisation to Silver Top Taxis (a Melbourne based company) to ban the use of mobile phones in its taxis.

92. The ACCC considered that the Wollongong rule was likely to breach s 45 of the TPA, which prohibits contracts, arrangements or understandings that restrict dealings or affect competition. The ACCC considered that giving effect to the mobile phone ban rule and giving effect to the penalty for drivers breaching the rule was a contract, arrangement or understanding that restricted dealings and affected competition.

93. Radio Cabs of Wollongong, and its directors, undertook to:

- notify all owners and drivers that no action would be taken against them for carrying or using a mobile phone in their cabs;

- ensure that no driver who carried or used a mobile phone in his/her cab would be denied access to the radio network of Radio Cabs of Wollongong by having carried or used a mobile phone;
- arrange for the holding of an Extraordinary General Meeting to rescind the rule; and
- introduce a trade practices compliance program.

## ATTACHMENT

Text of Question	Australia
Do national, state or provincial government hold equity stakes in business company : 7112 Urban, suburban and interurban highway passenger transport	Yes
Do national, state or provincial government hold equity stakes in business company : 7113 Other passenger land transport	No
Do national, state or provincial government hold equity stakes in business company : 7114 Road freight	No
Do national, state or provincial government hold equity stakes in business company : 7116 Supporting services to land transport	Yes
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7111 Railways	Yes
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7112 Urban, suburban and interurban highway passenger transport	Yes
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7113 Other passenger land transport	No
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7114 Road freight	No
Do national, state or provincial laws or other regulations restrict in at least some markets the number of competitors allowed to operate a business : 7116 Supporting services to land transport	No
7100 Transport, storage (general) : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7100 Transport, storage (general) : Is there exclusion or exemption from competition law : Vertical & abuse of dominance – monopolisation	No
7100 Transport, storage (general) : Is there exclusion or exemption from competition law : Merger	No
7112 Urban passenger transport : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7112 Urban passenger transport : Is there exclusion or exemption from competition law : Vertical & abuse of dominance - monopolisation	No
7112 Urban passenger transport : Is there exclusion or exemption from competition law : Merger	No
7113 Other road passenger transport : Is there exclusion or exemption from competition law : Cartel & other horizontal	No

7113 Other road passenger transport : Is there exclusion or exemption from competition law : Vertical & abuse of dominance – monopolisation	No
7113 Other road passenger transport : Is there exclusion or exemption from competition law : Merger	No
7114 Road freight : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7114 Road freight : Is there exclusion or exemption from competition law : Vertical & abuse of dominance - monopolisation	No
7114 Road freight : Is there exclusion or exemption from competition law : Merger	No
7116 support services, land transport : Is there exclusion or exemption from competition law : Cartel & other horizontal	No
7116 support services, land transport : Is there exclusion or exemption from competition law : Vertical & abuse of dominance – monopolisation	No
7116 support services, land transport : Is there exclusion or exemption from competition law : Merger	No
7100 Transport, storage (general) : Which source sector agencies and laws do refer : Other law	No
7112 Urban passenger transport : Which source sector agencies and laws do refer : Other law	NA
7113 Other road passenger transport : Which source sector agencies and laws do refer : Other law	NA
7114 Road freight : Which source sector agencies and laws do refer : Other law	NA
7116 support services, land transport : Which source sector agencies and laws do refer : Other law	NA
7100 Transport, storage (general) : Which source sector agencies and laws do refer : Government department	Yes
7100 Transport, storage (general) : Which source sector agencies and laws do refer : Independent agency	NA
7112 Urban passenger transport : Which source sector agencies and laws do refer : Government department	Yes
7112 Urban passenger transport : Which source sector agencies and laws do refer : Independent agency	Yes
7113 Other road passenger transport : Which source sector agencies and laws do refer : Government department	Yes
7113 Other road passenger transport : Which source sector agencies and laws do refer : Independent agency	Yes
7114 Road freight : Which source sector agencies and laws do refer : Government department	Yes
7114 Road freight : Which source sector agencies and laws do refer : Independent agency	Yes
7116 support services, land transport : Which source sector agencies and laws do refer : Government department	Yes

7116 support services, land transport : Which source sector agencies and laws do refer : Independent agency	NA
7100 Transport, storage (Is the General) : Is the General Competition agency engaged in: Enforcement	Yes
7100 Transport, storage (Is the General) : Is the General Competition agency engaged in: Price or entry regulation	No
7112 Urban passenger transport : Is the General Competition agency engaged in: Enforcement	Yes
7112 Urban passenger transport : Is the General Competition agency engaged in: Price or entry regulation	Yes
7113 Other road passenger transport : Is the General Competition agency engaged in: Enforcement	Yes
7113 Other road passenger transport : Is the General Competition agency engaged in: Price or entry regulation	Yes
7114 Road freight : Is the General Competition agency engaged in: Enforcement	Yes
7114 Road freight : Is the General Competition agency engaged in: Price or entry regulation	No
7116 support services, land transport : Is the General Competition agency engaged in: Enforcement	No
7116 support services, land transport : Is the General Competition agency engaged in: Price or entry regulation	No
Road freight : Is there a firm in the road freight sector that is publicly-controlled (ie. national, state or provincial governments hold the largest single share)?	No
Road freight : Is registration in any transport register required in order to establish a new business in the road freight sector?	No
Road freight : In order to operate a national road freight business (other than for transporting dangerous goods or goods for which sanitary assurances are required) do you need to be granted a state concession or franchise by any level of government?	No
Road freight : In order to operate a national road freight business do you need to obtain a license (other than a driving license) or permit from the government or a regulatory agency ?	No
Road freight : In order to operate a national road freight business do you need to notify any level of government or a regulatory agency and wait for approval before you can start operation ?	No
Road freight : In order to operate a national road freight business (other than for transporting dangerous goods or goods for which sanitary assurances are required) do you need to notify any level of government or a regulatory agency?	No
Road freight : Are criteria other than technical and financial fitness and compliance with public safety requirements considered in decisions on entry of new operators?	No – Not applicable
Road freight : If these entry regulations only apply to shipments above a specified distance, please indicate the threshold.	Not applicable

Road freight : If these entry regulations apply only to shipments above a specified weight, please indicate the threshold.	Not applicable
Road freight : Do these entry regulations apply if a firm wants to transport only for its own account?	No – Not applicable
Road freight : Does an authorisation to operate extend to the entire territory of the country?	Not applicable
Road freight : Is the authorisation to operate limited in duration?	Not applicable
Road freight : What is the longest amount of time that the responsible agency may take to reach a decision about a complete application?	Not applicable
Road freight : What is the minimum number of government levels that are involved in examining the applications?	Not applicable
Road freight : Are authorisations to operate transferable?	Not applicable
Road freight : Does the regulator, through licenses or otherwise, have any power to limit industry capacity?	No
Road freight : Do foreign firms have the same right to operate in the domestic market as domestic firms?	Yes
Road freight : Are any of the following constraints in place : Complete prohibition of cabotage	No
Road freight : Are any of the following constraints in place : Limitations on cabotage	No
Road freight : Are any of the following constraints in place : Domestic carrier requirements for public traffic	No
Road freight : Are any of the following constraints in place : Restrictions on the possibility for foreign firms to pick up freight	No
Road freight : Are any of the following constraints in place : Other	No
Road freight : Are professional bodies or representatives of trade and commercial interests involved in specifying or enforcing entry regulations?	No
Road freight : Are there any regulations setting conditions for driving periods and rests?	Yes
Road freight : If such regulation is in place, does it also apply to transit traffic (eg., traffic originating from and directed to a foreign country)?	Not applicable
Road freight : Do regulations prevent or constrain : Backhauling ?	No
Road freight : Do regulations prevent or constrain : Private carriage ?	No
Road freight : Do regulations prevent or constrain : Contract carriage ?	No
Road freight : Do regulations prevent or constrain : Intermodal operations ?	No
Road freight : Within the last five years, have laws or regulations removed restrictions on: Own-account shipments ?	No – no restrictions applied
Road freight : Within the last five years, have laws or regulations removed restrictions on: Commercial, for-hire shipments ?	No – no restrictions applied
Road freight : Are retail prices of road freight services in any way regulated by the government ?	No
Road freight : Does the government provide pricing guidelines to road freight companies?	No <sup>4</sup>

Road freight : Are professional bodies or representatives of trade and commercial interests involved in specifying or enforcing pricing guidelines or regulations?	Yes
Road freight : Total number of companies	200 000
Road freight : Combined market share of three largest companies	Approx 3%
Road freight : Total revenues	NA
Road freight : Total operating costs	NA
Road freight : total employees	NA
Road freight : total hours worked per year	NA
Road freight : Fixed investment	NA
Road freight : Capacity : number of trucks operating	406 400
Road freight : Capacity : total tonnes	1 197 million tonnes

NA = Not Available

## NOTES

1. The Trade Practices Commission (TPC) was merged with the Prices Surveillance Authority in 1995 to form the Australian Competition & Consumer Commission (ACCC) – Australia's national competition regulator.
2. *Australian Competition & Consumer Commission v J McPhee & Son (Australia) Pty Ltd* (1998) ATPR 41-628.
3. *Trade Practices Commission v TNT Australia Pty Limited & Ors* (1995) ATPR 41-375.
4. No guidance on pricing is provided, but the Federal government is currently funding a working group of transport operators, transport users and unions to prepare advice of this nature.