



Australian
Competition &
Consumer
Commission

2006—07

Annual report

ACCC incorporating the AER

FOSTERING COMPETITIVE, EFFICIENT, FAIR AND INFORMED MARKETS





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EXECUTIVE OFFICE



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29 August 2007

The Honourable Chris Pearce MP
Parliamentary Secretary to the Treasurer
House of Representatives
Parliament House
CANBERRA ACT 2600

In accordance with subsection 171(1) of the *Trade Practices Act 1974*, the Australian Competition and Consumer Commission is pleased to present you with its twelfth annual report, covering the ACCC's operations for the year ended 30 June 2007.

Handwritten signature of Graeme Samuel in black ink.

Graeme Samuel
Chairman

Handwritten signature of Louise Sylvan in black ink.

Louise Sylvan
Deputy Chair

Handwritten signature of Stephen King in black ink.

Stephen King
Commissioner

Handwritten signature of John Martin in black ink.

John Martin
Commissioner

Handwritten signature of David Smith in black ink.

David Smith
Commissioner

Handwritten signature of Edward Willett in black ink.

Edward Willett
Commissioner

about this report

The structure of the report closely follows the outcome and output structure of the ACCC portfolio budget statement 2006–07.

outcome one

to enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets

The ACCC seeks to:

- > promote effective competition and informed markets
- > encourage fair trading and protect consumers
- > regulate infrastructure service markets and other markets where competition is restricted

In reporting performance information this structure is aligned with the output groups:

output 1.1.1

compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

output 1.1.2

competitive market structures and informed behaviour

In these chapters information is given on litigation and public settlements including court enforceable undertakings.

Summary resources tables for output groups are given on page 23.

Compliance with the requirements for annual reports of the Department of Prime Minister and Cabinet is shown on page 237.

This report includes the annual report of the Australian Energy Regulator, prepared in accordance with s. 44AAJ of the *Trade Practices Act 1974*. The AER is part of the ACCC. It is not a separate agency under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*. The ACCC annual report includes the reporting requirements and financial accounts for the AER. The report on the AER's operations during the year is contained in part two of this report.

To obtain copies contact the ACCC on (02) 6243 1143.

For more information contact the director of publishing on (02) 6243 1148, or view the annual report on www.accc.gov.au



contents

	letter of transmittal	iii
	about this report	iv
part one	overview of the ACCC	1
	review	3
	who we are	13
	what we do	15
	the law	18
	effective competition and informed markets	18
	fair trading and consumer protection	19
	infrastructure service markets	20
part two	performance	21
	achieving outcome one	22
	how we do it	23
	enforcement and compliance	26
	communicating with businesses and consumers	27
	liaison activities	40
	responding to businesses and consumers	43
	enforcing for business and consumers	48
	litigation matters and undertakings accepted	51
	snapshot of litigation and administrative settlements	51
	mergers and asset sales	82
	adjudication	90
	regulatory affairs	98
	when we did it	130
part three	management and accountability	143
	decision-making structure	145
	terms of appointment	
	financial management	148
	people management	149
	information and communications	152
	legal services	153
	other governance activities	153
	ecologically sustainable development	154
	staffing	156

part four	financial statements	161
	appendixes	203
	the law	204
	freedom of information	208
	publications	212
	commissioner profiles	216
	AER member profiles	220
	external committees	222
	addresses and contacts	233
	glossary and abbreviations	235
	compliance index	237
	index	239

part one
overview of the ACCC



Close interaction with domestic and international regulatory agencies has shed light on scams, lifted the veil on cartels and helped prevent anti-competitive mergers. These relationships are invaluable to the ACCC in its determination to protect Australian consumers.

Graeme Samuel | Chairman



review

The ACCC's role as economic regulator and enforcer of competition and consumer protection provisions of the *Trade Practices Act 1974* has become more important as the Australian economy continues to grow.

2006–07 was a period of new direction in trade practices law and vigorous enforcement of the Act. This year we saw:

- > the commencement of amendments to the competition provisions of the Act following the Dawson Committee review
- > ACCC merger assessments reaching a record high, with the number of informal merger reviews undertaken increasing by more than 40 per cent on the 2005–06 financial year
- > a number of successful court and tribunal outcomes in competition and regulatory matters where the ACCC's views were upheld
- > two new mandatory codes of conduct—the Oilcode and the Horticulture Code of Conduct; the ACCC is responsible for promoting and achieving industry compliance with these mandatory codes—e.g. educating industry participants about the rights and obligations imposed by these codes, liaising with industry stakeholders and taking enforcement action when necessary
- > the provision under Part IIIA was used for the first time in November 2006 when Services Sydney notified the ACCC of a dispute regarding the methodology of pricing access to Sydney Water's declared sewage transportation services
- > the ACCC examining the prices paid to farmers for livestock and the prices paid by consumers for red meat.

legislative amendments

Parliament passed the first of a series of significant changes to the Trade Practices Act. The amendments to the restrictive trade practices provisions in Part IV of the Act flow from recommendations made by the Dawson Committee in its report of January 2003. They implement some of the most fundamental changes to the Act since its inception more than 30 years ago.

The increase in penalties has improved the deterrence effect of the Act. Under the changes introduced, corporations can now be penalised the maximum of \$10 million, three times the value of the gain from the breach, or if the gain cannot be accurately estimated, 10 per cent of the turnover of the body corporate and all related bodies. The courts can also ban an individual from being a director of a business and prohibit corporations from protecting directors from penalties.

Other amendments to the Act foreshadowed by the government relate to unconscionable conduct, misuse of market power and the introduction of criminal sanctions for hard-core cartel activity.

On the regulatory side, changes to the National Access Regime (Part IIIA) gave specific direction to the ACCC about the principles that should be taken into account when making regulatory decisions. The amendments include an objects clause to clarify that Part IIIA focuses on efficient use of and investment in infrastructure to promote competition in upstream and downstream markets.

enforcing the law

The ACCC continued its commitment to stamp out the most serious contraventions by business, such as price fixing and market sharing. The ACCC's investigation and litigation profile for 2006–07 reflects particular concerns about an array of anti-competitive conduct and about consumer and small business issues, including product safety, health and medical claims, online scams, and false income-earning and business opportunities.

The broad range of enforcement options available under the Trade Practices Act allows the ACCC to respond quickly and effectively to the many challenges facing us as a regulatory agency—whether in legislation, market conditions or technology.

In proceedings against Woolworths Limited, the Federal Court found that the company had entered into anti-competitive agreements and primary boycotts through restrictive agreements with operators of licensed premises for the purpose of substantially lessening competition in packaged takeaway liquor markets. In December 2006 the Federal Court ordered Woolworths to pay penalties totalling \$7 million and make declarations. Proceedings regarding other orders are continuing.

The Federal Court also ordered Barton Mines Corporation and Barton International Inc. to pay penalties totalling \$1.525 million after they admitted entering into an illegal market-sharing arrangement for the supply of alluvial garnet in Australia. The Federal Court declared that the two companies had breached s. 45 of the Act by entering into an agreement. The companies agreed to restrictions in relation to the geographic territories into which each would be permitted to supply alluvial garnet. The Federal Court also ordered injunctions against Barton Mines Corporation and Barton International Inc. preventing them from engaging in similar conduct in contravention of s. 45 of the Act for two years and a contribution to the ACCC's costs of \$75 000.

In May 2007 ACCC proceedings against petrol retailers and distributors in the Geelong region were dismissed by the Federal Court. The ACCC originally instituted proceedings against 18 respondents, alleging that they had fixed the retail price of petrol in the Geelong area in contravention of the Act. A number of respondents made admissions before the trial and some did not contest the allegations. The case turned on the Federal Court's interpretation of the facts and evidence presented. The ACCC is considering the implications of the court's judgment in this matter.

The ACCC remains committed to investigating and prosecuting alleged cartel conduct.

A number of resale price maintenance and secondary boycott cases were concluded this year, with the Federal Court imposing substantial penalties.

In a long-running case under ss. 46 and 47 of the Act, the Full Federal Court dismissed the ACCC appeal for findings that Baxter Healthcare Pty Ltd had breached the exclusive dealing and misuse of market power provisions of the Act. The appeal followed the first decision that Baxter was protected by Crown immunity in dealing with various state government departments. The court found that without that protection Baxter would have breached the exclusive dealing and misuse of market power provisions of the Act. After the Full Federal Court's dismissal of the ACCC's appeal, the ACCC obtained special leave to appeal to the High Court of Australia on 9 February 2007. The matter was heard by the High Court on 15 May 2007, judgment was reserved.

In a case involving misrepresentations to small business operators about profitability and the potential risks relating to the sale of phone card vending machine distributorships, the Federal Court found that Global Prepaid Communications Pty Ltd had breached the Act and made declarations, injunctions and ordered compensation totalling more than \$3.5 million to be paid to 23 small businesses and costs.

In another small business matter the ACCC was successful in obtaining orders against BIS Cleanaway for misleading or deceptive and unconscionable conduct relating to signing up customers for waste disposal contracts in Rockhampton.

The ACCC took action to protect consumers against misleading health and medical claims. Proceedings during the year included action against NuEra Health Pty Limited for cancer cure claims, Menopause Institute of Australia for promoting natural hormone replacement therapy, Emerald Ocean Distributors Pty Ltd for promoting slimming products and Advanced Medical Institute Pty Ltd for misleading use of celebrity endorsements.

Skippy Australia Pty Ltd was fined \$860 000 for breaching a mandatory consumer product safety standard for baby walkers and misrepresenting a cot's compliance with the Australian standard. The Commonwealth Director of Public Prosecution (CDPP), acting on information provided by the ACCC, laid charges against the specialist nursery retailer. Skippy Australia supplies goods nationally from warehouse premises through its own website and on the Australian eBay auction website. In handing down its decision, the Federal Court indicated that penalties had to be high to deter other suppliers from engaging in similar conduct. The potential dangers posed to infants using products that are non-compliant with mandatory consumer product safety standards are extremely serious and warranted criminal prosecution in this matter.

In another product safety matter the ACCC took action against British American Tobacco Australia Ltd (BATA) for supplying Limited Edition Dunhill cigarette wallet packs (also known as Dunhill wallet packs). The ACCC alleged that the Dunhill wallet packs did not comply with the prescribed consumer product information standard for tobacco labelling. The Federal Court made orders by consent that BATA will not in the future supply the Dunhill wallet packs, or any type of similar pack, in Australia. The orders were made without a finding of liability. In February 2007 the government amended the regulations relating to the labelling of tobacco products to clarify the law as it relates to packaging innovations and adhesive labels.

The ACCC concluded 24 cases of the 58 matters before the court during the year, plus accepted 52 public s. 87B undertakings; commenced 28 new cases, eight of which were concluded this year and did not intervene in any proceedings in the reporting period.

criminal prosecutions—obstruction

The ACCC views obstruction with its formal information-gathering powers as a serious issue. For the first time the ACCC gave information to the CDPP, who then laid charges against four separate individuals for non-compliance with s. 155 notices. To be an effective enforcement agency, the ACCC must take action to counter conduct designed to obstruct our investigation processes.

Generally, compliance with the ACCC's formal information-gathering powers is satisfactory. The ACCC issued 484 notices under its powers to compulsorily acquire information (s. 155); 206 notices to provide information in writing (s. 155(1)(a)); 206 notices to provide documents (s. 155(1)(b)) and 72 notices to appear in person (s. 155(1)(c)). No authorities were issued to enter premises and inspect documents (s. 155(2)).

product safety

The ACCC places a high priority on protecting consumers from unsafe or dangerous products. Regarding the enforcement of mandatory product standards and information standards, the ACCC undertook enforcement action resulting in the withdrawal from sale and/or recall of high-lift vehicle jacks and tobacco products.

The ACCC enforcement action resulted in the withdrawal from sale and/or recall of babies' dummies, baby walkers, basketball rings and backboards, bean bags, bunk beds, children's cots, children's dart gun sets, children's nightwear, elastic luggage straps, fire extinguishers, flotation toys and swimming aids, no holes tongue studs, pedal bicycles, sunglasses and fashion spectacles, toys for children under three (including small balls/toys containing small balls) and tobacco labelling.

During 2006–07 the ACCC conducted surveys at retail outlets across Australia and on internet sites for products subject to mandatory product safety and information standards and banned goods.

Work started on the regulation impact statement process for proposed standards for prams and strollers, hot water bottles, portable cots, and lead and heavy metals in children's toys.

Warning notices were issued under s. 65B of the Trade Practices Act for the possibility of rupture of the LPG tank in motor vehicles fitted for liquid petroleum gas; the potential for serious eye injury from the incorrect use of cosmetic contact lenses; and the dangers associated with imported toothpaste containing diethylene glycol.

After ACCC recommendations, the minister introduced 18-month bans under s. 65(C)5 of the Trade Practices Act on products that had been associated with serious injury, such as Woofaz Pet Products' 3-metre retractable dog leash; and toys, novelties or similar items containing abrus precatorius toxic seeds.

We also investigated complaints about the safety of several consumer products, such as cots, baby walkers, dog leads, various toys, imported toothpaste, blankets, bicycles and air conditioners.

communicating with consumers and businesses

The ACCC continues to liaise with and inform business and consumers about the law so that they, in turn, can inform their members and customers. The ACCC's compliance, education and enforcement activities stand side by side—central to the overall goal of ensuring compliance with the Act.

In the area of small business, the ACCC's education and liaison activities focused on franchising, the new collective bargaining notification scheme and unconscionable conduct.

Our outreach network carried much of the responsibility for educating primary producers and resellers about their responsibilities under the Horticulture Code of Conduct. Industry associations have played a key role in helping the ACCC to disseminate information and draw industry issues to our attention.

Meetings of the Small Business Advisory Group and the Franchising Consultative Panel provided the ACCC with the opportunity to liaise with industry associations and other key franchising and small business stakeholders to discuss emerging issues. The ACCC hosted roundtables on retail tenancy and unconscionable conduct, provided opportunities to debate emerging issues facing these industries, and developed collaborative initiatives with consultative committee members.

The ACCC received feedback that small business and consumer audiences prefer trade practices information in a simple, easy-to-read format. In response, we developed a fact sheet series comprising 'overview' fact sheets (on specific aspects of the Act, such as bait advertising or price fixing) and 'case outcome' fact sheets (on the outcome of ACCC litigation activity or administrative proceedings). Targeted distribution campaigns ensure that case outcome fact sheets reach those businesses and consumers most likely to be affected by the outcome.

The ACCC produced and released 117 new publications for business, industry and consumers in print, electronic and multimedia formats. These initiatives included:

- > a range of information materials to help introduce two new mandatory codes: the Oilcode and the Horticulture Code
- > a review and update of information guides to the Trade Practices Act provided to business and consumers after amendments to the Trade Practices Act
- > seven new child safety alert brochures identifying high-risk products for children with advice on how to provide and maintain a safe environment when using these products
- > information campaigns targeting non-English speaking audiences (e.g. a child safety booklet in Arabic and information on the Horticulture Code in Arabic, Khmer, Punjabi, Vietnamese and Chinese).

A total of over 1.1 million hard copy published items were distributed across metropolitan, rural and regional Australia.

Commissioners and senior staff undertook 73 speaking engagements and extensive briefings, both public and private. This was complemented by 465 meetings with business and consumer groups on trade practices issues including the amendments to the Act.

Most people's initial contact with the ACCC is through the Infocentre. The Infocentre handled 68 808 inquiries and complaints via email and telephone from businesses and consumers. Of the total calls received, 1480 calls were received on the ACCC small business helpline, up from 407 in the previous financial year.

During the year, changes were made to the ACCC website to reflect new procedures for the mergers public registers and changes to notification processes. On 31 October 2006 the ACCC launched the new look www.SCAMwatch.gov.au. The SCAMwatch website operates as an ancillary to the Infocentre. It has been an invaluable tool in educating consumers and small business about scams. Fifteen SCAMwatch radar email alerted the 3000 subscribers to widespread and new scams reported to the ACCC. In its first eight months of operation the new website received over 284 897 visits, with usage growing at a steady rate. The Infocentre received 3137 emails through the SCAMwatch 'report a scam' online complaints form.

The ACCC website received 1 869 645 visits and the Australian Energy Regulator's website received 88 554 visits.

mergers

Merger activity continued to break records with many businesses seeking assessment under the ACCC's informal merger review process. The key driver behind the rise in merger assessments was the increase in general merger activity in the economy.

The ACCC has learnt from past s. 87B undertakings and continues to refine those aspects that merger parties now put before it. Effective merger undertakings quickly and fully address the relevant competition concerns but go no further than required to address the ACCC's competition concerns.

During 2006–07 the ACCC conducted 390 merger reviews for compliance with s. 50 of the Trade Practices Act. Of the 390 merger reviews undertaken, 25 were either withdrawn or were notified as no longer proceeding before a final decision was made; six were publicly opposed outright following the ACCC’s review; eight were resolved with court enforceable undertakings during their review; and five variations to undertakings were considered. Of 194 matters that were considered on a confidential basis, 11 were opposed or had concerns expressed confidentially. No formal clearance or merger authorisation applications were made.

Some of the more substantial merger transactions the ACCC examined fell within the transport logistics, energy and health sectors.

Those publicly opposed were:

- > Barloworld Limited’s proposed acquisition of Watty Limited
- > Tabcorp Holdings Limited’s proposed acquisition of UNiTAB Limited
- > Origin Energy Limited’s proposed acquisition of Sun Gas
- > Healthe Care Australia Pty Ltd’s proposed acquisition of Brisbane Waters Private Hospital from Healthscope Limited
- > Santos Limited’s proposed acquisition of Queensland Gas Company Limited
- > ThoroughVisioN and Sky Group’s proposed joint venture

Those not opposed included:

- > Transurban Group Limited’s proposed acquisition of Sydney Roads Group Limited
- > AGL Energy and TruEnergy Pty Ltd’s proposed swap of South Australian electricity generation assets
- > Pacific Magazines Pty Ltd’s proposed acquisition of certain magazine titles of Time Inc. Magazine Company Pty Ltd, IPC Media Australia Holdings Pty Ltd
- > News Limited’s proposed acquisition of certain community-style newspapers and magazines of FPC Community Media Group
- > Consortium including Macquarie Bank—proposed acquisition of Qantas Airways Ltd

Those resolved during their review by court enforceable undertakings included:

- > Alinta Limited and the Australian Gas Light Company’s joint merger/demerger proposal
- > Linde AG’s proposed acquisition of the BOC Group plc
- > ABC Learning Centres Limited’s proposed acquisition of Hutchison’s Child Care Services Limited
- > Johnson & Johnson’s proposed acquisition of Pfizer Inc.’s consumer healthcare business
- > Fairfax Media Limited’s proposed acquisition of Rural Press Limited
- > OneSteel Limited’s proposed acquisition of Smorgon Steel Group Limited

The ACCC wanted to update and make its approach to merger reviews more meaningful by providing considerable guidance to the business community on its approach to merger review. It is doing so by issuing summaries of all its public merger decisions, as well as comprehensive reasons for decisions in mergers of public interest or where decisions are likely to be considered contentious. Through this transparent approach to merger review, the ACCC has sought to increase the predictability of its merger decision making. In 2006–07 the ACCC released 25 public competition assessments.

Through its application of the *Merger review process guidelines*, the ACCC has minimised the uncertainty and risk for businesses that seek informal merger clearance by providing a fair, predictable and consistent process that is flexible in its strategies for improving market outcomes.

adjudication

The past 12 months have seen a number of interesting matters or important developments in the work of the ACCC's adjudication functions with a continued focus on assessing public interest immunity through the authorisation and exclusive dealing notification processes.

In the 2006–07 financial year the ACCC received 38 new authorisation matters. The ACCC made 36 final determinations for authorisation and received 694 notifications for exclusive dealing, most concerned third line forcing. We also issued two notices to revoke and two draft notices to revoke (relating to exclusive dealing notifications).

Of particular note was the recent decision of the Australian Competition Tribunal on the Medicines Australia authorisation application. The tribunal affirmed the ACCC decision requiring public reporting on the type and cost of hospitality provided to health professionals at educational events sponsored by pharmaceutical companies. This landmark decision reinforced an earlier ACCC decision that put hospitality sponsored by the pharmaceutical industry in the spotlight. The matter focused on rules limiting the hospitality that drug companies could offer health professionals at educational meetings and symposiums. In an attempt to increase transparency, the tribunal backed an ACCC condition requiring details of the events held and the type and cost of hospitality provided be made available to the public.

It will introduce further discipline to pharmaceutical companies on the type and extent of hospitality they provide to doctors in what should be an arms-length relationship. It will also provide patients with greater confidence and the industry with an opportunity to demonstrate their record.

Resources were also devoted to ensure the smooth implementation of the collective bargaining notification process and other legislative changes that came into operation on 1 January 2007. The take-up of the new process has been slower than expected as small businesses ensure they understand the new notification process and compare the respective advantages with an improved authorisation process for collective bargaining.

Others have chosen to take advantage of streamlined authorisation processes and the new ability to request a reduction in authorisation fees. Victorian potato growers received interim authorisation approval in one month, a final decision in two months and were the first to take advantage of the ACCC's ability to waive fees.

regulation

The links between the AER and ACCC are working very well. As the roles of other regulators are progressively assumed, the AER and the regulatory process will benefit from the consolidation of energy regulation expertise in one body, while maintaining clear synergies with the ACCC's application of general competition and consumer protection regulation to the energy sector.

The regulatory environment is constantly changing—creating new challenges for regulators. We are frequently reviewing what and how we regulate to facilitate the development of regulated infrastructure sectors and to ensure that regulation does not distort investment. We also recognise that regulatory decisions need to be timely and consistent. To reduce regulatory error there should be scope for review, therefore changes have been made to the design of economic regulation and the institutions that apply it.

In 2006–07 the Australian Competition Tribunal assessed a number of ACCC regulatory decisions. The tribunal upheld the ACCC's decisions to reject prices proposed by Optus and Vodafone respectively for mobile terminating access to their GSM networks. In another two matters, the tribunal agreed with the ACCC's decision to reject Telstra's proposals on access to ULLS and came to the same view about Telstra's LSS prices being unreasonable. These four decisions affirm the ACCC's approach to assessing access prices.

This year the High Court heard an application by East Australian Pipeline Limited for review of the Full Federal Court's judgments of 2 June 2006 and 18 August 2006 in relation to the Australian Competition Tribunal's decision of 19 May 2005 concerning the access arrangement for the covered portions of the Moomba to Sydney gas pipeline. The High Court's judgment is pending.

There has been ongoing debate about the availability and speed of broadband in Australia and whether broadband rollouts are meeting the demands of Australian consumers and business. The ACCC is involved in the government's assessment process of proposals to build a new national broadband infrastructure. A public consultation process was also started on the fibre-to-the-node network special access undertaking lodged by FANOC Pty Limited.

Extensive assessment and analysis was undertaken again this year by the ACCC to examine the effect of market conditions on the price levels of goods and services and to ensure that businesses using monopoly services pay prices that reflect efficient costs.

Some of the highlights include:

- > an arbitration under Part IIIA of an access dispute between Virgin Blue and Sydney Airport Corporation Limited
- > monitoring the retail prices of unleaded petrol, diesel and automotive LPG in the capital cities and about 110 country towns
- > monitoring E10 petrol prices and the price differential between E10 petrol and regular unleaded petrol
- > a report regarding access, exit and termination fees charged by irrigation water delivery businesses in the southern Murray–Darling Basin.

liaising with other jurisdictions and regulators

New information-sharing provisions were introduced into the Act by the *Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007*. The new provisions commenced operation on 19 July 2007.

New s. 155AAA increases the number of circumstances where the ACCC is permitted to disclose information. Specifically it permits the ACCC to share protected information with an agency, such as another competition regulator, if that would enable or help them perform or exercise any of their functions or powers. The amendment will facilitate information sharing to assist in ACCC investigation processes.

The ACCC collaborated and shared information on consumer protection issues such as debt collection and scams with the Australian Securities and Investment Commission.

Collaborating with the state and territory offices of fair trading across a range of consumer protection issues facilitated enforcement and compliance measures in the areas of scams, the jewellery sector and product safety.

The new environment created by the government's media reforms—regarding both cross-media mergers and the allocation of digital TV channels—requires the ACCC and the Australian Communications and Media Authority to work much more closely with each other than they have done in the past. This closer relationship is already being put into practice at both the commission and staff levels as the two agencies begin to explore ways of enhancing their knowledge of communications infrastructure in Australia. In the near future, cross appointments will result in a commissioner of each agency becoming an associate commissioner of the other. This will cement the relationship we have enjoyed to date, which can only benefit the communications sector.

Developing and enhancing our relationship with overseas counterparts remains high on the ACCC's agenda, especially in the areas of cartel, merger and scam investigations. This financial year the ACCC co-chaired the International Competition Network cartel working group on investigative techniques and was a member of the working groups that dealt with unilateral conduct, merger notifications and procedures. These relationships are invaluable in the ACCC's constant determination to protect Australian consumers.

corporate and finance

The staff of the ACCC continued to be its great strength and I would like to thank them for their dedication, professionalism and untiring efforts throughout the year.

Jennifer McNeill concluded her five-year term as commissioner of the ACCC in July 2007. On behalf of my fellow commissioners I would like to thank Ms McNeill for her contributions and the professional manner in which she carried out her duties.

The 2006–07 budget appropriated a total of \$104.9 million for operating expenses and \$3.9 million for capital funding. This included new measures for the ongoing funding of the AER, new funding for criminal cartel enforcement, new funding for the Downstream Petroleum Reform Package (the Oilcode) and new funding for our Canberra accommodation.

The government announced in September 2006 the introduction of a prescribed code of conduct for the horticulture industry. Additional funding for 2006–07 of \$2.5 million (part of a total \$9.2 million over four years) was appropriated as part of additional estimates for this measure.

The actual number of staff employed at 30 June 2007, including all part-time and commission members (but not contractors), was 660. The ACCC recruited 38 graduates at the beginning of 2006; 37 remained with the ACCC after their induction program was completed and gained promotions.

In addition to the graduate program, the ACCC ran a successful pilot summer internship program within the AER and the Regulatory Affairs Division. Plans are underway to continue and expand this program across the entire organisation. The ACCC's learning and development strategy for the year continued to focus on providing managers and staff with structured professional development.

At this year's senior management conference a strategic assessment of the organisation was conducted. This process was assisted by input from external presenters representing the perspective of business, small business, politics and consumers. The conference outcomes will greatly assist the ACCC and the AER in their future direction and planning. As an independent statutory authority, we seek to maintain the highest standards of governance, build synergies and improve collaboration and cooperation across and between line and corporate areas of the organisation.

looking forward


To ensure our continuing relevance to the Australian community as the national competition and consumer law enforcer and economic regulator, we need to take account of both domestic and international environments. Closer working relationships with regulatory agencies, here and abroad, will be essential to secure a greater level of compliance with the Trade Practices Act.

The ACCC will build on the work undertaken regarding its intelligence, research and analytical functions to continue to develop a proactive national model of enforcement.

The ACCC looks forward to the foreshadowed introduction of criminal sanctions for serious cartel conduct and is awaiting the outcome of the current Productivity Commission review of the consumer protection provisions of the Act. Enforcement of the consumer provisions of the Act will remain a high priority of the ACCC, particularly in emerging markets and in the area of product safety.

The experience we have gained through regulating key infrastructure sectors will help to guide us as we move into new areas. We will continue to review the need to regulate those evolving sectors that raise questions about the nature and durability of the 'bottleneck' facility.

While the Act is mature, it remains dynamic. The continued review and updating of the Trade Practices Act reflects that it is a major piece of economic and consumer law essential to fostering a competitive market and enhancing the welfare of all Australians.



Graeme Samuel
Chairman

who we are

Australian Competition and Consumer Commission

chairman	Graeme Samuel AO
deputy chair	Louise Sylvan
commissioners	Stephen King, John Martin, David Smith, Edward Willett, Jennifer McNeill
chief executive officer	Brian Cassidy

enforcement and compliance division

executive general manager	Mark Pearson
general managers	Nigel Ridgway, compliance strategies branch Rose Webb, enforcement and coordination branch Michael Carnahan, information, research and analysis branch
regional directors	Geoff Williams, New South Wales Bob Weymouth, Victoria Alan Ducret, Queensland Kim McBey, North Queensland Sam Di Scerni, Western Australia George Kamencak, South Australia Peter Clemes, Tasmania Derek Farrell, Northern Territory

regulatory affairs division

executive general manager	Joe Dimasi
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communications group

group general manager	Michael Cosgrave
general managers	Robert Wright, compliance and regulatory operations branch Richard Home, strategic analysis and development branch

regulatory development branch

general manager	Anne Plympton
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transport and prices oversight branch

general manager	Margaret Arblaster
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office of the AER

group general manager	Michelle Groves
general managers	Sebastian Roberts, markets branch Mike Buckley, network regulation north branch Chris Pattas, network regulation south branch

adjudication branch

general manager	Scott Gregson
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mergers and asset sales branch

general manager	Tim Grimwade
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corporate branch

general manager	Helen Lu
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finance and services branch

chief finance officer	Adrian Brocklehurst
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legal group

executive general manager	Margaret Micallef
general counsel	Robert Alexander, trade practices litigation unit
general manager	Bruce Cooper, corporate and regulatory law unit

media relations unit

director	Lin Enright
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Australian Energy Regulator

chairman	Steve Edwell
member	Geoff Swier
member	Edward Willett

what we do

The Australian Competition and Consumer Commission is an independent statutory authority, set up in 1995 as part of the national competition policy reform program. It is the only national agency dealing with competition matters.

The primary responsibility of the ACCC is to ensure that individuals and businesses comply with competition, fair trading and consumer protection laws, in particular the *Trade Practices Act 1974*.

The ACCC applies these laws without fear or favour, helping to make sure that competition in the marketplace is efficient and fair.

As an integral part of its work the ACCC:

- > promotes effective competition and informed markets
- > encourages fair trading and protects consumers
- > regulates infrastructure service markets and other markets where competition is restricted.

promoting effective competition and informed markets

prevent price fixing, market sharing, bid rigging and boycotts

prevent the misuse of market power, anti-competitive exclusive dealing and resale price maintenance

assess mergers, asset sales and joint ventures

authorise anti-competitive conduct in the public interest

assess export agreements

ensure compliance by the professions

assess certification trademarks

improve compliance through education and information

maintain public and confidential information registers

encouraging fair trading and protecting consumers

prevent misleading and deceptive conduct and misrepresentation

ensure products comply with mandatory safety standards and advise government on product recalls, bans and warning notices

improve business and consumers' understanding of their rights and obligations

support the ability of small business to trade with larger firms in a fair environment

regulating infrastructure service markets and other markets where competition is restricted

promote competition in the network industries: energy markets, communications, aviation and airports, waterfront and shipping, rail and post

- > energy markets (current and future roles)
 - > monitoring compliance and investigating and prosecuting breaches by registered participants and other persons with the National Electricity Law (NEL), National Electricity Rules (NER) and the regulations
 - > monitoring the wholesale electricity market
 - > economic regulation of electricity transmission and distribution (except in Western Australia and the Northern Territory)
 - > economic regulation of gas transmission and distribution (except in Western Australia)
- > communications (telecommunications carriage services and the content and applications delivered by them)
 - > examine the competition implications of converging technologies
 - > maintain competitive and consumer safeguards across the industry
 - > determine which services should be subject to access regulation
 - > consider access undertakings and arbitrate disputes between industry members
- > aviation and airports
 - > assess proposals for price increases for air traffic control services by Airservices Australia
 - > monitor prices and quality of service, and administer financial reporting requirements for major private airports
- > waterfront and shipping
 - > monitor stevedoring prices and administer liner cargo shipping arrangements
- > rail
 - > ensure access to interstate rail track
 - > cap freight rail prices
- > post
 - > approve changes to charges of postal services operated exclusively by Australia Post
- > petrol prices
 - > monitor the prices of petrol, diesel and liquefied petroleum gas
- > insurance
 - > check costs and premiums in the public liability and professional indemnity sectors of the insurance market, monitor medical indemnity premiums and bank fees and charges

consultation and liaison

The ACCC convenes several committees with external stakeholders. These formal consultative mechanisms focus on specific sectors of the economy or areas of regulation. As well as being successful and inclusive forums for industry discussion, they provide accountability and transparency to the ACCC's decision-making.

This year consultative committee members have played a key role in assisting the ACCC in disseminating information for its education and information programs, as well as drawing industry and emerging trade practices issues to our attention.

Due to the diverse range of issues covered by the ACCC and the diversity of interest of committee members, it was decided to disband the **overarching** consultative committee. There are now six specialised consultative committees covering the areas of consumers, small business, franchising, health, infrastructure and energy. The ACCC also convened the Utility Regulators Forum.

The ACCC keeps consultative committee members updated on a quarterly basis through the publication of the *Recent activities report*.

In addition to these specialised consultative committees the ACCC also has bilateral meetings with various groups and industry associations on matters of particular interest to them.

For details of committee membership and functions, see appendix 6 of this report.

what we don't do

The ACCC deals with competition and consumer protection matters of national and international significance and therefore does not:

- > pursue issues such as the pricing of particular goods or services, warranties and refunds that are more effectively dealt with at local or state level
- > mediate disputes between individuals and the suppliers of goods and services
- > advise whether a company or individual is honest
- > approve individual business conduct
- > disclose the number or nature of complaints received about a company or individual
- > give legal advice
- > settle employment disputes
- > register business names

The ACCC also does not handle complaints about misleading or deceptive conduct in financial transactions. The Australian Securities and Investments Commission (ASIC) has this responsibility.

AER

The Australian Energy Regulator is an independent statutory authority and a constituent part of the ACCC. It is made up of one Commonwealth member and two state/territory members. They are appointed by the Governor-General for terms of up to five years, and one of them is appointed as chair of the AER.

The AER is responsible for the economic regulation of Australian energy markets and compliance with the electricity and gas rules at a national level.

the law

The Trade Practices Act promotes competition and fair trading and provides for consumer protection to enhance the welfare of Australians.

effective competition and informed markets

parts of the Trade Practices Act dealing with competition

IV	anti-competitive conduct: price fixing, market sharing, boycotts, agreements substantially lessening competition, misuse of market power, exclusive dealing, resale price maintenance, mergers substantially lessening competition
VII	authorisations and notifications
XIA	the competition code

enforcement

The ACCC is the only government agency that deals with anti-competitive conduct—which is illegal for all businesses in Australia. It conducts merger and acquisition analysis. To enforce the provisions of the Trade Practices Act the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > banning orders
- > adverse publicity orders
- > corrective advertising, public notices and disclosure for breaches of anti-competitive conduct
- > pecuniary penalties of up to \$10 million, three times the value of the illegal benefit or 10 per cent of corporate group annual turnover (whichever is the greater) for companies and \$500 000 for individuals

fair trading and consumer protection

parts of the Trade Practices Act dealing with fair trading and consumer protection

IVA	unconscionable conduct in commercial and consumer transactions
IVB	industry codes of conduct: the franchising, horticulture and oil codes of conduct are mandatory codes prescribed under Part IVB
V	unfair practices, misleading and deceptive conduct, pyramid selling, country of origin representations, product safety and information, conditions and warranties in consumer transactions
VA	liability of manufacturers and importers for defective goods
VC	criminal conduct in fair trading and consumer protection

enforcement

State legislation largely mirrors parts of the fair trading and consumer protection provisions of the Trade Practices Act. To enforce the provisions of the Trade Practices Act the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > adverse publicity orders
- > corrective advertising, public notices and disclosure

for criminal breaches of fair trading and consumer protection:

- > fines of up to \$1.1 million for companies and \$220 000 for individuals may apply

infrastructure service markets

parts of the Trade Practices Act dealing with regulated industries and prices surveillance

IIIA	access to the services of essential national infrastructure facilities, such as access to transmission wires networks, natural gas pipelines, rail tracks and airport facilities
VIIA	price monitoring and surveillance in relation to industries or businesses declared by the Australian Government
X	establishes limited exemptions in relation to international liner cargo shipping
XIB	anti-competitive conduct in telecommunications
XIC	access to services for telecommunications

regulation

The regulatory functions of the ACCC and the AER include regulating the electricity, gas, telecommunications and transport sectors to ensure equality of access to infrastructure; and monitoring of services and prices.

Since 1 July 2005 the AER has had direct responsibility for the regulation of revenues in the electricity transmission networks. Responsibility for regulating gas transmission networks will also be transferred from the ACCC to the AER in 2007–08.

The AER will also eventually have responsibility for the retail and distribution networks in the energy sector and these functions are also expected to transfer to the AER in 2007–08. The AER was established under the Trade Practices Act as a separate legal entity within the ACCC.