



## Goal 3: Regulate national infrastructure and other markets where there is limited competition

### Significant outcomes in 2011–12

- The ACCC is establishing access arrangements for the NBN that maximise the opportunities for effective retail competition.
- The ACCC accepted undertakings from Telstra that implement structural reform of markets for fixed-line communications. The undertakings promote competition and safeguard consumers in the transition to the new industry structure.
- The ACCC is helping to facilitate competition in the market for the export of bulk wheat. In 2011–12 it accepted access undertakings from four operators of port terminal facilities who also export bulk wheat to ensure that third party exporters are able to access the terminals.
- In water, the ACCC achieved cost effective and practical outcomes in its investigations of breaches of the water market rules and water charge rules. A decline in the significance and number of identified breaches demonstrates continuing improvement in operator and irrigator understanding of, and compliance with, the rules.
- The AER regulates monopoly electricity and gas transmission and distribution businesses by determining the revenue they receive. In 2011–12, the AER made determinations for Amadeus Gas pipeline (gas transmission), Envestra (gas distribution), Powerlink (electricity transmission) and Aurora (electricity distribution).
- As part of preparations for its new roles in regulating the retail electricity and gas market under the National Energy Retail Law, the AER approved the hardship policies of 32 authorised energy retailers.
- The AER approved pricing proposals for 12 electricity network service providers and annual tariff variations for 12 gas network service providers.

Australians rely on the market economy to provide positive outcomes for their prosperity and welfare. However, the market economy is not perfect. Market forces or players can undermine competition and harm consumer welfare, especially in some areas of infrastructure provision where there are or have been monopoly suppliers.

When this occurs, the role of the ACCC/AER is to protect, strengthen and supplement competitive market processes to improve the efficiency of the economy and to increase the welfare of Australians through effective regulation.

To achieve this, the ACCC /AER have a range of regulatory functions in relation to national infrastructure industries as well as a prices oversight role in other markets where competition is limited. The ACCC/AER have specific roles in industries such as communications, water, energy, fuel, rail, port terminals, airports, and post. In carrying out these roles they have a diverse range of functions including:

- determining the prices and access terms and conditions for some nationally significant infrastructure services
- monitoring and enforcing compliance with industry-specific laws for bulk water, energy and communications
- monitoring and reporting on prices and quality of particular goods and services to provide information about the effects of market conditions
- disseminating information to assist stakeholders in understanding the regulatory frameworks and the structure and operation of infrastructure markets
- providing advice when requested by governments and policy agencies on how efficient regulatory outcomes and competitive, well-functioning markets can be achieved.

### Strategies:

- Provide robust and independent regulation of natural monopoly markets
- Monitor and advise on industries where market structures are changing
- Monitor prices and quality of specified goods and services to assess and advise on the effect of market conditions

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## Communications

### Measures:

- Reasonable access terms and conditions (including prices) determined for nationally significant infrastructure services in a timely and transparent manner after appropriate consultation with stakeholders
- Industry-specific laws (technical, pro-competitive, consumer protection) monitored and enforced in a transparent and consistent way
- Prices and quality of particular goods and services monitored and reported on to provide relevant information to the community about the effects of market conditions
- Relevant information disseminated to assist stakeholders in understanding the regulatory frameworks and the structure and operation of infrastructure markets so that they can more effectively engage in the regulatory process
- Timely advice provided to governments and policy agencies on how efficient regulatory outcomes and competitive, well-functioning markets can be achieved

## OVERVIEW

The ACCC is responsible for the economic regulation of the telecommunications, broadcasting and content sectors under the Competition and Consumer Act, via the sector-specific access and competition provisions.

These provisions concern anti-competitive conduct in the industry, and access by companies to essential telecommunications infrastructure (mainly supplied by Telstra at present via its fixed-line network). Other companies need access to infrastructure and services to be able to supply voice and broadband services to consumers and businesses. It is the ACCC's role to ensure that this access is supplied on terms that promote competition to the long-term benefit of consumers and businesses.

In future, extensive infrastructure services will be supplied via the National Broadband Network (NBN). The NBN will be a national fibre-to-the-home (FTTH) and wireless/satellite network. It is to be operated on a wholesale-only, open access basis, subject to ACCC oversight of wholesale access arrangements (that is, the terms on which other companies can use the NBN to supply voice and broadband services to consumers and businesses).

More broadly, the ACCC also examines competition issues in relation to the mobiles sector, broadcasting and content sector, Pay TV sector, spectrum developments and emerging new technologies.

In 2010 and 2011 significant legislative changes were made regarding the industry-specific access and competition regimes, industry structure and access arrangements for the NBN.

Much of the ACCC's work during 2011–12 occurred as a result of these changes. This included processes put in place reasonable access terms and implemented, monitored or enforced industry-specific laws. The ACCC has undertaken this work in a timely, consistent and transparent manner and has ensured relevant information has been disseminated to stakeholders to facilitate their effective engagement in the regulatory process.

The ACCC has also monitored and reported on prices and market conditions and provided timely advice and assistance to government and other agencies.

In addition to the Competition and Consumer Act, the ACCC also has sector-specific responsibilities under the following legislation:

- *Broadcasting Service Act 1992*
- *National Broadband Network Companies Act 2011*
- *Radiocommunications Act 1992*
- *Telecommunications Act 1997*
- *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Further details on the ACCC's activities in the sector during 2011–12 are set out below.

## REASONABLE ACCESS TERMS

The ACCC aims to put in place reasonable access terms that:

- balance the interests of infrastructure owners, users and the broader public
- encourage efficient investment in, and use of, infrastructure, and
- promote competition for the long-term benefit of consumers and businesses.

The ACCC aims to do this in a timely and transparent manner after consulting with stakeholders.

To achieve this, the ACCC undertook the following activities in 2011–12:

## National Broadband Network access arrangements

In December 2011, NBN Co submitted a Special Access Undertaking (SAU) to the ACCC for assessment. The SAU contains NBN Co's proposed framework for access to the NBN. Other companies (retail service providers) will use NBN Co's services to provide voice and broadband services to consumers and businesses over the NBN.

The ACCC undertook significant consultation—releasing two consultation papers and conducting an industry forum—to inform its consideration of the SAU. In June 2012, the ACCC announced that it had suspended its assessment of the SAU following indications from NBN Co that it intended to lodge a revised undertaking.

### Access determinations

The ACCC issued final access determinations (FADs) setting out price and non-price terms of access for:

- regulated fixed-line services (the unconditioned local loop service (ULLS), the line sharing service (LSS), the wholesale line rental service (WLR), local carriage service (LCS) and the public switched telephone network originating and terminating access (PSTN OA and TA) services which may be used to provide fixed-line voice and broadband services)
- regulated mobile services (the mobile terminating access service which allows calls to end on an operator's mobile network), and
- regulated transmission services (which are an essential input for companies supplying wholesale and retail voice and broadband services).

These FADs establish fallback prices and conditions should companies be unable to reach a commercially negotiated agreement. The ACCC considers this will give companies more timely access to reasonable terms and that these terms will promote competition in the supply of voice and broadband services to end-users.

In each of these cases the ACCC consulted extensively with stakeholders by releasing an initial discussion paper then a draft determination before making the FAD. Where necessary, in relation to transmission services, the ACCC extended the operation of an interim determination to ensure consistent pricing during the time it finalised the FAD. The ACCC also released the cost model used to develop pricing for the fixed-line services, the FADs and sample data used to develop pricing for the transmission FAD. The ACCC also held an industry forum to discuss the transmission FAD.

After making the fixed-line services FADs the ACCC conducted two variation inquiries for these FADs. The outcomes of these were:

- The ACCC decided to vary the geographic scope of these FADs. The variation means that regulation of these services applies consistently in all geographic areas.
- The ACCC decided to temporarily vary the FADs to remove the obligation to supply certain regulated fixed voice services over the NBN (as Telstra is temporarily unable to supply these services for technical reasons).

In both instances the ACCC released a discussion paper for consultation with stakeholders before making its final decision.

The ACCC also issued an interim access determination for the wholesale DSL service after it decided to regulate the service. The wholesale DSL service is supplied over Telstra's fixed-line copper network and used by other telecommunications companies to supply broadband services to consumers and businesses.

### *Approaches to regulated pricing in access determinations*

The regulated prices the ACCC has implemented in the FADs have been consistent and predictable as follows:

- Prices for fixed-line services (ULLS, LSS, WLR, LCS and PSTN OA and TA) were determined according to a Building Block Model (BBM) approach to pricing. The BBM was proposed in

December 2009 as a pricing approach in the ACCC's review of access pricing principles that underpin regulated pricing for fixed-line services (APP review). The BBM approach was adopted for the prices in interim access determinations for the services and the draft FAD prices for consultation. The ACCC is consulting on a BBM record keeping and reporting rule it proposes to obtain information that will inform its future pricing functions.

- In reviewing the price for the regulated mobile terminating access service (MTAS), the ACCC noted that significant changes had taken place in the industry since the last regulatory period. The ACCC outlined in a public discussion paper a variety of possible regulatory approaches for the MTAS, noting that the price would likely decline. In the consequent draft access determination, the ACCC proposed an approach based on estimating the efficient costs of providing the service taking into account ongoing reductions in mobile network operator costs and the need to minimise regulatory shock to the industry. This draft approach, including the price reduction glide path, was adopted in the final access determination.
- Prices for the domestic transmission capacity service (DTCS) were determined using a domestic benchmarking approach. This is consistent with the approach proposed in an ACCC position paper on a DTCS pricing review, published in November 2010.

The ACCC's pricing methodologies were the subject of robust consultation with industry before being implemented in final access determinations. None of the ACCC's final access determinations were appealed to the Federal Court during 2011–12.

### *Current access determination inquiries*

During 2011–12 the ACCC initiated consultation on two FAD inquiries that are currently underway, as follows:

- In February 2012, the ACCC released a discussion paper in relation to a FAD for the wholesale ADSL service. Consultation on this FAD is underway as of 30 June 2012.
- In February 2012, the ACCC released a discussion paper in relation to a FAD for the local bitstream access service (LBAS). The LBAS is a wholesale access service that will be supplied over the 'last mile' of superfast fixed-line telecommunications networks built or upgraded after January 2011. Consultation on this FAD is currently underway.

It is proposed that both of these FADs will contain price and non-price terms of access.

## INDUSTRY-SPECIFIC LAWS

### Structural reform

The ACCC implemented the government's chosen approach to structural reform of the telecommunications industry by accepting extensive undertakings and a migration plan from Telstra regarding the migration of services from its fixed-line access networks to the wholesale-only National Broadband Network (NBN).

The structural separation undertakings that the ACCC accepted from Telstra provide for a series of additional commitments to promote equivalence and transparency for access seekers to Telstra's bottleneck fixed-line services, until such time as the migration to the NBN is complete.

Telstra's migration plan sets out the action it will take to cease supplying fixed-line services to customers using its networks and transfer its retail customers onto the NBN. The Migration Plan complies with the Migration Plan Principles issued by the Minister for Broadband Communications and the Digital Economy.

The ACCC undertook extensive consultation. This involved releasing two discussion papers, holding an industry forum and additional engagement with Telstra and NBN Co as participants in regulatory reform. Further detail is set out in the case study on page 92.



## Assessment of Telstra's structural separation undertaking

Telstra is in a unique position in the Australian fixed-line telecommunications sector. As a vertically integrated provider, Telstra operates at all levels of the supply chain and competes with the businesses that it supplies to. This has given rise to long standing competition concerns around Telstra's ability and incentive to favour its retail business over other service providers accessing its network to the detriment of consumers. In late 2010, the Australian Government introduced legislation which created a framework for reforming the telecommunications industry—through the structural separation of Telstra. Structural separation requires Telstra to cease supplying voice and broadband services to retail customers over its copper and hybrid fibre coaxial (HFC) cable networks. In July 2011, Telstra voluntarily submitted an undertaking to structurally separate and a migration plan that set out how Telstra would progressively transfer its fixed-line customers onto the National Broadband Network (NBN) as the fibre network is rolled out.

The ACCC was tasked with assessing the undertaking and migration plan and ensuring that the structural separation would be implemented in an effective way, while minimising 'collateral damage' to other markets or consumer interests. In addition, the ACCC was asked to broker a more effective framework for other service providers to access Telstra's network during the transition period until completion of the NBN.

Through the course of the ACCC's work:

- certain elements of the industry restructuring (which are contained in agreements between NBN Co and Telstra) that would have distorted wireless or subscription television markets were removed, and the ACCC was given ongoing oversight of any changes that might be made to the agreements
- the proposed access framework was significantly bolstered by more encompassing interim equivalence and transparency arrangements, requiring Telstra to supply regulated services to wholesale customers on equivalent terms to those on which it supplies its own retail business, allowing them to compete more effectively. A robust framework was established to plan ahead for, and quickly respond to, consumer issues that emerge as existing services are discontinued as part of the migration to the NBN.

In the early stages of negotiating the undertaking, Telstra, access seekers and interest groups were sharply divided as to what commitments were required. The ACCC engaged extensively with all interested parties and progressively narrowed points of difference. On the few issues that could not be resolved through this process, the ACCC quickly undertook separate inquiries and exercised existing regulatory powers to smooth the way for lodgement of an appropriate undertaking. In February 2012 Telstra lodged an undertaking and migration plan that were accepted by the ACCC and were well received by a broad cross section of industry and interest groups.

The ACCC continues to have an important role in overseeing the implementation of Telstra's commitments and ensuring compliance with the undertaking and will continue to engage extensively with industry and interest groups to ensure the smooth separation of Telstra and migration of consumers and businesses to the NBN.



## Industry-specific laws—regulating services

The ACCC conducted an inquiry into regulating the wholesale ADSL service. The wholesale ADSL service is supplied by Telstra over its copper fixed-line network and is used by other companies to supply broadband services to end-users. There have been ongoing competition concerns in relation to Telstra's supply of the wholesale ADSL service (including previous allegations of price squeeze behaviour). The ACCC issued a discussion paper and consulted with stakeholders as part of the inquiry. The ACCC decided to regulate the service as it considered this would give end-users access to a greater range of competitive fixed-line broadband internet services offering. Following its decision to regulate, the ACCC issued an interim determination setting access prices for the service and initiated an inquiry into making a final access determination (see 'Reasonable access terms', page 89).

The ACCC also declared the local bitstream access service (the 'LBAS'—a service that will be supplied over other superfast telecommunications networks that are not the NBN) to be a regulated service. The ACCC was required to regulate the LBAS following legislative amendments to the Competition and Consumer Act. As part of regulating the LBAS the ACCC issued a service description defining the service. Prior to issuing the final service description the ACCC released a draft service description and discussion paper for consultation with stakeholders. The ACCC is currently conducting an inquiry into making a final access determination for the service (see 'Current access determination inquiries' on page 91).

## Industry-specific guidelines

The ACCC published explanatory material (guidelines) on non-discrimination obligations in the Competition and Consumer Act for network providers of the LBAS over superfast telecommunications networks (including the NBN). Following legislative amendments, the ACCC is required to prepare this explanatory material and enforce the non-discrimination obligations. In preparing the explanatory material, the ACCC also released an issues paper and draft explanatory material for consultation with stakeholders.

## Other industry-specific laws

### *Record keeping and reporting rules*

The ACCC extended the operation of record keeping and reporting rules (RKR) that require Telstra to report (and publish) certain information about availability and queues for other companies to access its telecommunications exchanges. Prior to making this extension the ACCC released a consultation paper.

The ACCC has also begun consultation on a Building Block Model RKR that would require Telstra to report certain information that will assist the ACCC when it makes future pricing determinations for fixed-line services.

## MONITORING PRICES

### Statutory reporting

In its statutory reports, the ACCC has reported on market conditions and prices and quality of telecommunications goods and services as follows:

- In September 2011 the ACCC published reports on the telecommunications competitive safeguards for 2009–10 and changes in the prices paid for telecommunications services in Australia 2009–10, in accordance with its statutory reporting requirements.
- In June 2012 the ACCC published its reports on the telecommunications competitive safeguards for 2010–11 and changes in the prices paid for telecommunications services in Australia 2010–11 reports, in accordance with its statutory reporting requirements.
- The ACCC reported on Telstra's compliance with the retail price control arrangements for the period 1 July 2010—30 June 2011, in accordance with the ACCC's statutory reporting obligations.

## DISSEMINATING INFORMATION TO ASSIST STAKEHOLDERS

The ACCC's regulatory reports, determinations and issues papers are accessible in a timely fashion on the ACCC's website.

The ACCC publishes up-to-date information on ongoing processes, such as:

- the assessment of NBN Co's special access undertaking
- the implementation of Telstra's structural separation undertaking and migration plan, including the implementation of the Independent Telecommunications Adjudicator scheme
- the receipt of Statements of Differences from NBN Co and other superfast network operators, which facilitate monitoring of compliance with non-discrimination obligations
- the requirement of carriers or carriage service providers to lodge access agreements that relate to access to a regulated service
- its consultation on a BBM record keeping and reporting rule to require information to be provided to assist the ACCC in its future pricing decisions for certain regulated telecommunications services.

This assists in informing stakeholders about key industry developments and current consultations.

The ACCC has published (in accordance with a Ministerial Direction):

- Imputation testing and non-price terms and conditions report for June 2011
- Imputation testing and non-price terms and conditions report for September 2011
- Imputation testing and non-price terms and conditions report for December 2011
- Imputation testing and non-price terms and conditions report for March 2012
- Current cost accounting report for the second half and the full year ended 30 June 2011
- Current cost accounting report for July-December 2011.

These reports assist stakeholders' understanding of the Accounting Separation regime that applies to Telstra.

The ACCC also publishes on its website summaries of data obtained under some of the record keeping rules it has issued to telecommunications companies, relating to:

- telecommunications infrastructure
- access to Telstra's telecommunications exchange buildings
- access services provided by Telstra to other companies over its customer access network (CAN).

This assists in informing stakeholders so that they can effectively engage in regulatory processes.

For all regulatory processes carried out during 2011–12 the ACCC issued at least one discussion paper seeking comment from interested stakeholders on the matter under consideration. The ACCC fulfilled specific consultation requirements specified for certain matters in the Competition and Consumer Act, and usually issued a draft decision or determination for further comment before making a final decision or determination.

## ENFORCEMENT AND COMPLIANCE

The ACCC has established a compliance framework for overseeing Telstra's implementation of, and compliance with, its structural separation undertaking. This framework includes provision for a consultative forum to provide views on issues on the effectiveness of the undertakings as they are implemented.

During 2011–12 the ACCC investigated several complaints in relation to alleged anti-competitive conduct in the communications sector, mainly concerning alleged misuses of market power. However, these did not result in formal enforcement action being initiated.



Of note, the ACCC discontinued its investigation into Telstra's proposed closure of its South Brisbane exchange to upgrade from copper to fibre. The ACCC had received a number of complaints from access seekers about the adequacy and timing of information being provided by Telstra in relation to the closure. Telstra subsequently advised that it would be offering improved access terms to wholesale customers transitioning from copper based access services to fibre-based services. This substantively addressed the ACCC's concerns on the likely effect on competition when the copper based wholesale services are withdrawn.

Further to this, the ACCC also:

- issued guidance on the non-discrimination obligations that apply to NBN Co and non-NBN providers of superfast telecommunications networks (and will continue to monitor compliance with these provisions)
- corresponded with industry participants regarding instances of non-compliance with the access agreement lodgement obligations in Part XIC. No formal enforcement action has been taken to date, but the ACCC continues to assess compliance issues on a case-by-case basis
- held industry seminars following publication of its information paper on HFC cable and fibre-based broadband 'speed' claims and the consumer protection provisions in the Competition and Consumer Act. These activities provided information to industry providers on the ACCC's approach to assessing potentially misleading and deceptive claims about the data transfer rates (often called 'speeds') available for HFC cable and optical fibre broadband services.

The ACCC monitors compliance in relation to:

- the level playing field obligations which came into effect on 12 April 2012
- the FOXTEL Special Access Undertaking for the digital set top unit service
- certain obligations in the Radiocommunications Act that apply to licensees.

Before the acceptance of Telstra's structural separation undertaking in February 2012, the ACCC monitored Telstra's compliance with its Operational Separation Plan (OSP). Following acceptance of the structural separation undertaking, the OSP ceases to operate.

## TIMELY ASSISTANCE TO GOVERNMENT AND AGENCIES

The ACCC has provided timely assistance to government and other agencies regarding communications-related matters in the following way:

- ACCC representatives appeared before the Joint Parliamentary Committee on the NBN on 25 October 2011 and 16 April 2012
- the ACCC has provided ongoing advice to DBCDE on the regulatory framework for the NBN and the communications industry-specific regime in the Competition and Consumer Act
- the ACCC provided advice to the Minister for Broadband, Communications and the Digital Economy and other agencies on competition issues with respect to spectrum allocations and digital dividend
- the ACCC provided advice to the Minister for Broadband, Communications and Digital Economy in relation to Telstra's and TransACT's exemption applications from regulatory obligations (the obligation to supply a regulated service) over their non-NBN superfast networks
- the ACCC made submissions to following reviews:
  - the Department of Broadband, Communications and the Digital Economy's Review of Retail Price Controls 2011
  - the Convergence Review Committee on competition issues regarding content, media ownership and net neutrality—the ACCC provided ongoing informal advice
  - the Australian Law Reform Commission's National Classification Scheme Review.

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# Energy

## Measures:

- Reasonable access terms and conditions (including prices) determined for nationally significant infrastructure services in a timely and transparent manner after appropriate consultation with stakeholders
- Prices and quality of particular goods and services monitored and reported on to provide relevant information to the community about the effects of market conditions
- Relevant information disseminated to assist stakeholders in understanding the regulatory frameworks and the structure and operation of infrastructure markets so that they can more effectively engage in the regulatory process
- Timely advice provided to governments and policy agencies on how efficient regulatory outcomes and competitive, well-functioning markets can be achieved

## ROLE OF THE AER

The Australian Energy Regulator (AER) is the national energy market regulator and an independent statutory authority funded by the Commonwealth. The AER's staff, resources and facilities are provided through the Australian Competition and Consumer Commission (ACCC).

The AER's specific functions are set out in national energy market legislation. They include:

- setting the prices charged for using energy distribution and transmission networks that transmit energy to consumers and distribute energy in other ways
- wide ranging responsibilities in retail energy markets in those jurisdictions adopting the National Energy Retail Law (Retail Law), including providing a price comparison website; enforcing compliance with the retail legislation; authorising retailers to sell energy; approving retailers' policies for dealing with customers in hardship; administering a national retailer of last resort scheme; and reporting on retailer performance and market activity
- monitoring wholesale electricity and gas markets to ensure suppliers comply with the legislation and rules, and taking enforcement action where necessary
- publishing information on energy markets, including the annual *State of the Energy Market* report
- Assisting the ACCC with energy-related decisions arising under the Competition and Consumer Act, including enforcement, mergers and authorisations.

## LAWS, REGULATIONS, AND RULES

The AER applies the following laws, regulations, and rules:

- National Gas Law
- National Gas Rules
- National Gas Regulations
- National Electricity Law
- National Electricity Rules
- National Electricity Regulations
- National Energy Retail Law\*
- National Energy Retail Rules\*
- National Energy Retail Regulations\*.

\* Intended to take effect from 1 July 2012

Together, these laws, rules and regulations are designed to promote efficient investment in and operation of energy infrastructure and markets in the long-term interests of energy consumers.

In Victoria, the AER also regulates cost recovery for mandated smart-metering infrastructure under the *Victorian Electricity Act 2000*.

## ACCESS TERMS, CONDITIONS AND PRICES: PROPOSAL TO THE AEMC

One of the AER's roles is to make electricity determinations and gas decisions for transmission and distribution networks in accordance with the National Electricity Rules (NER) and National Gas Rules (NGR).

In making its determinations, the AER balances the interests of infrastructure owners, users, and the public by promoting the national energy market objective set out in the laws—namely, to promote efficient investment in energy services for the interests of consumers with respect to price, quality, reliability, safety, and security of energy services.

In 2011 the AER examined the operation of the national electricity rules in respect of network regulation, informed by its experience in assessing revenue and price determination proposals over the preceding four years. This resulted in the AER submitting a comprehensive rule change proposal to the Australian Energy Market Commission (AEMC) on 29 September 2011. This rule change would ensure that the AER is able to determine network revenues that provide for recovery of efficient cost while ensuring that consumers pay no more than necessary for a safe and reliable energy supply.

To ensure that networks are funded to provide a safe and reliable supply of electricity, and that network prices are no higher than required, the AER would have the scope to make effective and robust assessments of the capital and operating costs proposed by electricity network businesses.

The AER has also suggested improvements to the process for determining the rate of return that network businesses are allowed to earn on their regulatory asset bases. The current approach has led to allowances that are likely to greatly exceed the actual financing cost of businesses.

The AEMC is following the mandated consultation process set out in the national electricity and gas rules. A draft determination by the AEMC is expected in August 2012. The final determination and new rules are expected by the end of 2012.

The AER considers that the proposed changes would maintain incentives for efficient investment in and operation of the networks, and advance the long-term interests of consumers.

## DETERMINATIONS—ELECTRICITY

The AER is responsible for regulating the revenues associated with non-contestable elements of the electricity and gas transmission and distribution sector. This provides periodic regulatory oversight of the monopoly infrastructure in the energy market.

The AER assesses the costs of each transmission and distribution business, for most networks, at least every five years. The AER approves forecasts of efficient costs and energy demand to provide network businesses with the revenue to deliver services for the next five-year period.

As part of this process, the network businesses set prices (tariffs) for the first year of the five-year period. The determination sets out how these prices or revenue can be varied on an annual basis within the regulatory period through price control formula.

The determination also allows for the pass through of some costs within the regulatory period that were outside the control of the business and where the business has not been compensated for these costs in the determination.



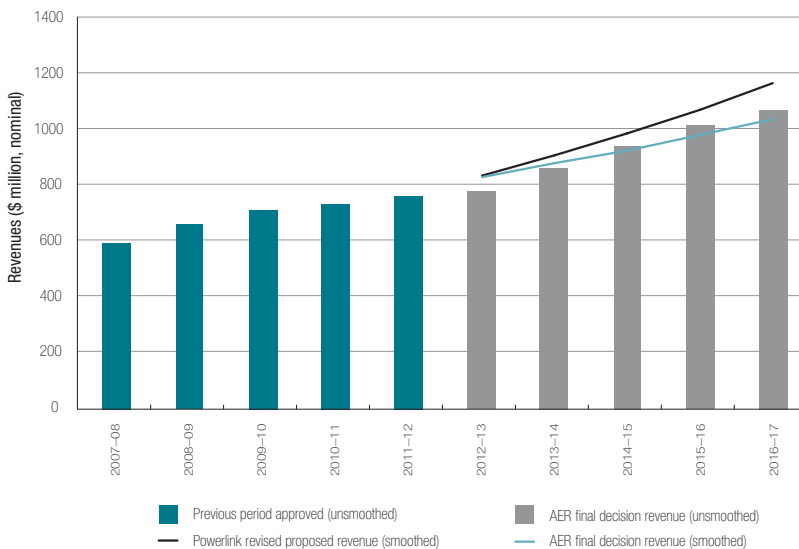
## Powerlink transmission determination

The National Electricity Law requires the AER to make decisions in a manner that will, or is likely to contribute to efficient investment in, and the efficient operation and use of, electricity services for the long-term benefit of consumers.

The AER is required to make a transmission determination for Powerlink's prescribed and negotiated transmission services. Chapter 6A of the National Electricity Rules sets out the framework for the economic regulation of transmission services. These require the AER to take into account capital and operating expenditure forecasts of transmission companies, along with forecasts of demand growth and the cost to finance network upgrades, when making a determination on relevant costs and revenues.

The AER assessed Powerlink's revised revenue proposal that sought \$5 billion to operate the Queensland transmission network during the five-year period, ending 30 June 2017. On 30 April 2012 the AER approved total revenue of \$4.7 billion for the period, or 6.3 per cent below that sought by Powerlink. The following figure illustrates the impact of the AER's determination.

Powerlink's revenue allowance (\$ million, nominal)



The AER's transmission revenue determination assessed Powerlink's capital governance arrangements, to determine if they represented those of an efficient benchmark organisation.

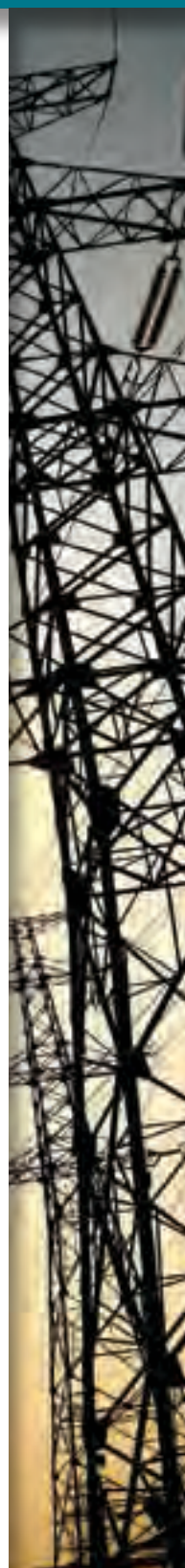
The AER took the view that a prudent service provider would seek cost efficiencies through continuous improvements. Customers ultimately share in these benefits.

The AER conducted more detailed analysis of the proposed capital expenditure of some specific projects. The AER did this to satisfy itself that Powerlink's overall approach to forecasting (including its planning and management strategies and policies) reasonably reflects the capital expenditure criteria within the National Electricity Rules.

This includes project sampling and a detailed review of specific issues noted in Powerlink's revised revenue proposal and in stakeholders' submissions to the AER draft decision. This included the proposed 500kV transmission line development, the forecast costs of which the AER approved as contingent on Powerlink undertaking further detailed regulatory investment tests to justify the project.

The AER considered that Powerlink's summer peak demand forecasts, which drive network upgrades, exceeded a realistic expectation of demand. The AER developed its own methodology to test forecast demand, based on Powerlink specific information and input variables the AER considered most appropriately reflected a realistic demand forecast.

Powerlink is limited to the revenue allowance approved by the AER and is required to manage its charges within that constraint.



The AER made the following electricity transmission and distribution determinations in 2011–12:

- Powerlink transmission (Queensland) 2013–17 (see case study on pages 98–9). The AER made its final determination on Powerlink's maximum allowable revenue for the regulatory control period 1 July 2012 to 30 June 2017. The AER determined a revenue requirement of \$4.7 billion over this period (up from \$3.3 billion in the previous five years). The revenue requirement accounts for expectations of demand, capital and operating expenditures and cost of capital that would enable Powerlink to efficiently operate its network under the national electricity rules. The proposed 500kV upgrade to the Queensland transmission network became a contingent project. The final determination was made on 30 April 2012.
- Advanced Metering Infrastructure (Victoria—distribution) 2012–15. The AER released its advanced metering infrastructure (AMI) final determination, in relation to Jemena, United Energy, SP AusNet, CitiPower and Powercor's AMI budgets and charges for 2012–15. The determination establishes the metering charges payable by Victorian consumers using less than 160MWh of electricity per annum over the period 2012–15. The AER approved budget expenditure of \$1.1 billion over the regulatory period; the AER previously approved expenditure for the 2009–11 budget period of \$1.2 billion. From 2015, charges for AMI services will be reviewed under the National Electricity Rules. The final determination was made on 31 October 2011.
- Aurora distribution (Tasmania) 2013–17. The AER issued its final determination for Aurora Energy, setting a total revenue requirement of \$1.4 billion for the forthcoming regulatory control period. This is 11.5 per cent below what Aurora sought. The main drivers of the difference between the AER's final determination and Aurora's revised regulatory proposal are the rate of return (the most significant driver) together with lower capital and operating expenditure. In addition, the AER's review of Aurora's revised proposal has resulted in price caps for metering services and public lighting services that are lower than those proposed by Aurora by an average of 10 per cent and 3.9 per cent respectively. The final determination was made on 30 April 2012.

During the year, the AER commenced the following determinations:

- framework and approach for the ACT and NSW electricity distribution determinations 2014–19
- ElectraNet transmission determination 2014–19 covering the operating and capital expenditure, demand forecast and cost of capital. ElectraNet anticipates it will require to efficiently operate the South Australian transmission network
- Murraylink transmission determination 2014–23 reviewing the operating and capital expenditure, cost of capital and expected revenues. Murraylink anticipates it will need to operate the direct current interconnector between South Australia and Victoria/New South Wales over a 10-year regulatory control period.

During the year, the AER revoked and substituted the following determinations:

- ActewAGL Distribution (ActewAGL) notified the AER that it identified two errors in its distribution determination resulting from the provision of incorrect information to the AER. ActewAGL requested that the AER use its discretion under clause 6.13 of the transitional National Electricity Rules to correct the errors. The AER considered ActewAGL's application and revoked the 2009–14 distribution determination, and substituted a new distribution determination for the 2009–14 regulatory control period to rectify the error. This resulted in an additional \$6.3 million being added to ActewAGL's revenue requirement.
- ETSA Utilities advised the AER of its intention to elect to recover feed-in tariff payments under the 'jurisdictional scheme amounts' provisions of the NER. Before the election is made, feed-in tariff payment amounts must be removed from the allowed revenues set in the applicable distribution determination for ETSA Utilities. On 17 February 2012, the AER revoked and substituted ETSA Utilities' distribution determination to remove an allowance for feed-in tariff payments.
- The AER issued a revocation and substitution of SP AusNet's final determination in respect of its 2009–11 advanced metering infrastructure revised budget application. This was to correct for financial modelling errors identified after the release of the final decision.

## Cost pass through applications from electricity providers

Regulated businesses are able to recover additional costs that were not anticipated at the time their price determinations were made. The AER assessed the following cost pass through applications from electricity network service providers.

### Transmission networks

- The AER approved a positive network support pass through amount of \$1.4 million for ElectraNet to pass through in 2012–13 to customers' transmission use of system charges.
- The AER approved Transend to reduce its 2012–13 transmission prices by \$390 000 as a consequence of a negative network support pass through.
- The AER approved negative pass through amounts for network support costs incurred during 2009–10 for Transgrid, Powerlink, Electranet and Transend to be passed through as a reduction in transmission prices.

### Distribution networks

- The AER declined a proposal by ETSA Utilities to pass through \$9.3 million into network tariffs for additional costs associated with legislative changes to the solar PV feed-in tariff (FiT) scheme in South Australia.
- The AER approved a pass through amount of \$48.8 million for Endeavour Energy's retail project event pass through in respect of the sale of its retail business to Origin Energy.
- The AER approved a positive pass through amount of \$73.98 million for Powercor arising as a result of Energy Safe Victoria's (ESV) approval of Powercor's Electricity Safety Management Scheme. The scheme was put in place to meet obligations under amendments to bushfire mitigation regulations, and ESV directions, stemming from recommendations of the 2009 Victorian Bushfires Royal Commission.

## PERFORMANCE REPORTING—ELECTRICITY DISTRIBUTION AND TRANSMISSION

The AER released its first annual performance report of the ACT and NSW electricity distribution network service providers (DNSPs) under the National Electricity Law. The report focuses on the financial and service performance of ActewAGL, Ausgrid, Endeavour Energy, and Essential Energy for 2009–10 and provides trend data on the DNSPs' service performance from 2005–06, based on jurisdictional information.

The AER also released the Victorian Electricity Distribution Businesses Comparative Performance Report 2010. The report presents the 2010 financial and service reliability performance of Victoria's five electricity DNSPs: CitiPower, Jemena Electricity Networks, Powercor, SP AusNet, and United Energy.

The AER released its eighth performance report for electricity transmission network service providers (TNSPs) to provide transparency about the financial and operational performance of these businesses under existing revenue determinations.





## Energy pricing

Every five years the AER reviews the efficient costs to transport and distribute electricity and gas to customers via the distribution and transmission network businesses. Based on an assessment of the efficient costs to provide these services, the AER determines the revenue required by each business to operate efficiently.

This required revenue is recovered by the business through charges to its customers, referred to as network tariffs. The network tariff is regulated by the AER.

The network tariff is only one component of the final retail energy price representing on average between 41 and 51 per cent of a typical small customer's final energy bill.

At the commencement of each regulatory period the businesses set network tariffs based on the AER's final determination of the business' required revenue and forecast energy for the first year of the period (subject to a number of pricing principles).

Within the regulatory period the network tariff is controlled by a CPI-X price control formula (for network businesses that are 'price capped') which requires that tariffs do not increase by more than inflation plus a factor for real cost increases/decreases.

On an annual basis, within the regulatory period, the distribution businesses submit network tariffs to the AER for approval. The AER ensures the network tariff complies with a CPI-X price control mechanism that has already been set at the beginning of the regulatory period. This ensures customers do not face significant price shock in any one year. The only circumstance within the period for the network tariff to vary from the price control formula is where the AER approves a pass through amount.

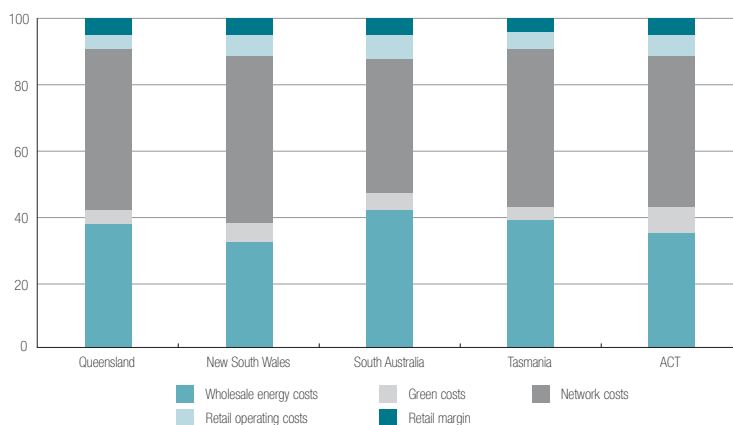
In 2011–12 the AER reviewed and approved changes to 24 gas and electricity network tariffs within the statutory time limits set out in the National Electricity Rules and National Gas Rules. These changes were all within the regulatory limits or allowances set by the AER.

In addition to the costs of supplying electricity and gas to customers, renewable energy target schemes, jurisdictional solar feed-in payments and energy efficiency schemes (reflected as 'green costs' in the figure below) also impact on energy prices. These costs are also passed through to customers either through network tariffs or specific levies charged to retail businesses. Apart from the costs of schemes directly levied on energy retailers, the AER assesses proposals by network businesses to pass through certain costs in their network tariffs.

The rest of the electricity and gas charge paid by customers consists of the retail cost of energy (including profit margin) and the wholesale cost of energy—the production of electricity and gas itself. The AER monitors the wholesale cost of energy, and issues market updates where there are significant price variations. The average wholesale cost of energy has been relatively low in most regions over 2010–11 and 2011–12.

The following figure provides a graphical representation of the indicative components of electricity prices in each jurisdiction in the National Energy Market (except for Victoria) prior to the introduction of the carbon tax on 1 July 2012.

**Indicative composition of residential electricity bills (to 30 June 2012)**



## OTHER ELECTRICITY NETWORK MATTERS

The AER made decisions in respect of:

- Energex and Ergon's application for waiver of the Queensland ring-fencing guidelines
- APT Pipelines' ring-fencing exemption application
- ETSA Utilities—amendments to cost allocation method
- SP AusNet's proposal for the early application of the market impact component of the service target performance incentive scheme.

## DISPUTE RESOLUTION

The AER assessed and resolved five electricity connection disputes, with two consumers receiving reductions in their connection charges.

## DETERMINATIONS—GAS

The AER made the following determinations on access arrangements for gas transmission and distribution pipelines:

- Amadeus Gas Pipeline (Northern Territory—transmission). The AER released its final decision on NT Gas Pty Ltd's Amadeus Gas Pipeline access arrangement proposal for 1 August 2011 to 30 June 2016. The final decision proposed changes to the revised access arrangement proposal and revised access arrangement information for the pipeline. The AER revised the tariffs and terms and conditions of access for the Amadeus Gas Pipeline to better balance the interest of NT gas users. This reflected the AER's reduction in capital and operating costs, and a lower cost of capital than that proposed by the pipeline operator. On 27 July 2011 the AER released its decision to approve the access arrangement (including the terms and conditions and access arrangement information) drafted by the AER for the Amadeus Gas Pipeline for the regulatory period 1 August 2011 to 30 June 2016. The final decision was made on 20 July 2011.
- Envestra gas distribution network (South Australia). The AER released its decision to approve the access arrangement (including the terms and conditions and access arrangement information) drafted by the AER for Envestra's South Australian gas distribution network for the period 8 July 2011 to 30 June 2016. The final decision was made on 7 July 2011.

The AER commenced the following determinations for gas transmission and distribution:

- Roma to Brisbane transmission pipeline (RBP) (Queensland). The AER received an access arrangement proposal for the RBP for the period 12 April 2012 to 30 June 2017. The proposal was submitted by the service provider of the RBP, APT Petroleum Pipeline Limited (APTPPL). The AER requested APTPPL to submit further access arrangement information as the initial application was deemed insufficient under the NGR. On 30 April 2012, the AER released its draft decision not to approve the access arrangement proposal for the RBP. The draft decision requires APTPPL to amend the access arrangement proposal for the RBP. On 25 May 2012, APTPPL submitted its revised access arrangement proposal for the RBP.
- GasNet transmission network (Victoria). APA GasNet Australia Pty Ltd (APA GasNet) submitted a revised gas access arrangement proposal for the Victorian gas transmission system, pursuant to APA GasNet's obligations under the National Gas Law (NGL). Under the NGL and NGR, the AER must review and approve the terms of the proposals. The proposal contains the terms, including prices, under which the service providers propose to provide gas retailers with access to their networks for the period 1 January 2013 to 31 December 2017. The AER assesses the terms of the proposals against the objective which is set out in the NGL.

- Multinet, SP AusNet and Envestra gas distribution networks (Victoria). The AER received an access arrangement proposal under the NGR from the three gas network businesses in relation to the capital and operating needs and revenue requirements they forecast over the regulatory control period 2013–17. Under the NGL and NGR, the AER must review and approve the terms of the proposal. The proposal contains the terms, including prices, under which the service providers propose to provide gas retailers with access to their networks for the period 1 January 2013 to 31 December 2017. The AER requested the gas distribution companies submit further access arrangement information as an addendum to the information already submitted, including nominating an averaging period for the market data such as risk free rate and debt risk premium.

## OTHER GAS NETWORK MATTERS

The AER made decisions in respect of:

- MultiNet's change in taxes event pass through application
- Jemena gas networks' mine subsidence expenditure application
- Carbon price pass through applications for gas distribution networks in Victoria, South Australia, New South Wales, and Queensland.

## ANNUAL ENERGY PRICING APPROVAL PROCESSES

Under the National Electricity Rules and National Gas Rules (the rules), network businesses are required to submit their pricing proposals and tariff variations to the AER for approval. In each case, the AER assesses compliance with the rules and the relevant distribution determination for each business.

The AER approved pricing proposals for 12 electricity network service providers:

- Ausgrid, Essential Energy, and Endeavour Energy in New South Wales
- ActewAGL in the Australian Capital Territory
- Energex and Ergon Energy in Queensland
- ETSA Utilities in South Australia
- CitiPower, Powercor, Jemena Electricity Networks, SP AusNet and United Energy Distribution in Victoria.

The AER approved annual tariff variations for 12 gas network service providers:

- Roma to Brisbane and Dawson Valley pipelines in Queensland
- Jemena Gas Networks, Wagga Wagga gas distribution network, and Central Ranges gas transmission and distribution pipelines in New South Wales
- ActewAGL gas distribution network in the Australian Capital Territory
- Envestra Victoria, Envestra Albury, SP AusNet, GasNet and Multinet in Victoria.

# GAS TRANSMISSION AND DISTRIBUTION COMPLIANCE

The AER received and considered annual compliance reports from 21 nominated service providers for eight transmission and 11 distribution pipelines for 2010–11.

## INCENTIVES FOR IMPROVED PERFORMANCE

The national electricity and gas frameworks rely on an incentive-based approach to the economic regulation of network businesses. Under this regime the AER has developed specific incentives for improving or maintaining service standards, achieving operating cost efficiencies, and implementing demand management schemes.

As part of the Aurora Energy distribution determination, the AER implemented a distribution service target performance incentive scheme (STPIS) that provides incentives for the distributor to maintain and improve reliability of supply while balancing end-users' willingness to pay. The AER also applied a demand management incentive scheme to Aurora Energy, encouraging it to make efficient use of its network.

Since March 2008, the STPIS for transmission network service providers (TNSPs) has included a market impact parameter (MIP), which aims to encourage transmission companies to reduce the impact of transmission outages on market outcomes. This was applied in the Powerlink transmission determination.

The MIP provides financial rewards to transmission companies to improve their performance against a target. The following illustrate the results achieved for TNSPs during the 2011 service standards compliance review:

- ElectraNet received a total financial incentive payment of \$2.4 million, consisting of \$913 000 for the service component and \$1.49 million for the market impact component
- Powerlink received a total financial incentive payment of \$18.43 million, consisting of \$3.27 million for the service component and \$15.16 million for the market impact component
- Transend received a financial penalty of \$830 000 for the service component and was prohibited from applying for the market impact component
- TransGrid received a total financial incentive payment of \$9.64 million, consisting of a financial penalty for the service component of \$1.07 million and a financial incentive payment of \$10.71 million for the market impact component
- Directlink received a financial penalty of \$112 000 for the service component and did not request the market impact parameter to be applied to it
- Murraylink received a financial incentive payment of \$97 000 for the service component and did not request the market impact parameter to be applied to it.

The AER commenced consultation on the amendments to the demand management and embedded generation connection incentive scheme that is proposed to be applied to the NSW electricity distribution network service providers (Ausgrid, Endeavour Energy, Essential Energy and ActewAGL) for the period 1 July 2014 to 30 June 2019.

In June 2011, the Victorian Government introduced a scheme to provide financial incentives for distribution network service providers (DNSPs) to reduce the risk of fire starts and loss or damage caused by fire starts—the 'f-factor scheme'. For the first four years (2012–15), DNSPs will be either rewarded or penalised at the incentive rate of \$25 000 per fire for performing better or worse than their respective fire start targets.

The AER determined the fire start targets for each of the DNSPs to take effect for the 2012–15 period. The targets were based on the average historical fire starts over the five previous calendar years.

## Electricity rebidding: three strikes

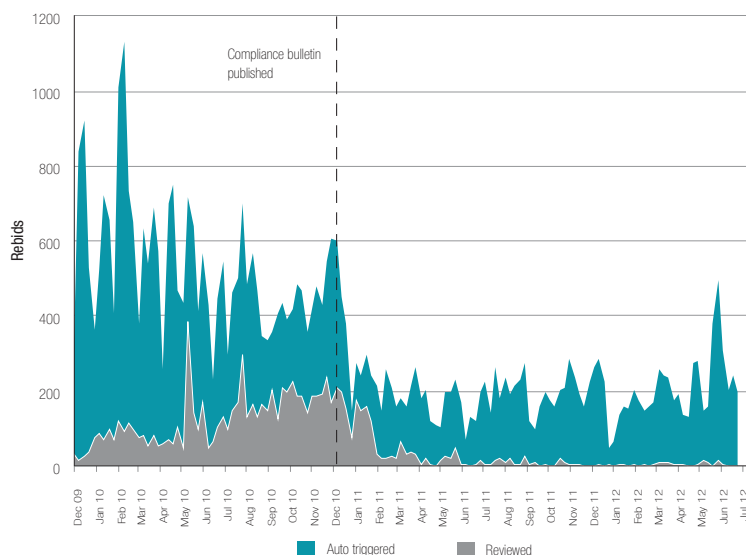
Scheduled generators and market participants operating in the National Electricity Market (NEM) submit wholesale electricity offers and bids for each half hour. 2000–2500 energy rebids are submitted by generators in the NEM each week, on average. The AER uses sophisticated systems to check that these rebids comply with the National Electricity Rules (NER).

The AER was concerned by the frequent submission of offers, bids and rebids which did not meet the requirements of the NER. This reduces the quality of information available to relevant participants and affects the AER's ability to monitor and enforce compliance with the NER.

The AER developed a new approach for monitoring rebidding to discourage non-compliance. A feature of this new approach was a new rebidding enforcement strategy, set out in the AER's *Compliance Bulletin No. 3* (December 2010), adopted from 1 March 2011. Under the new strategy, generators submitting information on two occasions that fails to meet the requirements of the NER receive warnings. If they repeat the behaviour within six months, the AER may issue an infringement notice. In June 2012 the AER clarified its view on portfolio bidding—where one trading team submits bids and rebids for generators that are registered separately. Where a trading team conducts the bidding for multiple generating units, the AER considers the cumulative count of bids by that trading team together, irrespective of whether the generators are registered separately.

The following figure shows that since the new enforcement strategy was published, there have been significant reductions in both the number of rebids triggered by the AER's internal compliance monitoring system and the number of rebids which required further review by AER staff.

Rebids auto-triggered and reviewed per week



A further benefit of the new enforcement strategy is that generators are notifying the AER of erroneous or questionable bids/rebids, reflecting a stronger focus on compliance within trading teams.

## REGULATORY PROCESSES

The AER consults in an open and transparent manner to enable participation by regulated businesses, energy consumers and other interested parties in its regulatory processes.

In addition to the consultation the AER undertook as part of its regulatory determinations and decisions, the AER consulted on:

- the transmission service target performance incentive scheme
- electricity consumption benchmarks on residential customers' bills
- minimum amount to be charged for disconnections
- customer hardship policies of all transitioning retailers
- customer connections.

## WHOLESALE ENERGY MARKETS COMPLIANCE

The AER is the enforcement and compliance agency for the rules and laws applying to the National Electricity Market and wholesale gas markets.

A focus for the AER has been monitoring compliance in the Short Term Trading Market (STTM), a market for the wholesale trading of natural gas at defined hubs. The STTM commenced on 1 September 2010 with hubs at Sydney and Adelaide, with a Brisbane hub added on 1 December 2011.

The AER observed an ongoing high number of data failures by STTM facility operators, whereby either late or erroneous data was submitted to the Australian Energy Market Operator, or data was not submitted at all. The AER engaged industry to promote compliance by raising its concerns with senior staff of the facility operators and reporting on data issues in its Quarterly Compliance Reports. In response to a continued high level of errors, the AER announced a new compliance strategy, in December 2011, whereby it will more actively consider issuing infringement notices.

On 1 June 2012 the AER issued its first such infringement notice, for \$20 000, to Epic Energy, for data failures on the Moomba to Adelaide gas pipeline. The AER published an investigation report on this matter on 21 June 2012. While the new approach has achieved a reduction in the number of data errors in gas markets, the AER will continue to monitor this area and will consider taking action where appropriate.

During the year the AER addressed many other compliance issues across the wholesale electricity and gas sectors using a variety of mechanisms. It has carried out audits of electricity generators and STTM facility operators to assess the systems and processes these parties have in place to achieve compliance with their respective obligations. The AER also published five compliance bulletins outlining its expectations regarding compliance with various parts of the National Electricity Rules (NER) and National Gas Rules (NGR). In particular, the bulletins covered the requirements for:

- market participants making best estimates when submitting injection bids and withdrawal bids for the Victorian gas market under the NGR
- developing credible options under the regulatory investment test for transmission
- conducting instrument transformer testing under the NER
- submitting STTM facility data (discussed above)
- information access and confidentiality requirements in the NER.



## Energy retailers' customer hardship policies

The new *National Energy Retail Law* ('Retail Law') and *National Energy Retail Rules* ('Retail Rules') will create a nationally consistent set of requirements for energy retailers to assist customers who are experiencing payment difficulties and hardship. These will take effect in each of the participating jurisdictions as they adopt the new laws from 1 July 2012. On 1 July all energy retailers had in place hardship policies meeting these requirements to help vulnerable customers manage their energy bills and to avoid being disconnected.

The AER is responsible for approving each retailer's customer hardship policy and must ensure that they meet all requirements under the Retail Law. A customer hardship policy must:

- have processes to identify customers experiencing financial hardship
- provide an early response to a customer's request for assistance
- offer flexible payment options (such as Centrepay and affordable payment plans)
- refer to government concessions schemes and financial counselling services and
- provide energy efficiency information to help reduce energy bills.

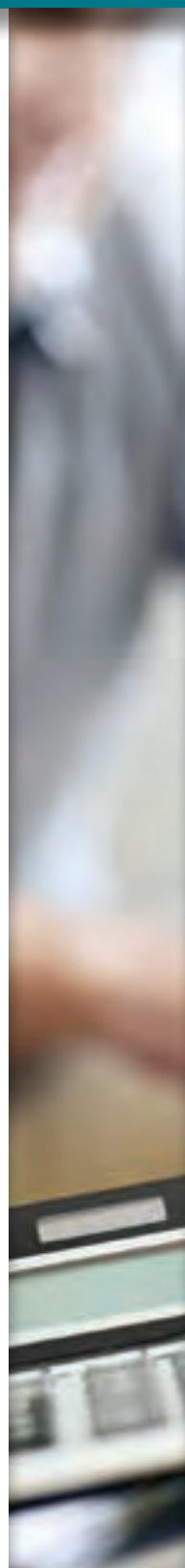
In May 2011, the AER published guidance for retailers on the information they could include in their hardship policy. The purpose of the guidance was to provide transparency to retailers and other stakeholders around the AER's approach to approving customer hardship policies and the information that would satisfy the AER that all requirements have been met.

The AER also offered retailers the opportunity for informal feedback on their draft policies. Many retailers used this as an opportunity to identify any gaps in their draft policies so that these could be addressed before formally submitting the policies to the AER for approval.

The AER's informal feedback enabled retailers to submit to the AER board final hardship policies that were of a more comprehensive, satisfying the requirements of the Retail Law and overall quality. By April 2012, the AER board had approved all transitioning retailers' policies.

Once the policies are approved, and the Retail Law has commenced in the jurisdictions in which it applies, retailers must publish them on their websites. Links to the policies will be available on the AER's website and to further improve consumer awareness of their rights and assistance available, the AER has also published details of the policies in the first AER newsletter: *AER Energy Update*.

The AER has an ongoing role in monitoring the performance of retailers to ensure they comply with their legal requirements. The AER will publish regular reports commenting on how retailers handle customers experiencing payment difficulties, including under their hardship programs and on the number of customers disconnected.



## NATIONAL ENERGY RETAIL LAW

The AER finalised its preparations for its new roles in regulating the retail electricity and gas market under the National Energy Retail Law (NERL) (to commence on 1 July 2012 in Tasmania and the Australian Capital Territory, and remaining jurisdictions thereafter). The AER's roles include:

- managing market entry and exit by authorising retailers to sell energy or granting an exemption from the requirement to have an authorisation and developing a Retailer of Last Resort Scheme (RoLR) that will operate in the event of retailer failure
- monitoring, enforcing and reporting on compliance by energy retailers and distributors
- approving energy retailers' hardship policies to assist residential customers experiencing payment difficulties better manage their energy bills
- administering electricity bill benchmarks to assist residential customers to compare their household's electricity usage with that of households of a similar size in their local zone
- developing and managing an energy price comparison website to assist small energy customers to compare generally available energy offers.

To manage market entry and exit in the lead up to the introduction of the NERL, the AER:

- assessed and approved five applications for retailer authorisation (four electricity and one gas) with four applications remaining open (three electricity and one gas)
- received 640 registrable exemptions and granted one individual exemption.

### Compliance and performance monitoring and reporting

The AER Compliance Procedures and Guidelines and Statement of Approach first released in July 2011 and updated in June 2012 clarified the AER's responsibilities and approach including plans for regular reporting on retailer and distributor performance.

### Customer hardship policies

The AER completed assessments of customer hardship policies for transitioning energy retailers and approved hardship policies for 32 authorised retailers (see case study page 109). Guidance was released in May 2011 to help energy retailers understand their obligations under the new laws.

## ENERGY PRICE COMPARATOR WEBSITE

The AER will launch its new energy price comparator website—Energy Made Easy—on 1 July 2012. Energy Made Easy will assist residential and small business energy customers to compare all the electricity and gas offers generally available to them by entering simple details such as their location and energy usage. The website will display which offers have discounts or special incentives available and what terms and conditions apply. The website also contains information on electricity bill benchmarking to help consumers assess their household's electricity usage against that of similar sized and located households and identify opportunities for more efficient energy.

## ELECTRICITY CONSUMPTION BENCHMARKS

Electricity consumption benchmarks allow residential customers to compare their electricity usage with households of a similar size in their area. In 2011–12 the AER:

- consulted with energy retailers including release of guidance on retailer obligations under the Retail Energy Law to provide benchmarks on residential customers' electricity bills
- ensured that benchmark information is readily available to residential customers through the Energy Made Easy website.

## RETAILER OF LAST RESORT (ROLR)

The AER is responsible for managing the retailer of last resort scheme, a customer protection program that ensures that, in the event of a retailer failing, all customers are transferred to another retailer without any loss of energy supply. Customers can then switch to another retailer at anytime without an early termination fee. In 2011–12 the AER:

- released a RoLR package including RoLR guideline, RoLR plan and statement of approach
- appointed default RoLRs in South Australia and the ACT (AGL for gas and electricity in South Australia, and ActewAGL for gas in the ACT)
- conducted public RoLR exercise with a range of stakeholders, to simulate an actual RoLR event and the associated communications flows before, during and after a RoLR event
- developed internal processes and procedures for use in a RoLR event including stakeholder training.

## MONITORING PRICES

The AER continually monitors activity in the gas and electricity wholesale markets, and publishes weekly electricity market analysis reports with a range of information including weekly average spot prices, financial year-to-date spot prices, reasons for variations between forecast and actual prices, and electricity futures prices and volumes.

The AER also publishes reports into circumstances where the spot price of electricity exceeds \$5000 per MWh. In 2011–12 the AER published only two such reports, as prices in the electricity market were relatively subdued compared to previous years.

The AER's weekly gas market analysis reports provide information on the Victorian wholesale gas market and the STTM. These reports cover many aspects of the markets, including weekly average prices and financial year-to-date prices, as well as demand information and an overview of any significant market events.

The AER is required to publish a report where there is a significant price variation in the Victorian wholesale gas market or the STTM, according to the AER's interpretation of 'significant'. While there were no such events for the Victorian market, the AER published its first report into an event for the STTM in May 2012.

## PUBLICISING OUTCOMES

The AER's new website was launched in May 2012 and provides up to date links to all of the AER's regulatory, monitoring, reporting and enforcement activities, including access arbitrations, arrangements, undertakings and inquiry findings.

The website is an important tool in providing stakeholders with opportunities to participate in regulatory processes. A feature of the website is a new 'For Consumers' section that provides an easy one stop shop for consumers looking for information on purchasing energy services, including their rights and obligations under the National Energy Retail Law (to commence on 1 July 2012). The information on the website includes:

- *AER Energy Update*, the AER's newsletter, which keeps stakeholders informed in a timely and succinct way about current issues in the energy market and new developments in the AER's work program
- *State of the Energy Market*, the AER's annual flagship report, which provides a detailed analysis of energy market outcomes over the calendar year
- the transmission network service providers' electricity performance report for 2009–10, which provides updated revenue, profit, and expenditure and service standards information on each transmission business

- separate web pages for each electricity determination and gas arrangement, with access to all public information on these matters
- quarterly compliance reports summarising the compliance and enforcement activities of the AER in the gas and electricity sectors
- compliance bulletins drawing attention to particular regulatory requirements and outlining the AER's expectations regarding participants' compliance with those requirements.

As part of the transition to the new website, the AER introduced a new resource centre that provides information on the Australian energy industry, including background on the history of energy reform and links to the legislation and *State of the Energy Market* reports. It also presents information on the performance of the energy sector over the medium to longer term in graphical and tabular form. This section covers both the gas and electricity sectors including the wholesale, regulated network and retail segments.

As well as publishing this information on its website, the AER notifies regulated businesses, energy consumers and interested parties of significant events—including public forums and meetings, the publication of decisions, determinations and reports—and opportunities to participate in regulatory processes. Over 100 notices were emailed to energy market participants and interested parties in 2011–12.

The AER consults regularly on consumer issues in the energy sector through forums such as its Consumer Consultative Group and the ACCC's small business and consumer consultative committees.

To support the introduction of the National Energy Retail Law, the AER undertook a range of education and awareness raising initiatives in 2011–12, including:

- consultation, education, training and the development of education materials for a range of small energy customers
- developing targeted information for energy resellers and their customers
- extensive engagement with business stakeholders, including training sessions, presentations, meetings, and written communications on the new laws
- a series of training and information sessions nationally for retailers and consumers groups on the features and function of the new Energy Made Easy website.

## ASSISTANCE TO GOVERNMENTS AND OTHER AGENCIES

Activities included:

- AER staff participated in consultations for the Department of Resources, Energy and Tourism's scoping study on the potential development of an energy information hub (i-hub) and more broadly the impact of consumer and third party access to interval meter data.
- The AER made a submission to a Productivity Commission review of barriers in the regulatory framework that may reduce use of productivity benchmarking by energy networks. The review also examines whether efficient levels of transmission interconnectors are being delivered to support the efficient operation of the National Energy Market.
- AER staff attended a public hearing of the NSW Legislative Assembly Public Accounts Committee to discuss energy network regulation and energy market issues and assist in its inquiry into and report on the comparable economics of energy generation in NSW.
- The AER made a submission to the Expert Panel, established by the Standing Council on Energy and Resources, conducting a legislated review of the limited merits review regime. The regime provides energy network businesses with avenues for appeal against decisions made by the AER in an attempt to deliver the National Electricity Objective and the National Gas Objective.

# ASSISTANCE TO THE AUSTRALIAN ENERGY MARKET COMMISSION

The AER contributed submissions to a range of consultation processes, predominantly those run by the Australian Energy Market Commission (AEMC). Key consultation processes to which the AER made submissions included:

## Gas network definition of services

- The AER submitted a rule change proposal to the AEMC on changes to the definition of a reference and rebateable service to better promote the efficiency of uptake and utilisation of pipeline services. The AER made a submission on 27 April 2012 to the AEMC's Draft Rule Determination.

## Network regulation

- The AER submitted a rule change proposal to the AEMC on the economic regulation of network service providers to propose changes to Chapters 6 and 6A of the National Electricity Rules to better promote efficient investment in and use of electricity services for the long-term interests of consumers.
- The AER Chairman, Mr Andrew Reeves, presented at a public forum held by the AEMC in November 2011 and the AER made further submissions to the AEMC throughout 2012 during this consultation process.

## Market power

- AER staff made a presentation at a stakeholder forum held by the AEMC in October 2011 and made submissions at all stages of the review. The rule change proposal submitted by Major Energy Users Incorporated seeks to mitigate the use of generator market power in the National Energy Market.

## Transmission framework

- The AER made a further submission to the AEMC's review of the electricity transmission frameworks. The purpose of the review is to assess whether changes are required to the existing frameworks to ensure the efficient investment, operation and delivery of electricity transmission services.

## Power of Choice Review

- The AER has been involved in the AEMC's consultation on its Power of Choice review, including attending workgroup meetings and making written submissions. The Power of Choice review aims to identify barriers or disincentives in the National Electricity Rules that inhibit efficient Demand Side Participation (DSP) in the NEM.

## Energy market arrangements—electric and gas vehicles

- The AER made a submission to the AEMC's review of energy market arrangements for electric and gas vehicles. The purpose of the review is to provide advice on energy market issues that may arise from the potential uptake of electric and gas vehicles.

## Cost pass through arrangements

- The AER made a submission to the AEMC on a rule change proposal for network businesses related to cost pass through arrangements in chapter 6 and chapter 6A of the National Electricity Rules. The rule change proposal submitted by Grid Australia seeks amongst other things to achieve consistency in the application of cost pass through provisions in the rules for electricity transmission and distribution businesses.

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# Water

## Measures:

- Reasonable access terms and conditions (including prices) determined for nationally significant infrastructure services in a timely and transparent manner after appropriate consultation with stakeholders
- Industry-specific laws (technical, pro-competitive, consumer protection) monitored and enforced in a transparent and consistent way
- Prices and quality of particular goods and services monitored and reported on to provide relevant information to the community about the effects of market conditions
- Relevant information disseminated to assist stakeholders in understanding the regulatory frameworks and the structure and operation of infrastructure markets so that they can more effectively engage in the regulatory process
- Timely advice provided to governments and policy agencies on how efficient regulatory outcomes and competitive, well-functioning markets can be achieved

The *Water Act 2007* provides for regulatory arrangements to address the sustainability and management of water resources in the Murray-Darling Basin.

The ACCC is responsible for monitoring regulated charges as well as monitoring and enforcing compliance with the Commonwealth Water Rules made under the Water Act, specifically the:

- Water Market Rules 2009 (WMR)
- Water Charge (Termination Fees) Rules 2009 (WCTFR)
- Water Charge (Infrastructure) Rules 2010 (WCIR)
- Water Charge (Planning and Management Information) Rules 2010 (WCPMIR).

The Commonwealth Water Rules aim to free up water markets by reducing barriers to trade faced by irrigators, and to promote the economically efficient use of water resources and infrastructure assets.

The WMR facilitate irrigators' ability to transform their irrigation right into a separately held water access entitlement. The WCTFR regulate the maximum termination fees that can be imposed on irrigators terminating their access to the irrigation network. The WCIR and the WCPMIR aim to increase the level of pricing and investment transparency for irrigators by requiring operators and governments to publish information about their charges.

During 2011–12, further elements of the WCIR came into effect. The WCIR require 'Tier 2' larger and medium sized operators (Murrumbidgee Irrigation Limited, Murray Irrigation Limited, Coleambally Irrigation Co-operative Limited, Central Irrigation Trust and SunWater) to consult on and develop Network Service Plans (NSPs). An NSP, among other things, outlines proposed changes to network infrastructure, major capital and recurrent expenditures and prices over a five-year period. The prudence and efficiency of the NSPs will be independently reviewed (at no cost to the operators) and the findings of the reviews will be provided to the tier 2 operators and their customers.

The ACCC continues to monitor and enforce compliance with the Commonwealth Water Rules, while providing further guidance to infrastructure operators and government agencies to assist with compliance (see Enforcing industry specific laws, page 115).

In April 2012, the ACCC released its second Water Monitoring Report, providing data and analysis on regulated charges, transformation and termination of water entitlements, and compliance with the Commonwealth Water Rules (see Monitoring prices, page 115).

During 2011–12, the ACCC provided ongoing assistance to the Murray-Darling Basin Authority (MDBA) for the development of water trading rules, under section 42 of the Water Act.

## MONITORING PRICES

Under the Water Act, the ACCC monitors regulated water charges, transformation arrangements and compliance with the Commonwealth Water Rules across the Murray-Darling Basin (MDB).

The ACCC provided its second Water Monitoring Report to the Minister for Sustainability, Environment, Water, Population and Communities in March 2012 and released the report publicly in April 2012. The report set out the ACCC's findings on regulated water charges, transformation arrangements and rule compliance for 2010–11, and examined the impact of the recent reform program on water markets and water infrastructure more generally.

In the Water Monitoring Report the ACCC made the following observations:

- Water charges for irrigation services are generally stable, and while there is variation between water service providers, the ACCC estimated that on average charges increased by approximately five per cent across the MDB in 2010–11.
- ACCC monitoring shows that while water service providers in the MDB are largely complying with the Commonwealth Water Rules, and there has been a reduction in the number of complaints received by the ACCC regarding compliance, minor breaches of the rules are still occurring.
- Irrigators are using the flexibility provided by water markets to maximise the value of their water assets, trading their water or using it for farming depending on market and climatic conditions. Also, fewer irrigators terminated their access to irrigation infrastructure in 2010–11 compared to 2009–10.

The ACCC sent out requests for information (RFI) to 36 water supply operators and government agencies in July 2011 to enable it to collect information necessary for compilation of the annual water monitoring report. Four different types of RFIs were sent depending on the size and nature of the reporting entities: standard, condensed, bulk water service provider and water planning and management. The ACCC considered it would be beneficial to provide assistance and have a collaborative approach to assist reporting entities who received the standard and condensed RFIs. The ACCC invited 21 of these reporting entities to meet with ACCC staff, and 17 accepted the invitation and meetings were subsequently held in their offices. The meetings were valuable as they assisted operators to complete their RFIs, and also helped ACCC staff to gain a better understanding of the operators' businesses.

## ENFORCING INDUSTRY SPECIFIC LAWS

Over 2011–12, the ACCC generally observed improved levels of compliance with the Commonwealth Water Rules. However, the ACCC continues to receive inquiries and complaints from irrigators and to identify concerns with the compliance efforts of infrastructure operators under the Water Market Rules 2009 (WMR) and Water Charge (Termination Fees) Rules 2009 (WCTFR). In the course of 2011–12, the ACCC agreed to the administrative resolution of a number of investigations into the termination fee and transformation practices of several irrigation infrastructure operators.

The ACCC continues to provide guidance to infrastructure operators to help them comply with the Commonwealth Water Rules. In 2011–12, the ACCC released a revised guide to the WCTFR and a number of guidelines on specific aspects of the Commonwealth Water Rules to help infrastructure operators understand their obligations. Additionally, the ACCC provided tailored guidance information in response to specific requests from infrastructure operators.

On 1 July 2011, the ACCC began monitoring compliance with the Water Charge (Planning and Management Information) Rules 2010 (WCPMIR). These rules require Ministers, government departments and water authorities to publish information for charges they determine that recover the costs of water planning and management activities. The ACCC will comment on compliance with these rules in the 2011–12 Water Monitoring Report.

The ACCC provided responses to ministerial and public correspondence within agreed timeframes.



## ACCESS TERMS, CONDITIONS AND PRICES

The Water Charge (Infrastructure) Rules 2010 (WCIR) enable the ACCC to make determinations (or accredit arrangements for a state regulator to make determinations) of regulated water charges for all tier 3 infrastructure operators in the Murray-Darling Basin. Tier 3 operators are identified as non-member owned operators that provide services in relation to more than 250 GL of water entitlement. Regulated water charges are required to contribute to achieving the water charging objectives (schedule 2 Part 2) and water charging principles (schedule 2 Part 3) established under the Water Act.

Building on the water charging objectives and principles contained in the Water Act, the ACCC has prepared two guidelines to assist accredited regulators and the ACCC in conducting a price review:

- A guide to the Water Charge (Infrastructure) Rules: Pricing application for Part 6 operators—which sets out the recommended contents of a pricing application. Broadly, the guide indicates that a pricing application should be sufficiently clear and detailed to enable the regulator to assess the relative merits of the proposed regulated charges and the underlying costs on which the proposed charges are based.
- Pricing principles for price approvals and determinations under the Water Charge (Infrastructure) Rules 2010—which sets out the methodology that will be followed by the regulator in conducting a price determination under the WCIR. The principles mainly relate to the determination of the costs on which regulated charges are based.

The Tier 3 rules in the WCIR provide for the approval or determination of regulated water charges levied by large non-member-owned operators. Approvals or determinations for Tier 3 operators are to be undertaken by either the ACCC or an accredited state regulator. In February 2012 arrangements for the Essential Services Commission of Victoria (ESCV) to approve or determine rural water infrastructure charges for the Victorian Tier 3 operators, Goulburn-Murray Water and Lower Murray Water, were accredited by the ACCC under the WCIR. Prices determined by ESCV under the accreditation arrangements will apply to Goulburn-Murray Water and Lower Murray Water from 1 July 2013.

The NSW Government has not sought accreditation of arrangements to allow for the NSW infrastructure regulator (IPART) to determine the charges of Tier 3 operators. Consequently the ACCC will determine State Water's regulated water charges from the end of the current price period on 30 June 2014.

## TIMELY ADVICE TO GOVERNMENT AND AGENCIES

During 2011–12, the ACCC provided ongoing assistance to the MDBA for the development of water trading rules, under section 42 of the Water Act. The water trading rules will form part of the Basin Plan being developed by the MDBA. In November 2011 the MDBA released its proposed (draft) Basin Plan for public consultation. In May 2012, the MDBA released a revised draft for consideration by the Murray-Darling Basin Ministerial Council. ACCC staff participated in the MDBA's consultation meetings and assisted the MDBA in responding to stakeholder comments.

The ACCC also provided assistance to the MDBA in developing its approach to monitoring compliance with, and enforcing, the water trading rules. While the ACCC is responsible for providing advice to the MDBA on the preparation of the water trading rules, the MDBA is the enforcement agency for the water trading rules under the Water Act.

The ACCC also assisted the Department of Sustainability, Environment, Water, Population and Communities to respond to concerns raised by infrastructure operators about the interaction of the water buyback tender requirements with the WMR.

## INFORMING STAKEHOLDERS

In December 2011, the ACCC released an updated version of *A guide to the water charge (termination) fees rules*. In May and June 2012, the ACCC also released guidelines on specific aspects of the Commonwealth Water Rules as part of a series on *Compliance with the Water Rules: Information for Irrigation Infrastructure Operators*. The guidance materials are available on the ACCC's website.

In February 2012, the ACCC published on its website notice of its decision, and related conditions, to accredit arrangements for the ESCV to determine regulated charges of relevant water infrastructure operators in Victoria.

In March 2012, the ACCC provided the Minister with the second *Water Monitoring Report*, which was publicly released on 26 April 2012.

The ACCC's website provides access to advice, guides and brochures prepared by the ACCC to help stakeholders understand and comply with the Commonwealth Water Rules, and other reports and updates.

The ACCC has also undertaken outreach activities to help infrastructure operators and other interested parties to understand the Commonwealth Water Rules, including:

- face-to-face meetings with a range of water infrastructure operators across the MDB through a consultation road show for the ACCC's *Water Monitoring Report*
- hosting information sessions for legal and other advisors that operate in the water industry in the MDB (local law firms, government agencies and water brokers).

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## Fuel

### Measures:

- Prices and quality of particular goods and services monitored and reported on to provide relevant information to the community about the effects of market conditions
- Relevant information disseminated to assist stakeholders in understanding the regulatory frameworks and the structure and operation of infrastructure markets so that they can more effectively engage in the regulatory process
- Timely advice provided to governments and policy agencies on how efficient regulatory outcomes and competitive, well-functioning markets can be achieved

The ACCC formally monitors the petrol industry under Part VIIA of the *Competition and Consumer Act 2010*.

These monitoring activities enable the ACCC to keep abreast of developments in the market and provide briefings and advice to the government and the public. Monitoring reports are available on the ACCC's website.

## PRICE MONITORING

The ACCC continued its formal monitoring of the petroleum industry under a direction from the Minister to monitor the prices, costs and profits of unleaded petrol products.

A report provided to the Minister in December 2011 included new chapters on the evolution of current industry structure and international perspectives on petrol pricing. The report found that Australian retail petrol prices closely followed the international benchmark prices of refined petrol (Singapore Mogas 95 Unleaded). The report also provided detailed analysis of the regular retail petrol price cycles that are evident in the larger cities. In the report the ACCC expressed its concern about the level of coordination apparent in the price cycle and stated that it is analysing the likely effects of this behaviour on outcomes for consumers. The report also found that demand for ethanol continued to grow, spurred by the NSW mandate. Other key findings of the 2011 petrol monitoring report include:

- Overall the ACCC did not find evidence of excessive profits in the Australian downstream petrol industry. It estimated that net profit to the petrol companies on each litre of petrol sold was around 2.2 cents. Other profit measures such as return on assets are comparable to other Australian manufacturing industries and petrol industries in other countries.
- Pre-tax prices are consistent with prices in other developed countries.
- Prices inclusive of tax are the fourth lowest in the OECD, due to comparatively lower taxes in Australia.
- Regional prices tend to be higher than in large capital cities. This generally reflects higher costs and lower levels of competition in the smaller regional markets.

In May 2011 the government directed the ACCC to undertake formal monitoring for a further 12 months and report by no later than 17 December 2012.

Ongoing monitoring of fuel prices covers:

- retail prices of unleaded petrol (including regular and premium unleaded petrol and E10 petrol), diesel and automotive liquefied petroleum gas (LPG) in all capital cities and around 180 regional locations
- movements in the international benchmark prices for the above fuels, international crude oil prices, published wholesale prices, the price differential between E10 petrol and regular unleaded petrol, and the price differential between capital cities and regional locations
- ethanol supply and pricing.

### *Did you know?*

The ACCC has estimated that net profit to the petrol companies on petrol products has averaged around 1.7 cents per litre (cpl) over the past nine years. In 2010–11 net profit to the petrol companies was around 2.2 cpl on petrol products.

## Petrol prices

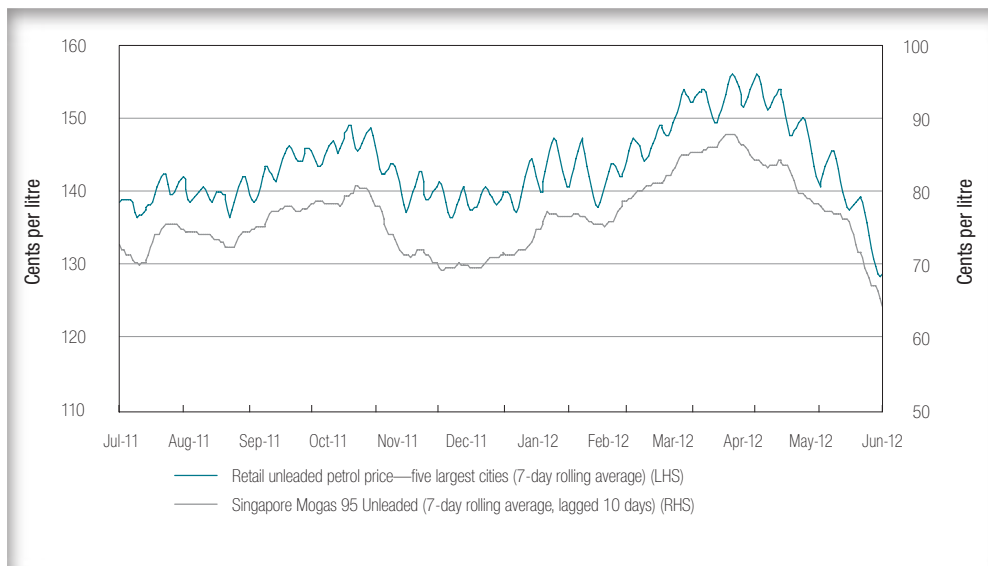
ACCC monitoring of regular unleaded petrol prices across the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) in 2011–12 indicated that average retail prices increased between July and October 2011 (see Figure 3.12). They subsequently decreased in November and December 2011 before increasing to a yearly high of 152.8 cpl in April 2012 (a level last experienced in September 2008). Subsequently, prices decreased by over 20 cpl to be 131.2 cpl (a yearly low) at the end of June 2012.

The average price in 2011–12 was 142.8 cpl, compared with 131.7 cpl in 2010–11. On a monthly basis, retail prices ranged from a low of around 138 cpl in June 2012 to a high of around 151 cpl in April 2012.

Movements in domestic retail petrol prices in 2011–12 were primarily influenced by movements in international refined petrol prices (Singapore Mogas 95 Unleaded) and the Australia/US dollar exchange rate.

International petrol prices increased for much of the year, influenced by tight crude oil and refined petrol supplies and geopolitical tensions in the Middle East. The decreases in international prices in late 2011, and May and June 2012, were due to economic concerns over Greece and other parts of Europe, and an easing of demand for petroleum products.

**Figure 3.6: Regular unleaded petrol price movements, 2011–12**



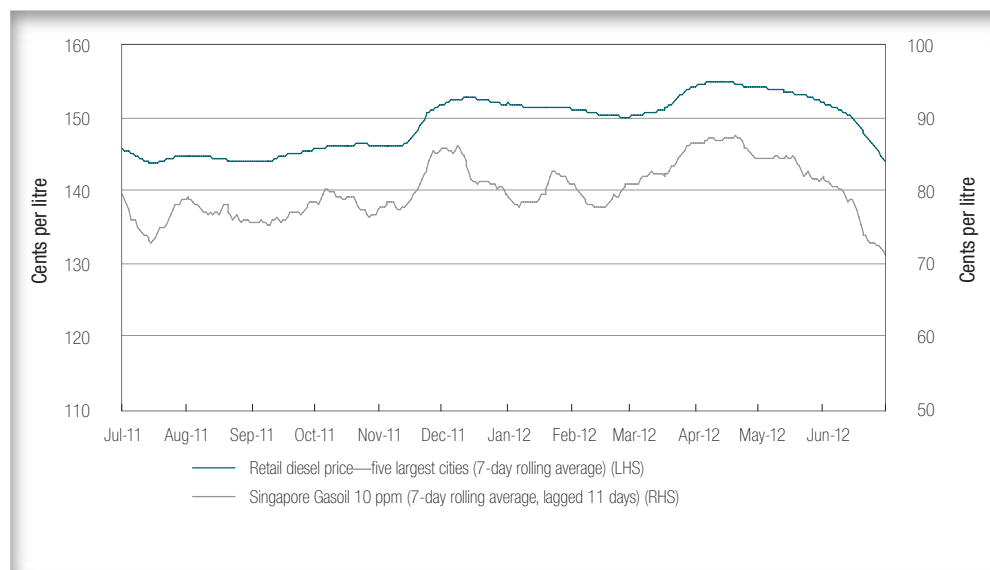
Source: ACCC calculations based on Informed Sources, Platts and RBA data

## Diesel prices

Average retail diesel prices across the five largest cities were broadly stable for much of 2011–12, with increases in November 2011 and March 2012, and a steady decrease between April and June 2012 (see Figure 3.13). Monthly average diesel prices ranged from a low of around 144 cpl in August 2011 to a high of around 152 cpl in April 2012. Diesel prices in Australia broadly followed movements in the relevant international refined diesel price (Singapore Gasoil 10 parts per million sulphur content). However, they tended not to move up or down as much as international prices in the short run.

The average retail diesel price in the five largest cities in 2011–12 was 147.9 cpl, which was 11.6 cpl higher than the average price in 2010–11.

Figure 3.7: Diesel price movements, 2011–12



Source: ACCC calculations based on Informed Sources, Platts and RBA data

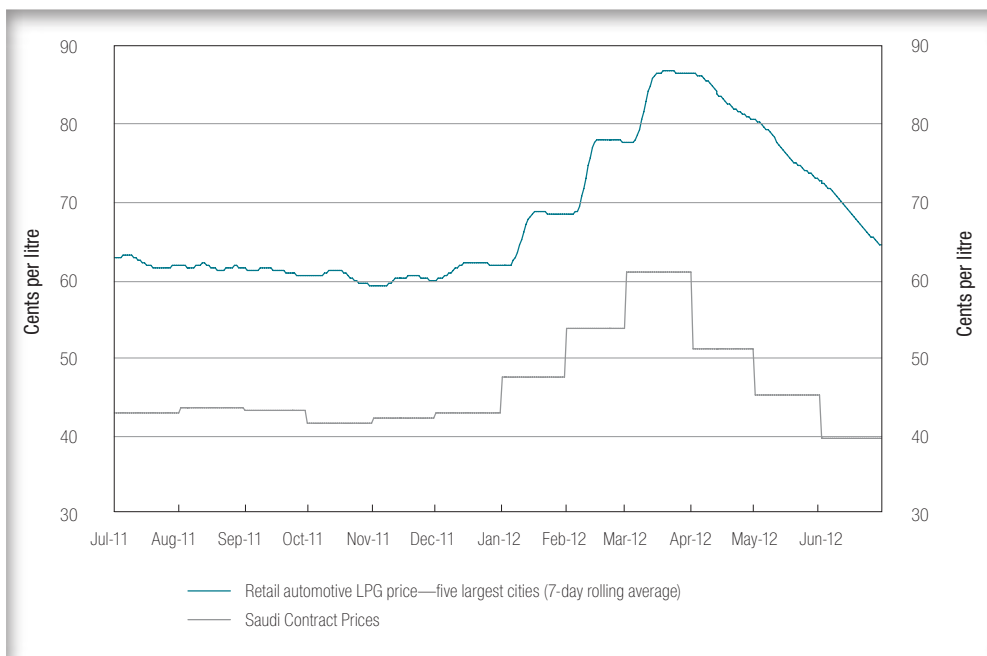
## Automotive LPG prices

Average retail automotive LPG prices across the five largest cities in 2011–12 were stable for the first half of the year before increasing sharply between January and March 2012 and subsequently decreasing sharply (see Figure 3.14). The average retail price in 2011–12 was 68.5 cpl, compared with 62.6 cpl in 2010–11. Monthly average retail prices ranged from a low of around 60 cpl in November 2011 to a high of around 85 cpl in March 2012.

In December 2011 excise of 2.5 cpl was imposed on retail automotive LPG. The rate of excise increased to 5.0 cpl from 1 July 2012.

The appropriate international benchmarks for automotive LPG in Australia are the Saudi Aramco contract prices for propane and butane, which are issued on the first day of each month. The Saudi international benchmark prices reached an all-time high of 61.2 cpl in March 2012, as a result of high demand for heating fuels and geopolitical tensions in the Middle East. However, demand fell away moving into the Northern Hemisphere summer, and benchmark prices subsequently fell to 39.6 cpl in June.

Figure 3.8: Automotive LPG price movements, 2011–12



Source: ACCC calculations based on Informed Sources, LPG Australia and RBA data.

## INFORMING STAKEHOLDERS

The 2011 Monitoring of the Australian petroleum industry report was released in December 2011 and distributed to key stakeholders and contributors in January/February 2012. This was the fourth report into the industry and is available from the ACCC website along with other ACCC fuel publications.

The fuel pages on the ACCC website ([www.accc.gov.au](http://www.accc.gov.au)) were regularly updated and remain accessible. Pricing information on petrol was updated daily on the ACCC's website. Further information on the effect of the value of the Australian dollar on fuel prices is available on the website. The ACCC also updated its fuel related factsheets and made these available on the ACCC website.

During 2011–12, the ACCC received over 1300 enquiries and complaints about fuel from consumers, many of which related to high prices.

In 2011–12 the ACCC continued with its liaison activities through its Fuel Consultative Committee meetings, which enabled stakeholders in the fuel industry and the ACCC to discuss key issues. The Fuel Consultative Committee met in October 2011 and May 2012.

The ACCC responded to correspondence from members of the public and ministerial correspondence with the majority of queries relating to high prices and petrol prices in regional Australia.

### *Did you know?*

The major determinants of retail petrol prices are the international price of refined petrol and the exchange rate of the Australian dollar against the US dollar.

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# Transport

## Measures:

- Reasonable access terms and conditions (including prices) determined for nationally significant infrastructure services in a timely and transparent manner after appropriate consultation with stakeholders
- Prices and quality of particular goods and services monitored and reported on to provide relevant information to the community about the effects of market conditions
- Relevant information disseminated to assist stakeholders in understanding the regulatory frameworks and the structure and operation of infrastructure markets so that they can more effectively engage in the regulatory process
- Timely advice provided to governments and policy agencies on how efficient regulatory outcomes and competitive, well-functioning markets can be achieved

## AIRPORTS AND AIR SERVICES

### Airport services including car parking

The ACCC monitors the prices, costs and profits relating to the supply of aeronautical services and car parking at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports at the direction of the Australian Government under Part VIIA of the Competition and Consumer Act. The ACCC is also responsible for financial account reporting and quality of service monitoring in relation to those airports under parts 7 and 8 of the *Airports Act 1996*.

The government has directed the ACCC to undertake monitoring due to market power concerns at the airports. The ACCC's Airport Monitoring Reports provide information to the government and the public about the monitored airports' performance that might not otherwise be available. Through its monitoring reports, the ACCC seeks to increase the transparency of the airports' performance to discourage airport operators from increasing prices excessively and providing unsatisfactory service standards. The ACCC's monitoring role does not extend to setting the airports' terms and conditions, such as prices, for the provision of services.

The *Airport Monitoring Report 2010–11* was released in March 2012.

### Aeronautical services

The 2010–11 report shows that the number of passengers passing through the five major airports increased by around 5.8 per cent from the previous year, to around 103.7 million passengers.

A combination of increased passenger numbers and, with the exception of Adelaide Airport, increased average prices, contributed to an increase in total revenue from aeronautical services in 2010–11. Sydney Airport had the highest total aeronautical revenue, while Perth Airport had the greatest growth in total aeronautical revenue.

With the exception of Melbourne Airport, average prices increased by more than unit costs, resulting in an increase in aeronautical operating margins per passenger. Melbourne Airport's unit costs increased by more than average prices due to increased investment in aeronautical services. As a result of this investment, Melbourne Airport's return on aeronautical assets also decreased in 2010–11. For the other airports, returns on aeronautical assets were higher than the previous year.

In relation to the airports' returns on aeronautical assets, the ACCC has observed that the volatility of the airports' returns, which is an indicator of risk, has been significantly lower than that of airlines despite the global financial crisis and a number of natural disasters in recent years. In previous reports, the ACCC observed that the airports' risk and returns on aeronautical assets were partially insulated by airlines. This year's observations provided further support for the observations made in the ACCC's previous reports.



Quality of service ratings for aeronautical services at Melbourne Airport declined from previous years. However, the airport was still rated as satisfactory on average. Quality of service ratings by airlines at Perth and Sydney airports remain a concern.

Airlines' ratings of Sydney Airport's quality of service improved to 'satisfactory' in the most recent period. While this was a positive sign, it followed reports of unsatisfactory service standards over many years which, when considered alongside continually increasing prices and profits, raised cause for concern about the airport's performance. At Perth Airport, airlines rated the quality of service as less than satisfactory for the second year in a row, although the airport was investing and increases in prices and profits had been relatively low.

### *Airport car parking and landside access services*

The 2010–11 report notes that revenue from on-airport car parking increased for all the airports in 2010–11. Melbourne Airport had the highest car parking revenue, while Perth Airport had the greatest growth in car parking revenue. For Adelaide and Sydney airports, the increase in car parking revenue was wholly attributable to an increase in demand as none of their prices changed in 2010–11. For Brisbane, Melbourne and Perth airports, the increase in car parking revenue was attributable to both demand and price increases.

As a result of revenue increasing by a greater rate than operating expenses, operating margins from on-airport car parking increased for all the airports except Brisbane Airport in 2010–11. The decrease in Brisbane Airport's operating margin was driven by cost increases attributable to substantial investment in new car parking facilities.

Revenue from landside access increased at all of the airports in 2010–11. For Brisbane Airport, the increase was due to a combination of increased demand and increased landside access charges. For the other airports, the increase was due wholly to increased demand as landside access charges were unchanged in 2010–11.

### **Airservices Australia price notification**

The provision of terminal navigation (TN), en route navigation (en route) and aviation rescue and fire-fighting (ARFF) services by Airservices Australia is declared under section 95X of the Competition and Consumer Act. This means that, under Part VIIA of the Competition and Consumer Act, Airservices is required to notify the ACCC of proposed price increases in these declared services.

The ACCC's role is to assess Airservices' price notifications, giving particular regard to the statutory criteria set out in subsection 95G(7) of the Competition and Consumer Act, which relate to the promotion of economically efficient investment and employment throughout the economy. The ACCC then decides whether to object or not to the proposed price increases.

Whether or not the ACCC has objected to the proposed price increases, Airservices can legally proceed to implement its proposed prices. However, the ACCC has the option of recommending an inquiry to the relevant Minister where the outcome is perceived to be unsatisfactory.

The ACCC undertook an assessment of three proposals from Airservices in 2011—a draft proposal and two formal price notifications—and one formal price notification in 2012.

## 2011 Price notifications

In March 2011, Airservices provided the ACCC with a draft proposal for a long-term pricing agreement (LTPA) that outlined a path of prices for TN, en route and ARFF services for a five-year period (from 2011 to 2016). The ACCC undertook a detailed assessment of Airservices' draft proposal, including a rigorous public consultation process. The ACCC released a view in July 2011 stating that it had three main concerns with Airservices' draft proposal: prudence of capital expenditure, drivers of efficiency, and rate of return on capital (WACC). The ACCC noted that Airservices would need to address these matters in its formal price notification.

On 22 August 2011, Airservices submitted a formal price notification to the ACCC that addressed two of the three concerns noted by the ACCC. Airservices' formal price notification incorporated commitments to improving consultation on capital expenditure and improving drivers of efficiency through developing key performance indicators. However, the ACCC was not satisfied that its previous concerns regarding WACC had been addressed and released a decision to object to the proposal on 8 September 2011. In particular, Airservices had sought to move away from a methodology for estimating its WACC that the ACCC had previously accepted. As a result, the proposed WACC was too high and Airservices would over-recover the revenue required to cover efficient costs based on its proposed prices.

On 9 September 2011, Airservices submitted a revised price notification to the ACCC that addressed the remaining concerns regarding WACC expressed in the previous decision. The ACCC released its decision to not object to Airservices' proposed prices on 22 September 2011. Airservices' prices for the first year of its LTPA came into effect on 1 October 2011.

In reaching its decision on Airservices' price notification, the ACCC noted that its decision was made only in respect of the first year of Airservices' LTPA and that Airservices would be legally required to submit a price notification before increasing prices for each of the subsequent years of the LTPA. Further, Airservices' progress on its LTPA commitments would be an important consideration by the ACCC in reaching its decision on these subsequent price notifications.

## 2012 Price notification

Airservices submitted the first of its subsequent annual price notifications to the ACCC on 8 June 2012. The price notification proposed price increases for TN and ARFF services from 1 July 2012 that were the same as those outlined in Airservices' LTPA.

In undertaking its assessment of the price notification, the ACCC conducted consultations with a targeted group of stakeholders to test the extent to which Airservices had made reasonable progress on implementing its LTPA commitments, more specifically, its commitments to improving consultation on capital expenditure and improving drivers of efficiency through developing key performance indicators.

Although stakeholders noted that there was scope for further development and improvement, they were also supportive of Airservices' progress to date and noted a range of positive improvements. Stakeholders recognised that it would take time to find the right balance of information and consultation and that Airservices was taking steps in the right direction.

The ACCC was satisfied that Airservices had made sufficient progress on implementing its commitments in the first period of its LTPA to ensure that its prices reflect an efficient cost base and promote an efficient provision and use of services. The ACCC noted that Airservices' ongoing implementation of its commitments would continue to be important for the assessment of its future price notifications.

On 27 June 2012 the ACCC released a decision to not object to Airservices' proposed price increases, which take effect from 1 July 2012.

# STEVEDORING AND SHIPPING

## Container stevedoring monitoring

The ACCC monitors the Australian container stevedoring industry at the direction of the Treasurer under Part VIIA of the Competition and Consumer Act. The ACCC is required to monitor prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney. Container stevedoring involves the lifting of shipping containers on and off ships.

The ACCC releases an annual container stevedoring monitoring report. The ACCC's container stevedoring monitoring program was established in January 1999 as part of the 1998 waterfront reforms. Major users of the monitoring reports include governments, stevedores, port corporations, shipping line representatives and land transport operators. These reports provide information to the government and wider community about the performance of Australia's container stevedoring industry that might not otherwise be available.

The ACCC's container stevedoring monitoring report for 2010–11 was released in November 2011. The report showed that industry operating performance was affected by increased demand for stevedoring services. At the individual stevedore level, growth in demand during 2010–11 was entirely serviced by DP World and represented a transfer of market share from Patrick to DP World.

Across the industry, unit total costs decreased as a result of higher container volumes. Unit revenues (which are indicative of average prices) were only slightly higher than 2009–10 levels, although this was entirely driven by higher revenues from non-stevedoring services. Industry profitability increased in 2010–11 as a result of higher volumes, higher stevedoring margins and a reduction in the value of the industry's asset base.

Quay-side productivity measures decreased on average across the five mainland container ports. Further incentives for existing stevedores to offer more productive services were needed. Competition is the most effective means of driving productivity in the operation of existing capacity, and the most effective way of driving efficient investment in new capacity.

Capacity expansion plans that provide for new entry were well underway in Brisbane and Sydney, with Hutchison Port Holdings scheduled to commence operations in those locations around 2013. There is a risk that capacity problems could emerge in Melbourne as early as 2015 if demand is higher than anticipated. Since the ACCC's container stevedoring monitoring report was published, the Victorian Government announced plans to re-develop the Port of Melbourne. On 24 April 2012, the Victorian Government announced plans to establish a new container terminal at Webb Dock (due to be operational in 2016) and enhance capacity of existing container terminals at Swanson Dock.

## Shipping

Part X of the Competition and Consumer Act deals with limited exemptions from certain provisions relating to anti-competitive agreements in Part IV of the Act for international liner cargo shipping conferences. The ACCC's role under Part X is to investigate complaints from parties adversely affected by shipping conference agreements and by the conduct of conference lines and non-conference lines with substantial market power. The ACCC can also initiate an investigation. During 2011–12, the ACCC did not complete any formal investigations regarding the conduct of shipping conference agreements.

## Wheat export port terminal services

Wheat (including flour) was Australia's most valuable agricultural export in 2010–11 (worth \$5.5 billion), ahead of even beef and veal (\$4.3 billion) (source: ABARES, *Agricultural commodity statistics 2011*).

Following abolition of the single desk export arrangements, to maintain export accreditation after 1 October 2009, wheat exporters who also own and operate port terminal facilities are required by the *Wheat Export Marketing Act 2008* (WEMA) to pass an access test. This can involve having a port

terminal service access undertaking accepted by the ACCC. Access undertakings are intended to ensure that third party exporters are able to access port terminals, ensuring competition in the market for the export of bulk wheat.

In 2009 the ACCC accepted initial access undertakings from three port operators—Ausbulk (now Vitorra Operations Ltd), Co-operative Bulk Handling (CBH) and GrainCorp Operations Ltd. Building on this framework, the ACCC accepted new access undertakings from GrainCorp on 22 June 2011, and CBH and Vitorra on 28 September 2011. These three undertakings are due to expire on 30 September 2014. In addition, the ACCC accepted an undertaking from Australian Bulk Alliance (ABA), now a wholly owned subsidiary of the Emerald Group Australia, on 28 September 2011. This was ABA's first undertaking and will expire on 30 September 2013. All four access undertaking assessments were completed within the relevant statutory timeframes.

The access undertakings provide standard access terms, conditions and prices (which are intended to account for the interests of infrastructure owners and users and the broader public), including:

- obligations on port operators not to discriminate or hinder access in the provision of port services
- clear and transparent port loading protocols for managing demand for port terminal services
- obligations on port operators to negotiate in good faith with eligible wheat exporters on access to port terminal services
- provision for wheat exporters to seek mediation or arbitration on terms of access in the event of a dispute.

In addition to assessing new undertaking applications, the ACCC has an ongoing role in monitoring compliance with undertakings and assessing any applications to vary undertakings. The ACCC also has a role arbitrate access disputes; however, to date this function has not been required.

As part of its 2011 undertaking, Vitorra must introduce an auction system for the allocation of port terminal capacity. On 17 February 2012, Vitorra began the process of introducing an auction system by lodging an auction variation notice. On 11 April 2012, the ACCC issued an auction objection notice outlining some concerns with Vitorra's proposed auction system. On 9 May 2012, the ACCC consented to variations to Vitorra's undertaking allowing it more time to work on a solution. The ACCC is working with Vitorra and interested parties to develop a revised auction system.

In assessing the wheat access undertakings and variations, the ACCC has made its issues papers and draft and final decision papers available to the public and stakeholders on the ACCC website and through email alerts and media releases. Stakeholders have been engaged in these processes, with 59 submissions in total received as part of the ACCC's processes in assessing the four undertaking applications and Vitorra's auction variation notice.

The Wheat Export Marketing Amendment Bill 2012 before Parliament at 30 June 2012 would remove the ACCC's wheat-specific regulatory role from 1 October 2014. The Bill seeks to implement the recommendations of the Productivity Commission's report on wheat export marketing arrangements and transition the wheat export industry to full deregulation by:

- abolishing the Wheat Export Accreditation Scheme and the Wheat Export Charge on 30 September 2012
- winding up Wheat Exports Australia on 31 December 2012
- removing the access test and associated undertaking requirements for port terminal operators on 30 September 2014 if the industry has developed, and the Minister for Agriculture, Fisheries and Forestry has approved, a voluntary code of conduct governing port access.

If the Bill is passed, on 1 October 2012 the ACCC would take over from Wheat Exports Australia the role of monitoring compliance with the continuous disclosure rules. These rules are part of the access test and require port terminal operators to publish ship loading and booking information.

## RAIL

In June 2011, the ACCC accepted an access undertaking from the Australian Rail Track Corporation (ARTC). The undertaking regulates access to ARTC's leased rail network in the Hunter Valley region of New South Wales. The network is predominantly used to transport export coal from the region's mines to the Port of Newcastle, but it is also used for non-coal freight and domestic coal. The Hunter Valley Coal Chain is the world's largest coal export operation. Coal is New South Wales' top merchandise export in value terms, worth \$14.1 billion in 2010–11 (source: *NSW Minerals Council, Coal specific statistics 2011*).

The undertaking provides for:

- regulation of ARTC's prices consistent with efficiency-promoting pricing principles, incorporating a revenue cap and pricing methodologies for access charges
- a negotiate/arbitrate framework for negotiating access agreements, with the ACCC as arbitrator in the event of an access dispute between ARTC and access seekers
- an indicative access holder agreement, as well as an indicative operator sub-agreement, to set terms and conditions of access
- protocols for the allocation and management of capacity on the network, with a particular emphasis on ensuring the efficient interaction between the rail network and other components of the Hunter Valley export coal chain
- a framework for the investment in and creation of additional capacity on the network.

On 2 December 2011, ARTC submitted to the ACCC a request to vary the undertaking to determine the efficient train configuration, initial indicative service and access charges for the initial indicative service. The variation application is required by the undertaking and represents the first step in optimising the use of Hunter Valley coal chain capacity.

The ACCC consulted with stakeholders on ARTC's proposed variation through a consultation paper released in December 2011 and a position paper setting out its preliminary views in May 2012. The ACCC is currently assessing the submissions provided in response to its position paper and expects to make a final decision soon.

The undertaking also requires ARTC to submit documentation for the purposes of an annual compliance assessment to be conducted by the ACCC. On 1 June 2012 ARTC submitted its annual compliance documentation for the 6 month period from 1 July to 31 December 2011. The ACCC is currently assessing whether ARTC has complied with the obligations set out in the undertaking and will seek industry submissions on ARTC's compliance shortly.

The ACCC also continued to monitor and administer relevant provisions of the ARTC interstate access undertaking accepted in 2008, which facilitates competition by providing access to freight and passenger services on the interstate rail network.

On 6 January 2012, ARTC submitted to the ACCC a request to vary the undertaking to include ARTC's proposed forecast capital expenditure on the interstate network for the period 1 July 2012 to 30 June 2018. ARTC proposed capital expenditure of \$626 million in new investment projects over the period.

After consulting with stakeholders, the ACCC finalised its assessment on 18 April 2012, consenting to ARTC's application to vary the undertaking. In its decision, the ACCC highlighted the importance of effective industry consultation by ARTC during the development and implementation of its capital expenditure program.

## Clearing and settlement of cash equities

In September 2011 the Council of Financial Regulators (CFR) invited the ACCC to participate in a working group to develop analysis on competition in markets for the clearing and settlement of securities. The working group comprises the Australian Securities and Investments Commission (ASIC), the Reserve Bank of Australia (RBA), the Federal Treasury and the ACCC.

The working group developed a discussion paper on competition in the clearing and settlement of the Australian cash equity market. The discussion paper set out a preliminary assessment of and sought comments on the implications of competition in those markets as they related to the responsibilities of the agencies—that is, the effective functioning of markets, financial stability and competition and access.

The discussion paper was released publicly on 15 June 2012, with submissions due on 10 August 2012. The ACCC continues to participate in the working group.

## Australia Post cross-subsidy assessment

The ACCC has three key responsibilities in the regulation of postal services:

- assessing price notifications for Australia Post's reserved services
- inquiring into disputes about the terms and conditions on which Australia Post provides bulk mail services
- monitoring for cross-subsidy between reserved and non-reserved services.

One of the purposes of introducing the record keeping rule powers was to address allegations raised by some competitors of Australia Post that it is unfairly competing by using revenue from its reserved services to cross-subsidise the services it provides in competition with other businesses.

The ACCC scrutinises Australia Post's regulatory accounts and reports annually on whether or not Australia Post is cross-subsidising its competitive services with revenue from its monopoly reserved services.

The ACCC issued its cross subsidy report for the 2010–11 year on 4 May 2012. The report concluded that, consistent with previous years, the regulatory accounts did not show that Australia Post was cross-subsidising its competitive services with revenue from its monopoly services. Rather, the 2010–11 report found Australia Post's competitive services, as a whole, were a source of subsidy.

While certain competitive services may have received a subsidy, the source of that subsidy appears to be Australia Post's other competitive services, rather than its monopoly services.

## Copyright

### LICENCE FEES

Under the *Copyright Act 1968*, the ACCC may join matters as a party in the Copyright Tribunal relating to the price paid by businesses for intellectual property provided by copyright licensing societies.

This year the ACCC was not a party to such Copyright Tribunal proceedings.

# Targets and results for goal 3: Regulating monopoly industries

**Measure:** Reasonable access terms and conditions (including prices) determined for nationally significant infrastructure services in a timely and transparent manner after appropriate consultation with stakeholders.

## TARGETS

Implementation of reasonable terms and conditions of access in arbitral determinations under the telecommunications access regime

Effective access regimes (evidenced by price levels and service delivery standards)

Improvement (to more closely reflect efficient costs) in prices paid by businesses using monopoly services

The ACCC did not make any arbitral determinations under the telecommunications access regime for 2011–12. The ACCC is currently arbitrating 13 access disputes concerning the internal interconnection cable charge paid in connection with Telstra's supply of the ULLS/LSS under the transitional provisions in the CCA.

See 'Reasonable access terms' under communications on page 89.

The AER makes determinations on the efficient expenditure allowance for regulated network businesses. The AER also implements the service target performance incentive schemes for electricity distribution and transmission that provides incentives to maintain and improve reliability of supply while balancing end-users' willingness to pay. See 'Access terms, conditions and prices—annual energy pricing proposals'.

Details of the impacts of the regulatory framework on Water discussed in 'Monitoring Prices' page 115, 'Enforcing industry specific laws' page 115 and 'Access Terms' page 116.

The accepted wheat port terminal services access undertakings provide standard access terms, conditions and prices which consider the interests of infrastructure owners and users and the broader public. At June 2012, there were 26 accredited exporters able to access the facilities of the port operators under these access arrangements.

See 'Reasonable access terms' under communications on page 89.

The AER has developed and implemented aspects of the regulatory framework which provide for continuous incentives for network business to seek cost efficiencies and to maintain or improve service levels for customers.

The ARTC Hunter Valley Access Undertaking contains a financial model which implements a revenue cap to constrain the maximum access revenues ARTC may earn over the term of the access undertaking.

In addition, ARTC's access charges must be set in accordance with the principles and methodologies contained in the financial model, which stipulate that operating expenditure must be incurred on an efficient basis and investments be made on a prudent basis.

Under annual compliance the ACCC may disallow (i) operating expenditure ARTC has incurred inefficiently and (ii) investment which is not prudent.

## RESULTS



## TARGETS

## RESULTS

Robust and accurate regulatory methodology (evidenced by industry acceptance)	<p>See 'Reasonable access terms' under communications on page 89.</p> <p>The AER applied accepted regulatory approaches based on proposals by network businesses in undertaking assessments of network pricing determinations.</p> <p>There were no appeals of the ACCC's regulatory decisions relating to third party access undertakings in 2011–12.</p>
Finalise two gas access arrangement decisions, two electricity revenue determinations and AMI budget approvals or the Victorian DNSPs	<p>The AER released decisions for Amadeus Gas pipeline (gas transmission) and Envestra (gas distribution), Powerlink (electricity transmission) and Aurora (electricity distribution).</p> <p>The AER also released its AMI determination for the five Victorian DNSPs (Jemena, United Energy, SP AusNet, Citipower and Powercor).</p>
Develop and implement new information requirements and a new connections framework for network businesses	The AER issued a connection charge guideline under the forthcoming chapter 5A of the National Electricity Rules for retail customers and a factsheet on the dispute resolution process for customer connections to electricity networks.
Complete annual tariff processes for network businesses	The AER approved pricing proposals for 12 electricity network service providers and approved annual tariff variations for 12 gas network service providers during the reporting period.
Complete access undertakings within statutory timeframes	<p>The AER's access determinations and revenue determinations were completed within statutory timeframes.</p> <p>The ACCC accepted access undertakings from Co-operative Bulk Handling (CBH), Viterra, and Australian Bulk Alliance (ABA) (now a wholly owned subsidiary of the Emerald Group Australia) on 28 September 2011 under Part IIIA of the CCA. The access undertaking assessments were completed within the relevant statutory timeframes. On 18 April 2012, the ACCC consented to a variation of ARTC's Interstate access undertaking to incorporate capital expenditure forecasts for the period 1 July 2012 to 30 June 2018.</p> <p>On 9 May 2012, the ACCC consented to a variation of Viterra's access undertaking to allow it more time to develop an auction system.</p>
Complete price notifications within statutory timeframes	The ACCC assessed three price notifications from Airservices Australia (for proposed increases in prices for its monopoly services) in 2011–12. The assessments were completed within the relevant statutory timeframes.
Complete arbitration determinations within statutory timeframes	The ACCC did not receive an application for an arbitration determination in 2011–12.

**Measure: Industry-specific laws (technical, pro-competitive, consumer protection) monitored and enforced in a transparent and consistent way.**

TARGETS			RESULTS
	Compliance with statutory reporting requirements to the Minister for Broadband, Communications and the Digital Economy	The ACCC has complied with its statutory reporting requirements. See 'Industry-specific laws', under Communications on page 91.	
	Review of declarations of declared services under the telecommunications access regime within statutory timeframes	As no declaration expired during the relevant period, it was not necessary for the ACCC to undertake any reviews.	
	Assistance to the Australian Competition Tribunal and courts in review of any appealed ACCC regulatory decisions under the telecommunications access regime	No ACCC regulatory decisions under the telecommunications access regime were reviewed in 2011–12.	

**Measure: Prices and quality of particular goods and services monitored and reported on to provide relevant information to the community about the effects of market conditions.**

Publish Competition and Consumer Safeguards Report (Division 11 and 12 Report) on an annual basis	Completed. See 'Monitoring prices' under Communications on page 93.
Provide Retail Price Control Report on an annual basis to the Minister	Completed. See 'Monitoring prices' under Communications on page 93.
Publish weekly electricity and gas reports and wholesale market high-price event reports in accordance with statutory timelines; publish <i>State of the Energy Market Report</i>	The AER's weekly energy reports and high-price event reports were prepared and published in accordance with relevant statutory timelines.  The <i>State of the Energy Market Report</i> was published as proposed, with hard copies distributed to key stakeholders and an electronic version available on the AER's website.
Complete Petrol Monitoring Report in order to provide to the Minister on an annual basis	The 2011 ACCC report on the prices, costs and profits of unleaded petrol in Australia was provided to the Minister on 12 December 2011 and released publicly on 14 December 2011.
Provide Container Stevedoring Monitoring Report to Treasurer on an annual basis (October)	The 2011 ACCC Container Stevedoring Monitoring Report was provided to the Treasurer on 31 October 2011 and released publicly on 2 November 2011.
Publish Price Monitoring and Quality of Service Report for the five major airports on an annual basis (March)	The 2011 ACCC Airport Monitoring Report was provided to the Minister on 23 March 2012 and released publicly on 30 March 2012.

**Measure: Relevant information disseminated to assist stakeholders in understanding the regulatory frameworks and the structure and operation of infrastructure markets so that they can more effectively engage in the regulatory process.**

TARGETS		RESULTS
	Timely and accessible regulatory reports, determinations, and issues papers	
		The ACCC's regulatory reports, determinations and discussion/consultation papers were accessible in a timely fashion on the ACCC's website.
		The AER's regulatory reports, determinations and issues papers are accessible in a timely fashion on its website.
	Publish Accounting Separation-Imputation Report and Non-Price KPI Report on a quarterly basis	
		The ACCC published the Accounting Separation—Imputation report and non-price KPI report for the June 2011, September 2011, December 2011 and March 2012 quarters.
	Publish Accounting Separation-Current Cost Accounting Report on a bi-annual basis	
		The ACCC published the Current cost accounting report for the second half and the full year ended 30 June 2011 and the half-year July–December 2011.
	Prepare all guidelines, instruments and the comparator website for the National Energy Customer Framework prior to 30 June 2012	
		The AER prepared guidelines, instruments and the comparator website— <a href="http://www.energymadeeasy.gov.au">www.energymadeeasy.gov.au</a> ahead of commencement of the NECF in the ACT and Tasmania on 1 July 2012.
	Consult with government, industry and consumer groups in preparation for Customer Framework, including by holding three Customer Consultative Group meetings	
		The AER consulted with government (including departments and regulators in participating jurisdictions), industry and consumer groups in preparation for Customer Framework. This was undertaken through formal consultative mechanisms such as the AER Customer Consultative Group and public forums during guideline development, as well as at an individual level on specific issues.
	Provide responses to ministerials within 14 days and public correspondence within 28 days	
		The ACCC and the AER provided timely responses to all ministerial and public correspondence received.
	Publish guidance for stakeholders in relation to Part IIIA of the CCA by targeted function on an annual basis	
		Guidance for stakeholders in relation to the ACCC's roles under the National Access Regime in Part IIIA of the CCA was published in 2011–12 on the ACCC website.

**Measure: Timely advice provided to governments and policy agencies on how efficient regulatory outcomes and competitive, well-functioning markets can be achieved.**

**TARGETS**

Assistance to parliamentary inquiries and government agencies to develop policies and processes

The ACCC and AER have provided extensive and timely assistance to governments and agencies.

Assistance in telecommunications matters are listed in 'Timely assistance to government and agencies' in the communications section on page 95.

The AER made submissions to the Australian Energy Market Commission and Productivity Commission and other organisations and government bodies on issues impacting on the national energy regulatory framework.

It consulted with state governments and jurisdictional regulators on the new national retail framework, participated in industry meetings with the Joint Implementation Group and appeared before the Senate Estimates Committee to answer questions about energy market developments.

The ACCC has provided advice to the Minister and government agencies to assist implementation of the government's water reform agenda. See 'Timely advice to government (and agencies)' under Water on page 116.

The ACCC participated in the Productivity Commission's inquiry into the economic regulation of airport services by making two public submissions, in March and October 2011.

ACCC staff appeared in November 2011 before the Senate Standing Committee on Rural and Regional Affairs and Transport as part of the Committee's inquiry into operational issues in export grain networks.

ACCC staff also appeared as witnesses in May 2012 before the House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry and the Senate Standing Committee on Rural and Regional Affairs and Transport. Both committees were directed to conduct inquiries into the Wheat Export Marketing Amendment Bill 2012.

The ACCC participated in a working group of the Council of Financial Regulators to develop analysis on competition in markets for the clearing and settlement of securities.

**RESULTS**