

## Competition Policy Statement

### Objective

APEC economies will enhance the competitive environment to increase consumer welfare in the Asia-Pacific region, taking into account the benefits and challenges of globalization, developments in the New Economy and the need to bridge the digital divide through better access by ICT, by:

- a. introducing or maintaining effective, adequate and transparent competition policy and/or laws and associated enforcement policies;
- b. promoting cooperation among APEC economies, thereby maximizing, inter alia, the efficient operation of markets, competition among producers and traders, and consumer benefits; and
- c. improving the ability of competition authorities, through enhanced capacity building and technical assistance, to better understand the impact of globalization and the New Economy.

## **Guidelines**

Each APEC economy will:

- a. review its respective competition policy and/or laws and the enforcement thereof taking into account the “APEC Principles to Enhance Competition and Regulatory Reform”;
- b. enforce competition policies and/or laws (including those prohibiting anticompetitive practices that prevent access to ICT and other new technologies), to ensure protection of the competitive process and promotion of consumer welfare, innovation, economic efficiency and open markets;
- c. disclose any pro-competitive efforts undertaken (e.g. enactment of competition laws, whether comprehensive or sectoral);
- d. implement as appropriate technical assistance in regard to policy development, legislative drafting, and the constitution, powers and functions of appropriate enforcement agencies;
- e. establish appropriate cooperation arrangements with other APEC economies, including those intended to address the digital divide; and
- f. undertake additional steps as appropriate to support the development of the New Economy and to ensure the efficient functioning of markets.

## **Collective Actions**

APEC economies will:

- a. gather information and promote dialogue on and study;
  - (i) the objectives, necessity, role and operation of each APEC economy's competition policy and/or laws and administrative procedures, thereby establishing a database on competition policy;
  - (ii) competition policy issues that impact on trade and investment flows in the Asia-Pacific region;
  - (iii) exemptions and exceptions from the coverage of each APEC economy's competition policy and/or laws in an effort to ensure that each is no broader than necessary to achieve a legitimate and explicitly identified objective;

- (iv) areas for technical assistance and the modalities thereof, including exchange and training programs for officials in charge of competition policy, taking into account the availability of resources; and
  - (v) the inter-relationship between competition policy and/or laws and other policies related to trade and investment;
- b. deepen competition policy dialogue between APEC economies and relevant international organizations;
  - c. continue to develop understanding in the APEC business community of competition policy and/or laws and administrative procedures;
  - d. continue to develop an understanding of competition policies and/or laws within their respective governments and within relevant domestic constituencies, thereby fostering a culture of competition;
  - e. encourage cooperation among the competition authorities of APEC economies with regard to information exchange, notification and consultation;
  - f. contribute to the use of trade and competition laws, policies and measures that promote free and open trade, investment and competition;
  - g. encourage all APEC economies to implement the “APEC Principles to Enhance Competition and Regulatory Reform; and
  - h. undertake capacity building programs to assist economies in implementing the “APEC Principles to Enhance Competition and Regulatory Reform”.

The current CAP relating to competition policy can be found in the [Competition Policy Collective Action Plan](#)

#### **Australia’s Approach to Competition Policy in 2004**

Australia has a comprehensive competition policy. Competitive conduct rules are set out in the Trade Practices Act 1974 (an Australian Government law) and the Competition Code (state and territory law). These rules prohibit specific types of anti-competitive conduct, including:

- anti-competitive agreements (eg. price fixing);
- misuse of substantial market power;

- exclusive dealing;
- resale price maintenance; and
- anti-competitive acquisitions.

The competitive conduct rules are administered by an independent, statutory regulator, the Australian Competition and Consumer Commission (ACCC). The ACCC is charged with enforcing the rules, as well as compliance and educational activities. Private action is also available.

Australian competition policy also extends to:

- laws for access to essential facilities;
- laws for price oversight of firms with substantial market power;
- principles for review and reform of anti-competitive regulation;
- principles for structural reform of public monopolies; and
- principles for competitive neutrality between government and privately owned businesses.

While Australia aims as far as possible for a competition law of universal application, the general law is supplemented in some industries by special regimes, for example in the telecommunications, energy and airports sectors.

Australia's competition policy has undergone significant review.

### Australia's Approach to Competition Policy in 2004

Section	Improvements Implemented Since Last IAP	Current Competition Policies / Arrangements	Further Improvements Planned
<p><b>General Policy Framework</b></p>	<p>Modification of Australia's National Competition Policy (NCP) arrangements continued. Water reform arrangements were incorporated into a new National Water Initiative. A newly formed National Water Commission will undertake the 2005 NCP assessment and will have a continuing role in monitoring and review.</p>	<p>The competitive conduct rules cover all business activity in the Australian economy, including government business activity. Exemptions from the majority of these rules may be granted on public benefit grounds on a case by case basis through an administrative process (authorisation) managed by the Australian Competition and Consumer Commission (ACCC). These exemptions are reviewable by the ACCC in certain circumstances and are appealable to the Australian Competition Tribunal.</p> <p>Private action is also available under the Trade Practices Act 1974 (TP Act).</p> <p>Printed and electronic versions of the TP Act are widely available. A summary of the TP Act and the ACCC's enforcement guidelines can be downloaded from the ACCC's website (<a href="http://www.accc.gov.au/">http://www.accc.gov.au/</a>).</p>	<p>The Productivity Commission (PC) will undertake a study on Australian and New Zealand competition and consumer protection regimes.</p> <p>The PC has been directed to report back to the Australian Government within six months (late December 2004). Details of the study can be found on the PC's web site (<a href="http://www.pc.gov.au/study/transtasman/background">http://www.pc.gov.au/study/transtasman/background</a>)</p> <p>.</p>
<p><b>Reviews of Competition Policies and/or Laws</b></p>	<p>The Australian Government and state and territory governments have continued to progress their Legislation Review Schedules.</p>		

**Australia's Approach to Competition Policy in 2004**

<b>Section</b>	<b>Improvements Implemented Since Last IAP</b>	<b>Current Competition Policies / Arrangements</b>	<b>Further Improvements Planned</b>
	<p><b>Trade Practices Act</b></p> <p>The Senate Economics References Committee produced an inquiry report into The effectiveness of the Trade Practices Act 1974 in protecting small business in March 2004. The Australian Government responded to the report on 23 June 2004, announcing a limited number of changes to the competition laws (see <a href="http://www.aph.gov.au/senate/committee/economics_ctte/trade_practices_1974/report/government_response.pdf">http://www.aph.gov.au/senate/committee/economics_ctte/trade_practices_1974/report/government_response.pdf</a>).</p>		<p><b>Trade Practices Act</b></p> <p>Legislation giving effect to the changes recommended by the the Senate Economics References Committee (see Improvements Implemented) will be introduced into the Australian Parliament</p> <p>The Trade Practices Legislation Amendment Bill 2004 was introduced on 24 June 2004. It incorporated the Government's response to the majority of the recommendations arising from the Dawson Review (see <a href="http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/24060400.pdf">http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/24060400.pdf</a>). The Bill lapsed on 31 August 2004 when the Australian Parliament was prorogued in advance of the Federal</p>

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			<p>Election. The legislation will be reintroduced.</p> <hr/> <p><b>COAG Review of National Competition Policy</b></p> <p>In April 2004, the Australian Government asked the PC to inquire into the impact of competition policy reforms undertaken by Australian governments to date, and to identify areas of opportunity for significant gain through further competition reform. The PC will report to the Government in January 2005. The inquiry report is intended to feed into the Council of Australian Governments (COAG) review of NCP, scheduled for completion in September 2005.</p>

**Australia's Approach to Competition Policy in 2004**

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	<p><b>Radiocommunications</b></p> <p>In December 2002, the Australian Government released its response to the recommendations of two reviews, the PC's review of the Radiocommunications Act 1992 (see <a href="http://www.pc.gov.au/inquiry/radiocomms/finalreport/index.html">http://www.pc.gov.au/inquiry/radiocomms/finalreport/index.html</a>) and the Radiocommunications Review Report. The Government accepted 35 of the 47 recommendations contained in the two reports. The reports had evaluated the appropriateness, effectiveness and efficiency of the Radiocommunications Act 1992 and related legislation.</p>		<p><b>Radiocommunications</b></p> <p>The Government is seeking further information on some of the recommendations. In particular, the Government is examining the wider regulatory, budgetary and other implications of the PC recommendation that spectrum licences should have a perpetual nature.</p>

**Australia's Approach to Competition Policy in 2004**

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	<p><b>Energy</b></p> <p>On 20 December 2002, COAG's Independent Review of Energy Market Directions, Towards a truly national and efficient energy market, was released by the Ministerial Council on Energy (MCE). The MCE released its response to the Review on 11 December 2003 and this has been endorsed by COAG. The implementation of an agreed energy market reform program is underway. Key elements include strengthening the quality, timeliness and national character of the governance regime; streamlining and improving the quality of economic regulation; and improving network planning.</p>		

**Australia's Approach to Competition Policy in 2004**

<b>Section</b>	<b>Improvements Implemented Since Last IAP</b>	<b>Current Competition Policies / Arrangements</b>	<b>Further Improvements Planned</b>
	<p><b>Essential Facilities</b></p> <p>In February 2004, following extensive consultations with states and territories, the Australian Government announced its final response to the PC review of Part IIIA of the TP Act. See <a href="http://www.treasurer.gov.au/tsr/content/publications/FinalReport_NationalAccessRegime.asp">http://www.treasurer.gov.au/tsr/content/publications/FinalReport_NationalAccessRegime.asp</a>.</p>	<p><b>Essential Facilities</b></p> <p>Part IIIA of the TP Act provides a legislative regime to facilitate third party access to the services of certain essential facilities of national significance, such as electricity grids or natural gas pipelines. Its object is to encourage competition in related markets.</p> <p>The PC reviewed Part IIIA in 2001. In September 2002, the Australian Government released the report and announced its interim response to the review recommendations.</p> <p>Special regimes are in place for:</p> <ul style="list-style-type: none"> <li>• telecommunications (Part XIC of the TP Act);</li> <li>• gas (a National Code); and</li> <li>• electricity (National Electricity Code).</li> </ul>	<p><b>Essential Facilities</b></p> <p>Legislation to implement the Australian Government's response to the PC review of Part IIIA will be introduced into the Australian Parliament.</p>
	<p><b>Telecommunications</b></p> <p>On 18 February 2004, the Australian Government amended the Customer Service Guarantee (CSG) to enable carriage service providers with a small share of a market for CSG</p>	<p><b>Telecommunications</b></p> <p>In December 2002, the Australian Parliament passed the Telecommunications Competition Act 2002. This legislation was developed in response to the PC report on Telecommunications Competition Regulation.</p> <p>The Telecommunications Competition Act enacted amendments to both Parts XIB and XIC of the TP Act, as</p>	<p><b>Telecommunications</b></p> <p>The Minister for Communications, Information Technology and the Arts has directed the ACCC to review the operation of Telstra's retail price controls. The ACCC</p>

### Australia's Approach to Competition Policy in 2004

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	<p>services to apply for temporary exemptions (up to five years) from the CSG.</p> <p>In June 2004, a review of the operation of the Universal Service Obligation (USO) and Customer Service Guarantee (CSG) was completed as required by section 159A of the Telecommunications (Consumer Protection and Service Standards) Act 1999.</p> <p>The review, which formed part of the Government's response to an independent review of telecommunications in regional Australia, addressed:</p> <ul style="list-style-type: none"> <li>• USO costing and funding;</li> </ul>	<p>well as the Telecommunications Act 1997. It covered measures to:</p> <ul style="list-style-type: none"> <li>• facilitate timely access to basic telecommunications services by: <ul style="list-style-type: none"> <li>○ requiring the regulator to publish benchmark terms and conditions of access; and</li> <li>○ removing the right of merits review in relation to access arbitrations;</li> </ul> </li> <li>• facilitate investment in new telecommunications infrastructure by extending the existing provisions under Part XIC of the TP Act relating to exemptions and undertakings to include services that are not yet declared or supplied;</li> <li>• encourage a more transparent regulatory market by requiring greater transparency of Telstra's wholesale and retail operations; and</li> <li>• effect a number of other changes to the telecommunications competition regime.</li> </ul>	<p>is expected to report on its review in January 2005.</p>

**Australia's Approach to Competition Policy in 2004**

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	<ul style="list-style-type: none"> <li>• provision of USO services to remote indigenous communities;</li> <li>• USO contestability arrangements; and</li> <li>• issues associated with network extension and trenching.</li> </ul> <p>The telecommunications industry regulator, the Australian Communications Authority, completed a review of Australia's pay phone policy.</p>		
	<p><b>Gas</b></p> <p>On 11 June 2004, the PC completed its final report on the review of the Gas Access Regime. The review focused on the appropriateness of an industry specific access regime, the Gas Code's</p>		<p><b>Gas</b></p> <p>The MCE expects to complete its response to the PC report on the Gas Access Regime by December 2004.</p>

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	effect on investment in pipeline networks and the Gas Code's consistency with the National Access Regime.		
		<p><b>Intellectual Property</b></p> <p>Subsection 51(3) of the TP Act provides limited exemptions for conditions of intellectual property (IP) licences and assignments from certain sections of Part IV (Restrictive Trade Practices) of the TP Act.</p>	<p><b>Intellectual Property</b></p> <p>Legislation to amend the TP Act resulting from the Australian Government's response to the review of intellectual property legislation under the Competition Principles Agreement will be introduced into the Australian Parliament.</p>
			<p><b>Financial Markets</b></p> <p>Australia proposes to amend the Bills of Exchange Act 1909 to dematerialise bills of exchange and promissory notes from paper-based documents to electronic instruments. The proposal</p>

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			<p>would take advantage of developments in electronic commerce, reducing costs to business and other investors and facilitating greater use of these instruments.</p>
	<p><b>International Shipping</b></p> <p>In June 2004, the Australian Government announced the early commencement of the scheduled review of Part X of the TP Act.</p>	<p><b>International Shipping</b></p> <p>Part X of the TP Act is the Australian regulatory regime for international liner cargo shipping operations. It describes the conditions under which international liner operators are permitted to form conferences to provide joint liner cargo shipping services for Australian exporters and importers.</p>	<p><b>International Shipping</b></p> <p>The PC will review Part X of the TP Act and report to the Australian Government in December 2004.</p>
<p><b>Competition Institutions (Including Enforcement Agencies)</b></p>	<p>No improvements implemented since the last IAP.</p>	<p>Australia's competitive conduct rules are administered by the ACCC, an independent, statutory regulator. The ACCC is charged with enforcement, compliance and educational activities. In fulfilling its role, the ACCC can reach administrative resolution of matters (including through the acceptance of court enforceable undertakings), or bring civil actions in the Federal Court of Australia. The ACCC's administrative decisions are subject to review by the Administrative Appeals Tribunal (see <a href="http://www.accc.gov.au/content/index.phtml/itemId/3744">http://www.accc.gov.au/content/index.phtml/itemId/3744</a>). Some of the ACCC's</p>	<p>The Australian Government has recommended that the ACCC develop a code of conduct to govern its use of the media, and has, in principle, accepted recommendations designed to increase the accountability of the ACCC.</p> <p>Australia's competition</p>

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		<p>decisions are also subject to review by the Australian Competition Tribunal (see <a href="http://www.fedcourt.gov.au/aboutct/aboutct_admin_other_act.html">http://www.fedcourt.gov.au/aboutct/aboutct_admin_other_act.html</a>).</p> <p>The ACCC publishes guidelines on specific aspects of the law (including administrative procedures) and on its enforcement priorities. Many of these are available on the ACCC's website (see <a href="http://www.accc.gov.au/">http://www.accc.gov.au/</a>).</p> <p>The ACCC is required to publish an annual report, and is subject to scrutiny by the Australian Parliament.</p> <p>The ACCC also maintains a non-statutory public mergers register, a non-statutory public register of enforceable undertakings and has issued public statements of its corporate plan and service charter. Further, the ACCC employs a media strategy to promote transparency, education and compliance.</p> <p>The ACCC promotes compliance with the law through its enforcement activities and by ongoing compliance work, such as promoting awareness and understanding of the TP Act and the ACCC's policies and procedures, co/self-regulation, compliance programs and liaison. For further information see: <a href="http://www.accc.gov.au/content/index.phtml/itemId/3669">http://www.accc.gov.au/content/index.phtml/itemId/3669</a>.</p>	<p>institutions will be assessed against the governance templates agreed by the Australian Government as an outcome from the review of governance of statutory authorities (the Uhrig Review).</p>

**Australia's Approach to Competition Policy in 2004**

Section	Improvements Implemented Since Last IAP	Current Competition Policies / Arrangements	Further Improvements Planned
		<p>Contact the ACCC's Chief Executive Officer, Brian Cassidy (<a href="mailto:brian.cassidy@acc.gov.au">brian.cassidy@acc.gov.au</a>)                      470 Northbourne Avenue                      Dickson ACT 2602                      (PO Box 1199, Dickson ACT 2602)                      Tel: (+61) 2 6243 1111 Fax: (+61) 2 6243 1199</p>	
<p><b>Measures to Deal with Horizontal Restraints</b></p>	<p>The Australian Government has given in-principle acceptance of the Dawson Review's recommendation to introduce criminal sanctions for cartel conduct, subject to a working party resolving a number of problems identified by the Dawson Review in introducing such sanctions into Australian law. In October 2003, the Australian Treasurer established a working party of officials to examine whether criminal penalties for cartel conduct could be introduced. The working</p>	<p>Provisions in Part IV of the TP Act prohibit a variety of anti-competitive agreements and conduct, including:</p> <ul style="list-style-type: none"> <li>• agreements that have the purpose or effect of substantially lessening competition in a market (section 45);</li> <li>• agreements containing an exclusionary provision (subsection 45(2) and section 4D);</li> <li>• agreements containing a price-fixing provision (subsection 45(2) and section 45A); and</li> <li>• secondary boycotts (sections 45D – 45EA).</li> </ul> <p>These rules cover all business activity in the Australian economy, including government business activity. Conduct which satisfies a public benefit test may be exempted from these rules on a case-by-case basis. Information on administrative exemptions granted by the ACCC can be found at:  <a href="http://www.accc.gov.au/content/index.phtml/itemId/259496">http://www.accc.gov.au/content/index.phtml/itemId/259496</a>.</p>	<p>Australia will reintroduce the Trade Practices Legislation Amendment Bill 2004 into the Australian Parliament. In accordance with the recommendations from the Dawson Review, the Bill proposes amendments to replace existing exemptions granted to joint ventures under the TP Act with a broader joint venture defence. It also proposes establishing a notification system to facilitate collective bargaining by small businesses.</p>

**Australia's Approach to Competition Policy in 2004**

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	<p>party has reported to the Treasurer and the Government will respond in due course.</p>	<p>The ACCC has a formal leniency policy to encourage whistle blowers to come forward and expose hard-core cartel activity.</p>	<p>The Bill, which lapsed on 31 August 2004 when the Australian Parliament was prorogued in advance of the federal election, may be found at <a href="http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/24060400.pdf">http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/24060400.pdf</a>.</p>
<p><b>Measures to Deal with Vertical Restraints</b></p>	<p>No improvements implemented since the last IAP.</p>	<p>Section 47 of the TP Act prohibits anti-competitive exclusive dealing arrangements that have the purpose or effect of substantially lessening competition in a relevant market. Unlike other exclusive dealing arrangements, third line forcing arrangements are prohibited outright, that is, without regard to their impact on competition.</p> <p>Under section 48 of the TP Act, suppliers, manufacturers and wholesalers are prohibited from specifying a minimum price below which goods or services may not be resold or advertised for sale.</p> <p>These rules cover all business activity in the Australian economy, including government business activity.</p>	<p>In accordance with the recommendations of the Dawson Review, the Trade Practices Legislation Amendment Bill 2004 proposed that third-line forcing arrangements be treated in the same manner as other forms of exclusive dealing. That is, third line forcing arrangements would only be prohibited if they lessened competition substantially.</p>

**Australia's Approach to Competition Policy in 2004**

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		<p>Arrangements or conduct which satisfies a public benefit test may be exempted from these rules on a case-by-case basis.</p>	<p>The Bill lapsed on 31 August 2004 when the Australian Parliament was prorogued. Legislation proposing these amendments will be reintroduced into the Australian Parliament.</p>
<p><b>Measures to Deal with Abuse of Dominant Position</b></p>	<p>See also Reviews of Competition Policies and/or Laws, above.</p>	<p>Section 46 of the TP Act prohibits a business that has a substantial degree of power in a market from taking advantage of that power for a prohibited purpose.</p> <p>The law of misuse of market power covers all business activity in the Australian economy, including government business activity. No exemptions are available for misuse of market power.</p> <p>Part XIB of the TP Act, dealing with anti-competitive conduct, provides a special regime for telecommunications.</p>	<p>On 23 June 2004, in response to the Senate Economics References Committee inquiry into The effectiveness of the Trade Practices Act 1974 in protecting small businesses, the Australian Government announced its intention to make a limited number of changes to section 46 of the TP Act. These changes would provide some additional guidance to courts in the consideration of predatory pricing cases. The</p>

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			<p>Government also proposes to amend section 46 to ensure it can stop anti-competitive leveraging of market power from one market to another and to ensure arrangements between firms are taken into account in assessing market power.</p>
	<p><b>Prices Surveillance</b></p> <p>In 2003, legislation passed by the Australian Parliament provided that prices surveillance powers that previously operated under the Prices Surveillance Act 1983 (PS Act) would be contained in the TP Act. These powers provide for selective surveillance of, and the holding of inquiries into, the prices of certain goods and services. These amendments are consistent</p>	<p><b>Prices Surveillance</b></p> <p>The Australian Government's price restriction powers that applied under the PS Act are now incorporated into Part VIIA of the TP Act as recommended by the PC's inquiry into the PS Act. The objects clause for Part VIIA of the TP Act provides that prices surveillance will only be applied in those markets where, in the view of the Minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers.</p>	

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	with the PC's review of the PS Act and the Australian Government's response.		
	<p><b>Essential Facilities</b></p> <p>In February 2004, following extensive consultation with States and Territories, the Australian Government announced its final response to the PC's review of Part IIIA of the TP Act. That response is available at <a href="http://www.treasurer.gov.au/tsr/content/publications/FinancialReport_NationalAccessRegime.asp">http://www.treasurer.gov.au/tsr/content/publications/FinancialReport_NationalAccessRegime.asp</a>.</p>	<p><b>Essential Facilities</b></p> <p>Part IIIA of the TP Act provides a legislative regime to facilitate third party access to the services of certain essential facilities of national significance, such as electricity grids or natural gas pipelines. Its object is to encourage competition in related markets.</p> <p>Special regimes are in place for:</p> <ul style="list-style-type: none"> <li>• telecommunications (Part XIC of the TP Act);</li> <li>• gas (a National Code); and</li> <li>• electricity (National Electricity Code).</li> </ul>	<p><b>Essential Facilities</b></p> <p>Legislation to amend Part IIIA will be introduced into the Australian Parliament.</p>
	<p><b>Telecommunications</b></p> <p>The ACCC implemented regulatory accounting separation for Telstra. Accounting separation requires the preparation</p>	<p><b>Telecommunications</b></p> <p>Legislation is in place to facilitate more timely and effective access to basic telecommunication services under the telecommunications specific access regime (see <a href="http://www.dcita.gov.au">http://www.dcita.gov.au</a>).</p>	

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	<p>and publication of regulatory accounts to provide transparency to the regulator and the market. These accounts will assist in determining whether Telstra is unfairly discriminating between the price it charges competitors for wholesale services and the price it charges its own retail arm. Similar transparency is provided in relation to non-price terms and conditions of access.</p>		
	<p><b>Airports</b></p> <p>In 2003, section 192 of the Airports Act 1996 was repealed in response to the PC review of Airport Price Regulation.</p> <p>The Government has directed the ACCC to undertake monitoring of the supply of aeronautical and</p>	<p><b>Airports</b></p> <p>The PC's 2002 report on price regulation of airport services found insufficient grounds for an airport-specific access regime, as the general access provisions available under Part IIIA of the TP Act (and Part IV) provide sufficient safeguards for those seeking access to airport facilities.</p>	

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	<p>aeronautical-related services at Brisbane, Melbourne, Perth, Sydney (Kingsford Smith), Adelaide, Canberra and Darwin airports. This replaces the CPI-X price cap regime that previously applied at Brisbane, Melbourne, Perth, Adelaide, Canberra and Darwin airports, and the system of prices notification applying to Sydney (Kingsford Smith) airport.</p>		
<p><b>Measures to Deal with Mergers and Acquisitions</b></p>	<p>No improvements implemented since the last IAP.</p>	<p>Section 50 of the TP Act prohibits mergers or acquisitions which would have the effect or likely effect of substantially lessening competition in a substantial market for goods or services.</p> <p>The merger rules cover all business activity in the Australian economy, including government business activity. Conduct may be exempted from these rules on a case-by-case basis.</p> <p>Information about the ACCC's mergers work is available</p>	<p>In accordance with the Dawson Review recommendations, the Trade Practices Legislation Amendment Bill 2004, which was introduced into the Australian Parliament on 24 June 2004, proposed a voluntary formal clearance process for mergers. The process</p>

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		<p>on its website at <a href="http://www.accc.gov.au/content/index.phtml/itemId/6204/romItemid/3669">http://www.accc.gov.au/content/index.phtml/itemId/6204/romItemid/3669</a>.</p>	<p>would work in parallel with the existing informal clearance process operated by the ACCC. The Bill also proposed that applications for authorisation of mergers be made directly to the Australian Competition Tribunal.</p> <p>The Bill lapsed on 31 August 2004 when the Australian Parliament was prorogued. Legislation proposing these amendments will be reintroduced into the Australian Parliament.</p> <p>The ACCC is adopting principles recommended by the International Competition Network (ICN) relating to accountability, transparency, efficiency and timeliness. These will be applicable to the</p>

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<b>Section</b>	<b>Improvements Implemented Since Last IAP</b>	<b>Current Competition Policies / Arrangements</b>	<b>Further Improvements Planned</b>
			informal merger clearance system which is currently in operation. These principles are also evident in the voluntary formal merger clearance system, recommended by the Dawson Review and contained in the Trade Practices Legislation Amendment Bill 2004.
<b>Other Issues Addressed by Competition Policy</b>	See Chapter 10 on Regulatory Reform.	See Chapter 10 on Regulatory Reform.	See Chapter 10 on Regulatory Reform.
<b>Co-operation Arrangements with other Member Economies</b>	<p>Australia provided technical assistance to Thailand by conducting a five day basic investigation course for 20 officials in Bangkok.</p> <p>Australia conducted a staff exchange program with the relevant agency in Chinese</p>	<p>A Treaty on Mutual Anti-trust Enforcement Assistance exists between the Australian Government and the Government of the United States.</p> <p>The ACCC has agency level co-operation arrangements in place with the Korean Fair Trade Commission, New Zealand Commerce Commission, the Fair Trade Commission of Chinese Taipei and the Consumer Affairs Council of Papua New Guinea.</p>	<p>Australia will continue to provide assistance in regard to policy development and technical issues to APEC economies as requested.</p> <p>As appropriate, and subject to confidentiality</p>

**Australia's Approach to Competition Policy in 2004**

<b>Section</b>	<b>Improvements Implemented Since Last IAP</b>	<b>Current Competition Policies / Arrangements</b>	<b>Further Improvements Planned</b>
	<p>Taipei, engaged in information exchange and/or enforcement co-operation with various agencies, and hosted a number of study visits by delegations from the following APEC economies: Indonesia, Japan, Korea, Malaysia, New Zealand, Papua New Guinea, Philippines, Singapore, and the United States.</p>	<p>The ACCC has a tripartite agency level arrangement in place with the Canadian Competition Bureau, the New Zealand Commerce Commission and the Taiwan Fair Trade Commission.</p> <p>The ACCC has ongoing staff exchange programs in place with Canada, New Zealand and Chinese Taipei.</p> <p>For further information on the ACCC's international activities, please see <a href="http://www.accc.gov.au/content/index.phtml/itemId/255432">http://www.accc.gov.au/content/index.phtml/itemId/255432</a>.</p>	<p>restrictions, Australia will engage in information exchange and enforcement co-operation with other agencies in APEC economies, particularly in relation to global mergers and global cartels.</p> <p>Australia will pursue further agency bilateral agreements, study visits, liaison meetings and staff exchange programs as appropriate.</p> <p>Australia will enter into further mutual assistance agreements with APEC member economies as appropriate.</p>
<p><b>Activities with other APEC Economies and in other International Fora</b></p>	<p>Australia attended a series of APEC events in Chile during May 2004. Australia presented a paper on regulatory impact analysis</p>	<p>Australia continues to participate actively in the competition law and policy-related activities of APEC, the OECD, the WTO and the ICN.</p>	<p>Australia will maintain a high level of participation in international fora.</p>

**Australia's Approach to Competition Policy in 2004**

<b>Section</b>	<b>Improvements Implemented Since Last IAP</b>	<b>Current Competition Policies / Arrangements</b>	<b>Further Improvements Planned</b>
	<p>in the sixth workshop of the APEC-OECD Cooperative Initiative on Regulatory Reform. Australia chaired a seminar on Best Practice in the Enforcement of Competition Policy.</p> <p>In July-August 2003, Australia hosted its fourth conference on key regulatory issues of national significance, focusing on "Regulation, Industry Structure and Market Power".</p>		
<b>Collective Actions</b>	<p>Australia continued to participate in the work of the Competition Policy and Deregulation Working Group.</p>	<p>Australia actively participates in, and contributes to, the work on competition issues within APEC.</p> <p>Australia seeks to encourage the exchange of information on developments between APEC economies and develop a forum for dialogue to deepen understanding of competition policy within APEC.</p>	<p>Australia will continue to participate in the work of the Competition Policy and Deregulation Working Group.</p>

## Improvements in Australia's Approach to Competition Policy since 1996

Section	Position at Base Year (1996)	Cumulative Improvements Implemented to Date
<p><b>General Policy Position</b></p>	<p>The competitive conduct rules are set out in the TP Act, an Australian Government law, and the Competition Code (state and territory legislation). These rules prohibit specific types of anti-competitive conduct, including:</p> <ul style="list-style-type: none"> <li>• anti-competitive agreements (eg price fixing);</li> <li>• misuse of substantial market power;</li> <li>• exclusive dealing;</li> <li>• resale price maintenance; and</li> <li>• anti-competitive acquisitions.</li> </ul> <p>Australian competition policy also extends to:</p> <ul style="list-style-type: none"> <li>• laws for access to essential facilities;</li> <li>• laws for price oversight of firms with substantial market power;</li> <li>• principles for review and reform of anti-competitive regulation;</li> <li>• principles for structural reform of public monopolies; and</li> <li>• principles for competitive neutrality between government and privately owned businesses.</li> </ul> <p>The TP Act, enacted in 1974, replaced even earlier legislation also aimed at protecting the community from the costs of anti-competitive behaviour.</p>	<p>The competitive conduct rules were extended to cover all business activity in the Australian economy, including government business activity (see 1996 IAP).</p> <p>NCP arrangements have continued to be modified. Water reform arrangements have been incorporated into a new National Water Initiative. A newly formed National Water Commission will undertake the 2005 NCP assessment and will have a continuing monitoring and review role (2004 IAP).</p>
<p><b>Reviews of Competition Policies and/or Laws</b></p>	<p>In October 1992, the Australian Government established a committee (the Hilmer Committee) to</p>	<p>The Australian Senate held an inquiry into the socio-economic consequences of NCP (1999 IAP). The</p>

## Improvements in Australia's Approach to Competition Policy since 1996

Section	Position at Base Year (1996)	Cumulative Improvements Implemented to Date
	<p>inquire into a national competition policy, following the agreement between the Australian Government and the state and territory governments on the need for such a policy. At the April 1995 COAG meeting, the governments agreed on a package of reforms based largely on the recommendations of the Hilmer Committee.</p> <p>A Treasury publication, The Socio-Economic Consequences of the National Competition Policy provides further information, and is available at the following site: <a href="http://www.treasury.gov.au/contentitem.asp?pagelD=&amp;ContentID=180">http://www.treasury.gov.au/contentitem.asp?pagelD=&amp;ContentID=180</a>.</p>	<p>Committee reported in February 2000 (see <a href="http://www.aph.gov.au/senate/committee/ncp_ctte/index.htm">http://www.aph.gov.au/senate/committee/ncp_ctte/index.htm</a>).</p> <p>Australia held an inquiry into the impact of NCP on rural and regional Australia (see 1999 IAP). The inquiry report was released in October 1999 (see <a href="http://www.pc.gov.au/inquiry/compol/index.html">http://www.pc.gov.au/inquiry/compol/index.html</a>).</p> <p>The Australian Government responded to the inquiries on socio-economic consequences of NCP and its impact on rural and regional Australia (see 2001 IAP) and to the review of the Prices Surveillance Act 1983 (PS Act) (see 1999 IAP).</p> <p>The Government announced the review of the inter-governmental Conduct Code Agreement, the Competition Principles Agreement and the need for and operation of the National Competition Council (see 1999 IAP).</p> <p>In March 2003, the Government responded to reviews of Parts XIB and XIC of the TP Act which provide a legislative regime for competition in telecommunications. The response can be accessed at <a href="http://www.dcita.gov.au">http://www.dcita.gov.au</a>.</p> <p>The Government responded to a review of Part IIIA of the TP Act (see 2000 IAP).</p>

**Improvements in Australia's Approach to Competition Policy since 1996**

<b>Section</b>	<b>Position at Base Year (1996)</b>	<b>Cumulative Improvements Implemented to Date</b>
		<p>COAG confirmed the importance of NCP in sustaining the competitiveness and flexibility of the Australian economy and contributing to higher living standards. COAG also agreed to several measures to clarify and fine-tune NCP implementation arrangements (see 2000 IAP).</p> <p>Australia enacted the Trade Practices Amendment Act (No. 1) 2001 which introduced amendments to facilitate access for small businesses and consumers to remedies under the TP Act (see 2001 IAP).</p> <p>The Government released and responded to an independent review of the competition provisions of the TP Act and their administration (see 2003 IAP).</p> <p>The most recent amendments to Part X of the TP Act (Trade Practices Amendment (International Liner Cargo Shipping) Act 2000) included increasing the powers of the Minister and the ACCC, introducing provisions for more flexible penalties for breaches of undertakings, and extending to Australian importers the same protection under Part X given to Australian exporters (2004 IAP).</p>
<b>Competition Institutions (Including Enforcement</b>	Australia's competitive conduct rules were administered by an independent, statutory regulator,	No further development of competition institutions or enforcement agencies has been necessary.

**Improvements in Australia's Approach to Competition Policy since 1996**

<b>Section</b>	<b>Position at Base Year (1996)</b>	<b>Cumulative Improvements Implemented to Date</b>
<b>Agencies)</b>	<p>the ACCC.</p> <p>The ACCC was formed in 1995 by the merger of the Trade Practices Commission and the Prices Surveillance Authority.</p> <p>The ACCC is charged with enforcement, compliance and educational activities.</p>	
<b>Measures to Deal with Horizontal Restraints</b>	<p>Provisions in Part IV of the TP Act prohibited a variety of anti-competitive agreements and conduct, including:</p> <ul style="list-style-type: none"> <li>• agreements which had the purpose or effect of substantially lessening competition in a market (section 45);</li> <li>• exclusionary agreements (subsection 45(2)); and</li> <li>• price fixing agreements (section 45A).</li> </ul> <p>These rules covered all business activity in the Australian economy, including government business activity. Conduct may be exempted from these rules on a case-by-case basis.</p>	<p>The ACCC introduced a formal leniency policy to encourage whistle blowers to expose hard core cartel activity (2003 IAP).</p>
<b>Measures to Deal with Vertical Restraints</b>	<p>Section 47 of the TP Act prohibited anti-competitive exclusive dealing which had the purpose or effect of substantially lessening competition in a relevant market.</p> <p>Under section 48 of the TP Act, suppliers,</p>	<p>No further action.</p>

## Improvements in Australia's Approach to Competition Policy since 1996

Section	Position at Base Year (1996)	Cumulative Improvements Implemented to Date
	<p>manufacturers and wholesalers were prohibited from specifying a minimum price below which goods or services may not be resold or advertised for sale.</p> <p>These rules covered all business activity in the Australian economy, including government.</p>	
<p><b>Measures to Deal with Abuse of Dominant Position</b></p>	<p>Section 46 of the TP Act prohibited a business that had a substantial degree of power in a market from taking advantage of that power for a prohibited purpose.</p> <p>Part IIIA of the TP Act was inserted in 1995 to provide a legislative regime to facilitate third party access to the services of certain essential facilities of national significance, such as electricity grids or natural gas pipelines.</p> <p>The PS Act enabled the ACCC, where the Australian Government declares products or services, to examine prices with the objectives of promoting competitive pricing wherever possible and restraining price rises in markets where competition is less than effective. The Government's price restriction powers that applied under the PS Act have now been incorporated into Part VIIA of the TP Act as recommended by the PC's inquiry into the PS Act.</p>	<p>The National Electricity Code was authorised in 1997.</p> <p>The Gas Code was established in 1997.</p> <p>Parts XIB and XIC of the TP Act (which provide a special regime for competition in telecommunications) were inserted in 1997.</p> <p>A new Part VB was inserted into the TP Act to prohibit price exploitation or excessive profit-taking resulting from the implementation of the New Tax System (see 2000 IAP).</p> <p>In 2003, legislation passed by the Australian Parliament provided that prices surveillance powers that previously operated under the PS Act would be contained in the TP Act. These powers provide for selective surveillance of, and the holding of inquiries into, the prices of certain goods and services. These amendments are consistent with the PC's review of the PS Act and the Government's response which</p>

### Improvements in Australia's Approach to Competition Policy since 1996

Section	Position at Base Year (1996)	Cumulative Improvements Implemented to Date
		were released on 20 August 2002 (2004 IAP).
<b>Measures to Deal with Mergers and Acquisitions</b>	Section 50 of the TP Act prohibits mergers or acquisitions which would have the effect or likely effect of substantially lessening competition in a substantial market for goods or services.	The Trade Practices Amendment Act (No. 1) 2001 amended the TP Act to include 'a region in Australia' in the definition of 'market' for the purposes of the merger control test.
<b>Other Issues Addressed by Competition Polic</b>	See Chapter 10 on Regulatory Review.	See Chapter 10 on Regulatory Review.
<b>Co-operation Arrangements with other Member Economies</b>	Australia signed an inter-agency cooperation agreement with New Zealand in July 1994.	Australia subsequently signed agreements with the following economies: <ul style="list-style-type: none"> <li>• Chinese Taipei – agency arrangement signed in September 1996;</li> <li>• United States – treaty signed in April 1999;</li> <li>• Papua New Guinea – agency arrangement signed in November 1999;</li> <li>• Australia/Canada/New Zealand – tripartite agency arrangement signed in October 2000;</li> <li>• Australia/New Zealand/Chinese Taipei – tripartite agency arrangements signed in July 2002; and</li> <li>• Korea – agency arrangement signed in September 2002.</li> </ul>

**Improvements in Australia's Approach to Competition Policy since 1996**

<b>Section</b>	<b>Position at Base Year (1996)</b>	<b>Cumulative Improvements Implemented to Date</b>
<b>Activities with other APEC Economies and in other International Fora</b>	Australia actively participated in the competition-related activities of APEC, the OECD, the WTO and the International Competition Network.	