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## Trade Practices Legislation Amendment Bill 2003

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I N F O R M A T I O N   A N D   R E S E A R C H   S E R V I C E S

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No. 9 2003–04

Trade Practices Legislation Amendment Bill 2003

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Law and Bills Digest Group  
4 August 2003

## Contents

Purpose. . . . .	1
Background. . . . .	1
Part IIIA of the Trade Practices Act — Access Regimes . . . . .	1
<i>Prices Surveillance Act 1983</i> . . . . .	3
Productivity Commission report into the PSA. . . . .	5
Government Response. . . . .	6
Main Provisions . . . . .	7
Schedule 1—Access regimes . . . . .	7
Schedule 2 — Prices Surveillance . . . . .	8
Concluding Comments. . . . .	12
Endnotes. . . . .	12

# Trade Practices Legislation Amendment Bill 2003

**Date Introduced:** 27 March 2003

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** The substantive provisions commence on a day to be fixed by Proclamation

## Purpose

The purpose of the Bill is to:

- repeal the *Prices Surveillance Act 1983* and replace it with a new part in the *Trade Practices Act 1974* which preserves the existing prices surveillance powers, and
- amend the *Trade Practices Act 1974* to clarify the ability of State and Territory access regimes to confer duties upon the Australian Competition and Consumer Commission (ACCC) and the Australian Competition Tribunal.

## Background

### Part IIIA of the Trade Practices Act — Access Regimes

Part IIIA of the Trade Practices Act (TPA) establishes a regime for third party access to essential infrastructure facilities. It was introduced into the TPA in 1995 in response to the Hilmer Report and the subsequent Competition Principles Agreement.<sup>1</sup>

The objectives of Part IIIA were explained in *Re Australian Union of Students* as follows:

Part IIIA is based on the notion that competition, efficiency and public interest are increased by overriding the exclusive rights of the owners of ‘monopoly’ facilities to determine the terms and conditions on which they will focus their services. In Part IIIA the focus is upon facilities of national significance that it would be uneconomic to duplicate or replicate and that supply a service, access to which would promote competition in another market.<sup>2</sup>

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There is a two-part process for access to essential facilities. The first part deals with determination of whether or not the facility is 'essential' and the second part provides for arbitrated access when the parties are unable to agree on access arrangements or pricing. Both parts of the process are complex and beyond the scope of this Digest.

However in the context of this Bill it is relevant to note that Clause 6 of the Competition Principles Agreement also envisaged that States and Territories may introduce access regimes of their own. It provides that the Commonwealth regime is not intended to apply to essential facilities in a State or Territory where the State or Territory has in place a conforming access regime, unless either the National Competition Council determines that the regime is ineffective having regard to the influence of the facility beyond the jurisdiction of the State or Territory, or difficulties arise from the facility being in more than one jurisdiction. Part IIIA of the TPA therefore contains provisions that deal with both Commonwealth and State access regimes and the interaction between them.

The subject of such Commonwealth-State cooperative legislative schemes as found in Part IIIA were until recently, thought to be relatively secure in a constitutional sense. However, co-operative legislative schemes are not without constitutional limits. Recent High Court decisions, like that in *R v. Hughes*,<sup>3</sup> raised a number of questions, some as yet unanswered, about cooperative schemes. The decision in *Hughes* tells us that where a State law confers functions on a Commonwealth entity, the Commonwealth can use the incidental power found in the Constitution to pass a law permitting those functions to be exercised by the Commonwealth entity. The situation becomes more complex where the Commonwealth law expressly or impliedly imposes a duty on the Commonwealth entity to exercise the power or function so conferred. In such a case, or where the function is a coercive one, it may be necessary for a Commonwealth head of power to be found which supports the law. Another question left unresolved by the High Court in *Hughes* is whether a duty imposed on a Commonwealth entity under a cooperative legislative scheme can only be imposed by a Commonwealth law and cannot be imposed by a State law.

Since the decision in *Hughes* the Government has introduced a number of Bills designed to secure the constitutional validity of various Commonwealth-State cooperative schemes. Among these is the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2001* which aims to shore up the cooperative national scheme for the evaluation, regulation and control of agricultural and veterinary chemicals. This Act allows for the possibility that State laws can impose duties on Commonwealth entities but provides a fall-back position in case it transpires that only a Commonwealth law can impose such a duty.

The amendments in Schedule 1 of the Bill are a similar attempt to remedy the *Hughes* problem in relation to the Australian Competition and Consumer Commission and the Competition Tribunal powers in relation to State/Territory access regimes.

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## *Prices Surveillance Act 1983*

The *Prices Surveillance Act 1983* (the PSA) provides for the surveillance of, and the holding of inquiries into prices for the supply of certain goods and services in Australia. It was introduced in 1983 as part of the Commonwealth Government's prices and incomes policy. The original intention was to promote restraint in pricing to accompany wage restraint as part of the Government's strategy to control inflation and promote economic growth. Overtime a change in economic conditions and the competitive environment have meant that prices oversight is now viewed as part of competition policy restraining monopolistic prices.

The effects of 'monopoly pricing' can also be encountered in markets left with two or three oligopolists where one competitor may have a sufficient degree of market power to charge supra-competitive prices.<sup>4</sup>

Ministerial responsibility for the PSA lies with the Treasurer and the Australian Competition and Consumer Commission (ACCC) administers the Act.<sup>5</sup>

The PSA provides for three forms of prices oversight:

- monitoring and reporting (sections 27A and 27B)
- price notification (section 22), and
- public inquiries (section 18).

### **Monitoring and reporting**

Price monitoring is where the Minister directs the ACCC to monitor the prices, costs and profits of companies and government authorities in relation to specified goods and services and to report the results of the monitoring to the Minister. This 'formal monitoring' role<sup>6</sup> is used infrequently and is currently restricted to stevedoring, and airport services. The ACCC was also recently involved in monitoring the dairy industry as part of the Government's deregulation and compensation package for that industry.<sup>7</sup>

### **Prices notification**

Price notification is where the Minister declares that specified companies are to notify the ACCC of a proposed price increase for specified goods and services. The ACCC is required to make a determination about the notified price increase within 21 days unless the company agrees to an extension. The determination is not enforceable, but there is a penalty for increasing prices during the prescribed 21-day period without the approval of the ACCC. According to the Productivity Commission report (see below), there has only been one case of non-compliance with ACCC (or Prices Surveillance Authority) determinations on price notification.<sup>8</sup>

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Services that have been declared for price notification are harbour towage services, letter services reserved to Australia Post<sup>9</sup>, air services and aeronautical services.

The ACCC has stated that these pricing decisions are increasingly complicated and certainly difficult to achieve within the 21 day period specified by the PSA. The ACCC also argues that the economic environment in which the Act is administered has radically altered from the time of its inception. Therefore the criteria which the Commission are to consider when assessing a notification need to be interpreted in a different economic context.<sup>10</sup> In order to cope with the difficulties posed by complex notifications the ACCC has developed and implemented a new procedure which allows for pre-submission of prices notifications, which avoids triggering the 21-day period until the parties are ready to do so. Since February 1998, the ACCC has requested that declared companies pre-submit price notifications.<sup>11</sup>

### **Public inquiries**

The Minister can direct the ACCC to hold an inquiry into specified matters and report its findings to the Minister who then makes decisions on the recommendations. Companies are liable to a maximum penalty of 100 penalty units (ie \$11,000) if they increase prices during the inquiry without approval from the ACCC.

According to the Productivity Commission report, public inquiries initiated under the PSA have been used for a number of purposes, including:

- to determine whether pricing outcomes reflect competitive market forces
- to advise the Minister on what types of prices oversight, if any, should be applied to the company or companies under inquiry, and
- to play an educative role by bringing information into the public domain, thereby facilitating public understanding of the pricing matters at issue.

One of the last public inquiries initiated under the PSA was a 1995 inquiry into bank fees by the ACCC's predecessor, the Prices Surveillance Authority. There have been no public inquiries under the PSA since 1996. By way of comparison between 1984 and 1996 there were 60 inquiries ranging from three months up to 11 months with an average duration of 5 months.

As the Productivity Commission has noted, the PSA deliberately provides little guidance to the Minister on whether a product or service may be declared for price notification or subjected to monitoring, or whether to hold a public inquiry. Rather the ACCC applies the instruments of prices oversight in accordance with the declaration and/or directions issued by the Minister.

Price notification and public inquiries are a mixture of direct and indirect forms of price control. There is direct control while an inquiry is in progress or before a determination is made under price notification. Beyond this, price control is indirect in the sense that firms

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are encouraged to set prices considered appropriate by the regulator. The PSA relies on firms deciding that it is prudent to abide by the ACCC's determination.<sup>12</sup>

### **Productivity Commission report into the PSA**

In 2000 the Commonwealth Government asked the Productivity Commission to review the PSA and to report on appropriate arrangements for prices surveillance in Australia. In particular the Commission was asked to focus on those parts of the legislation that restrict competition, or which impose costs or confer benefits on business. The inquiry stemmed from the 1995 Agreements between the Commonwealth, States and Territory Government to implement the National Competition Policy.<sup>13</sup> One of the agreements — the Competition Principles Agreement — committed Australian Governments to review all legislation that restricts competition by the year 2000. This deadline was subsequently extended to June 2002.<sup>14</sup>

On 20 August 2001 the Productivity Commission's inquiry report 'Review of the Prices Surveillance Act 1983' was released and the Government's response was announced in August 2002.

In its report the Productivity Commission concluded that generally price control should be applied only to markets that display substantial market power and are of significance to the national economy. In the Commission's view, Part IV (restrictive trade practices) and Part IIIA (national access regime) of the TPA provide sufficient means to promote competition and regulate prices in situations where monopoly prices are likely to warrant attention.<sup>15</sup> The Commission therefore recommended that the PSA in its current form should be repealed. It argued:

[The PSA] was written and enacted in quite different circumstances, for purposes very different from its current use. Further, it has many deficiencies from the perspective of good regulation:

- it does not have clearly defined objectives;
- it does not require that there be an assessment of the existence or significance of monopolistic pricing, prior to a decision to apply notification or monitoring;
- it does not require that there be explicit consideration of options for addressing monopolistic pricing; and
- the regulator is the primary adviser on the need for prices oversight.

These deficiencies give rise to uncertainty about how the Act may be applied in the future and therefore the Commission considered that new legislation is needed. The Commission stated:

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[... as] prices oversight is now part of competition policy, it would be sensible to create a new part in the TPA, appropriately written to avoid the deficiencies in the current PSA and to complement the rest of the TPA.

The new part in the TPA would:

- have a clearly defined objects clause stating that the objective of pricing inquiries and prices monitoring is to enhance economic efficiency
- provide guidance to the relevant Minister as to the circumstances in which an inquiry could be initiated
- specify that inquiries must be undertaken by an entity that is independent of the ACCC
- provide guidance as to how any inquiry should be undertaken
- specify that the reasons for inquiry recommendations be made publicly available, and
- provide for prices monitoring to be undertaken, but impose limitations on the way it is undertaken to ensure that it does not become a de facto form of price control.

The Commission also recommended that there would be no provision in the new legislation for the ACCC to be directed administratively by the Minister to approve price increases or control prices. If price control were recommended by an inquiry, industry-specific legislation would be required if the Government wished to implement the recommendation.

In relation to price notification the Commission's view was that price notification is an indirect form of price control and is no longer appropriate. It argued:

A general discretionary mechanism such as this is no longer needed now that the majority of areas where price control may be warranted are covered by Part IIIA of the TPA.

### **Government Response**

The Government in its response to the Productivity Commission report agreed that the PSA should be repealed and a new part be incorporated into the TPA. It also agreed that an objects clause be inserted into the new part that provides that prices surveillance will only be applied in those markets where competitive pressures are not sufficient to achieve efficient prices and protect consumers.

However the Government disagreed with a number of the recommendations of the Productivity Commission and argued that removal of the existing price restriction provisions as recommended by the Commission would weaken the Government's ability to respond promptly to concerns about price related matters. This could be contrary to the public interest and consumer protection. Furthermore, while appreciating the potential for

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inappropriate price restrictions to create inefficiencies, the Government argued that it intends that prices surveillance will only be applied in those markets where competitive pressures are not sufficient to achieve efficient prices and protect consumers, and where the Minister considers that the pricing issue is sufficiently important and a public interest exists.

Amongst other things the Government saw merit in:

- preserving in the new part of the TPA the price restriction provisions currently in the PSA
- allowing the Minister the discretion to appoint either the ACCC or another inquiry body to conduct inquiries
- providing for public inquiries, and
- continuing price monitoring by the ACCC and not restricting it to situations where it was recommended by a public inquiry.

Schedule 2 of the Bill implements the Government's response to the Productivity Commission report.

## Main Provisions

### Schedule 1—Access regimes

**Item 1** inserts a definition of a State or Territory access regime law into section 44B of the TPA.

**Item 2** inserts **new sections 44ZZM, 44ZZMA and 44ZZMB**. These sections will replace the current sections 44ZZM and 44ZOA which deal with ACCC and the Tribunal functions and powers under State and Territory access regimes. The proposed provisions differ from the current sections in the following ways.

- **New subsection 44ZZM(1)** explicitly refers to the conferral of duties on the ACCC and the Tribunal (whereas the current sections refers only to powers and functions).
- **New subsection 44ZZM(2)** confirms that the conferral of a duty on the Commission or the Tribunal can be authorised by a State or Territory access regime law subject to constitutional and legislative powers.
- **New subsection 44ZZM(3)** replaces the current subsection 44ZZM(2). It specifies that the ACCC or the Competition Tribunal can only perform functions or duties, and exercise powers in accordance with an agreement between the Commonwealth and the State concerned. In short the new subsection adds a reference to duties.

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- **New section 44ZZMA** specifies the boundaries between the Commonwealth and States power where a State or Territory access regime law purports to impose a duty on the Commission or Tribunal. In particular **new subsection 44ZZMA(2)** provides that a duty is taken not to be imposed by any law of the Commonwealth to the extent to which the duty is not supported by State or Territory legislative power. **New subsections 44ZZMA(3)-(6)** provide that if State or Territory legislative power is not sufficient to support any duty, that duty will be imposed by the TPA.
- **New section 44ZZMB** sets out the circumstances in which a State or Territory access regime law imposes a duty on the ACCC or the Tribunal.

## Schedule 2 — Prices Surveillance

As stated above, **Schedule 2** repeals the *Prices Surveillance Act 1983* (see **item 31**) and replaces it with a new Part VIIA in the *Trade Practices Act 1974*. At the outset it is worth noting that there are four essential differences between the provisions in Schedule 2 of the Bill and the PSA. The new Part VIIA:

- contains an objects clause (**new section 95E**)
- allows for AAT review of decisions by the ACCC rejecting claims of confidentiality (**new subsection 95ZC(6)**)
- introduces a 2 years imprisonment penalty for a breach of the secrecy provisions (**new sections 95ZP and 95ZQ**), and
- allows for the holding of public inquiries by bodies other than the ACCC (**new subsection 95H(3)**).

Apart from these differences together with a more modern drafting style, the new Part VIIA essentially replicates the PSA.

**Items 1-30** make consequential amendments to a number of Acts to replace references to the *Prices Surveillance Act 1983*, with references to the corresponding new sections in the TPA. The amended Acts are the *Airports Act 1996*, *Air Services Act 1995*, *Australian Crime Commission Act 2002*, *Australian Maritime Safety Authority Act 1990*, and the *Australian Postal Corporation Act 1989*.

Section 6 of the TPA is primarily a machinery provision designed to expand the operation of the Act. **Items 33-35** exclude the new Part VIIA from section 6 of the TPA. Accordingly, the application of prices surveillance under Part VIIA will be the same as it has been under the PSA.

Section 25 of the TPA allows the Commission to delegate any of its powers under the Act. **Item 36** prevents the Commission from delegating, under section 25, certain powers conferred in relation to prices surveillance. Note however that **item 37** inserts a note

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indicating that new section 95ZD rather than section 25 allows the Commission to delegate certain powers relating to prices surveillance.

**Item 38** is a similar provision. It prevents the Minister giving directions relating to Part VIIA under paragraph 29(1A)(a). Instead, Ministerial directions relating to Part VIIA would be given under new section 95ZH.

**Items 39 and 41-43** make consequential amendments to replace references to the PSA with a corresponding reference to the new part to be inserted into the TPA.

**Item 31** repeals the Prices Surveillance Act.

**Item 40** inserts the new Part VIIA — Prices surveillance, into the TPA.

**New section 95A** contains definitions relevant to the prices surveillance provisions in new Part VIIA. These include definitions of price, services, supply, notified goods or services, which are identical to definitions listed in the PSA.

**New section 95C** defines the application of the new prices surveillance provisions which, broadly, extend to the supply of any goods or services by the corporate sector or by Commonwealth authorities but not by State, Northern Territory or Norfolk Island authorities.

**New section 95E** is an objects clause. It states that prices surveillance is to be applied only in those markets where the Minister believes competitive pressures are not sufficient to achieve efficient prices and protect consumers. An objects clause is the modern variant of a preamble. It has been explained as something the courts can resort to it where there is uncertainty or ambiguity. It is there to assist in interpretation and is not legally definitive.<sup>16</sup> It is of note that the Productivity Commission recommended the inclusion of an objects clause in its review of the PSA.

**New section 95G** sets out the Commission's functions under the new Part VIIA. These functions relate to the holding of price inquiries, price notification and price monitoring. In performing its functions the ACCC has to take into account three statutory criteria:

- the need to maintain investment and employment, including the influence of profitability on investment and employment
- the need to discourage a firm, which is in a position substantially to influence a market for goods or services, from taking advantage of that power in setting prices, and
- the need to discourage cost increases arising from increases in wages and changes in conditions of employment inconsistent with principles established by relevant industrial tribunals (**new subsection 95G(7)**).

These are the identical criteria found in subsection 17(3) of the PSA.

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**Division 3, new sections 95H-95W**, deal with price inquiries. Under **new section 95H** the Minister can require the ACCC or another body to hold an inquiry into matters relating to the prices for the supply of goods and services. By way of comparison, under the PSA only the ACCC can hold inquiries into prices.

**New sections 95J-95N** set out the process of initiating an inquiry. The Minister may, in an inquiry notice, give directions as to the holding of the inquiry and the matters to be taken into consideration in the inquiry (**new section 95J**). The inquiry notice must also specify the time frame within which the inquiry is to be completed. Companies that are subject to the inquiry are liable to a maximum penalty of 100 penalty units (ie \$11,000) if they increase prices during the inquiry without approval from the ACCC (**new section 95N**).

**New section 95P** deals with the reporting requirements. The inquiry body is required to send its report to the company subject to the inquiry on the same day on which it gives the Minister the report. The inquiry body must, unless directed otherwise by the Minister, make the report available to the public within 28 days. **New section 95Q** requires that company to notify the Commission within 14 days of receiving the inquiry report the prices at which they are supplying the goods and services covered by the inquiry. A penalty of 10 penalty units applies to a breach of this provision. The Commission then has 14 days in which to make public those prices.

**New sections 95R-95W** deal with the procedure at inquiries. Amongst other things:

- inquiries must be in public (unless directed otherwise by the Minister)
- procedure at inquiries is normally to be at the discretion of the chair, and
- the inquiry body is not bound by the rules of evidence.

The inquiry body has the power to summon people to attend as witnesses to an inquiry and produce documents (**new section 95S**). Failure to attend an inquiry or failure to answer questions or produce documents without reasonable excuse incurs a maximum fine of 10 penalty units (**new section 95U**).

**Division 4, new sections 95X-95ZC**, deal with price notification. Price notification is where the Minister or the Commission with the approval of the Minister, declares that specific companies are to notify the ACCC of a proposed price increase for specified good or services. The price notification provisions in the PSA are essentially replicated in Division 4 of new Part VIIA.

**New section 95X** provides that the Minister, or the Commission with the approval of the Minister, may make declarations in relation to goods or services or to a company. A declaration must be published in the gazette and must specify the time it is to remain in effect. Under **new section 95Z** a declared organisation cannot raise the price of a declared product beyond its peak price of the previous 12 months. If it wishes to raise prices of the declared product, the Commission must be notified. The Commission is required to make

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a determination about the notified price increase and whether it is acceptable within 21 days unless the companies agree to an extension (**new section 95ZB**). The determination is not enforceable, but there is a maximum penalty of 100 penalty units for increasing prices during the prescribed 21-day period without the approval of the ACCC (**new section 95Z**).

**New section 95ZC** requires the Commission to keep a public register showing price notifications, together with the Commission's deliberations, the outcome and reasons for the outcome on price notifications. The Commission may exclude material from the public register where satisfied that a claim of confidentiality is reasonable and that disclosure is not necessary in the public interest. Decisions by the ACCC against exclusion from the register are reviewable by the Administrative Appeals Tribunal. Review by the AAT is not available in the PSA.

**New section 95ZD** enables the Commission to delegate to a single member the task of dealing with price notifications.

**Division 5, new sections 95ZE-95ZG**, deal with price monitoring. The Minister may give the Commission written directions to monitor prices, costs and profits relating to the supply of goods or services by persons in a specified industry or business for a specified period. The Commission's monitoring report must be prepared with regard to commercial confidentiality.

**New section 95ZH** deals with Ministerial directions. The ACCC, when performing its functions relating to notification, monitoring and inquiries must give special consideration to and comply with ministerial directions. Section 20 is the equivalent section in the PSA.

**New Section 95ZI** provides that the regulations are to specify the manner in which an inquiry body conducts its inquiry which is either an unincorporated body or a group of 2 or more individuals.

**New sections 95ZK-ZO** deal with the information gathering powers of the ACCC and other inquiry bodies. **New section 95ZK** enables the ACCC to request that organisations or individuals provide information or documentation relevant to a price notification, an inquiry or monitoring. Refusal to comply with such a request incurs a maximum penalty of 20 penalty units. An inquiry body has similar powers in relation to inquiries (**new subsection 95ZK(2)**). **New section 95ZN** provides for the protection of confidential information given at inquiries or furnished in accordance with the monitoring or notification process. Confidentiality is on the basis that the particular information given would affect the competitive position of the particular body. There are equivalent information gathering powers found in section 32 of the PSA.

**New sections 95ZP and 95ZQ** impose secrecy obligations on members and staff of the ACCC and other inquiry bodies in relation to the information or documents obtained in relation to their work with prices surveillance. A maximum penalty of imprisonment for 2

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years applies to a breach of these provisions. It is of note that the equivalent provision in the PSA imposes a maximum penalty of 10 penalty units.<sup>17</sup>

**Items 44-58** are transitional provisions. In particular **items 46-55** continue the effects of price inquiries, price notifications, price monitoring, information gathering, inspection of documents, witness allowances, secrecy, and related matters made under the PSA as if they were made under the new part to be inserted into the TPA.

## Concluding Comments

At the time of the release of the Productivity Commission report, the Opposition expressed concern at the Commission's 'proposed light handed prices oversight regime in the TPA' and called on the Howard Government to rule out watering down the existing protection for Australia.<sup>18</sup> The Bill in fact leaves intact the current prices surveillance powers so presumably will receive bipartisan support within the Parliament.

It is of note that since 1996 when the Government announced changes to the use of prices surveillance<sup>19</sup> there has been a dramatic drop in the number of public inquiries, notifications and monitoring carried out under the PSA. Should Parliament pass the Bill it would seem that the Government will continue to use the new Part VIIA provisions as it has used the PSA since 1996. On the other hand should a government have the political will the proposed provisions which have left intact the powers of prices surveillance could allow price monitoring, notification or a public inquiry into industries such as banking and insurance. Arguably such an inquiry could be justified on the grounds of what the Government has referred to as public interest and consumer needs.<sup>20</sup>

## Endnotes

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- 1 Clause 6 requires the Commonwealth Government to establish legislation granting third party access to essential infrastructure facilities and sets out principles for State and Territory access regimes.
- 2 *Re Australian Union of Students* (1997) ATPR 41-573.
- 3 (2000) 171 ALR 155.
- 4 *Boral Besser Masonry Ltd v ACCC* (2003) ALJR 623 per McHugh J at p. 668.
- 5 The ACCC has administered the PSA since the merging of the Trade Practices Commission and the Prices Surveillance Authority in 1995.
- 6 Separate from these formal monitoring powers found in the PSA, the ACCC from time to time monitors markets informally. According to the [ACCC's website](#), the Prices Oversight Section is undertaking informal monitoring of a number of industry sectors including public

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liability, professional indemnity and medical indemnity insurance. This informal monitoring relies on publicly available sources of information and the cooperation of the monitored organisations. While petrol and diesel prices were deregulated on 1 August 1998, the ACCC also still retains an informal monitoring role and monitors petrol prices in metropolitan areas and country towns.

- 7 Milk prices were monitored from April 2000 to January 2001. The ACCC released a monitoring report in April 2001.
- 8 In 1998 Waratah Towage Pty Ltd increased charges for tug services in Port Jackson by 15 per cent, despite the ACCC's objection to the price increase.
- 9 Under the *Australian Postal Corporation Act 1989* Australia Post has the exclusive right to carry letters within Australia and the exclusive right to issue postage stamps. The ACCC has responsibility for reviewing price notifications relating to proposed increases in charges for these 'reserved services'.
- 10 *ACCC Journal*, December 1999.
- 11 Productivity Commission, 'Review of the Prices Surveillance Act 1983', *Inquiry Report*, no. 14, 14 August 2001, p. 66.
- 12 Productivity Commission, *Op. cit.*, p. xv.
- 13 The National Competition Policy was the outcome of the 1993 inquiry by the Independent Committee of Inquiry into National Competition Policy known as the Hilmer Report. The policy was to consist of laws ... principles and processes aimed at improving Australia's international competitiveness and living standards (Hilmer Report 1993).
- 14 Productivity Commission, *Op. cit.*, p. 1.
- 15 *ibid.*, p. 45.
- 16 Barwick CJ in the TPA case *Re credit Tribunal; Ex parte General Motors Acceptance Corp, Australia* (1977) 14 ALR 257 at 260.
- 17 Section 43.
- 18 Shadow Assistant Treasurer, Kelvin Thompson, *Press Release*, 13 June 2001.
- 19 Treasurer, *Press Release*, 19 September 1996. The Treasurer stated that the Government would retain the Prices Surveillance Act, but in future, prices surveillance would only be applied in those markets where competitive pressures are not sufficient to achieve efficient prices and protect consumers.
- 20 The Government in its response to the Productivity Commission report argued that prices surveillance should be maintained to allow it to respond promptly to concerns about price related matters on the grounds of 'public interest and consumer needs'. See above at p. 6.

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