

Current issues in competition and consumer law

Overview

- 2.1 The Australian Competition and Consumer Commission (ACCC) appeared before the committee on Wednesday 16 August 2017 in Canberra for a public hearing, as part of the review of its 2016 annual report.
- 2.2 Issues raised at the hearing included the ACCC's new Financial Sector Competition Unit (FSCU) and its inquiry into residential mortgage products. The ACCC has commenced an investigation into the interest rate practices of the four major banks, under a mandate from the Treasurer to scrutinise any pass through of the Major Bank Levy. From 1 July 2018 the FSCU will focus on all banks and review their activities in relation to competition. The current investigation into the major banks' interest rate practices has already requested numerous internal documents relating to the processes used by banks in setting interest rates.
- 2.3 The committee also scrutinised the ACCC on its broadband performance monitoring program, and on its work in relation to the ban on excessive payment surcharging.
- 2.4 The committee questioned the ACCC on product safety issues, including the largest vehicle recall in history involving Takata airbags, and sectors of concern for the ACCC, including Australia's energy markets.

Powers and activities of the ACCC

Financial Sector Competition Unit

- 2.5 In response to Recommendation Three of this committee's Review of the Four Major Banks, the Government is providing the ACCC \$13.2 million over four years to establish the FSCU. The FSCU will undertake regular in-depth inquiries into specific financial system competition issues from mid-2018.¹
- 2.6 The ACCC, however, has already commenced work in this area specifically in relation to the Major Bank Levy. The committee scrutinised the ACCC on the establishment and early program of work for the FSCU, including its first task of inquiring into any pass through of the Major Bank Levy onto residential mortgage products.²
- 2.7 The Chairman of the ACCC, Mr Rod Sims, explained that, following its initial year focussing on the specific task in relation to the bank levy, the FSCU will have a more general focus on competition and how the banks make their interest rate decisions:
- ...we've been set up to look at, on a continuing basis, competition in the banking sector, but the first year is a bit different. The first year we have been given a specific task – to see to what extent and why the bank levy may be passed through. So obviously we're mainly focused on that, but being focused on that also sets a fantastic platform to be able to pick up on our competition work from July next year, particularly following the Productivity Commission's review.
- So what we've done so far is use our information notices to seek to understand how banks have made their interest rate decisions in the recent past, and that's going to be very helpful.³
- 2.8 The Chairman said that these notices will be valuable for the following three reasons:
-

1 The Treasurer, The Hon. Scott Morrison MP, 'House Economics Committee's Review (Coleman Report) of the four major banks – Government response, May 2017, <http://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/FourMajorBanksReview2/Government_Response>, viewed 23 August 2017, p. 2. The Productivity Commission has also been tasked with undertaking a review of competition in the banking sector, commencing 1 July 2017.

2 See: ACCC, *Residential mortgage products price inquiry*, 9 May 2017, <<https://www.accc.gov.au/about-us/inquiries/residential-mortgage-products-price-inquiry>>, viewed 23 August 2017.

3 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 1.

- First, it will help the ACCC understand the competitive environment in which the banks are making decisions, including ‘what assumptions they are making about what their competitors are doing and, importantly, how much they are looking at the small regional banks.’⁴
- Second, ‘working out how much they've got an eye to what the RBA is doing with cash rates versus other influences’;⁵ and
- Third, it will enable the ACCC to ‘work out to what extent they're weighing the interests of their profitability versus the interests of their customers, be they depositors or borrowers’.⁶

ACCC scrutiny of residential mortgage products

- 2.9 On 9 May 2017, The Treasurer, The Hon Scott Morrison MP, directed the ACCC to inquire into residential mortgage products focussing on ‘prices charged or proposed to be charged by Authorised Deposit-taking Institutions (ADIs) affected by the Major Bank Levy’.⁷
- 2.10 According to the ACCC, the inquiry can ‘compel the banks affected by the Major Bank Levy to explain any changes or proposed changes to fees, charges, or interest rates in relation to residential mortgage products’. The inquiry will examine prices charged until 30 June 2018.⁸
- 2.11 The committee asked the ACCC to outline the kinds of information it will be seeking from the banks during the course of its inquiry. The Chairman responded, ‘certainly board minutes but also, crucially, documents from committees that make the decisions and then some of the decision-making documents that may even reside lower down.’⁹
- 2.12 The ACCC further explained:
- We're really looking for two things in the first round of notices. We're firstly looking for evidence of what the process is so that we can understand it more fully than we currently do, but we're also looking for the actual decision-making documents that might, in a

4 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 1.

5 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 2.

6 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 2.

7 The Treasurer, The Hon. Scott Morrison MP, *Ministerial Direction*, 9 May 2017, <<https://www.accc.gov.au/system/files/Ministerial%20Direction.pdf>>, viewed 23 August 2017.

8 See: ACCC, *Residential mortgage products price inquiry*, 9 May 2017, <<https://www.accc.gov.au/about-us/inquiries/residential-mortgage-products-price-inquiry>>, viewed 23 August 2017.

9 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 2.

sense, open up the black box, the one that has always been quite hard for consumers to understand.¹⁰

- 2.13 The committee questioned the ACCC on what it would do if it found conflicting evidence between a bank's public rationale for interest rate movements and internal reasons. The Chairman said that the ACCC's response would be to 'make that transparent and bring it out'.¹¹ The Chairman explained:

...we're really trying to provide transparency, so our first look would be to make that apparent and then work out what it meant: Why have they done what they've done? What implications might that have for the market, for consumers?¹²

- 2.14 The ACCC was asked about the banks raising interest rates in response to the Australian Prudential Regulation Authority's (APRA) restrictions on investor lending, particularly if this showed there was a lack of competition in the sector. The Chairman responded:

I think it does perhaps reaffirm our concerns about competition in the sector. It's hard to say more until we get their documents, but you'd have to say the banks reacting in the same way to something where they could have gone this way or that way is always indicative of the general concerns we've got.¹³

- 2.15 When asked when the first results from the inquiry into residential mortgage products were expected to be made public, the Chairman said in early 2018, and remarked 'we want to come out with something to say as distinct to speculating on things'.¹⁴ The Chairman added, 'once we do our first report, we may then come out and say things on a continuing basis. But I think we need to have a very firm basis for that first report'.¹⁵

Broadband performance monitoring

- 2.16 In April 2017, the Government announced funding for a new broadband performance monitoring program in the ACCC to 'provide consumers with greater information on the speeds and experience they can expect

10 Mr Marcus Bezzi, Executive General Manager, Competition Enforcement, ACCC, *Transcript*, 16 August 2017, p. 2.

11 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 3.

12 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 3.

13 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 3.

14 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 3.

15 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 3.

- from fixed-line broadband services delivered over the National Broadband Network (NBN).¹⁶
- 2.17 The program 'will use hardware-based devices to perform remote testing of around 4,000 households to determine typical speeds on fixed-line NBN services at various times throughout the day'.¹⁷
- 2.18 The committee questioned the ACCC about the tender for testing services for the program, including who will be responsible for analysing the data collected. The ACCC noted that tenders closed on 26 June 2017 and that it was currently going 'through a standard assessment process for the tenders, under a strict probity type regime'.¹⁸ The ACCC said that it would work with the tester to ensure that the data is reliable and robust.¹⁹ The Chairman confirmed that the ACCC will be responsible for the analysis, stating 'we're not subcontracting out either the analysis or the thrust of the report'.²⁰
- 2.19 The committee scrutinised the ACCC about whether it had the technical expertise needed to understand why consumers experience slow broadband speeds. The Chairman noted that the ACCC is the economic regulator for telecommunications, and responded that it has an engineering section comprising 'people who've spent 30 to 40 years of their lives as telecommunications engineers'.²¹ The Chairman added:
- Going down to the level you're asking about, which is some people getting a bad performance, yes, we have the ability to understand how far that may be away from the node, whether there are basement problems and so forth. So we absolutely have that expertise.²²
- 2.20 Currently, every Australian internet provider has to purchase bandwidth from NBN co. Limited (NBN Co). This bandwidth usage charge is referred to as the Connectivity Virtual Circuit (CVC).²³ The committee questioned the ACCC on whether the data collected through its broadband

16 Senator the Hon. Mitch Fifield, Minister for Communications, *Media release*, 'ACCC to monitor broadband performance', 7 April 2017.

17 ACCC, *Media release*, 'ACCC to monitor Australia's broadband performance', 7 April 2017.

18 Mr Sean Riordan, General Manager, Industry Structure and Compliance, ACCC, *Transcript*, 16 August 2017, p. 4.

19 Mr Sean Riordan, General Manager, Industry Structure and Compliance, ACCC, *Transcript*, 16 August 2017, p. 4.

20 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 5.

21 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 5.

22 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 5.

23 NBN Co. Limited (NBN Co), *The nbn project*, 'nbn's new CVC pricing model set to help improve consumer experience', 5 July 2017, <<http://www.nbnco.com.au/blog/the-nbn-project/nbns-new-cvc-pricing-model.html>>, viewed 23 August 2017.

monitoring program was of sufficient detail, including information on CVC bandwidth purchased and used by Retail Service Providers (RSPs). The ACCC responded:

We do collect aggregated data at present, which is broken down into each RSP at each point of interconnection. It gives us a view as to the average consumed over particular time periods in a day over a three-month period. So it's very aggregated, but it does give us a sense, from a market perspective, as to how much CVC is being purchased and how much of that is being consumed, on average, over a three-month period.²⁴

2.21 When asked where it sources the data, the ACCC said the data is collected 'from the central point, which is the NBN Co. It's being collected under a legal instrument, an obligation to supply on a quarterly basis.'²⁵

2.22 The committee was interested whether the ACCC had formed an opinion on the amount of CVC an RSP should purchase to support traffic demand on the NBN. The ACCC responded:

I would advance a personal opinion that it should be a little more, but, again, that's just in general, and only when comparing it back to the reports that we receive through the press and from consumers directly that they're disappointed with their evening speeds.²⁶

2.23 The Chairman did not specify a level of CVC an RSP should purchase, given current broadband traffic trends, but stated it was concerning that:

We're seeing two things. Firstly, some companies are putting people on a very basic 12-1 plan. You didn't need to build the NBN to put people on a 12-1 plan. We're very concerned about how they're selling that. They're selling that sometimes as being a fast service, when it's a basic plan. And, secondly, when they're selling them on the higher speed plans, we're concerned they're not giving them enough, they're not provisioning enough CVC – particularly for those busy periods.²⁷

2.24 The Chairman said that the combination of the monitoring program, and the speed guidance it would be issuing to RSPs 'would be a massive

24 Mr Sean Riordan, General Manager, Industry Structure and Compliance, ACCC, *Transcript*, 16 August 2017, p. 5.

25 Mr Sean Riordan, General Manager, Industry Structure and Compliance, ACCC, *Transcript*, 16 August 2017, p. 6

26 Mr Sean Riordan, General Manager, Industry Structure and Compliance, ACCC, *Transcript*, 16 August 2017, p. 6.

27 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 6.

change', remarking 'we're going to be stepping into this arena in a big way as the year progresses.'²⁸

Ban on excessive payment surcharging

2.25 As of 1 September 2017, all Australian businesses will be subject to a ban on excessive payment surcharges, under recent changes to competition law.²⁹ This ban stops businesses charging payment surcharges on credit, debit and prepaid card payments that are excessive. The ACCC has been given new powers to enforce the ban, including the capacity to obtain information from businesses involved in the payments process and the authority to issue infringement notices.³⁰

2.26 The committee questioned the ACCC on its progress administering the ban, particularly now that it affected small and medium size businesses. The ACCC noted it has already been monitoring the prohibition of surcharges for large businesses for 12 months, working with 'industry, dealing with complaints, and addressing issues where they arise.'³¹ The ACCC remarked:

Many of the matters reported to us involve small businesses, not large businesses, and we've been working with those businesses to draw their attention to the imminent changes – from 1 September. We have been trying to put industry on notice – that is, I guess, all small businesses who may surcharge.³²

2.27 The ACCC also said it expects to deal with an increase in complaints once the ban comes into effect, noting that it is poised to take enforcement action as necessary:

We are expecting an upsurge in those, given that the prohibition will expand from a small target set at the moment of large businesses into all businesses. We have systems in place to work beyond the team we currently have to review, triage and escalate complaints, where we need to. In most circumstances, when we have a new provision we take a balanced approach. We don't

28 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 6.

29 See: The Treasurer, the Hon. Scott Morrison MP, *Media release*, 'Turnbull Government's laws to end excessive card surcharging pass Parliament', 22 February 2016, <<http://sjm.ministers.treasury.gov.au/media-release/013-2016/>>, viewed 23 August 2017.

30 See: The Treasurer, the Hon. Scott Morrison MP, *Media release*, 'Turnbull Government's laws to end excessive card surcharging pass Parliament', 22 February 2016, <<http://sjm.ministers.treasury.gov.au/media-release/013-2016/>>, viewed 23 August 2017.

31 Mr Scott Gregson, Executive General Manager, Consumer Enforcement, ACCC, *Transcript*, 16 August 2017, p. 4.

32 Mr Scott Gregson, Executive General Manager, Consumer Enforcement, ACCC, *Transcript*, 16 August 2017, p. 4.

necessarily say that we have to enforce every matter that comes to our attention. We will work with those small businesses to educate them and provide them with the information they need to change. That's not to say, though, that where there's not problematic conduct, intentional behaviour, or impacts that need to be sanctioned that we will not take enforcement action with businesses.³³

Product safety

Takata airbags

2.28 On 24 July 2017 the ACCC announced that it was urgently seeking information from the Department of Infrastructure and Regional Development (DIRD) and car manufacturers regarding Takata airbags. The ACCC urged all drivers to check if their car's airbag has been recalled, in what it referred to as the 'largest vehicle recall in history.'³⁴ The Chairman warned:

Do not ignore or delay responding to a letter from your car's manufacturer or retailer asking you to have your car's airbag replaced. The airbags degrade over time and can become lethal by misdeploying and firing metal shards at the car's occupants.³⁵

2.29 According to the ACCC:

Since 2009, more than 2.3 million vehicles in Australia have become subject to the recall of airbags made by Japanese manufacturer, Takata. The airbags are in 60 makes of cars sold in Australia, including Honda, Toyota, BMW, Mitsubishi, Subaru, Lexus, Jeep, Nissan, Chrysler, and Dodge.³⁶

2.30 When questioned on the process of the Takata recall in Australia and the ACCC's involvement, the ACCC noted that the 'voluntary recalls in

33 Mr Scott Gregson, Executive General Manager, Consumer Enforcement, ACCC, *Transcript*, 16 August 2017, p. 4.

34 ACCC, *Media release*, 24 July 2017, 'ACCC investigating Takata airbag recall', <<https://www.accc.gov.au/media-release/accc-investigating-takata-airbag-recall>>, viewed 24 August 2017. The ACCC is urging all drivers to check if their car's airbag has been recalled by visiting <<https://www.productsafety.gov.au/>>.

35 ACCC, *Media release*, 24 July 2017, 'ACCC investigating Takata airbag recall', <<https://www.accc.gov.au/media-release/accc-investigating-takata-airbag-recall>>, viewed 24 August 2017.

36 ACCC, *Media release*, 24 July 2017, 'ACCC investigating Takata airbag recall', <<https://www.accc.gov.au/media-release/accc-investigating-takata-airbag-recall>>, viewed 24 August 2017.

- Australia were announced as early as 2009, but, in the last two years, about 2.2 of the 2.35 million vehicles were then recalled'.³⁷
- 2.31 The ACCC explained that while DIRD was responsible for monitoring the recalls, the ACCC had commenced its own safety investigation and had issued notices seeking information from the car companies involved.³⁸
- 2.32 The ACCC was concerned by evidence that some car companies were replacing like for like, or going for short term solutions, because the Takata airbags were still likely to degrade over time.³⁹ Furthermore, the ACCC said that it had received a number of 'complaints and reports that consumers are having to wait for their airbag replacement on the basis that there isn't enough stock.'⁴⁰
- 2.33 The committee asked the ACCC if a mandatory recall was being considered. The ACCC said that its current investigation is 'directed to determining whether the voluntary recall is sufficiently remedying and addressing the safety risks to consumers'.⁴¹ The Chairman further noted that 'the alternative, of course, is a mandatory recall'.⁴²
- 2.34 In relation to the more dangerous 'alpha' type airbag, the ACCC stated 'it's critical that the alpha airbags be replaced immediately', adding 'we're certainly having regard to whether a mandatory recall is required to expedite the recall of the remaining 49,000 of those alpha bag vehicles'.⁴³ The Chairman added that the ACCC was preparing advice for the Minister, who will decide if a mandatory recall is needed.⁴⁴
- 2.35 The committee asked what the recall process is for consumers that have purchased affected cars second hand. The ACCC responded that consumers could check their Vehicle Information Number (VIN) on the ACCC website, manufacturers could access various databases to 'ascertain who has the vehicles', and that the ACCC was considering the following two mechanisms:

37 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 8.

38 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 8.

39 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 8.

40 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 9.

41 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 9.

42 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 9.

43 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 10.

44 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 10.

(1) to encourage or mandate that suppliers trace vehicles, whether they're second hand or third hand; (2) we'll look at mechanisms to nudge consumers towards getting their car remedied, because you can have a mandatory recall or a voluntary recall, but it's still up to the consumer.⁴⁵

2.36 The ACCC was asked whether it could penalise companies for having a poor voluntary recall process, and what additional tools a mandatory recall process would give the ACCC. The ACCC said that it could not penalise companies 'unless in that voluntary recall they have misled consumers in some way'.⁴⁶ The ACCC added that 'it would be much easier to take action in relation to noncompliance with a mandatory recall. A voluntary recall is that: it's voluntary.'⁴⁷

2.37 When asked if it required more powers in this area, the ACCC responded:

As part of the ACL [Australian Consumer Law] review that's being considered by ministers at the end of this month, there are a number of proposed reforms to the product safety administrative regime, including enabling the commission to streamline compulsory recalls, amongst other proposals. So, yes, there is some scope, I think, to reform some of the product safety laws.⁴⁸

Thermomix

2.38 On 16 June 2017, the ACCC announced that it had instituted proceedings in the Federal Court against Thermomix In Australia Pty Ltd (Thermomix). The ACCC alleged Thermomix contravened several provisions of the Australian Consumer Law (ACL) in relation to its appliances. The allegations focus on a safety issue that eventually led to a recall action in October 2014.⁴⁹

2.39 Under the ACL, suppliers of consumer goods and related services must report deaths, serious injuries or illnesses associated with those products to the Government. This requirement is referred to as mandatory

45 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 18.

46 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 10.

47 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 10.

48 Mr Tim Grimwade, Executive General Manager, Consumer, Small Business and Product Safety Division, ACCC, *Transcript*, 16 August 2017, p. 11.

49 ACCC, Media release, 16 June 2017, 'ACCC takes action against thermomix', <<https://www.accc.gov.au/media-release/accc-takes-action-against-thermomix>>, viewed 24 August 2017.

reporting.⁵⁰ The ACCC alleges that Thermomix failed to comply with mandatory reporting requirements for injuries arising from the use of the appliances.⁵¹

2.40 The committee questioned the ACCC about the mandatory reporting regime and how it became aware of the issue with Thermomix appliances. The ACCC replied that it became aware of the issue through consumer complaints and from other organisations including Choice.⁵²

2.41 The ACCC explained that it worked with state and territory consumer law regulators, and relied on a range of information sources, including mandatory reports and consumer complaints. However, the ACCC said it was not possible for it to more broadly audit product safety 'because you're looking for things that you don't know might exist'.⁵³

Challenges and sectors of concern

2.42 The committee was interested in the challenges facing the ACCC, including the sectors or markets that are of concern. The Chairman highlighted the importance of the ACCC's work on criminal cartels:

I think the work we're doing on criminal cartels will help move the dial on cartels and cartel conduct in this country considerably, and we have several cases with the CDPP and we expect a flow of criminal cartel cases. I think that's important.⁵⁴

2.43 The Chairman also provided examples of the ACCC's consumer work focussed on big companies because 'that is where the widest detriment comes from':

We have successfully won a case, for example, against Dulux for selling paint that was supposed to reduce the heat in your house; we won that case. A few months back, we instituted proceedings against Heinz for selling products to one-to three-year-olds which

50 See: ACCC, *Product Safety*, <<https://www.accc.gov.au/business/treating-customers-fairly/product-safety>>, viewed 25 August 2017.

51 ACCC, Media release, 16 June 2017, 'ACCC takes action against thermomix', <<https://www.accc.gov.au/media-release/accc-takes-action-against-thermomix>>, viewed 24 August 2017.

52 Mr Scott Gregson, Executive General Manager, Consumer Enforcement, ACCC, *Transcript*, 16 August 2017, p. 17.

53 Mr Scott Gregson, Executive General Manager, Consumer Enforcement, ACCC, *Transcript*, 16 August 2017, p. 17.

54 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 7.

they were saying were healthy products when, we allege, they're 68 per cent sugar. That, you can see, is a very important matter.⁵⁵

- 2.44 The Chairman said that the ACCC's current inquiries into electricity⁵⁶ and gas⁵⁷ markets were 'hugely important for consumers', noting that 'residential consumers, small business consumers and large companies are suffering incredibly through high electricity and gas prices.'⁵⁸

Energy markets

- 2.45 The committee questioned the ACCC about its inquiries into Australia's energy markets, including whether those markets were being effectively regulated by the Australian Energy Regulator (AER).

- 2.46 The Chairman noted that the ACCC is currently collecting and examining the data, and stated:

In terms of rules, our job is to focus on affordability, and, if we think there are rule changes that are needed to promote that, we will certainly put them forward. We're not going to go through methodically and assess all the rules; we're just going to see what's important for affordability.⁵⁹

- 2.47 In relation to the AER, the Chairman commented:

I have an overwhelming view that the rules under which the AER had to work, that were set about 10 years ago, were extremely bad and have cost consumers a lot of money and forced up network charges way more than they needed to be. This is both because they allowed expenditure that shouldn't have occurred and because they allowed high rates of return much higher than they should have been.

Those rule changes have now been made a lot better, but we'll still look at that area.⁶⁰

- 2.48 The committee questioned the ACCC why it opposed the sale of Macquarie Generation and Liddell by the New South Wales Government to AGL Energy. The Chairman remarked that the ACCC opposed the sale because 'it made it much harder for other players, and we believe it's had

55 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 7.

56 See: ACCC, *Electricity supply & prices inquiry*, < <https://www.accc.gov.au/regulated-infrastructure/energy/electricity-supply-prices-inquiry>>, viewed 25 August 2017.

57 See: ACCC, *Gas market transparency measures*, < <https://www.accc.gov.au/regulated-infrastructure/energy/gas-market-transparency-measures>>, viewed 25 August 2017.

58 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 7.

59 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 14.

60 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 15.

the effect of increasing electricity prices.⁶¹ While noting that the ACCC lost the case, the Chairman explained:

We prefer a market where you don't have that complete level of vertical integration. Prior to that sale, if you think about Queensland, New South Wales and Victoria, in each of those markets you had generators that weren't really much aligned with retailers. Obviously, there were the two Queensland government-owned ones. There used to be three, and that was a better world. But they weren't retailers. And in New South Wales, you had Macquarie Generation and Liddell, and they weren't retailers. And in Victoria you had a couple of generators that were largely generators. They had small retail businesses, but they had extra capacity they wanted to sell to all sorts of retailers, so it made a more competitive market. I don't mind a bit of vertical integration. What I'm concerned about is when you have three players that are fully vertically integrated in a market. It makes it very hard for anybody else to get in.⁶²

2.49 The Chairman noted that South Australia also had a particularly concentrated market because 'AGL has a very large capacity' in that state, and explained:

Of course, with the closure of Northern, that's just increased their position. And the other problem you've got is that they own Torrens Island, which is a very valuable asset. Whoever owns that was always in a strong position. But, yes, South Australia has a very concentrated market.⁶³

2.50 The ACCC was also questioned about energy market concentration in Queensland, including the proposed merger of two state-owned generation companies. The Chairman responded:

We were very disappointed when the three generators became two. The AER have done the analysis of this, and their analysis shows that this hasn't been an issue of rebidding; it has simply been that at times of high demand they know they need to be dispatched because they're two-thirds of Queensland capacity, so they can bid high. They did, and that pushed up wholesale prices in Queensland. The evidence of the fact that they have market power and can do that is that as soon as the Queensland minister

61 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 12.

62 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 12.

63 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 13.

told them to bid less aggressively, they pulled back and prices came straight down.⁶⁴

2.51 The committee was also interested in the impact of green schemes on the energy market. The Chairman commented:

Over 10 years, electricity prices have more than doubled, after inflation. Why has that occurred? Part of that is due to higher network costs. Part of it's due to that concentration we've just been discussing. And part of it's due to those green schemes.⁶⁵

2.52 The Chairman added that the ACCC will be examining 'what has contributed to each increment of the rise in prices', including for green schemes, over the past decade, and will be producing an interim report in September 2017.⁶⁶

Conclusion

2.53 In November 2016, the committee, as part of its review of the four major banks, expressed concern that a lack of competition in the financial sector poses significant risks for the Australian economy and consumers, and concluded that the banking sector is an oligopoly.⁶⁷ In response to the committee's recommendations, the Government established a Financial Sector Competition Unit within the ACCC. The committee welcomes the responsiveness of the Government in this area.

2.54 The committee notes that the four major banks, and in particular the executives and committees who are involved in setting lending rates for residential mortgage products, should be aware that the ACCC are now scrutinising how they arrive at their interest rate decisions, and taking further action as appropriate.

2.55 The committee notes that the Government has also given additional powers to the ACCC to monitor and enforce the ban on excessive payment surcharges by all Australian businesses, and that it will now be monitoring broadband performance to provide Australian consumers with reliable information about broadband speeds.

64 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 19.

65 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 13.

66 Mr Rod Sims, Chairman, ACCC, *Transcript*, 16 August 2017, p. 13.

67 House of Representatives Standing Committee on Economics, *Review of the Four Major Banks (First Report)*, November 2016, pp. 22-23.

- 2.56 The committee shares the ACCC's concern about competition in Australia's energy markets, noting that the ACCC is currently reviewing data on the effectiveness of the rules governing those markets.
- 2.57 Given these new responsibilities and powers, the ACCC must continue to monitor and protect Australian consumers against anti-competitive behaviour and breaches of consumer law in Australia's markets. The committee will continue to scrutinise the performance and effectiveness of the ACCC's operation.

Mr David Coleman MP
Chair
13 September 2017