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ACCC under the microscope

The House of Representatives Economics Committee has today released a report reviewing the operations of the Australian Competition and Consumer Commission (ACCC).

The review, titled '*Competing Interests: is there balance?*', raises questions about whether the ACCC has too many responsibilities, and should have some parts separated into another body.

While the Committee reserves its judgement on this question, it says it should be open to public debate, and plans that it be further examined by the Committee in the next Parliament. The ACCC has rapidly accumulated powers since its establishment in 1995.

The Committee also highlights:

- Concerns with some of the ACCC's approaches to business, including the way in which, on occasions, it uses the media; and
- The need for - or otherwise - of amendments to the Trade Practices Act to:
 - Include powers such as a penalty for imprisonment for participants in hard core cartels;
 - An effects test to strengthen section 46; and
 - Cease and desist orders to enhance the ACCC's enforcement capability.

The Committee says the ACCC has shown itself to be an effective and powerful regulatory body.

"The ACCC must reach a balance between consumer protection and good business practice," Mr Hawker says. "It is essential that Australia has a good competition regulator, one that not only is fair and balanced in its decision-making, but is also seen to be fair and balanced."

On the ACCC's argument for further powers, the Committee says that additional penalties such as imprisonment for participants in hard core cartels, should be seriously considered, but that in all other areas examined the existing powers seem adequate.

The Committee also looked at mergers, misuse of market power by large companies against small businesses, and price monitoring.

A copy of Mr Hawker's tabling speech is attached.

To arrange comment:

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For a copy of the Committee's report see:

- internet (<http://www.aph.gov.au/house/committee/efpa/>)
- or contact the Committee Secretariat.

Committee Members

Chairman:	Mr David Hawker MP	
Deputy Chair:	Ms Anna Burke MP	
Members:	Mr Anthony Albanese MP	Ms T Plibersek MP
	Ms Teresa Gambaro MP	Mr Christopher Pyne MP
	Mrs Kay Hull MP	Hon Alex Somlyay MP
	Mr Mark Latham MP	Dr Andrew Southcott MP

TABLING SPEECH - DAVID HAWKER MP (CHAIRMAN) - 24 SEPT 2001

Mr Speaker

The report I present to you today is again a unanimous report of the House Economics Committee.

This report reviews the performance of the Australian Competition and Consumer Commission (ACCC) over the past year.

It focuses on the operations of the ACCC and relevant legislation particularly mergers, cartels, misuse of market power by large companies against small businesses, and prices oversight matters.

Mr Speaker we are all intimately aware of the significant impact that competition policy, and the ACCC, has on the Australian community.

The ACCC has been in existence now for some six years. It has shown itself to be a very powerful but effective regulator. This was particularly evidenced by the ACCC's handling of its responsibilities relating to the introduction of the New Tax System.

It is essential that Australia has a good competition regulator, one that is not only fair and balanced in its decision making, but is also seen to be fair and balanced.

Maintaining this balance is always a challenge.

Questions have been raised about the approach the ACCC takes to business in particular its tactics, including on occasions comments in the media.

Some of these concerns raised include:

- implying the ACCC's views are 'law' when it really means seeking a court ruling;
- emphasising the threat of penalties;
- requiring voluminous disclosure from companies without always detailing the ACCC's concerns; and
- leaving the impression publicly that a party has breached the law before it is proven.

Many of these allegations to the committee arose from the ACCC's application of its powers in relation to price exploitation, telecommunications and mergers.

The committee believes that if the public, or a business, considers that there is a problem with the ACCC, it needs to be dealt with by the Commission in a positive way. In other words it is a reasonable expectation the ACCC adopts a balanced approach to its responsibilities.

The committee's report also looks at the call for strengthening the Trade Practices Act in the following three areas:

- giving the court the option of applying jail sentences for participants in cases of hard core cartels;
- the addition of an 'effects' test to strengthen section 46 on the misuse of market power; and
- the power to issue 'cease and desist' orders to enable the ACCC to quickly halt illegal activity pending legal action.

Of the three matters raised, the committee was only inclined to support the first - the imposition of a penalty for participants in hard core cartels. However, even on that matter, we believe that there is a need for more research before recommending the implementation of such a penalty.

Since its inception the ACCC has received many new powers and roles. The committee questioned whether the ACCC has too many divergent roles (as price setter, competition enforcer, adjudicator and arbitrator) and whether competition might be better served by separating some functions into another body. Questions also have been asked about whether these roles have been thrust upon the ACCC or whether some have, or are being, sought by it.

The committee believes that the future role of the ACCC needs considerably more thought and debate.

The issues that the committee has raised in this report are important. Further investigation of some of these issues is required and there are a number of Productivity Commission reviews on aspects of the ACCC's operation and its guiding legislation that are not yet publicly available. Accordingly, the committee sees this report as not only significant, but also as part of an ongoing effort to maintain the balance between consumer protection and good business practice. We plan to look at this again in the next parliament.

We encourage others to involve themselves in this debate.

In undertaking its work to date the committee appreciates the cooperation and assistance it received from the ACCC. I also thank all of the members of the House Economics Committee, the committee secretariat and Mark Tapley (from the Parliamentary Library) for their contributions to this inquiry and report.

I commend this report to the House.