

ACCC and Key Sectors

Telecommunications

Broadband internet services and competition

- 4.1 The recent issue of Telstra undercutting its commercial rivals in relation to its retail pricing for broadband internet services was raised at the Melbourne public hearing. The ACCC advised that it was displeased with Telstra's conduct due to a range of factors including:
- there was no prior consultation with the Commission as the ACCC was only made aware of this matter after it had 'received a volume of complaints from Telstra's wholesale customers saying that the retail prices were below the wholesale prices being charged by Telstra to its customers';⁴⁵
 - at least ten days transpired before Telstra informed the Commission that it would consider reducing its wholesale pricing;
 - Telstra was slow in notifying its wholesale customers of the change as they were only informed the day before the commencement of the new broadband retail pricing strategy; and
 - it created a significant issue as to whether this pricing change would enable the continuation of a competitive environment where wholesale customers are able to compete with Telstra's retail price regime.
- 4.2 In addressing this matter, Mr Samuel noted that the ACCC began by issuing to Telstra an advisory notice that by itself did not have any

⁴⁵ *Official Hansard*, 5 March 2004, Melbourne, p. 18.

legal power, but which did notify the company that it should desist in engaging in this particular anticompetitive behaviour. Upon receipt of this notice Telstra advised the Commission that 'they would bring about certain reductions in their wholesale prices which would apply as from the day after'.⁴⁶

- 4.3 The provision of this advice by Telstra did not conclude the ACCC investigation into this matter. Mr Samuel commented at the Melbourne public hearing that if the Commission has reason to believe that Telstra has not ceased in engaging in anticompetitive conduct, then the ACCC would consider taking a number of actions including instigating court proceedings for injunctions and/or issuing a competition notice that:

has the prospect of giving rise of up to a \$10 million fine...plus ongoing fines of \$1 million per day, backdated in respect of ongoing conduct.⁴⁷

- 4.4 The ACCC has since issued a 'Part A' competition notice to Telstra, indicating that the company is engaging, or has engaged, in anti-competitive conduct in relation to its broadband pricing. Following this development, Telstra backed down by drastically reducing its wholesale pricing for broadband internet services. On 31 March 2004 the corporation unveiled two new pricing packages for internet service providers.
- 4.5 The fact that regulation in the area of telecommunications is fundamental in creating a more competitive marketplace was stressed by the Chairman, as was the point that this objective is being hindered by the current market structures in place. These structures effectively ensure that one incumbent dominant player has control over most of the current telecommunication networks including the copper wire network as well as the major coaxial cable, which 'is the other element of broadband availability in this country other than wireless, which is still at its incipiency stage'.⁴⁸
- 4.6 These issues will be revisited at the next ACCC hearing.

Telecommunications and rural areas

- 4.7 In response to Committee questioning on competition within the telecommunication sector in rural and regional areas, the Chairman commented that the current market structure is not conducive to the

⁴⁶ *Official Hansard*, 5 March 2004, Melbourne, p. 18.

⁴⁷ *Official Hansard*, 5 March 2004, Melbourne, p. 19.

⁴⁸ *Official Hansard*, 5 March 2004, Melbourne, p. 19.

proper efficient operation of competition or of normal market forces, due to there being a 'bottleneck' in terms of ownership with the bulk of telecommunication infrastructure in Australia lying with Telstra. Mr Samuel advised that in addressing this complicated issue there are two options, namely altering the current market structure or providing for greater regulation. In regards to the latter alternative the Chairman stressed that it is wrought with complication and difficulty.

Regulation is a slow, difficult means of bringing about competition and the incumbent has the ability and the incentive to game the process, and does.⁴⁹

- 4.8 The Committee feels that further work should be done by the ACCC on a third alternative, namely determining the extent to which competition can accelerate access to new technology in regional Australia.

Recommendation 3

The Committee recommends that further work be done by the ACCC to determine the extent to which competition can accelerate access to new telecommunications technology in regional Australia.

Banking

Bank fees and charges

- 4.9 Whilst the ACCC cannot set or regulate interest rates or fees charged by banks and credit unions, it does maintain an informal oversight of bank fees and charges. In explaining this further Mr Cassidy stated that:

the banks have a habit of notifying us when they are proposing changes to their fees and charges...we basically monitor the fees and charges that are particularly relevant to the average person: personal transaction accounts, basic bank accounts and credit cards.⁵⁰

- 4.10 When questioned by the Committee as to whether this data is examined to determine if the new price regimes are reasonable, Mr

⁴⁹ *Official Hansard*, 5 March 2004, Melbourne, p. 20.

⁵⁰ *Official Hansard*, 5 March 2004, Melbourne, p. 28.

Cassidy responded by noting that it does not rigorously consider their 'reasonableness'.

I could not say that we spend a significant amount of time thinking about their reasonableness. We do look at them in terms of understanding what is going on.⁵¹

- 4.11 In reply to an assertion by the Committee that bank fees and charges are increasing, the Commission advised that the issue of bank fee increases is far from a straightforward matter. Whilst some fees have markedly increased, other bank charges have been reduced, particularly those associated with electronic banking.
- 4.12 Finally, in response to a query as to whether the ACCC produces any reports on this topic, Mr Cassidy informed the Committee that the Commission produces internal reports detailing 'bank fees and charges as well as what is happening and the results of [its] monitoring'.⁵²
- 4.13 The Reserve Bank currently produces an annual survey of bank fees and charges. Given the more comprehensive information available to the ACCC the Committee feels that it should do the same.

Recommendation 4

The Committee recommends that the ACCC produce a public report at least annually detailing bank fees and charges.

Interchange fees for EFTPOS

- 4.14 "Interchange" fees are paid between financial institutions of persons receiving payments and persons making payments in the four party credit card systems (Bankcard, MasterCard and Visa), the EFTPOS system, ATM networks and in BPay.
- 4.15 In a joint study in 1999-2000, the ACCC and the RBA examined the economic case for interchange fees in ATMs, EFTPOS and credit card services. These systems were chosen because they account for a very large proportion of retail payments in Australia and all have interchange fees. After analysing detailed data on costs and revenues,

⁵¹ *Official Hansard*, 5 March 2004, Melbourne, p. 28.

⁵² *Official Hansard*, 5 March 2004, Melbourne, p. 29. The RBA also publishes an annual survey of bank fees.

the study concluded that there was no justification for an interchange fee in the EFTPOS system.⁵³

4.16 The Governor of the Reserve Bank, Mr Ian Macfarlane noted at a 2003 hearing into the RBA's *Annual Report 2002* that the banks had put to the ACCC a proposal to abolish wholesale EFTPOS interchange fees. Mr Macfarlane referred to this proposal as "a very constructive step", and expressed hope that the "elaborate procedures" that the RBA had been through in relation to credit card reform, involving formal designation of payment streams, could be avoided.⁵⁴

4.17 However, in August 2003 the ACCC rejected the banks' proposal, stating that:

The ACCC is concerned that the EFTPOS proposal addresses only one element of reform in this area – that is, the setting of wholesale fees. Without reforming access to the network and making it easier for new groups to enter and compete, consumers and small business may be disadvantaged by the proposal...

The ACCC is concerned that the proposed agreement is likely to increase the barriers faced by new entrants seeking to compete against the banks and other financial institutions in the EFTPOS network. It may also act to further entrench the already high level of concentration in the EFTPOS network (currently the four major banks issue about 70% of debit cards and provide about 85% of merchant services)...

The ACCC considers that a proposal that included reform of access that would increase competition between banks in the EFTPOS network would be more likely to be in the public interest.⁵⁵

4.18 The decision to reject the proposal by the banks to scrap the interchange fee for EFTPOS purchases was further discussed at the Melbourne public hearing. The Commission informed the Committee that this proposal was ultimately approved on the basis that it had become satisfied that there would be improvements on access reform.

⁵³ House of Representatives Standing Committee on Economics, Finance and Public Administration, *Review of the Reserve Bank of Australia Annual Report 2002*, November 2003, pp. 28-9.

⁵⁴ House of Representatives Standing Committee on Economics, Finance and Public Administration, *Review of the Reserve Bank of Australia Annual Report 2002*, November 2003, p. 29.

⁵⁵ ACCC, "ACCC Proposes to Deny EFTPOS Price-Fix" (media release, 8 August 2003) at http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=1088 (as at September 2003).

The reason behind this shift was a submission from the RBA stating that it was considering using its authority to designate the EFTPOS scheme under the Payments Systems Act, or in other words under its jurisdiction, in order to pressure change in access arrangements. Following the handing down of the ACCC's decision it was appealed to the Australian Competition Tribunal by groups of retailers who stand to lose from the proposed reforms.

- 4.19 The Australian Competition Tribunal ruling on this matter handed down on 25 May 2004, disagreed with the ACCC, holding that any public benefits are clearly outweighed by the detriments. The Tribunal was not satisfied on the available evidence that the proposed agreement would result in a significant increase in the use of EFTPOS. Moreover, it held that there is real public detriment in the likelihood of a flow on of costs to consumers generally. Hence the Tribunal ruled that the authorisation should be set aside.

Petrol and competition

- 4.20 Petrol pricing in rural and regional areas is complicated by a range of issues. One of the most significant is population demographics:

Competition requires at least two players to be competing against each other. Two or more players require enough consumers to warrant two or more players being available to participate in the market...in many rural areas there is not a sufficient concentration of population to warrant two pharmacies, two supermarkets, two petrol stations or two of anything.⁵⁶

- 4.21 In reply to a Committee query as to whether the major petrol retailers are participating in price undercutting of independent operators to a greater extent in certain states, the ACCC responded by stating that according to its data, this occurrence is no more prevalent in one state than another. It further advised that price undercutting is often due to quite legitimate reasons including the dynamics of international oil prices and exchange rate movements.
- 4.22 The ACCC also noted that following a number of complaints, it has investigated several allegations of predatory behaviour involving company owned retailers targeting independents or branded independents. Following intensive monitoring of prices in particular

56 *Official Hansard*, 5 March 2004, Melbourne, p. 15.

areas over a particular time it typically found that the pricing behaviour was not predatory in nature, but rather a response to ‘what an independent...[was] doing in the area’.⁵⁷ Despite the outcome of these investigations the Commission stressed that given the vulnerability of independent petrol station owners it will continue to examine allegations of predatory behaviour rigorously.

...where an allegation of predatory behaviour is involved, we will always look at it fairly carefully, because we are conscious of the vulnerability of independent petrol station owners.⁵⁸

4.23 Following detailed research and analysis into competition in the retail petroleum sector the ACCC has found that:

The leaders of price discounting are not the small independent players but the independent chains. The small independent players ...are generally the price followers rather than the price leaders in the discount moves and discount cycles that occur in retail petroleum.⁵⁹

4.24 In looking into the future the ACCC advised that commercial competition in rural Australia will continue to be challenged should there be further population reductions within these communities. The more this situation is exacerbated, the less people there will be to support the number of marketplace participants necessary to bring about effective competition.

Petrol and shopper docket

4.25 In relation to petrol shopper docket schemes, the Commission informed the Committee that at present there is ‘no reason to suggest that these schemes will lead to any significant lessening of competition in the marketplace’.⁶⁰ However, it did stress that there have been a range of developments which have reduced the competitiveness of a number of these programs considerably. One of the most prominent examples is the introduction of revised fuel standards on 1 January, as this removed a source of cheap imported fuel which was frequently the main supply of discounted fuel for many of the independent petrol retail chains involved in shopper docket arrangements.

⁵⁷ *Official Hansard*, 5 March 2004, Melbourne, p. 17.

⁵⁸ *Official Hansard*, 5 March 2004, Melbourne, p. 17.

⁵⁹ *Official Hansard*, 5 March 2004, Melbourne, p. 8.

⁶⁰ *Official Hansard*, 5 March 2004, Melbourne, p. 15.

- 4.26 The existing shopper docket arrangements between Coles and Shell and Woolworths and Caltex were also discussed at the Melbourne public hearing. The ACCC advised that the potential ascendancy of these commercial arrangements has been somewhat overstated given that only about 25 percent of Caltex fuel stations are involved in the Woolworths joint venture whilst Shell has only incorporated approximately a third of its sites into its arrangement with Coles. The Commission further noted that British Petroleum and Mobil are also entering into the shopper docket marketplace, with both companies 'in the process of establishing...schemes with independent grocery outlets not associated with Coles and Woolworths'.⁶¹ Metcash, in contrast to the above approaches, has not aligned itself with any of the major petrol retailers, preferring instead to provide a rebate on grocery prices when customers produce a petrol voucher from any of the major petrol retailers.
- 4.27 In addition to the major corporations, an increasing number of smaller retailers are also participating in shopper docket programs. According to Mr Cassidy the ACCC has received over 100 notifications of exclusive dealing from significantly smaller schemes, with many involving local grocery retailers from country towns entering into arrangements with local service stations. The Commission asserted that this development is not only an indication that these programs are occurring outside of major metropolitan centres but also that the 'competitive market is working'.⁶²
- 4.28 In terms of future trends the ACCC advised that there is likely to be a considerable evolution in petrol retailing, with a reduction in the smaller independent petrol outlets in favour of the larger retailers, such as those located on major highways.
- We have indicated that we think there are likely to be fewer of the smaller independent outlets, in favour of a move towards, a consolidation of petrol retailing into those larger outlets on major highways.⁶³
- 4.29 The Committee will continue to monitor this issue at future hearings with the ACCC.

⁶¹ *Official Hansard*, 5 March 2004, Melbourne, p. 16.

⁶² *Official Hansard*, 5 March 2004, Melbourne, p. 16.

⁶³ *Official Hansard*, 5 March 2004, Melbourne, p. 16.

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