

REVIEW OF THE PRICE SURVEILLANCE ACT

ACCI SUBMISSION
TO THE
PRODUCTIVITY COMMISSION

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Commerce House, 24 Brisbane Ave, Barton ACT 2600 • PO Box E14, Kingston ACT 2604 Australia
Telephone: 61-2-6273 2311 • **Facsimile:** 61-2-6273 3286 • **Email:** acc@acc.asn.au



Background

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. ACCI's members are employer organisations in all States and Territories and all major sectors of Australian industry.

Through our membership, ACCI represents over 350,000 businesses nation-wide, including the top 100 companies, over 55,000 enterprises employing between 20-100 people, and over 280,000 enterprises employing less than 20 people. This makes ACCI the largest and most representative business organisation in Australia.

Membership of ACCI comprises State and Territory Chambers of Commerce and national employer and industry associations. Each ACCI member is a representative body for small employers or sole traders, as well as medium and large businesses.

Introduction

The idea that someone can look at a price and decide whether it is too high is one of the most notorious fallacies in economics. The very concept of price regulation is flawed to its very depths, and efforts made to pretend that the public is in some way protected by having prices regulated does nothing more than mislead the community about how economies actually make lives better. What it does is provide a pretence that something is being done on the community's behalf when the reality is that the underlying economic conditions for everyone are only being made worse.

On the other hand, industry structure, and the strength of competitive forces bearing on individual sellers, have an important role to play, not just in the determination of prices charged but across all aspects of the production process from output quality through to the prospects for innovation and product development. To separate out questions related to prices charged from all other aspects in the operation of a firm or an industry, and then attempt to impose a pricing regime on the firm or industry, has the large potential to make business less capable of providing the goods and services the community seeks and less able to generate the well paying jobs that everyone says they want business to provide.

The Productivity Commission has completed a review of the *Prices Surveillance Act* in which it has examined the inadequacies of the price surveillance mechanisms as they now exist and has proposed alternative arrangements. What it has recommended is a clear

improvement on current arrangements, but whose implementation will require legislation that carefully incorporates both the letter and the spirit of what is proposed.

What is Proposed

The most important aspect of the Productivity Commission draft report is that it is highly sceptical about the value of price surveillance except in very restricted conditions. It has emphatically recognised the importance of market structure in creating the conditions where price surveillance might be necessary. And here it is important to recognise that it only raises certain market structures as creating a possibility of further action. What the draft report says is this:

“The role of prices oversight has shifted to a more explicit focus on controlling monopolistic pricing by firms that do not face effective competitive pressures and on industries in transition towards competition.

“The area of the economy where monopolistic pricing is now likely to be of greatest concern is in those infrastructure services dominated by a single firm and where there are no close substitutes. In such cases, firms may be able to set prices well in excess of costs, which in turn may not be subject to market disciplines.” (page XVI)

There are thus only a handful of situations in which there is even a case that can be made for price surveillance: generally speaking, there is either a situation where a monopoly seller exists or where a market is in transition from public to private ownership. And even where these conditions exist, the question still remains whether market dynamics are such that what may appear as a potential for monopoly pricing is merely transient and for which other solutions are available besides price surveillance.

The Report, in attempting to identify where price surveillance may be needed, cited a 1994 Industry Commission submission. It stated that price notification “should be limited to situations where a single firm:

- has a greater than two-thirds market share; and
- has no major rival; and
- faces sporadic or trivial imports; and
- is sheltered by substantial barriers to entry.”

It also noted the views of the Australian Companies and Consumers Commission (ACCC) which stated that “there is likely to be insufficient competition in a market for a good or service if:

- the minimum efficient scale of operation in the industry is large relative to demand; and
- there are no reasonable alternative sources of supply.”

In the view of business, these are specifications much too wide. In its previous submission (August 2000), ACCI stressed the “extremely limited role” for a price monitoring process.

ACCI argued that price monitoring or control should occur only when all of the following conditions exist at one and the same time. That is, it should occur:

- *only in situations where competition is virtually impossible because of the nature of the industry itself, and*
- *the industry produces a good or service used by a large proportion of the population, and*
- *the proportion of incomes spent on the product or service is large.*

The industry must therefore be a monopoly producer of national significance and require large personal outlays relative to individual incomes in buying its products. These must be the prima facie conditions before a price monitoring regime is allowed to commence. The conditions laid down by the Industry Commission and the ACCC are too broad and allow for the price monitoring apparatus to commence when there is no genuine market need. Price surveillance is a heavy handed approach to dealing with market outcomes that have the potential to create more problems than it solves. Restrictions which do not first ensure that there is a legitimate monopoly situation in place and in which personal outlays are large relative to income will make the operation of the economy less efficient and reduce community welfare.

A proper identification of the threshold conditions for the introduction of price surveillance mechanisms is crucial.

The Recommended Best Practice Approach

The Report notes that there are three key parties to the price surveillance process: the government, an independent review body and an independent regulator. These work together to create a

process of price surveillance that will limit the damage that is inevitable from the use of price controls in anything other than the most restricted circumstances.

The process that is outlined in the Report, if adopted, has the potential to achieve the crucial aim of focusing the price surveillance mechanism on the small number of places that might require such attention while ensuring that for the overwhelming majority of firms there is little need to be concerned about the imposition of price controls of any kind.

1. The government begins the process by first deciding that a situation of monopolistic pricing may exist.

Crucially, the review process is commenced by the government. There is no roving bureaucracy that keeps an eye out for firms or industries that it believes are possibly in a position to set prices with only limited disciplines from the market. Rather, it is only the government that can set the process in motion so that every use of this process is political from the start.

2. “The Government would refer this issue for review by an independent body.”

Having identified a possible problem the government then refers it to an independent body for investigation. This investigating body “would not have on-going responsibility for implementing any regulatory solutions.” That is, the body that undertakes the inquiry is aware from the start that it will not have subsequent involvement with the process irrespective of what is finally decided.

3. “This investigating body, which would be required to operate transparently through a public process, would be asked to assess whether there is a significant pricing problem that needs to be addressed.”

This is a critically important part of the process. The body undertaking the inquiry examines the price setting processes within the market context of the firm or industry to reach conclusions about firstly, whether a problem exists and then, secondly, what might be done to remedy the problem once it has been identified. There ought to be no presumption of a problem, and no assumption that a firm or industry is at fault simply because an investigation is being conducted.

4. “If [the investigating body] decides that there is a problem it would go on to identify all the relevant policy instruments which could be used to achieve the policy objectives. The

review would evaluate the advantages and disadvantages of each option and whether any restricts competition.”

The fact that a problem might exist is not itself evidence that price surveillance or controls are called for. The review process would have to assess all of the different options and make a judgement about the pros and cons of each one. The conclusion that should never be jumped to would be that it is price control that is required.

5. The investigating body “would then recommend that it implement the preferred instrument, if any.”

That is, at the end of the review process, during which all manner of options were looked into, a decision would be put into the hands of the government.

6. “The government would then decide on the appropriate course of action within a defined period of time, publishing reasons for its decisions.”

Thus, even when the investigation is completed, the next stage would remain a political decision. The body undertaking the investigation, having provided a range of options, would leave the decision up to the government. Price oversight would be only one of the options that might be adopted.

7. “If [the appropriate course of action] involved some form of price oversight, this would be undertaken by an independent regulator responsible for achieving the objectives that the government has set.”

The final stage would be to put the oversight of the pricing process into the hands of an independent regulator. The government would have set down the objectives that were to be achieved and the regulator would put those objectives into a code of practice. This would represent the most important part of the process and the one where the greatest difficulties are likely to lie.

8. “There would be a requirement for a periodic re-assessment of the need for price oversight, to ensure that it is implemented only for as long as it is needed and that it remains the most suitable policy instrument.

Reassessment would be needed from time to time to determine whether circumstances had changed and whether the apparatus attached to the price surveillance process remained necessary. Given the intrusive nature of the process and the likelihood that there will be some damage to industry to balance against whatever

benefits occur, it will be imperative that a process that is commenced does not just continue because of its own history.

Proposal for Further Consideration

Based on its best practice outline, the Report has made a number of recommendations:

- repeal of the existing Prices Surveillance Act
- insertion of a new section in the Trade Practices Act to provide for inquiries and prices monitoring in nationally significant markets where there may be monopolistic pricing
- in the new section of the Trade Practices Act, it should:
 - insert an objects clause making clear what the purpose is
 - provide for public inquiries into monopolistic pricing only where the minister has been satisfied that monopolistic pricing exists
- the inquiries should:
 - identify why the issue is important
 - outline alternatives to price oversight including reforms to the industry which will add to competition
 - be conducted by an independent body separate from the regular
 - end with a published report that outlines its conclusions and the reasons it has reached the decisions it has
 - and where monitoring is recommended, it should specify the indicators that should be disclosed and determine the period during which monitoring will apply
- the ACCC would be designated as the regulator for monitoring prices
- the regulator would be restricted to doing no more than publishing the information being monitored, **but would not be able to make determinations or recommendations using this information.**

Comments on Proposal

Taken as a block there is merit in the proposal. This would be light handed, and would limit the damage to the economy from overly zealous price regulation. The ideal would be a process in which what you would have is an inquiry system that ended up in price monitoring but no price control. If this were restricted to those industries in which outlays were relatively large and in which there were no alternative sellers, it would be relatively simple to endorse this procedure.

There are, however, a number of problems, the most basic being that if the Government adopted the outline only in part, we would end up with the worst of all possible outcomes. If the Government sought a mechanism to control prices rather than just one which monitored prices charged, the decision to hand over the process to the ACCC would mean that a body which had demonstrated an inappropriate approach to price surveillance during the introduction of the GST would be given the primary responsibility for undertaking this role.

In ACCI's submission in August, the position was stated in these terms:

“The experience of the business community with the price monitoring role undertaken by the Australian Companies and Consumers Commission (ACCC) during the lead up to the introduction of the Goods and Services Tax (the GST), as well as the actions taken by the ACCC since the GST's introduction on July 1, have confirmed the business community's views against any extension of the role of price surveillance. The ACCC's price surveillance role has been an entirely unnecessary yet extremely intrusive exercise. All the ACCC price monitoring regime has done is add to the problems of business in negotiating a very difficult period of adjustment.”

The inappropriateness of the ACCC as the agency undertaking this role was further highlighted in the Productivity Commission Report where it noted that “the ACCC considers that it is required to adopt a cost-based approach to assessing prices” (page 60). That it applies an approach to dealing with price movements that lacks genuine insight into the price setting needs of business merely adds to the concerns that this foot in the door by the ACCC will lead to a more inefficient industry structure. As the Report noted about the current circumstance:

“The PS Act does not require an examination of the appropriate methodology for assessing prices. The absence of such a requirement increases the risk that an inappropriate methodology will be selected.” (page 60)

There is every reason to believe that the ACCC will not be able to widen its methodological scope to deal with the genuinely problematical issues involved. The ACCC sees itself as a form of consumer protection agency rather than one which seeks to improve the efficiency of the economy overall.

Instead of handing this role of price surveillance to the ACCC, there should be no single agency monitoring prices where monopolistic pricing is seen to be a feature of the market structure. The role should be conducted by specialist agencies with deep knowledge of the industries. Price regulation should be undertaken by specialised agencies whose understanding of the issues is detailed and comprehensive. The specific knowledge required to monitor prices requires a knowledge not of the price formation process as a general proposition, but of the industry itself.

While ACCI agrees with the wider recommendations of the Report and with its desire to limit the role and scope of price surveillance, it does not believe that the ACCC should become the single regulator. There will be very few instances where this approach will be needed. And while it is always best to limit the growth of the bureaucracy, where price control becomes involved – an issue that should be extremely limited – it is too important to hand the responsibility to an agency which has insufficient expertise to monitor the pricing process well. The additional costs of a small secretariat to monitor prices will be more than repaid in the greater understanding that agency will have of the issues and problems that the regulated industries will face.

Commentary on Issues Raised in Prices Surveillance Report

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The Prices Surveillance Act in Brief	The Prices Surveillance Act in Brief
<p>THE ACT PROVIDES FOR THE MINISTER TO DIRECT THE ACCC TO UNDERTAKE THREE FORMS OF PRICES OVERSIGHT:</p> <ul style="list-style-type: none"> • monitoring the prices, costs and profits of companies • public inquiries into specified matters • prices notification, whereby the Minister declares that specified companies are to notify the ACCC of proposed price increases. The ACCC is required to make a determination about this price increase within 21 days of notification. 	<p>THE PRICES SURVEILLANCE ACT IS ABOUT IMPROVING EFFICIENCY IN LIMITED MARKET FAILURES WHERE THE IMPACT IS OF NATIONAL SIGNIFICANCE. THE ACCC SHOULD NOT BE THE REGULATOR OF CHOICE GIVEN THEIR LIMITED INDUSTRY SPECIFIC KNOWLEDGE.</p> <p>In reference to the stated time frame allowed by the PS Act, the average time in dealing with notification since 1999 has been at least months. Comment.</p>
<p><i>Why was the PS Act introduced?</i></p> <p>The intention was to promote restraint in pricing to accompany wage restraint exercised under the Prices and Incomes Accord, as part of a strategy to control inflation and promote economic growth.</p> <p>It was intended to be used strictly where competition was lacking and also to be flexible in its application.</p>	<p><i>Why was the PS Act introduced?</i></p> <p>ACCI concurs with this assessment of the original purpose of the Prices Surveillance Act. Agreement.</p>

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<p>What role is there for prices oversight?</p> <p>Since the introduction of the PS Act in 1983 there have been significant changes to the structure of Australian economy therefore the relevance of the Act may be diminished. Given that many micro reforms have taken place to increasing competition domestically and from abroad.</p> <p>Prices oversight has shifted thus to looking at monopolies rather than general prices surveillance.</p> <p>In 1995 the government introduced Part IIIA in to the TPA to help prevent the misuse of market power by owners of essential infrastructure facilities of national importance.</p> <p>Therefore the areas of possible monopolistic pricing that might otherwise be covered by the PS Act have been substantially reduced.</p>	<p>What role is there for prices oversi</p> <p>Existing arrangements reflect federalist nature of the Australian na and the allocation of responsibi between Ministers and agencies/offi</p> <p>Comment</p> <p>ACCI concurs that there is an extre limited role for prices surveill</p> <p>Agreement.</p>

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<p>Is there a need for Prices Surveillance outside of the National Access Regime?</p> <p>National access regime does not apply to goods, intellectual property and production process all of which are unlikely to exhibit monopolistic characteristics.</p> <p>This is of concern to the Commission “and raises the question of the type of prices oversight regime, if any, that might be required for areas not covered by Part IIIA”. (p.xvii)</p> <p>Regulators would like to set prices at the competitive level. But this task of setting prices is a complex task requiring information that is typically not available. Therefore, government and regulators should be wary of setting prices.</p> <p>The Commission is of the view that price notification should be removed from the PS Act, now that the majority of areas where price control may be warranted are covered by part IIIA of the TPA.</p> <p>Retaining the scope for inquiries and for price monitoring would still be valuable under the PS Act.</p>	<p>Is there a need for Prices Surveillance outside of the National Access Regime?</p> <p>ACCI is of the view that light-ha regulation is what is required for the outcomes. Agreement.</p> <p>Regulators would have very lit power through the recommenda outlined by the Commission. Comm</p> <p>ACCI believes that regulation shou undertaken by an independent regu with experience in the relevant ind since it is very difficult to attem understand the price setting pr without detailed understanding of industry and its needs. Proposal.</p> <p>Just as difficult as setting price monitoring prices and forming co judgments on the observed Therefore oversight, where ne should be conducted by an indepei regulator. Proposal.</p>

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<p>Inquiries and Price monitoring</p> <p>There is a case for keeping these functions due to the fact that market power could at some time in the future exist and that would not be covered the IIIA section of the TPA. Therefore this would allow for properly constituted public inquires where there is evidence of monopolistic pricing.</p> <p>The Commission is of the view that retaining the lesser scope for price setting would foster more light-handed regulation.</p>	<p>Inquiries and Price monitoring</p> <p>ACCI welcomes moves that allow greater freedom of business to p their own interests in the manner choose. Limits to regulatory power of great aid to the independenc businesses and will improve econ efficiency and foster growth. Comm</p> <p>ACCI also welcomes moves tov light-handed regulation in well de and important instances of market fa Agreement</p>
<p>What form should inquiries and monitoring take?</p> <p>Inquiries should only take place in national significant markets where there is evidence to suggest that they are pricing at monopolistic levels.</p> <p>Inquiries would define the nature of the market, the significance of the monopolistic pricing problem and discuss relevant options for addressing the problems, such as deregulation and prices monitoring.</p> <p>The reasons for the recommendations would be publicly available.</p> <p>Price setting could only then take place through industry specific regulation, and would be a last case scenario.</p>	<p>What form should inquiries monitoring take?</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>ACCI SHARES THE PRODUCTIVITY COMMISSIO VIEWS ON THE EVIDENCE REQUIRED TO SUPPORT AN MOVE TO STEP INTO THE PRIVATE SECTOR’S PRICIN STRATEGIES. AGREEMENT</p> </div> <p>ACCI further supports the general t of the Commission in outlining process for prices inquiries and the re to be achieved by an inquiry. Agreem</p>

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<p>Should inquiries and monitoring be done through the PS Act?</p> <p>“While it may be possible to retain the inquiries and monitoring functions in a (duly amended) PS Act, the Commission has concluded that the PS Act in its current form should be repealed. It was written and enacted in quite different circumstances, for purposes very different from its current use and, even apart from this, has many deficiencies from the perspective of good regulation:” (p.xix)</p> <ol style="list-style-type: none"> 1. It does not have clearly defined objectives; 2. It does not require an assessment of whether monopolistic practices are being pursued prior to price notification or monitoring activities; 3. It does not require alternatives to be raised before prices surveillance is undertaken; and 4. The regulator is the chief advisor on the need for prices oversight. 	<p>Should inquiries and monitoring be done through the PS Act?</p> <p>The issue is not particularly v ‘vehicle’ is used to deliver light ha prices oversight but rather that p oversight should be modified in lig today’s conditions and with a vie future issues that may arise. Commen</p> <p>The points noted by the Commissio reasons necessitating the repeal of th Act identify many problem areas wit current legislation. In view of identified deficiencies it should possible to amend the legislation in a way as to correct for these deficier rather than enact a new section o TPA. Comment.</p> <p>ACCI also believes that these issues be resolved in any new section o TPA or amended legislation. Comme</p>

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<p>Reason for a new section of the TPA rather than new legislation.</p> <p>Given that the PS Act has many deficiencies the Commission felt that new legislation would be required to permit the proposed price inquiries and monitoring functions. The Commission feels that given National Competition Policy is now embodied in the TPA it seems logical that any legislation for Prices Surveillance under the banner of competition should be enacted in the TPA in a new section, if there was to be prices surveillance at all.</p>	<p>Reason for a new section of the rather than new legislation.</p> <p>IN BROAD TERMS, WE CONC WITH THE FRAMEWORK OF NATIONAL COMPETITION POLICY AND THAT A NEW SECTION OF THE TPA IS THE BEST METHOD OF BRING PRICE OVERSIGHT UP TO DATE AND INTO LINE WITH CURRENT COMPETITION POLICY REFORMS. INCLUDING PRICE SURVEILLANCE IN THE RELEVANT SECTION OF THE DOCUMENT THAT EMBODIES OTHER AREAS OF NATIONAL COMPETITION POLICY AND STANDARD FRAMEWORK FOR DEALING WITH AREAS WHERE COMPETITION MAY BE LACK OR BEING LIMITED IS THE BEST WAY OF APPROACHING PRICE SURVEILLANCE. AGREEMENT</p>

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<p>Given that the new section of the TPA does not yet include a directive for the application of prices regulation</p> <p>Legislation would need to be enacted for price setting or approval in a case where direct prices regulation was found to be required.</p>	<p>Given that the new section of the does not yet include a directive for application of prices regulation</p> <p>ACCI is concerned that industry sponsored legislation enacted in response to Ministerial inquiries of prices and application of the new section of the TPA could allow for the nomination of ACCC as the prices regulator. ACCI seeks the involvement of specialist regulators to oversee price movements where such oversight has been deemed necessary. ACCI feels that there is a need to clarify this point. ACCI believes there is a need to avoid any misunderstanding in the direction and application of the new prices surveillance process.</p> <p>Comment</p> <p>A specific section laying out the processes of prices regulation would make the application of direct price oversight systematic and well defined rather than relying on different formulations and conceived enactments of Parliament. The placement of price setting in a new section of the TPA would then reduce the chance of prices setting being conducted in a manner inconsistent with the efficiency gains originally conceived of by replacing the PS with the creation of a new section of TPA. Proposal.</p>

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<p>The New section of the TPA.</p> <p><i>Objects Clause.</i></p>	<p>The New section of the TPA.</p> <p>Objects Clause.</p>
<p style="text-align: center;">THE PRODUCTIVITY COMMISSION PROPOSES THE INCLUSION OF AN OBJECTS CLAUSE THAT WOULD STATE “THE OBJECTIVE OF PRICING INQUIRIES AND PRICES MONITORING IS TO ENHANCE ECONOMIC EFFICIENCY.” (PXIX)</p>	<p>In principle the inclusion of an of clause within a new section of the will help to clarify the outcomes Commission is seeking to de Agreement.</p> <p>Such a clause would also make ex the intent of the legislation, and faci more consistent application of p surveillance. Agreement.</p> <p>Further to this ACCI believes tha objectives statement should also pr a framework and guiding principle industry-specific price surveillance regulation. Proposal.</p>

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<p>Provide guidance to the relevant Minister.</p> <p>A new section of the TPA would also embody the following general characteristics:</p> <ol style="list-style-type: none"> 1. “Provide guidance to the relevant Minister as to the circumstances in which an inquiry could be initiated; 2. Specify that inquiries must be undertaken by an entity that is separate of the regulator; 3. Provide guidance as to how the inquiry is to be held; 4. Specify the reasons for the inquiry recommendations be made publicly available; 5. Provide for prices monitoring to be undertaken, but impose limitations on the way it is undertaken to ensure that it does not becomes de facto price regulation.” (xix) 	<p>Provide guidance to the relevant Minister.</p> <p>Other than the need to further clarify what is to occur in the case of price regulation, the guidance and involvement of the Minister and government is for improvement in the management of prices. This is so because it effectively removes a bureaucracy from the ability to undermine and second-guess individual firm’s pricing strategies.</p> <p>Comment.</p> <p>There should also be guidance given in the cases where price setting is not specified in industry specific legislation.</p> <p>Proposal.</p>

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<p>No provision for compliance on information giving or price control.</p> <p>There is to be no compliance provision in the new section that would force firms to divulge information to the ACCC or for the ACCC to set prices.</p> <p>The Productivity Commission proposes that if price control were to be required as set out by the inquiry then industry specific legislation would need to be enacted to allow for direct price control.</p>	<p>No provision for compliance information giving or price control</p> <p>There should be limits on the inform needed to be kept on the odd chanc ACCC should care to examine sens information or information not req for business purposes and therefor kept. Agreement.</p> <p>Given that the Produc Commission’s proposals, ind specific legislation for prices setting have an unknown composition character, therefore all parties ma better served by dealing with what occur where price setting will be req under this new section of TPA v firms know what they are liable Proposal.</p>
<p>Findings 2.1 and 2.2</p> <p>The Productivity Commission found that prices oversight is now an entrenched part of competition policy and that the primary focus should be on firms with substantial market power in substantial markets, and because of the limitations and potential costs, price control should only be applied as a ‘last resort’.</p>	<p>Findings 2.1 and 2.2</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>THE FINDINGS SHOW THE IMPORTANCE THAT PRICE SURVEILLANCE IS LIMITED SCOPE AND APPLIED ONLY WHERE THERE IS A STRONG LIKELY HOOD THAT MONOPOLISTIC PRICE SETTING MAY EXIST. AGREEMENT.</p> </div>

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<p>Findings 3.1</p> <p>The Productivity Commission found that price control should only be considered where there is substantial monopoly power, and even in markets where competition is not strong the costs of price control are likely to exceed the benefits of attempting to correct for any anti-competitive pricing behaviour.</p>	<p>Findings 3.1</p> <p>ACCI WOULD LIKE THE COMMISSION TO GO FURTHER QUALIFYING ‘SUBSTANTIAL MARKET POWER’ TO REALISE MONOPOLY POWER IN NATIONALLY SIGNIFICANT MARKETS, WITH A LARGE SHARE OF CONSUMERS’ EXPENDITURES, SINCE SUBSTANTIAL IS NOT A DEFINED AND DEFINED AMOUNT OF POWER. PROPOSAL.</p>
<p>Finding 3.2</p> <p>The Productivity Commission found that the competition policy framework would be improved if the PS Act were to be repealed and a new section of the TPA were to be created alongside other national competition policy laws in the TPA.</p>	<p>Finding 3.2</p> <p>This finding is consistent with the proposals. Agreement.</p>
<p>Finding 3.3</p> <p>The Productivity Commission found that Price notification provided under the PS Act is no longer appropriate, and the PS Act falls short of best practice legislation.</p>	<p>Finding 3.3</p> <p>This finding is consistent with the proposals. Agreement.</p>

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<p>Finding 4.2</p> <p>The Productivity Commission found that the PS Act has the potential to inhibit and retard the development of pro-competitive options in industries that have historically been considered to have market power.</p>	<p>Finding 4.2</p> <p>ACCI strongly supports this finding Agreement.</p>

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<p>Repeal the prices surveillance act and incorporate a new section in the Trade Practices Act.</p> <p>The TPA section would thus look something like this.</p> <ul style="list-style-type: none"> a) Include an objects clause embodying the objectives for the inquiry and monitoring section in the act. b) Provide for public inquiries into monopolistic pricing. c) Require the relevant Minister to be satisfied, before initiating an inquiry, that: <ul style="list-style-type: none"> a. The pricing issue is material to the Australian economy; and b. Prima facie evidence of monopolistic pricing exists. d) The Minister should make public the reasons for the inquiry and specify the duration of the inquiry, which should not exceed six months. e) Specify that public inquiries: <ul style="list-style-type: none"> a. Identify the nature and significance of the pricing issue referred by the Minister; b. Identify and assess alternatives to price oversight including pro-competitive reforms; c. Be conducted in a transparent manner with input from, but not only, the regulator; d. Be required to publish a report, containing the reasons for the recommendations; e. Be able to recommend structural reform or 	<p>Repeal the prices surveillance act incorporate a new section in the T Practices Act.</p> <p>ACCI is supportive of the improvement sought by the Productivity Commission to the Prices Surveillance Act and a with the general set up of a new section of the TPA. However ACCI would suggest that the Commission propose the use of industry specific regulators since in case of regulation or even price oversight, the making of judgements upon price data requires significant knowledge of the specific industry.</p> <p>Proposal.</p> <p>As well as stating industry specific regulation be carried out under a section of the TPA, as mentioned above it would be superior to have specific mention of industry specific regulation. This would provide some guidance in cases where prices regulation would to be employed and industry specific legislation enacted. ACCI object leaving the door open for Australian regulation of prices in the extreme cases where price controls are legislated.</p> <p>Comment.</p> <p>ACCI seeks to clarify that if a case made for prices setting to be undertaken that the regulation of the prices of a particular industry in question should then be carried out by the ACCC through industry specific legislation. Proposal.</p>

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<p>industry-specific measures; and</p> <p>f) Only allow monitoring to be initiated:</p> <ul style="list-style-type: none"> a. By the responsible Minister, following a recommendation from such an inquiry; or b. As part of a decision by the appropriate regulator not to declare an essential facility for access under national access regime. <p>g) Designate the ACCC as the regulator for the monitoring provision.</p> <p>Enable the regulator to publish information being monitored under this section, but not make determinations or recommendations using this information.</p>	
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