

APPENDIX A: TERMS OF REFERENCE

Effective competition laws contribute to the productivity, efficiency and growth of an open, integrated Australian economy.

The Government considers it is timely to review some key provisions of the *Trade Practices Act 1974* (the Act) in view of the significant structural and regulatory changes that are occurring in Australia that impact on the competitiveness of Australian businesses, economic development and affect consumer interests.

In establishing a review, the Government is aware of concerns, among other things:

- that Australian businesses increasingly face global competition and need to compete locally and internationally;
 - that excessive market concentration and power can be used by businesses to damage competitors; and
 - the need for businesses to have reasonable certainty about the requirements for compliance with, or authorisation under, the Act.
1. The Committee is to review the operation of the competition and authorisation provisions of the Act, specifically Parts IV (and associated penalty provisions) and VII, to determine whether they:
 - (a) inappropriately impede the ability of Australian industry to compete locally and internationally;
 - (b) provide an appropriate balance of power between competing businesses, and in particular businesses competing with or dealing with businesses that have larger market concentration or power;
 - (c) promote competitive trading which benefits consumers in terms of services and price;
 - (d) provide adequate protection for the commercial affairs and reputation of individuals and corporations (in this regard, the Committee may examine the processes followed by the ACCC and

Appendix A: Terms of reference

the laws under which the ACCC operates, but is not to reconsider the merits of past individual cases);

- (e) allow businesses to readily exercise their rights and obligations under the Act, consistent with certainty, transparency and accountability, and use compliance or authorisation processes applicable to their circumstances; and
 - (f) are flexible and responsive to the transitional needs of industries undergoing, or communities affected by, structural and/or regulatory change and to the requirements of rural and regional areas.
2. The Committee is to identify, where justified, improvements to the Act, its administration and/or additional measures to achieve a more efficient, fair, timely and accessible framework for competition law.
 3. The Committee may consider other aspects of the Act and the recommendations of reviews currently underway or previously completed where relevant; but is not to include in this review a direct consideration of sections 45D-45EB, sections 51(2) and (3) of Part IV, or Parts IIIA, X, XIB or XIC.
 4. In performing its functions, the Committee is to advertise nationally, consult with key interest groups and affected parties, receive public submissions, and take into account overseas experience. As the States and Territories each apply the competition provisions of the Act as their own laws, the Committee should seek the views of the State and Territory Governments.
 5. The Committee is to protect the confidentiality of the affairs of individuals and companies during the course of its deliberations.