

**REVIEW OF THE COMPETITION PROVISIONS OF THE
TRADE PRACTICES ACT 1974**

**Department of Transport and Regional Services
Submission**

August 2002

The views expressed in this submission are those of the Department and do not necessarily reflect those of the Minister for Transport and Regional Services or the Government.

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1 Executive summary

The Department of Transport and Regional Services considers that the competition provisions of the Trade Practices Act (TPA), and their administration by the ACCC, are important for regional communities by offering protection to small regionally based businesses and to consumers in small regional markets. Regional businesses and regional consumers can be more vulnerable to unfair competition. Regional suppliers are often much smaller than their business customers while regional consumers often have far less opportunity to shop around than city based consumers.

The TPA and its administration have also helped to facilitate a substantial transfer of responsibility in the transport sector from government to the private sector by providing a safeguard for consumers against a potential increase in anti-competitive behaviour. This reform has provided substantial transport efficiency benefits, both nationally and in regions where the reform process has facilitated better transport services. There is likely to be a continuing need for such a safeguard given recent increases in concentration within particular transport modes.

All business arrangements that reduce competition would be expected to result in benefits for businesses that are voluntary participants in these arrangements. Consumers also benefit to the extent that associated efficiencies are passed on. Consequently it will always be a matter of judgement as to whether these benefits outweigh any adverse effects from reduced competition.

The ACCC appears to have considerable scope under the TPA to consider all the relevant factors that should be taken into account. However, finding the correct balance between competing interests will always be a matter for judgement.

In assessing specific business arrangements, the Department considers that every effort should be made to avoid any approach that prevents transport operators from significantly lowering their costs. Lower costs for transport operators provides the opportunity to lower costs for transport users.

The Department also emphasises the need to give significant weight to regional consequences, and particularly in assessing whether proposed business arrangements are in the public interest.

This submission puts forward a number of areas that the Review should consider in assessing whether the balance should be changed — either towards greater freedom for business or towards greater regulatory control.

The Department submits that the Review should examine:

- the scope to provide greater freedom for small businesses and agricultural producers to negotiate collectively when dealing with big business. The Department supports the introduction of a simple and low cost notification process for collective bargaining.
- the scope to make the TPA more accessible to small regional businesses and communities. It is important that small regional businesses and communities have easy and affordable access to, and enforcement of, the TPA, and that its requirements and administration are clear and unambiguous.

- the scope to ensure that the public benefit test takes clear account of issues at the local and regional level. It is important that the TPA easily enables exemption from its anti-competitive provisions for anti-competitive behaviour that is in the best interests of the local community.
- opportunities to ensure that rural and regional communities are aware of their rights and obligations under the TPA. Rural Transaction Centres may be able to provide an additional regional presence with appropriate support from the ACCC.
- the need to provide greater certainty for industry as to what business arrangements would contravene the competition provisions of the TPA — including through improved access to information for small businesses and the issuing of guidelines for aviation.
- whether assessments of mergers or cooperative agreements in the transport sector should emphasise the potential to significantly disadvantage transport users rather than the potential to increase profit margins.
- whether there is sufficient scope to approve mergers or cooperative agreements in the transport sector subject to conditions that protect transport users.
- the impact on investment of proposals to provide additional powers to control anti-competitive practices.

2 The Department's approach to the inquiry

The overriding objective of the Department of Transport and Regional Services (DOTARS) is:

A better transport system for Australia and greater recognition and opportunities for local, regional and territory communities.

The competition provisions of the Trade Practices Act 1974 (TPA) have an impact on the Department's regional objective through its influence on regional business activities and resultant effects on service levels for regional communities. The Review is required to determine whether the competition provisions are flexible and responsive to the requirements of rural and regional areas. Regional aspects are considered in sections 3 & 4.

The competition provisions of the TPA also have an impact on the Department's transport objective by regulating the activities of the transport industry. These transport aspects are considered in sections 5 to 7. A better transport system generally provides greater opportunities for local, regional and territory communities.

3 Consideration of regional issues

In its *Stronger Regions, A Stronger Australia* statement, the Government indicated that the social and economic interests of rural and regional communities would be taken into account in the implementation of National Competition Policy¹. This included a requirement that reform of regulatory arrangements be assessed against the interests of rural and regional communities. The statement indicated that processes for the review of legislation should seek the input of key rural and regional stakeholders and that the outcomes of these processes should be fully and clearly explained.

Consistent with this, term of reference 1(f) requires the Review to determine whether the competition provisions of the TPA are flexible and responsive to the special requirements of rural and regional communities, particularly where these communities are affected by structural and/or regulatory change.

The special considerations for rural and regional communities include:

- the small size of their markets and economies relative to their metropolitan counterparts;
- their limited access to, and greater cost of, vital services; and
- issues pertaining to the primary industries and supporting small businesses that constitute a significant proportion of their local economies.

Of course, the Department has no expectation the competition provisions of the TPA can be designed to solve all regional problems. The Government has recognised that misunderstanding about the purpose and scope of National Competition Policy, of which the TPA is part, can cause concern, especially among rural and regional

¹ Commonwealth of Australia, 2001, *Stronger Regions, A Stronger Australia*, August.

communities. The Productivity Commission has also noted that National Competition Policy is often unfairly blamed for a wide range of regional problems — such as the withdrawal of government services, the demise of local businesses, the closure of country bank branches and the population decline in parts of country Australia².

The reality is, however, that all Australian communities face significant change in this modern era from a wide variety of domestic and international sources. Such change results from new government policy and institutional reform, economic patterns of development, technological advances, and new environmental and social pressures. However, many rural and regional communities have greater difficulty in adjusting to the structural and regulatory changes they face. Such difficulties are magnified by local factors such as a lack of employment opportunity, outward migration of young people, and an inability to attract or retain skilled employees.

Stronger Regions, A Stronger Australia outlined the view that governments cannot impose a common solution to the diverse problems of all regions. The role of government is not to tell communities what they need, but to listen to what they need, and then to help provide the tools to achieve it. The Government seeks to ensure that local communities have the skills, knowledge and expertise to find their own solutions and the help they need to put those solutions in place. This underscores the need for flexible and responsive trade practices provisions.

It also highlights the need for the Review to consult widely on regional Australia's experience with the current form and administration of the competition provisions of TPA. In this context, the Department recommends that the Review meets with the Regional Business Development Analysis Panel. The Panel has recently been appointed to recommend an action plan to the Federal Government on how it can improve the regional business environment and reduce impediments to growth — see Attachment A.

The Review should consider a number of factors that are likely to be important in assessing regional requirements. These include:

- the need for consumers in regions to have reasonable access to essential goods and services;
- the desirability of consumers in regions having access to goods and services at a price and quality which is comparable to that available in metropolitan communities;
- the opportunity for regional producers to negotiate reasonable supply arrangements with large customers; and
- the opportunity for small competitors operating in regional markets to compete on their merits where large competitors have a presence.

² Productivity Commission, 1999, *Impact of Competition Policy Reforms on Rural and Regional Australia* (p XXIII)

Not surprisingly, there are inherent tensions in the interaction between these factors. For example, changes that disadvantage firms in one region may provide benefits to firms in other regions or to consumers generally.

4 Assessing the competition provisions of the TPA against regional objectives

4.1 Collective bargaining

The Department supports a number of the other submissions to the Review that recognise a need for provisions that allow small businesses and agricultural producers to negotiate collectively when dealing with big business.

This need is particularly evident within Australia's dairy industry, which faces a multitude of competitive pressures. As much of its produce is exported, the industry is effectively a global market price taker for a large portion of its output. Additional competitive pressures are experienced through domestic competition, where the ability for producers to influence farm gate price is limited by the increasing purchasing power of suppliers and retail distributors who both purchase milk from producers. As a result, individual milk producers are typically in a weak bargaining position.

The challenge lies in reconciling the benefits of competition between small suppliers with the potential benefits for the continued viability of small suppliers of allowing them to negotiate collectively with large companies. It is important that any amendments to the TPA are consistent with current policies of agricultural deregulation. Given that agricultural produce is sold largely on a competitive international market, it is likely that allowing small suppliers to negotiate collectively with large customers would seldom pose a significant threat to consumers.

As many regional communities represent small markets, they may be particularly vulnerable to anti-competitive behaviour. While it is important to provide some regional businesses with collective bargaining abilities so that they can minimise the anti-competitive behaviour of others, there should always be consideration of the total impacts of any authorisation on local communities, including the impacts on local consumers.

The Department supports the ACCC suggestion for the introduction of a simple and low cost notification process for collective bargaining — similar to that currently in effect for exclusive dealings. Under such a system, protection would be automatically granted and remain valid until the ACCC determined that the conduct substantially lessened competition without sufficient public benefit.

Such a notification process should also allow third parties (such as grower representatives) to apply for notification on behalf of those who will be directly involved in collective bargaining. This should significantly reduce the administration costs for both the ACCC and those applying for the right to collectively bargain.

Provisions that allow for collective bargaining, such as through notification or authorisation, should provide improved certainty as a basis for investment in regional businesses.

4.2 Increasing concentration in the retail sector

The trend towards a more highly concentrated market structure in the retail sector, and particularly in the grocery market, has increased structural adjustment pressures in many regional communities. The Department urges the Review to evaluate the overall benefits for Australia achieved through the increased concentration of the retail sector, against the specific costs that may be imposed on regional communities.

The large purchasing power of the retail chains enables them to exert considerable pressure on their often much smaller regional suppliers. This may be reflected in lower prices for their suppliers as well as through stipulated quality control systems that impose requirements on everything from fertiliser selection to the means of transport of the goods. While the large purchasing power of the retail chains may have price and quality benefits for consumers, it can lead to accelerated structural change in some areas of agricultural production, including the transition to increased farm sizes. Such accelerated change adds a further adjustment pressure to many regional communities that are already struggling to adjust to other pressures.

In some cases, the increased concentration of the retail sector has been achieved through the gradual acquisition of small retailers. It is therefore important that the ACCC considers the total effect of previous acquisitions when considering a new acquisition under section 50 of the TPA.

4.3 Regional markets

Many regional areas are characterised by a number of small businesses that operate in distinct regional markets that have less buying power and less access to business expertise than their metropolitan counterparts. These businesses can be major contributors to the economic base of their region as employers.

The Productivity Commission's *Impact of Competition Policy Reforms on Rural and Regional Australia* inquiry report (pp 344-5) identified that low population densities and remote markets often result in a small number of goods and services suppliers. This can easily result in a spatial or geographic monopoly or oligopoly. The Department welcomes the efficiency gains and benefits to consumers provided by large retail chains and does not support the protection of regional business for its own sake. However, given the ease with which anti-competitive practices can affect small regional economies, and considering the greater consequences of such impacts, the Department believes that abuse of market power in regional markets must be diligently policed, and particularly predatory pricing.

4.4 Access, authorisation and administration

The Review should consider whether the TPA sufficiently allows regional businesses to readily exercise their rights and obligations under the TPA, consistent with certainty, transparency and accountability, and whether they can readily use compliance or authorisation processes applicable to their circumstances.

Due to a relatively greater difficulty in accessing local legal services, many regional communities may face barriers in determining their rights and obligations under the TPA. It is important that small regional businesses and communities have easy and

affordable access to, and enforcement of, the TPA, and that its requirements and administration is clear and unambiguous.

4.5 Authorisation and the public benefit test

In assessing authorisation applications and notifications, the ACCC is required to apply a public benefit test. While the public benefit is not defined by the TPA, it is recognised that the ACCC must look at each case on its own merits in determining what is the public benefit from particular conduct in its unique context.

The Department is of the view that the public benefit test should take clear account of issues at the local and regional level. For example, more remote or smaller regional communities may have access to a limited number of essential service providers, such as doctors and pharmacists. In order to ensure that necessary services are available when required (24 hours a day in some cases), some collusion may be required amongst these service providers in the form of a roster system. It is thus important that the TPA easily enables exemption from its anti-competitive provisions when such anti-competitive behaviour is in the best interests of the local community.

4.6 ACCC Rural and Regional Program

The Department notes the valuable contribution of the ACCC Rural and Regional Program in ensuring that rural and regional communities are aware of their rights and obligations under the TPA. This is a step in ensuring that the TPA is easily accessible, enforceable and understandable by small regional businesses and communities.

The Program's primary strategy is the development of relevant communication and education strategies in rural and regional areas throughout Australia.

The ACCC should be strongly encouraged to maintain and improve its efforts to notify regional consumers of their rights. Rural Transaction Centres may be able to provide an additional regional presence with appropriate support from the ACCC. Details of the Department's Rural Transaction Centres are provided at Attachment B.

5 A better transport system

The Department considers a 'better' transport system to be one that is safer, more efficient, internationally competitive, sustainable and accessible.

The Government's broad approach to improving the efficiency and international competitiveness of the transport sector has been to reduce its traditionally high levels of Government control and to rely more on market incentives and competition to meet Australia's transport needs. As a result, transport reform has involved opening markets up to potential new entrants, reducing regulation and privatisation of Government monopolies.

In aviation, for example, successive Australian Governments have deregulated the domestic market, privatised government owned airlines and airports, opened up the domestic market to inward investment and created a single aviation market with New Zealand. In sea transport, allowing more shipping permits to international operators has

provided increased competition on Australia's coastal shipping routes. In rail, increased opportunities for new railways and the privatisation of Government rail freight operators are aimed at reversing the declining performance of this transport mode.

These reforms have resulted in major benefits for transport users and less demands on taxpayers to subsidise government transport operators. A recent Productivity Commission review identified considerable improvements in a range of transport services over the last decade³. Rail freight rates have decreased significantly, perhaps by 40 per cent overall. Port charges have also fallen, for example, by over 60 per cent for container ships in Melbourne.

The reform process has seen the introduction of new players, the exit of some major existing ones, takeovers, mergers and large changes in market shares of some businesses. Growing firms are likely to see this as a sign of healthy competition necessary to ensure transport services are meeting consumer demands at minimum cost. However, firms that have lost competitiveness will tend to disagree and argue that these changes are the result of unfair or anti-competitive business practices that will penalise consumers in the future.

While the boundaries between fair and unfair competition are often blurred, the Department considers that it has been important for the reform process to have a mechanism in place to address concerns about unfair competition that could otherwise have constituted a significant barrier to change. The Department considers that the competition provisions of the TPA and their implementation by the ACCC have been effective in facilitating reform in this way.

6 Recent developments within the transport sector

There have been considerable recent structural changes in aviation and heavy freight transport that at least raise questions about the adequacy of competition within the transport sector. While these changes are expected to improve transport efficiency, there may be a need to consider whether any changes to the competition provisions are required to ensure that these efficiencies result in benefits for transport users.

6.1 Aviation

The major development in the Australian aviation sector over the past year has been the demise of Ansett and the growth of Qantas' market share to 70-80 percent. Despite the high market share held by Qantas, it is not clear that there is a general competition problem on the main domestic aviation routes. The market for air travel can be segmented by travel routes as well as by the standard of service provided. It is possible for strong competition to exist on a route, for example Sydney to Melbourne, without necessarily involving strong competition on some of its segments, for example, business travel.

The trend worldwide has been for substantially increased competition at the leisure end of the market for air travel with a rise in no-frills discount air services. This appears to

³ Productivity Commission, 2002, *Trends in Australian Infrastructure Prices, 1990-91 to 2000-01*.

also have been the case in Australia. While discount airfares fluctuate considerably, airfare monitoring by the Bureau of Transport and Regional Economics indicates that there has been a significant reduction in discount fares over the last decade — and particularly towards the end of this period.⁴ With competitive pressure from Virgin Blue, we expect that more recent data will show a continuation of this trend.

The business market for air travel has not been subject to the same level of price competition as the leisure market. Airlines have tended to compete on service. There has been a modest increase in full economy fares over the last decade while full business fares have increased more strongly — by about 30 per cent in real terms.

Since mid 2001, despite the demise of Ansett, both full business and full economy airfares have been quite stable. The demise of Ansett clearly reduced total airline capacity. Despite the efforts of Qantas and Virgin Blue to expand their services, capacity in June 2002 remains well below that in August 2001. However, air travellers appear to have been more affected by reduced access to discounted airfares rather than by increases in particular types of airfares.

Looking ahead, both Qantas and Virgin have plans to acquire additional aircraft and both have made optimistic statements about their future market shares. The competitive pressures between them are likely to see increased capacity and service frequency on the higher volume routes, particularly for leisure travellers. Qantas has just announced its intension to provide single class services for major leisure routes.

The demise of Ansett may have also increased the potential for new airlines to enter the domestic market. Changes in the ownership of the former Ansett domestic terminals have created additional opportunities for airport operators to provide access to new airline operators. Many airports also constructed low cost express terminal facilities to accommodate Virgin Blue. Taken together these facilities have significantly reduced the barriers that might previously have existed and created new opportunities for aspiring entrants to the market.

The Department expects that there will be increasing pressure on the ACCC to approve mergers involving Australian airlines. Airlines across the world are seeking to consolidate and rationalise their operations. This reflects the intense nature of airline competition in a deregulated market. The pressure to consolidate also reflects the benefits to airlines and their customers that accrue from large networks which allow passengers to connect with points across the globe in a seamless and convenient way.

The Department is concerned about a lack of competition between airlines on some regional routes. Qantas or its affiliates already dominate many of these routes. Only a small number of mainly thin routes are served by regional airlines not affiliated with Qantas.

There are a number of concerns about the future of many regional aviation services, though many of these concerns relate more to the costs of providing such services and low levels of demand than to the nature of competition in these markets. For example,

⁴ Bureau of Transport and Economics, 2002, Transport Indicators, www.dotars.gov.au/btre/docs/indicate/airfares.htm

regional airlines not affiliated with Qantas appear to have problems securing feed traffic to or from the main routes and in making timetable connections.

There are potential options that may improve regional airline services. The Department understands that some unaffiliated regional airlines are in discussions to secure feed traffic and interline arrangements. Others (as is already the case with Flight West in Queensland) may carefully concentrate on particular routes that offer profits or guaranteed State subsidies. Nevertheless, there is a risk of potential Qantas dominance of some regional routes.

Air services on very thin regional routes that cannot support a single operator are a separate issue. They are mainly intrastate services. Some State governments consider that, for wider policy reasons, they wish to protect an incumbent operator and/or subsidise an airline to service a route. This can disadvantage non-aviation competitors, such as bus operators, though this concern is largely relevant to shorter routes.

6.2 Domestic freight transport

Road transport dominates the domestic freight task. Competition in road transport has traditionally been extremely robust. There are large numbers of road transport firms, and new firms can be established relatively easily. For example, a new firm can commence trading with a single truck — that can be leased or purchased 2nd hand — and a relatively small amount of working capital compared with most other businesses. However, while small firms dominate the industry in terms of numbers of establishments, a small number of very large freight forwarders or logistics providers are rapidly accounting for a major share of the freight transport market. These firms typically have extensive pick-up and delivery networks, specialised terminal facilities, advanced management and control systems and access to a variety of forms of transport that can be tailored to the job at hand⁵.

Logistics providers are able to achieve significant cost savings through the effective integration of a diverse range of transport services. As a result they have been able to win market share from more narrowly focussed transport operators as well as from the ‘in-house’ transport services which still account for the dominant component of the road transport task.

Logistics operators have often acquired access to additional transport capacity through takeovers of existing transport firms. Indeed, the number of firms in the road transport industry has reduced by about half since the 1980s. The recent rapid growth of Toll Holdings is a notable example of a transport company that expanded rapidly through acquisitions. Toll Holdings was listed as a public company as recently as 1992 but is now one of Australia’s largest logistics providers. It has acquired many major road transport companies, two stevedoring companies, and, in conjunction with one of Australia’s two major stevedoring companies, Australia’s major interstate and within NSW rail freight operators. Despite this spectacular growth, the ACCC decided not to

⁵ For further details of the logistics sector see Bureau of Transport Economics, 2001, *Logistics in Australia, A preliminary analysis*, Working paper 49.

intervene in Toll's acquisition of Finemore Holdings — another major freight operator — stating that competition among transport and logistics providers is fierce⁶.

An alternative mechanism by which transport providers can better integrate transport services is through cooperative arrangements. They can be between logistics providers and between purchasers of logistics services. These arrangements can improve the range of services offered and the overall standard of service delivery.

Increasingly, a firm's competitive advantage is derived by its relationship with the suppliers and customers along the logistics chain in which the firm is a participant. Best practice logistics are characterised by chain leaders that coordinate and/or control everything from the point of sourcing raw materials to the delivery of the final product to the customer. In doing so, the chain leader attempts to maximise the benefits to those along the chain by taking decisions on a systems or network basis.

For the past two years, the Department of Transport and Regional Services has been assisting the freight logistics industry, and its stakeholders, in the development of the Freight Transport Logistics Industry Action Agenda. This activity represents the most comprehensive survey of the industry undertaken to date and provides an insight into the issues affecting the performance of the logistics industry in Australia.

7 Assessing the competition provisions of the TPA against transport objectives

The Department considers that the competition provisions of the TPA and the ACCC have helped to facilitate a substantial transfer of responsibility in the transport sector from government to the private sector by providing a safeguard for consumers against a potential increase in anti-competitive behaviour. This reform has provided substantial transport efficiency benefits, both nationally and in regions where the reform process has facilitated better transport services.

There are some concerns in the transport industry that the competition provisions increase their costs by constraining their decision making. Against this however, there are concerns that recent increases in concentration within the sector may place additional demands on regulation to control anti-competitive practices.

Finding the correct balance will always be a matter for judgement. On the one hand, the Department places a high premium on mergers and cooperative arrangements that significantly lower transport costs. Lower transport costs provide the opportunity for lower costs for transport users. At the same time, the Department considers that such gains need to be weighed against the prospect that these efficiency benefits may not be passed on to transport users if mergers and arrangements reduce competition within the transport industry.

⁶ ACCC 2000, ACCC not to intervene in Toll Holdings' proposed takeover of Finemore Holdings, media release by ACCC, MR221/00, 15 August.

The Department would like to put forward a number of areas that the Review could consider in assessing whether the balance should be changed — either towards greater freedom for business or towards greater regulatory control.

7.1 Reducing industry uncertainty

A major study of the Australian Logistics Industry identified considerable uncertainty as to what cooperative arrangements between businesses would contravene the competition provisions of the TPA⁷.

The study found that there are some perceptions in the logistics industry that the ACCC is generally against cooperative arrangements. The Commission's stance on the application of the TPA to alliances involving overseas partners and/or markets is seen as particularly confusing. In such instances, it is often unclear which part of the supply chain is considered domestic, and whether all, or only part, of such chains are subject to the TPA. Whether these concerns are valid or not, industry can opt to do nothing rather than endeavouring to create the strategic alliances necessary to compete globally and improve domestic competition. Perceptions that cooperation may not be possible appear to have bred reluctance towards adopting more efficient and effective logistics practices.

The implication of logistics chain competition is that it requires the exchange of market and operational intelligence between those firms participating in a given chain. However, the study found that the logistic industry was concerned that this exchange of information may contravene the TPA. The Department believes that this lack of clarity stems from a lack of industry understanding of the TPA. It appears that many in the logistics industry, and their customers, gain their knowledge of the TPA by media reports of breaches of the Act and through hearsay. This seems to be particularly so for smaller businesses.

The Department believes that for Australian industries to remain internationally competitive they must be capable of participating in global logistics chains. However, the lack of understanding of the constraints the TPA may have on the ability of Australian firms to actively participate in these global chains is an impediment to Australian firms developing leading edge logistics chain practices. Therefore, the Department sees benefit in the Committee considering the development of logistics chain relationships with respect to the TPA, and the possible need for change and/or clarification of the constraints and opportunities provided by the Act. With respect to improving the level of knowledge of the TPA, the soon to be formed Australian Logistics Council could be used as one forum by the ACCC to educate the logistics industry.

With respect to aviation, there also appears to be uncertainty over the likely attitude of the ACCC to particular forms of commercial behaviour.

Aggressive competition in rapidly changing markets is a feature of the airline industry. Sophisticated computer reservation systems provide ones means by which airlines can create an edge over competitors. These systems are used to determine the proportion of seats on any one flight that will be made available at relatively low fares. If that

⁷ Industry Steering Committee for the Freight Transport Logistics Industry Action Agenda, 2002, *Freight Logistics in Australia: An agenda for action*.

proportion is substantially increased (possibly in the context of additional capacity in response to competition) it might be difficult for a newcomer to survive, especially as newcomers tend to initially rely largely on low fare traffic. The range of advertised fares can remain unchanged but the mix can be changed, either as a normal commercial management tool or as a competitive device.

As a result, it is often very difficult to disentangle anti-competitive or predatory behaviour from normal commercial management of day-to-day demand fluctuations using computer reservations systems. As ACIL Consulting put it:

Has Qantas been predatory? Some of its responses to the new competition have been to offer substantial quantities of cheap seats, to divert aircraft capacity from less profitable international routes, and to put more flights on some of the routes chosen by new entrants.

All of these developments could be explained by commercial factors other than predation. For example, it is sensible to offer cheap seats on off-peak flights and Qantas, being the major business airline, has a lot of such flights. The diversion of aircraft capacity may have been sensible given the problems on international routes.⁸

The Department supports initiatives to provide greater certainty for the aviation industry about the application of the competition provisions of the TPA. It understands that the ACCC has done considerable work on a guideline approach, but has not issued guidelines. While the Department acknowledges the practical difficulties in developing guideline material for such a dynamic industry, it would be happy to cooperate by making available its aviation expertise in developing guidelines.

7.2 Emphasising the potential to significantly disadvantage transport users rather than the potential to increase profit margins

The Department asks that the review consider the extent to which the TPA should be used to stop mergers or cooperative arrangements that increase profit margins.

The Department supports the current emphasis provided under the TPA to assess whether mergers or cooperative arrangements are likely to significantly disadvantage transport users. It is not clear to the Department why the TPA should be used to prevent a merger or cooperative arrangement in the transport sector that is expected to result in increased profit margins if there is not a reasonable expectation that it will also significantly disadvantage transport users.

The need for increased private sector investment in transport infrastructure is a major element of the Government's transport reform process. Mergers and cooperative arrangements that increase profit margins in the sector by significantly reducing transport costs may lead to increased private sector investment.

As reflected in the TPA, the assessment of whether mergers and cooperative arrangements will disadvantage transport users requires consideration of such issues as the availability of competing services and the potential for new entrants.

⁸ Australian Financial Review, 21 January 2002.

In many areas of freight rail, for example, prices have been traditionally set by Government owned railways to provide a competitive alternative to road freight and have not provided a commercial return to the rail sector. Consequently, there is little fear that reduced competition between rail operators in these areas would lead to higher prices for rail services.

In aviation, there is far less potential for competition from other forms of transport. For most purposes, air travel can be seen as a separate market from train, bus or car travel, although there will be competition from other transport modes on shorter routes such as Sydney-Canberra and Cairns-Townsville. However, on the main aviation routes at least, competitive pressure is largely reliant on actual competition in the air or the threat of entry of new airlines.

7.3 Alternative options should be considered

The Department understands that there is some capacity under the TPA to approve mergers and cooperative arrangements that substantially lessen competition in the transport sector subject to conditions aimed at protecting the interests of transport users.

Given the substantial economies of size in many areas of the transport sector, the Department considers that this approach has substantial merit and requests that the Review consider whether there is sufficient scope under the TPA for the ACCC to consider alternative options to protect transport users.

In rail, for example, approval for mergers and co-operative arrangements could be given subject to a satisfactory rail access regime for new operators being in place. Price undertakings by the businesses involved may also be able to be developed to protect consumers.

7.4 Additional powers to control anti-competitive practices

The Department supports the need for competition provisions of the TPA to protect the interests of transport users and to facilitate the continued reform of the transport sector that has produced considerable benefits for consumers over the last decade.

As noted earlier, some parts of the transport sector have indicated their uncertainty over the likely attitude of the ACCC to particular forms of commercial behaviour. Consequently, a significant increase in the punitive powers of the ACCC may deter the transport sector from mergers and cooperative arrangements that could lower transport costs.

A shift from Government to private sector investment is a key element of the Government's transport reform process. Consequently proposals for additional powers to regulate transport operators need to take into account any potential disincentive for private investment in the transport sector.

Attachment A Regional Business Development Analysis Panel



Regional Business Development Analysis Panel

A78/2002

25th June 2002

The Federal Government has appointed Dr John Keniry as the chair of the Regional Business Development Analysis Panel, the Deputy Prime Minister and Minister for Transport and Regional Services, John Anderson, announced today.

“The \$1.5 million analysis will recommend an action plan to the Government on how we can improve the regional business environment and reduce the impediments to growth. The action plan will be revenue neutral with respect to the Commonwealth Budget. It is a key component of the Government’s *Stronger Regions: A Stronger Australia* statement, which I launched last year.

“The panel will also examine the effectiveness of the current Federal, state and territory, and local government assistance for regional businesses, and the scope for greater cooperation between governments in providing assistance.

“The panel will consist of:

- Dr John Keniry (Chair) — current Chair of Ridley Corporation and immediate past president of the Australian Chamber of Commerce and Industry;
- Mr Edward Notter — former Chair of Gove Joint Venture and Nabalco, and former CEO of Swiss Aluminium Australia Ltd;
- Ms Sally Thomson — Director, Ruddweigh ISC Guyra, and Marketing Manager for Petals Network, Armidale;
- Ms Elspeth Radford — Director, Designer and Marketing Manager for Saltbush Clothing Company, Burra; and
- Mr Aivars Blums — Chief Executive, Gladstone Economic and Industry Development Board.

“The panel members have a wealth of business skills and a deep understanding of the needs of regional Australia. Their broad range of experience will ensure that the panel considers all the relevant issues, and that its recommendations are practical and deliverable.

“The panel will release a discussion paper shortly, and will consult widely with interested people and organisations. It is due to report by April 2003. The Government will then consider its recommendations,” Mr Anderson said.

**The panel’s terms of reference and short biographies of its members are attached.
Media contact: Bill McKinley 02 62777680**

Regional Business Development Analysis Panel Terms of Reference

The Regional Business Development Analysis Panel will recommend an action plan to the Federal Government on how it can improve the regional business environment and reduce impediments to growth. The action plan will be revenue neutral with respect to the Commonwealth budget.

The Panel will specifically examine and report on:

1. Options to encourage the growth of regional businesses and to attract new investment to regions;
2. Impediments to growth of regional businesses including access to finance, skills, infrastructure and technology;
3. The effectiveness of current Federal, state and territory, and local government assistance for regional businesses and the scope for greater cooperation between Federal, state and territory and local government in providing assistance for regional businesses; and
4. International practice and arrangements for providing assistance to regional businesses.

The Panel will consult widely throughout regional Australia, and will report to the Government by April 2003.

Attachment B Rural Transaction Centres Program

The Federal Government established the Rural Transaction Centres (RTC) Program in response to the need to ensure access for regional, rural and remote Australians to basic services which have been withdrawn from, or have never existed in, some small rural towns. The Federal Government has committed up to \$70 million to establish RTC's in towns of less than 3,000 people.

The Program is community driven and takes into account the diversity of regional communities by allowing a flexible approach to service delivery. The range of services which communities are offering through an RTC includes: Financial services, Centrelink services, Medicare easyclaim, business printing and secretarial services and other federal, state and local government services.

Any incorporated non-profit organisation representing a community can apply for funding under the RTC Program. Applicants can include Local Government, community groups and Chambers of Commerce. RTCs can be collocated in an existing business or in council chambers. The Program has funded over 200 RTCs and Electronic Point of Sale equipment across Australia to date.

Field Officer Network

The RTC Field Officer Network assists communities through the development, application, establishment and ongoing operational phases of a RTC. The 14 Field Officers are based in regional centres across Australia. Field Officers can:

- assist communities to gain a clearer understanding of the responsibilities facing them in running an RTC;
- facilitate individual business plans in consultation with the community and prospective service providers; and
- work at individual, local and regional level with other State/Federal bodies providing assistance programs to rural and regional Australia.

RTC EPOS

In August 2001, as a result an agreement between the Federal Government and Australia Post, eligible licensees of post offices in rural and regional locations with less than three thousand people could apply for the installation of Electronic Point of Sale (EPOS) equipment under the RTC Program.

The EPOS facility provides access to online bill paying to over 440 organisations and the giroPOST service that allows on-line deposit and withdrawals with 70 financial institutions. A total of 98 sites have been approved and the majority of these are operational.