

REVIEW OF THE PRICE SURVEILLANCE ACT

*ACCI PRELIMINARY SUBMISSION
TO THE
PRODUCTIVITY COMMISSION*

AUGUST 2000

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:** acci@acci.asn.au



Review of the Price Surveillance Act

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. That 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.

Each ACCI member organisation, through its network of businesses, identifies the concerns of its members and plans united action. Through this process, business policies are developed and strategies for change are implemented.

Review of the Price Surveillance Act

At its meeting of the General Council on July 28, the Australian Chamber of Commerce and Industry resolved that a submission should be made to the Productivity Commission Inquiry into Price Surveillance opposing any extension of price surveillance from its current stance. This submission is only intended as a preliminary expression of the views of ACCI on price surveillance. Following the release of the interim report, a more comprehensive submission on the issues raised will be provided.

It should, however, be made clear from the start that there is an extremely limited role for price monitoring or price control as part of the normal operation of the economy. Only in situations where competition is virtually impossible because of the nature of the industry itself, and only then when the industry produces a good or service used by a large proportion of the population and in which the proportion of incomes spent on the product or service is large, should a price surveillance mechanism even be considered. The concept of natural monopoly should be at the basis for any price surveillance activity.

The example of electricity transmission lines represents the kind of situation in which there is a genuine role for keeping a watching brief on prices. In this situation, monopoly profits are available to the owners of transmission lines, electricity is purchased by the entire population, there are no readily available alternatives and outlays on electricity are a significant part in the budgets of most consumers. These are the circumstances which must all be present before a case can be made for a price surveillance role.

In all other circumstances, pricing decisions should be left entirely to the market. Only a business can understand the range of considerations that go into its pricing decisions. If a free enterprise economy is to operate efficiently, it is the individual pricing by individual firms which will allow that to occur.

There can be no more fundamental assault on the free market than to intrude public sector interference into the price setting framework of business. It will reduce the ability of firms to plan for the future if it finds that there is a government body with the authority to second guess their decisions on the prices to charge for the products and services they sell. Price setting, which is difficult enough, will become immensely more difficult if there is perennial question mark hanging over a business about whether the decisions reached will be acceptable to some agency without the knowledge or information to make an informed judgement.

Review of the Price Surveillance Act

And this, of course, in part of the problem itself. Any disagreement over pricing policy will inevitably require firms to justify the pricing decisions they have made. This would, at a minimum, require additional record keeping to enable firms to explain why prices have moved as they have. This would demand a permanent addition to the cost structure of business in keeping the necessary records to explain price movements but would have no other business use. And wherever the price monitoring authority sought additional information about some price movement, there would be the additional time and expense involved.

For the vast majority of firms, there is no methodology to explain price movements. They are based on a host of considerations whose relative importance shifts with time. On occasion it is determined by costs of production, there are periods in which shifts in demand dominate. There are decisions about marketing and the variations between the short run and the long. No business can explain the reasons for the prices it charges since it is invariably a matter of testing the market which will come up with different answers at different times.

For a price monitoring agency, the fundamental problem it will face is that there is no theoretical basis upon which to make any judgements about the prices which have been charged or the increases which have occurred. Unless there is a template against which some actual decision can be tested, there is no basis upon which judgements can be soundly based. Economists have long debated the nature of price setting and have never been able to isolate a model capable of explaining how prices are determined in the market. Given that this is the theoretical position, there is no means for an agency to determine whether a price is too high or an increase has been too large.

Beyond the operation of individual firms, it is the price mechanism which provides the necessary signals to market participants over where resources ought to be deployed. The macro efficiency of the economy is dependent on resources flowing to where they can earn their highest return. A price monitoring, or even more destabilising, a price controlling agency will prevent the economy from properly adjusting.

This is an issue of the highest priority. Business is unequivocal on the issue of price surveillance and price monitoring. There should be no extension of price surveillance beyond its current level and there should be no introduction of any process of price monitoring. We are looking to improve the flexibility of the economy, not reduce it or add to the burdens of compliance with government regulation. It would do untold damage to overseas capital inflow if

Review of the Price Surveillance Act

foreign investors came to the view that Australia has a price surveillance and monitoring agency with the power to second guess the prices that businesses charge for the products and services they sell.

Price monitoring is already undertaken regularly by consumers who select the goods and services they buy from a vast range of products and who make their decisions without any need for a price monitoring agency to act as an intermediary. Competition is the sole guarantor needed to ensure that prices respond to the demand and supply pressures of the market.

The review should make it absolutely clear that price surveillance and price monitoring have the most limited role in the Australian economy.

In addition, there should be no single agency whose role it is to monitor prices in those very few areas in which price surveillance is deemed necessary. Instead, 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 specific industry.

The problems of attracting capital, financing expansion, maintaining an existing structure, paying its ongoing costs and ensuring an adequate return on investment will be different in each area under surveillance. These will be the forms of knowledge required and should therefore be conducted by specialist groups with a proper understanding of the particular issues of the industry.

Experience During Introduction of GST

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.

Our original conclusion, that there is absolutely no need in a free market economy for an agency to monitor prices, has been more than borne out by this experience. There is no constructive social

Review of the Price Surveillance Act

purpose in having a bureaucratic agency looking over the shoulders of business during the price setting process.

Included as Appendix 1 is an article taken from the August 1999 *ACCI Review* title, 'Tax Reform and the ACCC', which is deeply critical of the price monitoring role played by the ACCC. In its concluding section, the article stated

'There is little doubt why this legislation has been introduced but it should not stop the business community from making it understood that it has been an unnecessary encumbrance on the operation of the economy. The market will sort out relative prices and if the New Zealand experience is anything to go by, it will be only a matter of a few months and most of the upheaval will have dissipated....

'Business has been the largest supporter of tax reform, but if the new tax system also comes with a new system of price surveillance, and an onerous additional record keeping requirement, no one in the business community will be grateful.'

The experience with ACCC price monitoring during the introduction of the GST has confirmed there was no need for the price monitoring role to have been introduced as part of the tax reform process. The business community is deeply opposed to any extension of price surveillance from where it now is.

ACCC Submission

The Australian Chamber of Commerce and Industry is aware of the submission made to the Productivity Commission by the ACCC and its main recommendations are included as Appendix 2. The business community is strongly opposed to the recommendations made by the ACCC. This submission by the ACCC to the Productivity Commission's review has demonstrated that there are clear dangers that price monitoring could become a permanent feature of the Australian economy.

As already noted, the role of the ACCC in monitoring prices has become a more urgent issue in light of the experience Australia has had during the introduction of the GST. The ACCC was handed the job of overseeing price movements during the period of tax reform to ensure that 'price exploitation' did not occur.

Review of the Price Surveillance Act

What precisely constitutes 'price exploitation' was from the start difficult to identify even with all of the material provided by the ACCC but basically seemed to have amounted to this:

- no business was permitted to exaggerate the GST component of any price increase, and
- if there were many complaints about some price movement, the ACCC would then assume that where there is smoke there is fire.

Both of these provisions related to the introduction of the GST. In the normal course of economic activity, now that the GST has been introduced and established, price movements will no longer be attributable to tax changes. Thus, whatever justification there may have been in the original commissioning of the ACCC to monitor prices has now disappeared. There is no longer a role to guard against GST-based 'price exploitation'.

It is also worth noting that the ACCC was unable to provide any properly articulated general criteria to calculate price movements even over the short period during which the GST was being introduced. The ACCC's *Everyday Shopping Guide with the GST* purported to indicate the growth in prices for broad categories of goods and services. The problem with this guide, as there would be with any such guide, and as the ACCC itself accepted, is that there is no way to forecast any specific price movement and therefore there is no conceivable framework against which to decide whether some particular price movement has been excessive.

As was conceded by the ACCC, its price guide applied only to broad categories of goods and services, it was recognised that the price movements would take place over an extended period of time, it ignored all of the other considerations which affect individual prices and there were serious deficiencies in the modelling so that only a rough guide to these general price changes could be calculated. There was no specificity in its calculations to allow the ACCC to look at any individual price and decide whether the increase was justified in the circumstances.

This is, as already noted, the problem with price monitoring as a general proposition. There is no basis upon which those who monitor prices can base any conclusions in regard to what a price ought to be. No price monitoring agency has the information, even in theory, upon which it can base a decision to roll back a price determined by a business in the marketplace. But in the meantime, the intrusive nature of those who monitor prices in seeking a

Review of the Price Surveillance Act

justification for a price movement create costs and reduce business flexibility. The introduction of a permanent price monitoring agency would be an unacceptable and unwarranted interference in private sector activity that would provide no compensating benefits to the community.

The ACCC, in interfering in the processes of the market, in interpreting its mandate took upon itself the right to tell private sector businesses what prices they should sell their products for. This is an unacceptable practice even as part of the introduction of the GST. It ought to be seen as utterly beyond the pale during the normal operation of an economy.

There would have been innumerable changes going on as the economy adjusted to the GST, the removal of the wholesale sales tax, the changes to the fuel excise, the large reductions in personal income taxes and the changes to welfare payments, that no one should think it remotely possible for anyone or any organisation outside the business itself to say what should happen to any particular price.

However, even during the normal processes of economic activity there are an extraordinary number of changes taking place, far too many to make a price monitoring agency anything other than a serious obstacle to economic adjustment. There are the effects of the fluctuating fortunes of the market, which include shifts in the value of the dollar, frequent changes in import prices, shifting demand and supply from overseas buyers and sellers as well as an infinite number of other economic changes which are a constant part of the operation of any business.

Final Comment

This submission has argued that there should be no price monitoring conducted in Australia as part of the operation of competitive markets. It has stated that a number of preconditions must be present before price surveillance can be considered. Surveillance should occur only in situations where

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

Review of the Price Surveillance Act

In addition, where these circumstances exist, there should be no single agency monitoring prices in each of these industries, but 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.

Price monitoring is already undertaken regularly by consumers who select the goods and services they buy from a vast range of products and who make their decisions without any need for a price monitoring agency to act as an intermediary. Competition is the sole guarantor needed to ensure that prices respond to the demand and supply pressures of the market. A further extension of price surveillance beyond its present scope should not occur.

Appendix 1**Tax Reform and the ACCC**

Reprinted from the August 1999 ACCI Review

As part of the process of introducing tax reform, the Australian Competition and Consumer Commission (ACCC) has been asked to monitor the price effects of tax reform to ensure that 'price exploitation' as a result of tax changes does not occur. There is apparently concern that under cover of the various changes going on, prices will be raised more than they ought to be or will not be brought down as much as they should.

This, for anyone who understands how markets work, is a totally unnecessary concern. What is, however, a genuine concern is that a system of price surveillance will now be introduced which if it is not very limited in scope and does not entirely disappear three years from now when its legislative life runs out, will then become a genuine obstacle to the processes of market adjustment and will relentlessly undermine Australia's economic strength.

The legislation introduced as part of the tax reform process includes the following amendment to the *Trade Practices Act*.

- (1) A corporation contravenes this section if it engages in price exploitation in relation to the New Tax System changes.
- (2) For the purposes of this section, a corporation engages in price exploitation in relation to the New Tax System changes if:
 - (a) it makes a regulated supply; and
 - (b) the price for the supply is unreasonably high, having regard alone to the New Tax System changes (so far as they have taken effect); and
 - (c) the price for the supply is unreasonably high even if the following matters are taken into account:
 - (i) the supplier's costs;
 - (ii) supply and demand conditions;
 - (iii) any other relevant matter.

The legislation, moreover, calls for fines of up to \$10,000,000 for firms and up to \$500,000 for individuals who contravene the Act. And as a final hurdle, the onus of proof is placed on the business or individual price setter to prove that they have not been engaged in

Review of the Price Surveillance Act

price exploitation. Thus, in any court proceedings it is the accused who must prove that they have done nothing wrong. One is guilty until one can prove one's innocence.

One can see the motivation which lies behind this legislation. The Government must surely understand just how unnecessary such legislation is. It is perfectly well aware of the role of markets and market forces in the process of price determination.

It must also fully understand that once the legislation permits 'supply and demand conditions' as an explanation for an increase in price, that there is very little that has to be said after that. Prices determined in the market are the outcome of whatever prevailing conditions happen to exist.

There are, no doubt, large numbers of Australians who strongly believe that some sellers may seek to claim that price increases resulting from the tax changes are justified when they are not. But for all this concern, the market will do a better job of controlling prices than will ever be done by a government agency.

Businesses, because they are hemmed in by competitive forces, will be no more able to 'exploit' their market position after tax changes are introduced than they were before.

It is, moreover, perfectly well understood that a series of changes of the most profound kind will be taking place at one and the same time as part of the tax reform process. There will be the elimination of the Wholesale Sales Tax which will remove upwards of 32% from a wide range of manufactured products. The price of diesel fuel will be coming down across a broad front of utilisation.

There will be some very large cuts to the level of personal taxation which will substantially lift the after-tax incomes of virtually every income earner in the country. There will be increases in a large range of welfare payments and in the age pension.

And finally, every good and service sold, other than a limited range of exemptions, will have a 10% GST embedded in the price, which, because of the other changes then going on, will definitely not mean a 10% increase in all prices.

These are circumstances in which will make any assessment as to what any individual price should or should not do impossible. There is no framework which will allow anyone to say that any particular price has fallen less than it ought to have or that it has risen more than was appropriate.

Review of the Price Surveillance Act

This is perfectly well understood by those who have framed the legislation. They appreciate that no model of pricing behaviour will provide even a vague impression of what ought to happen while all of the changes to the tax system are being introduced. But while they understand this, they also understand that others do not accept this conclusion. They recognise that there are others who are critics of the tax changes who will argue that under cover of the GST, other price increases will be added on.

Even though there is no need to have waited for the tax changes to raise prices if that is what they wish to do, and even though competitive forces will continue to operate and therefore provide market restraint on the movement in prices, they will argue that something untoward will be going on.

It is useful to recall that the *ACCI/Westpac Survey of Industrial Trends* has shown 14 consecutive quarters of falling average selling prices – a result achieved in the market without legislative intervention.

The concern business has is that by putting such legislation in place, the Government has provided ammunition to those who do not accept in spite of the evidence that the market does provide restraint.

It is therefore highly regrettable that in introducing much needed tax reform the Government has also provided a precedent of sorts for those who mistrust the market.

Importantly, this is legislation with a sunset clause. Three years from the day the legislation was passed it is to disappear. That this does indeed happen will be essential if the Australian economy is to operate efficiently. Governments ought to have no role in price setting in the private sector. That this legislation is a very special case is understood by business. It must set no precedent.

ACCC Guidelines

The legislation having been passed, the administration of the law falls to the Australian Competition and Consumer Commission (the ACCC). As far as the ACCC is concerned, the Government has decided that there is such a thing as price exploitation and it is therefore the role of the ACCC to ensure it does not take place.

It is clear that the approach adopted by the ACCC is to respond to complaints. Since there is little in the way of a means to determine whether prices have gone up more than they should, the means chosen to determine whether a problem exists is through the weight

Review of the Price Surveillance Act

of public complaint. A 'hotline' has been set up to phone in complaints. As the ACCC states in its press release:

'For the cost of a local call from anywhere in Australia consumers and business will be able to report exploitation directly to an ACCC officer.

'The ACCC will use the hotline information to come down hard on those who are clearly profiteering.'

The very choice of the word 'profiteering' provides an indication of the mindset of those who are administering this legislation. It is totally inappropriate that the ACCC should suggest that price setting behaviour in competitive markets should be looked upon as 'profiteering' (whatever that may be). The educative role of the ACCC is teaching the community the wrong lessons about its own welfare.

The ACCC have, however, formulated a set of guidelines on what in very general terms will constitute exploitative (ie illegal) behaviour. After extensive consultation with business, the ACCC has arrived at guidelines which in a summary provided by the Commission are:

- [where taxes are lowered as part of the reform process] prices should be reduced immediately to pass on the full effect of the tax reductions;
- any increase in price based on the GST should include a full offset for other indirect tax reductions;
- no markup should be applied to the GST component of price;
- prices should reflect only actual, not anticipated, tax increases; and
- businesses should not take the opportunity to increase the difference between cost and prices in dollar terms (the dollar margin rule).

The rule underpinning these guidelines would be troublesome in a business producing only a single product. That they will be applied to the product range of businesses selling hundreds if not thousands of products or services is a matter of the greatest concern, especially when the onus is on the business to demonstrate for a three year period that it is not liable for a fine of \$10,000,000 in having chosen whatever price it has put on what it has put up for

Review of the Price Surveillance Act

sale to the public at a time when a complex mix of changes is taking place.

A Simplified Example

Probably the most important issue for business compliance is the demand that 'no markup should be applied to the GST component of price'. It is so unintuitive for most businesses that it will take some getting used to. In days past, a markup was applied to the invoice price of all inputs to the production process. That is now illegal where the input price includes the GST.

If the markup a business normally applies is 20%, then for a good which has cost \$100 the sale price becomes \$120. Now, however, the invoice price of what had previously been \$100 will be \$110 which is the cost price inclusive of GST. If one then placed a 20% markup on this item which would bring its cost to \$132 and then placed a further 10% GST on top, this would add another \$13.20 and bring the price to \$145.20.

Any business which did this would suddenly be liable for prosecution however inadvertent what had been done actually was. What must be done instead is to remove the GST paid for an input before adding on the markup and the GST.

Therefore, in this example, the input costs \$110 including \$10 of GST. Before the 20% markup is added in, the GST paid must be removed. With the 20% markup added in, the price is then, as before, \$120. On this is then added one's own GST of \$12 which is 10% of \$120. This brings the sale price to \$132.

Thus the difference in pricing appropriately and pricing wrongly is that the good in question is sold for \$145.20 rather than \$132.

Would everyone make this mistake? It is highly unlikely and the consequence would be that the market would punish any business which tried to sell a product for \$145.20 when it could be had elsewhere for \$132. The natural processes of the market will ensure that the price of goods and services rapidly finds its way towards the price the ACCC is trying to enforce. The threat of \$10,000,000 fines is totally unnecessary.

A Summary Table

The following table shows this same example, and also includes an explanation of how beneath all the application of the GST, the retailer is in exactly the same position as before.

Review of the Price Surveillance Act
A Simplified Example

	Before GST	Wrong Markup	Right Markup
Wholesaler			
Price of Purchased Input	100.00	100.00	100.00
GST		10.00	10.00
Payment for Purchased Input	100.00	110.00	110.00
Retailer			
20% Markup	20.00	22.00	20.00
Price After Markup	120.00	132.00	120.00
GST		13.20	12.00
Final Sale Price	120.00	145.20	132.00
GST Payments			
To Wholesaler			10.00
To Tax Office			2.00
Total			12.00
Amount Retained by Retailer	120.00		120.00

In regard to the GST payments, the retailer paid \$110 for this good when previously it had cost only \$100. The retailer is thus out of pocket an additional \$10 on the previous transaction. The sale price, with the 10% GST added on, is then \$132. Of this, \$12 is GST payment. The retailer receives a credit for the \$10 already paid in GST and must then forward an additional \$2 to the Tax Office.

The result is that the retailer having paid \$10 to the wholesaler in GST and a further \$2 to the Tax Office has paid in one way or the other \$12 in GST. Removing the \$12 from the final price of the good shows that the amount retained by the retailer remains as it was before, \$120.

A Less Simplified Example

But let us add the next stage of complexity. Some inputs now have Wholesale Sales Taxes (WST) of various rates applied to them. Assume here that the good we are describing had a WST of 22%. When this tax is removed, the price of the product falls by around \$18, and its sale price becomes \$82 plus a further 10% which brings it to \$90.20.

Review of the Price Surveillance Act

If all went according to the previous approach, the final seller would add a markup of 20% to the \$82 amount which is the price paid less the GST component. This would bring the pre-GST price to \$98.40, and with the addition of the GST, to \$108.25.

Thus, with the removal of the WST and the addition of GST, the price of this product has fallen by 9.8%, from \$120 to \$108.25.

However, the 20% markup had previously been placed on an item which cost \$100 which left a gross profit of \$20. Now the markup of 20% is on \$82 which leaves a gross profit of only \$16.40. Since the markup is what pays for all of the costs of running the business outside the actual cost of goods sold, there is \$3.40 missing to cover wages, rent and other expenses.

Therefore, one of the provisions in the ACCC Guidelines is an acceptance that the markup can be applied in dollar terms rather than as a percentage. Here the markup would be \$20 on the product so that to the \$82 input price with the GST removed, the markup is \$20 which takes the price to \$102. With the GST added on, the price then becomes \$112.20.

Thus, net effect of the removal of the 22% WST and the addition of the 10% GST is a fall in the price of around 9.4% for this one good in this one instance.

Adding More Complexity

But firms do not sell just one good nor are their markups held constant. Few shops fail to have their share of sales and discounts so that what the price or the markup of any particular good or service might be is a matter of business strategy. The variations in the price of petrol is but one example of the manner in which prices move. Supply conditions are constantly undergoing shifts, some small and subtle, others quite large and intrusive.

The cost of running a business as with household costs will suddenly be confronted by a variety of price changes. This will not be as in an inflationary environment where everything rises by more or less the same rate. This will be a situation in which some prices will be rising and others falling, not just for what one buys but also for what one sells.

There will also be the effects of the personal tax reductions as well as the increases in various welfare and pension-related payments. Incomes both absolute and relative will be shifting about during a period in which virtually everyone will have a higher real after-tax

Review of the Price Surveillance Act

income but in which the prices of goods and services will be generally unfamiliar.

What will happen then? What becomes of the supply and demand conditions in a market which has so radically changed in so many ways and more or less at a single moment? Who will be able to state about any particular price that it is too high? Who will actually have any serious idea about whether 'exploitation' or 'profiteering' has gone on?

It will be simply impossible for anyone in the midst of so much commotion to say one way or another that a price should be different from whatever it happens to be. This will be a period of profound uncertainty, and it will not be helped by the ACCC peering over the shoulders of the business community, second guessing what prices should be.

Where to From Here

There is little doubt why this legislation has been introduced but it should not stop the business community from making it understood that it has been an unnecessary encumbrance on the operation of the economy. The market will sort out relative prices and if the New Zealand experience is anything to go by, it will be only a matter of a few months and most of the upheaval will have dissipated.

To the extent that anyone actually mis-prices an item, it will be due to markups and the GST being applied to input costs before the GST paid has been removed. By the time the GST is introduced, most firms will understand the procedures involved, and where they do not, the market will alert them rather rapidly that the prices they are charging are well out of line with the prices of their competitors.

The ACCC will therefore need to apply its guidelines in a flexible and sensible way. Firstly, there will be only a few key periods of transition to the new system. These will be when the changes are made to Wholesales Sales Taxes, to various state taxes and to when the GST first becomes applicable.

Record keeping during such a period of a large addition to the complexity of business management will be an additional aggravation when the very processes of accommodating the GST will be taking place. Nevertheless, businesses have been warned and they will therefore understand that proper records will need to be kept of how various shifts in taxation have impacted on the hundreds and thousands of prices they charge.

Review of the Price Surveillance Act

The need to keep records should apply to only this tight time period, not across the subsequent months and years of price reconfiguration. Four months after the tax changes have been made there should be no call for the ACCC to look into the pricing behaviour of a business.

Not only would there be no reason to do any such thing, but to demand of businesses that they keep records of how they justified an increase (or insufficient decrease) in prices at some particular point months after the tax changes have been introduced would be inappropriate at the best of times, but extraordinarily onerous at a time such as this.

Business has been the largest supporter of tax reform, but if the new tax system also comes with a new system of price surveillance, and an onerous additional record keeping requirement, no one in the business community will be grateful.

Appendix 2

ACCC Recommendations for Amendment of the Current Price Oversight Regime

The ACCC recommends that the price oversight regime be amended. A broad overview of the amended legislation, includes the following elements:

- *The pricing powers should include provisions to regulate prices mainly in relation to monopolies*

In the case of price regulation, decisions should be court enforceable. The need for price regulation should be subject to review from time to time. This does not relate to access pricing as such but the need for final price regulation. These pricing provision are an adjunct to access legislation and other pro-competitive reforms. Generally, these powers would be used in relation to markets of national significance.

- *A monitoring function would also be required as part of these new pricing provisions*

Independent of price regulation, Government should be able to determine that certain entities or industries be subject to price monitoring. Monitoring is most likely to be appropriate for those areas of the economy where there is high market power and high community concern about public detriment.

In addition, the ACCC should be able to continue to make preliminary informal inquiries in order to make recommendations about when monitoring should be conducted. Monitoring should take place for a prescribed period and its continuance be subject to review by the relevant Minister.

- *The new pricing provisions should be supported by appropriate procedural measures.*

A range of procedural reforms to the PS Act are suggested in the submission. These modified procedures should support the new focus of the PS Act – regulating prices for monopoly utilities. The ACCC should have some discretion to choose an appropriate methodology for assessing prices and this should allow for incentive price regulation which could take the form of a CPI – X regime.