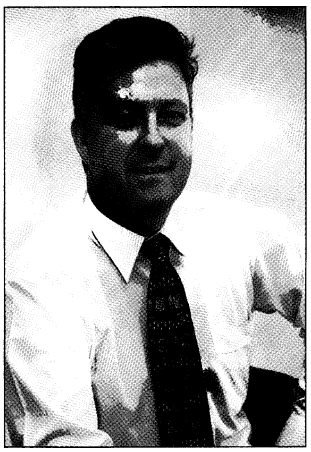
Forum

GST head appointed

John Grant has joined the ACCC to head up the new GST Operations Group. The profile of the Commission's responsibilities, the short timeframe and the amount of work to be done before the proposed legislation is planned to take effect means that John needs to be vigorous in establishing action plans, liaising with the stakeholders and beneficiaries of the proposed new tax arrangements, and ensuring that the Commission is positioned to fulfil its responsibilities.



A key factor is recruiting high calibre staff to participate in new responsibilities arising from the Government's proposed A New Tax System (ANTS) initiatives. The group's basic functions will be to:

- formulate guidelines about when prices for supplies may be regarded as exploitative;
- monitor prices to assess the general effect of the ANTS changes on prices;
- report to the Minister about the Commission's operations (in relation to this part of the Trade Practices Act); and
- foster compliance with, and where necessary enforce, the provisions of the Act.

Draft GST pricing guidelines

On 23 April 1999 the Commission issued preliminary draft pricing GST guidelines for consultation with all interested parties.

The intention of the guidelines is to ensure that consumers benefit fully from reductions in indirect tax, where that is the effect of the tax changes; that consumers are not exposed to greater than necessary price rises; and that consumers are not exploited.

The proposed legislation requires the Commission to formulate guidelines as to when prices may be regarded as being in breach of the price exploitation provisions. Whilst the legislation is yet to be passed, the guidelines need to be developed before 1 July 1999 to ensure the objectives of the legislation are achieved, since tax changes are expected to occur soon after that date.

The draft paper reflects the Commission's current thinking about the key principles that the guidelines should contain.

The Commission considers that it is preferable for the guidelines to be as general and simple as possible, given their broad application across all sectors of the economy to businesses of all sizes and kinds. Additional guidelines may be drafted in relation to issues affecting particular industries or sectors if the need arises.

The Commission will consult with key interested parties on an ongoing basis on the development and implementation of guidelines.

The statutory principle

The proposed new s. 75AU of the Trade Practices Act outlines the broad statutory test in relation to price exploitation during the transition period of the new tax system

changes. This test provides the underlying principle on which the guidelines are based.

A corporation (or person) will be considered to engage in price exploitation 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 other matters are also taken into account:

(i) the supplier's costs;

(ii) supply and demand conditions;

(iii) any other relevant matter.

Penalties for breaching the price exploitation provisions of the proposed legislation will be substantial, including fines of up to $10 million for corporations and $500 000 for persons.

Price changes, not price levels

The Commission's focus in the transition period will be on **changes** in prices resulting from the tax changes, not on the **level** of prices. It is only interested in the response of business to the tax changes. It is not intended that the Commission assess how reasonable or otherwise the existing level of prices may have been.

The Commission will expect suppliers to adjust their prices in response to the new tax system changes and be able to justify the changes made.

A basic principle is that prices should reflect the **net** effect of GST and pass through of the offsetting indirect tax reductions. Whilst prices may reflect the effect of GST, no profit markup may be applied to it.

The pass through test

The net profit margin implied by prices and costs incurred in the supply of a particular good or service should not increase as a result of the new tax system changes alone.

The net profit margin will be assessed as a percentage of costs or of sales exclusive of indirect taxes, unless a supplier is able to demonstrate that exceptional circumstances justify a different approach to net profit assessment.

Consistent with the pass through test, businesses should not anticipate the effects of the new tax system changes by increasing current prices. In general, suppliers should not change prices in advance of the introduction of the GST solely on the basis of **expectations** about all or any of:

- the introduction of the GST itself;
- the business costs of complying with the administration of the GST;
- changes in input costs due to input suppliers anticipating the effects of the GST introduction.

The competitive market test

The statutory test recognises that there may be other factors that influence the extent of pass through in the transitional period in addition to the new tax system changes. These may be indirectly related, for example changes in administrative costs associated with implementing the tax changes (net of any government assistance received relating to these costs), and changes in production and sales volumes resulting from price changes or anticipated price changes.

Changes in costs actually incurred if reflected in prices should not affect net profit margins. Changes in demand may result in margin changes. However, in assessing the reasonableness of margin changes the Commission will apply a competitive market test. That is, the Commission will consider whether any change in margin is consistent with what would be expected to occur in a competitive market. In making this assessment the Commission will assess whether a supplier or suppliers together are likely to possess a high degree of market power which may allow them to take inappropriate advantage of the new tax system changes.

If margins are observed to change before the introduction of the GST in response to forward buying and deferral of buying by consumers within the transition period, the Commission

will closely examine subsequent pricing responses at the time of the GST introduction and afterwards. The Commission would expect to see the effects of demand anticipation on margins to be neutral over the transition period.

Supplier justification

The Commission expects that suppliers will be able to justify in specific terms any change in product net margins.

Justification should be by reference to the terms of the statutory test and the guidelines, including consistency with competitive market operation.

Monitoring

In carrying out its task of monitoring prices in the transition period the Commission will take into account any publicly available econometric modelling and any other modelling that the Commission itself undertakes or commissions. Price changes that vary significantly from an industry's expected average price movements will be an indicator for closer scrutiny by the Commission.

Displaying prices

Where prices are displayed they should be GST inclusive. This is in line with the intent of the Government. It is also consistent with the Trade Practices Act (ss 52, 53(e) and 53C). In addition, suppliers are encouraged to provide information to consumers to explain the basis for any price changes. This may include display of the pre-GST prices as well as the GST inclusive price, where appropriate.

Compliance commitments

The Commission will seek voluntary commitments of compliance with the guidelines from individual businesses with annual turnovers above $100 million.

The draft guidelines are available from Commission offices or at its website.

Restrictive trade practices and health professionals

This article by Elizabeth Kelleher of the ACCC's Brisbane office identifies some of the types of conduct that may be subject to enforcement action by the Commission in relation to the application of Part IV of the Trade Practices Act to health professionals.

Part IV of the Act was extended to unincorporated businesses, including the medical profession, by the *Competition Policy Reform Act 1995* and State and Territory application law from 21 July 1996. Part IV therefore applies to those professionals that operate through independent businesses as opposed to employed professionals.

Health sector compliance with the provisions of the Act is a Commission priority. The important social and economic role of the health sector in our society makes it vital that consumers enjoy the full protection of the Act. Application of Part IV will help ensure that competitive forces stimulate the development of products and services and allow consumers to determine the range, quality and price of services available.

The specific provisions of the Act dictate what enforcement action can be taken by the Commission. This article highlights the types of conduct that are likely to breach the provisions of Part IV of the Act and provides several examples of instances where the Commission has taken action.[1] Professionals need to be aware that monetary penalties apply to breaches of the Act.

Primary boycotts: ss 45, 4D

Agreements reached between persons in competition with each other that exclude or