

The GST — and the ACCC's role

Everyone's talking about the GST, including the ACCC, which is already gearing up for its role. Set out below is an outline of the responsibilities it is to be given.

The ACCC is to get special transitional powers contained in A New Tax System (Trade Practices Amendment) Bill 1998 which inserts a new Part VB into the Trade Practices Act.

It will have the power to monitor prices to prevent the possibility of consumer exploitation and excessive profit taking in the transition to the new tax system — from 1 July 1999 or when the law commences (whichever is later), until two years after implementation of the GST.

In the period before the GST is introduced the prohibition on price exploitation will apply to prices for goods on which the rate of sales tax is to be reduced on 1 July 1999.

Price exploitation is defined in the Bill as occurring if the price for the supply of a good or service is unreasonably high, having regard to the effect of the tax changes under the next system. The Bill recognises that many factors may affect price. It will not be price exploitation if the higher price is attributable to the supplier's costs, supply and demand conditions, or any other relevant matter.

The existing Part IV penalties will apply: up to \$10 million for corporations and up to \$500 000 for individuals.

The ACCC will be able to seek injunctions or, as an alternative to court action, accept voluntary undertakings in line with its existing power under s. 87B of the Trade Practices Act.

New power to issue notices

The ACCC will have the power to issue notices in two price exploitation situations.

The first is if the ACCC considers a corporation has breached the prohibition. In any proceedings seeking penalties or injunctions this notice will constitute prima facie evidence that the corporation made a supply at a price that was unreasonably high, and that the price is not attributable to a supplier's costs, supply and demand conditions, or any other relevant matter. In this instance it will be up to the corporation to provide evidence to the contrary.

The second situation is if the ACCC considers issuing the notice will prevent price exploitation. In these notices the ACCC will specify a maximum price that, in its opinion, may be charged for supplies of a specified kind, made in specified circumstances, and during a specified period. These notices will carry no evidentiary effect but will give an indication of the price above which the ACCC will consider a future supply to constitute price exploitation. The ACCC will be able to publish these notices.

Information gathering

Under Part VB the ACCC will have extensive information gathering powers additional to those that already exist under s. 155 of the Trade Practices Act. The new powers will generally be used to collect background information on prices and price setting — and the ACCC will be able to do this before the transition period begins, which will enable it to compare before and after prices.

State and Territory cooperation

Because limitations on the Commonwealth's constitutional power mean these measures can't extend across the whole economy, States and Territories will be applying the Commonwealth legislation to their own jurisdictions.

Guidelines

As part of its responsibilities the ACCC will be required to publish guidelines and will have to take them into account before issuing notices. The court may also have regard to them in proceedings brought by the ACCC.

The ACCC will embark on a major compliance education program and seek the active cooperation of industry in the development of guidelines.