

Jill Walker, the ACCC's newest commissioner



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The Australian Competition and Consumer Commission's newest commissioner, Dr Jill Walker, is already one of the most knowledgeable people in her specialty areas of mergers and anti-competitive conduct.

She easily recalls investigating, as a staffer with the Trade Practices Commission (TPC), the proposed merger of Ampol and Caltex in 1995—and wrestling an agreement from them that contained significant concessions.

'The undertakings we obtained were quite significant,' she recalls. 'It demonstrated the benefits of the "substantial lessening of competition" test, as opposed to the previous "dominance test", which allowed the commission to challenge the proposed merger.

'Under the old test, a merger could only be challenged if the merged firm would be likely to supply the majority of the market.

'The Caltex–Ampol merger involved a reduction from five to four major petrol refiner-retailers, in a market with substantial barriers to entry and import competition.'

The TPC, the predecessor of the ACCC, initially opposed the merger and then in tough negotiations produced a set of legally enforceable undertakings, including the sale of large petrol terminals at six major ports, an offer to sell a billion litres of petrol a year to independents, the sale of 20 distribution depots and 50 retail sites plus other undertakings.

Dr Walker's interest in regulating mergers and anti-competitive conduct dates back to her time (1992–95) at the TPC, where she was a principal analyst and an economic specialist in its economic and general research branch and its mergers branch. Following her employment

with the TPC, she became an economic advisor with the ACCC (1995–99).

'Getting the regulation of mergers right is particularly important for ensuring competitive markets, low prices and the efficient delivery of goods and services to consumers,' she told *ACCC update*.

'Mergers affect the structure of the market and the incentives for firms to compete.

'Regulating mergers is about preventing anti-competitive conduct, rather than stopping it afterwards. But mergers can also be an important means of achieving increased efficiency in the delivery of goods and services, and the potential for a takeover keeps management on their toes.

'It is important to prevent those mergers that will substantially reduce competition, but not to block the many more mergers that will do no harm at all.'

Dr Walker said the biggest changes she had seen in the mergers area had been changes to the 'test'.

'When the Trade Practices Act was proclaimed in 1974, the test was the "substantial lessening of competition", but it was soon changed to the "dominance" test, a much higher threshold to prove. In 1993, after a protracted and heated policy debate, the test was changed back to the current "substantial lessening of competition" test.

'At that time, the legal fraternity was up in arms— "It's too uncertain"; "You'll kill off Australian business"; "We won't be able to get big enough to compete internationally".

'It was all doom and gloom, which didn't come to pass, of course. These days the "SLC" test is like an old shoe—

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everyone is very comfortable and nobody seriously suggests it should be changed back to “dominance”.’

Other changes she has noticed over the years include the increasing formality and transparency of the commission’s processes when deliberating on proposed mergers.

Dr Walker does not see the current economic situation as a reason to ‘go soft’ on merger regulation.

‘Firms may be struggling to make a profit in the current climate, but that is essentially a cyclical problem that affects everyone and which will be replaced by good times in the future,’ she says.

‘Allowing anti-competitive mergers would leave us with a legacy of poor market structures, which would be likely to deliver higher prices and lower efficiency into the future. To borrow a well-worn phrase, “mergers, like puppies, are not just for Christmas”.

‘Looking towards the future, the economy will bounce back in much better shape if markets remain competitive.

Competition spurs efficiency and innovation and delivers the best prices and products to consumers.’

Dr Walker was born in the United Kingdom and after completing a bachelor’s degree in economics at Cambridge University went on to study at the University of Massachusetts for a master’s degree before returning to Cambridge to complete a doctorate in land economy.

She studied labour economics and then worked as an academic at the Australian National University. She then worked for the Home Care Service of New South Wales before turning her attention to industry and antitrust economics. This took her on a new road, and led to her joining the Prices Surveillance Authority, the TPC and the ACCC as an analyst and adviser, as well as teaching industry economics at the University of Technology in Sydney.

Since 2000, the Canberra-based Dr Walker has been a principal with several economic consulting companies working primarily in the field of trade practices or antitrust economics.

She was appointed a member of the Australian Competition Tribunal in September 2001 and reappointed in 2006. She has relinquished that role to take up her new position with the ACCC in September.