



Australian  
Competition &  
Consumer  
Commission

# **ACCCount**

**A report of the  
Australian Competition and Consumer Commission's activities**

**1 April to 30 June 2011**

Australian Competition and Consumer Commission

23 Marcus Clarke Street, Canberra, Australian Capital Territory 2601

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# Contents

<b>Overview .....</b>	<b>1</b>
<b>1 Enforcement and compliance .....</b>	<b>3</b>
Complaints and inquiries .....	3
Enforcing the Act for businesses and consumers .....	4
Section 87B Enforceable undertakings accepted.....	7
<b>2 Communicating with businesses and consumers.....</b>	<b>9</b>
Liaison and education activities.....	9
Product safety .....	13
Product safety legal framework .....	14
<b>3 Mergers .....</b>	<b>16</b>
Merger reviews undertaken in the June 2011 quarter.....	16
Statement of issues.....	18
Public competition assessments .....	18
Major matters .....	18
<b>4. Authorisations and notifications .....</b>	<b>22</b>
Authorisations.....	22
Exclusive dealing notifications.....	25
Collective bargaining notifications .....	25
<b>5. Regulatory affairs.....</b>	<b>26</b>
Communications.....	26
Australian Energy Regulator .....	27
Gas network regulation matters .....	27
Electricity network regulation matters.....	28
Energy markets .....	32
Transport and General Prices Oversight.....	35
Water.....	39
Fuel .....	39
<b>6 International activities .....</b>	<b>42</b>
<b>7 Reviews and inquiries.....</b>	<b>46</b>
Legislative matters .....	46
Parliamentary inquiries.....	46
<b>Appendix .....</b>	<b>48</b>
Speeches .....	48
News releases.....	48
Publications .....	48



# Overview

The Australian Competition and Consumer Commission (ACCC), through securing compliance with the *Competition and Consumer Act 2010* (the Act) enhances the welfare of all Australians. This is achieved by promoting competition and fair trading, and protecting consumers from unfair business practices. The ACCC, with the Australian Energy Regulator (AER), also has a role in regulating national infrastructure services and other markets where there is limited competition and natural monopoly characteristics.

In meeting these objectives, the ACCC ensures that its processes are efficient, transparent and fair. Outcomes achieved are communicated to the Australian public. In the June 2011 quarter, the ACCC undertook a range of activities that benefited both businesses and consumers.

The June 2011 quarter was marked by the conclusion of one instance of competition litigation, *ACCC v Japan Airlines International Co*. In this matter, a total of \$5.5 million in penalties was imposed on Japan Airlines International Co for price fixing and cartel involvement. This penalty, combined with those already ordered against other international airlines, bring the total pecuniary penalties ordered in Australia against the illegal cartel to \$46.5 million.

Important outcomes were also achieved in the fair trading and consumer protection spheres. In *ACCC v Yellow Page Marketing BV*, the defendant had \$2.7 million in penalties imposed upon it for its involvement in an online business directory scam. A penalty of \$400 000 was imposed on Dimmeys Stores Pty Ltd for the supply of children's dressing gowns which did not have a fire hazard information label, in contravention of a consumer product safety standard.

During the June 2011 quarter, some of the major mergers matters decided by the ACCC included:

- not opposing InvoCare Limited's proposed acquisition of Bledisloe Group Holdings Pty Ltd
- not opposing Caltex Australia Petroleum Pty Ltd's proposed acquisition of the Mobil assets at the Caltex-Mobil joint fuel terminal in Gladstone
- not opposing Woolworths Limited's proposed acquisition of The Cellarmasters Group Limited from Archer Capital.

In its adjudication role, the ACCC issued seven determinations in the June 2011 quarter. This includes Energy Assured Limited's application for authorisation for a scheme to self-regulate door to door energy sales, which was authorised for three years. In another significant decision, the ACCC authorised Western Australian broiler chicken growers to collectively bargain with their processors.

In the regulatory area of communications, the ACCC continued its work on the National Broadband Network (NBN). During the quarter the ACCC issued a revised list of 121 initial Points of Interconnect (POI) for the NBN.

The Australian Energy Regulator (AER) continued its review of the National Electricity Rules and released its strategy for information collection, analysis and reporting for

electricity distribution and transmission networks. In the gas sector, the AER released its final decisions on access arrangements for gas distributions networks in South Australia and Queensland.

The ACCC accepted an access undertaking from Australian Rail Track Corporation (ARTC) which regulates access to ARTC's leased rail network in the Hunter Valley region of New South Wales. The ACCC also accepted GrainCorp's access undertaking relating to port terminal services for the export of bulk wheat from GrainCorp's seven terminals in Queensland, New South Wales and Victoria. The ACCC's consideration of the access undertakings lodged by Australian Bulk Alliance, Vitterra and Cooperative Bulk Handling continued.

The ACCC issued its first annual water monitoring report to the Minister for Sustainability, Environment, Water, Population and Communities. The report provides information about the impact of reforms, including the new water market and water charge rules, on the water industry in the Murray Darling Basin.

# 1 Enforcement and compliance

Maintaining and enhancing compliance with the *Competition and Consumer Act 2010*, formerly the *Trade Practices Act 1974*, is a key objective of the ACCC. This is achieved by promoting competition and informing markets, encouraging fair trading and protecting consumers. The enforcement function of the ACCC, including litigation, is well supported by its liaison, analysis, outreach and compliance arms.

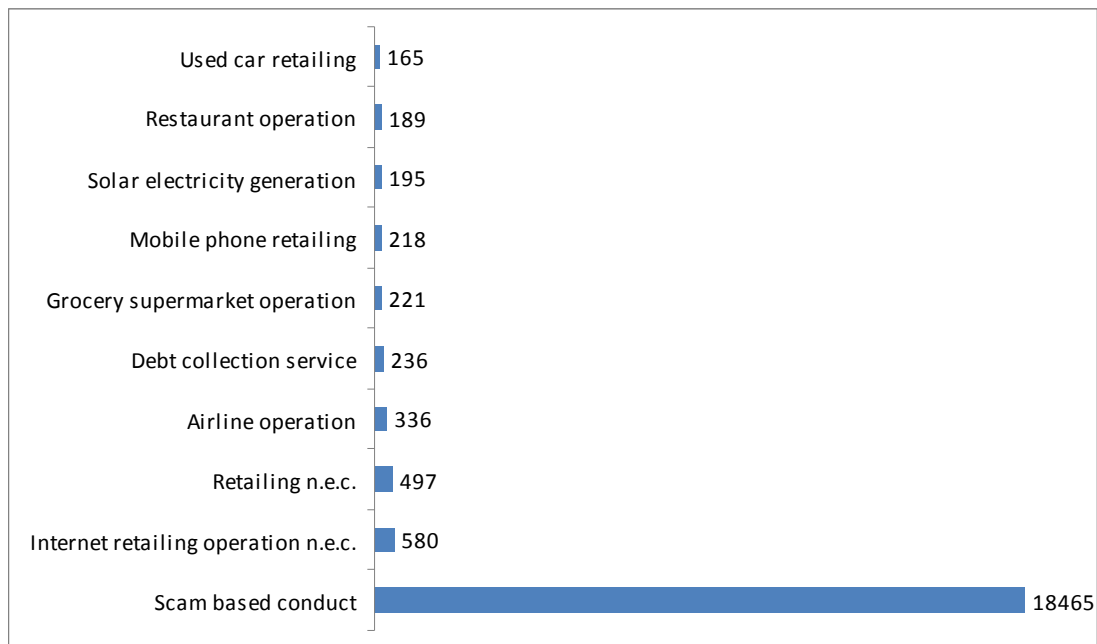
## Complaints and inquiries

During the June 2011 quarter the ACCC Infocentre responded to 40 948 complaints and inquiries from businesses and consumers (email 10 852, telephone 29597, letter correspondence 499).

Of these, 32 649 complaints and inquiries were entered into the ACCC's database with 417 flagged for further consideration. The complaints and inquiries not entered into the ACCC's database raised issues which fall outside of the ACCC's role and responsibilities.

Contacts about scam activity continue to be significant, accounting for 58 per cent of the complaints and inquiries entered into the ACCC's database during the June 2011 quarter. Other significant areas of contact concerned requests for warranty and refunds advice and complaints about the internet retailing sector.

Chart 1.1: The ten industries attracting the most complaints



## Enforcing the Act for businesses and consumers

In undertaking its enforcement activity, the ACCC remains committed to working in an efficient and professional manner. As Australia's national consumer protection and competition agency, the ACCC manages its enforcement processes to achieve effective and efficient outcomes that serve the public interest, in accordance with the ACCC's *Enforcement and Compliance Policy*, available on the ACCC website.

### Litigation commenced

The ACCC commenced four first-instance litigation proceedings in the Federal Court of Australia during the June 2011 quarter for alleged breaches of the Trade Practices and/or Competition and Consumer Act.

### Competition

Nil

### Fair trading and consumer protection

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#### Advanced Medical Institute

Justice North | Federal Court Melbourne

Commenced 7 June 2011 | VID527/2011

The ACCC instituted new proceedings in the Federal Court against Advanced Medical Institute Pty Limited (administrators appointed) and AMI Australia Holdings Pty Ltd (administrators appointed).

The ACCC alleged that AMI had failed to advise existing and potential patients that it was in administration, insolvent and may not be able to provide goods and services after determination of the administration period. It further alleged that AMI wrongly accepted payments in advance for treatments when there was a real risk that AMI would not be able to continue to supply its treatments to patients.

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#### Halkalia Pty Limited

Justice Tracey | Federal Court Melbourne

Commenced 6 May 2011 | VID362/2011

Proceedings under consumer protection provisions for alleged misleading and deceptive conduct, false or misleading representations, and contravention of the franchising code in relation to advertisements claiming that individuals have the opportunity to earn between \$900 and \$2000 per week delivering Heartlink-branded household products to independent supermarkets.

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#### Sontax Australia

Justice Gordon | Federal Court Melbourne

Commenced 17 June 2011 | VID633/2011

Proceedings under consumer protection provisions for alleged supply of elastic luggage straps that do not comply with the mandatory product safety standard.

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**The Jewellery Group**

Justice Lander | Federal Court Adelaide

Commenced 5 April 2011 | SAD57/2011

Proceedings under consumer protection provisions for alleged misleading and deceptive conduct, and false or misleading representations in relation to price.

**Other**

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**MSY Technology (appeal)**

Justice Emmett | Federal Court Sydney

Commenced 5 May 2011 | NSD578/2011

Proceedings under consumer protection provisions for alleged misleading and deceptive conduct, and false or misleading representations in relation to notices displayed in MSY's stores around Australia regarding consumers' statutory warranty rights.

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**Sensaslim**

Justice Jacobson | Federal Court Sydney

Commenced 16 June 2011 | NSD940/2011

Orders sought under section 137F to preserve money held by Sensaslim while the ACCC investigates concerns about alleged misleading and deceptive conduct in relation to nasal spray, which is claimed to help weight-loss through appetite suppression.

**Proceedings concluded**

Eight first-instance enforcement litigation proceedings were finalised during the June 2011 quarter.

**Competition**

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**Japan Airlines International Co**

Justice Ryan and Justice Jacobson | Federal Court Sydney

Commenced 17 May 2010 | Concluded 11 April 2011 | NSD535/2010

Proceedings under competition provisions for alleged price fixing.

Outcome | injunctions, pecuniary penalties \$5.5 million, costs \$200 000

## **Fair trading and consumer protection**

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### **Dimmeys Stores Pty Ltd**

Justice Gordon | Federal Court Melbourne

Commenced 10 November 2010 | Concluded 8 April 2011 | VID964/2010

Proceedings under consumer protection provisions for alleged supply of children's dressing gowns which did not have a fire hazard information label, in contravention of a consumer product safety standard.

Outcome | pecuniary penalties \$400 000, costs \$60 000

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### **Global One Mobile Entertainment Limited and 6G Pty Limited**

Justice Bennett | Federal Court Sydney (fast track list)

Commenced 20 October 2010 | Concluded 15 June 2011 | NSD1388/2010

Proceedings under consumer protection provisions for alleged misleading or deceptive conduct in connection with television advertising for mobile premium services

Outcome | Declarations, injunctions, pecuniary penalty \$375 000, costs and implementation of a compliance program.

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### **Gwyneth Graham**

Justice Siopis | Federal Court Perth

Commenced 11 February 2011 | Concluded 21 April 2011 | WAD38/2011

Proceedings under consumer protection provisions for alleged misleading and deceptive conduct, and false or misleading representations in relation to 'cancer cures'.

Outcome | case was discontinued

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### **Marksun Australia**

Justice Gilmour | Federal Court Perth

Commenced 24 December 2010 | Concluded 23 June 2011 | WAD418/2010

Proceedings under consumer protection provisions for alleged misleading and deceptive conduct in relation to labelling on Ugg Boots.

Outcome | pecuniary penalties \$430 000

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### **MSY Technology Pty Ltd**

Justice Perram | Federal Court Sydney

Commenced 28 October 2010 | Concluded 2 May 2011 | NSD1472/2010

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Proceedings under consumer protection provisions for making false and misleading consumer warranty representations.

Outcome | injunctions, pecuniary penalties \$203 500, and costs

This matter was subsequently appealed (see page 5).

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### **Smash Enterprises Pty Ltd**

Justice Gordon | Federal Court Melbourne

Commenced 17 December 2010 | Concluded 14 April 2011 | VID1102/2010

Proceedings under consumer protection provisions for alleged supply of bean bag covers which did not have the required choking hazard warning label in contravention of a consumer product safety standard.

Outcome | injunctions, pecuniary penalties \$300 000, costs \$10 000

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### **Yellow Page Marketing BV**

Justice Gordon | Federal Court Melbourne

Commenced 4 November 2010 | Concluded 12 April 2011 | VID942/2010

Proceedings under consumer protection provisions for alleged misleading and deceptive conduct in connection with an online business directory scam.

Outcome | pecuniary penalties \$2.7 million, and costs

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### **Other**

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### **Global Green Plan**

Justice Bennett | Federal Court Sydney

Commenced 2 June 2010 | Concluded 25 May 2011 | NSD624/2010

Proceedings under consumer protection provisions for alleged breach of Federal Court orders to purchase 4000 Renewable Energy Certificates (RECS)

Outcome | Case was discontinued

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## **Section 87B Enforceable undertakings accepted**

The ACCC accepted two enforcement-related section 87B undertakings during the June 2011 quarter.

### **Competition**

**Supabarn Supermarkets Pty Ltd** has provided a court enforceable undertaking to the ACCC in relation to restrictive provisions contained in lease agreements. Supabarn has undertaken that it will not:

- enter into or renew a supermarket lease agreement that includes one or more restrictive provisions, unless authorised by the ACCC or notified to the ACCC

- enforce or rely on the restrictive provision in its Canberra Centre lease in any expansion of the Canberra Centre outside a limited area defined in the undertaking.

### **Fair trading and consumer protection**

**Prime Fuel Distributors Pty Ltd**, trading as Speedway Meadows and Speedway has provided court enforceable undertakings to the ACCC. Prime admits that it engaged in misleading conduct in contravention of sections 52, 53(a) and 55 of the Trade Practices Act when it promoted and sold the same petrol as two different petrol products at two different price points.

As the onsite day-to-day manager of both service stations, Mr Jamil El-Khoury has provided a separate court enforceable undertaking to the ACCC.

The undertaking requires Mr El-Khoury not to engage in, or be directly or indirectly knowingly concerned in, or party to, the promotion and sale of different fuels (including the fuels labelled 'Unleaded' and 'Unleaded 95' or '[E10] Unleaded 95') at any service station, when in fact those different fuels promoted and sold to customers are the same fuel.

## **2 Communicating with businesses and consumers**

### **Liaison and education activities**

The ACCC works with other regulators, government departments, businesses, industry associations and consumer associations in monitoring emerging trade practices issues and educating relevant stakeholders.

This quarter the ACCC met with representatives from Australian Government agencies, including the Department of Health and Ageing and Food Standards Australia New Zealand, to provide input to proposed amendments to the Food Standards Code.

During the quarter, the ACCC also engaged with industry associations, professional associations and consumer associations, both to promote greater understanding of the Competition and Consumer Act and the Australian Consumer Law in relation to particular market sectors and practices and respond to issues identified by those organisations. These engagements focused primarily on education and included:

- a cross-agency meeting with the Australian Tax Office, the Australian Securities and Investments Commission, the Department of Innovation, Industry, Science and Research and several industry bodies to explore ways in which agencies can work together to best engage with small business operators interaction with the Law Council of Australia in relation to competition and consumer protection issues for the small business sector
- a combined ACCC and AER meeting with the WA Energy Regulation Authority to discuss the Australian Consumer Law and the interaction with the National Energy Customer Framework.

### **Consumer Consultative Committee**

The second Consumer Consultative Committee meeting for 2011 took place on 6 June 2011. Major topics discussed were the ACCC's role in price monitoring with petrol monitoring as a case study. Members were also provided with a briefing on the ACCC's use of the new Australian Consumer Law remedies and powers. Issues raised by members included door to door sales and energy issues.

### **Franchising Consultative Committee**

The Franchising Consultative Committee met on 3 June 2011 to consider issues in the franchising sector. In particular, the committee discussed the ACCC's new Australian Consumer Law powers and remedies, industry code audits, the ACCC's franchising-related enforcement and education activities and exclusive dealing notifications.

## Small Business Consultative Committee

The first Small Business Consultative Committee meeting for 2011 was held on 10 June 2011. Topics discussed included the ACCC's use of its new enforcement powers and remedies particularly relevant to small business, small business scams and the protections under the Australian Consumer Law.

## Product safety

This quarter, the ACCC's reached a number of milestones related to education and engagement strategies, including exceeding 1,000 followers of the @ProductSafetyAU twitter account.

A second product safety webinar, focused on product testing and attracting over 300 registrations, was held to assist suppliers better understand their responsibilities for product safety compliance. Staff presented information on the appropriate use of product testing and Peter Kell officially launched two new publications: *Product Safety: A guide to testing* and *Testing to Product Standards: Principles for test organisations*. Appropriate use of testing is a fundamental component of ensuring compliance with mandatory standards. Both of these publications, and a recording of the webinar, are available via the Product Safety Australia website ([www.productsafety.gov.au/producttesting](http://www.productsafety.gov.au/producttesting)).

A short animated film was released promoting what has historically been one of the ACCC's most popular (in terms of the number of publication distributed) publications, *Keeping Baby Safe*, which was revised in light of a number of changes to relevant standards and bans. The film is published on the Product Safety Australia website and on YouTube.

## Australian Consumer Law

The ACCC continued to work with businesses, industry associations and consumer groups to promote awareness of the Australian Consumer Law and the rights and obligations that it provides. Key activities for June included:

- participation in the national group of Australian Consumer Law regulators' Education and Information Advisory Committee. During the quarter the Education and Information Advisory Committee delivered a national point of sale sign. This sign was launched at the Consumers 2011 conference and outlines the circumstances where consumers are entitled to a refund or replacement
- participation in meetings of another committee comprised of Australian Consumer Law regulators, the Compliance and Dispute Resolution Advisory Committee, in April, May, and June 2011
- participation in bi-monthly meetings of the National Indigenous Consumer Strategy reference group. The National Indigenous Consumer Strategy is endorsed by Ministerial Council on Consumer Affairs. The reference group also advises the Compliance and Dispute Resolution Advisory Committee on issues specific to Indigenous Australians.
- development of articles for inclusion in industry newsletters and journals, presentations at industry events and dissemination of ACCC and joint-agency guidance material through ACCC and other government agency networks.

These activities have enabled the ACCC, together with state and territory counterparts, to deliver consistent guidance to business and consumers about their rights and obligations under the Australian Consumer Law.

The ACCC continued to work closely with the Treasury, ASIC and state and territory consumer protection agencies on national projects for:

- Indigenous consumer issues—addressing a number of issues identified in the National Indigenous Consumer Strategy as key to improving the trading practices of traders serving Indigenous consumers
- unfair contract terms—taking a proactive compliance review of standard form contracts and appropriate enforcement action for non-compliance
- environmental claims—compliance with energy efficiency measures that are potentially misleading, vague or false
- consumer guarantees—educating suppliers of goods on the consumer guarantee provision of the Australian Consumer Law
- mortgage early exit fees—compliance with the National Credit Code and the unfair contract terms provisions of the ASIC Act.

### **Consumer protection issues in Indigenous communities**

The ACCC has developed an Indigenous consumer protection strategy. This identifies and addresses consumer protection issues of concern to Indigenous consumers. The ACCC is consulting with the appropriate agencies to facilitate more effective information and communication exchanges. The ACCC is also contributing to the work undertaken with the National Indigenous Consumer Strategy to address specific areas of concern of Indigenous consumers, such as:

- unfair trading practices
- consumer literacy.

Within the trading practices priority issue, areas of interest to the ACCC are door-to-door sales, general marketing, and debt collection. Within the consumer literacy priority issue, areas of interest to the ACCC are consumer rights, contracts, complaints processes, and knowledge of consumer agencies and services.

The ACCC has continued work with the Compliance and Dispute Resolution Advisory Committee and the Education and Information Advisory Committee to identify and then address unfair high pressure sales and trading practices in a number of Indigenous communities in central western NSW and the Northern Territory. The objective is to establish effective communication links to detect and act upon unfair high pressure sales and trading practices in those selected communities which contravene *the Competition and Consumer Act 2010* and, in the longer term, use those established communication links to facilitate ongoing early detection and reporting of *Competition and Consumer Act 2010* contraventions generally.

### **Unfair contract terms**

The ACCC has undertaken a proactive approach to achieving compliance with the new unfair contract term provisions which were introduced under the Australian Consumer Law. The primary focus of the ACCC's activities with the unfair contract terms provisions relates to proactive industry reviews.

The ACCC is continuing to seek compliance with the unfair contract provisions through proactive engagement with key industry identified as having potential unfair contracts in standard form agreements offered to consumers in the following sectors:

- airlines
- telecommunication
- hire cars.

### **Green claims**

The ACCC is liaising with the Department of Climate Change and Energy Efficiency on the proposed harmonisation of the greenhouse and energy minimum standards legislation that is replacing the current energy efficiency labelling scheme and consumer information issues in the emerging light emitting diode market.

A national working group under the Compliance and Dispute Resolution Advisory Committee was formed in March 2011 to address consumer detriment from environmental claims in the solar power industry. The working group is made up of representatives from WA (lead agency), ACT and NSW offices of fair trading and the ACCC.

A media release warning solar traders about misleading and deceptive conduct and misleading representations about proposed changes to the renewable energy certificate schemes was issued by the ACCC on 4 May 2011.

### **Consumer guarantees**

This quarter the ACCC completed a number of education and awareness-raising activities, including:

- development of guidance material, in consultation with industry stakeholders, on how the provisions apply to businesses
- dissemination and promotion of ACCC guidance materials—business snapshots, online education module, publications for consumers
- publication of articles in industry newsletters, including the security and motor vehicle industries
- presentations at various industry events including seminars and conferences.

The ACCC's work in relation to consumer guarantees will align with the national project on consumer guarantees being undertaken by the Compliance and Dispute Resolution Committee, led by Consumer Affairs Victoria with assistance from the ACCC.

### **Telecommunications consumer protection reviews**

The ACCC continued to participate in reviews of the telecommunications consumer protection framework, including the Australian Communications and Media Authority's *Reconnecting the Customer* Inquiry about industry complaints handling and customer service practices, and the Communications Alliance's review of its Telecommunications Consumer Protection Code. These current reviews provide opportunities to implement significant reform in the way consumer protection is regulated in the sector.

The ACCC is seeking an effective consumer protection framework that facilitates informed and confident consumer participation. Throughout the reviews, the ACCC has indicated that this will be delivered only by addressing the causes of underlying



consumer detriment, and will require implementing stronger incentives to significantly improve industry compliance with consumer protection framework.

## **Scams**

During the quarter, the ACCC continued work on a number of initiatives to raise consumers' awareness of their rights, and to alert them to new and emerging scams. For example, the SCAMwatch logo will be used by Western Union to improve scam messaging at the point of transaction and warn consumers of the dangers of sending money to strangers via a money transfer service.

Four SCAMwatch radar alerts were issued on the SCAMwatch website and to subscribers during the June quarter to alert consumers and businesses to new scams, including a fake FBI email scam, computer and government rebate scams. New content was published on inheritance scams during this quarter.

The ACCC sends out daily tweets on emerging scams and scam prevention tips with over 30 tweets posted weekly to 1200 followers.

SCAMwatch also partnered with the Department of Broadband, Communications and the Digital Economy to promote the National Cyber Security Awareness Week which took place from 30 May to 3 June 2011.

## **Product safety**

During the quarter, the ACCC consolidated the successful development and implementation of a number of projects underpinning the introduction of the Australian Consumer Law.

Over the past two years the ACCC and state and territory fair trading agencies have implemented reforms both in terms of the law and the way it is implemented. These changes make the product safety regime more streamlined, and enable a more effective response to product safety issues.

## **Emerging hazards and product safety recalls**

During the quarter, the ACCC:

- received 468 mandatory reports. Of these, 240 were referred to other regulators (predominantly food reports referred to Food Standards Australia New Zealand (FSANZ) and the remaining 228 were assessed or are under assessment by the ACCC.
- observed take-up by suppliers of the new progress reporting e-form of almost 100 per cent. The form has been a useful tool when the ACCC has been negotiating (or renegotiating) recalls strategies with suppliers
- continued testing a new system for measuring recall effectiveness, including the development of possible risk mitigation strategies for product recalls
- provided feedback to the Therapeutic Goods Administration review of the Uniform Recall Procedure for Therapeutic Goods (URPTG), with a view to aligning the URPTG with the ACCC Recall Guidelines and the 2010 ACCC Recalls Review.
- Significant recalls this quarter included the recall of a number of models of Phil & Ted's strollers and of hair straightening treatments containing formaldehyde.

### **Case study: ACCC drives compliance in hair industry**

As a result of proactive compliance work initiated by the ACCC, a significant improvement in supplier compliance in the hair industry has been observed by the ACCC.

Six recalls have been made over the last eight months for hair straightening treatments due to excessive levels of formaldehyde, including one product which contained free formaldehyde in excess of 50x the legal limit. In addition to the excessive formaldehyde, some of the recalled products were also found to contain other unauthorised ingredients, have non-compliant labelling, and also potentially misleading claims.

Formaldehyde is irritating to the eyes, nose and skin. It can trigger asthma, cause allergic contact dermatitis and permanently sensitise the skin. Long term exposure to high concentrations can cause cancer.

To further raise awareness of the mandatory requirements within the hair industry, the ACCC along with the National Industrial Chemicals Notification and Assessment Scheme provided information at the June 2011 HairExpo in Sydney. More than 10,000 people from all parts of the hair trade attended the event.

## **Product safety legal framework**

### **Development of mandatory standards and bans**

No new standards or bans were declared during the June 2011 quarter.

The mandatory safety standard for child restraints for use in motor vehicles was reviewed and amended to reflect recent changes to the Australian Standard. The revised safety standard took effect in May 2011.

The ACCC released a regulatory proposal paper regarding the possible regulation of portable swimming pool labelling in early June. Stakeholder submissions are required by 17 July 2011.

A proposal to amend the existing permanent ban on miniature motorbikes with unsafe design features was published on the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)) for comment/review by relevant suppliers. The amendment removes electric powered miniature motorbikes from the ban. It is proposed that the ban only apply to miniature motorbikes with internal combustion engines. Suppliers have until 11 July to request a conference in relation to this ban.

### **Chemicals assessment and information standards**

The formaldehyde example in the case study above is illustrative of the ACCC's work in the area of chemicals assessment during the June 2011 quarter. By way of background to the case study, a number of recalls were triggered late last year following the ACCC's survey of formaldehyde in cosmetics. During the June 2011 quarter, a sixth recall (the sixth in eight months) of a hair straightening treatment due to excessive levels of formaldehyde was announced by the supplier.

On 11 May 2011 the Parliamentary Secretary to the Treasurer, the Hon David Bradbury MP issued a public warning notice highlighting the health dangers of high levels of formaldehyde in a hair conditioner product, *Keratin Complex Intense Rx*. The

warning notice was issued on the advice of the ACCC after the supplier of Intense Rx downplayed the health hazards of their product in their voluntary recall notice.

The ACCC is continuing its investigation of other potential misleading and deceptive conduct in relation to 'formaldehyde free' marketing claims, and will continue working with state and territory health authorities and industry in relation to this safety hazard.

### 3 Mergers

In assessing mergers, acquisitions and asset sales under section 50 of the *Competition and Consumer Act 2010*, the ACCC conducts thorough and rigorous processes to ensure transactions do not lead to a substantial lessening of competition in the marketplace.

#### Merger reviews undertaken in the June 2011 quarter

The ACCC reporting processes distinguish between matters that did not require investigation and review because no competition concerns were considered likely ('pre-assessed matters') and matters that required review.

The matters that were pre-assessed as not requiring review are often referred to the ACCC by other parties or agencies, such as the Foreign Investment Review Board (FIRB), as a courtesy by the merger parties because ACCC clearance is not requested or result from the ACCC's monitoring activities.

In the June 2011 quarter, 72 matters were pre-assessed by the ACCC and reviews were conducted on 26 matters, including confidential and public merger reviews. Of the 26 matters reviewed, 88 per cent of merger proposals were cleared unconditionally by the ACCC.

The ACCC expressed concerns following one confidential review proposal. One variation to an existing undertaking was accepted by the ACCC.

**Table 3.1: Matters assessed and reviews undertaken, June 2011 Quarter**

	CONFIDENTIAL	PUBLIC	TOTAL
<b>Pre-assessed 1 April – 30 June 2011</b>	<b>72</b>	<b>0</b>	<b>72</b>
<b>Total reviews undertaken 1 April – 30 June 2011</b>	<b>3</b>	<b>23</b>	<b>26</b>
Total reviews can be broken down into the following categories:			
Not opposed	1	22	23
Finished—no decision (including withdrawn) <sup>1</sup>	0	0	0
Opposed outright	0	0	0
Confidential review—ACCC concerns expressed	1	0	1
Resolved through undertakings <sup>2</sup>	0	1	1
Variation to undertaking accepted	1	0	1
Variation to undertaking rejected	0	0	0
<b>Total matters assessed and reviews undertaken</b>	<b>75</b>	<b>23</b>	<b>98</b>

<sup>1</sup> These are matters that were withdrawn or where no decisions were made. They are not included in the timings in table 3.3 below.

<sup>2</sup> Only public matters can be resolved through undertakings.

**Table 3.2 Matters assessed and reviews undertaken, financial year comparisons**

	2009-10	YTD 2010-11
<b>Total matters assessed and reviews undertaken</b>	<b>321</b>	<b>376</b>
<b>MATTERS ASSESSED - NO REVIEW REQUIRED</b>	<b>153</b>	<b>236</b>
<b>REVIEWS UNDERTAKEN</b>	<b>168</b>	<b>140</b>
<i>Total reviews can be broken down into the following categories:</i>		
Not Opposed	131	110
Finished – no decision (incl. withdrawn)	16	14
Publicly Opposed outright	8	3
Confidential review – Opposed or ACCC concerns expressed	6	4
Resolved through undertakings	4	7
Variation to undertaking accepted	2	2
Variation to undertaking rejected	1	0

### Time taken to assess mergers

The following table breaks down the time taken by the ACCC to complete reviews of merger proposals in the June 2011 quarter.

Reviews of completed mergers are not included in table 3.3. Completed mergers are not subject to the same time frames as reviews of proposed mergers for several reasons, including that it often takes longer to obtain parties' submissions because the time incentives of parties are altered. The tables do not include matters pre-assessed as not requiring substantive review, e.g. FIRB notifications. The majority of matters that are pre-assessed as not requiring a review are dealt with in less than two weeks, but are not recorded in these tables because the tables list only the timing relating to substantive merger investigations.

**Table 3.3: Time taken to review merger proposals 1 April – 30 June 2011<sup>3</sup>**

<b>Time taken to undertake merger reviews (cumulative)</b>	<b>Number of reviews</b>	<b>Percentage of mergers</b>
Two weeks or less	0	0%
Four weeks or less	2	10%
Six weeks or less	12	57%
Eight weeks or less	19	90%
More than eight weeks	2	10%

<sup>3</sup> This does not include 72 pre-assessed matters, 1 matter where no decision was formed on a confidential basis, 1 variation to an existing undertaking, or 4 reviews of completed mergers.

## Statement of issues

One statement of issues was released during the June quarter:

- Wesfarmers Ltd possible acquisition of Burrup Holdings Ltd - 11 May 2011

## Public competition assessments

To support the aim of fostering informed markets and provide an enhanced level of transparency in its decision making, the ACCC provides public competition assessments outlining how decisions are reached on matters of particular public interest or those that have important precedence value.

The ACCC issued four public competition assessments during this quarter:

- Woolworths Limited proposed acquisition of The Cellarmasters Group - Liquor retailing - 27 May 2011
- Sleepyhead - proposed acquisition of Pacific Brands Dunlop Foams and Sleepmaker businesses; Pacific Brands - proposed acquisition of Wonderlay from Sleepyhead - Foam manufacturing and bedding - 4 May 2011
- Fairfax Media Limited proposed acquisition of Southern Independent Publishers Ltd Kiama Independent and Lake Times newspapers - Media - 3 May 2011
- Aspen Pharmacare Holdings Limited proposed acquisition of Sigma Pharmaceuticals (Australia) Pty Ltd - Pharmaceuticals -13 April 2011

## Major matters

Major matters decided during the March 2011 quarter included:

- InvoCare Limited – proposed acquisition of Bledisloe Group Holdings Pty Ltd
- Caltex Australia Petroleum Pty Ltd - proposed acquisition of the Mobil assets at the Caltex-Mobil joint fuel terminal in Gladstone
- Woolworths Limited – proposed acquisition of The Cellarmasters Group Limited from Archer Capital.

The ACCC's merger analysis of these matters is set out below.

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### **InvoCare Limited – proposed acquisition of Bledisloe Group Holdings Pty Ltd**

Result | On 9 June 2011 the ACCC decided not to oppose the proposed acquisition subject to undertakings.

On 19 November 2010 the ACCC commenced a review of InvoCare's proposed acquisition of Bledisloe. InvoCare was the largest provider of funeral services and the largest private operator of cemeteries and crematoria in Australia.

Bledisloe operated a funeral directing business in Australia and New Zealand and also owned and operated three cemeteries and crematoria in Queensland.

On 19 January 2011 the ACCC released a Statement of Issues outlining preliminary concerns arising from the proposed acquisition. In particular, the ACCC was concerned that the proposed acquisition was likely to result in a substantial lessening of competition in the supply of funeral directing services in north metropolitan Sydney, north and south metropolitan Brisbane as well as in the supply of cremation services in both north and south metropolitan Brisbane. The Statement of Issues also identified concerns that customers seeking competitive quotes from funeral directors may unknowingly solicit quotes from branches of the same company and that this was a particular concern with InvoCare given the high degree of recognition associated with the InvoCare brands. The ACCC identified concerns that InvoCare's acquisition of the Bledisloe funeral directing brands may exacerbate this issue

Following the release of the Statement of Issues, staff conducted market inquiries with participants in each of the relevant markets and also sought and obtained detailed information from the merger parties.

On 9 June 2011 the ACCC decided not to oppose the proposed acquisition after the competition concerns identified by the ACCC were resolved by InvoCare providing a section 87B undertaking to the ACCC. Under the terms of the undertaking, InvoCare has committed to the ACCC to:

- sell Bledisloe's Gregory and Carr funeral directing service brand and assets in north metropolitan Sydney;
- sell Bledisloe's Great Northern Garden of Remembrance crematorium in Deception Bay, Queensland; and
- implement an 'ownership statement' obligation for five years which requires InvoCare to clearly disclose which funeral directing brands are owned by InvoCare in all marketing and advertising in the Brisbane metropolitan area for each of the InvoCare brands.

The ACCC considered that without the proposed divestiture of Bledisloe's funeral directing business in north metropolitan Sydney, InvoCare would have the ability and incentive to increase the price for funeral services in north metropolitan Sydney, either by reducing the frequency and size of discounts provided to customers or by increasing price lists for funeral services.

The ACCC also considered that in the absence of the divestiture of Bledisloe's crematorium in north metropolitan Brisbane, InvoCare would have the ability and incentive to increase the price of cremation services in that area.

The ACCC considered that the implementation of the ownership statement obligation requiring InvoCare to make it clear in advertising and marketing in the Brisbane metropolitan area that a brand is a member of the InvoCare group was sufficient to address the competition concerns identified in the supply of funeral directing services in south metropolitan Brisbane.

The ACCC concluded that there were no competition concerns in other markets in which the operations of InvoCare and Bledisloe overlapped, and so no undertakings were required in relation to other geographic areas.

A Public Competition Assessment detailing the basis upon which the ACCC reached its decision will be published on the ACCC's website.

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**Caltex Australia Petroleum Pty Ltd - proposed acquisition of the Mobil assets at the Caltex-Mobil joint fuel terminal in Gladstone**

Result | On 26 May 2011 the ACCC decided not to oppose the proposed acquisition.

On 15 October 2010 the ACCC commenced a review of the proposed acquisition of Mobil assets in Gladstone by Caltex Australia Petroleum Pty Ltd (Caltex)

Caltex proposed to acquire the Mobil assets at the Gladstone fuel terminal, which was operating as a joint fuel terminal by Caltex and Mobil.

The ACCC considered the proposed acquisition in the context of the market for the supply of liquid petrol and diesel hosting services in the Gladstone region. Competition in this market would have an effect on markets for the wholesale and retail supply of petrol and diesel in the Gladstone region.

The ACCC considered that the proposed acquisition was not likely to substantially lessen competition in the relevant market. The ACCC considered that the proposed acquisition was unlikely to substantially competition against the possible counterfactual of an independent fuel supplier acquiring the Mobil assets. In forming this view, the ACCC had regard to:

- The low likelihood that an independent fuel supplier could acquire the assets and operate them on a 'stand-alone' basis (i.e. without entering into joint terminal arrangements with Caltex) and in a manner that would be competitive with incumbents in the market. In this regard, the ACCC noted that Mobil would require a hosting agreement for a significant volume of fuel regardless of who acquired the assets, limiting the alternative uses of the assets especially if they were operated on a stand-alone basis. To enter into a joint terminal agreement with Caltex would have required any independent buyer to enter into a separate agreement with Caltex in addition to an agreement with Mobil to acquire the assets and there was uncertainty as to whether such an agreement could be reached.
- The likelihood of future expansion and development at Port Alma (including the potential for petrol imports) which could result in more efficient importation through that port and competitive wholesale supply by independents to the Gladstone region.
- The growth of the Gladstone region (in terms of population and industry) which was likely to result in significant increases in fuel demand which might create future opportunities for supply or expansion by independent fuel suppliers, particularly at the nearby port of Port Alma.

Accordingly, the ACCC formed the view that the proposed acquisition would be unlikely to result in a substantial lessening of competition.



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**Woolworths Limited – proposed acquisition of The Cellarmasters Group Limited from Archer Capital.**

Result | On 21 April 2011 the ACCC announced it would not oppose the proposed acquisition.

On 1 March 2011 the ACCC commenced a review of the proposed acquisition of the Cellarmasters Group Ltd (Cellarmasters) from Archer Capital by Woolworths Ltd.

The ACCC considered that existing competition between Cellarmasters and Woolworths was for sales of wine only but examined the likely impact of the proposed acquisition on competition in three potentially relevant retail markets:

- a market for all liquor sales
- a market for all wine sales
- a market for online/direct wine sales only.

In relation to wine retailing, the ACCC concluded that the proposed acquisition was unlikely to substantially lessen competition in any relevant retail market regardless of the approach taken to market definition. The ACCC formed this view having regard to the minimal concentration that would result from the proposed acquisition and the competitive constraint that would come from multiple existing competitors and potential new entry and expansion.

The ACCC found there was no compelling evidence to suggest that Cellarmasters was a particularly vigorous and effective competitor. Further, the ACCC considered that barriers to entry and expansion in online wine retailing were not insurmountable.

The ACCC also assessed the likely impact of the proposed acquisition in a national wholesale wine market and concluded that Woolworths' buying power at the wholesale level of the wine market would not be substantially increased post-acquisition. The ACCC had regard to the fact that Cellarmasters produces a large proportion of the wine it sells itself and, therefore, the increase in Woolworths' purchases from the wholesale market arising from the proposed acquisition would be relatively small. The ACCC also noted that no wine producer is heavily reliant on both Woolworths and Cellarmasters to get their product to the retail market.

The ACCC also concluded, after examining potential vertical issues arising from Woolworths' acquisition of Cellarmasters' winemaking business (Dorrien Estate) and wine services businesses (Vinpac) that vertical competition issues were unlikely to arise since there were a significant number of existing competitors to these businesses in operation. This was likely to prevent Woolworths foreclosing access to these services.

Since the ACCC found that the proposed acquisition was unlikely to lead to a substantial lessening of competition in the wholesale bottled wine market, the ACCC considered that concerns in the wholesale wine grape market would also be unlikely. This was because the proposed acquisition would not create any concentration in wine grape acquisitions (since Woolworths does not acquire wine grapes) and any impact in the wine grape market would be a flow-on effect from an impact in the wholesale bottled wine market. A Public Competition Assessment detailing the basis upon which the ACCC reached its decision is published on the ACCC's website.

## 4. Authorisations and notifications

### Authorisations

During the June quarter 2011 the ACCC received 5 new authorisation applications covering 3 projects. The ACCC also received 1 application for a minor variation of an authorisation.

At 30 June 2011 a total of 7 authorisation applications, covering 5 projects, were being considered by the ACCC.

### Matters finalised

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#### **Australian Swimmers' Association Incorporated – A91260**

Summary | On 5 November 2010 the Australian Swimmers' Association Incorporated (ASA) lodged an application for revocation and substitution of its authorisation to conduct collective negotiations on behalf of its members with Swimming Australia Limited (SAL).

On 6 April 2011 the ACCC issued a determination granting authorisation for ten years.

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#### **Australian Paint Manufacturers Federation – A91251**

Summary | On 12 October 2010 the Australian Paint Manufacturers Federation (APMF) applied for authorisation for an agreement with manufacturers and suppliers of architectural and decorative paint to impose a levy on the wholesale sale of paint. The levy will be used to fund a 12 month waste paint collection scheme trial in Victoria.

In its application for authorisation, the APMF proposed that participating paint manufacturers would impose a levy of 5 cents per litre on the wholesale sale of paint in Victoria. On 17 December 2010 the APMF amended its application for authorisation to propose that a national levy of 2 cents per litre be imposed instead of the Victorian levy. The national levy will still be used to fund the 12 month waste paint collection scheme trial in Victoria.

On 20 April 2011 the ACCC issued a final determination granting authorisation to the APMF until 1 December 2012.

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#### **Australian Hotels Association – A91257**

Summary | Following an amendment made on 30 March 2011, the Australian Hotels Association's Divisions sought authorisation to permit collective bargaining on behalf of their current and future members with a number of providers of wagering services, subscription broadcasting services, licensing of the public performance and communication rights in musical works, licensing of the broadcast, communication or performance of protected sound recordings or music video clips, accommodation booking services and suppliers of electronic gaming machines.

On 20 April 2011 the ACCC issued a determination granting authorisation for five years.

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**Refrigerant Reclaim Australia Limited - A91256**

Summary | On 20 October 2010 Refrigerant Reclaim Australia Limited (RRA) applied for authorisation to continue to operate a product stewardship scheme to recover ozone depleting and synthetic greenhouse gases (refrigerant) to be destroyed, stored or reclaimed and sold and to expand the scope of the scheme to allow industry participants (which are part of the RRA Board) to discuss and agree to:

- reduce the level of the levy applied to each kilo of refrigerant imported and sold in Australia
- set the value of rebates paid to contractors and wholesalers
- the processes used to reclaim recovered refrigerant to on-sell
- consider alternative destruction services either in Australia or offshore.

On 12 May 2011 the ACCC released a final determination granting authorisation to RRA for five years, until 3 June 2016.

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**AgStewardship Australia Limited – A91105**

Summary | On 20 April 2011 AgStewardship Australia Limited (AgStewardship) applied for minor variation to authorisation A91105. The authorisation was granted on 21 January 2009 to allow AgStewardship to charge a four cents per litre/kilogram levy on the manufacturers and suppliers of agricultural and veterinary (agvet) chemicals to support the Industry Waste Reduction Scheme (the Scheme), which incorporates the drumMUSTER and ChemClear chemical container collection programs.

AgStewardship proposed to amend the definition of "containers" which are collected under the Scheme, the proposed variation did not otherwise alter the operation of the Scheme.

On 9 June 2011 the ACCC granted authorisation to the proposed variation.

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**Western Australian Broiler Grower Association Incorporated – A91262**

Summary | On 8 February 2011 the Western Australian Broiler Growers' Association (WABGA) sought authorisation, on behalf of its member chicken growers, for its current and future member growers to engage in collective bargaining with the chicken meat processors to whom they supply growing services

On 16 June 2011 the ACCC issued a final determination granting authorisation for five years.

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**Energy Assured Limited – A91258 & A91259**

Summary | On 29 October 2010 Energy Assured Limited applied for authorisation for a scheme to self regulate door to door energy sales undertaken on behalf of electricity and gas retailers.

On 23 June 2011 the ACCC issued a final determination granting authorisation for a period of three years.

#### **Draft determinations issued (not otherwise appearing above)**

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##### **Australian Dairy Farmers Ltd – A91263**

Summary | On 8 March 2011 the Australian Dairy Farmers lodged an application for re-authorisation to continue to collectively bargain the terms and conditions of supply contracts between dairy farmers and dairy processors.

On 16 June 2011 the ACCC issued a draft determination proposing to grant authorisation for 10 years.

The ACCC has sought submissions from interested parties regarding the draft determination and the matter is under consideration.

#### **Applications lodged (not otherwise appearing above)**

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##### **Virgin Australia Group & Singapore Airlines - A91267 & A91268**

Summary | On 20 June 2011 Virgin Australia and Singapore Airlines applied for authorisation for a proposed alliance in relation to international passenger transport services. The proposed alliance comprises an 'Alliance Framework Agreement', and includes:

- freesale codeshare agreements
- a special prorate agreement
- reciprocal frequent flyer and lounge agreements.

Under the alliance, the Virgin Australia and Singapore Airlines will fully cooperate on all aspects of their Australia-Singapore services and any international and domestic connecting routes, including joint pricing, scheduling, marketing and sales. The airlines will cooperate in relation to the marketing of services to corporate and government accounts, including joint bidding and joint pricing.

Virgin Australia and Singapore Airlines do not intend to share revenues at this stage.

The ACCC has sought submissions from interested parties and the matter is under consideration.

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##### **Qantas Airways Limited & American Airlines Inc. - A91265 & A91266**

Summary | On 12 May 2011 Qantas Airways and American Airlines sought authorisation to make and give effect to a Joint Business Agreement (JBA). Under the proposed JBA, they would coordinate operations on services between Australia/New Zealand and the United States of America (the trans-Pacific routes), and on extensive Qantas and American Airlines services which support the trans-Pacific routes.

On 9 June 2011 the ACCC granted interim authorisation to allow the parties to commence the proposed JBA while the ACCC considers the substantive authorisation.

The ACCC has sought submissions from interested parties and the matter is under consideration.

## **Exclusive dealing notifications**

A notification of interest considered during the quarter was:

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### **Review of Co-operative Bulk Handling Limited – N93439**

Summary | On 11 June 2008 CBH lodged a notification to offer to supply storage and handling services on the condition that Growers or Marketers acquire:

- supply chain coordination services from CBH; and
- to the extent that grain remains in CBH's custody, that they only acquire transport services from CBH (through its nominated carrier).

In June 2010 the ACCC commenced a review of the notification, a draft notice to revoke the notification was issued by the ACCC on 6 December 2010.

On 29 June 2011 the ACCC issued a notice revoking the notification.

## **Collective bargaining notifications**

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### **Newsagents Association of NSW and the ACT – CB00149**

Summary | On 22 June 2011 the Newsagents Association of NSW and the ACT (NANA) lodged an application to collectively bargain on behalf of its members with NSW Lotteries in relation to the distribution services that NANA members provide to NSW Lotteries and to NSW/ACT consumers.

The ACCC has sought submissions from NSW Lotteries and the matter is under consideration.

## 5. Regulatory affairs

The ACCC and AER have roles in promoting competition in network industries: communications, energy, post, water and transport. The ACCC is also involved in monitoring prices of selected goods and services. The ACCC and the AER ensure that participants in the regulated industries comply with access obligations and revenue or pricing arrangements that apply to facilities such as gas transmission pipelines, electricity transmission networks, telecommunications networks and airports.

### Communications

In the June 2011 quarter, the ACCC:

- issued an Interim Access Determination (IAD) for the regulated domestic transmission capacity service (DTCS). This IAD was backdated to commence on 1 January 2011 and expires on 31 December 2011
- issued discussion papers and launched inquiries into the making of final access determinations (FADs) for the DTCS, the domestic mobile termination access service (MTAS) and other regulated fixed line services
- issued a revised list of initial Points of Interconnect (POIs) for the National Broadband Network (NBN)
- released a consultation paper proposing to extend the operation of the Telstra Exchange Facilities Record Keeping and Reporting Rule (TEF RKR) for another three years.
- issued two reports: an imputation and non-price terms and conditions report relating to Telstra's performance during the December 2010 quarter and the 'Current Cost Accounting Report' for July-December 2010
- provided a submission to the Australian Government's Convergence Review Committee.

	Total
Active disputes at 1 April 2011	11
Decisions subject to appeal to the Federal Court	0
New arbitrations commenced	2
Final determinations issued	0
Disputes withdrawn	0
Published determinations	0
Active disputes at 30 June 2011	13

With these changes, the ACCC continues to arbitrate thirteen access disputes.

## **Points of Interconnect**

On 3 May 2011 the ACCC published a revised list of POIs to the NBN. This list is part of the POI confirmation process and amends the earlier lists published on the ACCC website. The list identifies 121 POIs to the NBN.

## **Access to Telstra's exchange facilities record keeping and reporting rule**

In April 2011 the ACCC released a consultation paper proposing to extend the operation of the TEF RKR (with some minor variations) for another 3 years. The TEF RKR provides oversight and transparency in relation to access to Telstra's exchange capping and queuing processes. In this paper, the ACCC also proposed to issue another disclosure direction (on the same terms as the current disclosure direction) in relation to publishing certain information it receives in accordance with the TEF RKR.

## **Australian Energy Regulator**

All papers and submissions relating to the AER are freely accessible by the public on the AER's website at [www.aer.gov.au](http://www.aer.gov.au).

## **AER's proposed changes to network regulation rules**

Since early 2011, the AER has undertaken a review of the National Electricity Rules. On 20 June 2011 AER Chairman, Mr Andrew Reeves highlighted the constraints and limits of the current regulatory framework and their impact on energy prices for consumers at a seminar hosted by the Energy Users Association of Australia.

The AER is currently drafting a rule change proposal that will be submitted to the Australian Energy Market Commission later this year. The rule change proposal will focus on how the regulator can ensure that the allowances for the businesses are no more than necessary.

Further, the AER is examining ways to ensure that businesses are not rewarded for unnecessary and excessive overspends and will also seek to reform the process for deciding the business's allowable returns. The AER will propose replacing the various processes currently used across electricity and gas transmission and distribution networks with a single consistent framework, ensuring that returns are consistent with current commercial practices and financing costs.

## **Gas network regulation matters**

### **Tribunal decision on AER gas access arrangement decision for Jemena Gas Networks (NSW) Limited**

On 30 June 2011 the Tribunal made its final decision on the review of the AER's decision on the access arrangement for Jemena Gas Networks (NSW) Limited (JGN). JGN applied for a review of the various aspects of the AER's decision, including its decision in determining the capital base, the debt risk premium, the appropriate tax allowance and the terms and conditions for reference services.

The Tribunal allowed JGN to recover additional revenues of \$162 million over the final three years of the five year regulatory period. These increased revenues result from the decision on the debt risk premium and the tax allowance. This represents a 7.9 percent increase to total revenues over the five year regulatory period.

The decision of the AER to disallow an amount of \$4.6 million in the opening capital base in respect of mine subsidence expenditure and to reallocate \$3.1 million forecast expenditure on mine subsidence to forecast operating expenditure was remitted to the AER to make the decision again in accordance with the Tribunal's final directions.

### **Access arrangement final decisions: South Australian and Queensland gas distribution networks**

On 17 June 2011 the AER released its final decisions on access arrangements for gas distribution networks in South Australia and Queensland owned by Envestra (SA and Qld) and APT Allgas (Qld). The access arrangements set out the tariffs and terms and conditions of access to the networks for the period from 1 July 2011 to 30 June 2016.

The AER's final decisions did not accept the access arrangement proposals submitted by Envestra and APT Allgas. The AER concluded that the access arrangement proposals were not acceptable because the proposed tariffs were too high and the terms and conditions too much in favour of the service providers. The AER considered its final decisions better balanced the interests of the service providers and network users.

The final decisions allowed for increases in network charges of around 13-15 per cent as at 1 July 2011. Increases in subsequent years would be lower (averaging around 7-10 per cent). These increases were substantially less than those proposed by Envestra and APT Allgas.

### **Access arrangement draft decision – Amadeus Gas Pipeline**

On 21 April 2011 the AER released its draft decision on the access arrangement proposal for the Amadeus Gas Pipeline (AGP) for the period 1 July 2011 to 30 June 2016.

The AER did not accept the access arrangement proposal, as it was not satisfied the proposal met the National Gas Rules' requirements. The AER considered that the proposed reference tariff was too high and that the terms and conditions were too much in favour of N.T. Gas Pty Limited (NT Gas). The draft decision required NT Gas to amend the access arrangement proposal for the pipeline. On 27 May 2011, NT Gas submitted its revised access arrangement proposal to the AER. The AER received two submissions from interested parties before the closing date for submissions on 24 June 2011. A final decision is expected in mid July.

## **Electricity network regulation matters**

### **Consultation paper – connection charge guideline for accessing the electricity distribution network**

On 10 June 2011 the AER released an issues and preliminary positions paper on the design of the connection charge guidelines for consultation. The Ministerial Council on



Energy has endorsed the introduction of a new chapter 5A (Electricity connection for retail customers to the National Electricity Rules). Under chapter 5A, the AER will be required to develop and publish connection charge guidelines to codify how electricity distribution businesses should charge new electricity customers for connecting to their networks.

As part of developing this guideline, the AER has identified a number of issues and alternate options for calculating the connection charge. As this guideline will have a significant impact on how new users are charged for connecting to the electricity grid, the AER is consulting on these issues before it proceeds to further develop the guideline. As part of this consultation process, the AER hosted a public forum on 11 July 2011 about the issues identified in this paper and to assist stakeholders in preparing their submissions to the AER. Submissions are due by 5 August 2011.

### **AER networks information strategy**

On 9 June 2011 the AER released its Strategy for information collection, analysis and reporting for electricity distribution and transmission networks. This Strategy describes the AER's aims regarding an information collection, analysis and reporting framework that will support its regulatory functions for electricity transmission and distribution businesses.

The AER's role includes collection, analysis and reporting of information about the past, present and future performance of electricity network businesses. The AER uses the information it collects to make decisions about future revenues and prices. Its decisions impact on future investment, operating and maintenance expenditure, the level of service provided and the incentives faced by the network businesses to supply services in an efficient way. The AER's decisions about network businesses revenues and prices will directly affect the charges electricity consumers pay, with network charges typically representing around half of a consumer's electricity bill.

The AER will collect information from network businesses annually and at the time the network businesses lodge a distribution or revenue proposal with the AER, generally every 5 years.

### **ActewAGL's judicial review application**

On 8 June 2011 the Federal Court delivered its judgement dismissing ActewAGL's application to review the AER's 2009 distribution determination for the Australian Capital Territory. ActewAGL had sought judicial review of the risk-free rate averaging period determined for the purpose of setting its cost of capital.

### **Invitation to provide submissions on Aurora Energy's regulatory pricing proposal for 2012-17**

On 31 May 2011 Aurora Energy submitted its regulatory pricing proposal for the period 2012-13 to 2016-17. The regulatory proposal sets out the prices that Aurora proposes for services it will provide over the 2012-13 to 2016-17 regulatory period, as well as Aurora's forecasts of the costs it will incur over that period. On 23 June 2011, the AER published non-confidential aspects of Aurora Energy's regulatory proposal and addendum on the AER website. Interested stakeholders are invited to provide submissions to the AER on Aurora's regulatory proposal by 12 August 2011.

The AER is required to make a decision by April 2012 on the maximum revenue that Aurora Energy may receive from prices for electricity distribution services.

### **Invitation to provide submissions on Powerlink's revenue proposal for the 2012–13 to 2016–17 regulatory control period**

On 31 May 2011 Powerlink submitted its revenue proposal for the regulatory control period 1 July 2012 to 30 June 2017 together with its proposed negotiating framework and proposed pricing methodology. On 27 June 2011, the AER published non-confidential aspects of Powerlink's revenue proposal, together with its proposed negotiating framework and proposed pricing methodology on the AER website. Interested stakeholders were invited to provide submissions to the AER on Powerlink's revenue proposal, proposed negotiating framework and proposed pricing methodology by 12 August 2011, and invited to attend a public forum on 26 July 2011 on the proposal submitted by Powerlink.

The AER is required to make a transmission determination in respect of both prescribed and negotiated transmission services by 30 April 2012 that will apply to Powerlink for the regulatory control period 1 July 2012 to 30 June 2017.

### **Final decision - Ergon Energy's ring-fencing waiver application regarding its photovoltaic installations**

On 25 May 2011 the AER released its final decision to approve Ergon Energy's ring-fencing waiver application to allow it to own and operate photovoltaic (PV) installations on its office buildings and depots. On 16 March 2011, Ergon Energy applied to the AER for a waiver under the Queensland Ring-Fencing Guidelines. These guidelines prevent Ergon Energy from producing electricity. Given that PV installations produce electricity, Ergon Energy was required to seek a waiver to the guidelines to be able to own and operate such installations. On 21 April 2011, the AER published its draft decision to approve the waiver application. One submission to the draft decision from Ergon Energy was received by the AER.

The AER's final decision is to allow a waiver to the guidelines in respect of Ergon Energy's PV installations. This waiver is limited to a total generation capacity of 300 kilowatts for all PV devices installed (or to be installed) on Ergon Energy's office buildings and depots.

### **Tribunal decision on AER electricity distribution determinations for South Australia and Queensland**

On 19 May 2011 the Australian Competition Tribunal handed down its decision on the appeals by the South Australian (ETSA Utilities) and Queensland electricity distribution network operators (Energex and Ergon Energy), and has allowed them to recover additional revenues of about \$850 million, about a 5 per cent increase to total revenues over the five year regulatory period. Specifically, ETSA Utilities, Energex and Ergon Energy have been permitted to recover an additional \$301 million, \$298 million and \$243 million respectively.

These appeals were against the AER's May 2010 distribution determinations for these businesses. All three businesses applied for a review of the AER's decision on the estimated cost of corporate income tax. ETSA Utilities and Ergon Energy also applied for a review of other aspects of the AER's determination.

### **Final decision: applications for exclusion from the Victorian service incentives for supply reliability, supply interruption events July–December 2010**

On 17 May 2011 the AER released its final decision with regards to SP AusNet's application for exclusion from the Victorian service incentives for supply reliability, supply interruption events for July–December 2010. SP AusNet was the only distribution business to apply to the AER to exclude one supply interruption event on 28 November 2010 from the supply reliability service incentive scheme under the Essential Services Commission of Victoria's (ESCV) *Electricity Distribution Price Review 2006–10* (Price Review), now administered by the AER.

The event was due to an incorrect current transformer ratio setting, and resulted in a momentary supply interruption to customers in numerous sub-station zones in Victoria. The AER made its draft decision to approve SP AusNet's application to exclude the supply interruption event at Morwell Terminal Station, due to incorrect setup of protection equipment at this terminal station, from the calculation of the S factor and the obligation to make low reliability guaranteed service level payments. The AER did not receive any submissions and confirmed its draft decision.

### **Final decision - Powercor's cost pass through application in relation to the Victorian Bushfire Royal Commission**

On 24 February 2011 the AER received an application from Powercor for the pass through of costs resulting from changes in the compliance framework in response to the Victorian Bushfire Royal Commission (VBRC) recommendations. Powercor proposed a positive pass through amount of \$103.65 million be passed through to distribution network users during the 2011-15 regulatory control period.

On 13 May 2011 the AER decided not to approve Powercor's pass through application. The AER considered that the events nominated by Powercor in its pass through application did not satisfy the pass through requirements under clause 6.6.1 of the National Electricity Rules. The AER noted however that Powercor may make further applications based on any administrative action that ESV may take in regard to the approval of plans prepared in response to actions taken to implement the recommendations from the VBRC.

### **Final decision - SP AusNet's revised AMI budget application for 2009-11**

On 29 April 2011 the AER provided its final determination on SP AusNet's AMI Revised Budget Application for 2009-11. The final determination rejected several aspects of SP AusNet's Application. Instead, the AER has determined the variations to SP AusNet's previously Approved Budget for 2009-11.

In addition, the AER identified errors in its final determination and issued a corrigendum which specifies the corrected figures on 30 May 2011. These corrected figures result in a -\$14.46 million reduction to SP AusNet's Approved Budget for 2009-11 and not a -\$4.63 million reduction as incorrectly specified in the original final determination. The corrigendum is to be read together with the final determination.

### **Final decision - Priorities and Objectives of electricity network service provider performance reporting**

On 7 April 2011 the AER released its final decision on the priorities and objectives of electricity network service provider performance reports. This is accompanied by the statement of approach, which sets out the AER's response to submissions on the

discussion paper released in December 2010. The purpose of this final decision is to detail the AER's priorities and objectives to be addressed through the preparation of network service provider performance reports. The priorities and objectives of business performance reporting will be reflected in future electricity businesses' performance reports.

The AER has previously published performance reports on transmission businesses, and will continue to do so. The AER is now responsible for publishing performance reports on distribution businesses, starting with the 2009-10 performance of businesses in NSW and the ACT. The AER will also publish the Victorian distribution businesses' performance report in its current form for one further year, covering the period to the end of the previous regulatory control period (2010).

### **Ergon Energy's judicial review application**

The Federal Court hearings on Ergon Energy's judicial review application were held in April 2011. The questions before the court were whether the provision, construction and maintenance of street lighting are a distribution services and if not, did the AER have power to regulate these services under chapter 6 of the National Electricity Rules. The court decision is pending.

### **Final decision: Approval of the interest rate for CitiPower's and Powercor's security deposit scheme for network connections in Victoria**

On 7 April 2011 the AER released its final decision on CitiPower's and Powercor's proposed interest rate for refund of security deposits under their security fee schemes. Under Electricity Industry Guideline No. 14 - Provision of Services by Electricity Distributors, a distribution network service provider may require a security deposit, or security fee when connecting high risk customers to insure existing customers and the distribution businesses against the potential cost of asset stranding. The final decision paper follows an extensive consultation process including a draft decision released in December 2010.

The AER approved the use of 90 day Bank Bill rate less a 0.25 per cent administration charge as the interest payable on the amount of a security fee returned to a customer.

## **Energy markets**

### **Publication of draft exempt selling guideline and network registration exemption guideline for consultation**

On 27 June 2011 the AER published two draft exemption guidelines in relation to network registration and retail onselling. While the consultation for each guideline takes place under a different legislative framework, the AER has aligned these processes as there are a number of commonalities in situations such as caravan parks, apartments and shopping centres.

#### ***Network registration exemption guideline:***

Under the National Electricity Rules, any party that engages in an electricity transmission or distribution activity must either be registered with the Australian Energy Market Operator (AEMO) as a network service provider, or be exempted by the AER from this requirement. The AER's network service provider registration

exemption guideline outlines classes of electricity transmission or distribution activities which will be exempt from the obligation to be registered as a network service provider with AEMO.

***Exempt selling guideline:***

Under the National Energy Retail Law, a person wishing to sell energy must hold a retailer authorisation, or be exempt from that requirement. The AER's exempt selling guideline outlines classes of onselling activities which will be exempt from the requirement to hold a retailer authorisation under the National Energy Retail Law. It also outlines situations where an onseller should seek an individual exemption from the AER.

These documents form the last round of consultation prior to release of the final exempt selling guideline, which is expected to be released later this year.

The AER has invited written submissions on both guidelines by 12 August 2011, and will host a public forum to discuss network registration exemptions and retail exemptions on 27 July 2011.

**Spot prices above \$5000/MWh report**

In June 2011 AER published a report covering an event where the spot electricity price exceeded \$5000/MWh across the National Electricity Market. This event occurred on 1 February when a planned transmission outage in Victoria reduced the capability of the Heywood interconnector. High energy prices in Victoria drove exports from South Australia into Victoria. These exports, when combined with the transmission outage, led to a requirement for local frequency control ancillary services in South Australia.

AGL is the most significant provider of these frequency control services in South Australia and offered the majority of its capacity for these services at the price cap. The combination of high energy prices in the eastern states and AGL's high offer prices saw the price for lower frequency control services exceed \$5000/MW for seven five-minute dispatch intervals, totalling \$441 000. This compares to less than \$3000 per day for the same services on a typical day.

**Final Guidance - AER approval of customer hardship policies**

On 17 May 2011 the AER published its final Guidance on AER Approval of Customer Hardship Policies (Guidance). Under the new National Energy Retail Law, energy retailers will be required to have AER approved customer hardship policies. Hardship policies aim to assist customers experiencing payment difficulties due to hardship to better manage their energy bills on an ongoing basis.

The Guidance outlines what information retailers should include in their customer hardship policies when submitting those policies to the AER for approval. The Guidance also sets out the factors the AER may consider in deciding whether or not to approve a retailer's customer hardship policy.

The Guidance will assist retailers to demonstrate that their policy satisfies the minimum requirements and obligations specified in the Retail Law and Rules. Under the Retail Law, new entrant retailers will be required to submit their hardship policies to the AER for approval within three months of being granted an authorisation to sell electricity and gas.

Those existing energy retailers, who will be transitioned to authorised retailers under the Retail Law, will be required to have an AER approved customer hardship policy in

place for commencement of the Retail Law on 1 July 2012. To ensure this requirement is met, retailers will be required to submit their customer hardship policy to the AER for approval by 1 December 2011. The AER intends to commence detailed discussions with retailers on the submission and approval of their customer hardship policies from September.

### **Retail Pricing Information Guideline released for consultation**

On 6 May 2011 the AER released a draft AER Retail Pricing Information Guideline. This Guideline is required under section 61 of the new National Energy Retail Law (Retail Law). The purpose of this Guideline is to provide guidance to retailers in the presentation of standing offer prices and market offer prices, thereby assisting small customers to consider and compare standing offer prices and market offer prices offered by retailers.

The AER commenced consultation on this Guideline with the release of an issues paper in March 2010 and a position paper/draft Guideline in September 2010.

The AER has used the earlier consultations to develop the draft Guideline released with this notice. This notice and the draft Guideline have been published on the AER's website in accordance with the retail consultation procedure set out in clause 173 of the National Energy Retail Rules. This will be the last round of consultation prior to the release of the final document. The finalised document is expected to be released later this year.

### **Notice of draft instrument: Retailer authorisation guideline**

On 3 May 2011 the AER released a draft Retailer Authorisation Guideline. The guideline is required under section 117 of the new National Energy Retail Law (Retail Law).

Under the Retail Law, the AER will be responsible for issuing and revoking retailer authorisations. To support this role, the AER is required to develop a guideline to assist applicants to understand the process for obtaining energy retailer authorisations, and for the transfer, surrender or revocation of retailer authorisations.

The AER commenced consultation on the Retailer Authorisation Guideline with the release of an issues paper in March 2010 and a consultation paper in November 2010. The AER has used the earlier consultations to develop the draft guideline released with this notice. This will be the last round of consultation prior to the release of the final document. The finalised document is expected to be released later this year. The AER invited comments on the draft guideline, which closed on 31 May 2011.

### **Energy Quarterly Compliance Report - January – March 2011**

On 2 May 2011 the AER published its latest energy quarterly compliance report. The report summarises the results of the AER's compliance monitoring and enforcement activities in both the electricity and gas industries during the period January-March 2011.

It provides an overview of the results of investigations (including special reports into significant market or power system events), compliance audits, targeted compliance reviews as well as electricity derogations and rebidding enquiries during the quarter.

## **Notice of draft instrument: Performance Reporting Procedures and Guidelines**

On 18 April 2011 the AER released draft Performance Reporting Procedures and Guidelines developed under the new National Energy Retail Law (Retail Law).

Under the Retail Law, the AER will be responsible for monitoring and reporting on the performance of regulated entities. To support this new role, the AER is empowered to develop Performance Reporting Procedures and Guidelines.

The AER commenced consultation on approaches to performance monitoring and reporting with the release of issues papers in April and June 2010, and a position paper including proposed reporting requirements in November 2010. The AER has used the earlier consultation to develop the draft guideline released with this notice. This notice and the draft guideline have been published on the AER's website in accordance with the retail consultation procedure set out in cl. 173 of the National Energy Retail Rules. This will be the last round of consultation prior to release of the final document. The finalised document is expected to be released later this year. The AER invited comments on the draft guideline, which closed on 3 June 2011.

## **Transport and General Prices Oversight**

### **Airservices Australia draft price notification**

On 7 March 2011 Airservices Australia provided the ACCC with a draft price notification covering all of its regulated services: terminal navigation (TN), en route navigation (en route), and aviation rescue and fire fighting (ARFF) services.

Airservices is the monopoly provider of air traffic control services in Australia, including both en route air navigation and terminal navigation (TN). It also provides aviation rescue and fire-fighting (ARFF) services. These services are declared under section 95X of the *Competition and Consumer Act 2010*, which means that Airservices must notify the ACCC when it wishes to increase prices. The ACCC may object or not object to the proposed increases.

Airservices proposed a five-year price path for each of its three regulated services, covering the period 2011-12 to 2015-16. Airservices stated that its price proposal includes an average real price reduction of more than 8 per cent over the five-year period. This is the result of proposed changes to charges for TN and ARFF services, while charges for en route services remain unchanged.

The ACCC released an issues paper in early April seeking public comment on the draft notification and received 14 submissions from interested parties.

On 7 July 2011 the ACCC released its preliminary view stating that it would object to Airservices' proposed price increases. The ACCC's view was that the proposed prices are higher than required to cover costs and provide a reasonable return. The ACCC also asked Airservices to better demonstrate that its forecast costs are prudent and efficient.

There is scope for Airservices to address these issues prior to it submitting a formal long-term pricing proposal. The ACCC is seeking comments from interested parties on its preliminary view by 1 August 2011.

## **Ports**

### **GrainCorp's proposed ports access undertaking**

On 7 October 2010 the ACCC released an issues paper on the proposed undertaking received from GrainCorp on 22 September 2010 and sought submissions by 4 November 2010. This commenced consultation in relation to the ACCC's assessment of the proposed undertaking under Part IIIA of the *Trade Practices Act (the Competition and Consumer Act from 1 January 2011)*. Three interested parties made submissions to the issues paper.

The proposed undertaking is intended to take effect at the expiry of the current undertaking accepted by the ACCC in September 2009 and relates to port terminal services for the export of bulk wheat from GrainCorp's seven terminals in Queensland, New South Wales and Victoria.

A Draft Decision was released on 24 March 2011. Eight interested parties made public submissions on the Draft Decision, with further parties providing confidential submissions.

On 2 June 2011 the ACCC released for public consultation a draft amendment notice and explanatory statement regarding GrainCorp's proposed undertaking. Three interested parties made submissions.

On 20 June 2011 the ACCC gave GrainCorp a final amendment notice. GrainCorp provided a revised undertaking to the ACCC in response to the amendment notice on 20 June 2011.

On 22 June 2011 the ACCC issued a final decision to accept GrainCorp's undertaking that will operate from 1 October 2011 to 30 September 2014. The ACCC considered that the current arrangements had worked well and should largely continue, but that some improvements were needed. These included achieving more economically efficient use of port terminal facilities. To address this GrainCorp included measures to encourage return of unwanted capacity at peak times and to increase transparency regarding its system of capacity allocation.

Acceptance of an access undertaking will ensure access by wheat exporters under fair terms to grain handling facilities in east coast ports owned by GrainCorp, and ensure ongoing competition in this significant export market.

### **Australian Bulk Alliance's (ABA) proposed ports access undertaking**

On 23 December 2010 ABA submitted a proposed undertaking to the ACCC for assessment under Part IIIA of the *Trade Practices Act (the Competition and Consumer Act from 1 January 2011)*. ABA is an Australian subsidiary of the Japanese listed Sumitomo Corporation and the undertaking relates to the provision of access to services for the export of bulk wheat at the grain terminal operated by ABA at the Port of Melbourne.

An Issues Paper was released on 20 January 2011. Three interested parties made submissions to the issues paper.

The ACCC sent ABA a request for information in April 2011 seeking further information regarding the undertaking application and ABA duly responded to the ACCC's request.

A Draft Decision is likely to be released in July 2011.



### **Viterra's proposed ports access undertaking**

On 23 December 2010 Viterra submitted a proposed undertaking to the ACCC for assessment under Part IIIA of the Trade Practices Act (the Competition and Consumer Act from 1 January 2011).

The proposed undertaking is intended to take effect at the expiry of the current undertaking accepted by the ACCC in September 2009 and relates to port terminal services for the export of bulk wheat from Viterra's six port terminals in South Australia.

An Issues Paper was released on 20 January 2011. Seven interested parties made submissions to the issues paper.

In April, the ACCC sent requests for information to Viterra seeking information regarding the undertaking application and Viterra duly responded to the ACCC's requests. Further requests for information sent to both Viterra and exporters, known to operate in South Australia, sought information regarding capacity allocation at Viterra's port terminals. The ACCC received 14 responses from exporters, the majority of which have been de-identified and published on the ACCC website.

A Draft Decision is likely to be released in July 2011.

### **Cooperative Bulk Handling (CBH) Proposed ports access undertaking**

On 31 March 2011 CBH submitted a new Proposed Undertaking to the ACCC, with arrangements for access by other wheat exporters to its four grain port terminals in Western Australia (Albany, Esperance, Geraldton and Kwinana).

An Issues Paper was released on 21 April. Ten interested parties made submissions on the Issues Paper.

On 6 May 2011 the ACCC sent a request for information to CBH, seeking further information regarding the undertaking application. On 18 May 2011 CBH provided a public response to the ACCC's request for information.

A Draft Decision is likely to be released in July 2011.

## **Rail**

### **Hunter Valley rail access undertaking**

The ACCC accepted an access undertaking under Part IIIA from Australian Rail Track Corporation (ARTC) on 29 June 2011. The undertaking regulates access to ARTC's leased rail network in the Hunter Valley region of New South Wales. The network is predominantly used to transport export coal from the region's mines to the Port of Newcastle, but it is also used for non-coal and domestic coal freight.

The arrangements:

- provide for the negotiation of long term access contracts between users of the rail network and ARTC;
- processes for new investment in the rail network, in consultation with stakeholders; and
- incentives to promote alignment of all coal chain contracts and efficient use of the Hunter Valley infrastructure.

ARTC initially submitted a proposed access undertaking in relation to the Hunter Valley network on 22 April 2009. Following receipt of complete information from ARTC,

the ACCC issued a Position Paper on that undertaking in February 2010, followed by a Draft Decision in March 2010. The ACCC was of the preliminary view that it would reject that proposed undertaking as being unlikely to be appropriate under Part IIIA. ARTC withdrew the undertaking on 19 April 2010.

ARTC submitted a revised undertaking to the ACCC on 7 September 2010. The ACCC released a Position Paper on 21 December 2010, again taking the view that the undertaking was unlikely to be appropriate to accept. As it had done previously, the ACCC provided extensive recommendations on how ARTC could revise the undertaking to address the concerns of the ACCC and other stakeholders.

In response to the Position Paper, ARTC provided an informal revised version of the undertaking to the ACCC on 7 April 2011. ARTC also requested a 'clock stopper' to the existing statutory timeframe until 9 June 2011 to allow for consideration of the new documents.

Following further discussion with industry stakeholders, ARTC ultimately withdrew its September 2010 undertaking and on 23 June 2011 resubmitted a complete revised version that addressed the views of the ACCC from the earlier Draft Decision and Position Papers. The ACCC accepted this undertaking on 29 June 2011, and it took operative effect from 1 July 2011.

In assessing the various iterations of the undertaking, the ACCC consulted extensively with stakeholders. These included ARTC, Hunter Valley coal producers, rail operators, industry bodies, owners of other infrastructure in the Hunter Valley (such as port terminals), and government departments.

The undertaking is a key step in the implementation of the long-term solution to capacity constraints in the Hunter Valley coal export supply chain, and should allow all parties to work together to remove export bottlenecks for the coal industry. The undertaking also includes mechanisms to facilitate access to the network by non-export coal parties, including a negotiate/arbitrate framework and a reference to indicative terms of access.

## **Post**

On 25 January 2011 Australia Post provided the ACCC with a draft price notification proposing price increases for its monopoly business mail services. Australia Post, to encourage more efficient and flexible use of its postal network, also proposed an improvement in the delivery standards for Off Peak letters.

In response to ACCC concerns about users' responsiveness to Australia Post's proposed changes to Off Peak letter, Australia Post submitted a revised draft price notification on 16 May 2011. The revised proposal reduced the size of the proposed price increases for some Off Peak prices by over 50 per cent.

The ACCC released its preliminary view on Australia Post's draft price notification on 27 May 2011, which was to not object to Australia Post's revised pricing proposal. On 3 June 2011 Australia Post submitted a formal price notification to the ACCC seeking the same price increases as proposed in its revised proposal submitted in May 2011. Australia Post also advised the ACCC of its intention to increase the prices of its business mail services with effect from 4 July 2011. On 23 June 2011 the ACCC released its final decision to not object to the proposed price increases and the product design changes for Off Peak letters.

## Water

Under the *Water Act 2007*, the ACCC has policy development, enforcement and monitoring responsibilities relating to water markets, water trading and water delivery services in the Murray–Darling Basin.

### ACCC water monitoring report 2009-10

The Australian Competition and Consumer Commission (ACCC) is required under the *Water Act* to monitor regulated water charges, transformation arrangements and compliance with the water market rules and the water charge rules. It is also required to issue an annual water monitoring report to the relevant Minister.

The ACCC publicly released the first such report in April 2011, covering the 2009-10 financial year. The report provides information about the impact of reforms, including the new water market and water charge rules, on the water industry in the Murray Darling Basin.

The report found that the impact of the new rules was most clearly seen in the fall in termination fees, significant transformation of irrigation right and significant termination of water delivery right during the course of the year. These indicators suggest that irrigation infrastructure operator-imposed barriers to trade have been reduced. While there was considerable transformation and termination, the report also noted that many irrigators who sold water maintained an involvement with their infrastructure operator and continued irrigated agricultural production. The report found that considerable state-government-imposed barriers to trade still remained.

The report also found that compliance with the new rules was generally good. However, the ACCC has conducted investigations and taken enforcement action where necessary. The report also examined water charges levied by infrastructure operators in the Murray Darling Basin, observing that the level and structure of charges varied across service providers. There are a number of possible reasons for the variations including differences in the type of infrastructure and in operator efficiency. Future reports will provide additional information on the differences.

## Fuel

### Price Monitoring

The ACCC closely follows developments in the petroleum industry and monitors the retail prices of petrol, diesel and automotive liquefied petroleum gas (LPG) in all capital cities and around 150 regional centres and country towns.

### Price movements in the June 2011 quarter

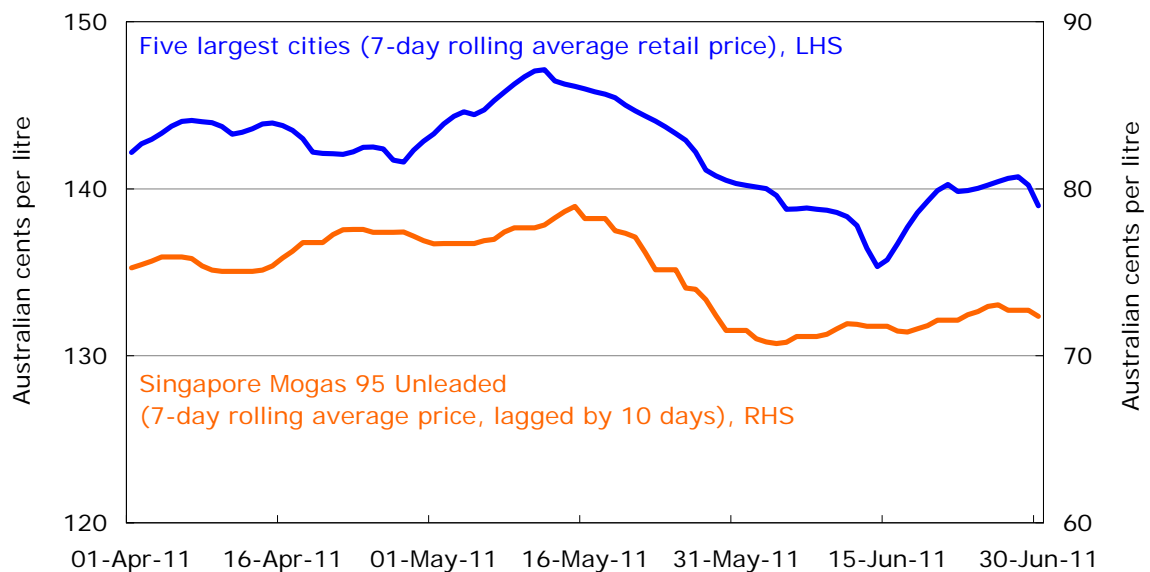
#### Petrol

The ACCC monitors movements in domestic retail petrol prices against movements in international benchmark prices. In the case of regular unleaded petrol (RULP), movements in seven-day rolling average retail RULP prices in the five largest cities

(Sydney, Melbourne, Brisbane, Adelaide and Perth) are compared with movements in seven-day rolling average prices for Singapore Mogas 95 Unleaded (lagged by 10 days) in Australian cents per litre (cpl).

Chart 1 shows movements in these prices over the period 1 April to 30 June 2011. Retail RULP prices are shown on the left hand side of the chart and Singapore Mogas 95 Unleaded prices are shown on the right hand side. It is important to remember that a comparison of movements in these two prices is indicative rather than an exact science and that factors other than international benchmark prices can influence retail petrol prices in the short run. This caveat also applies to the comparisons of movements between retail diesel and automotive LPG prices and their respective international benchmarks.

**Chart 1: Movements in retail RULP prices and international benchmark prices—1 April to 30 June 2011**



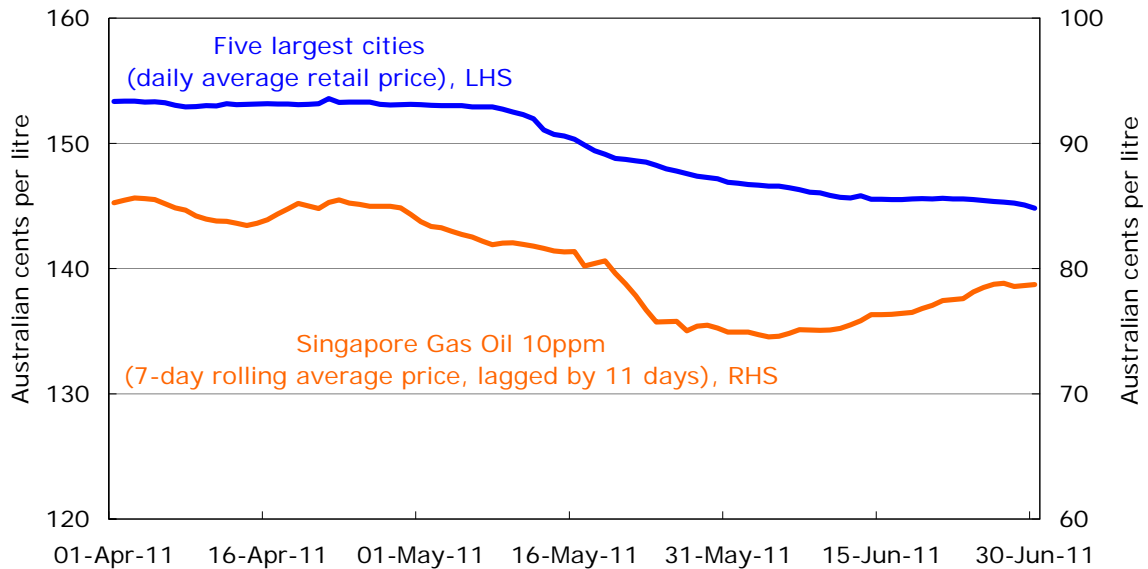
As illustrated in the chart, retail RULP prices broadly tracked movements in the benchmark prices in the June 2011 quarter. The chart also shows that there were periods of discounting in some cities at the retail level in April and June 2011. Average retail RULP prices across the five largest cities (on a seven-day rolling average basis) increased from 142.2 cpl at the beginning of April 2011 to a high of 147.1 cpl in May, their highest level since October 2008. Prices subsequently decreased to be at 139.0 cpl at the end of June 2011—a decrease of 3.2 cpl over the quarter. The decreases in the Singapore Mogas 95 Unleaded price in May 2011 were influenced by high gasoline stock levels and weak global economic conditions.

## Diesel

The ACCC monitors the movement of retail diesel prices against the spot price of Singapore Gasoil with 10 parts per million (ppm) sulphur content. Chart 2 shows daily average retail diesel prices on the left hand side of the chart and seven-day rolling average Singapore Gasoil 10 ppm prices (lagged by 11 days) on the right hand side. The chart illustrates that retail diesel prices broadly tracked movements in the international benchmark prices over the June 2011 quarter.

Daily average retail diesel prices for the five largest cities decreased by 8.5 cpl over the June 2011 quarter—from 153.3 cpl to 144.8 cpl.

**Chart 2: Movements in retail diesel prices and international benchmark prices—1 April to 30 June 2011**

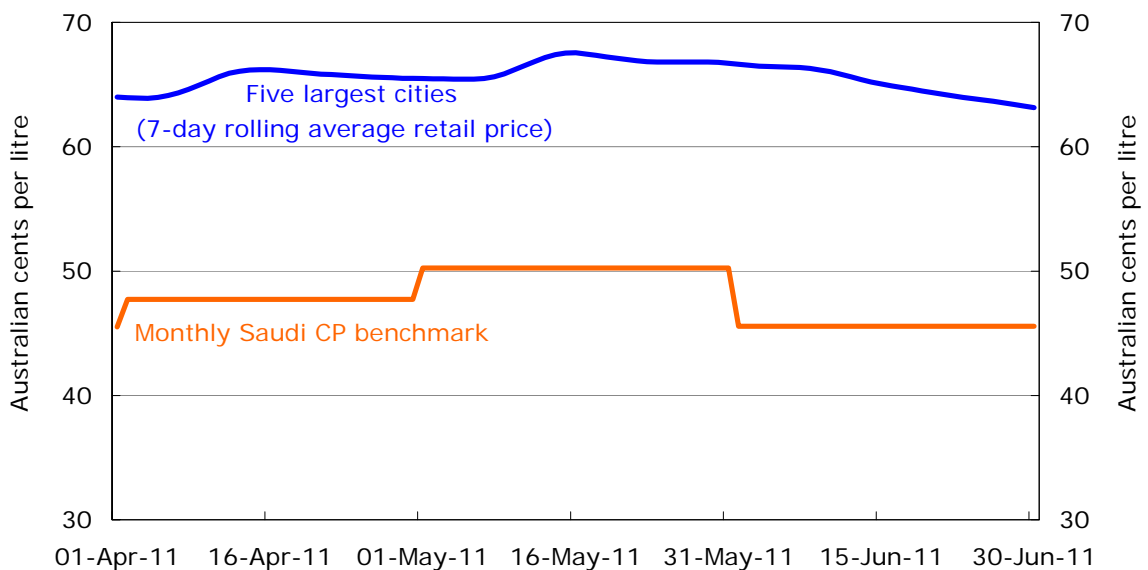


#### Automotive LPG

The ACCC monitors the movement of retail automotive LPG prices against the average price of Saudi Aramco contract prices for propane and butane, which are issued on the first day of the month (chart 3).

Average retail automotive LPG prices in the five largest cities (on a seven-day rolling average basis) decreased by 0.8 cpl over the June 2011 quarter—from 64.0 cpl to 63.2 cpl.

**Chart 3: Movements in retail automotive LPG prices and international benchmark prices—1 April to 30 June 2011**



## 6 International activities

The ACCC's international activities support its work by promoting international enforcement assistance and best practice regulation, and by developing and maintaining effective networks and links with international counterpart agencies. Core activities include to:

- develop relationships and exchange information with international counterpart agencies and other international stakeholders
- identify and address international conduct which may raise concerns under the Competition and Consumer Act and engage in enforcement cooperation with international counterpart agencies
- participate in best practice and policy discussions of relevance to the ACCC, including at international fora
- deliver technical assistance and capacity building to developing agencies and economies, and
- draw upon international benchmarking, trends and developments in the ACCC's work.

### International fora

The ACCC participates in a variety of international fora throughout the year. For example, the ACCC is an active member of the International Competition Network (ICN) and is represented on its steering group and a number of working groups, including those relating to mergers and cartels.

The ACCC is also an active member of the International Consumer Protection Enforcement Network (ICPEN).

The two networks hold calls, meetings, workshops and conferences through the year which ACCC staff attend as required.

The ACCC is also the Chair of an OECD Product Safety Working Party, which is focusing on improving information sharing across national borders, and participates in an International Consumer Product Safety Caucus working group examining product tracking and traceability. Participating in such fora delivers a number of benefits to the ACCC including:

- promoting competition and consumer protection in the region and internationally
- assisting the ACCC to obtain global development updates, as well as information and best practice approaches to enforcement strategies from counterpart agencies
- assisting in building and sustaining strong links with key international officials and organisations.

In particular, during the June 2011 quarter, the ACCC:

- attended the OECD Competition Committee meetings in France
- attended the International Telecommunications Society Conference in Taiwan
- attended the International Society of Franchising Conference in the United States
- presented at the International Mass Marketing Fraud Working Group in the United States

- presented at the ICN Annual Conference in The Netherlands
- presented to the Irish Institute of International and European Affairs in Ireland
- presented at the 19th Consumers International World Congress in Hong Kong
- presented at the Joint IBA & Korean Bar Association Conference in Korea
- presented at the IPCEN Conference in The Netherlands
- attended the Energy Intermarket Surveillance Group meeting in the United States
- attended the OECD Committee on Consumer Policy meetings in France
- attended the International Consumer Product Safety Caucus meeting in France
- attended the OECD Product Safety Working Party meeting in France
- presented at the UNCTAD Experts Working Group Meeting in Switzerland, and
- participated in regular calls held by the ICN's Steering Group, Working Group Chairs, Cartel Working Group and Merger Working Group, the ICPEN's Advisory Group and the International Mass Marketing Fraud Working Group.

### **Information requests**

The ACCC continues to actively share information regularly with its international counterparts. During the June 2011 quarter, the ACCC received and/or sought information from counterpart agencies in Canada, the European Union, Germany, Hong Kong, Indonesia, Israel, Korea, the Netherlands, New Zealand, Papua New Guinea, Poland, Singapore, South Africa, Switzerland, Thailand, Turkey, United States and United Kingdom.

Information shared between the ACCC and its counterpart agencies relates to all aspects of the ACCC's work including market inquiries, best-practice processes for investigations, product safety standards, fuel trends, regulatory issues (in particular telecommunications), outreach, awareness and compliance, cross-border cartels, mergers and scams/fraud, and general information about the ACCC's role and functions and Australia's competition, regulatory and consumer protection laws and policies. The ACCC has also exchanged information to assist with enforcement investigations and provided technical assistance to a number of developing agencies and economies.

### **Bilateral/multilateral meetings and visits**

In addition to information requests, the ACCC hosts visits by counterpart agencies which provide an opportunity to share information, experiences and expertise. In addition to hosting meetings in Australia, the ACCC also holds meetings with counterpart agencies at international events.

During the June 2011 quarter, the ACCC met with representatives from a number of agencies and organisations, including:

- Department of Economic Planning and Development, Brunei
- Competition Bureau, Canada
- Chile's National Economic Prosecutor
- Consumer Authority, Costa Rica
- Danish Competition and Consumer Authority
- International Energy Agency

- Fair Trade Commission, Japan
- Fair Trade Commission, Korea
- Consumer Agency, Korea
- Malaysia's Ministry of Domestic Trade, Co-operatives and Consumerism
- Netherlands Consumer Authority
- New Zealand Commerce Commission
- New Zealand Ministry of Economic Development
- Organisation for Economic Cooperation and Development (OECD)
- Vice Ministry of Foreign Trade, Peru
- Competition Commission Singapore
- Competition Commission, United Kingdom
- Office of Fair Trading, United Kingdom
- United Nations Conference on Trade and Development (UNCTAD)
- US Federal Trade Commission
- US Department of Justice
- Vietnam Competition Authority

In April, the ACCC's Canberra office hosted a visit by officials from the Vietnam Competition Council.

In June, Mr Tim Scott (Assistant Director, Enforcement Operations Group, ACT and National Projects Branch) began a 12 month placement at the Competition Commission of Mauritius. The same month, Mr Shin Yamamoto from the Japan Fair Trade Commission completed a three month internship in the ACCC's Canberra office; and Ms Ariunaa Byambajaw from the Mongolian Authority for Fair Competition and Consumer Protection commenced a one month work experience placement in the ACCC's Sydney office.

### **Capacity building activities**

The ACCC's capacity-building activities mainly focus on best practice processes in competition, infrastructure regulation and consumer protection. ACCC involvement in technical assistance programs provides valuable learning opportunities for developing agencies and experience for ACCC staff in delivering training. During the quarter, the ACCC has received requests for meetings and assistance from a number of jurisdictions including India, Indonesia, Kenya, Mongolia and Malaysia. The ACCC undertook preparations for the arrival (in August) of two internship trainee officials from the Vietnam Competition Authority.

### **Free trade agreements**

The ACCC continues to actively participate in free trade agreement (FTA) negotiation rounds contributing to work on competition and consumer protection issues. The ACCC's participation in these negotiations reflects its goals of promoting competition and consumer protection in the region and ensuring that Australia's FTAs:

- are compatible with Australia's competition and consumer protection law and regulations



- are practical in implementation
- contain mechanisms to build cooperative arrangements between the relevant enforcement authorities.

This quarter the ACCC participated in negotiations, or assisted in the preparation of material for negotiations, for the following FTAs:

- Australia-Malaysia
- Australia-Thailand
- the Trans Pacific Partnership Agreement.

## 7 Reviews and inquiries

### Legislative matters

The following legislation came before the Australian Parliament during the June 2011 quarter.

#### **Competition and Consumer Legislation Amendment Bill (No. 1) 2011**

On 15 June 2011 the Parliamentary Secretary to the Treasurer introduced legislation into the House of Representatives.

The Bill proposes to

- amend the *Competition and Consumer Act 2010* to clarify the operation of the mergers and acquisitions provisions
- include a statement of interpretive principles in the unconscionable conduct provisions in the Australian Consumer Law and the *Australian Securities and Investment Commission Act 2011* and unify the consumer and business related provisions prohibiting unconscionable conduct in these Acts
- correct drafting errors and in the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*

Debate on the Bill has been adjourned until the next sittings of Parliament in August.

### Parliamentary inquiries

#### **Budget Estimates**

On 31 May 2011 the ACCC and AER appeared before the Senate Economics Legislation Committee as part of the Budget Estimates 2010–11 process.

#### **Competition and Consumer Amendment Bill (No. 1) 2011 and Competition and Consumer (Price Signalling) Amendment Bill 2010**

On 10 May 2011 both the Competition and Consumer Amendment Bill (No. 1) 2011 and Competition and Consumer (Price Signalling) Amendment Bill 2010 were referred to the House Standing Committee on Economics for inquiry and report.

On 22 June 2011 the Committee presented its report, titled *Advisory report on the Competition and Consumer (Price Signalling) Amendment Bill 2010 and the Competition and Consumer Amendment Bill (No. 1) 2011*.

The Committee recommended the House of Representatives pass the Competition and Consumer Amendment Bill (No. 1) 2011 and reject the Competition and Consumer Amendment (Price Signalling) Bill 2010.

#### **Joint Committee on the National Broadband Network**

In late November 2010, the Government agreed to establish a Joint Committee on the National Broadband Network (NBN) to inquire into and report on the rollout of the NBN.

On 16 May 2011 the ACCC appeared before the Joint Committee on the NBN.

The Committee is expected to report for the first time on 31 August 2011, and at six monthly intervals thereafter.

### **The Impacts of Supermarket Price Decisions on the Dairy Industry**

Following the Senate Economics Committee releasing its interim report on 20 April 2011, it released its secondary interim report on 9 May 2011. The Committee, in the second interim report, notes the potential impacts of lower supermarket milk prices on the dairy industry and is equally cognisant of the benefits to consumers from sustained lower prices. The Committee considers that provided farmers have the opportunity to make a reasonable profit, and in the absence of substantiated damage to the dairy industry, consumer interests must not be overlooked.

The Committee considered no final conclusions or recommendations could be made until it obtains further information. It also encouraged further submissions as critical to its decision and invited updates and new submissions to assist in its final report.

On 12 May 2011 the Government released its response to the Committee's interim report, stating that it will respond following the Committee's receipt, examination of all evidence and delivery of its final report

The final report is expected to be tabled by 1 October 2011.

### **Regulation of Billboard and Outdoor Advertising**

On 4 July 2011 the House Standing Committee on Social Policy and Legal Affairs tabled the report of its inquiry the *regulation of billboard and outdoor advertising* entitled 'Reclaiming Public Space'.

The Committee put forward 19 recommendations in its report.

### **Other inquiries**

On 10 June 2011 the ACCC provided a submission to the Convergence Review Committee in response to principles proposed by the Committee to underpin any new policy framework for the media and communications sector.

# Appendix

## Speeches

During the June quarter the ACCC delivered 51 addresses including:

Promoting and enforcing competition and consumer protection in the retail sector  
27<sup>th</sup> June 2011

Marcus Bezzi, Executive General Manager Enforcement and Compliance  
Retail World, Sydney

Right women, right place, right time 24<sup>th</sup> June 2011

Mr Graeme Samuel, Chairman  
Australian Women's Leadership Symposium, Melbourne

Collins Street sleeper agent or Castro's right-hand man? 15<sup>th</sup> June 2011

Mr Graeme Samuel, Chairman  
National Press Club Lunch

Developments in competition law 8<sup>th</sup> June 2011

Dr Jill Walker, Commissioner  
RBB Economics Australian Conference, Sydney

Consumers 2011 7<sup>th</sup> June 2011

Mr Graeme Samuel, Chairman  
Consumers 2011: Australian Consumer Policy, Law and Practice

Exploring the latest issues in regulation 12<sup>th</sup> April 2011

Mr Mark Pearson, Deputy CEO Regulatory Affairs  
Regulatory Reform, Melbourne

Telecommunications regulation: the new paradigm 1<sup>st</sup> April 2011

Mr Graeme Samuel, Chairman  
ATUG 2011 annual conference

## News releases

During the June 2011 quarter the ACCC issued 57 news releases and the AER issued six news releases.

## Publications

The following publications were released during the June 2011 quarter.

### Revised publications:

- Country of origin claims
- Export agreements and the Competition and Consumer Act
- Franchising code of conduct compliance manual CD
- Streamlined collective bargaining for small business: more timely decisions/greater certainty of outcomes
- Guidelines for excluding information from the public register for authorisation and notification processes

- Guide to collective bargaining notifications
- Collective bargaining notifications—a summary
- Authorisation process—the basics
- Authorising and notifying cartel conduct
- Industry associations, competition and consumers
- Professions and the Competition and Consumer Act
- Safety alert - Blind and curtain cords
- Supplier guide - Children's toys containing magnets
- Supplier guide - Motor vehicle recovery straps

### **New publications:**

- ACCCount: A report of the Australian Competition and Consumer Commission's activities, 1 April to 30 June 2011
- Country of origin claims and the Australian Consumer Law
- Exclusive dealing notification process—the basics
- Kickstart your career with the ACCC
- Product safety: A Guide to Testing
- Product safety bulletin - Chemicals in cosmetics including hair products
- Product safety bulletin - Formaldehyde in cosmetics including hair products
- Product safety: Testing to product standards - Principals for test organisations
- Keeping baby safe - a guide to infant and nursery products
- Refunds and returns
- Safety alert - Baby slings
- Supplier bulletin - formaldehyde in cosmetics
- Supplier bulletin - chemicals in cosmetics including hair products