



Australian  
Competition &  
Consumer  
Commission

# ACCCOUNT

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

1 July to 30 September 2011

Australian Competition and Consumer Commission

23 Marcus Clarke Street, Canberra, Australian Capital Territory 2601

© Commonwealth of Australia 2011

This work is copyright. Apart from any use permitted by the *Copyright Act 1968*, no part may be reproduced without prior written permission from the Commonwealth, available through the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601 or by email to [publishing.unit@acc.gov.au](mailto:publishing.unit@acc.gov.au).

ISBN: 978 921964 53 4

[www.accc.gov.au](http://www.accc.gov.au)

# Contents

<b>Overview .....</b>	<b>1</b>
<b>1 Enforcement and compliance .....</b>	<b>3</b>
Complaints and inquiries .....	3
<b>2 Communicating with businesses and consumers .....</b>	<b>13</b>
Liaison and education activities.....	13
Product safety .....	13
Product safety .....	16
Emerging hazards and product safety recalls .....	16
Minimising potential harm to consumers .....	17
<b>3 Mergers .....</b>	<b>18</b>
Merger reviews undertaken in the September 2011 quarter .....	18
Statement of issues.....	20
Public competition assessments .....	20
Major matters .....	20
<b>4. Authorisations and notifications .....</b>	<b>25</b>
Major authorisations .....	25
Notifications.....	27
<b>5. Regulatory affairs.....</b>	<b>28</b>
Communications.....	28
Transport and General Prices Oversight.....	40
Water.....	44
Fuel Price Monitoring .....	45
<b>6 International activities .....</b>	<b>48</b>
<b>Appendix .....</b>	<b>51</b>
Speeches .....	51
News releases.....	51
Publications .....	52

# Overview

The Australian Competition and Consumer Commission (ACCC) administers, enforces and ensures compliance with the *Competition and Consumer Act 2010* (CCA), including the Australian Consumer Law (ACL). This work enhances the welfare of Australians by promoting competition and fair trading, and protecting consumers from unfair business practices. The ACCC and Australian Energy Regulator (AER) also regulate national infrastructure services, telecommunications including the national broadband network, airports and other markets where there is limited competition and natural monopoly characteristics.

On 1 August 2011 Rod Sims commenced as ACCC Chairman.

Consumer issues were an area of focus for the ACCC during the September quarter. The ACCC secured a public commitment from Tiger Airways to provide fair and flexible remedies for consumers affected by the suspension of its domestic flights by the Civil Aviation Safety Authority on 1 July 2011. The ACCC consulted closely with state and territory fair trading regulators throughout negotiations with Tiger Airways.

In August, the ACCC instituted proceedings against Energy Watch Pty Ltd and Mr Benjamin Polis, alleging contraventions of the ACL by making false or misleading representations. These representations were made through a range of media and claimed that Energy Watch's energy price comparison service compares the rates of energy retailers in the consumer's area, and provides the amount consumers will save by using Energy Watch's service.

The ACCC and AER are keen to improve retail practices in the energy sector and have written to energy retailers reminding them of their obligations under the law in relation to door-to-door marketing.

On 5 September 2011 the ACCC joined over 40 members of the International Consumer Protection and Enforcement Network for the 13th annual international internet sweep. This year's sweep targeted websites that mislead consumers into believing that the websites have government endorsement or support. The ACCC looked closely at sites that charge a fee for accessing government services such as government grants and immigration services.

In respect of mergers, major matters decided during the September 2011 quarter included:

- Teys Bros (Holdings) Pty Limited - proposed merger with Cargill Beef Australia – the ACCC did not oppose
- Asahi Holdings (Australia) Pty Ltd - proposed acquisition of P&N Beverages Australia Pty Ltd – the ACCC did not oppose
- Experian Australia Holdings Pty Ltd, Consortium of investors - proposed acquisition of Experian Australia Credit Services Pty Ltd – the ACCC did not oppose
- Wesfarmers Ltd - proposed acquisition of interests in Burrup Holdings Ltd and/or Burrup Fertilisers Pty Ltd – the ACCC did not oppose

The ACCC also released a statement of issues in relation to FOXTEL's proposed acquisition of AUSTAR United Communications Limited to elicit further information from the market in its assessment.

In its adjudication role, the ACCC granted conditional authorisation for 10 years to enable dairy farmers to collectively bargain terms and conditions of raw milk supply contracts with processors. It also authorised the Joint Business Agreement between Qantas Airways and American Airlines for five years.

Structural reform of the telecommunications sector continued to be an area of significant focus for the ACCC in the September quarter. On 30 August 2011 the ACCC commenced public consultation in relation to Telstra's structural separation undertaking (SSU) and draft migration plan. The objective of the undertaking and plan is to progressively implement structural reform of the telecommunications sector through Telstra ceasing to supply fixed-line voice and broadband services over its copper and HFC networks and supplying those services using the national broadband network. The ACCC's preliminary view is that Telstra's undertaking can not be accepted in its current form and that important changes are required.

Reform is also proposed for the energy sector. On 29 September 2011 the AER submitted a rule change proposal to the Australian Energy Market Commission. The AER is currently restricted in its ability to set prices based on an objective assessment of the efficiency or the necessity of the expenditure proposed by electricity businesses. The AER's proposed changes would give it the scope to make a more effective and robust assessment of the costs proposed by electricity network businesses.

The AER is also proposing a consistent approach for setting the rate of return on investment for gas and electricity network businesses. Under this approach the AER would review the rate of return at least every five years with the outcome applying to each subsequent energy network revenue determination. Also proposed are improvements to the processes for stakeholders to provide their views on spending proposals from electricity network businesses.

The ACCC has a role in access arrangements for wheat exporters as part of the deregulation of the wheat industry. In the September 2011 quarter the ACCC accepted undertakings under Part IIIA regulating access to services for the export of bulk wheat at port terminals operated by Australian Bulk Alliance at the Port of Melbourne, Viterra at six ports in South Australia and Cooperative Bulk Handling at four ports in Western Australia. The access undertakings will ensure that third party exporters are able to access the port terminals operated by vertically integrated port terminal operators, ensuring competition in this significant export market.

# 1 Enforcement and compliance

Maintaining and enhancing compliance with the CCA, formerly the *Trade Practices Act 1974* (TPA), 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.

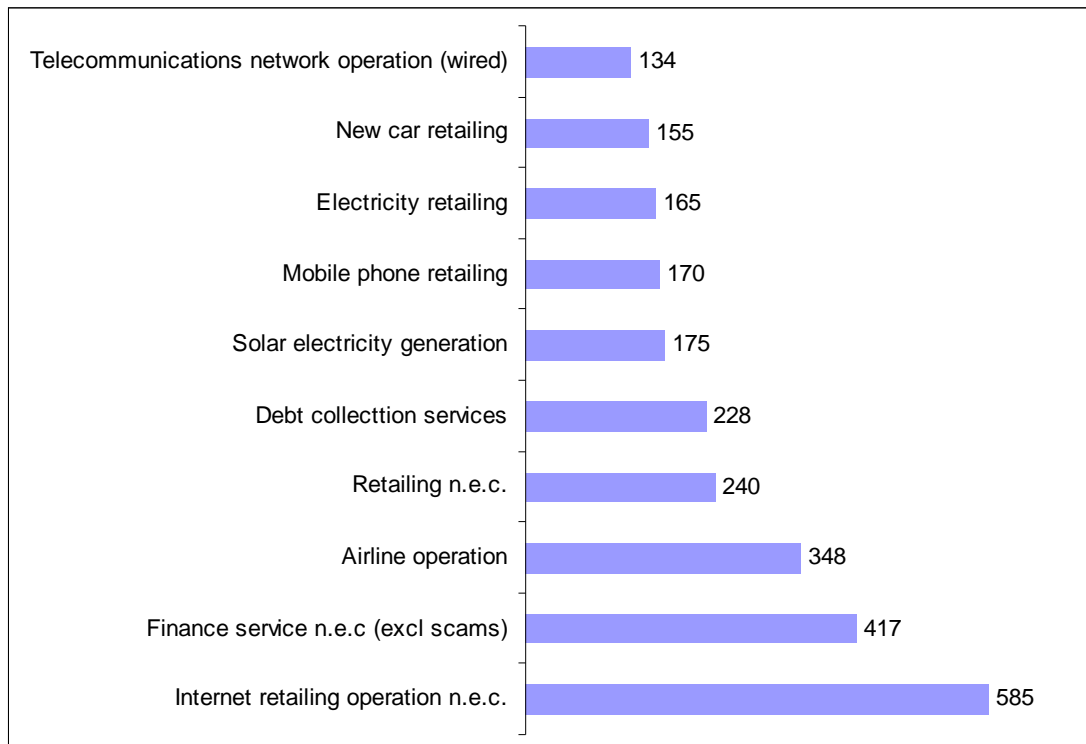
## Complaints and inquiries

During the September 2011 quarter, the ACCC Infocentre responded to 49 381 complaints and inquiries from businesses and consumers (email 15 886, telephone 32 961 and letter correspondence 534).

Of these, 40 797 complaints and inquiries were entered into the ACCC's database with 369 flagged for further consideration. Complaints and inquiries not entered into the ACCC's database were considered to raise issues that fall outside of the ACCC's role and responsibility.

Excluding scams, significant areas of contact included complaints in relation to airline operators (primarily involving flight schedule changes and alleged misrepresentations), and complaints about internet retailing and finance sectors.

Chart 1.1: The ten industries attracting the most complaints (excluding scams)

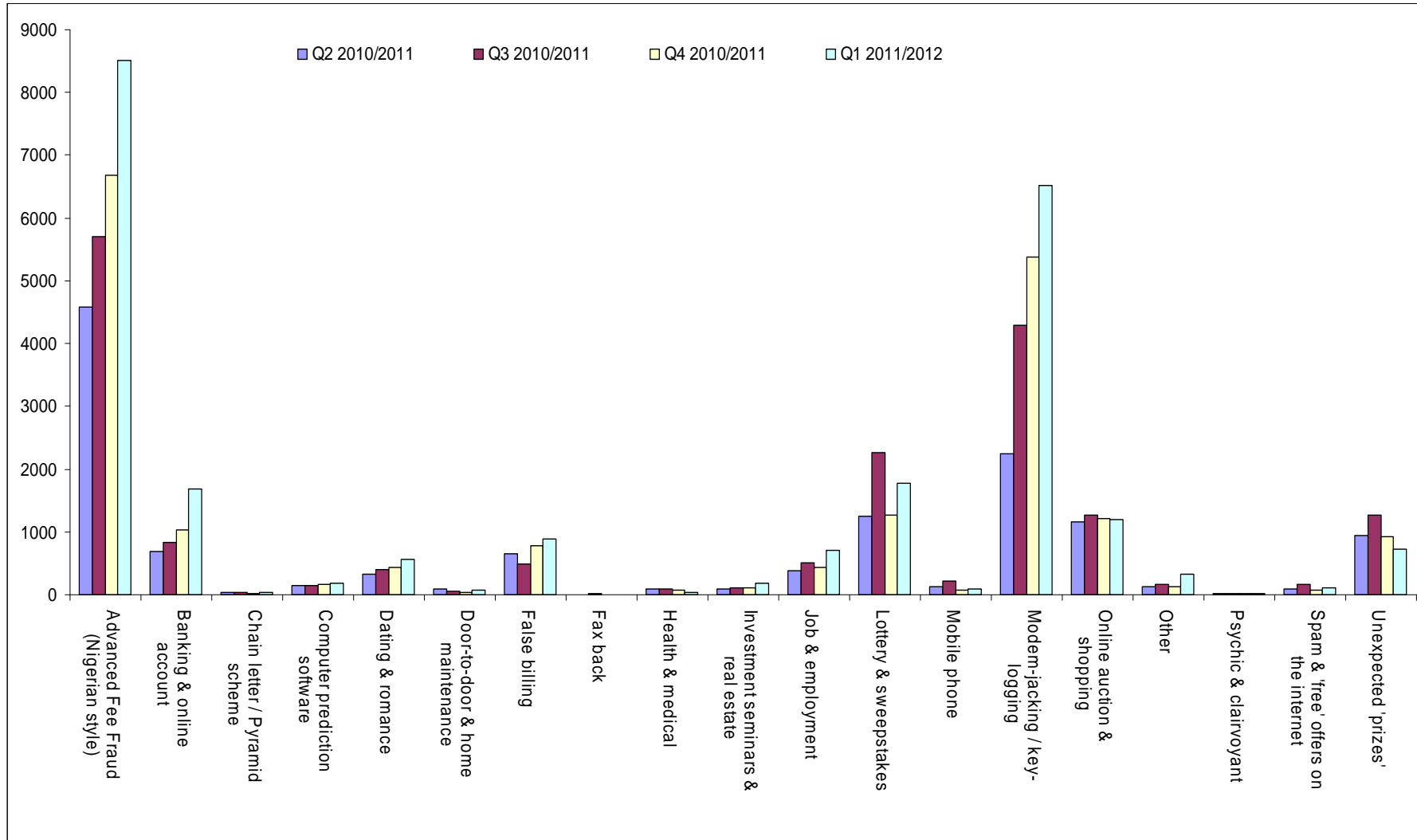


## **Scam contacts**

Contacts about scam activity continued to be significant, accounting for 58 per cent of the complaints and enquiries entered into the ACCC's database during the September 2011 quarter.

The highest number of complaints was received in relation to advance fee fraud, and computer hacking scams (including the 'Microsoft scam'). Complaints concerning banking and online account (phishing) scams have significantly increased over the last 12 months.

Chart 1.2: Breakdown of scam complaints from October 2010 to September 2011





## Enforcing the Act for businesses and consumers

In undertaking its enforcement activity, the ACCC remains committed to working in the long term interests of consumers. 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 six first-instance litigation proceedings in the Federal Court of Australia during the September 2011 quarter for alleged breaches of the TPA and/or CCA. Two appeals were lodged in the Federal Court.

### COMPETITION

No competition proceedings were commenced in the September 2011 quarter.

### FAIR TRADING AND CONSUMER PROTECTION

---

#### Energy Watch Pty Ltd & Anor

Justice Gordon | Federal Court Melbourne

Commenced 26 August 2011 | VID930/2011

The ACCC instituted proceedings in the Federal Court against Energy Watch Pty Ltd and Mr Benjamin Polis for alleged misleading or deceptive conduct and making false representations in contravention of the ACL.

Energy Watch provides an energy price comparison service (electricity and natural gas) to residential and business consumers.

The ACCC alleges that Energy Watch made false or misleading representations through a range of media, including television, radio and print advertising, and on websites and billboards, and advertising displayed on a scoreboard at the MCG during AFL games:

- that Energy Watch compares the rates of all or many of the energy retailers in the relevant geographic area of a consumer
- as to the amount consumers have saved, and will save, by using the service provided by Energy Watch.

---

#### Exclusive Media & Publishing Pty Ltd & Ors

Justice | Federal Court Brisbane

Commenced 21 September 2011 | QUD306/2011

The ACCC instituted proceedings in the Federal Court against four publishing companies and their sole director for alleged misleading or deceptive conduct, false representations, undue harassment and coercion and unconscionable conduct.

The ACCC alleges the companies offered mostly small businesses the opportunity to take out advertisements in the companies' community magazines at a cost of around \$500. The companies represented that 500 copies of the magazines would be distributed to various organisations. The ACCC alleges the companies never intended

to and never did distribute 500 copies of any of their magazines as represented and repeatedly demanded payment for these services.

---

**Kingisland Meatworks & Cellars Pty Ltd and Hooker Meats**

Justice Gordon | Federal Court Melbourne

Commenced 18 August 2011 | VID888/2011, VID889/2011

The ACCC instituted legal proceedings in the Federal Court, against two Victorian meat retailers. It is alleged that Kingisland Meatworks & Cellars Pty Ltd and its director, Mr Alexander Mastromanno, misrepresented via its 'King Island' trading name on store signage, in newspaper advertisements and on its website that a significant proportion of meat it supplied was grown on King Island.

---

**Sensaslim**

Justice Yates | Federal Court Sydney

Commenced 15 July 2011 | NSD1163/2011

The ACCC instituted proceedings alleging that Sensaslim Australia Pty Ltd (administrator appointed) and several of its officers engaged in misleading and deceptive conduct and made false representations.

This followed interim orders obtained by the ACCC in June to preserve money held in Sensaslim accounts.

---

**Trade Quip Pty Ltd**

Justice Murphy | Federal Court Melbourne

Commenced 22 July 2011 | VID792/2011

The ACCC instituted proceedings in the Federal Court, alleging breaches of the TPA as well as for contempt of court.

The ACCC alleges that between August 2009 and September 2010, Trade Quip supplied more than 2000 units of four models of hydraulic trolley jacks that did not comply with the prescribed consumer product safety standard. Further, Trade Quip engaged in misleading or deceptive conduct and made false representations by representing that the '2019' model jack complied with the applicable mandatory standards, when it did not.

---

**Turi Foods Pty Ltd & Ors**

Justice Gordon | Federal Court Melbourne

Commenced 5 September 2011 | VID974/2011

The ACCC instituted proceedings in the Federal Court against Turi Foods Pty Ltd, two other chicken suppliers Baiada Poultry Pty Ltd and Bartter Enterprises Pty Ltd and the Australian Chicken Meat Federation Inc alleging misleading and deceptive conduct and misleading representations regarding the space available for meat chickens to roam freely in various advertising.

## Other

---

### **Global One Mobile Entertainment Pty Ltd & Anor (appeal)**

Justices Greenwood, Logan, Yates, Emmett | Full Federal Court Sydney

Commenced 6 July 2011 | NSD1106/2011

Appeal of the penalty imposed by the Federal Court following ACCC proceedings for false and misleading advertisements for mobile premium services.

---

### **Singtel Optus Pty Ltd (appeal)**

Justice Emmett | Full Federal Court Sydney

Commenced 28 July 2011 | NSD1245/2011

Optus appealed the penalty imposed by the Federal Court following ACCC proceedings under consumer protection provisions for alleged misleading and deceptive conduct, and false or misleading representations in relation to advertising of its internet products.

---

### **Proceedings concluded**

Four first-instance enforcement litigation proceedings were finalised during the September 2011 quarter.

---

## **COMPETITION**

No competition proceedings concluded in the September 2011 quarter.

---

## **FAIR TRADING AND CONSUMER PROTECTION**

---

### **European City Guide SL**

Justice Moore | Federal Court Sydney

Commenced 18 August 2009 | Concluded 27 July 2011 | NSD879/2009

Proceedings related to misleading and deceptive conduct and false or misleading representations in relation to business directory listings between 2006 and 2009.

Outcome | Declarations, injunctions, 98 per cent of ACCC costs.

---

### **SMS Global Pty Ltd**

Justice Murphy | Federal Court Melbourne

Commenced 22 December 2010 | Concluded 3 August 2011 | VID1146/2010

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 \$85 000, costs and maintenance of a compliance program. This matter is subject to appeal.

---

---

## **Trading Post and Google Inc**

Justices Nicholas, Emmett, Tamberlin, Allsop | Federal Court Melbourne

Commenced 11 July 2007 | Concluded 22 September 2011 | NSD1323/2007

Proceedings in the Federal Court against Trading Post Australia Pty Ltd, Google Inc. alleging misleading and deceptive conduct by failing to adequately distinguish 'sponsored links' from 'organic' search results.

Trading Post Outcome | Declarations, \$28 000 to the ACCC by way of agreed contribution to ACCC's costs.

Google Inc Outcome | Rejected claim, pay Google's costs of proceedings. This matter is subject to appeal.

---

## **Willesee Healthcare Pty Ltd & Ors**

Justice Dodds-Streeton | Federal Court Melbourne

Commenced 8 October 2010 | Concluded 4 July 2011 | VID859/2010

Proceedings were instituted against five companies and four individuals for alleged false and misleading claims about allergy treatments.

Outcome | Injunctions, corrective notices and letters and contribution to ACCC costs.

---

## **Other**

### **A.I. Constructions (ACT) Pty Ltd**

Federal Court Canberra

Commenced 8 June 2011 | Concluded 25 July 2011 | ACD27/2011

Winding up proceedings for costs owed to ACCC.

Outcome | Orders to wind up company, and \$6 100 costs to the ACCC.

---

## **Allphones**

Justice Gordon | Federal Court Melbourne

Commenced 3 October 2008 | Concluded 19 July 2011 | NSD1567/2008

Contempt of court proceedings for breach of two undertakings given to the court in October 2008.

Outcome | pecuniary penalties \$45 000.

---

## Court enforceable undertakings accepted

The ACCC accepted eight enforcement-related section 87B undertakings during the September 2011 quarter.

### COMPETITION

**Aquadepot Pty Ltd** provided court enforceable undertaking to the ACCC in relation to resale price maintenance. The undertakings require Graeme Andrew Faulkner and Peifa Philip Wu of Aquadepot Pty Ltd to:

- refrain from engaging in acts of resale price maintenance for three years
- send a letter to AquaDepot retailers notifying them of the undertaking and informing them that they can choose the minimum selling price of AquaDepot products
- arrange for corrective notices to be published on the AquaDepot website and the Marine Aquarium Societies of Australia website
- undergo trade practices compliance training annually for three years.

### FAIR TRADING AND CONSUMER PROTECTION

**Advanced Lifestyle International** provided court enforceable undertakings in respect of false or misleading representations it made to consumers during in-home sales presentations. Advanced Lifestyle International Retail Pty Ltd (ALI) has undertaken to publish various corrective notices and implement a trade practices law compliance program.

**Lynn Marie Laws**, a former salesperson for ALI also provided the ACCC with a court-enforceable undertaking in respect of false or misleading representations she made to consumers during in-home sales presentations, primarily to senior citizens. Mrs Laws undertakes to undergo trade practices compliance training.

**Aldi Foods Pty Ltd and Spring Gully Foods Pty Ltd** provided court enforceable undertakings to the ACCC in relation to the labelling of 'Just Organic' honey manufactured by Spring Gully Foods and sold exclusively through Aldi supermarkets.

Aldi and Spring Gully Foods have undertaken they will:

- not represent honey is sourced from a particular location or region when those products are not sourced 100 per cent from the particular location or region
- not represent that honey products are a blend of honey with reference to a particular location or region when those products contain an insignificant amount of honey from the particular location or region
- publish a corrective notice on its website
- publish a corrective notice (Aldi store and newspapers)
- implement a compliance program and maintain it for a period of three years.

**AUSTAR Entertainment Pty Ltd** has provided court enforceable undertakings regarding the representations it made to customers signing up to its subscription television services.

AUSTAR sells its residential subscription television services in 'packages' of channels. AUSTAR ran a promotion whereby in addition to its base 'starter pack', it offered a number of other channels free for the first month of a minimum 12-month contract. The free channels were kept on the customer's subscription after the first month unless the customer, of their own volition, requested before the end of the first month that those additional channels be removed. Consequently, unless the customer requested the removal of the free channels, the customer would be required to pay for them after the first month of the 12 month contract. However, the total minimum cost of the contract that AUSTAR represented to the customer was based on the total minimum cost over the 12 month period assuming the customer would elect to downgrade their package to the starter pack.

AUSTAR admitted that its conduct was likely to have contravened section 52 of the TPA and section 18 of the ACL. AUSTAR has undertaken to disclose the minimum cost of the package selected by the customer at the time the customer subscribes to the service, being the total cost to the customer of acquiring the AUSTAR services over the minimum term of the contract, assuming that the customer does not vary their subscription after the date of signing the contract.

AUSTAR has undertaken to disclose the cost of the packaged subscription services selected by the customer at the time the customer subscribes to the service, and enter into a trade practices compliance program.

**Privity Pty Ltd** provided court enforceable undertakings in respect of misleading and deceptive conduct in representations that its 'Brazilian Blowout' hair straightening products did not contain any formaldehyde when that was not the case.

Privity admits that by making the 'formaldehyde free' representations the conduct is likely to have contravened the TPA by:

- engaging in conduct that was misleading or deceptive in contravention of section 52 of the TPA
- engaging in conduct in connexion with the supply of the product whereby it made a false or misleading representation concerning the composition of the product in contravention of section 53(a) of the TPA.

The ACCC was particularly concerned about this conduct because formaldehyde is considered to be a dangerous chemical and consumers should not be misled about its existence in products. To address the ACCC's concerns Privity provided an undertaking to undergo trade practices law compliance training.

**Tank Broker Pty Ltd** has provided a court enforceable undertaking to the ACCC to resolve concerns that a number of its advertisements for rainwater tanks were likely to have contravened sections 52, 53(e), 53C of the TPA and section 48 of the ACL.

In particular, Tank Broker admits that it misled consumers by advertising:

- tanks at prices calculated by deducting the maximum government rebates available and failing to state, or not stating in a prominent way, the full price that customers had to pay to purchase a tank
- certain rainwater tank kits for sale by comparing 'Now' prices with 'Was' prices for a period of four months in the circumstances where the 'Now' price had become the usual price for the tank kits.

As part of the undertaking accepted by the ACCC, Tank Broker will:

- refrain from engaging in similar conduct for a period of three years
- publish a corrective notice in *The Advertiser* and *The Sunday Mail* (Adelaide)
- maintain a compliance program for a period of three years.

## 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.

The ACCC also engages with industry associations, professional associations and consumer associations to promote greater understanding of the CCA and to respond to issues identified by those organisations. In the September 2011 quarter these engagements focused primarily on education and included:

- a cross-agency meeting of organisations with an interest in small business, including the Australian Tax Office (ATO); the Australian Securities and Investments Commission (ASIC); and the Department of Innovation, Industry, Science and Research to explore ways in which agencies can work together to engage with small business operators
- a meeting with the Energy and Water Ombudsman NSW to discuss compliance with the ACL and unfair contract terms, and interaction with the National Energy Customer Framework
- meetings with Brotherhood of St Lawrence, Financial Counselling Australia and Consumer Action Law Centre to discuss consumer issues in door to door selling. This will be used to refine a research proposal into the drivers for this type of selling practice.
- meetings with a range of industry associations including the Optometrists Association of Australia, Law Council of Australia, Motor Traders Association of NSW, Accord, Federal Chamber of Automotive Industries and AI Group to discuss the impact of the consumer guarantees, warranties against defects and repair notice provisions of the ACL, and to gather information on trade practices issues impacting the represented sectors.

### Product safety

This quarter the ACCC released an updated edition of *Keeping Baby Safe: A guide to infant and nursery furniture*. The guide was reviewed to include the latest information on mandatory standards and bans. Following consumer research, the guide now uses actual photographs of each product rather than illustrations.

As a part of the *Keeping Baby Safe* series, this quarter also saw the release of a short animated film one on the safety of household cots. The film is available via the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)).

The ACCC held its third online product safety campaign this quarter: #wintersafe. Winter safety tips were posted to @ProductSafetyAU Twitter followers daily and followers were encouraged to tweet their own winter safety tips, which many did. The @ProductSafetyAU account now has over 1460 followers.



## **Australian Consumer Law**

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

- participation in monthly meetings of the Compliance and Dispute Resolution Advisory Committee which is comprised of ACL regulators
- development of articles on consumer protection issues for inclusion in industry newsletters and journals, presentations at industry events and the dissemination of ACCC and joint-agency guidance material through the ACCC and other government agency networks including local government. The articles covering topics on the new law regarding warranties against defects, repair notices and consumer guarantees were distributed to businesses via the Frankston, Moreland and Whittlesea councils.

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 ACL.

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 ACL.

The ACCC also worked with the ACL regulators' Education and Information Advisory Committee to deliver consistent information on consumer protection for settlement workers.

## **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 and consumer literacy.

Over the quarter, the ACCC continued outreach visits to Indigenous communities with follow up visits to the Wurrumiyanga, Ntaria (Hermannsburg) and Santa Teresa communities. Initial visits were conducted in Jilkminggan, Beswick and Barunga. Further community visits are planned for October 2011.

## **Unfair contract terms**

The ACCC has undertaken a proactive approach to achieving compliance with the unfair contract term provisions that were introduced under the ACL. During the quarter, the ACCC continued to seek compliance with the unfair contract provisions in the airline, telecommunication and vehicle rental industries. Through proactive engagement with these industry sectors, the ACCC has observed businesses amending potentially unfair terms.

In September 2011, the ACCC instituted the first legal proceedings under the unfair contract terms provisions of the ACL by adding NRM Corporation Pty Ltd and NRM Trading Pty Ltd as respondents in the ACCC's case against Advanced Medical Institute (AMI) for alleged unconscionable conduct. In this matter, the ACCC alleges that AMI, amongst other things, was in breach of the ACL by entering into long-term agreements for the treatment of male sexual dysfunction which contain unfair contract terms in relation to the termination of a contract. In June 2011, the ACCC obtained orders in relation to AMI that, amongst other things, AMI would add to each of its contractual documents clear notice of their insolvency and its risks for delivery of goods or services.

## **Solar power industry claims**

The ACCC is continuing to address consumer concerns in relation to environmental claims in the solar power industry. This quarter the ACCC developed compliance information and guidance for solar panel installation businesses. The ACCC is also monitoring the level of consumer complaints in the market to determine whether further regulatory intervention is needed to ensure that solar panel installation businesses are complying with the ACL.

The ACCC is continuing to work closely with the Office of Renewable Energy Regulator (ORER) to ensure that any businesses that operate within ORER's framework comply with the Act. Further guidance for consumers will be provided online for consumers and will outline their rights and responsibilities when purchasing solar energy systems. The material will also provide tips and guidance for consumers on what they should consider when purchasing solar products, as well as information about government financial initiatives for consumers.

## **Consumer guarantees**

The ACCC is continuing to develop a communications campaign to increase consumer awareness and understanding in relation to consumer guarantees. During the quarter, the ACCC presented information on consumer guarantees at industry events, published articles in several industry newsletters, and developed ACCC guidance materials on repair notices and warranties against defects.

The ACCC distributed over 28 000 point of sale signs about consumers' warranties and refunds rights to key retail industry associations.

## **Scams**

During the quarter, the ACCC continued work on initiatives to alert consumers to new and emerging scams. Five SCAMwatch radars were issued on the SCAMwatch website covering the 'carbon tax compensation' scam, a new twist on the 'remote access computer' scam, 'scratchie cards' sent in the post, 'solar panel scam offers', and fake online government endorsements. The SCAMwatch website continued to receive a high number of visitors with over 12 million hits recorded for 2011, and more than 520 000 unique visitors.

In September 2011, the ACCC and the Council of Small Business of Australia (COSBOA) jointly hosted the *Small business and scams* forum. The forum, an initiative of the Australasian Consumer Fraud Taskforce, attracted approximately 70 participants representing small business owners, big business, industry associations and advisors, and state and federal government agencies. The forum explored the impact of consumer fraud on the small business sector, including the important role that businesses can play in protecting their customers from scams, and methods to deter such conduct.

### **Industry code compliance audits**

On 1 January 2011, the ACCC was given the power to conduct audits to monitor compliance with industry codes prescribed under the CCA. This power enables the ACCC to obtain from a corporation any documents it is required to keep, to generate or to publish under an applicable industry code.

This quarter, the ACCC conducted the first industry code audits and served 13 audit notices. Notices were issued against traders operating under the Franchising Code of Conduct and the Horticulture Code.

### **Product safety**

During the quarter, the ACCC and state/territory consumer product safety agencies launched a major national product safety education campaign focussed on 'do it yourself' vehicle maintenance. The campaign will continue to February 2012 and includes a safety video (for YouTube and the Product Safety Australia website, [www.productsafety.gov.au](http://www.productsafety.gov.au)), a competition to win an adrenaline experience, a mobile-friendly version of the 'DIY vehicle safety maintenance' website, and free safety postcards.

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

During the quarter, the ACCC:

- reviewed 507 mandatory reports of which 222 were referred to other regulators (predominantly food reports referred to FSANZ) while the remaining 185 were assessed or are under assessment by the ACCC.
- undertook an assessment of formamide in foam play mats. The ACCC in collaboration with the Queensland Office of Fair Trading and Consumer Affairs Victoria determined that the results indicated the current use of formamide in foam play mats does not present a hazard to children.
- received notification and uploaded details of 99 consumer product safety recalls to the Recalls Australia website ([www.recalls.gov.au](http://www.recalls.gov.au))—51 of these recalls were for consumer goods, which are recalls actively managed by the ACCC. Significant recalls this quarter included a number of non-compliant bicycles which were detected as a part of the 2011/1 national product safety survey program, a range of Fisher-Price products including highchairs and toy trikes and Tommee Tippee dummies.

The ACCC is pleased to see industry adopt the recalls program with participation by industry in the recalls progress reporting e-form in close to 100 per cent of cases. The form is one of the tools used by the ACCC when reviewing recall effectiveness and deciding whether to close a recall.

## Minimising potential harm to consumers

On 1 September 2011 the ACCC and state and territory product safety regulators launched an education campaign on 'DIY vehicle maintenance'. The campaign aims to reduce injury and deaths resulting from working under vehicles and uses the slogan 'don't be a jackass with jacks'.

The ACCC recommended two new interim bans on 'bling' dummies and dummy chains which were subsequently replaced by permanent bans. The ACCC also recommended that a permanent ban on miniature motor bikes with unsafe design features be revoked and replaced by a permanent ban on those miniature motor bikes with unsafe design features which are powered by an internal combustion engine. These bikes (also known as monkey bikes) are capable of speeds of up to 80 kph and it is essential that design features (including steering and braking) match their speed capability.

### Case study: Infant hazards

In July this year the Parliamentary Secretary to the Treasurer implemented two new interim bans for baby dummies and baby dummy chains with attached decorations (or 'bling'). These products were banned because of the choking, inhalation and ingestion risks associated with the decorations separating during use.

The CCA provides for an interim ban to be imposed without delay if it appears to the Minister that the goods present an imminent risk of death, serious illness or serious injury.

Following notification from NSW Fair Trading that the unsafe products were available for sale, an ACCC response team was put together to implement the interim bans. To minimise risk to babies and infants, speed was of the essence.

The interim bans were replaced by permanent bans on 9 September 2011. These permanent bans are in addition to the existing mandatory standard on baby dummies, which has been in place since 20 October 2006.



### 3 Mergers

In assessing mergers, acquisitions and asset sales under section 50 of the CCA, 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 September 2011 quarter

In the September 2011 quarter, 54 matters were pre-assessed by the ACCC and reviews were conducted on 24 matters, including confidential and public merger reviews. Of the 24 matters reviewed, 67 per cent of merger proposals were cleared unconditionally by the ACCC.

The ACCC expressed concerns following one confidential review proposal. One public merger review was resolved following the ACCC's acceptance of a s87B undertaking.

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

	CONFIDENTIAL	PUBLIC	TOTAL
<b>Pre-assessed 1 July – 30 September June 2011</b>	<b>54</b>	<b>0</b>	<b>54</b>
<b>Total reviews undertaken 1 July – 30 September June 2011</b>	<b>5</b>	<b>19</b>	<b>24</b>
Total reviews can be broken down into the following categories:			
Not opposed	0	16	16
Finished—no decision (including withdrawn) <sup>1</sup>	4	2	6
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	0	0	0
Variation to undertaking rejected	0	0	0
<b>Total matters assessed and reviews undertaken</b>	<b>59</b>	<b>19</b>	<b>78</b>

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

	2009-10	2010-11	YTD 2011-12
<b>Total matters assessed and reviews undertaken</b>	<b>321</b>	<b>377</b>	<b>78</b>
<b>MATTERS ASSESSED - NO REVIEW REQUIRED</b>	<b>153</b>	<b>236</b>	<b>54</b>
<b>REVIEWS UNDERTAKEN</b>	<b>168</b>	<b>141</b>	<b>24</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.

<i>Total reviews can be broken down into the following categories:</i>			
Not Opposed	131	110	16
Finished – no decision (incl. withdrawn)	16	14	6
Publicly Opposed outright	8	3	0
Confidential review – Opposed or ACCC concerns expressed	6	4	1
Resolved through undertakings	4	7	1
Variation to undertaking accepted	2	3	0
Variation to undertaking rejected	1	0	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 September 2011 quarter.

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

Time taken to undertake merger reviews (cumulative)	Number of reviews	Percentage of mergers
Two weeks or less	0	0%
Four weeks or less	3	18%
Six weeks or less	10	59%
Eight weeks or less	13	76%
More than eight weeks	4	24%

<sup>3</sup> This does not include 54 pre-assessed matters, 6 matters that were either withdrawn or where no decision was formed on a confidential basis, or one review of a completed acquisition. 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.

## Statement of issues

One statement of issues was released during the September quarter:

- FOXTEL - proposed acquisition of Austar United Communications Limited – 22 July 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 five public competition assessments during this quarter:

- Teys Bros (Holdings) Pty Limited - proposed merger with Cargill Beef Australia - beef processing - 21 September 2011 – not opposed
- Experian Australia Credit Services proposed joint venture - credit reporting services - 19 September 2011 – not opposed
- Asahi Holdings (Australia) Pty Ltd proposed acquisition of P&N Beverages Australia Pty Ltd – beverages – 13 September 2011 – not opposed
- Wesfarmers Ltd proposed acquisition of interests in Burrup Holdings Ltd or Burrup – fertilisers – 19 August 2011 – not opposed
- InvoCare Limited proposed acquisition of Bledisloe Group – funeral services – 14 July 2011 – not opposed

## Major matters

Major matters decided during the September 2011 quarter included:

---

### **Proposed merger between Teys Bros (Holdings) Pty Ltd and Cargill Beef Australia**

Result | On 6 July 2011 the ACCC decided not to oppose the proposed merger.

On 13 May 2011 the ACCC commenced a review of the proposed merger between the beef processing operations of Cargill Beef Australia (Cargill) and Teys Bros (Holdings) Pty Ltd (Tey's). Cargill owned two abattoirs in Tamworth and Wagga Wagga, and a feedlot in Stockinbingal, New South Wales. Teys owned four abattoirs in Rockhampton, Beenleigh and Biloela, Queensland, and Naracoorte, South Australia. Teys also held a majority share in a feedlot located in the southern Darling Downs region of south-west Queensland.

On 6 July 2011 the ACCC decided that the proposed merger would be unlikely to have the effect of substantially lessening competition in any market in contravention of section 50 of the CCA. In particular, the ACCC considered that:

The merged entity would be unlikely to be able to depress prices for fat cattle in markets for the acquisition of fat cattle for the following reasons:

- there was limited geographic overlap between the merger parties and competition between them primarily occurred on a seasonal basis;
- several competing abattoirs were likely to continue to constrain the merged entity;
- existing capacity of abattoirs was largely under-utilised such that competing abattoirs would have the capacity to increase their production in response to an exercise of market power by the merged entity;
- cattle producers may bypass the merged entity by selling cattle at different locations or by switching production to other goods.

The proposed merger would be unlikely to result in coordinated effects in markets for the acquisition of fat cattle as the number of abattoirs competing in the market post-merger would make it difficult to organise and maintain coordinated conduct between the remaining firms. In addition, the presence of excess capacity in the industry provided firms with the incentive and ability to deviate from a coordinated price.

The proposed merger would be unlikely to substantially lessen competition in the market for the supply of processed beef on Australia's eastern seaboard due to the large number of competitors supplying processed beef and the countervailing power of large customers who had the ability to bypass the merged entity by processing their own cattle through service kill contracts with competing abattoirs.

There was only very limited overlap between the merger parties in the acquisition of feeder cattle, with their feedlots located more than 1000 kilometres apart. Post-merger, the merged entity was likely to be constrained from decreasing the price it paid to acquire feeder cattle by a large number of feedlots that competed to acquire feeder cattle in central NSW and Victoria.

The merged entity would be unlikely to have the ability or incentive to foreclose competing feedlots' access to the merger parties' abattoirs given that the merger parties' feedlots were unlikely to supply sufficient numbers of fat cattle to the merged entities' processing plants, and the presence of several other abattoirs in the relevant markets to which feedlots could supply fat cattle.

Post-merger, Cargill would be unlikely to have the ability or incentive to foreclose competing feedlots' access to grain because the merged entity's feedlots would be unlikely to constitute a sufficient customer base for Cargill's grain supply business. In addition, there were several alternative grain suppliers from which competing feedlots could acquire grain if Cargill attempted to engage in foreclosure strategies.

---

**Asahi Holdings (Australia) Pty Ltd - proposed acquisition of P&N Beverages Australia Pty Ltd**

Result | On 11 August 2011 the ACCC announced its decision not to oppose the proposed acquisition, subject to undertakings given by Asahi Holdings (Australia) Pty Ltd (Asahi) to divest the cordial and carbonated soft drink business of P&N Beverages Australia Pty Ltd (P&N).



On 9 March 2011 the ACCC announced its decision to oppose the proposed acquisition of P&N by Asahi (the original proposal).

The ACCC opposed the original proposal on the basis that it would be likely to substantially lessen competition in the national market for the manufacture and wholesale supply of carbonated soft drinks and in the national market for the manufacture and wholesale supply of cordial.

The ACCC was concerned that the original proposal, should it proceed, would remove P&N as a vigorous and effective competitor in the market for carbonated soft drinks. The ACCC considered that P&N acts to constrain the prices of branded carbonated soft drinks supplied by its competitors, including key players Schweppes and Coca-Cola Amatil.

The ACCC was also concerned that the original proposal would significantly reduce competition in the cordial market for branded products. The ACCC considered that Schweppes and P&N are close competitors in this market and that Schweppes responds competitively to the pricing, sales and promotional activity of P&N.

In its decision on the original proposal the ACCC did not identify any competition concerns with respect to the manufacture and supply of fruit juice or bottled water.

On 13 July 2011 Asahi lodged a revised proposal to acquire P&N and offered a section 87B undertaking to divest certain assets to remedy the ACCC's competition concerns. Pursuant to the undertaking, Asahi would simultaneously divest the cordial and carbonated soft drink business of P&N to Tru Blu Beverages Pty Ltd (TBB) and retain the water and juice business of P&N (the revised proposal).

Under the revised proposal, Asahi would retain only the P&N assets (including manufacturing plants, production lines, brand names, trade marks and staff transfers) required to conduct P&N's fruit juice and bottled water business.

Based on the results of market inquiries and its assessment of TBB, the ACCC formed the view that TBB would be likely to provide an ongoing and effective competitive constraint in the national markets for the manufacture and wholesale supply of carbonated soft drinks and cordial. The ACCC concluded that the undertaking offered by Asahi would remedy the ACCC's competition concerns in these markets.

Accordingly, the ACCC announced its decision on 11 August 2011 not to oppose the revised proposal and to accept the undertaking.

---

#### **Experian Australia Credit Services Pty Ltd – proposed joint venture**

Result | On 3 August 2011 the ACCC announced its decision not to oppose the proposed joint venture.

On 6 May 2011 the ACCC commenced a public review of the proposed acquisitions by ANZ, Citigroup, Commonwealth Bank of Australia, GE Capital Finance, NAB and Westpac (collectively the Investors) of minority shareholdings in Experian Australia Credit Services Pty Ltd, via the establishment of a joint venture with QAS Pty Ltd (a subsidiary of Experian plc) (the proposed joint venture).

The proposed joint venture intended to provide credit reporting services, including consumer and commercial credit reporting services, to financial institutions, credit unions and other credit providers.

In addition to seeking submissions at the outset of its review, the ACCC conducted extensive market inquiries with a range of industry participants. In particular, the ACCC engaged with smaller lenders on the potential impact of the proposed joint venture in the markets for lending products and services.

On 3 August 2011 the ACCC decided not to oppose the proposed acquisitions by the Investors.

The ACCC examined in detail, whether in the absence of the Investors' equity participation, Experian would still establish a credit reporting agency in Australia in the foreseeable future. The ACCC found that this would be highly unlikely in light of its review of the parties' internal documents and based on Experian's experience overseas.

The ACCC formed the view that the structure of the proposed joint venture and the incentives faced by the Investors were such that it would be highly unlikely to foreclose rival providers' access to credit information, customers and distribution in the national market for the provision of credit reporting services. Further, the ACCC concluded that it was unlikely that the proposed joint venture would discriminate against non-Investor customers.

The ACCC considered that the entry of the proposed joint venture was likely to increase competition, leading to lower prices and greater product innovation, in a market currently dominated by one provider.

The ACCC considered that the proposed joint venture would be highly unlikely to result in a substantial lessening of competition in any market for lending products and services. The ACCC concluded that rival lenders to the Investors were likely to benefit from the proposed joint venture's entry through lower prices and more innovative products, which would enable them to harness the competitive benefits from the introduction of comprehensive reporting. This conclusion was supported by the ACCC's review of the Investors' internal documents.

---

**Wesfarmers Ltd – proposed acquisition of interests in Burrup Holdings and/or Burrup Fertilisers Pty Ltd**

Result | On 27 July 2011 the ACCC announced its decision not to oppose the proposed acquisition.

On 14 February 2011 the ACCC commenced review of Wesfarmers' proposed acquisition of interests in Burrup Holdings and/or Burrup Fertilisers and the ammonium nitrate facility proposed by Burrup Nitrates (together, Burrup).

On 11 May 2011 the ACCC released a Statement of Issues outlining preliminary concerns in relation to the proposed acquisition.

In Western Australia, Wesfarmers was the only supplier of ammonium nitrate from its facilities in Kwinana, Perth. Wesfarmers proposed to expand its existing ammonium nitrate facility. Burrup Nitrates had announced plans to build an ammonium nitrate plant on the Burrup Peninsula. The ACCC was concerned that the proposed acquisition by Wesfarmers could foreclose pro-competitive new entry in the supply of ammonium nitrate by preventing rival bidders from acquiring and developing the proposed Burrup Nitrates plant as an alternative local source of supply to Wesfarmers' existing facility.

Following release of the Statement of Issues, the ACCC received information which suggested that the relevant market was a market for the supply of explosive grade ammonium nitrate (EGAN) in Western Australia. Based on demand forecasts for EGAN, the ACCC considered that a single EGAN plant or expansion was likely to be sufficient to meet forecast demand for EGAN in Western Australia for the foreseeable future. Consequently, the ACCC considered only one EGAN plant or expansion was likely to be constructed in Western Australia in the foreseeable future.

The ACCC formed the view that Wesfarmers was likely to proceed with the proposed expansion of its existing ammonium nitrate plant at Kwinana, Perth, irrespective of the outcome of the Burrup Holdings sale process. In forming this view, the ACCC had regard to the progress of the Wesfarmers proposed expansion, including the commitment of significant capital by the Board of Wesfarmers to this expansion. The ACCC also noted the announcement by Yara that the proposed Burrup Nitrates project had been delayed due to uncertainty surrounding the decision-making ability of the Board of Burrup Holdings. In the context of Wesfarmers continuing to make progress towards construction of its plant expansion, such a delay made the Burrup Nitrates plant unlikely to proceed in the foreseeable future.

On the basis that Wesfarmers was likely to proceed with the expansion of its existing ammonium nitrate plant ahead of the proposed Burrup Nitrates plant, the ACCC formed the view that irrespective of the ownership of Burrup Holdings, it would not be likely to build an alternative EGAN plant in the foreseeable future.

On the basis of the above, the ACCC formed the view that the proposed acquisition of Burrup by Wesfarmers would not be likely to result in a substantial lessening of competition in either of the relevant markets in contravention of section 50.

As of 30 September 2011, the sales process for the Burrup assets had not been finalised.

## 4. Authorisations and notifications

### Authorisations

During the September quarter 2011, the ACCC issued eight final determinations, four draft determinations and made one interim decision. The ACCC received 10 new authorisation applications covering 8 projects, including one application for revocation and substitution of an authorisation, in the quarter. The ACCC also received 3 applications for a minor variation of an authorisation.

**Table 4.1: Authorisations received and decisions issued September 2011 quarter**

<b>Total authorisations received 1 July – 30 September 2011</b>	<b>13</b>
New	9
Revocation and substitution	1
Minor variations	3
<b>Decisions issued 1 July – 30 September 2011</b>	<b>13</b>
Draft determinations	4
Final determinations	8
Interim decisions	1

### Major authorisations

Major authorisations decided during the September 2011 quarter included:

---

#### **Pozzolanic Enterprises Pty Ltd – A91261**

Result | On 14 July 2011 the ACCC issued its final determination, conditionally authorising Pozzolanic to make and give effect to the Fly Ash Supply Agreement until 1 March 2014.

On 7 December 2010 Pozzolanic sought authorisation to enter into a Fly Ash Supply Agreement with Tarong Energy Corporation Limited and Tarong North Pty Ltd granting Pozzolanic the right to purchase any and all fly ash from specified transfer points at the Tarong and Tarong North coal fired power stations in Queensland.

---

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

Result | On 4 August 2011 the ACCC issued a final determination granting conditional authorisation to Australian Dairy Farmers' arrangements for ten years.

On 8 March 2011 Australian Dairy Farmers Ltd lodged an application for revocation and substitution of its authorisation to enable dairy farmers to collectively bargain terms and conditions of raw milk supply contracts with processors.

---

#### **The Reserve Bank Health Society Ltd – A91264**

Result | On 25 August 2011 the ACCC issued a final determination granting authorisation to Reserve Bank Health Society (RBHS) for the proposed arrangements for 10 years.

On 29 April 2011 RBHS sought authorisation to enter into a management services agreement with Lysaght Peoplecare Ltd (Peoplecare), a fellow provider of private health insurance, for Peoplecare to provide administrative, operational and management services to RBHS. Information flow between RBHS and Peoplecare and Peoplecare's role in advising the RBHS Board, including on setting premiums and benefits, may potentially be interpreted as cartel provisions under the CCA.

---

**Rio Tinto Aluminium Limited & Ors – A91205 – A91207**

Result | On 7 September 2011 the ACCC issued a final determination granting the minor variation to authorisations A91205-A91207.

On 1 July 2011 Rio Tinto Aluminium Limited submitted an application for minor variation to the authorisations for itself and on behalf of the Gladstone Power Station Joint Venture participants. The application sought authorisation for further amendments to Schedule 16 of the Restated Interconnection and Power Pooling Agreement which sets out the definitions and rules (including formulae) which are used to calculate energy volumes and sums of money payable under the agreement.

---

**Qantas Airways Limited & American Airlines Inc – A91265 & A91266**

Result | On 29 September 2011 the ACCC issued a final determination granting authorisation in respect of a Joint Business Agreement between Qantas Airways and American Airlines for five years.

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, Qantas and American Airlines 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 supported the trans-Pacific routes.

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

Draft determinations issued during the September 2011 quarter included:

---

**Newsagents Association of NSW and the ACT – A91269**

Summary | On 1 August 2011 the Newsagents Association of NSW and ACT Ltd (NANA) lodged an application for authorisation to collectively bargain on behalf of its members with NSW Lotteries in relation to the terms and conditions of agency agreements and distribution services including: commission fees; handling fees; agency application fees; support services levies; freight charges; product ordering fees; equipment hire costs; retail image design and agency subsidy and insurances; and any conduct protocols issued by NSW Lotteries.

On 26 August 2011 the ACCC issued a draft determination proposing to grant authorisation for five years.

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

## Notifications

### Exclusive dealing notifications

Notifications of interest decided or under consideration during the quarter included:

---

#### **Victorian Container Management Pty Ltd & Ors – N95450-N95456**

Result | On 26 August 2011 the ACCC issued a decision allowing the notifications to stand.

On 24 June 2011 the 10 Applicants each individually lodged notifications regarding an arrangement with Containerchain Pty Ltd to manage the container movements to and from their container park, by requiring transport companies to enter their details in Containerchain's website, whereby a time slot will be allocated to the transport company as to when to drop off and pick up their shipping containers. The transport company will pay a booking fee for this service.

---

#### **Football Queensland Limited – N93402**

Summary | On 28 April 2008 Football Queensland Limited lodged a notification proposing to require clubs which participate in Football Queensland Competitions to use only 'Teamwear' from licensed suppliers during those competitions. Teamwear includes tracksuits, playing shirts, playing shorts, playing socks and balls.

The ACCC issued a Draft Notice proposing to revoke Football Queensland's notification on 9 September 2011. The ACCC is currently considering submissions from interested parties on the matter.

### Collective bargaining notifications

Notifications for collective bargaining were considered for one matter during the quarter:

---

#### **Mai Wiru Regional Stores Council Aboriginal Corporation CB00150 - CB00155**

Summary | On 7 September 2011 Mai Wiru Regional Stores Council lodged collective bargaining notifications on behalf of itself and six regional community stores to collectively bargain on behalf of the stores for the procurement of essential grocery and supermarket items to be sold to members of remote indigenous communities within the Anangu Pitjantjatjara Yankunytjatjara Lands.

The ACCC sought submissions from the six grocery suppliers with whom the bargaining group wish to negotiate.

## 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 September 2011 quarter, the ACCC:

- commenced public consultation and issued a discussion paper in relation to Telstra's structural separation undertaking (SSU) and draft migration plan
- issued Final Access Determinations (FADs) for the regulated fixed line services.
- commenced a public inquiry as to whether limited exemptions to Standard Access Obligations for the wholesale line rental, local carriage service and public switched telephone network originating access service in certain exchange service areas should continue
- released an issues paper relating to the preparation of explanatory material relating to the non-discrimination obligations of NBN and other superfast broadband networks
- commenced public consultation on the service description for a non-NBN Layer 2 bitstream service
- published three reports: 'Telecommunications competitive safeguards for 2009–10', 'Changes in the prices paid for telecommunications services in Australia 2009–10', and the 'Imputation testing and non-price terms and conditions report relating to the accounting separation of Telstra for the March quarter 2011'.
- extended the Record Keeping and Reporting Rule (RKR) relating to access to Telstra exchange facilities and released a Disclosure Direction to Telstra with regard to those facilities
- released an information paper in relation to Hybrid Fibre Coaxial (HFC) and optical fibre (FTTP) broadband internet "speed" claims and the CCA.

#### **Telstra's structural separation undertaking and draft migration plan**

On 30 August 2011 the ACCC commenced public consultation in relation to Telstra's SSU and draft migration plan. The purpose of the SSU and draft migration plan is:

- to further separate Telstra's wholesale and retail businesses
- for Telstra to progressively cease providing fixed-line services over its own copper and HFC networks
- to migrate Telstra's customers to the NBN as the new network is rolled out.

A key area of concern raised in the discussion paper is the adequacy of interim equivalence and transparency measures — measures to ensure that Telstra's wholesale business supplies services of equivalent functionality and quality to its own retail business and to non-Telstra retail businesses. The discussion paper stated that it

was unlikely that Telstra's current proposals would achieve an equivalence of outcomes.

### **Non-discrimination guidance for NBN Co and superfast telecommunication networks**

In July 2011 the ACCC released an issues paper and commenced a public consultation on explanatory material relating to the non-discrimination obligations of NBN Co and other superfast broadband networks.

Under the CCA, NBN Co and other providers of layer 2 bitstream services are prevented from discriminating against access seekers who seek access to their superfast telecommunication networks. The CCA also requires the ACCC to prepare explanatory material relating to these non-discrimination obligations. This explanatory material will provide guidance to NBN Co on when it may offer different but non-discriminatory terms to access seekers and on how the ACCC intends to enforce the non-discrimination obligations.

### **Access pricing - Final access determinations**

In the September 2011 quarter, the ACCC made FADs for the following regulated fixed-line services: unconditioned local loop service (ULLS); wholesale line rental (WLR); line sharing services (LSS); public switched telephone network originating access (PSTN OA); public switched telephone network terminating access (PSTN TA); and the local carriage service (LCS). These FADs were backdated to commence on 1 January 2011 and expire on 30 June 2014.

FADs set the price and/or non-price terms and conditions for access-seekers to access a particular declared service. These are default terms and conditions for access-seekers who are unable to negotiate satisfactory agreement with Telstra.

The ACCC also released a draft FAD for the domestic Mobile Terminating Access Service (MTAS). The MTAS is a service used by phone companies to complete phone calls by connecting to mobile phone networks belonging to a different provider.

### **Declared fixed line services – geographic exemptions**

The ACCC has provided limited exemptions relating to standard access obligations for the WLR, LCS and PSTN OA services in certain exchange service areas. On 1 September 2011 the ACCC commenced a public inquiry and released an issues paper on whether these exemptions should continue.

### **Declarations**

The ACCC has issued a discussion paper seeking submissions and commencing public consultation on the service description for a non-NBN Layer 2 bitstream service. The consultation is the first step in issuing a declaration for that service, which the ACCC is required to do under the CCA. Once the service is declared, non-NBN Layer 2 bitstream services will be subject to the access regime for regulated services under the CCA.



## Reports

On 23 September 2011, the ACCC published annual reports on:

- (a) competitive safeguards in the Australian telecommunications industry; and
- (b) changes in the prices paid by consumers for telecommunications services.

In July 2011, the ACCC published the 'Imputation and Non-price Terms and Conditions Report' relating to the March 2011 quarter. This report relates to the accounting separation regime that applies to Telstra.

## Access to Telstra exchange facilities

The ACCC has extended the Record Keeping and Reporting Rule (RKR) relating to access to Telstra exchange facilities (TEF) until 14 July 2014, with only minor changes from the previous RKR. The TEF RKR provides oversight and transparency in relation to access seekers getting access to Telstra's exchange buildings. The ACCC also issued a Disclosure Direction to Telstra requiring it to provide extracts of reports prepared in accordance with the RKR for publication on the ACCC's website.

## Access disputes

Following amendments to Part XIC of the CCA, transitional provisions provide that access disputes may be notified to the ACCC until a FAD in respect of a regulated service is made. Once a FAD is made, access disputes can no longer be notified to the ACCC in relation to that service. The ACCC has made FADs in relation to the six regulated fixed line services (ULLS, WLR, LSS, PSTN OA, PSTN TA and LCS).

Arbitration hearings for access disputes are private and the ACCC generally does not make any public comment on disputes.

In the September 2011 quarter, no new access disputes were notified to the ACCC. The following table summarises developments in relation to access disputes during the September 2011 quarter.

	<b>Total</b>
Active disputes at 1 July 2011	13
Decisions subject to appeal to the Federal Court	0
New arbitrations commenced	0
Final determinations issued	0
Disputes withdrawn	0
Published determinations	0
<b>Active disputes at 30 September 2011</b>	<b>13</b>

## HFC and optical fibre broadband speed claims

In July 2011 the ACCC released an information paper in relation to HFC and optical fibre (FTTP) broadband internet "speed" claims and the CCA. This paper provides basic information on the ACCC's approach to assessing potentially misleading and

deceptive claims about the data transfer rates available on HFC and optical fibre broadband services for carriage service providers.

## **Australian Energy Regulator**

All papers and submissions relating to the Australian Energy Regulator (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**

On 29 September 2011 the AER submitted a rule change proposal to the Australian Energy Market Commission (AEMC).

The AER is currently restricted in its ability to set prices based on an objective assessment of the efficiency or the necessity of the expenditure proposed by electricity businesses. The AER's proposed changes would give it the scope to make a more effective and robust assessment of the costs proposed by electricity network businesses.

The AER is also proposing a consistent approach for setting the rate of return on investment for gas and electricity network businesses. Under this approach the AER would review the rate of return at least every five years with the outcome applying to each subsequent energy network revenue determination.

Also proposed are improvements to the processes for stakeholders to provide their views on spending proposals from electricity network businesses.

The AER has submitted its proposals to the AEMC for consideration. To make the changes, the AEMC needs to be sure that the proposed changes meet the National Electricity Objective. The AER is confident that the proposed changes will maintain incentives for efficient investment and operations of the networks and advance the long term interests of consumers.

The AEMC will then follow the mandated consultation process set out in the national electricity and gas laws. The AER intends that the rules changes would be in place in time for the next round of revenue determinations in NSW and the ACT, with the first determinations under the new rules to take effect from 1 July 2014.

### **Federal Court decision regarding Queensland generator Stanwell Corporation Limited**

On 30 August 2011 the Federal Court dismissed the AER's case regarding Queensland generator, Stanwell Corporation Limited. The AER instituted proceedings against Stanwell on 28 July 2009 alleging that Stanwell had breached the good faith provision of the National Electricity Rules.

Generators like Stanwell are required to offer to supply energy into the National Electricity Market in good faith. The Australian Energy Market Operator accepts offers from generators and dispatches those generators in order of least cost to meet demand. Rebidding allows generators to alter these offers in response to changes in circumstances. The good faith provision of the National Electricity Rules requires a generator to honour its offer to the market unless there is a change in the material

conditions upon which the offer was based. Rebids that are not made in good faith can adversely affect the accuracy of information upon which market participants rely.

The AER was disappointed with the decision and will closely examine the judgment and consider its implications.

## **AER Strategic Priorities and Work Program 2011-12**

On 3 August 2011, the AER released its Strategic Priorities and Work Program for 2011-12. The document sets out the AER's objectives and values, and highlights five strategic priorities for 2011-12. A summary of the AER's work program for 2011-12 is also included.

## **Gas network regulation matters**

### **Amendments to the access arrangement for Jemena Gas Networks (NSW) – mine subsidence expenditure**

On 27 September the AER released its final decision on the treatment of mine subsidence expenditure with regards to Jemena Gas Networks (JGN). JGN, which owns the NSW gas distribution network, recently sought review of the access arrangement decision made by the AER. On 30 June 2011 the Australian Competition Tribunal decided to remit one issue, mine subsidence expenditure, back to the AER to make its decision again. The issue is whether JGN's monitoring costs associated with mine subsidence should be treated as capital expenditure or operating expenditure. In accordance with the Tribunal's decision, expenditure on mine subsidence that the AER had previously classified as operating expenditure has been reclassified as capital expenditure. Moreover, the AER has decided that JGN's monitoring costs associated with mine subsidence should be treated as capital expenditure.

The AER sought written submissions from interested parties by 26 August 2011.

### **Final decision on APTNT's ring fencing exemption application**

On 12 August 2011, the AER exempted APT Pipelines NT Pty Ltd (APTNT) from its ring fencing obligations under s. 140 of the National Gas Law (NGL).

The AER considered that APTNT's costs of complying with the ring fencing obligations outweighed any associated public benefit. The exemption will allow staff of APTNT to undertake marketing and sales work for NT Gas Distribution, which is an associate company that takes part in a related business.

The granting of the exemption will not preclude the AER from reviewing the exemption if market conditions change substantially at any time in the future.

The final decision also repeals a previous ring fencing exemption granted to NT Gas by the ACCC in March 2002.

### **Access arrangement final decision - Amadeus Gas Pipeline**

On 27 July 2011 the AER published its decision to approve the access arrangement (including the terms and conditions and access arrangement information) for the Amadeus Gas Pipeline for the period 1 August 2011-30 June 2016.

The decision gives effect to the AER's proposed revisions to NT Gas Pty Limited's access arrangement proposal set out in the AER's final decision of 20 July 2011. The decision also identifies any amendments required to correct for errors in the AER's final decision. These amendments have been incorporated in the access arrangement, including the terms and conditions and access arrangement information, published with this decision.

### **Access arrangement decision: South Australian gas distribution network**

On 7 July 2011 the AER published its decision to approve the access arrangement (including the terms and conditions and access arrangement information) for Envestra's SA gas distribution network for the period 8 July 2011 to 30 June 2016.

The decision gives effect to the AER's proposed revisions to Envestra's access arrangement proposal set out in the AER's final decision of 17 June 2011, and identifies any amendments required to correct for errors in the final decision. These amendments have been incorporated in the access arrangement, including the terms and conditions and access arrangement information) published with this decision.

### **Merits review of gas access arrangement decisions by the Australian Competition Tribunal in respect of the QLD and SA gas distribution networks**

On 8 August 2011 the AER provided notice to interested parties about Envestra and APT Allgas's applications for review of gas access arrangement decisions in the Australian Competition Tribunal (Tribunal). The access arrangement decisions were made by the AER in June/July 2011 in respect of Envestra Limited's Queensland and South Australian gas distribution networks and APT Allgas's gas distribution network in Queensland.

Envestra sought review of the decision with regards to the following matters:

- (a) the methodology and the estimation of the debt risk premium;
- (b) the estimation of the market risk premium;
- (c) the estimation of the forecast volume of unaccounted for gas in regard to its SA network;
- (d) the forecast costs for Envestra's network management fee in regard to its SA network.

APT Allgas sought review of the decision in respect of the methodology and the estimation of the debt risk premium.

The National Gas Law requires an applicant to apply to the Tribunal for leave to apply for review, with the Tribunal hearing submissions on the issue of leave at 10.15am on 12 October 2011. If the application is allowed to proceed, the Tribunal will also make directions as to the steps to be undertaken by the parties in preparation for the final hearing of the application for review.

## **Electricity network regulation matters**

### **Extension – time limit to submit cost pass-through applications in respect of sale of NSW electricity businesses**

On 1 July 2011 the AER extended the time limit for Ausgrid to submit an application to pass through costs associated with the sale of the EnergyAustralia retail business to TRUenergy. Similarly, on 19 July 2011, the AER extended the time limit for Endeavour Energy and Essential Energy to submit cost pass through applications with respect to the sale of their respective retail businesses – Integral Energy and Country Energy – to Origin Energy.

The AER granted a six month extension to each entity under clause 6.6.1(k) of the transitional National Electricity Rules. In this context, the AER considered there was sufficient difficulty in assessing or quantifying the effect of the relevant pass through events within the normal 90 business day period.

The granting of this extension has no implications for the AER's assessment of the merits of any pass through application when it is ultimately lodged.

### **Compliance Bulletin No. 5 - Criteria for determining credible options under the RIT-T**

On 21 September 2011 the AER published its Compliance Bulletin No. 5 'Criteria for determining credible options under the RIT-T' (the compliance bulletin).

The regulatory investment test for transmission (RIT-T) replaces the regulatory test for consultations that commenced on or after 1 August 2010. The RIT-T is used by electricity transmission network service providers (TNSPs) to assess the efficiency of proposed investment options. It is also used to identify the transmission investment option which maximises net economic benefits, while meeting any relevant jurisdictional or Electricity Rules based reliability standards.

The AER has identified an apparent misapplication by TNSPs of the criteria for developing alternative options in past undertakings of the regulatory test. While the RIT-T uses the term 'credible options' rather than 'alternative options' as used in the regulatory test, the AER is concerned that some TNSPs may also misapply the 'credible option' definition under the regulatory test. The RIT-T application guidelines provide guidance on what constitutes a credible option and the AER has published this compliance bulletin to draw attention to the importance of this requirement to assist TNSPs in undertaking future RIT-T consultations.

The AER encourages participants to examine their approach to determining credible options under the RIT-T to ensure that it reflects the requirements of the Electricity Rules.

### **Energex and Ergon Energy application for waiver of Ring fencing Guidelines (Queensland) – Request for submissions**

On 12 September 2011 the AER made its draft decision in respect of the applications from Energex Limited (Energex) and Ergon Energy Corporation Limited (Ergon Energy) for a waiver from the Queensland Competition Authority's Ring-Fencing Guidelines, September 2000 (Guidelines).

Energex and Ergon Energy (the Queensland distribution businesses) are seeking a waiver from sections 1(c), 1(d) and 2 of the Guidelines to avoid incurring the costs of submitting and maintaining two sets of regulatory accounts – one set in accordance with the Guideline and the other set in accordance with the AER's annual reporting requirements that are currently being developed. The AER invited submissions to the draft decision by 29 September 2011.

### **Draft determination - Victorian advanced metering (smart meter) infrastructure roll-out 2012-2012**

On 28 July 2011 the AER released its Advanced Metering Infrastructure (AMI) draft determination, in relation to CitiPower, Jemena, Powercor, SP AusNet and United Energy Distribution's AMI budgets and charges for 2012–15, for consideration and comment by interested parties.

The draft determination establishes the basis for the metering charges payable by Victorian consumers using less than 160MWh of electricity per annum over the period 2012 to 2015.

In its draft decision, the AER considered the Victorian distributors did not substantiate their proposed total budget for this period of \$1.24 billion and considers a total budget of around \$760 million meets the relevant tests set out in the Victorian Order in Council that applies to the assessment of this program. The AER must make its final decision by 31 October 2011.

### **Public forum – Powerlink's revenue proposal for 2012/13 – 2016/17**

On 26 July 2011 the AER hosted a public forum in Brisbane on Powerlink's revenue proposal, proposed negotiating framework, and proposed pricing methodology. Powerlink is Queensland's transmission network service provider.

The purpose of the forum was to outline the AER's processes for considering Powerlink's revenue proposal and for Powerlink to provide an overview of its proposal. Interested parties were invited to provide submissions by 12 August 2012. The AER will release its draft decision in November 2011.

### **AER Final Determination regarding SP AusNet's Revised Budget Application 2009-11**

On 20 July 2011 the AER issued a new final determination on SP AusNet's 2009-11 Advanced Metering Infrastructure (AMI) Revised Budget Application, having revoked its original determination.

The AER's original determination (published on 3 May 2011) included financial modelling errors which were identified after the release of the final decision. The determination was revoked with the written consent of SP AusNet. In this substitute final determination, the AER corrected all identified errors. This results in a net decrease in SP AusNet's Approved Budget for 2009-11 of \$1.263m (\$2008).

### **Public forum – Aurora Energy's revenue proposal for 2012 - 2017**

On 19 July 2011 the AER hosted a public forum on the regulatory proposal of Aurora Energy, the electricity distribution provider in mainland Tasmania. The AER

is responsible for making a distribution determination for Aurora Energy for the period commencing 1 July 2012. This determination will govern the prices that Aurora Energy can charge for its electricity distribution services. Aurora Energy submitted its regulatory proposal to the AER on 31 May 2011. The AER invited interested parties to provide submissions on the proposal by 12 August 2011.

The public forum was hosted in Hobart, at which Aurora Energy presented its regulatory proposal.

### **Final decision on SP AusNet's market impact parameter**

On 4 July 2011 the AER released its final decision on SP AusNet's proposal for the early application of the market impact component of the service target performance incentive scheme. Under the National Electricity Rules, transmission network service providers may apply for an early application of the market impact component of the service target performance incentive scheme.

On 30 March 2011 SP AusNet submitted to the AER an application for the early implementation of the market impact component of the scheme. SP AusNet proposed an early start date of 1 August 2011, and subsequently an amendment to the proposal for the early implementation of the market impact component of the scheme on 6 April 2011.

The AER determined the proposal (including the amendment) complied with the submission guidelines in respect of the service target performance incentive scheme.

## **Energy wholesale markets**

### **June 2011 Energy Quarterly Compliance Report**

On 17 August 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 April-June 2011.

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

### **Compliance Bulletin No. 4 - Submitting best estimate injection bids and withdrawal bids in the Victorian Declared Wholesale Gas Market**

On 1 July 2011 the AER released its fourth compliance bulletin. This compliance bulletin relates to the Victorian Wholesale Gas Market.

The compliance bulletin explains the AER's expectations in regard to market participants making best estimates when submitting injection bids and withdrawal bids as required under rules 213(2)(b) and (c) of the National Gas Rules.

## **Energy retail**

On 1 July 2012 the AER will assume new responsibilities for the regulation of energy retail markets under a new National Energy Retail Law and National Energy Retail Rules. These responsibilities include a number of non-price distribution and retail regulatory functions, including authorisation of retailers, approval of hardship policies, development of a retail price comparator website and performance reporting and monitoring. In early 2010 the AER commenced consultation and development of guidelines and instruments to assist with these functions. The following guidelines and consultations were undertaken between June and September 2011.

### **Final Retail Pricing Information Guideline**

On 14 September 2011 the AER released the final Retail Pricing Information Guideline and Notice of Final Instrument developed under the National Energy Retail Law (Retail Law). The Guideline will apply to energy retailers and will take effect from 1 July 2012, when the Retail Law is expected to commence.

The Retail Law includes new roles for the AER to mandate the way retailers present their pricing information to customers. To support these functions, the Retail Law requires the AER to develop and implement a Retail Pricing Information Guideline, which provides guidance to retailers in the presentation of energy offers. Of particular note under the Guideline is the requirement for retailers to produce Energy Price Fact Sheets for each generally available offer. These fact sheets will provide customers with a broad overview of offers available, including details such as price, fees, contract length and discounts.

The AER commenced consultation on its approach to the Guideline with the release of an issues paper in March 2010. In April 2010, the AER commissioned Wallis Consulting Group to undertake qualitative market research to obtain customer feedback on a range of areas relating to the Guideline.

The AER published a position paper and draft Guideline for stakeholder consultation in September 2010. The AER released a second draft Guideline and draft notice of instrument in May 2011.

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

On 28 July 2011 the AER released the Retailer authorisation guideline. The guideline is required under section 117 of the 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 guideline with the release of an issues paper and draft guideline in March 2010 and revised draft guidelines in November 2010 and March 2011. As advised by the MCE Standing Committee of Officials Bulletin No. 191, dated 12 April 2011, the transition of existing retailers (those holding a state or territory retail licence in a participating jurisdiction on 12 April 2011) will be determined by jurisdictions and implemented through application legislation.



Any retailer that is granted a jurisdictional licence after 12 April 2011 who wishes to retail energy beyond 1 July 2012 will need to apply to the AER for a national retailer authorisation (or exemption). The AER will start accepting applications for authorisation from 3 October 2011.

### **Consultation on Price Comparator website**

The AER has commenced consultation on the development of its national price comparator website, releasing an issues paper on 27 July 2011 and hosting a public forum on 17 August 2011. Under the Retail Law, the AER must develop and operate an online price comparator tool to assist small customers to compare offers.

The AER envisages that the price comparator website will include offers for electricity, gas and dual fuels. The AER proposes that users will input a variety of information and the website will generate a list of energy offers available to them.

The AER has commenced preparations for the website's development. The issues paper contains several targeted areas on which the AER sought submissions from stakeholders and interested parties.

### **Public forum – draft exempt selling guideline and network registration exemption guideline**

On 27 July 2011 the AER hosted a public forum in Melbourne on network registration exemptions and retail exemptions following its release of two draft exemption guidelines and accompanying papers 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 synergies in many situations such as caravan parks, apartments and shopping centres.

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. The AER undertook consultation on the draft guideline and issues paper, which closed on 12 August 2011 and will release its final package in November 2011.

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. The AER has consulted on its draft guideline and notice and will release its revised draft issue for consultation in October. The final guideline will be published in early 2012.

### **Final Compliance Reporting Procedures and Guidelines**

On 26 July 2011 the AER released the final Compliance Reporting Procedures and Guidelines developed under the Retail Law and the final Statement of Approach to

compliance with the Retail Law and Rules. The guideline and statement of approach will take effect from 1 July 2012.

The Retail Law includes new roles for the AER in monitoring, investigating, enforcing and reporting on compliance by regulated entities with obligations under the Retail Law and Rules. To support these functions, the Retail Law provides wide ranging information gathering powers and requires the AER to produce compliance procedures and guidelines. The AER has also released the Statement of Approach to compliance with the Retail Law and Rules, providing information to stakeholders on how the AER will approach its compliance and enforcement responsibilities under the Retail Law.

The AER commenced consultation on approaches to these new roles with the release of an Issues Paper in May 2010. A draft decision and preliminary drafts of the guideline and statement of approach were released in December 2010. The AER released a second draft guideline and statement of approach in March 2011.

### **Final Performance Reporting Procedures and Guidelines**

On 26 July 2011 the AER released the final version of the Performance Reporting Procedures and Guidelines developed under the National Energy Retail Law (Retail Law). The guidelines will take effect from 1 July 2012.

Under the Retail Law, the AER will be responsible for reporting on the performance of regulated entities. The AER's Retail Market Performance Reports will include information on customer service and complaints, the handling of customers experiencing payment difficulties, prepayment meters, security deposits, concessions, disconnections and reconnections. The Performance Reports will also include an overview of the retail market and the hardship program indicators.

To support this new role, the AER is empowered to develop Performance Reporting Procedures and Guidelines. The Guidelines specify the manner and form in which energy businesses must submit information and data to the AER relating to their performance.

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. In April 2011, the AER released draft performance reporting procedures and guidelines.

### **Customer Consultative Group discusses customer education**

On 8 July 2011 the AER hosted its fifth Customer Consultative Group meeting. The meeting was primarily devoted to a workshop on approaches to improving energy literacy within the community and customer education. Outcomes from the workshop inform the development of the AER's energy customer education strategy in the lead up to and after commencement of the National Energy Retail Law.

The workshop discussion covered a range of topics, including:

- the types of messages that the AER should be conveying to customers
- the most effective means of communicating the AER's message to a range of community sectors including customers who are experiencing financial hardship, culturally and linguistically diverse communities and the aged
- the use of social media to communicate with energy customers

- the AER's customer information sheets which were posted on the AER's website in late July.

The Customer Consultative Group meets up to three times a year and has nine current members—Australian Council of Social Service, Australian Council on the Ageing, Australian Industry Group, Brotherhood of St Laurence, Consumer Action Law Centre, Consumer Utilities Advocacy Centre, Public Interest Advocacy Centre, South Australian Farmers Federation and UnitingCare Wesley Adelaide.

### **Consultation and stakeholder forum on the National Retailer of Last Resort (RoLR) Scheme**

On 7 July 2011 the AER published the RoLR notice of draft instrument, draft RoLR guidelines, draft RoLR statement of approach and draft RoLR plan (draft RoLR package) in accordance with the retail consultation procedure under clause 173 of the National Energy Retail Rules. The AER also hosted a public stakeholder forum on 13 July 2011. The AER invited written submissions on the draft RoLR package by 19 August 2011.

Under the Retail Law, the AER will be responsible for overseeing the RoLR Scheme. Under the scheme, the AER will be required to publish the RoLR guidelines, publish the RoLR plan, appoint default RoLR's, maintain and publish a register of RoLR's, appoint designated RoLRs following a RoLR event and make RoLR cost recovery scheme determinations and will publish the package later in the year.

## **Transport and General Prices Oversight**

### **Airservices Australia's price notifications**

On 22 September 2011 the ACCC released a decision to not object to proposed price increases for terminal navigation (TN) and aviation rescue and fire fighting (ARFF) services set out in a price notification from Airservices Australia (Airservices) dated 9 September 2011. This decision follows the ACCC's consideration of a previous draft and formal price notification from Airservices, which the ACCC did not accept.

Airservices is the monopoly provider of air traffic control services in Australia, including both en route navigation and TN, to aircraft operators flying in Australian airspace and landing at Australian airports. It also provides ARFF services at Australian airports. These services are declared under section 95X of the CCA, 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.

In March 2011 Airservices submitted a draft price notification to the ACCC proposing a long-term pricing agreement that included price increases for TN and ARFF services over a five year period (2011-12 to 2015-16). In July 2011, the ACCC released a preliminary view stating that it would object to the proposed price increases in Airservices' draft price notification on the basis of three main concerns: prudence of capital expenditure; drivers of efficiency; and rate of return on capital (WACC). The ACCC noted that if Airservices addressed these matters in its formal price notification, the ACCC would be minded to not object to the related price increases.

On 22 August 2011 Airservices submitted a formal price notification to the ACCC that addressed two of the three concerns in its preliminary view. However, the ACCC was not satisfied that its previous concerns regarding WACC had been addressed. In

particular, Airservices had sought to move away from a methodology for estimating its WACC that the ACCC had previously accepted. As a result, the WACC proposed by Airservices was too high. This meant that Airservices would over-recover the revenue required to cover efficient costs based on its proposed prices. The ACCC released a decision to object to Airservices' formal price notification on 8 September 2011.

On 9 September 2011 Airservices submitted a revised price notification to the ACCC that addressed the remaining concerns expressed in its previous decision. In particular, Airservices proposed lower prices that would recover costs based on a methodology that was consistent with that used in its previous long-term pricing agreement. Airservices' revised proposal incorporated a WACC of 8.60 per cent, whereas its previous price notification used 9.12 per cent. The ACCC released its decision to not object to Airservices revised proposal on 22 September 2011.

Airservices' revised prices took effect on 1 October 2011.

## **Ports**

On 28 September 2011 the ACCC accepted undertakings under Part IIIA regulating access to services for the export of bulk wheat at port terminals operated by Australian Bulk Alliance (ABA) at the Port of Melbourne, Viterra at six ports in South Australia and Cooperative Bulk Handling (CBH) at four ports in Western Australia.

The access arrangements provide for:

- obligations on port operators not to discriminate or hinder access in the provision of port services
- clear and transparent port loading protocols for managing demand for port terminal services
- obligations on port operators to negotiate in good faith with eligible wheat exporters for access to port terminal services
- the ability of wheat exporters to seek mediation or arbitration on terms of access in the event of a dispute.

The ACCC has a role in access arrangements for wheat exporters as part of the deregulation of the wheat industry. Access undertakings are intended to ensure that third party exporters are able to access the port terminals operated by vertically integrated port terminal operators, ensuring competition in this significant export market.

### ***Australian Bulk Alliance's ports access undertaking***

ABA submitted its proposed undertaking to the ACCC on 23 December 2010, relating 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.

The ACCC released a Draft Decision and draft Amendment Notice for consultation on 11 August 2011, following consultation on an Issues Paper released on 20 January 2011. The Amendment Notice specified required changes that would address concerns the ACCC had with the proposed undertaking. No public submissions were received on the Draft Decision.

On 7 September 2011 the ACCC issued a final amendment notice to ABA and ABA provided a revised undertaking to the ACCC in response to the amendment notice on 21 September 2011.

On 28 September 2011 the ACCC issued a final decision to accept ABA's undertaking that will operate from 28 September 2011 to 30 September 2013.

In making its decision, the ACCC recognised that current arrangements at Melbourne Port Terminal appeared to be working well and that ABA is a relatively small operator facing strong competition. In such circumstances, significant changes were not required. ABA made a few amendments to its original proposal to ensure consistency with industry-wide standards, and increased transparency for exporters on the details of port terminal operations. The arrangements will provide bulk wheat exporters with fair and transparent access to the Melbourne Port Terminal.

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

Viterra submitted its proposed undertaking to the ACCC on 23 December 2010, relating to the provision of access to services for the export of bulk wheat at Viterra's ports in South Australia at Port Lincoln, Port Adelaide Inner Harbour, Port Adelaide Outer Harbour, Port Giles, Thevenard and Wallaroo.

The ACCC released a Draft Decision for consultation on 11 August 2011, following consultation on an Issues Paper released on 20 January 2011 and requests for information sent to Viterra and third party exporters. Eleven public submissions were received on the Draft Decision.

On 22 September 2011 Viterra lodged a revised undertaking with the ACCC and on 28 September 2011 the ACCC issued a final decision to accept Viterra's undertaking that will operate from 1 October 2011 to 30 September 2014.

The ACCC rejected the continuation of the 'first come, first served' (FCFS) capacity allocation arrangements operated by Viterra. The ACCC noted that under the previous FCFS arrangements, only Viterra and one other exporter could access Viterra's deep water port terminals at Port Lincoln and Adelaide Outer Harbour in the peak months of January to April 2012.

In its revised undertaking, Viterra will introduce auction arrangements from May 2012. Prior to the introduction of the auction system, Viterra has withdrawn a number of its own bookings. This greater access to Viterra's port terminals at Port Lincoln and Adelaide Outer Harbour between January and April 2012 is expected to increase the number of third party exporters from two to seven.

Other features of the accepted access arrangements include greater transparency of available capacity, pricing and stock at port information.

### ***Cooperative Bulk Handling's ports access undertaking***

Cooperative Bulk Handling (CBH) submitted its proposed undertaking to the ACCC on 31 March 2011 relating to the provision of access to services for the export of bulk wheat at CBH's ports in Western Australia at Albany, Esperance, Geraldton and Kwinana.

The ACCC released a Draft Decision for consultation on 23 August 2011, following consultation on an Issues Paper released on 21 April 2011. Eight public submissions were received on the Draft Decision.

On 20 September 2011 CBH lodged a revised undertaking with the ACCC and on 28 September 2011 the ACCC issued a final decision to accept CBH's undertaking that will operate from 1 October 2011 to 30 September 2014.

The ACCC considers that CBH's current access arrangements have successfully allowed access to CBH's port terminal services by wheat exporters and that it is appropriate for those existing arrangements to continue. CBH agreed to continue with its existing auction arrangements after the ACCC raised concerns about a two-tiered capacity allocation scheme that CBH had previously proposed.

The ACCC is open to revisiting with CBH capacity management options to promote efficiency and competition in the wheat export marketing industry if concerns identified with its initial proposal can be addressed.

## **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
- incentives to promote alignment of all coal chain contracts and efficient use of the Hunter Valley infrastructure.

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.

During the September 2011 quarter the ACCC began carrying out the functions conferred to it under the undertaking. This has included appraising the auditor proposed by ARTC to audit ARTC's compliance with its 'system true up test' obligations (which go to ARTC's liability for performance of its contractual obligations).

## 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.

### Monitoring & Water Pricing

#### ***Meetings with Murray Darling Basin water infrastructure operators***

Under the *Water Act 2007* the ACCC is required to monitor regulated water charges levied by water infrastructure operators, transformation arrangements and compliance with the water market rules and water charge rules. The ACCC provides an annual water monitoring report on the results of its monitoring to the Commonwealth Minister responsible for water resources, as required under the *Water Act 2007*.

In July 2011 the ACCC sent out requests for information (RFIs) to 37 water infrastructure operators for the 2010-11 reporting period (1 July 2010 to 30 June 2011) and offered to meet with operators to discuss the RFI process and assist them where required in completing their RFIs. These meetings were conducted over August - September 2011.

The meetings provided an opportunity to discuss specific aspects of the RFIs as well as the broader role of the ACCC's Water Branch and enabled ACCC staff to gain a better understanding of the water infrastructure operators, their similarities and differences. Feedback at the meetings strongly indicated that the operators benefited from the opportunity to meet with ACCC staff and establish and build a relationship with the ACCC.

#### **Pricing principles for price approvals and determinations under the Water Charge (Infrastructure) Rules**

On 5 July the ACCC released pricing principles for price approvals and determinations made under the Water Charge (Infrastructure) Rules (WCIR). These rules provide for price approvals and determinations of certain rural water infrastructure operators in the Murray-Darling Basin by either the ACCC, or a state agency accredited by the ACCC.

The principles outline the ACCC's approach to making price approvals and determinations under the WCIR. The ACCC is proposing that, as a term and condition of accreditation, state agencies will also be required to apply the principles. This will help to achieve consistent implementation of price approvals or determinations where there are multiple regulators.

In developing these principles the ACCC issued draft pricing principles for public consultation. Five submissions were received in response. The ACCC considered the matters raised during consultation in preparing the current version of the pricing principles.

## 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.

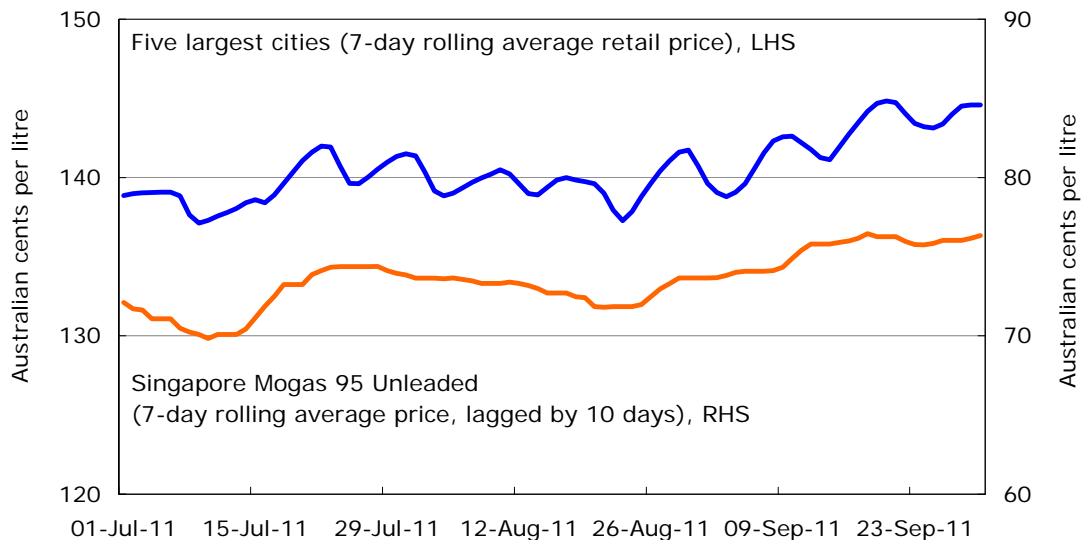
### Price movements in the September 2011 quarter

#### *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 5.1 shows movements in these prices over the period 1 July to 30 September 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 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 5.1: Movements in retail RULP prices and international benchmark prices—1 July to 30 September 2011**



As illustrated in the chart, retail RULP prices (on a seven-day rolling average basis) broadly tracked movements in the benchmark prices in the September 2011 quarter. The chart also shows cyclical fluctuations in the 7-day rolling average RULP price from mid July. Traditionally analysts have used the 7-day rolling average to smooth out the effects of the weekly petrol price cycle; however, since mid-July price cycles have at times extended beyond a week in duration, causing cyclical movements in the 7-day rolling average.



7-day rolling average retail RULP prices across the five largest cities increased from 138.9 cpl at the beginning of July 2011 to a high of 144.8 cpl in September, their highest level since May. Prices subsequently decreased to be at 144.6 cpl at the end of September 2011—an increase of 5.7 cpl over the quarter.

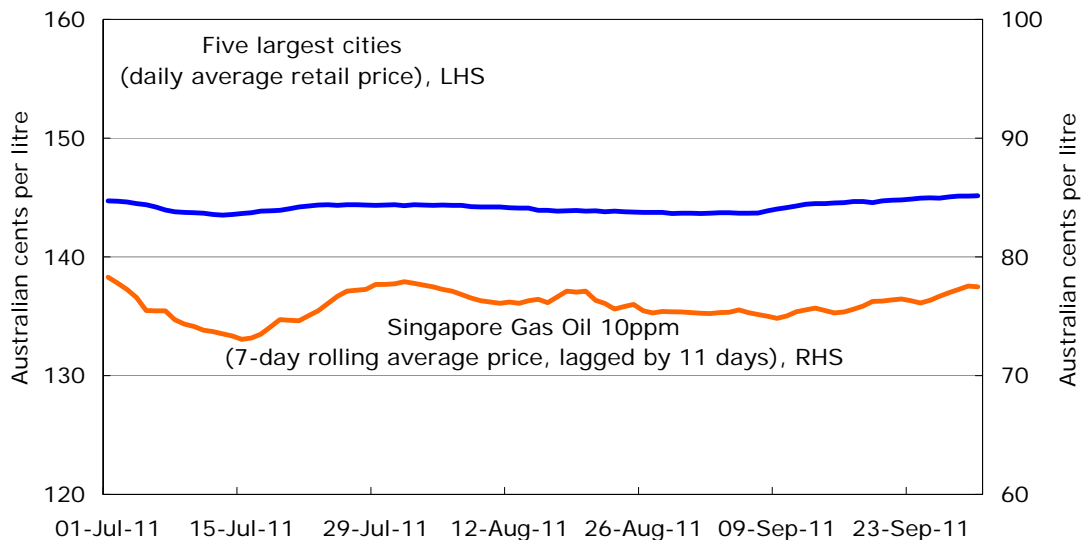
The increase in Singapore Mogas 95 Unleaded prices was partly driven by a decrease in the Australian/US dollar exchange rate. During the September quarter, the Australian Dollar fell 9.3 cents against the US dollar.

### ***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 5.2 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 September 2011 quarter. Singapore Gasoil 10 ppm prices have remained relatively stable over the past quarter due to strong regional demand in the Asian region.

Daily average retail diesel prices for the five largest cities increased by 0.5 cpl over the September 2011 quarter—from 144.7 cpl to 145.2 cpl.

**Chart 5.2: Movements in retail diesel prices and international benchmark prices—1 July to 30 September 2011**

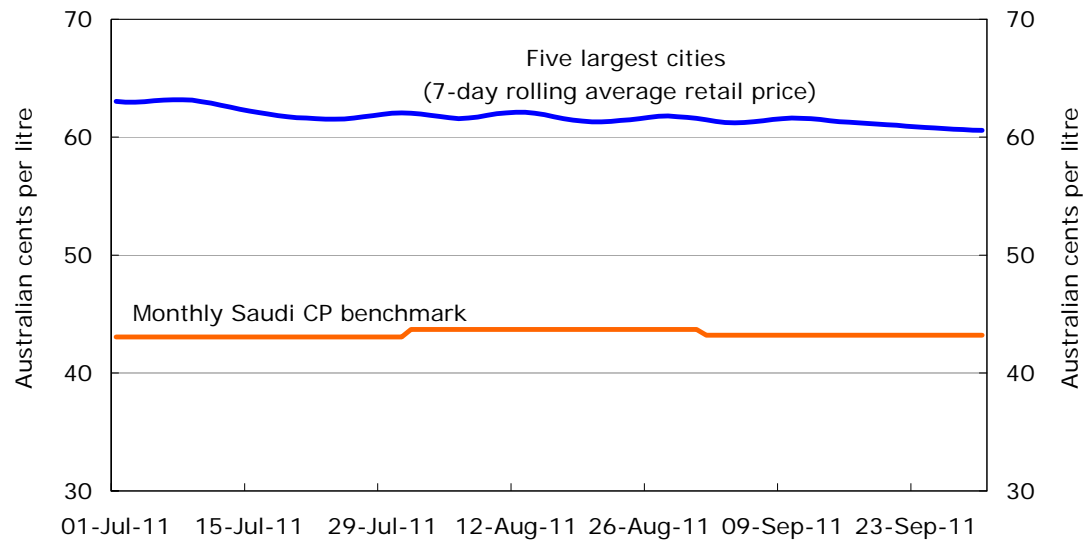


### ***Automotive LPG***

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 5.3).

Average retail automotive LPG prices in the five largest cities (on a seven-day rolling average basis) decreased by 2.4 cpl over the September 2011 quarter—from 63.0 cpl to 60.6 cpl.

**Chart 5.3: Movements in retail automotive LPG prices and international benchmark prices—1 July to 30 September 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.

### 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 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. 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.

During the September 2011 quarter, the ACCC:

- attended the 31st Antitrust and Trade Regulation Seminar in New Mexico
- presented at the 3rd Asian Forum on Consumer Policy in Korea
- presented at the International Franchise Conference in Malaysia
- attended the 22nd Workshop of the Competition Law and Policy Institute of New Zealand
- presented at the Taiwan Fair Trade Commission/Vietnam Competition Authority Capacity Building Seminar in Vietnam
- participated in the Leading Australia's Future in Asia and the Pacific (LAFIA) study tour in the South Pacific region
- participated in the 2nd BRICS International Competition Conference in China
- participated in the Energy Intermarket Surveillance Group Conference in the USA
- 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 September 2011 quarter, the ACCC received and/or sought information from counterpart agencies in Canada, China, the European Union, Germany, Kenya, Mauritius, the Netherlands, New Zealand, Norway, Singapore, Taiwan, 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 September 2011 quarter, the ACCC met with representatives from a number of agencies and organisations, including:

- Malaysian Competition Commission
- Malaysia's Ministry of Domestic Trade, Co-operatives and Consumerism
- ASEAN
- Korea Consumer Agency
- Japanese Consumer Affairs Agency
- China's State Administration for Industry and Commerce
- OECD Principal Administrator for Consumer Policy
- Kenya's Monopolies & Prices Commission
- Thailand's Office of the Council of State Division of Foreign Law
- International Telecommunications Union (ITU) and the Thai National Broadcasting and Telecommunications Commission
- New Zealand's Competition Commission
- Competition Commission of Singapore
- Mexican telecommunications commission
- Energy Regulatory Commission of Thailand
- Civil Aviation Administration Authority of China
- Taiwan Fair Trade Commission

From 1 August to 28 September, the ACCC's Canberra office hosted two officials from the Vietnam Competition Agency.

## **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
- the Trans Pacific Partnership Agreement
- India-Australia.

# Appendix

## Speeches

During the September quarter the ACCC delivered 46 (2 internal) addresses including:

*National Small Business Summit*

27<sup>th</sup> July 2011

Dr Michael Schaper, Deputy Chair

Council of Small Business of Australia summit, Sydney.

*ACCC: Future Directions*

28<sup>th</sup> August 2011

Mr Rod Sims, Chairman

The Law Council Competition and Consumer Workshop 2011

*The ACCC and Small Business*

12<sup>th</sup> September 2011

Mr Rod Sims, Chairman

COSBOA Business Leaders Dinner

*Retail Energy: a fair go for consumers*

13<sup>th</sup> September 2011

Mr Rod Sims, Chairman

ACOSS & CHOICE - Energy at Home Forum

*Is competition a myth?*

23<sup>rd</sup> September 2011

Mr Rod Sims, Chairman

Australian Economic Forum, Sydney

## News releases

During the September 2011 quarter the ACCC issued 69 news releases and the AER issued three news releases.

## **Publications**

The following publications were released during the September 2011 quarter.

### **New publications:**

- Update Magazine Edition 31 – Winter
- AER Strategic plan and work program
- Australian Competition and Consumer Commission Enterprise Agreement 2011-2014
- Fuel reselling agreements, disclosure and the oil code
- The guide to the oil code for industry participants in the down stream petroleum retail industry
- Leadership protocols poster
- Telecommunications competitive safeguards for 2009-10
- Keeping Baby Safe – advertisement
- Carbon pricing – hot topics
- Working Paper – Public utility regulation in Australia
- Working paper series – ISBN number insertion
- Leadership protocols booklet