

What's news

ACCC defends the rights of Playstation owners

The ACCC has intervened in a case currently before the Federal Court in a bid to open up the games market for consumers with Sony Playstations. Sony has instituted a copyright case to limit the installation of chips that allow games with regional coding to be played on consoles bought in Australia.

The ACCC fears that if Sony is successful in the court action, consumers stand to lose money on games bought overseas much more cheaply by being denied the right to use them in Australia. If the ACCC's argument is accepted in the Federal Court it will mean Playstation users can continue to rightly enjoy unrestricted use of the goods they own.

Chairman of the ACCC, Professor Allan Fels said: 'Consumers' interests are best served by ensuring access to the widest possible range of goods at the most competitive prices. Sony has overridden this basic consumer right by creating and maintaining artificial barriers to trade that the ACCC claims are not warranted by the law.'

Sony Computer Entertainment Australia and related companies are seeking to have new provisions of the *Copyright Act 1968* applied to prevent consumers from having the region coding in their Playstation consoles modified. The device, which modifies region coding, is called a 'mod chip' and once installed, permits the use of imported Playstation games and legitimate backup copies.

A similar problem exists with DVDs. The ACCC has been investigating the regional playback control (RPC) technology present in DVD players and accompanying films. The ACCC is aware that RPC effectively divides the world into six regions for the purposes of DVD distribution, preventing inter-region substitution of discs and hardware. The practical effect is that a consumer who has bought a DVD player in Australia may be prevented from playing films obtained overseas. Overseas markets give Australian consumers access to a wider range of competitively priced film titles, with special features not otherwise available in Australia. In the ACCC's view, this means Australian consumers are forced to pay higher prices for films with fewer features and a more limited range of titles.

More information: [Media release MR 22/02](#), 8 February 2002

ACCC examines Telstra's new Internet pricing

The ACCC has received many queries from consumers about Telstra's recently announced pricing changes for its BigPond broadband and narrowband Internet services. These changes were announced on 1 February to be implemented on 1 March.

The ACCC has a limited role in relation to these changes, as it cannot set retail Internet service prices or make Telstra offer products at certain prices.

However, given Telstra's position as Australia's largest ISP, its resultant market power and the lack of available alternative broadband services, **the ACCC will examine these proposals closely** to ensure that no breach of the Trade Practices Act has occurred.

More information: <http://www.accc.gov.au>

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In the consumers' interest

When can you get a refund?

Many consumers and businesses are confused about what their warranty rights and obligations are under law. Basically, when a consumer buys goods or services a statutory warranty is implied, regardless of cost etc. Statutory warranties cannot be overwritten or signed away. They give the consumer basic rights:

- that the goods are of merchantable quality;
- that the item is fit for the purpose it is intended for;
- that the item matches the description or sample given; and
- that services are carried out with due skill and care.

If the consumer has problems with an item, quite often a retailer will blame a manufacturer and vice versa. It is not up to the consumer to sort that dispute out. They are entitled to certain remedies and it is up to the businesses involved to negotiate who is responsible for absorbing the cost of a remedy.

It is wise for businesses to also remember that the Trade Practices Act prohibits a business from giving misleading information about warranties. For instance, a blanket 'No refund' sign will probably breach s. 53 (g) of the Act. It should be made clear however, that if consumers change their mind, or decide they do not like the product, or find the item cheaper elsewhere, they are unlikely to be able to claim a refund under law.

More information on warranties can be found in the easy to read publication, *Warranties and Refunds* at:

- <http://www.accc.gov.au/pubs/Publications/Industry/Retail/Warranties_refunds_Dec2001.pdf>; or
- hard copy from ACCC offices on 1300 302 502.

New publications

GM foods must be labelled

New mandatory labelling requirements for genetically modified foods introduced in December 2001 will help consumers decide what food to buy.

The ACCC has published GM labelling guidelines for all businesses in the food supply chain.

All genetically modified food and ingredients need to be labeled with the statement "genetically modified" where the final food contains novel DNA and/or novel protein or where the foods characteristics have been altered. Manufacturers must be able to verify any claim. This may involve maintaining a clear paper trail about the manufacturing process for a food, or establishing an 'identity preservation' system to assure the content of a food.

The ACCC's role is to ensure that any information on which consumers are likely to base their decision to purchase is not misleading or deceptive.

More information: [Media release MR 5/02](#), 18 January 2002

New guide for TCF industries

Developed in conjunction with industry and Government, this guide will help the textiles, clothing and footwear industries to make country of origin claims correctly.

More information:

- ACCC website www.accc.gov.au (free);
- contact the ACCC Publishing Unit for a hard copy on (02) 6243 1143; or
- [Media release MR 2/02](#), 17 January 2002

From the infocentre Frequently asked questions!

Can the ACCC set prices?

The ACCC's Infocentre receives many complaints about retail price rises, especially grocery items in supermarkets.

We hope that the following gives a better understanding of our role in pricing.

- The ACCC is not a price setting body for retail goods and services. In a free market economy such as Australia's, prices for goods and services are mostly determined by supply and demand.
- However, the ACCC does set the wholesale prices for a few services in telecommunications, gas, electricity and airports using powers given by the Trade Practices or Prices Surveillance Acts. These powers only apply to services or industries 'declared' by Parliament or the relevant Minister.
- Competitors who agree to fix prices amongst themselves may breach the Trade Practices Act and potentially face penalties up to \$10 million.
- Sometimes State or Territory Governments set the price consumers pay for essential products. The ACCC has no control over this.
- The ACCC cannot help consumers with general complaints about pricing. Consumers concerned about high prices are encouraged to discuss these with the store owner or manager. The ACCC encourages consumers to shop around for the best deal.
- The ACCC has a limited role to make sure that prices do not rise by more than 10% as a result of the New Tax System changes. This role will end on 30 June 2002.

Recent Investigations

Commodore Homes refund GST

The Federal Court has recently found that Commodore Homes (WA) Pty Ltd, a member of the Buckridge Group of companies, had engaged in false, misleading or deceptive conduct in breach of s. 52 and s. 53(e) of the Trade Practices Act.

The court found that Commodore Homes had misled new home-buyers about how long it would take to build their

new homes, and the application of GST to their home contracts.

The ACCC alleged that in the lead-up to the introduction of the GST, Commodore Homes told potential home-buyers that if they signed up they wouldn't have to pay GST, as the homes would be finished before the introduction of the GST on 1 July 2000. Delays in construction, however, meant many homes were not finished by that date. Commodore Homes then attempted to recover the GST component.

The Federal Court ordered, among other things, injunctions restraining Commodore Homes from engaging in such conduct for three years, and payment of costs.

This outcome reinforces the ACCC's message to business that GST enforcement objectives will continue to be a priority for the ACCC until the GST transition period expires on 30 June 2002.

More information: [Media release MR 25/02, 12 February 2002](#)

Latest Developments

Lower aeronautical charges required at Perth and Brisbane airports

The ACCC has required Perth and Brisbane airports to lower aeronautical charges to comply with price cap regulation. These are the prices charged by airports to airlines for services such as the use of runways, terminal facilities etc. The ACCC makes sure that declared services under the Prices Surveillance Act stay within their price cap.

Perth and Brisbane airports have not reduced aeronautical charges enough in recent years to meet the price cap. Because it is the last year of the price cap arrangements, the reduction in charges must occur this year.

More information: [Media release MR 27/02, 19 February 2002](#)

ACCC supports amendment to the Trade Practices Act

The Australian Competition and Consumer Commission supports a Senate review of amendments to the misuse of market power section of the Trade Practices Act.

'The ACCC has initiated only a few actions under section 46 (misuse of market power) of the Act, with a major difficulty being in proving a proscribed purpose', ACCC Chairman, Professor Allan Fels, said today.

'Companies are now aware of the possible implications of creating "smoking gun" documents, even creating a "cover" of apparently legitimate substantial purposes to avoid court actions against allegations of misuse of market power.' The ACCC's submission reviews s. 46's operation and says a reversal of onus of proof as to purpose would be preferable to the way current s. 46 actions are proved before the courts.

In the ACCC's view, a better approach to the current one, would be to amend s. 46 so it focused more on the effect of the conduct in question.

Generally, misuse of market power is when one business with a substantial degree of market power, uses this power

to damage another business, prevent competition or prevent new players from gaining entry into the market. The ACCC has successfully taken action against businesses that have misused their market power in the past, most noticeably against Boral in Melbourne. Boral drastically reduced the prices of their products when a new and innovative player attempted to enter the market. Boral has taken the case to appeal.

More information:

[Media Release MR 35/01, 28 February 2001](#); and

[Media Release MR 30/02, 20 February 2002](#)

News from afar

A US District Court Judge has ordered SkyBiz.Com Inc, which operates an alleged illegal pyramid scheme, to return millions of dollars being held in offshore accounts to preserve them for potential consumer redress, pending trial.

The ACCC has similar proceedings on foot against SkyBiz.Com Inc, following the ACCC's successful action last year against a Western Australian promoter. The ACCC has alleged SkyBiz.Com Inc has engaged in misleading and deceptive conduct and breached provisions outlawing pyramid selling, referral selling and income representations regarding home based business schemes.

It is alleged that SkyBiz.Com Inc, through its participants, claimed that consumers who joined the scheme, by purchasing a website for \$US100, could earn substantial income by recruiting new participants.

About the ACCC Rural and Regional Program

The ACCC has developed a Rural and Regional Program to better inform businesses and consumers in regional Australia about their rights and obligations under the Trade Practices Act.

Regional Outreach Officers, or ROOs as they have come to be known, have been appointed to ACCC regional offices across Australia. They have been building on existing local contacts in communities to establish a local supporters network.

Local supporters, which include representatives of small business, local government and consumer associations, will supplement the work being done by ROOs. They will use their own network to spread information about the Trade Practices Act and will also be contact points for this information in their communities.

The Competing Fairly Forum satellite broadcasts form part of this program with the next broadcast scheduled for 21 May 2002. The focus will be on ways of settling disputes. For more information visit the forum website www.forums.accc.gov.au.

For more information on the Rural and Regional Program and local contacts in your area call the ACCC Infocentre on 1300 302 502

New on the ACCC bookshelf

The ACCC has released the following publications in the past few months.

Advertising and selling:

- Updated guide on the consumer protection provisions of the Trade Practices Act to ensure that businesses trade fairly with consumers. \$10

Small business and the Trade Practices Act:

- Practical guide to the TPA for Australian small businesses.

Textiles, clothing and footwear industries:

- Country of origin guidelines to the Trade Practices Act.

The franchisees guide:

- Updated guide to the Franchising Code of Conduct.

Small business leaflets about unconscionable conduct:

- Guaranteed a loan for someone? Lost your house?
- Are you happy with your retail tenancy lease?
- Bought a franchise without enough information?
- Do you supply goods or services to major retail chains?

Franchising Code of Conduct Compliance Manual:

- Updated version, including amendments to the code. \$50

Are you being harassed about debts?:

- Leaflet about what debt collectors can and cannot do.

Warranties and refunds:

- Leaflet on small business' obligations about warranties and refunds for consumers.

ACCC update 9:

- Free magazine — special consumers issue.

ACCC Annual Report 2000-01 — \$15

Product safety guide:

- children's nightwear.

News for business:

- genetically modified foods.

The following Videos are also available (\$10 each).

Competing Fairly Forum:

- proceedings from the 3rd forum in November 2001, featuring advertising and selling.

Fair Game or Fair Go:

- understanding unconscionable conduct.

Without fear or favour:

- short general video about the ACCC.

Advertising and selling:

- training video derived from the Competing Fairly Forum (to be released soon).

February media releases

- 28 Feb [ACCC Publishes Reasons for Harbour Towage Decision](#)
- 28 Feb [Airport Terminal Users Well Protected by Price Controls](#)
- 25 Feb [ACCC Approves Sydney Airport Apron Parking Charge](#)
- 22 Feb [ACCC Requires Divestment Undertaking From Manildra](#)
- 20 Feb [Adsteam's Proposed Price Increases Not Justified: ACCC](#)
- 20 Feb [ACCC Supports Amendment to Misuse of Market Power Provisions of Trade Practices Act](#)
- 19 Feb [ACCC & Safeway](#)
- 19 Feb [Lower Aeronautical Charges Required at Perth and Brisbane Airports](#)
- 18 Feb [ACCC Enhances Proposed Transmission Network Planning and Approval Processes](#)
- 12 Feb [Commodore Homes \(WA\) Pty Ltd Refund \\$880,000 to New Home Buyers](#)
- 8 Feb [ACCC not to Oppose Acquisition of Wreckair Hire Business by Coates Limited](#)
- 8 Feb [ACCC not to Intervene in OPSM Acquisition of Kays Optical](#)
- 8 Feb [ACCC Defends the Rights of Playstation Owners](#)
- 7 Feb [ACCC v Samton Holdings Pty Ltd & Others](#)
- 7 Feb [ACCC Institutes Against Wizard Mortgage Corporation Limited for Alleged Misleading Advertising](#)
- 5 Feb [No Evidence that Trade Practices Act Hinders Rural Doctors: ACCC](#)
- 5 Feb [Jet Motorcycle Helmet Recalled](#)
- 5 Feb [AXA/MBF Possible Merger](#)
- 1 Feb [Adsteam Submits New Harbour Towage Notification](#)

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