

What's news

Record companies penalised \$1 million

Penalties totalling more than \$1 million were imposed on Universal Music Australia Pty Ltd, Warner Music Australia Pty Ltd and senior company executives in the Federal Court on 6 March 2002.

They were found to have breached sections 46 and 47 of the *Trade Practices Act 1974* by refusing to supply (or threatening to) CDs to Australian retailers who stocked non-infringing parallel imported CDs.

The ACCC began its investigation in 1998 after receiving complaints about the companies. In several cases it was alleged that Warner and Universal had cut off supply to retailers who stocked parallel imports. The ACCC alleged that this conduct prevented or discouraged Australian businesses from selling competitively priced imports.

Every major record company (including Warner and Universal) retains exclusive rights to the music which forms its catalogue. Within each catalogue a company is likely to have top selling titles featured in the charts. For most consumers specific titles can't be substituted. It is therefore commercially imperative for a music retailer to retain access to major companies' catalogues. Retailers denied supply may not be able to obtain music from the companies' catalogue either locally or overseas at an economic price, on time, or at all.

In their defence Universal and Warner claimed that competition from these cheaper, imported CDs would drive down their profits. However, the Federal Court found that Universal and Warner tried to stop alternative, imported supplies of non-infringing recordings of titles in their catalogues.

In fact, the court found the dire predictions of reduced promotion through to reduced production and ultimate market failure had simply not occurred. If anything, the evidence shows a continued increase in titles, promotion and production and at lower prices.

The ACCC is very pleased with the outcome of this case as it establishes an important precedent and win for Australian consumers. Retailers may now freely access cheaper, legal, imported CDs without fear that they'll lose supply of alternative stock. Universal and Warner are now permanently restrained from refusing, or threatening to refuse, supply of recorded music CDs to Australian retailers who source non-infringing titles already featured in their catalogues.

More information: [MR 39/02 6 March 2002](#)

Insurance report released

The ACCC has just released its draft report into the insurance industry requested by the former Minister for Financial Services and Regulation, Joe Hockey. The ACCC received submissions from interested parties, including consumers and industry groups and requested information from insurers in relation to premium rates in the insurance industry.

ACCC Chairman Professor Fels, commenting on the report, *Insurance industry and market pricing review* said 'Consumers need to know exactly why prices for particular policies have risen, so they can make informed decisions about policy renewal'.

The report says that general insurance customers need clear information about increased charges for their individual insurance policies.

The ACCC report provided important input into the debate on the cost drivers for public liability insurance considered at the March Ministerial meeting held in Canberra.

The ACCC welcomes the Government's decision that it continues to update the report, and by July 2002, provide analysis of competitiveness of the public liability and professional indemnity sectors of the market.

The ACCC is concerned that large across-the-board premium increases, over that of general inflation, were attributed solely to the collapse of HIH Insurance and the events of 11 September 2001. The ACCC believes such opportunistic pricing could not continue in a competitive market. It is not advocating price controls on general insurance but believes companies should not try to justify

What's in this issue

WHAT'S NEWS.....	1
RECORD COMPANIES FINED \$1 MILLION	
INSURANCE REPORT RELEASED	
ACCC RUNS OUT OF PATIENCE WITH TELSTRA	
IN THE CONSUMERS' INTEREST.....	2
COMPETITION WILL LIFT TV EFFICIENCY	
FROM THE INFOCENTRE	2
DON'T BE FOOLED BY MAIL SCAMS	
RECENT INVESTIGATIONS	3
ACCC DEFENDS MARKET GARDENERS	
BETTER PROTECTION FOR SMALL BUSINESS	
ACCC STOPS RIP-OFF	
RECENT DEVELOPMENTS.....	3
ACCC TAKES ARNOLDS TO COURT	
PROPOSED MERGER GIVEN THE NOD	
ABOUT THE ACCC	4
ADJUDICATION	
MARCH MEDIA RELEASES.....	4

price rises by using external factors rather than admitting past management mistakes.

The report noted that some sectors of the general insurance industry had low return on equity over the past nine years.

However, insurance companies should review and improve their inquiry and complaints handling systems to help consumers who wish to query increases.

The ACCC suggests that companies' review the language used in insurance contracts to demystify the process for consumers, small business and community organisations. Consumers will benefit from being able to choose a policy that best suits their needs, while insurers, by providing the most competitive services, should attract more customers.

The ACCC believes that consumers should receive policy renewals in time for any queries arising from the terms and conditions to be effectively dealt with without risk to their policy coverage.

More information: [MR 60/02 26 March 2002](#)

ACCC runs out of patience with Telstra

A competition notice issued by the ACCC to Telstra in September last year came into force on 21 March. Since late last year the ACCC believed that Telstra was engaging in anti-competitive conduct in the way it treated its wholesale broadband customers. As of 21 March, competitors can seek damages from Telstra, and the ACCC can take action against Telstra in the Federal Court to obtain penalties.

'The ACCC put Telstra on notice last year that if it continued to refuse to provide the services that its competitors required to compete fairly with the Telstra BigPond products, Telstra would be exposed to significant penalties under the *Trade Practices Act*', said ACCC Chairman, Professor Allan Fels.

The ACCC sees the existence of competitive wholesale offerings as an important aspect of increased choice of broadband solutions; especially for residential consumers seeking access to high speed Internet services.

More information: [MR 51/02 21 March 2002](#)

In the consumers' interest

Competition will lift TV efficiency

There was no inherent conflict between competition policy and legitimate cultural assistance, ACCC Chairman, Professor Allan Fels, told the Australian Children's Television Foundation's 20th anniversary symposium held recently.

He said applying competition policy to broadcasting would not destroy social and cultural objectives.

However, he warned that a regulatory regime, which was introduced to achieve higher quality children's programming, may be misdirected and/or inefficient.

'Production quotas are likely to bias the programming towards quantity rather than quality', he said.

Professor Fels said 'allowing new competition into free-to-air television would not necessarily mean the end of local content.

'New entry could be made conditional on meeting the domestic content requirements set by the government. If the Australian market is too small to support a larger number of broadcasters complying with the content requirements, then some will fail. But this happens in any other industry.

'If the market could support only three commercial networks it may be that the new entrants could meet the content requirements more efficiently than the incumbents.

'The current regulatory arrangements are contrary to effective competition policy and protect the existing networks at a considerable, and hidden, cost to the community in terms of reduced program choice and higher cost for advertisers.'

More information: [MR 52/02 21 March 2002](#)

From the Infocentre

Don't be fooled by mail scams

Following the recent actions in Queensland and Western Australian to halt mail scams, it is timely to remind consumers to be alert to the mail scams operated from Australia and overseas.

Often people don't realise they have been swindled, or will not admit they have been the victim of a scam because they are embarrassed. Mail scams tend to involve small amounts of money; \$20 to \$40 on average. While an individual may chalk it up to a relatively inexpensive experience, scams are big business.

If you receive an unsolicited letter in the mail or an email, you should ask yourself a few questions:

- If it says you have won a lottery, ask yourself: Did I enter a lottery? If I haven't entered a lottery, how did I manage to win one?
- If it says you need to send money to collect a cash prize, ask yourself: Why do I need to send money if they have all of those winnings the lottery operators can take their fee out of? A good response to this type of letter is to send a letter authorising the company to deduct their fee from your winnings.
- Remember the Nigerian scam? It's still going around — why would someone want to give you millions of dollars just for the use of your bank account? This scam has been going for some years and is now pursued through email.
- Ask yourself: Is it too good to be true? If it sounds too good to be true it probably is.

If you are taken by a scam, you may find yourself on a 'suckers' list, which will mean you will constantly receive 'announcements' of lottery and prize winnings.

If you receive a letter that doesn't look legitimate, you have a number of options:

- You could check the scamwatch website to see if anything similar is listed at <http://www.scamwatch.gov.au>.

- You could read the *Little Black Book of Scams* published by the Ministerial Council of Consumer Affairs and available at <www.scamwatch.gov.au>.
- You could throw it in the bin.

If you have been the victim of a mail scam it may be difficult to recover your money. However, it is always a good idea to notify the ACCC on 1300 302 502 and your local fair trading authority.

Recent investigations

ACCC defends market gardeners

Action by the ACCC has led to five Vietnamese market gardeners winning a dispute with their landlord who had tried to deny their lease and irrigation rights.

The lessees were Vietnamese farmers with little formal education or knowledge of English.

In 1994 Avanti entered into agreements with two farmers to lease the land. This land was then sublet to five other farmers, who were the victims. Four years later Avanti unlawfully claimed a right to break and vary the leases, and in 1998 and 1999 made the farmers sign new leases which each time reduced the amount of water available. The farmers were also told that the leases were the same as the 1994 lease except for the rent and the terms.

The court declared that Avanti had engaged in unconscionable conduct in breach of section 51AC of the *Trade Practices Act*, misleading or deceptive conduct in breach of section 52 and made false or misleading representations about the land leased by the farmers, in breach of section 53A.

More information: [MR 37/02](#) 5 March 2002

Better protection for small business

Small businesses are better protected from misleading demands over Internet re-registrations, after an action by the ACCC. The Federal Court in Brisbane has declared that conduct by Mr Stephen Henry Wayt, the proprietor of COM.AU.REGISTER breached the *Trade Practices Act*.

The ACCC had alleged that between January and March last year, COM.AU.REGISTER sent businesses and organisations throughout Australia a fax that was likely to mislead recipients into believing that COM.AU.REGISTER was responsible for registering Internet domain names when it did not and could not provide that service. The ACCC also alleged that some of the statements on COM.AU.REGISTER's Internet site were likely to be misleading.

Any business which believes they were misled and have not yet received a refund should contact the ACCC Infocentre on 1300 302 502.

More information: [MR 43/02](#) 8 March 2002

ACCC stops rip-off

Small business scamsters John Moon (a.k.a. John Robert Croke) and Wayne Baker, and their two companies, Back to Basics Worldwide Education Aids Systems Pty and Hartwich Pty Ltd, were recently convicted for a total of 16 counts of breaching the *Trade Practices Act*. The court found they had made false representations by inviting investors to buy distributorships selling educational aids to primary schools, and ordered fines and compensation of \$726 000.

The offenders operated in four States and placed advertisements in *The Age*, *The Sydney Morning Herald*, and *The Advertiser*. At least seven distributors, mainly married couples, were recruited and invested up to \$65 000. In every case their businesses failed and they lost their money.

Both men pleaded guilty before the Federal Court in Brisbane in March 2001. On 20 March 2002 the court handed down default judgment against the companies including fines and compensation.

More information: [MR 52/02](#) 21 March 2002

Latest developments

ACCC takes Arnolds to court

The ACCC has instituted proceedings in the Federal Court in Sydney against Arnolds Ribs & Pizza Australia Pty Ltd. The ACCC alleges the company, its four directors and its Queensland master franchisee, have engaged in misleading, deceptive and unconscionable conduct in promoting its fast food franchise system.

The ACCC is seeking court orders including:

- declarations that Arnolds has breached sections 52, 59(2) and 51AC of the Act;
- injunctions;
- findings of fact; and
- costs.

'It is important to note in relation to this matter, the ACCC action is against the franchisor corporation and five associated individuals arising out of the sale of Arnolds franchises. This action does not involve any conduct on the part of Arnolds store owners in their dealings with their customers', ACCC Chairman, Professor Allan Fels, said.

More information: [MR 56/02](#) 22 March 2002

Proposed merger given the nod

The ACCC won't intervene in the proposed merger between Hewlett-Packard and Compaq.

Hewlett-Packard provides computers, imaging products and services in over 120 countries worldwide. Compaq provides similar products and services and operates in 200 countries.

The ACCC's investigation of the proposal concluded that the merger wouldn't substantially lessen competition in any market. The merged entity will continue to face competition from several established suppliers, including IBM, Sun and Dell.

More information: [MR 47/02](#) 13 March 2002

About the ACCC — adjudication

One of the objectives of the Trade Practices Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency and enhancing consumer choice on price, quality and service. However, the ACCC also recognises that there are some circumstances where conduct that may restrict competition may also result in a public benefit.

Under the Trade Practices Act, the ACCC has the power to grant immunity from prosecution on public benefit grounds for some conduct which might otherwise breach certain competitive conduct provisions of the Act. Immunity is not available from the consumer protection provisions of the Act or from the misuse of market power provisions.

Decisions to grant immunity are made by the full Commission and the ACCC's Adjudication Branch is responsible for processing applications.

Immunity from prosecution can only be granted if the conduct will result in a benefit to the public and that benefit will outweigh any anti competitive detriment. When considering applications for immunity, the ACCC asks interested parties for submissions.

Individuals or organisations with sufficient interest may ask the Australian Competition Tribunal to review the ACCC's decision.

More information about the ACCC's adjudication function as well as applications currently before the Commission can be found on the ACCC's website <http://www.accc.gov.au>.

March media releases

- 31 Mar [Further Call to Whistleblower](#)
- 28 Mar [Easter Petrol Prices](#)
- 27 Mar [ACCC Institutes Against Waterman Collections Pty Ltd for Alleged Misleading and Deceptive Conduct](#)
- 26 Mar [ACCC Takes Court Action Against Cadbury Schweppes Over Cottee's Cordial Labelling](#)
- 26 Mar [Federal Court Denies Medibank Private's Motion to Strike Out ACCC Case](#)
- 26 Mar [Consumers Need Clear Insurance Information: ACCC](#)
- 25 Mar [Internet Access Charge Details Issued by ACCC](#)
- 24 Mar [Court Agrees that Door-to-Door Sellers Illegally 'Slammed' Telephone Customers](#)
- 22 Mar [ACCC Views on Easter Petrol Prices](#)
- 22 Mar [ACCC Improves National Electricity Code Dispute Resolution Processes](#)
- 22 Mar [Federal Court Finds Crowded Planet Misled Consumers Over Contraceptives](#)
- 22 Mar [ACCC Institutes Against Arnolds Ribs and Pizza Australia Pty Ltd For Alleged Misleading Promotion of Franchise System](#)
- 21 Mar [No Inherent Conflict Between Competition Policy and Legitimate Cultural Assistance: ACCC](#)

- 21 Mar [ACCC Stops 'Business Opportunity' Rip-Off](#)
- 21 Mar [ACCC Runs Out of Patience with Telstra's Wholesale Broadband Delays](#)
- 19 Mar [ACCC Pursues Trustee to Enforce Federal Court Ruling](#)
- 19 Mar [ACCC Points Spotlight on Regional Australia](#)
- 15 Mar [N.T. Gas Waiver Proves Gas Code Flexibility: ACCC](#)
- 13 Mar [ACCC not to Intervene in the Proposed Merger Between Hewlett-Packard and Compaq](#)
- 13 Mar [ACCC Confirms Draft Decision to Allow Dairy Farmers to Collectively Negotiate](#)
- 13 Mar [ACCC not to Intervene in the Proposed Merger Between Hewlett-Packard and Compaq](#)
- 12 Mar [Regulators Co-operate to Improve Privacy Compliance](#)
- 8 Mar [Federal Court Orders Following ACCC Action Assists Small Businesses Regarding Internet Registration](#)
- 7 Mar [ACCC Proposes to Allow Sydney Councils to Collectively Bargain with Recycling Facilities](#)
- 7 Mar [ACCC Maintains Price Rises for Harbour Towage Not Justified](#)
- 7 Mar [Roller Shutter Company Ordered to Refund Franchisees \\$77,594](#)
- 6 Mar [Threats to C.D. Supplies Cost Record Companies \\$1M](#)
- 5 Mar [Release of Foxtel Channels by Optus and Telstra](#)
- 5 Mar [Federal Court Declares Lessor Acted Unconscionably Towards Lessee Market Gardeners](#)
- 3 Mar [Qantas Comments: Business Sunday](#)
- 1 Mar [Small Business in Focus: ACCC Publication](#)

Need more information? Want to subscribe?

The ACCC's media releases and other useful information can be found on our website at <http://www.accc.gov.au>. Or call the ACCC Infocentre on 1300 302 502. You can receive *ACCC consumer express* for free by sending an email to express@acc.gov.au. Put 'subscribe' in the subject line and we'll do the rest.

ACCC consumer express is published by the Australian Competition and Consumer Commission for the general information of consumers and consumer organisations. It may be freely reproduced subject to acknowledgment of the source. Editorial inquiries to melanie.sherrin@acc.gov.au