

Want to make a complaint? Contact the ACCC Infocentre on **1300 302 502**

Want to forward suggestions for future articles? Email the Consumer express team at express@accc.gov.au

What's news

ACCC draft leniency policy for cartel arrangements

The ACCC released a draft leniency policy on 4 July 2002 to break secret cartel arrangements. The ACCC wants **your comments** on the policy before implementation.

Part IV of the Trade Practices Act prohibits certain types of agreements or understandings between competitors, such as price fixing, bid rigging, output restriction and market sharing. Such secret agreements between large companies are often referred to as 'hard core cartels'.

Cartel arrangements affecting Australian markets almost always operate behind closed doors. Cartels ordinarily involve large corporations who consider it good business to make illicit profits at the expense of the public. Cartel arrangements are designed to artificially raise prices and restrict output thereby causing substantial damage to other businesses, consumers and the economy.

The leniency policy aims to destabilise cartel arrangements. It provides strong incentives for corporations and the executives involved to come forward with evidence that may enable the ACCC to take enforcement action. The ACCC sees it as a high priority to protect consumers and the economy by detecting, stopping and deterring domestic and international cartels.

This new draft policy sets out the ACCC's conditions for lenient treatment for the first company or individual to come forward with evidence of a cartel operating in Australia.

The draft policy and other relevant information is available from the ACCC website at <http://www.accc.gov.au>.

All interested parties are encouraged to provide comment on the draft leniency policy by no later than **30 August 2002**. Submissions should be addressed to:

Australian Competition and Consumer Commission
Enforcement Co-ordination Branch
PO Box 1199
DICKSON ACT 2602

New Consumer Commissioner— Jennifer McNeill

Jennifer McNeill began her term as Commissioner on 22 July 2002.

Before joining the Commission, she was a partner in a major national law firm, practising predominantly in litigation and dispute management. While with that firm she gained broad experience in contentious matters covering areas of the law, such as Parts V and VA of the Trade Practices Act, insurance, professional negligence and contractual disputes. She was also the firm's pro-bono scheme partner in Canberra.

Ms McNeill will be playing a particularly active role in the Commission's enforcement and consumer protection activities.

ACCC chips away at region coding

PlayStation owners had a significant win after the Federal Court established the rights of owners to have their game consoles modified with a special 'chip' to play imported and copied games.

Chips allow consumers to play backup copies of PlayStation games they have bought, and to play imported games from other regions by circumventing region coding measures in the consoles and games. Sony produces and distributes games globally according to three mutually exclusive regions.

The ACCC intervened in the Federal Court proceedings after Sony Computer Entertainment Australia took action against an individual involved in 'chipping' consoles and selling copied games. The ACCC was granted leave to be heard in the proceedings as a 'friend of the court'.

The ACCC argued that region coding does not exist to prevent copyright infringement. The court held that the effect of region coding is to restrict the playback of certain games, not to prevent copies from being made. The court noted that the Copyright Act does not make it illegal for consumers to play certain games (such as parallel imports and legitimate backup copies of games), but rather prohibits the illegal copying and distribution of games.

The court agreed with the ACCC's interpretation of s. 116A of the Copyright Act, which makes it illegal to make or supply a device or measure that is designed to overcome copyright protection measures, providing that these measures have no commercially significant purpose other than to protect copyright.

The court noted that region coding does not prevent or inhibit the copying of games and is therefore not worthy of protection under Australian Copyright Law. This decision may set a precedent if the courts consider the issue of region coding measures present in other forms of digital media, such as DVD's. At present, there is no evidence to suggest that DVD player modification chips enable the illegal copying of DVD's.

Sony was successful in establishing that the individual had sold unauthorised copies of PlayStation games. The Copyright Act continues to protect the rights of manufacturers and owners of intellectual property from unauthorised copying.

Consumers should note that this judgment does not confer the right to produce and distribute illegal or pirated copies of games.

More Information: MR 181/02 29 July 2002

http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=758

Your rights—pyramid scams

Consumers often ask the ACCC about the difference between a pyramid selling scheme and a multi-level marketing scheme. Sometimes the differences might not be obvious to the average consumer.

Pyramid selling schemes rarely involve the legitimate and regular retailing of products. Instead, they provide rewards for introducing new participants. Saturation point is very quickly reached and later recruits have little chance of recovering their money.

Legitimate marketing schemes only provide rewards based on genuine product sales.

Pyramid sales promoters may attempt to disguise their schemes by selling goods and services that are overpriced, of poor quality, difficult to sell or of little value.

Participants who induce others to join pyramid schemes, as well as the initial promoters, are in breach of s 61 of the Act.

There are two questions that may help consumers identify legitimate multi-level marketing schemes:

- Are the rewards for participants in the scheme purely based on product sales (by either themselves or others they introduce to the scheme)?
- Are the products genuine products, of real value, of a type that normally will be used and purchased time and time again by a consumer, and not at a grossly inflated price?

If you answer yes to both questions, it is likely that the scheme is a legitimate multi-level marketing scheme.

If you have doubts about a particular marketing scheme, the ACCC or your state or territory fair trading agency may be able to assist. You should seek legal advice before entering into any business arrangements.

From the Infocentre

Harassment and coercion (s. 60) —it's not all debt collection

Complaints to the ACCC of harassment or coercion of consumers have more than doubled in the past year, largely because of increased debt collection activity. However, a growing number of these complaints concern selling tactics.

Section 60 of the Act prohibits the use of physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer, as well as in connection with payment.

Justice French of the Federal Court noted that the word 'harassment' as used in s. 60 also 'describes a range of conduct, in connection with the supply of goods or services which involve...applying repeated pressure to a consumer who is under no pre-existing obligation to acquire'.

If a salesman keeps ringing a consumer to sell them a product or service despite requests to desist, such conduct may breach section 60. Undue coercion may also breach this section.

More Information: Guideline to section 60: *Debt collection and the Trade Practices Act*:

http://www.accc.gov.au/pubs/Publications/Business_general/Debt_collection/DEBTCOLLECT.pdf

In the consumers' interest

SOCAP Conference 16–18 October

The Society of Consumer Affairs Professionals in Business Australia Inc. will host its 12th Annual Conference at the Sofitel Hotel, 25 Collins Street, Melbourne. The theme for the conference this year will be 'Unlocking consumer thinking: what's driving consumer behaviour today?'

The conference will focus on consumer behaviour. What are consumers saying? What are the implications for business and other organisations? What about the future?

More information: <http://www.socap.org.au/>

Western Australia: free investor forums in August

ASIC and the Institute of Chartered Accountants will host a series of investor forums in four venues in Western Australia during August. Learn how to protect yourself against scams, swindlers and their sickening consequences. Admission is free.

More information:

<http://fido.asic.gov.au/fido/fido.nsf/byheadline/ASIC+Investor+Forums?openDocument>

Straight talking—ACCC launches a training tool for business

The ACCC has issued a new tool to help business, big and small, and their employees comply with the consumer protection provisions of the Trade Practices Act.

Straight talking—advertising, selling and the Trade Practices Act is a new 37-minute video covering issues such as fine print advertising, refunds and warranties, and misleading pricing.

The video contains extracts from the ACCC's Competing Fairly Forum on advertising and selling, chaired by George Negus. A panel of experts outlines some problem areas and the basics of truthful advertising. The video also provides some entertaining examples of shonky selling practices.

While the video is designed as a training tool for business employees, it can also be used for community workers or business studies students.

Straight talking—advertising, selling and the Trade Practices Act costs \$10 and is available from the ACCC's Publishing Unit. It complements the more extensive *Advertising and Selling*, a publication that looks at the consumer protection rules in a bit more detail.

More information: *Advertising and Selling* (Nov. 2001)
http://www.accc.gov.au/pubs/Publications/Business_general/Advertising/AdvertisingSelling_Nov2001.pdf

Update from the June edition

Basic Bank Account application

The Australian Bankers Association (ABA) applied to the ACCC on behalf of several Australian banks for authorisation under the Trade Practices Act to offer a Basic Bank Account. If authorisation is granted, member banks will be able to collectively agree on the minimum features of a Basic Bank Account without breaching the price fixing provisions of the Act.

To grant authorisation, the ACCC must be satisfied that the benefit to the public from the arrangements will be greater than any anti-competitive detriment. The ACCC sought submissions from interested parties on the application for authorisation. The closing date for submissions was 17 July 2002. The ACCC has received 24 submissions relating to the application for authorisation lodged by the ABA. Staff from the ACCC are currently meeting with a number of community and consumer organisations to discuss the Basic Bank Account initiative proposed by the ABA. The ACCC intends to prepare a draft determination once the consultation process with interested parties has been finalised.

For more information on the adjudication process, visit the adjudication page of the ACCC website, at
<<http://www.accc.gov.au/adjudication/fs-adjudicate.htm>>.

Product safety alert

Unsafe fire extinguisher

Consumers who have bought portable fire extinguishers in the last few years are being asked to check that it is not the 'FIRE CAP Fire and Smoke Suppressant' brand, which is potentially dangerous.

The product may have been sold door-to-door in Northern Queensland as part of a safety package.

The 300mm high aerosol cans are red, orange, yellow, black and white with a red plastic cap and red aerosol button. Wording on the can reads in part 'FIRE CAP ... FIRE and SMOKE SUPPRESSANT' ... 'FOR USE ON SMALL SPOT FIRES'.

Tests have shown that this particular extinguisher could intensify some types of fires, particularly oil fires. Consumers are advised to safely discharge and dispose of the extinguisher.

More Information: MR167/02 4 July 2002
http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=742

Recent investigations

Alleged misleading conduct about tours to Aboriginal land

The ACCC recently instituted proceedings against Voyages Hotels and Resorts Pty Ltd (Voyages) alleging misrepresentations about tours to Yulara Pulka Aboriginal Homelands near Uluru. Representations included: that Voyages had exclusive rights to offer these tours, that Aboriginal owners would meet with tour groups and that Aboriginal owners would receive a significant amount of the tour price from Voyages.

More information: MR 169/02 9 July 2002
http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=753

Home loan program a pyramid selling scheme

In June 2002 Guardian Finance and Insurance Consultants Pty Ltd and Mr Peter Martin James (Guardian) consented to Federal Court orders that its Guardian Reducible Home Loan Introducers program and Rate Reward program (the programs) breached s. 57 (Referral Selling) and s. 61 (Pyramid Selling) of the TPA. This scheme involved a particularly large financial transaction—possibly the largest financial decision for consumers—the purchase of a home.

Remedies by consent order included injunctions restraining Guardian from engaging in future contraventions, the implementation of a compliance program and refunds of application fees paid by participants.

More information: MR 169/02 9 July 2002
http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=746

From other regulators

The Telecommunications Industry Ombudsman

The Telecommunications Industry Ombudsman (TIO) is warning consumers to steer clear of Internet service providers (ISPs) with contract clauses that discourage customers from taking complaints to the TIO.

The Ombudsman has been made aware that a number of ISPs are using an anti-TIO clause that claims that the ISP can suspend a customer's Internet service if they make a complaint to the TIO.

Legislation is currently being introduced to prevent companies from passing on TIO fees to their customers after it was discovered that an ISP was charging a customer for the TIO's investigation of his complaint.

The Ombudsman said that access to the TIO scheme was one of few consumer safeguards in the largely unregulated Internet industry and called on ISPs to stop using the clause. 'Any ISP using this clause should seriously consider the damage they are doing to the confidence of their customers and to the credibility of the industry.'

For the full story see TIO Media Release of 26 June:
http://www.tio.com.au/media_statements/RELEASES/2002/release_04.htm

The TIO is an independent non-government scheme with a dispute resolution focus. It is not a consumer advocate, but rather a service to help consumers and telecommunications companies resolve disputes.

If you experience difficulties with your ISP or other Telecommunications provider, you can contact the TIO (freecall) on **1800 062 058** or on-line at [<http://www.tio.com.au>](http://www.tio.com.au).

Recent developments

Domain names registration

The ACCC has had concerns for some time about consumers being misled about domain name registration and renewal services:

- in January 2001 the ACCC issued a 'Consumer Alert' in the form of a media release on the issue
- in February 2001 the ACCC produced a publication titled *Fair.com* to inform Internet service providers of their responsibilities under the Trade Practices Act
- on 8 March 2002 the Federal Court declared that Stephen Henry Wayt of *COM.AU REGISTER* had engaged in misleading and deceptive conduct in promotion of domain name registration services, as a result of ACCC action
- in April 2002 the ACCC instituted proceedings against the Internet Name Group (ING), alleging misleading claims made in their marketing

- in July 2002 the ACCC provided assistance through referring complainants to the au Domain Administration (auDA), who took legal action against Internet Registry for misleading statements in the course of solicitations for domain name renewals.

Consumers should be aware that there are many competing resellers that can register a domain name, and shop around like they do for any other product, seeking the best service and price. Domain name registrations are renewed every two years.

If you have not had previous dealings with this business, you are not obliged to renew your domain with them. If the solicitation seems misleading, report it to the ACCC on **1300 302 502**.

'Free' or 'unlimited' Internet access

In recent years the ACCC has pursued several cases of misleading conduct in the provision of Internet access. Particularly when businesses claim to offer 'free' or 'unlimited' access to the Internet. The ACCC also worked with the Telecommunications Industry Ombudsman in 1997 to investigate advertising claims and issued an information sheet to ISPs.

The ACCC recently instituted court proceedings against Internet TV Australia, or 'Free2Air' on 5 June 2002. Previous actions started with the court's decision on the use of the word 'free' in the Nationwide News Ltd case in 1996, and continued with enforceable undertakings from Microsoft and Prentice Hall in 1996. The Wavequest case followed in 1998, the GoConnect case in May 2000, and the Optus@home decision in November 2000.

It is clear that businesses cannot advertise 'free' or 'unlimited' Internet access, and then attempt to impose charges or limits through fine print, disclaimers, terms and conditions, or user policies.

Exercise products in 'infomercials'

The ACCC is currently in court with Danoz Direct Pty Ltd and Mr Moshe Ozana about their promotion of the 'Abtronic', represented as a muscle stimulation device.

The ACCC has asked the court for injunctions to stop the promoters from claiming that the Abtronic gives the results of up to 600 sit-ups in just 10 minutes without any effort, can flatten your stomach once and for all and other similar claims. The ACCC is alleging misleading conduct.

The Federal Trade Commission in the USA has also taken action against promoters of Abtronic, applying for injunctions to stop claims that the device will lead to loss of fat and inches, and is superior to other abdominal exercises.

More information: MR 113/02 9 May 2002
http://203.6.251.7/accc.internet/digest/view_media.cfm?RecordID=686

News from afar

Company touting unproven cancer treatment agrees to settle FTC charges

The Federal Trade Commission (FTC) warns of over 280 websites making questionable health claims.

A Southern California-based company that touted safe and effective 'alternative' treatments for cancer has agreed to settle FTC charges. BioPulse International, Inc., BioPulse, Inc. and their principals advertised in print and on the Internet that their therapies—'insulin-induced hypoglycemic sleep therapy' (IHT) and 'Acoustic Lightwave Therapy' (ALW) could effectively treat a wide variety of cancers and other serious diseases.

The U.S.-based company offered its purported treatments in a clinic in Tijuana, Mexico. The FTC alleges that the defendants did not have adequate substantiation for the safety and efficacy claims made for these treatments. As part of the settlement with the FTC, the defendants are permanently barred from misrepresenting the safety of IHT or any similar treatment and from making any unsubstantiated safety or efficacy claims for IHT, ALW, or any dietary supplement, food, drug, device, or any health-related service.

<<http://www.ftc.gov/opa/2002/07/biopulse2.htm>>

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- 29 July 2002** [Game Over for Sony Playstation](#)
- 26 July 2002** [ACCC Receives API/Sigma Merger Authorisation Application: Seeks Submissions](#)
- 25 July 2002** [ACCC Does Not Object to Temporary Price Increase for Airservices Australia](#)
- 24 July 2002** [International Expert on Electricity Markets Opens ACCC Conference](#)
- 22 July 2002** [ACCC Deregulates Local Call Services in Major Capital Cities](#)
- 19 July 2002** [ACCC Alleges Misleading Conduct About Tours to Aboriginal Land Near Uluru](#)
- 18 July 2002** [ACCC and Rural Press](#)
- 12 July 2002** [ACCC Institutes Against Wesfil Australia Pty Ltd Alleging Country of Origin Deception](#)
- 11 July 2002** [ACCC to Oppose Joint Venture Between Farm Pride Foods and Pace Farms](#)
- 10 July 2002** [ACCC Action Stops Pyramid Scheme in Home Loan Industry](#)
- 10 July 2002** [Federal Court Orders N.R.M.A. Health Insurance Ads Misleading](#)
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