

ACCC working in Western Australia

**2000-2001
report**





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Year in review

This is the fourth report in the *ACCC Working in Western Australia* annual series. It highlights some of the ACCC's regional activities in Western Australia during 2000–01, as well as national activities from a state perspective. It also includes some of the work planned for next year.

The year 2000–01 was the first full year of the GST and the ACCC used a large part of its resources to make sure that the benefits of the New Tax System were passed on to consumers and that businesses did not exploit consumers in implementing the tax changes. This involved an extensive public information campaign for business and consumers and the national monitoring of prices. The ACCC also set up a complaints-handling system capable of accepting and dealing with an unprecedented number of inquiries and complaints. Several successful enforcement cases resulted from investigations of complaints.

During the past year the WA office received many complaints and, in most instances, it resolved them without resorting to litigation. When the complaints concerned particularly serious conduct, the WA office negotiated court enforceable undertakings and took legal action where appropriate.

Looking forward

The Corporate Plan, launched in July 2001, highlights the ACCC's priorities, especially compliance in the public interest in areas such as unconscionable conduct, misleading and deceptive conduct and anti-competitive conduct. The ACCC is particularly committed to pursuing areas where problems are major, detriment to public welfare is significant, and meaningful results can be achieved.

During 2001–02 the ACCC will expand its communication with regional and rural Australia through new approaches. Twice a year it runs the Competing Fairly Forums by satellite throughout Australia for regional and rural small businesses. In addition the ACCC has created a new position of Manager, Rural and Regional Services (Western Australia) to provide the necessary outreach to small businesses and consumers in rural and regional WA. The manager will work closely with the ACCC's existing Small



Chairman
Professor Allan Fels



Regional Director
Sam Di Scerni



Associate Commissioner
Don Watt

Business Unit, the Small Business Manager (Western Australia) and the WA Regional Office.

To keep pace with the changing face of business, the ACCC has set up an e-commerce unit and some of its work will be undertaken through the WA office. Among other things the unit will look at aspects of e-commerce relating to both competition and fair trading.

The ACCC acknowledges WA-based Associate Commissioner Don Watt for this work on its behalf during the year.

The purpose of *ACCC working in Western Australia* is to provide the reader with a glimpse of the work done by the ACCC's WA office, and an appreciation of how it forms an integral part of the ACCC's national program.



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The WA office — how we work

Most ACCC investigations begin as a result of complaints made by consumers, businesses or associations. We therefore rely very much on the Western Australian public to let us know what is going on in the marketplace.



Making a complaint

The ACCC's Infocentre began operating on 1 July 2001. It is situated in Canberra and receives all telephone and email complaints and inquiries from consumers and businesses about their rights and obligations under the Trade Practices Act. The Infocentre operates between 8.30 a.m. and 6.00 p.m. and can be contacted on 1300 302 502. You do not have to give us your name, although that might limit the help we can give you. There is no fee or charge for making an inquiry or complaint.

While we cannot give legal advice in the same way a solicitor can, we can explain your rights and obligations under the Act, and how the ACCC is likely to react to a particular business practice.

If the Trade Practices Act does not apply to your problem we will usually suggest the appropriate government agency for you to contact, or suggest other options.

How the ACCC deals with your complaint

When the ACCC receives a complaint it obtains all the necessary information and assesses whether the law may have been broken. Information is collected from the complainant, other market participants and from traders themselves. The ACCC can also use its powers to require people to provide information, documents or attend an examination under oath.

Even when the ACCC believes the law has been broken it has to be selective in the matters it chooses to pursue. Generally it takes into account whether the matter involves:

- significant consumer detriment;
- blatant disregard for the law;
- new market issues, i.e. newly deregulated industries or e-commerce;
- the educative or deterrent effect of its action; and
- a need to test the reach of the Act.

When the ACCC pursues a matter it has several options for resolving it. It can choose to warn the businesses involved, it can work with the parties to reach an agreed outcome, it can accept court enforceable undertakings from the business or, if necessary, it can take the business to court.

Regardless of the option it chooses, the ACCC seeks to achieve these basic objectives:

- to stop the conduct from continuing;
- to make sure the affected parties are given appropriate remedies;
- to prevent the conduct from recurring (by both the business and industry at large); and
- where appropriate, to seek penalties.

If the ACCC chooses to take a matter to court, the court can make orders including declarations, injunctions, corrective advertising, compliance programs, damages, legal costs and penalties.



Keeping Western Australia informed

As well as investigating possible breaches of the Act the ACCC's role extends to educating consumers, businesses and industry about trade practices issues and changes in the law.

New publications (many of which are free) are continually being produced with the latest information on new products, industries and markets. The ACCC also published many GST and small business brochures during the year, as well as a short video on unconscionable conduct in conjunction with the Competing Fairly Forum on that topic.

For further information about publications you can visit the ACCC's main website at <<http://www.accc.gov.au>>; for its GST publications visit <<http://gst.accc.gov.au>>; or contact the Infocentre on 1300 302 502. The websites also contain all of the ACCC's media releases with information on hot topics and current actions.

Working in the community

The ACCC is constantly in touch with the Western Australian community through complaints handling, conducting investigations and providing advice. It has staff available to speak to community groups, business groups and educational institutions throughout the State.

Working with government and industry

The ACCC works in a dynamic environment in which its projects impinge on many industry and government players. During the year joint work was undertaken with a range of government and non-government organisations. The ACCC is grateful for the enormous cooperation and assistance provided by many organisations during the year.



The WA office maintains strong working relationships with several industry bodies, such as the WA Chamber of Commerce and Industry.

Staff regularly attend meetings of the Association for Compliance Professionals of Australia Incorporated, the Service Providers Access Network, the Commercial Crime Committee, the Public Sector Development Network, the Trade Practices Committee of the Law Council of Australia and the Franchise Council of Australia Ltd.

The WA office has developed strong cooperative working relationships with many Federal and State government agencies. State agencies include the Department of Consumer & Employment Protection (formerly the Ministry of Fair Trading), the WA Treasury, and the Small Business Development Corporation. Federal agencies include the Australian Securities & Investment Commission (ASIC), Australian Taxation Office, and the Department of Employment, Workplace Relations and Small Business.

During the year the WA Office of Health Review and the ACCC signed a cooperation agreement where both agencies agreed to exchange information, refer appropriate matters to each other and coordinate compliance education and enforcement matters. The agreement will allow complaints from consumers, individual practitioners and others in WA's health sector to be dealt with more effectively.

Working with small business, rural and regional communities

Throughout the year the Western Australian office continued the work of the ACCC's Small Business Program in delivering presentations to, and attending seminars with, small business operators, industry groups, small business associations, and chambers of commerce. These activities ensure that businesses are aware of their rights and obligations, and ensure the commercial environment is fair and competitive.



Competing Fairly Forums

The forum series was developed by the ACCC to reach small businesses all over rural and regional Australia, in conjunction with business groups, industry associations, local government and community organisations.

The forum is a satellite link-up of up to 90 regional towns across Australia. Local businesses are invited by a local convenor to attend the satellite broadcast to a venue in their town. They also have an opportunity to present questions relevant to business in their region to the panel for response during the broadcast.

So far, the Small Business Unit has broadcast three Competing Fairly Forums, the first of which explored general trade practices issues; the second, retail tenancy and franchising issues evolving from the 1998 unconscionable conduct provisions and the price exploitation role under the New Tax System; and the third, advertising and selling.

From the far reaches of Broome, Carnarvon, Geraldton, Northam, Kalgoorlie, Bunbury and Albany, the towns of Western Australia linked up with Perth to discuss advertising and selling in the October Competing Fairly Forum. The forum's success and relevance continues to grow since the initial satellite broadcast in November 2000.

Cooperation

To maximise its outreach efforts the ACCC's WA office combines what it does with those of other Commonwealth agencies, State government departments and industry and community associations that deal with small business. Several networks have been established and liaison is on-going through the WA Small Business Manager with numerous business and consumer organisations throughout the State.

The newsletter, *Retail Flash*, was jointly published with the Australian Retailers Association for the retail sector. It regularly informs small retailers about fair trading practices to improve their customer relationships.



Communication

The ACCC participated in the Business Opportunities Expo at Burswood in May 2001. This exposure provides an opportunity to raise the awareness of prospective franchisees and potential small business operators, who are often the most vulnerable in commercial arrangements, about the work of the ACCC. It also provides an occasion for the distribution of the ACCC's information booklets and brochures to consumers and business.

Regional and rural program

The program's regional and rural outreach service has been important in delivering information to small businesses in rural Western Australia. Within the WA office, two Rural Investigation and Liaison officers have been appointed with dedicated responsibilities for:

- visiting rural and regional centres and communities regularly to inform business and consumers of their rights and obligations under the Act. In a practical sense this will give businesses and consumers the chance to talk to ACCC officers face to face about their problems and concerns;
- fast tracking any investigations into complaints lodged by rural businesses and consumers with the ACCC; and
- developing and maintaining close working relationships with the business associations and community groups in rural centres to ensure that the ACCC support and information exchange continues.

During the year, visits were made to Albany and the Great Southern Region; Bunbury and Busselton in the south west; Carnarvon and the Gascoyne Region; Geraldton and other towns in the mid-west region; Port Hedland and Karratha in the Pilbara; and Broome and other major towns in the Kimberleys. Talks and presentations were made to businesses in these towns and individual business operators had the opportunity for private appointments with the Small Business Manager.

Franchising Code

The dispute resolution procedure under the Franchising Code has proved to be successful for solving problems and the ACCC encourages small business to use mediation to seek redress where appropriate.



Changes to the Act and the Franchising Code

Small businesses will also benefit from recent changes to the Trade Practices Act. They offer improved protection to small businesses especially regarding anti-competitive conduct. They also clarify that the unconscionable conduct provisions apply to State/Territory jurisdiction.



Changes to the Franchising Code of Conduct took effect 1 October 2001 and included the option of a short disclosure document for franchisors and electronic submission of documentation.

Working in e-commerce

The ACCC has set up a new e-commerce issues unit. E-commerce is a growing area of commercial activity with the potential to increase the welfare of all Australians by expanding business opportunities and offering a wider choice of products and suppliers for consumers. At the same time, dangers for competition and consumer protection may arise in the e-commerce sphere.

The unit will identify emerging trade practices issues in e-commerce, increase the level of awareness of such issues within the ACCC and develop strategies to help staff deal with them in their day-to-day work.

The unit will also assist other areas of the ACCC in developing computer forensic capabilities. To catch online offenders the ACCC needs to use the Internet effectively itself, and understand how to access and present evidence stored on computers and the Internet to the courts.

The unit will work with external agencies, industry and consumer groups to develop e-commerce compliance materials, and to ensure the ACCC is aware of broader policy considerations. The ACCC also liaises with international agencies in pursuing cross-border enforcement matters.

Can we work with you?

If you are an organisation that would like to work with the ACCC's WA office please contact us. We would be happy to talk to you about the ACCC's roles and functions and about relevant trade practices issues when we next visit your region.

WA office staff are available to give presentations as often as our workload permits. Meeting with consumer, business and community groups helps keep us in touch with everyday issues, and builds more effective cooperation in developing compliance with the law.



Achieving compliance in Western Australia



The following is an overview of the more significant enforcement and other compliance actions taken by WA office over the past year. Those relating to the introduction of the GST are in the New Tax System chapter on p.20.

Stopping anti-competitive conduct

The Trade Practices Act encourages competition in Australian markets by prohibiting anti-competitive conduct such as illegal price agreements, market sharing agreements, misuse of market power and anti-competitive mergers.

Price fixing

Joondalup Health Campus

In July 2000 the ACCC instituted proceedings in the Federal Court against the Western Australian branch of the Australian Medical Association (AMA (WA)), Mayne Nickless Ltd and others alleging that they were involved in price fixing and other anti-competitive conduct in breach of s. 45 of the Trade Practices Act.

The ACCC is alleging that the AMA (WA) and Mayne Nickless arrived at understandings which:

- prevented, restricted or limited the supply of medical services by some or all of the visiting medical practitioners (VMPs) to Mayne Nickless at the Joondalup Health Campus;
- fixed the prices for medical services supplied by the VMPs to Mayne Nickless for the care of public patients at the Joondalup Health Campus; and
- substantially lessened competition in the market for medical services for the care of public patients.

The ACCC is seeking court orders including declarations, injunctions, pecuniary penalties, costs and orders requiring the publishing of public notices and the institution of trade practices compliance programs. Litigation is continuing.

Pilbara panel beaters

In July 2001 the ACCC instituted proceedings in the Federal Court, Perth against four panel beating and spray painting businesses (two companies and two sole traders) in the Port Hedland region alleging the businesses were involved in price fixing.

The ACCC is seeking declarations, injunctions, orders requiring the implementation of trade practices compliance programs, and costs. Litigation action is continuing.

Helping small business

Unconscionable conduct

The following illustrate the type of cases handled by the WA office during the year to assist small business.

CG Berbatis Holdings and others (Farrington Fayre Shopping Centre)

In April 1998 the ACCC instituted proceedings against the owners of the Farrington Fayre Shopping Centre at Leeming alleging they, and other parties, engaged in unconscionable conduct in relation to leasing arrangements to certain tenants in the shopping centre.

In September 2000 the Federal Court found that the conduct of the owners, in one of the three pleaded cases, was unconscionable and in breach of the Act. This decision was appealed and, in June 2001, the Full Court overturned the original decision. The ACCC has subsequently sought special leave to appeal the Full Court decision to the High Court.

Samton Holdings

In February 1999 the ACCC instituted proceedings in the Federal Court, Perth, against Samton Holdings and the individual landlords alleging they had engaged in unconscionable conduct toward one of their tenants in a lunchbar.



In November 2000 the court dismissed the ACCC's application — a decision that was subsequently appealed by the ACCC. The Full Court appeal hearing was held on 28 May 2001 with the decision reserved.

Franchising Code of Conduct

Section 51AD prohibits contraventions by corporations of mandatory industry codes of conduct. The Franchising Code of Conduct was declared a mandatory industry code in July 1998.

Half Price Shutters

The ACCC instituted proceedings in August 2000 in the Federal Court against Perth-based company, Australian Industries Group, trading as Half Price Shutters, and Mr Anthony Gullotti, national manager, alleging breaches of the Trade Practices Act.

The ACCC alleges that Half Price Shutters breached the Franchising Code of Conduct by entering into licence agreements that were franchises; published an advertisement for employment when this was not true; and made false representations about the profitability of its businesses.

It also alleges that the national manager of Half Price Shutters, Mr Gullotti, and Half Price Shutters acted in an unconscionable manner by:

- threatening to cease providing work;
- failing to act within the relevant industry code;
- failing to act in good faith; and
- exploiting the weaker bargaining position of the purchasers.

The ACCC is seeking declarations that Half Price Shutters engaged in conduct contravening the Act; that Mr Gullotti was a party to the contravention under s. 51AC of the Act; that the contract between Half Price Shutters and its installers is void *ab initio*; injunctions restraining Half Price Shutters and Mr Gullotti from engaging in the conduct referred to; that Half Price Shutters implement a trade practices compliance program; and compensation and costs. Litigation is continuing.



Helping consumers

All actions of the ACCC affect the welfare of Australians. One of the ACCC's major functions is consumer protection and this is reflected in the number and type of cases it takes on, and the results achieved for consumers.

The ACCC complements the consumer protection role of State and Territory consumer protection agencies that administer their mirror legislation. The ACCC has a cooperative agreement with the WA Department of Consumer and Employment Protection that formalises the links between the two agencies.

Some of the areas in which the ACCC took action to protect and help consumers include:

- unconscionable conduct in consumer transactions;
- claims of harassment by debt collectors;
- fine print advertising;
- enforcing product safety standards; and
- misleading claims regarding health and/or cosmetic products and services.

Most problems and complaints between consumers and traders are minor and are resolved well before legal action becomes necessary. They are dealt with swiftly and effectively, ensuring that businesses know about the law and how to comply, and that consumers are compensated if there is a genuine problem.

The following are some of the matters dealt with by the WA office illustrating the breadth of issues the ACCC takes on.

Unconscionable conduct

Lux Pty Ltd

In July 2000 the ACCC instituted proceedings in the Federal Court, Perth, alleging that Lux Pty Ltd, through its sales agent, had acted unconscionably and had used coercion in selling a vacuum cleaner to an intellectually impaired couple.

The ACCC is seeking orders from the court including declarations, injunctions, corrective notices, a trade practices compliance program, the voiding of the contract, and costs. Litigation is continuing.



Harassment and coercion in debt collection

Cash Return Mercantile

In late 1999 the ACCC instituted legal action against Cash Return Mercantile Pty Ltd and a former debt collection agent alleging that they engaged in undue harassment, coercion and misleading conduct while collecting debts from consumers, breaching s. 60 of the Trade Practices Act.

On 1 August 2000 the Federal Court found that Cash Return and its agent:

- made an excessive number of telephone calls to debtors;
- adopted a threatening, aggressive and abusive manner in those telephone calls; and
- misled debtors and others about debt recovery procedures and the consequences of non-payment of debts.

The court found that the recovery of unpaid debts can be pursued with firmness, determination and civility without resorting to bullying, bluff, misrepresentation or stand-over tactics.

The ACCC's action serves as a warning to debt collectors and suppliers that consumers are protected by the Act from unfair or intimidating behaviour.

Esanda Finance Corporation Ltd and others

In April 2001 the ACCC instituted proceedings in the Federal Court against Esanda Finance Corporation Ltd, Capalaba Pty Ltd trading as Nationwide Mercantile Services, and several individuals alleging the use of physical force, undue harassment and coercion and unconscionable conduct in the supply and payment for services by a consumer.

The ACCC has also alleged some individuals breached s. 23 of the *WA Fair Trading Act 1987* (which mirrors s. 60 of the Trade Practices Act). Litigation is continuing.



Honesty in advertising and promotions

Paul and Linda Storer

In July 2000 the ACCC instituted legal proceedings against Mr Paul Storer, and later Mrs Linda Storer, of the Chronic Fatigue Syndrome Advisory Centre in Perth alleging that they had made misleading claims about his professional qualifications and the success rates of his treatment plan for chronic fatigue syndrome (CFS).

Mr Storer claimed he:

- was a doctor of microbiology and that he had attained his PhD at the University of Western Australia;
- was obtaining 60–70 per cent success rates in treating CFS sufferers; and
- that the product he was promoting, Probiotics, can be used successfully to treat a condition generally described as CFS.

On 20 April 2001 the Federal Court, through consent orders, handed down declarations that Mr Paul Storer and Mrs Linda Storer had engaged in false and deceptive conduct and made misrepresentations in relation to Paul Storer's professional qualifications and the treatment of chronic fatigue syndrome.

The court also handed down injunctions and ordered the Storers to offer refunds to consumers who were misled by the representations and also required the Storers to participate in a trade practices compliance seminar, and to publish corrective notices in prominent newspapers to inform the public of the decision.

Slendertone Health & Beauty Pty Ltd, Emerald Ocean Distributors Pty Ltd, Mr Sean O'Donoghue

This action concerns alleged misleading claims by Slendertone Health and Beauty Pty Ltd and associated parties, who retail electromagnetic stimulation devices under the brand name 'Slendertone'. They claimed their devices were capable of toning the body without any physical effort or additional dietary requirements. The ACCC commenced litigation action in July 2000.



The ACCC alleged that the claims were false and misleading, as claims about the uses or benefits of the treatment program to tone the body and reducing waist measurements could not be substantiated. The ACCC also alleged that the claims of cosmetic benefits arising out of passive electrical stimulation are not supported by any research.



The ACCC is seeking declarations, injunctions, the publishing of corrective notices, refunds to affected consumers and the institution of a corporate compliance program. Litigation is continuing.

Pyramid selling

Section 61 prohibits the promotion of, or participation in, pyramid selling schemes in which a person makes a payment to a corporation with the prospect of receiving payments for the introduction of other participants to the scheme.

Greenstar Cooperative Ltd

In June 2001 the ACCC instituted proceedings in the Federal Court alleging Greenstar Cooperative Ltd and others engaged in pyramid and referral selling to promote an organic fertiliser product and transaction card, and alleged misleading and deceptive conduct and false representations regarding the transaction card.

In the course of proceedings, the ACCC obtained interim injunctions preventing the promotion of the Greenstar scheme until the matter is determined at trial or earlier order, and a mareva injunction freezing the assets of Greenstar. Litigation is continuing.

Internet pyramid selling

The Internet has become widely used by consumers to access a wealth of information and to buy a vast array of goods and services. It also enables consumers to engage in transactions that are not just instantaneous but span national borders. These very qualities make it a powerful resource for unscrupulous operators who manipulate the technology for scams such as pyramid selling schemes.

The ACCC is keen to protect the interests of consumers in such situations — for example, in legal proceedings against Kevin Ryan, who participated in a scheme called Skybiz 2000 Home Based Business.

Kevin Ryan and SkyBiz

The ACCC instituted legal proceedings in the Federal Court in Perth against Mr Ryan in August 2000 alleging he contravened the Trade Practices Act by attempting to induce others to become participants in the pyramid trading scheme promoted by SkyBiz.com, Inc.

In August 2001 the court handed down orders by consent declaring that Kevin Ryan had breached the Act by promoting the scheme. In settlement, Mr Ryan has consented to orders in which the court:

- declared that he had breached the Act by attempting to induce persons to take part in a pyramid trading scheme by representing to them that they would receive payments if they in turn introduced other persons into the pyramid scheme, in breach of the Act;
- accepted his personal undertaking that he will not take part in, or induce or attempt to induce others to take part in the pyramid scheme; and
- ordered that he pay a contribution to the ACCC's costs.

No intention to supply

Section 58 of the Act prohibits a corporation from accepting payment for goods or services when it does not intend to supply them or intends to supply goods or services materially different from those paid for.



Info4pc.com Pty Ltd

In January 2001 proceedings were instituted in the Federal Court, Adelaide, against Info4pc.com Pty Ltd alleging it had engaged in misleading or deceptive conduct, bait advertising and had accepted payment with no intention to supply. Shortly thereafter the matter was transferred to the Federal Court in Perth. An ex parte interim injunction restrains the company from, among other things, advertising and accepting orders for computers and/or upgrades, and freezes the company's business bank account. Litigation action is continuing.



Fine print advertising

The ACCC's focus on the inappropriate use of small print has prompted greater industry education and investigation of misleading advertising which has the potential to cause significant consumer detriment.

Target

The ACCC instituted proceedings in the Federal Court, Perth, on 5 September 2000 alleging that certain Target national television and newspaper advertisements, which appeared in early 2000, breached the Act. The 'Every Stitch of Clothing' promotion, for example, stated in large print that substantial percentage price reductions applied to a broad category of goods but also used fine print to exclude certain items from the discount sales.

On 25 June 2001 the court, through consent orders, declared that the advertisements were false, misleading and deceptive. It ordered Target to broadcast a corrective advertisement nationally on 88 television stations and to publish corrective notices in 37 newspapers across metropolitan, regional and rural Australia. The court also issued injunctions restraining Target from advertising in the same way for four years, ordered Target to review its trade practices compliance program, and ordered Target to pay ACCC costs of \$65 000.

Keeping products safe

Consumers have the right to be protected against products that are hazardous to health or life. Many products are subject to mandatory consumer product safety and information standards and some goods are banned outright.

Compulsory consumer product safety standards for particular goods may be made by regulation or declared by the Minister for Financial Services by notice in the Commonwealth Government Gazette.

Currently there are 24 mandatory product safety and information standards and nine banned products. At least two new mandatory product safety standards are likely to be gazetted over the coming year.

The ACCC carries out national surveys twice a year to ensure compliance of goods and to inform businesses of their responsibilities. These surveys often result in the withdrawal from sale of some products.

The WA office works closely with the local Department of Consumer and Employment Protection during the survey periods to avoid duplication when surveying particular products. Some of the products surveyed include vehicle and trolley jacks, children's nightwear, toys for children under the age of three, child restraints, bean bags, children's cots, bicycle helmets, cosmetics, tobacco products and sunglasses. The level of compliance has been high. Any problems encountered have generally been remedied promptly.

Monza Imports Pty Ltd and Apollo Optical (Aust) Pty Ltd

The ACCC instituted proceedings in July 2001 alleging that both Monza Imports Pty Ltd and Apollo Optical (Aust) Pty Ltd supplied sunglasses that do not comply with the field of view requirements of the relevant mandatory product safety standard. On 17 October 2001, the court declared, in consent orders, that each of the companies had breached The Publishing Act and made orders covering injunctions, refunds, the publishing of public notices, compliance programs and contributions to costs.



LPG prices

In 1998–99 the ACCC undertook an informal inquiry to assess the prices of liquid petroleum gas (LPG) — sold as automotive transport fuel and also in LPG cylinders — in Western Australia, after receiving complaints about the high level of prices in WA compared to those in the eastern States.



A draft report, issued in September 1999, found that LPG prices in Perth were, in fact, higher and more stable than those in the eastern State capital cities. This disparity appeared to reflect a lack of competition in the Perth market. It also found that the WA market was relatively small and immature so that unit costs were probably higher than in the larger markets.

Retail price movements in Perth seemed to have a less direct relationship with changes in producer prices than in other cities in Australia and this supported the view that pricing may reflect factors other than cost, such as supply arrangements, and possible structural problems, in the Western Australian market.

The WA office then undertook an extensive investigation into the concerns highlighted in the report, including the supply arrangements within the industry. The ACCC could find no evidence of breaches of the Trade Practices Act by participants in the LPG market in Western Australia.

However, close monitoring of the LPG pricing patterns in Perth since September 1999 has shown that the pricing disparity between Perth and the other capital cities has largely disappeared. Perth motorists now buy LPG at roughly the same prices as motorists in the eastern State capitals.

The ACCC will continue to closely monitor movements in LPG prices in Perth and other capital cities to determine whether this alignment represents a fundamental change or is only a temporary adjustment.

The New Tax System

During 2000–01, the first year of the New Tax System, a large part of the ACCC's resources made sure that the benefits of the New Tax System were passed on to consumers and that businesses did not exploit consumers when implementing the tax changes.

The ACCC felt that price exploitation was more likely to happen in ill-informed markets and so provided a lot of information quickly to business and consumers. It also monitored prices nationally, investigated complaints and followed them up with enforcement action.

The ACCC began an extensive price-monitoring program, collecting data from specially commissioned surveys and other public and private sources.

After one year of the GST the ACCC found that most businesses had complied with its guidelines, correctly adjusting prices. The impact occurred mainly in the September 2000 quarter and was consistent with the ACCC's estimates of the effects of the tax changes.

Although some prices have risen further since, or are still rising, these have generally been in line with underlying inflation that was evident before the tax changes occurred.

Many companies that completed public compliance commitments have advised the ACCC their prices will not increase any more from the tax changes.

The ACCC has continued to work with business to ensure they understand their pricing obligations under the New Tax System. In response to complaints and inquiries about GST-exclusive price displays and advertisements, the ACCC produced a poster for the retail sector to reinforce the message that prices should include GST. Over 200 000 of these posters, carrying the message 'No one likes to be misled — Prices should include GST', were distributed through business and industry groups, local government councils and other agencies.



To ensure that consumers fully benefited from reductions in indirect taxes, the ACCC:

- issued guidelines to business on conduct likely to constitute price exploitation;
- ran an extensive consumer and business education program, including campaigns focused on NESB/ATSI communities, so they knew what to expect during the changeover to the GST;
- monitored prices to ensure all displayed and advertised prices were GST-inclusive;
- produced a wide range of publications;
- established a national GST hotline — 1300 302 502;
- set up a purpose-built GST website <<http://gst.accc.gov.au>>;
- used staff in every capital city to investigate price exploitation allegations; and
- supported hefty penalties for those who engaged in price exploitation — up to \$10 million for corporations and \$500 000 for individuals.

All GST-related enforcement matters undertaken during the year were generally resolved quickly and without the need for court action. Once made aware of the issue most businesses were quick to amend prices or advertising to ensure compliance with the law.

The following are some of the matters dealt with by the WA office in relation to the New Tax System.



Commodore Homes (WA) Pty Ltd

In proceedings instituted in April 2001 the ACCC alleges that in the lead-up to the introduction of the GST, Commodore Homes represented to potential homebuyers that if they signed up with them, their homes would be built by 1 July 2000 and they would avoid having to pay GST. The ACCC is seeking declarations that Commodore Homes' conduct breached the Trade Practices Act; orders restraining Commodore Homes from engaging in such conduct in the future; for Commodore Homes to publish a corrective public notice and implement a trade practices compliance program; refunds of the GST money paid to Commodore Homes by those affected homebuyers; and costs. Litigation is continuing.

Goldy Motors

In December 2000 the Federal Court declared that Goldy Motors, a Perth car dealership, had breached the Trade Practices Act by encouraging consumers to purchase vehicles before 30 June because it was their 'Last chance to buy...GST FREE!!'. The Federal Court also found that the 'No Finance Application Refused!' statement in the advertisement was misleading because the small print qualifier, 'T.A.P.' — to approved purchasers — was inadequate as some consumers might be unaware of the meaning of the letters. They may also have misinterpreted the wording in such a way as to equate 'acceptance' of a finance application with 'approval' of that application.

The court also handed down other orders, including:

- injunctions preventing Goldy Motors from engaging in similar conduct in the future;
- orders that corrective advertising be published;
- refunds or an alternative form of appropriate compensation for consumers induced by the advertisement into purchasing a car and/or applying for finance before 30 June 2000 as result of the advertisement; and
- costs against Goldy Motors.



Mergers



The ACCC assesses mergers and acquisitions under s. 50 of the Trade Practices Act. This section prohibits mergers and acquisitions that would have the effect, or would be likely to have the effect, of substantially lessening competition in a substantial market.

Rio Tinto and North Limited

The ACCC decided not to intervene in Rio Tinto's acquisition of North Limited. The main areas of competitive overlap between the parties are in the mining of iron ore, copper, gold, zinc and uranium. Virtually all of the two companies' Australian production of these metals is exported.

The ACCC also considered the potential competitive impact of the merger proposal on the markets for the provision of rail and port infrastructure in the Pilbara region. It found that while there are some issues relating to access to, and use of, third party infrastructure, the competitive effects of the merger proposal in these markets will not influence decisions by rail owners to provide access.

The ACCC decided that the acquisition of North Limited by Rio Tinto is unlikely to result in a substantial lessening of competition in any Australian market.

De Beers and Ashton Mining

On 31 July 2000 De Beers, the world's largest diamond mining company, announced a takeover offer of Ashton Mining. Rio Tinto announced a counter bid on 29 August 2000.

The ACCC conducted extensive market inquiries, contacting market participants, overseas competition authorities, government and a range of other interested parties. In the course of its market inquiries, the ACCC examined both the national and global markets for the sale of rough diamonds.

The ACCC's inquiries found that market participants consider the market for rough diamonds to be global and the majority of sales occur in Europe. The ACCC concluded that there is unlikely to be a substantial lessening of competition in any substantial market in Australia.

Billiton and the Worsley joint venture

The ACCC did not oppose the acquisition by Billiton of up to 86 per cent of the Worsley joint venture.

Alcoa and Billiton are the first and fourth largest producers of alumina and aluminium in the world. Under an agreement with the European and American competition authorities, Alcoa is required to divest its interest in Worsley to allay competition concerns arising from its earlier acquisition of Reynolds Metals.

Worsley's assets consist of bauxite mining and alumina refining operations situated in the Darling Ranges in Western Australia. In 2001 Worsley is expected to produce 3.1 million tonnes of alumina, all of which is to be exported for use in overseas aluminium smelters. The present stakeholders in Worsley are Alcoa/Reynolds with 56 per cent, Billiton with 30 per cent and a Japanese consortium with 14 per cent.

Most producers of alumina are vertically integrated through bauxite mining to aluminium smelting. Over two-thirds of alumina produced is consumed by integrated aluminium producers. The remaining production is sold either at a 'spot price' or via long-term contracts to traders, non-integrated smelter operators or integrated smelter operators who are deficient in alumina. This non-integrated market for alumina is often referred to as the market for 'untied' alumina.

In reaching its decision the ACCC noted that Billiton is expected to control less than 10 per cent of the worldwide trade in untied alumina post acquisition. Further the acquisition is not expected to result in the concentration of the Australian alumina market.



RACWA and Royal and Sun Alliance — WA insurance joint venture

The ACCC decided not to intervene in the joint venture between the RACWA and Royal and Sun Alliance as it would not have a market share sufficient to raise competition concerns in any of the insurance categories identified.

The ACCC noted that, while the RACWA is a strong player in motor vehicle insurance in Western Australia, Royal and Sun Alliance has a small presence.

After conducting market inquiries, the ACCC found that strong competition from other insurance companies, particularly the NRMA and its WA subsidiary, SGIO, would ensure that the market would remain competitive after the merger.

Wesfarmers' acquisition of IAMA

The ACCC has approved, subject to certain undertakings, the Wesfarmers Dalgety's acquisition of IAMA (Wesfarmers Dalgety is a fully owned subsidiary of Wesfarmers). In July 2000 IAMA announced that it was holding discussions with Wesfarmers about a potential merger between IAMA and Wesfarmers Dalgety whereby Wesfarmers would become the major shareholder in IAMA. In November 2000 IAMA and Wesfarmers announced their intention to merge the IAMA and Wesfarmers Dalgety businesses.

Based on information collected during market inquiries, the ACCC had concerns that:

- the proposed merger would substantially lessen competition in several markets for farming inputs in WA;
- a situation may develop whereby Wesfarmers not only owned the dominant brand of fertiliser in CSBP, but also took majority ownership of IAMA, the primary distributor of CSBP's main competitor in Summit; and
- the high level of market concentration that a merged Wesfarmers Dalgety and IAMA would achieve in regard to herbicides and animal health and nutrition products and the possible ramifications this could have on competition for these products in Western Australia.



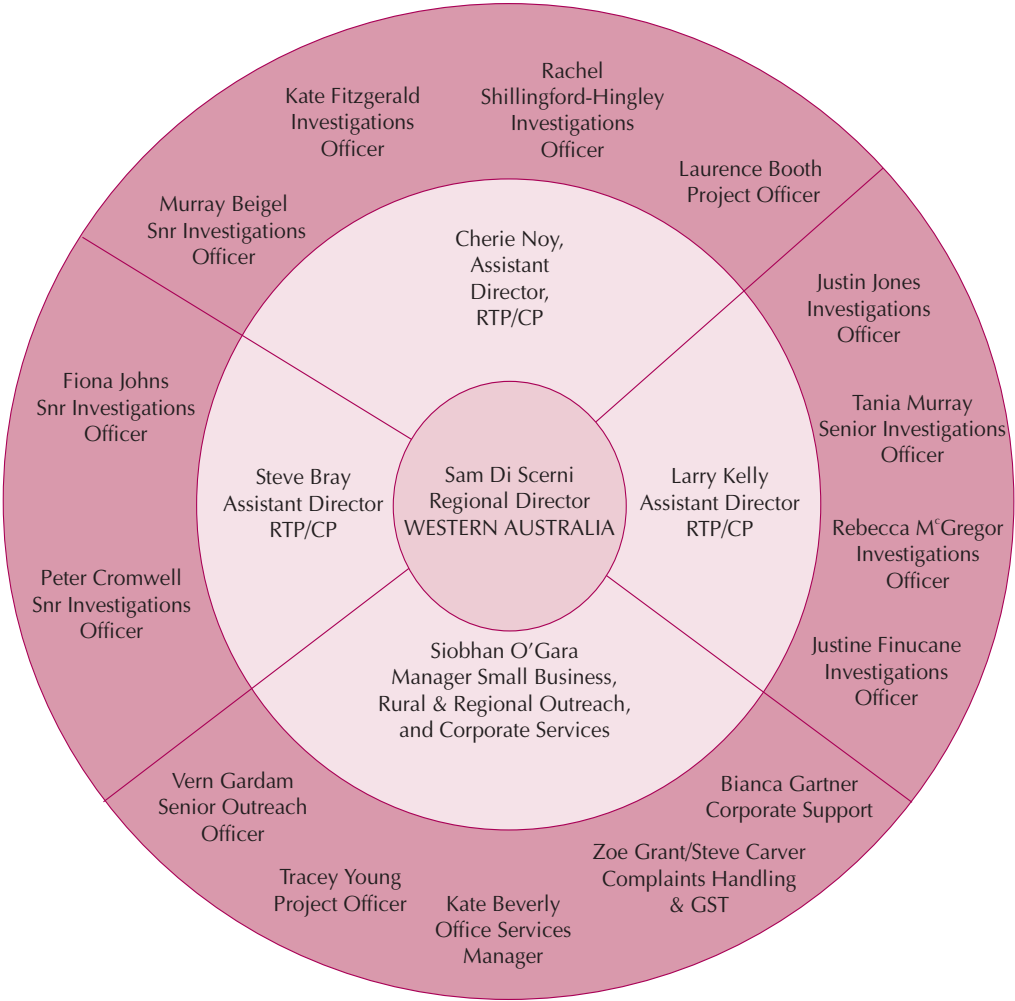
The ACCC has accepted undertakings from the parties that overcome these concerns. These include:

- the sale of some rural merchandise outlets which will reduce the market concentration of the new business; and
- the new merged entity will take no steps, in the next two years, to constrain the terms upon which the agents and affiliates of the new business will deal with fertiliser suppliers and will continue the existing distribution agreement between IAMA and Summit.

After taking account of the undertakings offered by the parties, the ACCC believes that the proposed acquisition is unlikely to lead to a substantial lessening in competition.



WA organisation chart



Office contacts

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Websites

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