

IMPORTANT NOTICE

Amendments to the *Trade Practices Act 1974* (the Act) have resulted in changes in several areas within this publication. This publication is therefore currently under review.

The main areas of change are:

Deputy chairperson

A second deputy chairperson position has been created for the ACCC.

Misuse of market power (s. 46)

Section 46 has been amended to provide that a corporation must not take advantage of a substantial degree of market power, either in the market in which the power is held, or any other market, for a proscribed purpose. The matters a court may consider in determining the degree of market power that a corporation has in a market, or may take into consideration when determining whether a corporation has misused its market power, have been expanded.

Section 46 now provides that a body corporate may have a substantial degree of market power even though it does not substantially control the market or does not have absolute freedom from constraint by the conduct of its competitors, suppliers or customers. Also, more than one corporation may have a substantial degree of power in a market.

Anti-competitive below-cost pricing by corporations with substantial market share is the subject of several amendments. A corporation with a substantial share of the market must not supply or offer to supply goods or services for a sustained period at a price below the relevant cost of the supply to the corporation for a specified anti-competitive purpose. Also, a court may have regard to the supply of goods or services by a corporation for a sustained period at a price below the relevant cost of the supply to the corporation, and the reasons for that conduct, when determining whether a corporation has breached s. 46(1). In considering whether a corporation has a substantial market share, the court may consider the number and size of competitors in the market.

These amendments are also included in the Competition Code.

Telecommunications

Sections 151AH and 151AJ have been amended to mirror, as appropriate, amendments to s. 46.

Unconscionable conduct in business transactions

The matters a court may consider in determining whether a breach of unconscionable conduct provisions ss. 51AC(1) or 51AC(2) has occurred now expressly include whether a party has a contractual right to unilaterally vary a term or condition of a contract between a supplier and a business consumer, or between an acquirer and a small business supplier.

Section 51AC will now apply to transactions of up to \$10 million, an increase from \$3 million previously.

For more information

Contact the ACCC Infocentre on 1300 302 502.

Some of the above amendments have been affected by further amendments in 2008. For information about the 2008 amendments, please see the ACCC's 2008 notice of amendments December 2008.