part

two

performance

achieving outcome one

enhancing social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets

evaluation by results

measured against performance indicators defined in the ACCC portfolio budget statement 2002–03

output group 1.1.1

[compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed]

respond quickly to allegations of breaches of competition, fair trading and consumer protection legislation

received 89 175 inquiries and complaints from business and consumers concerning competition and consumer issues, 53 532 of these matters were recorded in the ACCC's national complaints database

answered within 20 seconds more than 54 000 (83 per cent) of the 65 349 telephone calls received by the infocentre

seek appropriate remedies when there is a breach of the law

concluded 48 cases this year, plus 30 public undertakings accepted; commenced 39 new cases, 10 of which were concluded this year; 71 cases currently before the courts

announced a leniency policy to help detect and dismantle secret cartels with the subtle message to conspirators: confess your company's cartels to the ACCC now before your competitors report your company, and you personally

monitored performance of court orders and undertakings; took action to ensure that remedies ordered in concluded litigation and agreed to in public settlements were honoured

took action to recover the debts in all litigation matters resulting in judgment debts not paid as ordered by the court, including assessing respondents' capacity to pay; no judgment debts were waived or written off

enforce mandatory product safety and information standards

completed survey and complaint investigations that led to the withdrawal from sale and/or recall of 39 different products

conducted at retail outlets across Australia 28 surveys for products subject to safety standards and 41 surveys for banned goods; seven enforceable undertakings and one court-ordered injunction resulted from product safety surveys

develop new consumer protection and investigative initiatives for e-commerce

evaluated and upgraded electronic investigation capabilities, including assessment of practices of overseas regulators, monitoring of new software products, training delivery in basic awareness to all ACCC investigators, training of e-commerce staff in forensics

contributed to: au Domain administration review of code of practice for domain name licence sales, government review of spam, ongoing development of the econsumer.gov international consumer complaint facility and streamlining data exchange between state and federal consumer protection agencies

took successful court action against internet businesses for fair trading contraventions

liaise with and inform business and consumers about the law so that they can, in turn, inform their members and customers

held more than 650 meetings with small business and regional consumers, gave 238 presentations and participated in 25 conferences and seminars, represented the ACCC at 64 international meetings

visited 190 rural and regional towns to contact businesses and consumers, using direct satellite feeds for some educational programs

issue publications and media releases, speak to the public, conduct public meetings and conferences and use the latest technology to reach business and consumers throughout Australia

produced 88 new publications; printed in total 800 000 copies of publications

issued 317 media releases; 111 speeches delivered by Commissioners

sent *ACCC Consumer Express* monthly email newsletter to 1482 subscribers and *ACCC Briefing* bi-monthly email newsletter to 1681 small businesses; emailed *ACCC Infolink* monthly one-pager for small businesses to more than 1000 subscribers; produced three editions of *Retail Flash*, a newsletter for retailers and distributed 40 000 copies

work with other competition, fair trading and consumer protection agencies in Australia and overseas

worked with 87 agencies from 24 countries in evaluating thousands of travel agency websites worldwide with 1269 suspected websites identified internationally for follow-up

hosted 49 delegations from 21 countries

Australia held presidency of the International Consumer Protection and Enforcement Network; hosted meetings in Sydney in September 2002 and Port Douglas in April 2003; participated in the International Competition Network

consulted with the European Commission and the Federal Trade Commission in the United States on the worldwide merger between Pfizer and Pharmacia

received 160 requests for information from 41 countries and made 153 requests to 32 countries, including on enforcement issues

conducted seven staff exchanges with Canada, New Zealand, Chinese Taipei, Hong Kong, the United Kingdom, Ireland and the United States

signed a tripartite arrangement with the Taiwan Fair Trade Commission and New Zealand Commerce Commission and a bilateral cooperation arrangement with the Korean Fair Trade Commission

collect statutory fees and judgment debts

collected total revenues administered on behalf of the government including fines and costs, and authorisations fees totalled $7 912 000 compared to $7 152 000 last year

output group 1.1.2

[competitive market structures and informed behaviour]

assess the competition effects of mergers, acquisitions and asset sales

examined 191 mergers, acquisitions and asset sales for their compliance with section 50 of the Trade Practices Act; 182 were not opposed, nine were opposed, two were allowed to proceed after the acceptance of undertakings

ensure that access regulation provides incentives for efficient business investment and use of infrastructure

maintained transmission prices in real terms with substantial increases in investment; more than $700 million in new investment over five years in three revenue cap decisions, covering electricity transmission networks in Victoria and South Australia; enabled service providers to meet growing electricity demand and deliver improved reliability of supply

with three decisions, saved electricity customers in two states about $425 million in five years when compared to proposals submitted by service providers

included in gas reference tariffs an incentive for providers to out-perform benchmarks, retaining profits from efficiency gains

included consideration of investment incentives in telecommunications in the decision to declare a line sharing service; undertook a major survey of telecommunications infrastructure, to establish investment levels and trends in the sector

ensure that businesses using monopoly services pay prices that reflect efficient costs

ensured that reference tariffs for access to monopoly gas pipeline services reflected efficient costs of providing the services with four access arrangements and two revisions completed

accepted undertakings for content sharing agreement between Foxtel and Optus

finalised an anti-competitive conduct investigation into Telstra's agency arrangements

accepted court enforceable undertakings from Vodafone regarding fastfone prepaid services

completed major cost-based assessment of Australia Post, with incentives for future cost reductions put in place

opposed price increases for Airservices Australia

issued stevedoring monitoring report showing average company costs continued to decline

adjudicate authorisations applications (where anti-competitive behaviour is claimed to deliver public benefits)

made 41 final determinations for 89 applications for authorisation (including gas, electricity, mergers and other authorisations)

received 61 new applications for authorisation, 21 new applications for minor variation to an existing authorisation, 11 new applications to revoke an existing authorisation and grant a substitute authorisation, 11 requests to revoke an existing authorisation, and 248 notifications for exclusive dealing

develop industry specific codes of conduct

provided technical assistance in developing and reviewing of industry and consumer codes of conduct

publicise merger and authorisation decisions, arbitrations, undertakings and access arrangements and monitor activities and inquiry findings

issued 36 media releases on merger and authorisation decisions, 18 on undertakings, seven on gas access arrangements and six on inquiries and reports

provided more detailed findings of all ACCC decisions on the ACCC website and in six editions of the *ACCC Journal*; regulatory decisions appeared in three issues of the utility regulators' forum publication, *Network*

assist parliamentary inquiries and government agencies to develop policies and processes that are consistent with the competition, fair trading and consumer protection laws

produced more than 80 submissions, papers and reports in response to parliamentary and government requests

made submissions to reviews of 11 mandatory product safety standards, nine Australian standards and three product safety bans

liaise with other regulators, business and consumer associations, speak to the public, participate in meetings and conferences, nationally and internationally

held 10 advisory group meetings with industry and consumer representatives

conducted two round table discussions on the smash repair industry, one on retail tenancy and one on motor vehicle advertising

coordinated the initiative targeting vulnerable consumers with the consumer consultative committee; established the franchise consultative panel to work on emerging issues

worked with network industry regulators through the regulators forum, energy committee and working groups, the natural gas pipelines advisory committee, the National Competition Council, Australian Communications Industry Forum, New Zealand Commerce Commission and the Commonwealth Department of Industry, Tourism and Resources

help overseas trading partners to develop and implement effective competition regimes to benefit Australian industry

provided technical assistance to four countries: Vietnam, Fiji, Barbados and Zambia

participated in 11 conferences and forums concentrating on promoting fair market practices

monitor prices to assess the impact of market conditions on price levels of goods and services

monitored prices formally and informally for petrol, diesel, liquefied petroleum gas, compact discs, books, computer software, bank fees and charges, aeronautical and aeronautical-related services, container stevedoring, freight rates for international liner cargo, public liability and professional indemnity insurance, medical indemnity insurance; seven reports released

resource table

outcome one

to enhance social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed markets

		budget $'000	additional revenue $'000	total revenue $'000	acutal expenses $'000	net surplus (deficit) $'000
output 1.1.1 compliance with competition, fair trading and consumer protection laws	2001–02	57 716	685	58 401	50 522	7879
	2002–03	**41 290**	**332**	**41 622**	**52 293**	**(10 671)**
	2003–04	41 067				
output 1.1.2 competitive market structures and informed behaviour	2001–02	25 744	444	26 188	21 733	4455
	2002–03	**21 270**	**255**	**21 525**	**21 057**	**468**
	2003–04	25 550				
output group 1.1	2001–02	83 460	1129	84 589	72 295	12 294
	2002–03	**62 560**	**587**	**63 147**	**73 350**	**(10 203)**
	2003–04	66 527				

		total
average staffing level	2001–02	478.2
	2002–03	**468.6**
	2003–04	465.0

promoting effective competition and informed markets

encouraging fair trading and consumer protection

The primary responsibility of the ACCC is to serve the public interest by ensuring that businesses, and the people behind them, are aware of and comply with the **competition, fair trading and consumer protection** laws.

Voluntary compliance with the law, especially a corporate culture of compliance within businesses, is strongly encouraged by the ACCC.

The ACCC **communicates** widely, to assist businesses understand and meet their legal obligations and to inform consumers about their rights. It publishes extensive general and targeted information about the law and the ACCC's role in securing compliance, liaises with a diverse range of interested parties, and provides information directly to the tens of thousands of inquirers who contact the ACCC each year.

When businesses choose to act unlawfully, or fail to take adequate measures to ensure compliance and do not remedy their conduct, the ACCC acts to stop serious consequences for consumers by **enforcing compliance** with the law.

Businesses that break the law gain illegal advantage at the expense of all Australians. They hurt consumers directly and sabotage the dynamics of competition that benefit consumers.

Those who engage in **anti-competitive conduct** deprive consumers of better prices, quality and choice in goods and services at the most fundamental level. Those who engage in **misleading or unconscionable conduct** also cause loss and damage to consumers, directly and by wrongly disadvantaging other businesses.

The Australian public—consumers and business—are the ACCC's **undercover investigators** in detecting non-compliance with the law. With millions of consumers testing market performance and business engaging in transactions every day, and many thousands of those reporting matters of real concern every year, the ACCC is very well assisted in identifying conduct and issues which require its particular attention.

Many anti-competitive and deceptive practices are not readily detectable by market participants and the ACCC makes **inquiries** and conducts research and analysis, to identify obscured non-compliance and emerging issues.

The ACCC is unable to **investigate** all possible contraventions of the law that come to its attention, and focuses on those that fall within its priorities. During the year the ACCC received more than 40 000 complaints relevant to the Act, identified about 660 for possible investigation, investigated about 220 matters in detail and commenced proceedings in 39 matters.

communicating for business and consumers

this year the ACCC

published 17 new compliance publications, 11 corporate publications, 20 about competition, and 38 about fair trading and consumer protection

received more than 1 000 000 visits to its website for business publications

answered 89 175 inquiries and complaints and recorded 53 532 of those in the national database

printed and distributed 75 publications for business; produced videos and CDs on compliance issues, distributed 800 video copies and 150 CDs

conducted an education campaign to encourage best practice in all-inclusive pricing, focusing on the aviation, motor vehicle and travel industries

provided technical assistance on voluntary industry codes of conduct

for rural and regional business and consumers, and small business

produced and distributed by video the November 2002 competing fairly forum to 450 regional contacts around Australia, who then showed it to businesses and consumers in their regions

satellite broadcast the May 2003 competing fairly forum, a hypothetical hosted by Geoffrey Robertson, to 18 towns throughout regional Australia; delivered further video presentations of the forum to 20 communities

visited 190 rural and regional towns to reach businesses and consumers

held round table meetings to discuss retail tenancy issues, motor vehicle product safety issues, motor vehicle advertising, and to bring insurance companies and smash repairers together for discussions

produced country of origin compliance guide for the food and beverage industry and the furnishings industry

updated the general country of origin compliance guide and the complementary health care industry guide

provided information on stands at 16 expos/field days

delivered seminars for dairy farmers on collective bargaining with processors

provided fruit and vegetable producers with information on how to deal with retailers, wholesalers and agents in the retail supply chain

with other agencies in Australia

produced a national series of seminars on collective bargaining in the dairy industry with Agriculture Forestry Fisheries Australia and the Australian Dairy Farmers Federation

produced a framework for delivering trade practices information to regional Australia with Department of Transport and Regional Services

developed a national Indigenous consumer protection strategy with state offices of fair trading, Treasury and Aboriginal and Torres Strait Islander Services

with other agencies internationally

held the 2002–03 presidency of the International Consumer Protection and Enforcement Network

participated in international educative program on open relay email and Australian government review on spam to reduce spam email worldwide, and contacted businesses on open ports that can be used to relay spam

reviewed the code of practice for domain name licence sellers

enforcing for business and consumers

effective competition and informed markets

this year the ACCC

reinforced the seriousness of price fixing and market sharing, concluding litigation against compressors suppliers and an electricity transformers supplier with further action still to go against one alleged participant in transformers cartel

halted attempt to induce blocking of bulk-billing and after-hours services at medical practice, and stopped agreement by obstetricians to boycott 'no-gap' billing

alleged in cases currently before the court

that commenced this year:

collusion in fire protection services, flour, demolition services, masonry products, salmon farming

boycotts by unions and businesses in retail liquor supply

misuse of market power and exclusive dealing in supply of medical fluids, sports apparel and barge services

price maintenance in beauty products

that commenced before this year:

collusion in electricity transformers, vitamins, medical services, scrap metal auctions and waste paper collection

collusion and misuse of market power in rural newspapers and CDs

collusion and price maintenance in petrol

misuse of market power in domestic aviation

competition issues in copyrighting of computer games

fair trading and consumer protection

product safety | detected unsafe jelly cup confectionary, mislabelled cosmetics, unsafe cots, vehicle jacks and sunglasses; after complaints, and 41 surveys for banned goods and 28 surveys conducted at retail outlets around Australia: 39 different products withdrawn from sale and/or recalled; seven court enforceable undertakings; one court injunction resulted

health and medical | stopped spurious fitness and weight loss claims, miracle health claims about anodised aluminium charms, protected the sick and vulnerable from extravagant cure and treatment claims, made sure a skin product was described correctly, found '100%' orange juice with sugar and preservatives

retail prices and fine print advertising | pursued companies who made incorrect headline price claims such as '15 per cent off everything' or 'store cost plus one dollar', revealed fictitious claims in 'was/now' prices in music retailer's catalogue, confirmed that computer company must include delivery charges in advertised price, clarified labelling of GST charges, obtained GST refunds for motor vehicle customers, alerted shoppers to wrong sale claims, ensured consumers did not lose their rights to refunds, dealt with fine print in advertisements for health insurance

internet and phones | checked on accuracy of information provided to internet and mobile phone users, made Yellow Pages supplier honour an offer to supply priority service for extra payment, looked into claim that some long distance telephone calls were free, stopped price misrepresentation for mobile phone users

place of origin | stopped the use of 'made in Tasmania' labels on Chinese shirts, removed 'Australian made' packaging from Thai air filters, corrected claims when all products represented as local beef did not come from local stock, found 'Tasmanian' meat that wasn't, required accurate description of Australian content in commercial road sweepers

income-earning and business opportunities | stopped television production company taking advantage of job seekers, gave punters a chance on horse-racing betting software, stamped out an American pyramid selling scheme, prevented illegal franchising of will writing, took action over orange juice machine businesses, made sure major overseas company played fair in selecting Australian agents, challenged an accountant who wasn't, ensured mandatory franchising code of conduct was followed

alleged in cases currently before the court

that commenced this year:

health and medical claims, safety of car jacks, telephone service prices, lawyers' prices, fine print and bait advertising, place of origin, business opportunities, Aboriginal-style art, stock feed, tax benefits, pest control, and web jacking

that commenced before this year:

health and medical claims, health insurance advertising, safety information, telephone services, bait advertising, unconscionable conduct, business opportunities, fruit juice content claims, debt collection practices, real estate investment, pyramid and referral selling, unsolicited business services, retail leasing, and responsibility of advertising agents for misleading advertisements

	effective competition and informed markets	fair trading and consumer protection	total	TOTAL
concluded:				
litigation commenced and concluded during 2002–03	1	9	10	48
litigation commenced before 2002–03 and concluded during 2002–03	7	31	38	
continuing:				
litigation commenced during 2002–03 and continuing	14	15	29	71
litigation commenced before 2002–03 and continuing	14	28	42	
undertakings:				
undertakings accepted during 2002–03	6	24	30	30
				149

information, liaison and enforcement

The ACCC considers **voluntary industry codes** a central plank of the strategy to encourage fair trading in Australia, and was involved with technical assistance or the review of more than 20 industry and consumer codes.

Consumer networks were expanded and their effectiveness enhanced through the **consumer consultative committee** and the campaign to protect vulnerable and disadvantaged consumers. Members of the committee include the Aboriginal Coordinating Council, Australian Consumers Association, Australian Federation of Disability Organisations, Communications Law Centre, Consumer Credit Legal Service (WA), Consumer Law Centre of Victoria, Consumers Federation of Australia, Consumers Health Forum of Australia, Country Women's Association and Tasmanian Council of Social Services.

The ACCC, with 87 agencies from 24 countries, evaluated thousands of **travel agency websites** worldwide on 11 February 2003. In Australia, Treasury and all state and territory fair trading authorities participated. Almost 1269 websites were identified internationally as warranting further examination, 193 in Australia. The most common problems were: insufficient information such as contact details, inclusions, currency; non-secure website inviting personal information and credit card payments; and quoting a total price that excludes compulsory or essential charges.

Two meetings of the **International Consumer Protection and Enforcement Network** were hosted in Australia by the ACCC concentrating on effective **cross-border** actions that would benefit consumers around the world. In April Treasury hosted the OECD committee on consumer policy and **guidelines for protecting consumers from fraudulent and deceptive commercial practices across borders** were released on 17 June 2003. In August 2002 Asia Pacific Economic Cooperation ministers approved the principles on consumer protection in the **online environment** to establish a framework of consumer protection across the region, allowing consumers to transact online between economies with greater confidence.

The ACCC is strongly focused on promoting and facilitating **voluntary compliance** with the Trade Practices Act. To achieve that aim the ACCC organised discussions with **industry groups** including travel agents, airlines and motor vehicle dealers.

Through meetings of the **small business advisory group** and the newly formed **franchise consultative panel** the ACCC liaised with small business industry groups. This is a two way process where the ACCC provides guidance on the law, and small business industry groups can relay concerns to the ACCC.

The ACCC also hosted a roundtable with **motor vehicle industry** stakeholders to consider the issue of price representations in advertising claims.

Continued support was given for the **franchising industry** and enforcement of the mandatory franchising code of conduct which is prescribed under the Trade Practices Act.

At the second annual **International Competition Network** conference in June 2003 members, including the ACCC, adopted recommended practice proposals and presented reports to improve merger review, competition advocacy, and capacity building throughout the world.

The **Principles-based review of the law of negligence (the Ipp review)** was announced on 2 July 2002. The review panel was asked to review the law of negligence and its interaction with the Trade Practices Act. The ACCC provided two submissions to the review.

Second insurance industry market pricing review, a parliamentary report to Senator Coonan released in September 2002 concluded that despite the effects of 11 September 2001 the collapse of HIH and successive years of significant underwriting losses in the 1990s, the outlook for the Australian general insurance industry for 2002–03 was positive.

Anti-competitive and other practices by health funds in relation to private health insurance, fourth report to the Australian Senate on practices that reduce the extent of health cover for consumers and increase their out-of-pocket medical and other expenses.

GST reports, seventh and eighth reports to the Minister for Financial Services and Regulation about the ACCC's oversight of pricing responses to the introduction of the new tax system (GST).

Relative financial and corporate differences between friendly society dispensaries and pharmacist-owned pharmacies report to the Treasurer, concluding that friendly society dispensaries did not have significant competitive advantages including as a result of their income tax treatment.

Grocery pricing inquiry report on wholesale prices paid to suppliers by the retail chains and the independent wholesalers was delivered to the President of the Senate on 30 September 2002.

There were 71 **enforcement** matters before the courts at year's end, and 39 proceedings were commenced. Of the 119 matters before the court during the year, 48 were concluded. Ten of the concluded matters were commenced during the year. No judgment debts were written off or waived. Public undertakings to address apparent contraventions and provide appropriate remedial action were accepted in 30 matters (eight being associated with litigation matters).

Additionally there were seven new **appeals** during the year: Medibank, Saatchi & Saatchi, John Bevins, Medical Benefits Fund of Australia, Dell Computer, Rural Press and Sony (amicus curiae).

The ACCC issued 234 notices under its powers to **compulsorily acquire information** (section 155); 111 notices to provide information in writing (section 155(1)(a)), 113 notices to provide documents (section 155(1)(b)) and 10 notices to appear in person (section 155 (1)(c)).

During the year the ACCC concluded its inquiries into anonymous **allegations of collusion** among three major oil companies and associated petroleum distribution companies. In the investigation the ACCC exercised its powers to enter premises and inspect and copy documents, and these attendances at premises were reported in the press.

The ACCC was strongly criticised by the companies and others. This **criticism** was directed at the publicity generated, clouding clear justification for commencing the investigation and the correctness of the processes adopted. The ACCC has since reviewed its approach to this investigation, as it does with any major investigation, and has learned from the experience. Its resolve to investigate allegations of cartel activity is unchanged.

Hard core **cartels** are among the most serious violations of the law. To increase detection and breaking of collusive conduct such as market sharing, price fixing and bid rigging, the ACCC introduced its **leniency policy** on 30 June 2003. In return for revealing such conduct and cooperating with the ACCC, cartel participants will receive a clear, transparent and certain offer of leniency. Leniency is only available to the first company or executive to come forward, and is not available to persons who coerce others or to clear cartel leaders.

The ACCC's **priorities** are reflected in matters it chooses to investigate and litigate. Recent enforcement history shows continuing issues with all forms of anti-competitive conduct, and specific compliance issues affecting basic consumer purchases both large and small.

Compliance by the **professions** with the Trade Practices Act continues to be a priority for the ACCC. The ACCC pursues information and liaison activities, while applying the Act to the professions in the same way as it does for all other sectors of the Australian economy. The ACCC remains focused on issues pertinent to all professions, including in the health and medical sectors.

Other enforcement issues include:

product safety problems are often detected, and prompt withdrawal of offending products posing significant risk is sought; unsubstantiated **health and medical claims** have strong potential to take advantage of vulnerable consumers; misleading **food and beverages** claims about what ingredients are present or not present; misleading retail price advertising and the use of **fine print** across a variety of sectors and including claims about discounts, savings, what goods or services are included in prices quoted, free products, and non-disclosure of necessary costs such as taxes; price advertising for **telephone and internet services** and misleading conduct about domain name requirements; **place of origin** of goods; **pyramid and referral selling schemes**, and **unconscionable conduct** towards business and consumers.

There are also on-going problems with income-earning opportunities generally, including **purchases of small businesses**.

To enhance the effectiveness and efficiency of investigations and litigation, the ACCC further improved its ability to use **information technology**. Also, the ACCC successfully undertook numerous enforcement activities involving businesses using information technology and the worldwide web to engage in possible breaches of the law, including securing court orders to assume control of a website. It engaged with providers of information technology and internet services, and conducted a major analysis of an on-line joint venture.

Investigations and litigation continue to more frequently involve businesses located in other countries, in both the competition and consumer areas. Formal and informal collaboration between the ACCC and its **international enforcement counterparts** has greatly assisted the ACCC's law enforcement in such circumstances.

major litigation

As in 2001–02 much of the more significant litigation undertaken by the ACCC this year concerned anti-competitive conduct and was subject to court appeals.

The **Federal Court** dismissed the ACCC's case alleging price fixing by major milk processors supplying the Northern Territory. Notwithstanding the dismissal, the court stated that the ACCC was justified in making its inquiries and bringing its action. The ACCC continues its proceedings against: Qantas Airways (alleged misuse of market power in airline services); Baxter Healthcare (alleged misuse of market power and exclusive dealing in medical fluids); Liquorland and Woolworths (alleged restrictive arrangements for take-away liquor); Fila Sports Oceania (alleged misuse of market power and exclusive dealing in sports apparel); and the AMWU, AWU and CEPU unions (alleged picket line boycott). The ACCC is also pursuing a number of alleged price fixing and market sharing arrangements before the Federal Court.

Proceedings under appeal to the **Full Federal Court** were those against Australian Safeway Stores (alleged misuse of market power, price fixing and market sharing in bread), Universal Music and Warner Music (alleged misuse of market power and exclusive dealing concerning parallel imports of CDs), NT Power Generation v Power and Water Authority (alleged misuse of market power—ACCC intervening on the application of the Act to government energy contracts) and Stevens v Kabushiki Kaisha Sony Computer Entertainment (alleged circumvention of Copyright Act concerning chipping of PlayStations—ACCC appearing as amicus curiae).

Cases under appeal to the **High Court** at the end of the year were Visy (alleged anti-competitive agreement concerning waste paper collection), Rural Press (alleged misuse of market power and anti-competitive arrangements concerning newspapers) and South Sydney Rugby League Football Club v News Ltd (alleged anti-competitive arrangement concerning football games entry; ACCC intervening).

During the year the ACCC was unsuccessful in four cases brought before the High Court but the court clarified aspects of the Trade Practices Act important to the application of the law.

misuse of substantial market power

The **Boral** case, in which the ACCC alleged misuse of substantial market power, concerned price reductions out-bidding a new entrant in the concrete masonry sector in Victoria. The ACCC alleged that Boral had substantial market power and tried to use it to predatory price the new entrant out of the market. The High Court found that Boral did not have substantial market power, that it was meeting customer demand in reducing prices to generate business, and that out-bidding the new entrant was a legitimate competitive response. Questions arise from the decision about what constitutes substantial market power; this may become clearer as further proceedings are decided by the courts.

unconscionable conduct

In the **CG Berbatis Holdings** case, the ACCC alleged unconscionable conduct had occurred in relation to a retail lease. The High Court found that the tenants were not under any special disadvantage and that it was not unfair for the landlords in the case to refuse to renew or extend a commercial property lease on condition that the tenants withdrew proceedings against the landlords in the Western Australian Commercial Tenancy Tribunal. The tenants in the case had no pre-existing entitlement to renewal or extension of the lease. The proceedings turned on the traditional equitable law against unconscionable conduct imported into the Trade Practices Act. New provisions prohibiting unconscionable conduct have been added to the Act since the circumstances in this case arose. The extent to which the decision affects the application of these new provisions will become clearer as the courts work through further cases.

honouring advertised promises

In the **Medibank Private** case, the ACCC alleged misrepresentations about the benefits of health insurance cover available from Medibank. The case is continuing. During the proceedings, Medibank successfully contested whether the ACCC could ask the courts to order that Medibank honour the representations it made to consumers. The High Court declined to grant special leave to appeal to the High Court on the ACCC's case as currently pleaded, whether Medibank could be required by the courts to honour its promises. If the ACCC is unable to ask courts to order that businesses live up to their advertised promises in appropriate cases, this will have consequences for businesses' approach to how they induce consumers to shop with them and for affected consumers.

ACCC power to demand information

The **Woolworths/Coles/Daniels** cases concerned whether the ACCC's statutory power to demand information about suspected illegal conduct covered information subject to legal professional privilege. The High Court ruled that the ACCC could not compulsorily acquire legally privileged information without the consent of the person holding the privilege.
The High Court noted that communications between lawyers and clients for the purpose of illegal activity or seeking to evade the law were not covered by its decision. Where contraventions are aided by lawyers or sought to be cloaked by claims of privilege, the ACCC can obtain relevant information.
The decision nevertheless has implications for the ACCC's ability to properly investigate alleged illegal activity where information is withheld because of claims to legal privilege.

the infocentre

The infocentre is the primary contact point for people telephoning or emailing the ACCC. Infocentre staff have a good working knowledge of the Trade Practices Act and other related legislation and are able to advise consumers and businesses about their rights and obligations. The more serious allegations are passed directly to investigators for follow-up action.
The information received from businesses and consumers is recorded in the ACCC complaints database. This information is available to all staff for the purpose of analysing complaint trends and identifying possible areas of further inquiry.

Last year significant issues including the collapse of One.Tel, HIH and Free2aiR led to **higher call volumes**. Last year's figures also include 5000 calls on GST related matters which are not now included in ACCC responsibilities. This year the spike in the retailing classification of pharmaceutical, cosmetic and toiletry was due to the recall of Pan Pharmaceutical products and, in particular, the rights of consumers to obtain refunds. A high volume of **email complaints** last year stemmed from the consumer price indexation of HECS debts with 3200 emails received on this issue alone.

[infocentre telephone 1300 302 502 | internet www.accc.gov.au]

The infocentre received 69 compliments on the advice given.

Some examples are:

> "Your reply is thorough and so very informative; in fact it leaves me speechless and has detracted my focus away from the issue of a refund. Leave aside the fact of having a department that protects the consumer and handles such queries, the efficiency and thoroughness of your staff is astounding. Thank you so much."

> "Thank you very much for your very helpful and clear answers to my questions. That is exactly what I need to know. I hope to resolve the issue amicably with the trader but am grateful for your information and suggestions should I need to pursue them. Thanks again for your first class help."

> "I am very impressed with the detail and promptness of your response. Keep up the outstanding work, I will follow the suggestions given."

this year the ACCC infocentre

received 65 349 telephone calls; 62 205 served, 2910 callers advised to visit website, 69 put off by engaged signal because of large amount of calls, 165 voicemail calls

responded to 83 per cent of calls in less than 20 seconds

entered 53 532 matters on to complaints database

received 8348 email complaints

sent out 15 187 publications to callers

	this year	last year
telephone calls		
received	65 349	87 078
served	62 205	75 108
abandoned	2910	7948
engaged	69	2041
voicemail	165	1981
email complaints		
number of emails sent	8348	12 333
answered by telephone response	4937	5675
answered by return email	1843	4924
sent elsewhere for response	398	431
no response required	1170	1303
business information complaints or inquiries		
about a small business	9575	8870
from a small business	7843	9009
about a franchise matter	1390	1279
about an online trader/e-commerce	2926	2327
escalated for investigation	1537	1690
flagged for future review	1746	2684
top ten industries for complaints		
telecommunication services	4247	6798
domestic appliance retailing	3117	3065
business services generally	2536	2123
retailing generally	2055	1412
automotive fuel retailing	1836	1964
car retailing	1008	931
banks	966	1102
services to finance and investment	902	905
general insurance	825	1342
pharmaceutical cosmetic and toiletry retailing	815	343

	this year	last year
top 10 breaches of the Trade Practices Act predominantly fair trading and consumer protection part V and VB		
misleading or deceptive conduct	9601	11 106
retail warranties	4848	2805
price misrepresentation	1657	1881
warranties, rights misrepresentation	713	639
performance misrepresentation	525	808
accepting payment non supply	461	616
goods and services tax	469	1756
predominantly effective competition and informed markets part IV		
exclusive dealing	698	731
misuse of market power	830	572
agreements lessening competition	713	475
publications sent to callers		
Warranties and refunds	4860	2624
Merchant pricing for credit card payments	4827	0
Franchisees guide	1312	1682
Small business and the Trade Practices Act	1279	629
News for business—fresh fruit and vegetables and the TPA	1024	0
Are you being harassed about debts	286	298
Country of origin claims	183	130
Care labelling	158	136
Cosmetics and toiletries—ingredient labelling	151	119
Refusal to deal	137	135

geographic location of inquiries and complaints

		Australian Capital Territory	New South Wales	Victoria	Queensland	Western Australia	South Australia	Tasmania	Northern Territory	other	total
part IV	last year	137	1333	954	959	467	294	92	81	7	4324
	this year	174	1502	1062	1023	541	399	114	60	23	4898
part V	last year	1693	11263	9718	7664	3858	2430	789	392	261	38068
	this year	1506	10871	9405	7519	3561	2458	739	390	293	36742
part VB	last year	113	1311	771	684	366	280	80	36	10	3651
	this year	35	308	208	128	69	61	14	14	3	840
part IVA/B	last year	30	381	275	364	154	110	41	29	5	1389
	this year	32	325	198	233	123	97	25	17	5	1055
prices	last year	17	117	86	154	44	29	15	15	2	479
	this year	4	43	39	67	17	16	7	3	0	196
other	last year	338	2836	2202	1984	877	498	156	239	78	9208
	this year	362	3145	2400	1944	968	551	137	177	117	9801
total	last year	2328	17241	14007	11809	5766	3641	1173	792	363	57120
	this year	2113	16194	13312	10914	5279	3582	1036	661	441	53532

where we did it

The ACCC investigates matters throughout Australia, via its regional and national offices.

Sydney

concluded cases

- Crackerjack Productions
- Dell Computer
- Signature Security Group
- Michael Kotowicz
- Woolworths
- Top Snack Foods
- Crowded Planet

continuing cases

- Commonwealth Bank of Australia
- Fila Sports Oceania
- Giraffe World
- Global Pre Paid & In-Touch Networks
- Advanced Medical Institute
- Arnold's Ribs and Pizzas
- Australian Biologics
- Various Scrap Metal Dealers
- FFE Building Services & others
- Liquorland (Australia), Woolworths Ltd
- Warner Music Australia
- Universal Music Australia
- Visy Paper

Melboune

concluded cases

- Boral Ltd
- SIP Australia
- Karmy
- Mitre 10
- Rod Turner Consulting
- Sensis/Pacific Access
- Telstra
- Wizard Mortgage
- Australian Safeway Stores

continuing cases

- AMWU, AWU & CEPU
- Dermalogica
- David Francis
- Berri
- Cadbury Schweppes
- Billbusters
- BMW (Australia)
- National Telecoms Group
- Harvey Norman Holdings
- Pacific Dunlop
- Leahy Petroleum

Brisbane

concluded cases

- Internet TV Australia
- Michigan Group
- Redmond Holdings
- Solutions Software International
- Daniels Corporation
- IMB Group
- Daewoo Australia
- Buyers Group

continuing cases

- Eurong Beach Resort
- Australian Icon Products
- Black on White
- Danoz Direct
- Dataline.net.au
- Kwik Fix International
- Oceana
- Westfield
- World Netsafe

Perth

concluded cases

- Skybiz.Com Inc
- Virgin Mobile Australia
- Wesfil (Australia) Pty Ltd
- CG Berbatis Holdings
- Trans Oriental Import and Export

continuing cases

- Econovite
- Thorn Australia
- Emerald Ocean
- Esanda
- Greenstar Co-operative
- IT&T AG
- Lux
- Mayne Group
- Midland Brick, Bristile Operations
- Info4pc.com

Darwin

concluded cases

- Pauls Ltd & others
- Voyages Hotels and Resorts
- Woolworths, Arnhem Club

continuing cases

- Chaste Corporation
- Rhonwood Ltd

Canberra

concluded cases

- Internet Registrations Australia
- Transformation 2012
- A K Freund
- Mark Leyden, Stephen Robson & Paul Khoo
- Western District Health Fund
- NRMA Health
- Internet Name Protection
- Purple Harmony Plates
- NT Power

continuing cases

- South Sydney Rugby League, News Ltd
- Morgan Buckley
- Richard Chen
- Baxter Healthcare
- Saatchi & Saatchi Australia
- John Bevins
- F Hoffmann-La Roche & others
- Bray & F Hoffmann-La Roche
- Medical Benefits Fund of Australia
- Medibank Private
- ABB Power Transformers
- ABB Distribution Transformers
- Kabushiki Kaisha Sony Computer Entertainment
- George Weston
- Qantas Airways

Adelaide

concluded cases

- Allans Music Group Pty Ltd
- Collagen Aesthetics
- Dodo Internet

continuing cases

- FFE Building Services & others
- McMahon Services Pty Ltd & others
- Synergy in Business
- South Australian Olive Corporation
- Pest Free Australia
- 4WD Systems
- Rural Press

Hobart

concluded cases

- Commercial and General Publications
- Tamar Knitting Mills
- Will Writers Guild

continuing cases

- Tasmanian Salmonid Growers Association, Tassal

Townsville

continuing case

- Multigroup Distribution Services

snapshots of litigation and administrative settlements

promoting effective competition and informed markets

encouraging fair trading and protecting consumers

The following information provides a brief summary of enforcement activity undertaken by the ACCC during the year. More information is available on the ACCC website www.accc.gov.au, in the *ACCC Journal* or by contacting the ACCC infocentre on 1300 302 502. The information is grouped:

1. litigation commenced and concluded during 2002–03
2. litigation commenced during 2002–03 and continuing
3. litigation commenced before 2002–03 and concluded during 2002–03
4. undertakings accepted during 2002–03
5. litigation commenced before 2002–03 and continuing

effective competition and informed markets

part IV	anti-competitive conduct: price fixing, market sharing, boycotts, agreements substantially lessening competition, misuse of market power, exclusive dealing, resale price maintenance, mergers and acquisitions substantially lessening competition
part XIA	the competition code

fair trading and consumer protection

part IVA	unconscionable conduct in commercial and consumer transactions
part IVB	industry codes of conduct; the franchising code is a mandatory code prescribed under part IVB
part V	unfair practices, misleading and deceptive conduct, pyramid selling, country of origin representations, product safety and information, conditions and warranties in consumer transactions
part VA	liability of manufacturers and importers for defective goods
parts VB and XIAA	price exploitation concerning GST
part VC	criminal conduct in fair trading and consumer protection

1. litigation commenced and concluded during 2002–03

effective competition and informed markets

medical services

AK Freund Pty Ltd, Abraham Freund

alleged | 3 December 2002 | lessening competition, primary boycott | attempt to induce a boycott of bulk-billing and after-hours services at Berwick Springs Medical Centre

result		
	Justice Sundberg Federal Court Melbourne 5 March 2003	orders by consent: declarations; undertakings to the court; agreed costs

significance | peer pressure to boycott bulk billing and restrict trading hours is a serious breach

fair trading and consumer protection

weight loss

David Francis

alleged | 31 October 2002 | contempt of court | failed to comply with orders prohibiting unsubstantiated claims for products represented as being able to assist in weight loss

result		
	Justice Ryan Federal Court Melbourne 17 February 2003	fined $9000 for contempt of court, and costs

significance | parties who do not obey court orders are pursued

internet

Dodo Internet Pty Ltd

alleged | 17 September 2002 | misleading, deceptive and unconscionable conduct | misrepresented dial-in telephone numbers provided unlimited internet access at local call costs, failed to check dial-in numbers, refused to deal with complaints, relied on unlawful exclusion clause

result		
	Justice Mansfield Federal Court Adelaide 6 February 2003	orders by consent: found conduct misleading, deceptive and unconscionable, injunctions, customer compensation for long-distance charges, implementation of trade practices compliance program

significance | accuracy of advertising for internet access

internet

Internet Registrations Australia Pty Ltd

alleged | 13 September 2002 | misleading or deceptive conduct, accepting payment without intending or being able to supply, unsolicited services, misrepresentations | about registering and renewing internet domain names, claimed pre-existing relationship or prior dealing, authority to register or renew consumers' domain names, and ability to register com.au domain names

result		
	Justice Finn Federal Court Canberra 29 November 2002	orders by consent declarations, injunctions, costs, implementation of trade practices compliance program; court enforceable undertakings for corrective notices and refunds

significance | correction and compensation for misleading claims re internet services

rights to refunds

Karmy Pty Ltd trading at Schots Restoration Emporium

alleged | 22 April 2003 | misleading or deceptive conduct, misrepresentation of right or remedy | misrepresented that consumers are not entitled to refunds on sale items if goods are faulty, that such refunds would be at the company's discretion

result	Justice North Federal Court Melbourne 21 May 2003	orders by consent: declarations, injunctions, corrective advertising, implementation of trade practices compliance program and costs

significance | misrepresentation of consumers' trade practices rights contravenes the Act

pre-paid telephone cards

Telstra Corporation Limited

alleged | 24 October 2002 | misleading or deceptive conduct | re pre-paid long distance 'say g'day' calling cards, accessing the long distance service phone number was 'free' or was 'a free call from fixed phones', whereas the call cost was 53 cents per minute

result	Justice Ryan Federal Court Melbourne 15 November 2002	orders by consent to stop making misleading claims re calling card costs; ACCC accepted court enforceable undertakings from Telstra to waive the 53 cents per minute charge until corrected cards, vouchers and promotional materials were distributed to retailers; and to review compliance procedures

significance | free means free

mini cup jelly

Trans Oriental Import and Export Pty Ltd

alleged | 10 December 2002 | misrepresentations and supply of banned product | supplied mini-cup jellies containing the ingredient konjac, a choking hazard

result	Justice Carr Federal Court Perth 14 May 2003	by consent found misleading conduct and supply of banned goods; injunctions; corrective notices; trade practices compliance program and costs

significance | product safety issue addressed

internet health cures

Transformation 2012 Pty Ltd

alleged | 11 September 2002 | misleading or deceptive conduct | marketed products on internet claiming they could treat or cure a wide range of diseases and illnesses

result	Justice Finn Federal Court Canberra February 2003	orders by consent: declarations; permanent injunctions; implementation of trade practices compliance program; corrective notice on website; court enforceable undertakings to provide refunds

significance | unsubstantiated treatment claims can affect vulnerable people with illness

tourism

Voyages Hotels and Resorts Pty Ltd

alleged | 19 July 2002 | misleading or deceptive conduct | claimed exclusive right to conduct tours to Yulara Pulka, that traditional Aboriginal owners would meet tour groups and receive a significant amount of the tour price

result	Justice Mansfield Federal Court Darwin 28 April 2003	by consent found misleading conduct; costs; court enforceable undertakings not to promote tours without consent of Aboriginal people; trade practices compliance program

significance | businesses making claims to have a permit or agreement in place with Aboriginal people

air filters

Wesfil (Australia) Pty Ltd

alleged | 12 July 2002 | misleading or deceptive conduct, place of origin | attached labels bearing the claim 'made in Australia' on packaging of car air filters; filters marked as made in Thailand

result	Justice Lee Federal Court Perth 16 August 2002	by consent found misleading conduct as to country of origin of some automotive air filters; injunctions; corrective notices; refunds; trade practices compliance program

significance | country of origin packaging

2. litigation commenced during 2002–03 and continuing

effective competition and informed markets

unions

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU), the Australian Workers' Union (AWU) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU)

alleged | secondary boycott | maintained a picket at the entrance to the construction site of the Patricia Baleen gas plant near Orbost preventing construction workers and vehicles delivering materials from entering

status	Justice Gray Federal Court Melbourne 16 May 2003	proceedings commenced seeking declarations, injunctions, penalties, implement compliance program, public notice in journals detailing the orders

medical fluids

Baxter Healthcare Pty Ltd

alleged | misuse of market power, exclusive dealing | entered into long-term, exclusive, bundled contracts of between three and five years to be the sole or primary supplier of large volume parenteral fluids, parenteral nutrition fluids, irrigating solutions and peritoneal dialysis products

status	Justice Whitlam Federal Court Sydney 1 November 2002	proceedings commenced seeking findings of fact, declarations, injunctions, penalties and review of trade practices compliance program

beauty products

Dermalogica Pty Ltd

alleged | resale price maintenance | requested two retailers to stop discounting via the internet; web guidelines stated that violation of the company's policy could result in account termination and legal action

status	Justice Goldberg Federal Court Melbourne 21 November 2002	proceedings commenced seeking declarations, injunctions, penalty, findings of fact and costs

barge services

Eurong Beach Resort Limited and others

alleged | misuse of market power, price fixing, market sharing, exclusive dealing, harassment and coercion | predatory pricing by barge operator at southern tip of Fraser Island to damage or eliminate new competitor

status	Justice Kiefel Federal Court Brisbane 5 September 2002	proceedings commenced seeking declarations, injunctions, penalties, adverse publicity orders, implementation of trade practices compliance program

fire protection

FFE Building Services Ltd, Tyco Australia Pty Ltd, Australian Fire Services Pty Ltd, and Australian Fire Services (SA) Pty Ltd, On-Line Fire Protection Pty Ltd and others

alleged | agreements lessening competition, exclusionary provision, price fixing | companies in South Australia installing fire sprinklers, alarms, and other systems made anti-competitive agreement

status	Justice Mansfield Federal Court Adelaide 23 April 2003	proceedings commenced seeking injunctions, declarations, penalties and costs

fire protection

FFE Building Services Ltd, Tyco Australia Pty Ltd and others

alleged | price fixing, market sharing and misleading conduct | New South Wales fire protection industry tenders for the provision of fire protection services

status	Justice Wilcox Federal Court Sydney 5 September 2002	proceedings commenced seeking injunctions, declarations, penalties and costs; 6 August 2003 directions hearing

sports apparel

Fila Sports Oceania Pty Ltd and others

alleged | 5 September 2002 | misuse of market power, exclusive dealing | imposed selective distribution policy; withdrawal of supply of Fila AFL-licensed apparel from retailers who did not agree to adopt policy; directors of Fila involved in the formulation and implementation of the policy

status	Justice Heerey Federal Court Melbourne 5 August 2003	directions hearing 16 December 2003

wheaten flour

George Weston Foods Limited

alleged | price fixing | company and divisional chief executive telephone calls to senior representatives of competitor to induce an increase in the wholesale price of wheaten flour (used in baking most bread)

status	Justice Gyles Federal Court Sydney 5 December 2002	proceedings commenced seeking declarations, penalties, injunctions and costs; directions hearing on 10 July 2003

liquor retailing

Liquorland (Australia) Pty Ltd and Woolworths Limited

alleged | anti-competitive agreements, primary boycotts | restrictive agreements with operators of licensed premises for the purpose of substantially lessening competition in packaged takeaway liquor markets

status	
Justice Allsop Federal Court Sydney 30 June 2003	proceedings commenced seeking declarations, injunctions, penalties, trade practices compliance programs, costs

demolition and asbestos removal

McMahon Services Pty Ltd, SA Demolition & Salvage Pty Ltd and DCD Enterprises Pty Ltd

alleged | price fixing | in relation to tender for demolition and removal of asbestos at Defence site in South Australia

status	
Justice Selway Federal Court Adelaide 24 January 2003	proceedings commenced seeking declarations, penalties, injunctions, findings of fact, implementation of trade practices compliance program and costs

bricks

Midland Brick Company Pty Ltd and Bristile Operations Pty Ltd

alleged | price fixing | supply of bricks to builders

status	
Justice Lee Federal Court Perth 30 June 2003	proceedings commenced seeking declarations, injunctions, penalties and costs

rugby league

South Sydney District Rugby League Football Club, News Limited

status	
Justices Gleeson CJ, McHugh, Gummon, Kirby and Callinan High Court of Australia August 2002	ACCC granted leave to intervene in the High Court appeal from a decision of the Full Federal Court concerning the exclusion of South Sydney team from the premier competition; Souths alleged before the Federal Court that the term of the partnership agreement between News Ltd and the Australian Rugby League, that restricted the competition to 14 teams, was an exclusionary provision in breach of the Trade Practices Act; judgment reserved

salmon farming

Tasmanian Salmonid Growers Association, Tassal Ltd

alleged | price fixing, exclusionary conduct | Atlantic salmon farmers in Tasmania agreed to restrict production, to avoid oversupply and price fall

status	
Justice Heerey Federal Court Hobart 24 April 2003	proceedings commenced seeking declarations, injunctions, penalties, findings of fact, implementation of trade practices compliance program, costs

takeaway liquor retailing

Woolworths (South Australia) Pty Ltd, The Arnhem Club Inc, Rhonwood Pty Ltd

alleged | December 2002 | price fixing | of certain alcohol products in Nhulunbuy

status	
Justice Mansfield Federal Court Darwin 30 May 2003	ordered injunctions against Woolworths and The Arnhem Club and costs; noted court enforceable undertakings that $150 000 be paid by each of them to an alcohol prevention program in Nhulunbuy; proceedings against Rhonwood Pty Ltd trading as The Walkabout Tavern are continuing

medical services

Australian Biologics Testing Services Pty Ltd

alleged | 30 June 2003 | misleading and deceptive conduct | no reasonable grounds for statements about thermography, live blood analysis and the Bolans clot retraction test

status	
Justice Moore Federal Court Sydney 17 July 2003	next directions 20 November 2003

Aboriginal art

Australian Icon Products Pty Ltd

alleged | 19 March 2003 | misleading or deceptive conduct | represented that some of its hand painted Aboriginal-style souvenirs were 'authentic', 'certified authentic' and/or 'Australian Aboriginal art', when most artists were not Aboriginal

status	
Justice Cooper Federal Court Brisbane 4 April 2003	interim orders by consent for corrective notices and restraining description as 'Aboriginal art' or 'authentic' unless painted or carved by a person of Aboriginal descent; ACCC seeking summary judgment

car jacks

BMW (Australia) Limited

alleged | 28 October 2002 | failure to comply with mandatory safety standard | supply of vehicle jacks and owner manuals

status	
Justice Marshall Federal Court Melbourne 20 May 2003	judgment reserved

banking

Commonwealth Bank of Australia

alleged | 25 September 2002 | misleading or deceptive conduct | home loan campaign advertised no establishment fee; fine print disclaimer that conditions apply; applicant had to hold three bank products to qualify

status	
Justice Conti Federal Court Sydney 12 June 2003	judgment reserved

weight loss

David Francis

alleged | misleading or deceptive conduct, misrepresentations | unsubstantiated claims for products represented as being able to assist in weight loss

status	
Justice Gray Federal Court Melbourne 6 May 2003	hearing of application for final orders consented to by parties; judgment reserved

stock feed

Econovite

alleged | misleading and deceptive conduct, misrepresentations | stock feed supplements and mineral supplement do not contain ingredients listed on the label

status	Justice French Federal Court Perth 27 June 2003	proceedings commenced

pre-paid telephone cards

Global Pre Paid Communications Pty Ltd and In-Touch Networks Pty Ltd

alleged | misleading and deceptive conduct, misrepresentations | about profitability and risk; sale of phone card vending machine distributorships; projected profitability, location, support and maintenance of vending machines

status	Justice Gyles Federal Court Sydney 19 March 2003	proceedings commenced seeking injunctions and other orders; representative action taken on behalf of customers claiming losses

software

Harvey Norman Holdings Pty Ltd

alleged | misleading or deceptive conduct, bait advertising | national advertising of GST-related software package when quantities of bonus software were insufficient; statements in catalogue misled consumers on eligibility for taxation benefits on digital cameras

status	Justice Ryan Federal Court Melbourne 7 November 2002	commenced proceedings against three companies in the Harvey Norman group and 15 franchisees seeking declarations, injunctions, corrective public notice, findings of fact and independent audit of trade practices compliance

legal services

Morgan Buckley Pty Ltd and another

alleged | misleading or deceptive conduct, misrepresentations | issuing tax invoices for legal fees to a client that implied the invoices had been calculated according to retainer agreement; resulted in client being overcharged

status	Justice Mansfield Federal Court Darwin 26 June 2003	proceedings commenced seeking declarations, injunctions, implementation of trade practices compliance program, independent audit of tax invoices, refunds, public notice, costs

free telecommunications services

National Telecoms Group Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | customers would pay no more, or pay only marginally more, than they were currently paying for their telephony services; would receive a free phone system; call rates would be the same or cheaper than existing provider

status	Justice Weinberg Federal Court Melbourne 12 February 2003	commenced proceedings seeking declarations, injunctions, implementation of trade practices compliance program, eduction and training programs, corrective notices and costs

pest eradication

Pest Free Australia Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | plug in pest free electronic device does not work as claimed; no reasonable basis for making the claims

status	
Justice Emmett Federal Court Sydney 14 November 2002	commenced proceedings seeking declarations, corrective notices, injunctions, refunds, removal of the products from sale and costs

Sydney Opera House bookings

Richard Chen

alleged | misleading or deceptive conduct | web jacking; website mirrored Sydney Opera House official website; consumers from Europe purchased tickets through the imitation site, credit cards charged, overcharged or no tickets

status	
Justice Sackville Federal Court Sydney 3 October 2002	proceedings commenced seeking to have offending sites removed, interim court orders to this effect; temporary orders prohibit Mr Chen from creating, operating or maintaining similar sites

olives

The South Australian Olive Corporation Pty Ltd, Inglewood Olive Processors Limited

alleged | misleading or deceptive conduct, misrepresentations | Viva brand olive oil represented in television and magazine advertising and on labels as Australian when it comprised up to 50 per cent imported olive oil

status	
Justice Finn Federal Court Adelaide 17 October 2002	proceedings commenced seeking declarations, injunctions, corrective notices and implementation of trade practices compliance program

small business training

Synergy in Business Pty Ltd (in liquidation) and others

alleged | contravention of industry code | small business training and development franchise system; contract purported to exclude the licence arrangement from being characterised as a franchise; claims about future profits

status	
Justice Stone Federal Court Sydney 22 July 2002	proceedings commenced seeking declarations that business was a franchising operation; findings as to misrepresentations, injunctions, refunds, cooling off rights and costs

renting household goods

Thorn Australia Pty Ltd trading as Radio Rentals

alleged | misleading or deceptive conduct, misrepresentations about conditions, failure to disclose full cash price | advertised a 'rent two get one free' deal and failed to adequately disclose full cash price payable and full terms and conditions

status	
Justice French Federal Court Perth 23 May 2003	proceedings commenced seeking declarations, injunctions, corrective notices, trade practices compliance program, costs

3. litigation commenced before 2002–03 and concluded during 2002–03

effective competition and informed markets

supermarkets

Australian Safeway Stores Pty Ltd

alleged | 9 February 1999 | price fixing, market sharing, misuse of market power | refused to buy premium-branded bread from plant bakers if the baker had supplied generic or secondary branded bread to independent retailers who sold the bread cheaply; price fixing and market sharing arrangement with George Weston Foods Ltd in the Preston area

result	Justices Heerey, Sackville and Emmett (dissenting) Full Federal Court Melbourne 30 June 2003	Safeway misused its market power in four of nine incidents pleaded, and engaged in price fixing at Preston Market; orders to be made; overturning Federal Court judgment of 21 December 2001 dismissing the case

significance | serious anti-competitive conduct by major supplier

concrete

Boral Ltd and Boral Masonry Ltd (formerly Boral Besser Masonry Ltd)

alleged | 6 March 1998 | misuse of market power | reduced prices of concrete masonry products below manufacturing costs to drive a new entrant out of the market and to deter other businesses from entering

result	Justices Gleeson CJ, Gaudron, McHugh, Gummow, Hayne, Callinan and Kirby (dissenting) High Court of Australia 7 February 2003	by a 6–1 majority, found Boral Masonry did not have substantial market power, and overturned the unanimous decision of the Full Federal Court

significance | High Court clarification as to what constitutes substantial market power

obstetricians

Mark Leyden, Stephen Robson and Paul Khoo

alleged | 17 April 2002 | boycott | specialists providing private in-hospital obstetrics services in Rockhampton agreed to boycott 'no-gap' billing arrangements offered by a number of private health insurance funds

result	Justice Kiefel Federal Court Brisbane 31 October 2002	orders by consent, injunctions and contribution towards costs; $97 000 refunds for patients; Dr Robson refunded patients; court enforceable undertakings accepted from Drs Khoo and Leyden to make refunds to patients

significance | application of Act to health professionals boycotting no-gap billing

electricity

NT Power Generation Pty Ltd v Power and Water Authority

private action | alleging misuse of market power | ACCC intervened in Full Federal Court proceedings heard in August 2001 on issue of derivative Crown immunity

result	Justices Lee, Branson and Finkelstein Full Federal Court Darwin 2 October 2002	2–1 majority that derivative Crown immunity applied

significance | Act did not apply to dealings between businesses and the Crown

milk

Pauls Ltd, Malanda Dairyfoods Ltd, Australia Cooperative Foods Ltd and others

alleged | 21 August 2001 | price fixing | agreed prices for milk products

result	Justice O'Loughlin Federal Court Darwin 19 December 2002	ACCC application dismissed

significance | no case to answer though court found ACCC justified in making inquiries and taking action

compressors

SIP Australia Pty Ltd, director Filippo Ippaso, Baker Bros (Aust) Pty Ltd

alleged | 23 April 1999 | primary boycott, price fixing and resale price maintenance | for supply of compressors

result	Justice Goldberg Federal Court Melbourne 16 April 2003	penalised SIP $580 000 and director Filippo Ippaso $120 000; unable to mitigate the amount of the penalty because of lack of cooperation with ACCC

significance | court will take cooperation with ACCC into account when determining penalties

statutory demands for information

The Daniels Corporation International Pty Ltd and Meerkin and Apel, Woolworths Limited, Coles Myer Ltd and Liquorland (Australia) Pty Ltd

alleged | 12 October 2001 | privilege claimed over information sought by statutory demand by ACCC |

result	Justices Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan High Court of Australia 7 November 2002	unanimously held that section 155 does not abrogate legal professional privilege, overturning unanimous decision of Full Federal Court

significance | implications for conduct of ACCC investigations

fair trading and consumer protection

musical instruments

Allans Music Group Pty Ltd

alleged | 2 May 2002 | misrepresentations about price | national retailer of musical instruments advertised inflated pre-sale 'was' prices in Christmas catalogue to create false sense of savings when compared with 'now' prices

result	Justice Tamberlin Federal Court Adelaide 13 December 2002	following guilty plea to nine counts, convicted and fined $80 000 plus costs; nine other counts withdrawn

significance | clarified application of the law to the commonly used retail marketing tool of was/now pricing

electronic muscle stimulation

The Buyers Group Pty Ltd

alleged | 27 July 2001 | misleading or deceptive conduct, misrepresentations |
TV advertorials promoting electronic Feminique Slimming muscle stimulation machine

result	Justice Cooper Federal Court Brisbane 8 April 2003	by consent: declarations that representations were misleading or deceptive; corrective notices to be broadcast; by agreement between parties: $1.2 million available for refunds

significance | advertorials are subject to the Act

shopping centre leases

CG Berbatis Holdings Pty Ltd trading as Farrington Fayre Shopping Centre

alleged | 28 September 2000 | unconscionable conduct in relation to leasing arrangements | landlords stipulated that, as condition of lease renewal or extension, tenants withdraw an action on charges and outgoings against the landlords from the West Australian Commercial Tribunal

result	
High Court of Australia 9 April 2003	dismissed appeal by ACCC to restore a trial judge's finding that some shopping centre landlords had acted unconscionably

significance | High Court clarification of what constitutes commercial unconscionable conduct

cosmetic products

Collagen Aesthetics Australia Pty Ltd

alleged | 27 May 2002 | misleading or deceptive conduct, composition, performance | magazine advertisements for Collagen and Hylagenesis products represented they were safer than competitors' products, painless and natural

result	
Justice Finn Federal Court Adelaide 11 April 2003	by consent declared false representations and misleading conduct; injunctions; corrective notices

significance | significance misleading advertising for cosmetic products

business advertising

Commercial and General Publications Pty Ltd

alleged | 28 September 2001 | accepting payment without intending or being able to supply as ordered | for advertising in a proposed Returned Services League publication

result	
Justice Heerey Federal Court Hobart 1 November 2002	found company would not be able to supply the advertising; imposed fine of $5000 on director; defendants were acquitted on charges of demanding payment for unsolicited advertising

significance | protecting small businesses from publishers accepting payment for advertising not supplied

reality television

Crackerjack Productions Pty Ltd and others

alleged | 13 May 2002 | misleading conduct; misrepresenting availability of employment | placed job advertisements in newspapers to lure potential subjects for a reality television show shown on Ten network

result	
Justice Lindgren Federal Court Sydney 30 August 2002	by consent: television production company, producer and Network Ten be restrained from engaging in similar conduct; company send letters of acknowledgment and apology to affected job seekers; trade practices compliance program

significance | taking unfair advantage of vulnerable job seekers, especially in rural areas

excavators

Daewoo Australia Pty Ltd, Mr Eui Hwan Kang and Daewoo Heavy Industries and Machinery Limited

alleged | 17 December 2001 | misleading, deceptive and unconscionable conduct | manufacturer and importer of heavy earthmoving equipment engaging Queensland dealer of excavators and wheel loaders in Australia

result	
Justice Wilcox Federal Court Sydney 6 December 2002	declared that Daewoo Australia engaged in misleading or deceptive conduct; former manager involved in some of the conduct; granted by consent five year injunctions against each respondent; ordered compliance programs/training and costs

significance | clarifies the circumstances in which breaches of contract may be unconscionable

oral contraceptives

David Zero Population Growth Hughes trading as Crowded Planet

alleged | misleading or deceptive conduct | false representations about the supply of oral contraceptives on the internet, nondisclosure of significant health risks; court found for ACCC, respondent sought leave to appeal

result	
Justice Allsop Federal Court Sydney August 2002	leave to appeal denied

significance | health risk posed by illegal supply of prescription medicine

computer delivery

Dell Computer Pty Ltd

alleged | 7 December 2001 | misrepresentations about price | advertisements did not disclose the compulsory nature of delivery charges; earlier advertisements did not clearly indicate amount of the delivery charge

result	
Justices Branson, Stone and Emmett Full Federal Court Sydney 20 December 2002	declared that advertisements published before November 2001 were misleading and deceptive as to price; previous decision on 2 July 2002 and appealed by ACCC had found generally misleading and deceptive; ordered injunctions and corrective notices

significance | advertisers need to be upfront about additional costs

polo shirts

GIA Pty Ltd trading as Tamar Knitting Mills

alleged | 28 September 2001 | misrepresentations, place of origin | removed original made in China collar label, substituted Tamar collar label, attached swing tag falsely representing that the polo shirt was Tasmanian or was made in Tasmania

result	
Justice Heerey Federal Court Hobart 23 October 2002	found guilty and fined $50 000, former director fined $4000 for being knowingly concerned; fined company $5000 and director $1000 for providing false and misleading information to the ACCC

significance | where place of origin of products is stated it must be accurate

rubgy club and investment policies

IMB Group Pty Ltd, Logan Lions Ltd and others

alleged | 3 June 1996 | third line forcing, misleading or deceptive conduct | financial planning, property development, sale of investment policies with funds accrued over the life of the policies used to fund the development of major sporting club facility

result	
Justices Emmett, Kiefel and Cooper Full Federal Court Brisbane 20 February 2003	dismissed the appeal points on misleading conduct alleged, and other findings made by the primary judge; no contravening conduct found on appeal

significance | membership of the sporting club was contingent on consumers signing up for an investment policy with particular insurance company

computers

Info4pc.com Pty Ltd

alleged | 22 January 2001 | contempt of court |

result	
Justice Nicholson Federal Court Perth 31 July 2002	company guilty of continuing to advertise computers on its website contrary to court orders; fined $2000, substantive case continuing

significance | pursued contempt of court case

internet

Internet Name Protection Pty Ltd trading as Internet Name Group

alleged | 17 April 2002 | misleading or deceptive conduct, approval or affiliation, unsolicited services | sent unsolicited invoices to businesses around Australia seeking payment for registration and renewal of domain names

result		
	Justice Ryan Federal Court Melbourne 11 October 2002	orders by consent: injunctions restraining the company from engaging in misleading or deceptive conduct concerning internet domain names; declarations; trade practices compliance program

significance | ensuring domain name service providers do not mislead net users

internet access

Internet TV Australia Pty Ltd trading as Free2airR

alleged | 7 May 2002 | misleading, deceptive and unconscionable conduct, harassment and coercion | represented that: internet access services included free internet access time, one-off set-up subscribing fee; no ongoing fees and charges other than for downloads in excess of monthly specified amount

result		
	Justice Spender Federal Court Brisbane 21 November 2002	declarations by consent

significance | contract terms should be disclosed before customers enter contracts

golf

Michael Kotowicz, Universal Sports Challenge Limited

alleged | 3 April 2001 | misleading and deceptive conduct | Shark Golf Challenge 2000 promotion included a final overseas tournament, but no overseas tournament offered to finalists; former chief executive knew of conduct; by consent, company found to have contravened the Act

result		
	Justice Emmett Federal Court Sydney 23 October 2002	Michael Kotowicz, the former chief executive officer of Universal Sports Challenge Limited, was not knowingly concerned in the misleading and deceptive conduct

significance | clarified obligations of promoters of competitions to supply prizes offered to consumers

orange juice business

Michigan Group Pty Ltd, Queensland Juice Co. and others

alleged | 18 December 2000 | misleading or deceptive conduct | for average investment of $15 000 per machine, investors would benefit from agreements to site the machines, including with Franklins and Coles; future income; time in which investment could be recovered; number of orange juice bottles that could be sold

result		
	Justice Dowsett Federal Court Brisbane 4 February 2003	declarations investors were misled and deceived; no arrangements existed to site the machines; injunction of companies from making misleading representations about dispensing machines

significance | protecting people seeking legitimate investment opportunities

discount prices

Mitre 10 Australia Limited

alleged | 24 September 2001 | misleading or deceptive conduct, price of goods | '15 per cent off everything' advertising campaign failed to disclose adequately that not everything was reduced by 15 per cent

result		
	Justice Sundberg Federal Court Melbourne 23 April 2003	by consent company gave undertakings that it would not, for two years, advertise goods at a discounted price when no discount applies

significance | companies to take care with headline claims

health insurance

NRMA Health Pty Ltd

alleged | 6 November 2001 | misleading or deceptive conduct | advertised that it would not cost a pregnant woman anything to have a baby if insured with NRMA Health Pty Ltd; significant proportion of members required to pay an excess or co-payment; fine print disclaimers inadequate

result	Justice Jacobson Federal Court Sydney 3 July 2002	by consent: declarations; information to affected consumers; waiver of the 12 month waiting period for pregnancy related services; refunds of excesses or co-payments; injunctions and review of trade practices compliance program

significance | refunds for consumers; confirmation that fine print may be misleading

internet health cures

Purple Harmony Plates Pty Ltd and others

alleged | 9 August 2001 | misleading or deceptive conduct | contempt of court; failed to implement court orders related to unsubstantiated health claims for products promoted on the internet

result	Justice Goldberg Federal Court Melbourne 6 February 2003	internet trader jailed following his failure to comply with conditions of his suspended sentence for contempt; domain name transferred to ACCC

significance | disobedience of court orders will be pursued; court dealt with overseas domain name

furniture

Redmond Holdings, Toowoomba Furniture and Electrical (Furnelect)

alleged | 16 January 2002 | misleading or deceptive conduct, price of goods | advertising campaign for furniture at 'store cost plus $1'; prices calculated by adding about 60 per cent to the prices paid by the stores, plus one dollar

result	Justice Kiefel Federal Court Brisbane 18 February 2003	fine print disclaimer displayed not effective; ordered injunction for three years; trade practices compliance training

significance | all cost-based representations used advertising must be accurate

accountants

Rod Turner Consulting Pty Ltd

alleged | 3 July 2000 | misleading or deceptive conduct | claimed to be chartered accountant; misrepresentation GST payable on residential rent and water rates

result	Justice Kenny Federal Court Melbourne 2 October 2002	by consent declarations; injunctions; costs; attendance at trade practices compliance seminar

significance | misrepresentations of the effect of the GST on prices, misleading conduct on professional qualifications

yellow pages

Sensis Pty Ltd (formerly Pacific Access Pty Ltd)

alleged | 14 December 2001 | misleading or deceptive conduct about price | Yellow Pages connect service offered priority advertising to out-of-area listings for an extra fee, priority paying advertisers were referred to consumers even when a relevant business existed in the location specified

result	Justice Merkel Full Federal Court Melbourne 20 December 2002	declarations; order to amend manual to ask whether the caller wants a business located in the area specified

significance | consumers not being provided with the service they paid for

security services

Signature Security Group Pty Ltd

alleged | 19 March 2001 | misleading and deceptive conduct, price of goods or services | advertising price without including GST, or without specifying the amount of GST, claiming to have specific authority to advertise in this manner; breaching section 87B undertaking

result		
	Justice Stone Federal Court Sydney 29 April 2003	breached Act by advertising without GST or merely as +GST; had misrepresented existence of arrangement allowing it to advertise on this basis and had breached section 87B undertaking; injunctions and declarations made

significance | suppliers need to make clear extra charges, including GST, and the amount of those charges; failure to honour undertakings will be pursued

pyramid selling

Skybiz.Com Inc.

alleged | 18 September 2001 | pyramid selling | United States company promoted Skybiz 2000 home-based business using pyramid selling scheme; participants paid US$100 for a website to take part

result		
	Justice Lee Federal Court Perth 26 September 2002	declared the company was pyramid selling; restrained company from repeating the conduct; company consented to orders which included disclosure to Australian participants

significance | pitfalls of joining pyramid selling scheme

horse racing software

Solutions Software International Pty Ltd, Robert James Price and others

alleged | 29 June 2001 | misleading, deceptive and unconscionable conduct, performance, benefits, price of services | software claimed to predict horse-race place-getters with high accuracy; 70–95 per cent success rate

result		
	Justice Dowsett Federal Court Brisbane 3 September 2002	declarations; waiver as condition of being refunded was unconscionable; permanent injunctions by consent; corrective notices; compliance training; costs; community service (court enforceable undertaking accepted by ACCC from William Greig Millar noted by court)

significance | promoters of gambling programs not to mislead or deceive consumers

snack foods

Top Snack Foods Pty Ltd

alleged | 27 September 1996 | misleading and deceptive conduct for business opportunity | liability found; ACCC seeking access to funds of liquidated company to compensate franchisees

result		
	High Court of Australia 5 November 2002	refused application for special leave to appeal decision of New South Wales Court of Appeal that funds should be made available to franchisees

significance | franchisees entitled to obtain damages from franchisor

mobile phones

Virgin Mobile Australia Pty Ltd

alleged | 6 May 2002 | misleading or deceptive conduct, price of goods or services | failed to state the full cash price of mobile phones in national advertisements for dial high club mobile phone packages

result		
	Justice French Federal Court Perth 11 December 2002	consent declarations; injunctions; public notices in the press and on website; write to relevant subscribers; community service order; compliance program; costs

significance | accuracy of mobile phone package offers

health insurance

Western District Health Fund Ltd

alleged | 25 January 2002 | misleading and deceptive conduct | advertising stating 'all operations covered', 'no excesses or co-payments', 'there's nothing hidden or complicated'; qualifying fine print inadequate

result		
	Justice Moore Federal Court Sydney 16 October 2002	consent orders: offer to refund expenses and costs to members choosing to leave fund; corrective statement; injunction; trade practices compliance program

significance | refunding consumers misled on the extent of coverage of health insurance products

wills

Will Writers Guild Pty Ltd

alleged | 26 September 2001 | misleading representation about business activities | misrepresented right to undertake a will writing business that could not be legally operated under state and territory law

result		
	Justice Heerey Federal Court Hobart 7 February 2003	found the company and director guilty; imposed permanent injunctions; fined the company $35 000 and the director $70 000; ordered payment of $230 000 in compensation to five franchisees; costs

significance | franchisees exposed to possible criminal sanctions had to abandon their businesses

mortgages

Wizard Mortgage Corporation Limited

alleged | 7 February 2002 | misleading or deceptive conduct | misleading features of Wizard's 'rate breaker' 5.64 per cent home loan products interest rate advertised on television

result		
	Justice Merkel Federal Court Melbourne 25 October 2002	order to restrain company for 18 months from publishing advertisements for housing loans with features the loans do not have

significance | businesses to provide consumers with accurate price information

beef

Woolworths Ltd

alleged | 30 October 2001 | misleading conduct, place of origin | advertisements, 'beefing up the local economy', misled consumers that all beef sold in regional supermarkets at Armidale, Gunnedah, Inverell, Moree, Muswellbrook, Narrabri, Scone, Tamworth, was from local cattle

result		
	Justice Lindgren Federal Court Sydney 20 August 2002	declared company had engaged in misleading or deceptive conduct and had made false or misleading representations in relation to the origin of cattle; no orders made for injunctions or corrective notices

significance | use of the word all means nothing less than all; promotions aimed at encouraging support for local economies need to include accurate information

4. | undertakings accepted during 2002–03

effective competition and informed markets

lottery

Golden Casket Lottery Corporation Limited

alleged | misuse of market power | rejected a Brisbane suburban newsagency's application for an online betting licence

result	Brisbane 8 October 2002	court enforceable undertakings; high level of cooperation from company; review, and if necessary amend, agency selection criteria; continue to make selection criteria publicly available; develop a public complaints-handling process; upgrade trade practices compliance program

significance | government-owned business and exclusive distribution system

medical services

Hunter Area Health Service

alleged | exclusive dealing | regarding radiology services

result	Sydney 30 July 2002	court enforceable undertakings; policy of referring requests for radiology services to Hunter Area Health Service radiologists not to be reinstituted for seven years without notice to ACCC; radiologists and doctors to be informed

significance | freedom of choice in medical services

obstetrician

Mark Andrew Phillip Leyden

alleged | 17 April 2002 | boycott | specialist who provide private in-hospital obstetrics services in Rockhampton agreed to boycott 'no-gap' billing arrangements offered by a number of private health insurance funds

result	Brisbane 31 October 2002	consent orders; injunctions and contribution towards costs; $97 000 refunds for patients; ACCC accepted court enforceable undertakings from Dr Leyden to make refunds to patients

significance | application of Act to health professionals

obstetrician

Paul Pong Tiah Khoo and PT Khoo Pty Ltd

alleged | 17 April 2002 | boycott | specialist who provide private in-hospital obstetrics services in Rockhampton agreed to boycott 'no-gap' billing arrangements offered by a number of private health insurance funds

result	Brisbane 31 October 2002	consent orders; injunctions and contribution towards costs; $97 000 refunds for patients; ACCC accepted court enforceable undertakings from Dr Khoo to make refunds to patients

significance | application of Act to health professionals

media

Queensland Newspapers Pty Ltd

alleged | misuse of market power | internet businesses could not advertise in classified sections, including in *The Courier Mail*

result	Brisbane 5 December 2002	court enforceable undertakings to establish a new classified advertisement category in general classifieds, and place in lift-outs where display advertising can be included

significance | allowing advertisements containing urls or website addresses in classified advertising

takeaway liquor retailing

Woolworths (South Australia) Pty Ltd, The Arnhem Club Inc

alleged | price fixing | of certain alcohol products in Nhulunbuy

result	Darwin 30 May 2003	ordered injunctions against Woolworths and The Arnhem Club and costs; court noted court enforceable undertakings accepted by ACCC that $150 000 be paid by each of them to an alcohol prevention program in Nhulunbuy; proceedings against Rhonwood Pty Ltd trading as The Walkabout Tavern are continuing

significance | financial contribution made to address social issues

fair trading and consumer protection

mobile phones

Alliance WA Pty Ltd

alleged | misleading or deceptive conduct, misrepresented price | advertisements misrepresented the total cost of mobile phone and call package

result	Perth January 2003	court enforceable undertakings not to engage in similar conduct in future; offer refunds to subscribers who were misled; implement a trade practices compliance program

significance | total prices should be shown

vehicle Jacks

Audi Australia

alleged | contravention of product safety standards | vehicle jacks supplied with new Audi motor vehicles failed to comply with the jack warning labelling and safe usage instructions

result	Melbourne 15 April 2003	court enforceable undertakings to remedy failure to meet the mandatory product safety standard for vehicle jacks

significance | product safety addressed

mobile phones

B Digital

alleged | misleading or deceptive conduct, misrepresented price | advertisements failed to state the full cash price of the mobile phone package; consumers had to commit to two plans and incur a minimum liability of $528 to obtain two free phones and $200 free calls

result	Perth March 2003	court enforceable undertakings not to engage in similar conduct in future; publish corrective notices; improve its trade practices compliance program

significance | total price should be stated; free means free

meat

Berties Pty Ltd

alleged | misleading or deceptive conduct, place of origin | signs in retail butcheries misrepresented prime meat cuts as being Tasmanian when the meat came from other states

result		
	Hobart February 2003	court enforceable undertakings not to engage in similar conduct in future; implement trade practices compliance measures

significance | place of origin should be accurately stated

duty free

City International Duty Free Pty Ltd, Downtown Duty Free Pty Ltd and Nuance Group Australia Pty Ltd

alleged | misleading and deceptive conduct | advertising consumers could get specified savings when the products had not been advertised at the higher price for a reasonable time before the sale; certain products were exclusive to particular stores

result		
	Sydney 29 November 2002	court enforceable undertakings to cease making further misleading and deceptive representations; published corrective notices and in-store notices; offered full refunds and implemented a trade practices compliance program

significance | price reductions must be real

travel

Contiki Holidays (Australia) Pty Ltd

alleged | misleading or deceptive conduct | representations to provide safe environment where customers' personal safety and security would never be compromised

result		
	Brisbane 28 November 2002	court enforceable undertakings, without admitting liability, in response to the Swiss canyoning disaster; company to reform quality assurance systems; compliance program

significance | travellers' safety protected

sunglasses

Creative Brands Pty Ltd

alleged | product safety standards contravention | sunglasses did not comply with transmittance requirements for fashion spectacles or display warning for those with colour defective vision

result		
	Perth 26 May 2003	court enforceable undertakings to advise retailers to withdraw glasses; provide refunds to people who return glasses; product recall notices; trade practices compliance program

significance | product safety addressed

vehicle jacks

Daewoo Automotive

alleged | contravention of product safety standards | vehicle jacks supplied with new Daewoo motor vehicles failed to comply with the jack warning labelling and safe usage instructions

result		
	Melbourne 15 April 2003	court enforceable undertakings to remedy failure to meet the mandatory product safety standard for vehicle jacks

significance | product safety addressed

vehicle leases

Ford Credit Australia Limited

alleged | misleading or deceptive conduct | concern that some of the company's lease agreements did not allow Ford Credit to pass on GST to its lessees

result	
August 2002	voluntary undertakings; company to credit 256 non-business consumers about $430 000 in GST through refunds and reduced rental payments on leases; business customers, who were not entitled to full input tax credits, to receive GST refunds and reduced rental payments on their leases

significance | pricing must be accurate

real estate

Golden Way Realty

alleged | false or misleading representations about the price of services | suburban Adelaide real estate agency failed to clearly disclose to property vendors that GST was applicable on quoted commission or fee

result	
Adelaide 9 August 2002	court enforceable undertakings; agreed to reinstate the equivalent of the GST liability to affected customers; implement trade practices compliance training program

significance | pricing must be accurate

washing machines

Haier Australia Pty Ltd

alleged | misleading labelling of performance characteristics | energy rating and capacity claims on washing machines; tested at claimed capacity machines failed soil removal, water extraction and energy consumption tests; tester noted very little movement of clothes during the wash and rinse cycles; some sections of the test load failed to get wet

result	
Melbourne 24 March 2003	court enforceable undertakings; trade practices compliance program; all Haier Electrical Australia whitegoods to be tested at a National Association of Testing Authorities Australia accredited, or equivalent, testing laboratory

significance | environmental impact is important to consumers

internet

Internet Registrations Australia Pty Ltd

alleged | 13 September 2002 | misleading or deceptive conduct, accepting payment without intending or being able to supply, unsolicited services | misrepresentations about registering and renewing internet domain names; claimed pre-existing relationship or prior dealing, authority to register or renew consumers' domain names, and ability to register .com.au domain names

result	
Canberra 29 November 2002	orders by consent: declarations, injunctions, costs, trade practices compliance program; court enforceable undertakings for publication of corrective notices and refunds accepted 28 November 2002

significance | correction and compensation for misleading claims

sunglasses

JM Australia Pty Ltd

alleged | product safety standards | sunglasses incorrectly labelled as fashion spectacles and did not carry a warning stating that the glasses were not suitable for driving

result	
Perth 26 May 2003	court enforceable undertakings to advise retailers to withdraw glasses; provide refunds; place product recall notices; trade practices compliance program

significance | product safety addressed

baby cot

Lane Wrigley Pty Ltd

alleged | product safety standard | noncompliance imported children's cots not deep enough to minimise the risk of a child climbing or falling out of it; protrusions and hazardous openings

result	
Melbourne 3 October 2002	court enforceable undertakings to implement a trade practices compliance program

significance | product safety addressed

commercial road sweepers

MacDonald Johnston Engineering Company Pty Ltd

alleged | misleading or deceptive conduct | misrepresentations about Australian content of commercial road sweepers

result	
Brisbane 28 August 2002	court enforceable undertakings; company agreed: not to advertise or make other misleading representations about the origin or level of Australian content of its products; implement trade practices compliance program

significance | country of origin claims must be accurate

fruit juice labelling

Outback Juice Company Pty Ltd

alleged | misleading or deceptive conduct | fruit juice labels stating fruit juice products were 100 per cent and 100 per cent fresh when sugar, sweetening products and preservatives were added

result	
Brisbane 26 May 2003	court enforceable undertakings that company will not engage in conduct that is misleading and deceptive; falsely represent that juice products are of a particular quality, grade or composition; implement trade practices compliance program if company recommences operations

significance | 100 per cent means 100 per cent

skin cream

Private Formula International Pty Ltd

alleged | product information standard | noncompliance incorrectly labelled product remained on sale at retail outlets; attempts to have retailers amend labelling not successful

result	
Perth 10 December 2002	court enforceable undertakings to re-label the cosmetic products; stop distribution of product which does not meet the mandatory standard; re-label all old stock; corrective notices; trade practices compliance program

significance | product information standard met

vehicle jacks

Proton Cars Australia Pty Limited

alleged | contravention of product safety standards | vehicle jacks supplied with new Proton motor vehicles failed to comply with the jack warning labelling and safe usage instructions

result	
Melbourne 15 April 2003	court enforceable undertakings to remedy failure to meet the mandatory product safety standard for vehicle jacks

significance | product safety addressed

washing machines

Retravision Pty Ltd

alleged | misleading labelling of performance characteristics | energy rating claims and capacity on washing machines; tested at claimed capacity machines failed soil removal, water extraction and energy consumption tests; tester noted very little movement of clothes during the wash and rinse cycles; some sections of the test load failed to get wet

result	Melbourne 24 March 2003	court enforceable undertakings to cause to provide full refunds to consumers, and trade practices compliance program

significance | environmental impact is important to consumers

pre-paid telephone cards

Telstra Corporation Limited

alleged | 24 October 2002 | misleading or deceptive conduct | re pre-paid long distance 'say g'day' calling cards, accessing the long distance service phone number was 'free' or was 'a free call from fixed phones', whereas the call cost 53 cents per minute

result	Melbourne 15 November 2002	orders by consent to stop making misleading claims re calling card costs court enforceable undertakings from Telstra to waive the 53 cents per minute charge until corrected cards, vouchers and promotional materials were distributed to retailers; and to review compliance procedures

significance | free means free

internet health cures

Transformation 2012 Pty Ltd

alleged | 11 September 2002 | misleading or deceptive conduct | marketed products on internet claiming they could treat or cure a wide range of diseases and illnesses

result	Canberra February 2003	by consent found misrepresentation; permanent injunctions; implementation of trade practices compliance program; corrective notice; court enforceable undertakings to provide refunds accepted 19 December 2002

significance | unsubstantiated claims affecting vulnerable people with illness

mobile phones

Vodafone Network Pty Ltd

alleged | misleading or deceptive conduct | misled about a cut in the expiry period for FastFone pre-paid call credits

result	Sydney 4 October 2002	court enforceable undertakings: refunds to some pre-paid mobile telephone customers; full disclosure of contract conditions; credit customers the number of call credits that were lost; supply new starter pack to customers whose service has been de-activated; not misrepresent the expiry period of pre-paid call credits; place corrective notices; trade practices compliance program

significance | conditions to be clearly stated

tourism

Voyages Hotels and Resorts Pty Ltd

alleged | 19 July 2002 | misleading or deceptive conduct | claimed exclusive right to conduct tours to Yulara Pulka, that traditional Aboriginal owners would meet tour groups and receive a significant amount of the tour price

result	Darwin 28 April 2003	by consent found misleading conduct; costs; court enforceable undertakings not to promote tours without consent of Aboriginal people; trade practices compliance program

significance | businesses making claims to have a permit or agreement in place with Aboriginal people

horse-racing software

William Greig Millar (Solutions Software International Pty Ltd)

alleged | 29 June 2001 | misleading, deceptive and unconscionable conduct, performance, benefits, price of services | software claimed to predict horse-race place-getters with high accuracy; 70–95 per cent success rate

result	Brisbane 3 September 2002	declarations; permanent injunctions by consent; compliance training; community service (court enforceable undertaking accepted by ACCC from William Greig Millar noted by court)

significance | promoters of gambling programs not to mislead or deceive consumers

5. litigation commenced before 2002–03 and continuing

effective competition and informed markets

electricity distribution transformers

ABB Transmission and Distribution Limited, Alstom Australia Limited, Wilson Transformer Company, Schneider (Electric) Australia Pty Ltd and others

alleged | 10 November 2000 | market sharing and price fixing | in distribution transformers

status	Justice Emmett Federal Court Melbourne 15 April 2003	ABB contesting liability; Alstom ordered to pay $1.5 million penalty; Wilson Transformer $2.5 million; AW Tyree Transformers $3.5 million; 14 February 2003 Full Federal Court reduced Schneider Electric's penalty from $7 million to $5.5 million; proceedings against ABB continue

electricity power transformers

ABB Transmission and Distribution Limited, Alstom Australia Limited, Wilson Transformer Company

alleged | market sharing and price fixing | in power transformers

status	Justice Emmett Federal Court Melbourne 15 April 2003	ABB contesting liability; Alstom ordered to pay $5.5 million penalty; Wilson Transformer $1.5 million; proceedings against ABB continuing

medical practitioners

Australian Medical Association (Western Australia) and Mayne Group Ltd and others

alleged | price fixing, conduct substantially lessening competition | collectively negotiating and agreeing the rates at which visiting doctors would supply medical services for the care of public patients at the Joondalup Health Campus, Perth

status	Justice Carr Federal Court Perth 17 March 2003	judgment reserved

scrap metal

BM Faulkner Pty Ltd and others

alleged | anti-competitive agreements | between competing scrap metal merchants on how they would bid at scrap metal auctions

status	Federal Court Sydney August 2003	directions hearing

vitamins

Bray v. F Hoffmann-La Roche and others

status	Justice Merkel Private action Melbourne February 2003
	concerning vitamins cartel: Full Federal Court hearing; ACCC granted leave to intervene; ACCC made submissions about extra-territorial application of the Act; heard, judgment reserved

vitamin C

F Hoffmann-La Roche, BASF Aktiengesellschaft and Takeda Chemical Industries

alleged | 23 August 2001 | price fixing and market sharing | global price-fixing arrangement on human vitamin C; allocated global market shares

status	Justice Merkel Federal Court Melbourne 24 November 2002
	obtained leave to serve the proceedings on some of the respondents located in Switzerland, Germany and Hong Kong

PlayStation

Kabushiki Kaisha Sony Computer Entertainment

alleged | anti-circumvention Copyright Act | modification of region coding in PlayStation consoles (chipping), allows consumers to use imported games and legitimate backup copies

status	Justice Sackville Federal Court Sydney 26 July 2002
	ACCC heard as amicus curiae; court found chipping was not a copyright circumvention device; February 2003 ACCC heard as amicus in Full Federal Court appeal, judgment reserved

petrol

Leahy Petroleum Pty Ltd and others

alleged | price fixing | of petrol in the Ballarat area under the Swift, Apco, Mobil, BP, Shell and Ampol/Caltex brands as part of price-fixing arrangement between distributors and retailers

status	Justice Goldberg Federal Court Melbourne 21 May 2002
	commenced proceedings seeking declarations; injunctions; findings of fact; implementation of a trade practices compliance program, penalties and costs

petrol supply

Leahy Petroleum Pty Ltd

alleged | resale price maintenance | on Buangor service station owner

status	Justice Goldberg Federal Court Melbourne 21 May 2002
	proceedings commenced seeking injunctions; declarations; findings of fact; implementation of a trade practices compliance program; penalties and costs

airlines

Qantas Airways Limited

alleged | misuse of market power | increasing capacity and reducing fares on Brisbane–Adelaide route in response to the entry of Virgin Blue Airlines Pty Ltd on the route

status	Justice Gyles Federal Court Sydney 7 May 2002
	proceedings commenced seeking declarations, injunctions, findings of fact, compliance program, penalties and costs

media

Rural Press Limited and others

alleged | 1 March 2001 | misuse of market power and anti-competitive arrangement | misuse of market power by Rural Press and subsidiary, Bridge Printing Office Pty Ltd, resulting in anti-competitive agreement between them and Waikerie Printing House to withdraw *The River News* regional newspaper from the Mannum area of South Australia

status	Justice Mansfield Federal Court Adelaide 16 July 2002	found misuse of market power and anti-competitive agreement; penalties $600 000 for the Rural Press respondents; 16 July 2002 on appeal Full Federal Court found anti-competitive agreement to substantially lessen competition; no misuse of market power; and no arrangement with Waikerie Printing that contained an exclusionary provision; application made on 13 August 2002 to High Court for special leave to appeal, granted on 11 April 2003

CDs

Universal Music Australia Pty Ltd and others

alleged | misuse of market power and exclusive dealing | threatened to and actually withdrew trading benefits from CD retailers stocking parallel imports

status	Full Federal Court Sydney 6 March 2002	imposed $450 000 penalty for misuse of market power and exclusive dealing; appeal to Full Federal Court heard November 2002; judgment reserved

recyclable waste paper

Visy Paper Pty Ltd

alleged | market sharing | attempt to induce Northern Pacific Paper into a market sharing agreement for recyclable waste paper collection

status	Justices Gleeson, McHugh, Gummow, Kirby, Hayne and Callinan High Court of Australia 3 December 2002	hearing; judgment reserved

CDs

Warner Music Australia Pty Ltd and others

alleged | misuse of market power and exclusive dealing | threatened to and actually withdrew trading benefits from CD retailers stocking parallel imports

status	Justices Wilcox, French and Gyles Full Federal Court Sydney 6 March 2002	imposed $450 000 penalty for misuse of market power and exclusive dealing; appeal to Full Federal Court heard November 2002; judgment reserved

fair trading and consumer protection

parts and accessories franchises

4WD Systems Pty Ltd and others

alleged | misleading, deceptive and unconscionable conduct by franchisor | of accessories for four wheel drive autos; cost of franchise, supply of stock, training, distribution rights and exclusivity of stock

status	Justice Selway Federal Court Adelaide 4 April 2003	trial commenced, proceedings continuing

medical claims

Advanced Medical Institute Pty Ltd and others

alleged | false, misleading and deceptive conduct | misrepresentations of impotence and erectile dysfunction treatments

status	
Justice Whitlam Federal Court Sydney 22 April 2002	hearing set for 1 December 2003

franchise

Arnold's Ribs and Pizza Australia Pty Ltd

alleged | misleading, deceptive and unconscionable conduct | misrepresentations about earnings by franchisees; unconscionable conduct concerning terms and conditions imposed under franchise agreements

status	
Justice Conti Federal Court Sydney 22 April 2002	next date to be fixed

fruit drinks

Berri Limited

alleged | 13 August 2001 | misleading and deceptive conduct | fruit drinks and juices labelled as made in Australia from Australian and imported juices depending on seasonal availability; did not contain sufficient Australian juice and Australian content; not dependent on seasonal availability

status	
Justice Gray Federal Court Melbourne 28 June 2003	awaiting a trial date

telephone bills

Billbusters Pty Limited and another

alleged | 23 November 1998 | misrepresentations about telephone bill-paying services | in claiming methods of reviewing and checking Telstra telephone accounts

status	
Justice Kenny Federal Court Melbourne 8 May 2003	granted summary judgment declaring that Miles Kendrick-Smith was knowingly concerned in misrepresentation; injunction restraining director from representing that he performs audit services on Telstra accounts or invoices; 29 May 2003 Mr Kendrick-Smith filed a notice of appeal

nannies training

Black on White Pty Ltd, trading as Australian Early Childhood College

alleged | 1 August 1997 | misleading, deceptive and unconscionable conduct | in relation to the accreditation of courses and enforcement of enrolment contracts in child care and related training courses

status	
Justice Spender Federal Court Brisbane 10 October 2002	found the company had engaged in misleading, deceptive and unconscionable conduct; the manager was knowingly concerned in misleading and unconscionable conduct and his son was knowingly concerned in the company's accreditation misrepresentations; both ordered to compensate consumers; and on 10 October 2002 hearing resulted in the redirection of earnings of manager's son

fruit drinks

Cadbury Schweppes Pty Limited

alleged | 22 March 2002 | false misleading and deceptive conduct | labelling of banana mango and apple kiwi fruit flavoured cordial which did not contain the banana, mango and kiwi fruits

status	
Justice Gray Federal Court Melbourne 19 June 2003	case heard; judgment reserved

weight loss

Chaste Corporation Pty Ltd, Peter Foster and others

alleged | 26 November 2001 | resale price maintenance, misleading, deceptive and unconscionable conduct, franchising code of conduct, misrepresentations | profitability of area manager distributorships and efficacy of weight loss product TRIMit; respondents disregarded managers' reasonable commercial expectations and long-term viability of Chaste

status	
Justice Spender Federal Court Brisbane 3 February 2003	unsuccessful in seeking pre-trial orders stopping Mr Foster from leaving Australia and requiring him to deliver his passport to the Federal Court; ruled prima facie case against Chaste Corporation and Mr Foster; proceedings continue

electronic muscle stimulation

Danoz Direct Pty Ltd

alleged | 3 May 2002 | misleading and deceptive conduct, misrepresentations | about capabilities of Abtronic device as a brilliant training and toning tool capable of causing weight loss

status	
Justice Dowsett Federal Court Brisbane 2 April 2003	judgment reserved; seeking declarations; injunctions; refunds for consumers; corrective notices; trade practices compliance program

internet service provider

Dataline.net.au Pty Ltd

alleged | 21 December 2001 | misleading, deceptive and unconscionable conduct, misrepresentations, resale price maintenance, undue harassment | supply of internet related services to small businesses and consumers

status	
Justice Keifel Federal Court Brisbane 9 May 2003	ordered parties attend mediation

muscle stimulation

Emerald Ocean Distributors Pty Ltd, Slendertone Health and Beauty Pty Ltd

alleged | 19 July 2000 | misleading or deceptive conduct, misrepresentation | health and cosmetic benefits of an electronic muscle stimulation product

status	
Justice Nicholson Federal Court Perth June 2003	trial part completed

finance

Esanda Finance Corporation Ltd, Nationwide Mercantile Services

alleged | 12 April 2001 | harassment and coercion, unconscionable conduct | debt collectors used physical force, coercion, undue harassment, and unconscionable conduct in repossessing a motor vehicle

status	
Justice Lee Federal Court Perth 21 July 2003	trial to take place

negative ion mat

Giraffe World Australia (in liquidation)

alleged | June 1998 | misleading and deceptive representations, pyramid selling | mats claimed to have particular health benefits, promotion of a pyramid selling scheme and referral selling

status	
Justice Lindgren Federal Court Sydney 15 February 2000	representative action to obtain compensation for participants on foot, adjourned

worms pyramid selling

Greenstar Cooperative Ltd, Bio Enviro Plan Pty Ltd, Buyplus Commodities Brokers Pty Ltd, Greenstar Management Pty Ltd and directors

alleged | 5 June 2001 | misleading or deceptive conduct, misrepresentations, accepting payment without intending to supply | promotion of a scheme involving a transaction card and earthworm farming program, as basis for enticing members to join pyramid and referral selling scheme

status	
Justice Nicholson Federal Court Perth 10 June 2003	hearing for final orders to take place

computers

Info4pc.com Pty Ltd

alleged | 22 January 2001 | misleading and deceptive conduct, bait advertising, accepting payment not intending to supply | computers valued at $1899 offered for $499 in exchange for completing monthly questionnaire for 2 years; supply not intended

status	
Justice Nicholson Federal Court Perth 2 April 2003	proceedings continuing

facsimile

IT&T AG

alleged | 28 March 2002 | misleading and deceptive conduct, unsolicited directory entry | mailed unsolicited documents from Switzerland to Australian businesses demanding payment for entries in an international fax directory

status	
Justice Nicholson Federal Court Perth 30 June 2003	judgment reserved on method of service of future documents

advertising

John Bevins Pty Ltd

alleged | February 2001 | misleading or deceptive conduct | advertising agency knowingly concerned in misrepresentations of Medical Benefits Fund of Australia Limited

status	
Justices Moore, Mansfield, Stone, Full Federal Court Sydney October 2002	ordered declarations and costs; appeal by Bevins to Full Federal Court heard on 12 May 2003, judgment reserved

car paint

Kwik Fix International Pty Ltd and others

alleged | 24 April 2002 | misleading, deceptive and unconscionable conduct, breaches of franchising code of conduct | concerning franchising of mobile repairs services for car paint, plastic and interiors

status	
Justice Keifel Federal Court Brisbane 24 April 2003	directions hearing; seeking declarations; injunctions; compliance training; compensation; costs

vacuum cleaners

Lux Pty Ltd

alleged | 27 July 2001 | unconscionable conduct, undue harassment or coercion | selling vacuum cleaner to intellectually impaired couple

status	
Justice Nicholson Federal Court Perth 7 April 2003	trial to continue

health insurance

Medibank Private

alleged | October 2000 | misleading or deceptive conduct | advertised no rate increase for 2000; failed to properly disclose that rates would increase for PackagePlus products; then offered consumers switching from other funds 'any waiting periods waived' and 'get 30 days free'; fine print provided that only the two-month general waiting period and the six-month optical waiting period were waived

status	
Justice Ryan Federal Court Melbourne 25 March 2003	seeking orders including waiver of waiting periods; provision of 30 days free health insurance; and refunds or credits for PackagePlus purchasers; March 2002 Medibank's application for certain remedial orders to be struck out was refused; September 2002 Full Federal Court upheld Medibank's appeal; 20 June 2003 ACCC application for special leave to appeal to the High Court refused; proceedings continue

health insurance

Medical Benefits Fund of Australia Limited (MBF)

alleged | 8 February 2001 | misleading or deceptive conduct | print and television advertisements containing pregnancy-related images with fine print that the 12-month waiting period for pregnancy related services would not be waived

status	
Federal Court Sydney October 2002	ordered declarations; injunctions; publication broadcast of corrective notices and costs; appeal by MBF to Full Federal Court heard 12 May 2003; judgment reserved

freight

Multigroup Distribution Services

alleged | 11 July 2001 | misleading and deceptive conduct | Parker Freight Express misled about the provision of a freight transport contract in North Queensland

status	Justice Spender Federal Court Brisbane 18 February 2003	direction hearing; seeking declarations, injunctions, finding of fact, damages, costs

gold coast property

Oceana Commercial Pty Ltd, Commonwealth Bank of Australia and others

alleged | 14 November 2001 | misleading, deceptive and unconscionable conduct | two-tier marketing on the Gold Coast; purchase price of property includes a substantial undisclosed marketing fee; unconscionable conduct by bank approached to finance purchase

status	Justice Kiefel Federal Court Brisbane 10 March 2003	seeking findings of fact; injunctions; implementation of trade practices compliance program

latex gloves

Pacific Dunlop Ltd

alleged | 21 January 2000 | misleading and deceptive conduct | packaging of Ansell latex gloves did not warn that latex could cause serious allergic reactions

status	Justice North Federal Court Melbourne	seeking declaration and injunction; 26 September 2003 directions hearing

advertising

Saatchi & Saatchi Australia Pty Ltd

alleged | November 2001 | misleading or deceptive conduct | advertising agency engaged in misleading or deceptive conduct in preparing advertisements for NRMA Health Pty Ltd; October 2002 case dismissed

status	Justices Moore, Mansfield and Stone Full Federal Court Sydney 13 May 2003	ACCC appeal against decision of Federal Court heard; judgment reserved

shopping centre lease

Westfield Shopping Centre Management Co. (Queensland) Pty Ltd and others

alleged | 29 October 2001 | misleading, deceptive and unconscionable conduct | misrepresentation in leasing negotiations; refusal to finalise settlement regarding misleading and deceptive conduct unless conditions were met including an undertaking from ACCC to cease investigations into the matter

status	Justice Kiefel Federal Court Brisbane February 2003	notice of motion filed to refer issue of damages to mediation; hearing of motion set for 30 July 2003

wills

Will Writers Guild Pty Ltd	
alleged | 27 March 2001 | contravention of industry code, misrepresentations | contravened mandatory franchising code; misrepresented right to undertake a will writing business that under state and territory law could not be legally operated	
status	Justice Marshall Federal Court Hobart 2 May 2003
	by consent judgment against company and director; permanent injunction; costs; compensation claim for remaining franchisee to be determined

international attm card scheme

World Netsafe Pty Ltd and another	
alleged | contempt of court | promotion and marketing of illegal international pyramid and referral selling scheme; breaches of substantive court orders	
status	Justice Spender Federal Court Brisbane 6 March 2003
	contempt findings made concerning website and lack of provision of information to the ACCC; judgment reserved on penalty and costs

The above list does not provide complete details and is not a legal document. It is intended for information only. Details of cases are given in the *ACCC Journal*.

assessing mergers, asset sales and joint ventures

The Trade Practices Act prohibits mergers, acquisitions and joint ventures which would substantially lessen competition and prevents businesses accumulating market power that could lead to anti-competitive conduct. The test applied by the ACCC rests on recognition of the link between market structure and resulting market power, and the need to be able to respond to potential threats from the exercise of market power.

this year the ACCC

finalised 191 mergers, asset sales and joint ventures;
27 in less than 2 weeks, 45 in less than 3 weeks,
76 in less than 6 weeks; 182 not opposed

those approved included:

Australian Cement Holdings and Queensland Cement merger

Coles Myer acquisition of Theo's Liquor

Grainco Australia and GrainCorp merger

Incitec and Pivot merger

Insurance Australia Group acquisition of Aviva CGU Insurance

Pfizer Pty Ltd and Pharmacia Corporation merger

Hoyts, Greater Union and Village Roadshow acquisition of Val Morgan

those opposed included:

Farm Pride Foods and Pace Farms joint venture

mergers and joint ventures

	this year	last year
total	191	237
not opposed	182	228
opposed	9	5
resolved through undertakings	(2)	(4)

number of mergers by industry

finance/banking/insurance	33	36
energy	21	12
food industry/produce	18	24
manufacturing	18	33
health	13	25
mining/forestry	19	24
communications	13	29
transport	6	21
computer	32	5
other	18	28
TOTAL	191	237

Mergers, acquisitions and asset sales were assessed for their compliance with section 50 of the Trade Practices Act. In total 191 matters were examined—of the nine that were opposed, two were allowed to proceed after the acceptance of undertakings to address anti-competitive detriment. Merger activity is becoming increasingly **global** in nature and the ACCC worked with overseas competition authorities, particularly through its active participation in the **International Competition Network**, a global forum through which individual national competition agencies are able to liaise on common issues. The ACCC is a member of the steering committee of the International Competition Network and its working groups include those dealing with best practice in mergers and investigative techniques for conducting effective merger review.

major mergers assessed

Australian Cement Holdings and Queensland Cement

result | merger not opposed

background | unlikely to result in any significant reduction in competition in cement, flyash and blast furnace slag markets as there is minimal geographic overlap between the two companies

Australian Wheat Board Limited and Goodman Fielder, Milling Australia

result | acquisition opposed

background | Australian Wheat Board monopoly exporter of wheat and largest domestic grain trader; substantial lessening of competition in markets for flour milling and mixing across Australia and grain trading in Queensland

Coles Myer Ltd and Theo's Liquor

result | no intervention in acquisition

background | Theo's Liquor has retail outlets located in the Sydney metropolitan area, Newcastle and on the Central Coast; information obtained from the market indicated that removing Theo's Liquor outlets as an independent force was not likely to lead to a substantial lessening of competition in either wholesale or retail markets

Farm Pride Foods and Pace Farms

result | joint venture opposed

background | substantial lessening of competition as together companies would account for more than half the market; imports nor existing competitors would provide competitive restraint

Grainco Australia Ltd and GrainCorp Ltd

result | merger not opposed

background | GrainCorp predominantly involved in bulk grain storage and handling services in New South Wales and Victoria; Grainco's operations are predominantly in Queensland; Grainco will not retain its interest in Australian Bulk Alliance; no substantial lessening of competition

GrainCorp/Cargill and Milling Australia

result | acquisition not opposed

background | GrainCorp is involved in the provision of storage and handling services in New South Wales and Victoria while both GrainCorp and Cargill are involved in grain trading; market inquiries found that there were strong constraints on GrainCorp's ability to discriminate against particular users of its storage and handling facilities; acquisition will not give GrainCorp the ability to raise rival millers' costs through its storage and handling network

Incitec Ltd and Pivot Ltd

result | merger not opposed

background | fertiliser products containing the same basic nutrients are substitutable and constrain each other in price; imported products would provide effective competitive constraint

Insurance Australia Group and Aviva CGU Insurance

result | acquisition not opposed

background | on most product lines there is little overlap between IAG, which has been more consumer focused, and CGU which is commercially focused; home insurance and domestic motor insurance are the only two significant areas of overlap between IAG and CGU; a substantial lessening of competition is unlikely because the merged entity will continue to face vigorous competition from other significant insurance companies

Pfizer Pty Ltd and Pharmacia Corporation

result | accepted section 87B undertaking for merger

background | concerns that the worldwide merger of the parties may result in a substantial lessening of competition in Australia in relation to certain products used by cattle breeders, veterinarians and farmers for the management of cattle reproduction; Pfizer to divest its CueMate product

Val Morgan and Hoyts, Greater Union and Village Roadshow

result | accepted section 87B undertaking on acquisition

background | concern that independent exhibitors would be treated unfairly with screen advertising; undertakings sufficient to resolve competition concerns

authorising anti-competitive conduct

The adjudication process is a fundamental and unique feature of the ACCC's work. The process involves assessing the public benefits and detriments resulting from certain anti-competitive practices. If there is a net public benefit the ACCC may grant immunity from legal proceedings. There are two ways in which immunity from the Trade Practices Act is available: through applying for an authorisation or lodging a notification of exclusive dealing.

this year the ACCC

received 61 new applications for authorisation, 21 new applications for minor variation to an existing authorisation, 11 new applications to revoke an existing authorisation and grant a substitute authorisation, 11 requests to revoke an existing authorisation

made 41 final determinations for 89 applications for authorisation (including gas, electricity, merger and other authorisations)

made 16 interim decisions for 29 applications and made 35 draft determinations for 73 applications

decided 268 notifications for exclusive dealing

main adjudication issues

final decisions:

Royal Australasian College of Surgeons surgical training program and overseas-trained surgeons' assessment

Health Purchasing Victoria collectively tender for agency nursing staff in several hospitals in Melbourne and Geelong

Royal Australian College of General Practitioners—allow doctors in the same practice to agree on patient fees

New South Wales Department of Health private in-patients in public hospitals to use public pathologists

Australian Hotels Association (NSW) collective bargaining for the provision of wagering and broadcasting services

draft decisions:

Qantas and Air New Zealand strategic alliance

Star Alliance airlines offer of discounts on published airfares

Allianz Australia Insurance Limited, QBE Insurance (Australia) Limited and NRMA Insurance Limited joint provision of public liability insurance to eligible not-for-profit organisations

interim decisions:

Qantas and British Airways joint services agreement

review:

International Air Transport Association authorisations

authorisation applications

	opening balance	new applications	applications withdrawn	applications decided	balance
authorisation applications	26 (67)	25 (61)	10 (22)	17 (59)	24 (47)
minor variation applications	0	11 (21)	0	8 (12)	3 (9)
revoke and substitute authorisation applications	6 (6)	11 (11)	0	7 (7)	10 (10)
applications to revoke authorisations previously granted	0	11 (11)	0	11 (11)	0
total	32 (73)	58 (104)	10 (22)	43 (89)	37 (66)
last year	39 (94)	22 (40)	1 (1)	28 (60)	32 (73)

notes: figures in brackets indicate total applications including electricity and gas matters; opening balance includes 30 applications relating to national electricity code changes and 11 applications relating to gas supply market rules; closing balance includes 12 applications relating to national electricity code and 11 applications relating to gas supply market rules; new applications decided includes one merger application

notifications

	this year	last year
opening balance	89	63
new applications	248	307
withdrawn	3	1
decided	268	281
balance	66	26

certification trade marks

opening balance	44	45
new applications	31	19
withdrawn	2	0
decided	28	20
balance	45	44

in the balance four have had initial assessments

applications for review by the Australian Competition Tribunal

opening balance	3	0
new applications	1	3
withdrawn	2	0
decided	1	0
balance	1	3

notes: Marven Poultry judicial review not included; application for review of Health Purchasing Victoria determination lodged on 20 December 2002; application for review of Agsafe determination withdrawn on 11 July 2002; application for review of Sydney Recycling determinations withdrawn in August 2002; application for review of Australian Diary Farmers Federation determination resulted in a consent agreement between the applicant for authorisation (Australian Diary Farmers Federation), the applicant for review (National Foods) and the ACCC, being agreed to by the tribunal on 27 August 2002.

The ACCC made 41 final determinations for 89 **applications for authorisation**, including gas, electricity and mergers. A signification portion of current adjudication workload is generated by organisations responding to changing market conditions, for instance resulting from regulatory change or global competition.

The ACCC engages with **overseas competition authorities** on authorisations where it has a common interest. One example is liaising with the New Zealand Commerce Commission on the Qantas/Air New Zealand strategic alliance proposal.

The ACCC also continues to respond to applications lodged as a result of the **impact of competition policy reform** on areas once beyond the reach of the Trade Practices Act, for example in relation to potentially anti-competitive arrangements in the professions or collective bargaining by small businesses. In previous years these have focused on **primary producers** wishing to collectively bargain with processors. This year applications have been considered from newsagents wishing to negotiate collectively with suppliers including publishers; hotels on the provision of totalisator betting from TAB Ltd and receiving broadcasting services from Sky Channel Pty Ltd; lottery agents seeking to engage in collective negotiations with the Golden Casket Lottery Corporation Limited in Queensland; and concrete carters wishing to negotiate collectively with CSR in Western Australia and Queensland. The ACCC has also received a number of **third line forcing** notifications across many different industry sectors, including banking and finance, telecommunications, petrol and retail.

major authorisations and notifications

Australian Pharmaceutical Industries Ltd (API) and Sigma Company Ltd

result | 12 September 2002 acquisition opposed

background | proposed acquisition would substantially lessen competition with full-line wholesalers reduced from three to two; together the companies would account for approximately 60–70 per cent of products for retail pharmacies

Australian Hotels Association (NSW)

result | 27 June 2003 final determination granting authorisation

background | proposed collective bargaining by New South Wales hotels for the provision of totalisator (wagering) (PubTAB) from TAB Limited and receiving broadcasting services from Sky Channel Pty Ltd; Australian Hotels Association (NSW) no longer seeking authorisation for collective boycott activity, the revision significantly reduced anti-competitive detriment

Australian Bankers' Association

result | 20 December 2002 application withdrawn

background | 10 member banks proposing to collectively agree to offer a basic bank account with minimum features to low income consumers; concern that the proposal had the potential to dampen competition between the major banks and result in the proposed minimum features becoming the industry standard

Allianz Australia Insurance Limited, QBE Insurance (Australia) Limited and NRMA Insurance Limited

result | 28 April 2003 draft determination proposing to grant conditional authorisation allowing the joint provision of public liability insurance to eligible not-for-profit organisations

background | 28 November 2002 interim authorisation granted allowing the companies to offer the joint insurance product while the merits of the proposal are considered

Investment and Financial Services Association

result | 11 December 2002 granted interim authorisation of the policy for members

background | arrangement between life insurance companies to limit the use of genetic testing in life insurance policies

Qantas and Air New Zealand

result | 10 April 2003 draft determination proposing to deny authorisation; formed the preliminary view that the proposed alliance would be highly anti-competitive and its benefits small; the ACCC is currently evaluating additional information

background | 9 December 2002 Qantas and Air New Zealand applications seeking authorisation for Qantas to acquire up to 22.5 per cent of the equity in Air New Zealand and for the formation of a strategic alliance; the strategic alliance would involve price, capacity and schedule coordination on nominated routes with the primary focus being the Trans Tasman, North America and New Zealand domestic markets

Qantas and British Airways joint services agreement

result | 11 June 2003 granted interim authorisation while considering the matter in full

background | 6 May 2003 Qantas and British Airways applications seeking re-authorisation of their joint services agreement due to expire on 21 July 2003

International Air Transport Association

result | 15 April 2003 application for revocation and substitution of an authorisation covering all International Air Transport Association activities other than for travel agents; progress the application by issuing discussion papers on the matters before issuing consolidated draft and final determinations

background | in consultation with IATA the ACCC commenced its review of authorisations granted 18 years ago covering IATA rules, regulations, agreements and resolutions; IATA is progressively lodging submissions on each of the systems

Star Alliance

result | 30 May 2003 draft determination proposing, to authorise the arrangements, subject to certain undertakings

background | 11 April 2002 Air New Zealand, on behalf of the members of the Star Alliance, applied for authorisation of the guidelines for implementation of the Star Joint Corporate Agreement and the Star Alliance Conventions Plus Program; Star Alliance airlines will jointly offer agreed discounts on published airfares to consenting corporate customers and convention delegates; airlines participating in a joint bid will collect and exchange information and will not make competing independent bids until a joint bid is withdrawn or rejected

Royal Australasian College of Surgeons

result | 30 June 2003 granted authorisation subject to conditions

background | applied for authorisation of its processes for selecting, training and examining surgical trainees; accrediting hospitals and hospital posts as being suitable for surgical training and for assessing the qualifications and experience of overseas-trained surgeons

Royal Australian College of General Practitioners

result | 20 December 2002 granted authorisation subject to conditions, to ensure that practices genuinely function as one medical body; authorisation does not allow fee agreements between doctors in different general practices

background | sought authorisation to allow general practitioners across Australia in the same associateship or partnership with a corporate partner to agree on patient fees

Health Purchasing Victoria

result | 5 December 2002 granted authorisation subject to conditions; Nursing Agencies Association of Australia lodged an application for review with the Australian Competition Tribunal

background | public hospitals in metropolitan Melbourne and Geelong apply for authorisation to collectively tender for agency nursing staff

New South Wales Department of Health

result | 27 June 2003 granted authorisation subject to conditions

background | New South Wales Department of Health applied for authorisation of its policy of requiring private in-patients in New South Wales public hospitals to use public pathologists

Australian Self Medication Industry

result | 12 February 2003 granted interim authorisation while merits of application are considered

background | 8 January 2003 Australian Self Medication Industry sought authorisation for an industry code of conduct for members designed to reduce the illicit diversion of pseudoephedrine containing medicines for the production of methylamphetamine (speed)

Australian Competition Tribunal

Australian Dairy Farmers' Federation

result | August 2002 | the Australian Competition Tribunal agreed on position consented to by National Foods, Australian Dairy Farmers' Federation and ACCC that groups of dairy farmers with a shared community interest are authorised to collectively negotiate terms of supply, including pricing, with a dairy company that each member of the group wishes to supply

Sydney Recycling

result | August 2002 | Waste Services Corporation New South Wales withdrew application for review of two authorisations allowing various Sydney councils to collectively negotiate with recycling facility operators

Agsafe Limited

result | July 2002 | Veterinary Manufacturers and Distribution Association withdrew application for review of authorisation to a self-regulation compliance program for the agricultural and veterinary chemical industry, overseen by Agsafe Limited

notifications of exclusive dealing

Telstra Corporation and Telstra Pay TV

result | 12 November 2002 ACCC decision not to intervene to remove third line forcing immunity granted to Telstra enabling it to include Foxtel's pay TV services in its 'rewards' packages

background | inclusion of Foxtel's pay TV services supplied by Telstra Pay TV with Telstra's telecommunications services in its existing 'rewards' packages, customer receives 5 or 10 per cent discount off the retail price of the Foxtel service; public benefits of allowing Telstra to proceed with bundling arrangements likely to outweigh any public detriment

regulating infrastructure service markets and other markets where competition is restricted

The ACCC promotes competition in the network industries: energy, telecommunications, aviation, waterfront, rail and post as well as monitoring prices of selected goods and services.

energy

The ACCC has powers and responsibilities to regulate the non-competitive sectors of the electricity and gas industries, the transmission wires and pipelines. The ACCC's responsibilities include **regulating the terms and conditions** on which competing businesses can gain access to transmission wires and pipelines, and constraining monopoly pricing. It performs these functions in liaison with state and territory regulators, which generally have responsibility for regulating the distribution wires and pipelines.

some technical terms

distribution networks
the smaller wires and pipelines that carry electricity and gas from the transmission networks to the consumer.

derogation
an exemption from a provision of the national electricity code

electricity pool
because electricity cannot be stored, and electricity produced by different generators cannot be distinguished, the wholesale market uses the concept of a pool where all electricity output from generators is centrally pooled and scheduled to meet demand.

electricity spot market
allows wholesale electricity to be traded between generators and wholesale customers. A spot price is calculated for each half hour period, based on price offers and bids.

forward-looking loss factors
wholesale electricity prices to be adjusted to reflect losses in transmission due to resistance in the network.

network service providers
businesses that own and/or operate the transmission and distribution wires and pipelines.

ring fencing
structures to prevent flows of information and personnel within an integrated utility and between related businesses.

transmission networks
the high voltage wires or high-pressure pipelines that carry electricity or gas from generators or producers to the distribution networks in the cities, towns and, in some cases, directly to major customers.

vertical integration
bringing successive stages in production and marketing under the control of one organisation, e.g. combining electricity generation, transmission, distribution and retailing.

electricity

this year the ACCC

finalised revenue cap decisions for transmission businesses of SPI PowerNet (Victoria), VENCorp (Victoria) and ElectraNet (South Australia)

finalised bidding and rebidding rule code changes

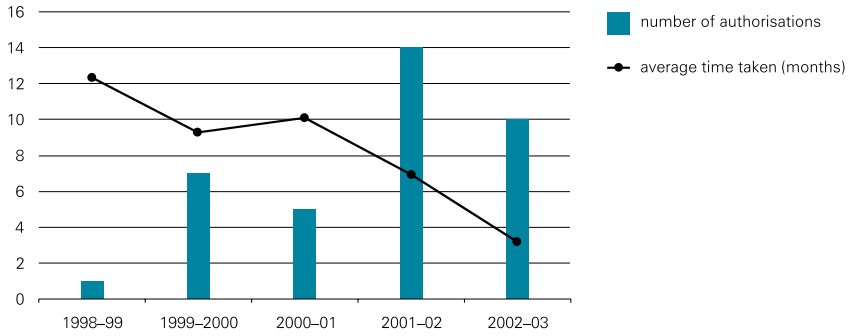
authorised code changes for implementing technical requirements for access to power system

authorised exemptions from provisions of the national electricity code on the introduction of full retail competition in South Australia and the Australian Capital Territory; extension of technical exemptions; safety net provisions and reserve contracting; calculation of loss factors in Queensland; and Victorian transmission network arrangements

reduced to four the outstanding code change applications

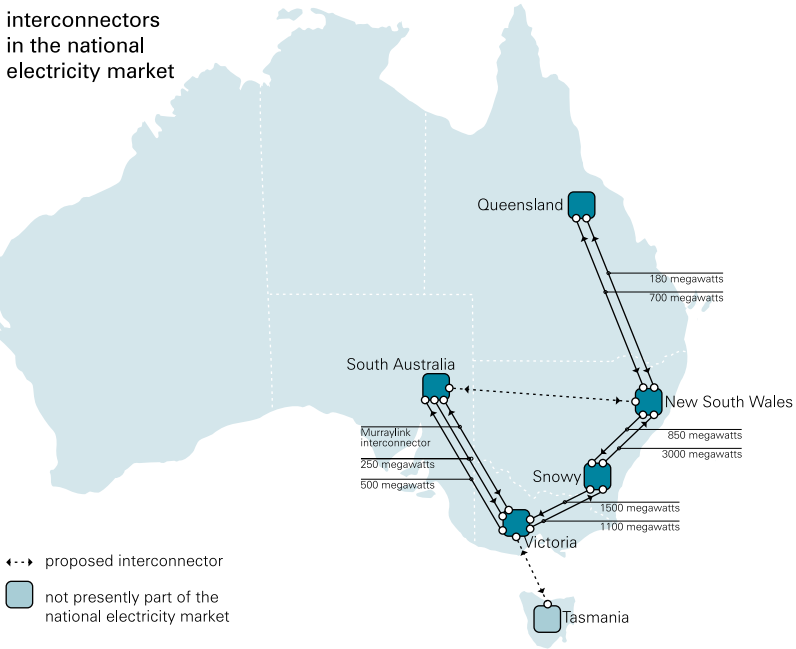
reduced the time taken to complete authorisations

authorisation comparison



	this year	last year
authorisations	10	14
minor variations to authorisations	1	0
final approvals for access undertakings	2	0
final decisions for revenue caps	3	1
discount recovery applications considered	4	6

☐ the national electricity market

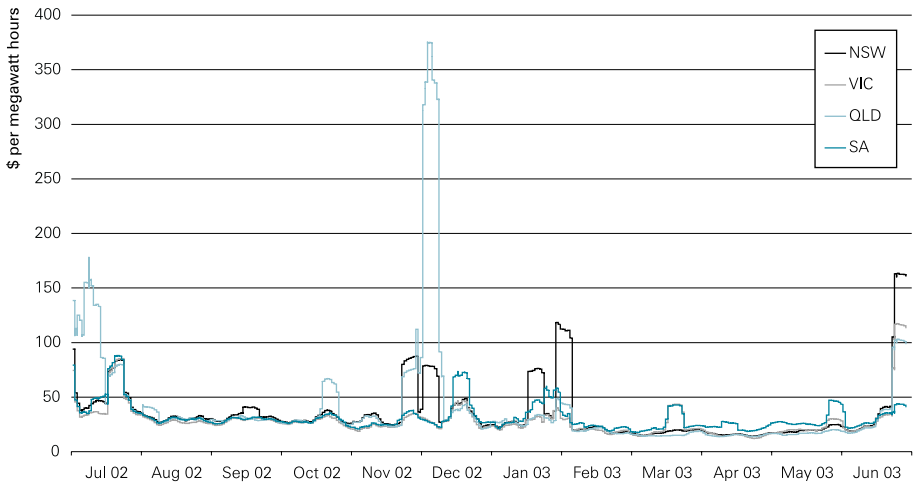


The **national electricity market** pools output from generators into a single wholesale market. The pool is managed by the **National Electricity Market Management Company Ltd** which is owned by the participating state and territory governments. Generators bid to supply given quantities of electricity into the spot market. Based on these bids the National Electricity Market Management Company schedules which generators will operate for each five-minute period.

Retailers purchase electricity through the **spot market**. They manage the risk of trading through the pool by purchasing financial contracts directly from other market participants including generators. All market participants supply the National Electricity Market Management Company with information that it needs to manage system security (the ability to meet all electricity demand) and to enable it to forecast demand and supply for up to two years in advance. All market participants have access to this information for forward planning purposes.

Detailed market rules are set out in the national electricity code which is administered by a separate company, the **National Electricity Code Administrator Ltd**. The competition and access-related parts of the code are under the ultimate supervision of the ACCC. The ACCC also approves changes to the code.

☐ volume weighted average price in the spot market



source: National Electricity Market Management Company

The figure indicates average spot market prices during the year. There were **price spikes** in the spot market of the national electricity market in July 2002 during the evening peak periods from 6 to 7:30pm. Prices increased from around $30 per megawatt hour to near the price cap of $10 000 per megawatt hour. High prices over the summer did not occur potentially because of the mild weather and changes in contract positions of market participants.

The price spikes in Queensland during the first week of December were caused by a combination of record demand, the reduction in availability of low priced generation, plant failures and a restriction on imports from NSW resulting from planned and forced network outages due to bushfires.

Prices were generally low from February to June 2003 with mild summer weather, improved plant availability and the contracting positions of market participants preventing very high pricing levels. The ACCC continues to monitor the performance of the market to determine whether efficient outcomes are being achieved.

Recent investment outcomes and proposals include the following: over $800 million in gas transmission developments is under construction or committed; a further $5.4 billion in gas transmission investment is proposed; $2.5 billion in new intra-state electricity transmission investments is underway or planned; new investment will increase the transmission asset base in the national electricity market by 40–50 per cent over a period of five years.

The following reports were produced: A submission to the **energy market review** set up by the Council of Australian Governments: the submission suggests further reforms to improve transmission investment outcomes and to mitigate market power in the NEM. **Transmission ring-fencing guidelines** which require transmission network service providers to provide financial statements, accounts and compliance reports; final reporting guidelines were also released. **Service standards guidelines** (draft) to inform transmission network service providers what service standards information to provide to the ACCC in their revenue cap applications and in annual compliance statements. A discussion paper reviewing the **regulatory test** that all transmission network investment must satisfy to receive regulated status.

amendments to the national electricity code

bidding and rebidding rules

result | 4 December 2002 | public benefit in generators bidding and rebidding in good faith; change is intended to stop rebidding unless unexpected circumstances occur; enhance the National Electricity Code Administrator's role of enforcing the market rules

review of directions in the national electricity market

result | 3 October 2002 | single and consistent arrangement should apply to the use of the ability of the National Electricity Market Management Company to intervene to direct supply; provisions strengthened to improve transparency of directions and to report on uses

review of integrating the energy market and network services stage one

result | 3 October 2002 | code changes arose from the National Electricity Code Administrator's stage 1 review of integrating the energy market and network services: the extension and refinement of settlement residue auction arrangements; refinement of the calculation of loss factors, including a move towards a forward-looking approach in their calculation

review of technical standards

result | 26 February 2003 | code changes aimed at implementing technical requirements for access to the power system while maintaining network security

safety net provisions and reserve contracting derogations

result | 27 November 2002 | widen the scope of the existing reserve trader provisions; allow National Electricity Market Management Company to enter into non-scheduled reserve contracts; ensure more reserve could be offered than currently possible

Queensland technical derogations

result | 27 November 2002 | specify technical standards for Queensland transmission and distribution companies to ensure that the stability of the transmission system is maintained

South Australian full retail competition and system planning derogations

result | 27 November 2002 | proposed changes would: introduce transitional arrangements for metering services in the wholesale electricity market; provide the local network service providers with a monopoly for the provision of metering services; ensure the derogation on system planning is consistent with the code; require planning information

Queensland intra-regional loss factors derogations

result | 15 January 2003 | derogation was extended to allow Queensland to continue using the forward-looking loss factors

Australian Capital Territory full retail competition derogations

result | 5 March 2003 | agreed with delay to the introduction of competition for metering services for a transitional period to coincide with other transitional arrangements established as part of the Australian Capital Territory full retail competition program

amendments to Victorian transmission regulatory arrangements derogations

result | 19 March 2003 | regulation of transmission network services in Victoria; granted conditional authorisation to ensure: greater clarity in the allocation of roles and responsibilities between the Victorian Energy Networks Corporation and SPI PowerNet; explicit recognition in Victoria's derogations of VENCorp's not-for-profit status; VENCorp is able to recover all of its operating costs and network capital expenditures

network regulatory work

Basslink access undertaking

result | Basslink Pty Ltd's access undertaking accepted; Basslink Pty Ltd is the market network service provider that proposes to build and provide access to the unregulated transmission cables that will connect Tasmania to the national electricity market

Murraylink access undertaking

result | Murraylink Transmission Company's revised access undertaking was accepted; network service provider who proposes to provide access to the Murraylink interconnector, which will be an unregulated link connecting the Victorian and South Australian electricity grids; recognised that it would not be appropriate to impose conditions to force company to operate as a regulated interconnector; code provisions create a reasonable expectation that company would be able to sell physical and financial transmission rights, and operate as a market network service provider

South Australian transmission network

result | maximum allowable revenue that ElectraNet can earn from the use of its non-contestable transmission assets will increase from $148 million in this year to $180 million in 2007–08; granted ElectraNet $48 million per annum for operating and maintenance expenditure over the regulatory period including grid support; total capital expenditure roll-in for the period 1 January 2003 to 30 June 2008 of $358 million; includes an incentive scheme to encourage ElectraNet to maintain or improve its service quality and reliability; the decision is expected to result in a 4 per cent decrease (in real terms) in transmission prices over the regulatory period compared to 2001–02

Victorian transmission network

result | revenue cap for SPI PowerNet that increases from $271.23 million in 2004 to $303.05 million in 2008; revenue cap based on post-tax nominal return on equity of 11.09 per cent and an opening asset balance of $1835.60 million; total capital expenditure for the period 1 January 2003 to 30 June 2008 of $378.64 million to cater for demand growth and ageing network; the decision will save Victorian consumers $146 million over five and a quarter years

Tasmanian transmission network

review | commence regulation of Transend Networks from 1 January 2004; Tasmania is not currently part of the national electricity market, but will join with the expected commissioning of the Basslink interconnector between Victoria and Tasmania

Murraylink Transmission Company conversion application

review | preliminary view approving the conversion of the Murraylink interconnector from an unregulated interconnector (relying on spot price differential between two interconnected regions to earn revenue) to a regulated interconnector (earning regulated revenue determined by the ACCC); cap on the Murraylink interconnector's revenues range from $12.25 million in 2004 to $14.33 million in 2012; the revenue cap is based on a post-tax nominal return on equity of 11.17 per cent and an opening asset balance of $114.42 million

gas

this year the ACCC

made final approvals for:

Amadeus Basin to Darwin pipeline access

Ballera to Mount Isa pipeline access

Moomba to Adelaide pipeline system access

revisions to the access arrangement for the principal transmission system proposed by GasNet, the system owner

Wallumbilla to Brisbane pipeline access

made final decisions for:

principal transmission system owned by GasNet

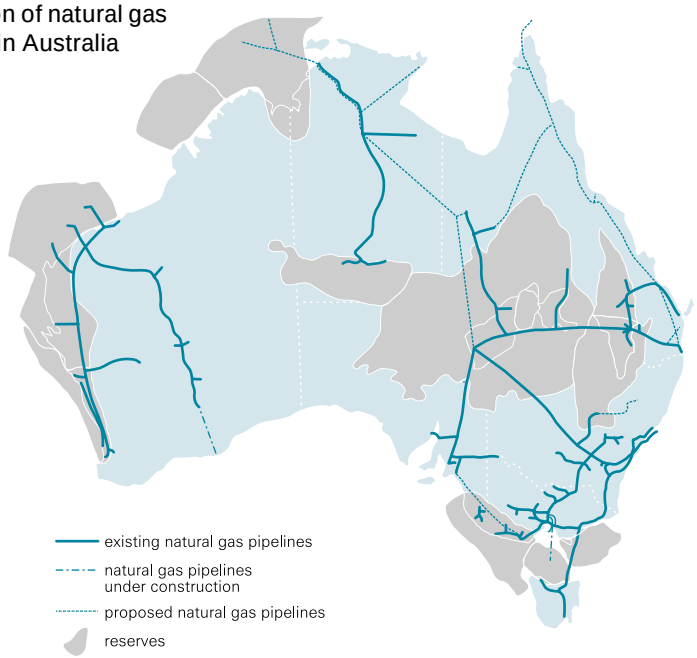
principal transmission system operated by VENCorp

Amadeus Basin to Darwin pipeline access

	this year	last year
final approvals for access arrangements	5	1
final decisions for access arrangements	3	4
ring fencing reports assessed	8	5
minor variations to authorisations	6	3
authorisations	3	0
VENCorp annual budget approved	1	1
competitive gas tender approved	1	1

the national gas code

☐ distribution of natural gas pipelines in Australia



The ACCC is the designated regulator for **gas transmission pipelines** in all states and territories (except Western Australia). It is responsible for: assessing proposed pipeline access arrangements and subsequent amendments; monitoring and enforcing reference tariffs, ring fencing, incentive regulation and other access arrangement provisions; arbitrating access disputes between pipeline service providers and access seekers; overseeing competitive tendering processes for new transmission pipelines; and assessing applications from industry for authorisation of anti-competitive gas supply arrangements. The ACCC also regulates the industry through the general merger, anti-competitive conduct, fair trading and consumer protection provisions of the Trade Practices Act.

The **national gas code** applies to transmission and distribution pipelines with natural monopoly characteristics. The owner or operator of a pipeline covered by the code must lodge an access arrangement with the relevant regulator, detailing proposed terms and conditions for access to its services. The code sets out the principles to be applied by the regulators in assessing an access arrangement. It also provides for binding arbitration of disputes between service providers and access seekers.

The ACCC and National Competition Council released a **joint publication** in November 2002 *Regional development of natural gas transmission pipelines* which outlines the possible regulatory implications for new pipelines.

access arrangements

Moomba to Adelaide pipeline system: Epic Energy

result | final approval rejected proposed access arrangement and approved an access arrangement re-drafted by the ACCC; proposed access arrangement did not comply with amendments required by the final decision; Epic applied to the Australian Competition Tribunal for review of elements of the decision

Victorian principal transmission system review: GasNet

result | final approval rejected GasNet's revisions in response to the final decision; ACCC drafted and approved revisions for GasNet; GasNet applied to the Australian Competition Tribunal to review the decision

Victoria Energy Networks Corporation (VENCorp)

result | final decision to approve VENCorp's proposed access arrangement

☐ South Australia

Moomba to Adelaide pipeline

☐ Victoria

Victorian transmission system

Ballera to Mt Isa pipeline

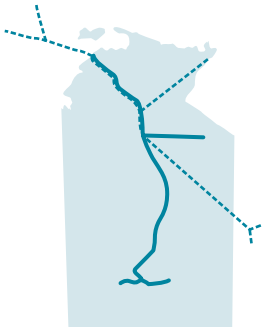
result | final approval accepted on the terms and conditions of transportation services proposed by the Carpentaria Gas Pipeline Joint Venture

Amadeus Basin to Darwin pipeline: NT Gas

result | final approval accepted on the terms and conditions of transportation services proposed by NT Gas

☐ Queensland
Ballera to Mt Isa pipeline,
Wallumbilla to Brisbane pipeline

☐ Northern Territory
Amadeus to Darwin pipeline



Victorian market and system operations rules

result | six minor applications for variations to the market and system operations rules received; authorisations were granted to give effect to exclusionary provisions and exclusive dealing arrangements; public detriment outweighed by the public benefits arising from the changes

Victorian market and system operations rules

result | granted three re-authorisations for exclusionary provisions and exclusive dealing aspects of the market and system operations rules

Wallumbilla to Brisbane pipeline

result | final approval accepted on the terms and conditions of transportation services proposed by APT Petroleum Pipelines Limited

Competitive tenders

result | issued a decision approving a request to conduct a competitive tender for the construction of a new natural gas transmission and distribution system to the Central Ranges region of New South Wales.

telecommunications

Telecommunications markets were opened to full competition. The ACCC is responsible for the **competition and economic regulation** of communications markets. The ACCC administers the general **consumer protection** provisions within the Trade Practices Act which apply to the telecommunications industry, comprising competitive safeguards and access regimes, as well as other legislative provisions in the *Telecommunications Act 1997* and related legislation.

The central premise of the **competitive safeguards regime** is that companies must not engage in anti-competitive conduct. The ACCC can issue competition notices in response to allegations of anti-competitive conduct. Importantly, the effect of the notice is to reverse the onus of proof. Recipients of the notice must demonstrate to the court that they are not engaging in anti-competitive conduct. The telecommunications **access regime** does not provide automatic rights of access as services must first be declared by the ACCC. Once declared, disputes can be brought to the ACCC for arbitration. The regime also enables access providers to lodge undertakings regarding conditions of access and seek exemptions from the standard access obligations.

this year the ACCC

declared line sharing service

granted exemptions for local carriage service

accepted undertakings from pay TV industry regarding Foxtel/Optus content sharing agreement

issued draft determinations for model terms and conditions for core services

established framework for review of existing declared services

issued record-keeping rules to Telstra for bundling and enhanced accounting separation

reported to communications minister on emerging market structures

accepted court enforceable undertakings from Vodafone fastfone prepaid services

finalised anti-competitive conduct investigation into Telstra's agency arrangements

issued guide to the resolution of access disputes

produced fair call advertising guide for telecommunications businesses

	this year	last year
anti-competitive conduct investigations	11	13
consumer complaints investigations	7	18
services declared	1	0
access undertakings received	3	0
exemption applications received	0	1

The ACCC delivered its three annual telecommunications reports to the Minister for Communications, Information Technology and the Arts in June 2003. In its reports on **Telstra's compliance with price control arrangements** the ACCC found that Telstra had complied with its price control arrangements under the 2001 ministerial direction subject to one caveat: there is a disparity of views between Telstra and the ACCC on the measurement of price movements, the extent of carry-over in relation to the second basket of services and Telstra's application of the ACCC's methodology for determining compliance with the ministerial determination. This may have implications for Telstra's compliance with the determination in future price cap periods.

In its **competitive safeguards report** to the minister the ACCC noted its continued concern at the lack of effective competition within and across telecommunications markets, due in large part to the continued dominance of Telstra. This was supported by the **changes in prices for telecommunications services report**, which found that price reductions have slowed over the last few years. While in real terms the overall price paid for telecommunications services in 2001–02 fell by 2.7 per cent, this was the lowest rate of decrease since 1998–99.

At the request of the Minister for Communications, Information Technology and the Arts in June 2003 the ACCC provided a report on **emerging market structures in the communications sector**, encompassing telecommunications, subscription television and media. In this report the ACCC argued that these markets are at a crossroads and without changes to communications regulatory arrangements Australia is unlikely to reap the full benefits of new technologies, particularly broadband applications. The report proposes that the government: introduce legislation requiring Telstra to divest its hybrid fibre coaxial network in full and divest its 50 per cent shareholding in Foxtel, unless it can be shown that the costs in doing so would outweigh the benefits; bring forward the review of the moratorium on the number of commercial free-to-air broadcast licences and an across the board review of media sector regulation, in particular those that have a direct impact on competition; and introduce legislation to increase access to pay TV content for broadband networks.

The ACCC implemented the ***Telecommunications Competition Act 2002***, passed in December 2002, which amended the telecommunications specific provisions of the Trade Practices Act, focusing on improving information available to the market and transparency within the industry. Using these new provisions, the minister issued a direction to the ACCC to make a record-keeping rule and to publish reports that are produced to implement enhanced **accounting separation** of Telstra's wholesale and retail operations. **Initial record keeping rules** were issued in June 2003, requiring Telstra to provide the ACCC with information on current costs, key performance indicators and imputation analysis.

As required by the legislative amendments, in June 2003 the ACCC released for comment draft price and non-price **model terms and conditions** for three core services: the local carriage service, the unbundled local loop service, and public switched telephone network originating and terminating access services. Non-price conditions include faults and maintenance, service migration and creditworthiness.

The amendments to the legislation also set five year expiry dates for all **new service declarations** where previously they were open ended. Under the transitional provisions in June 2003, the ACCC released the **timetable of expiry dates for declared services**, affirming its earlier draft decision. In accordance with the timetable, the mobile services declaration is being reviewed as part of a broader **mobile services review**, started in April 2003, examining what form of regulation, if any, should be applied to the mobile terminating and originating access services, the domestic and international roaming services and third generation mobile services. The ACCC issued a discussion paper and began industry consultation on this review. In September 2002 the ACCC varied the **pricing principles for mobile termination services**, to include termination on code division multiple access networks as well as general service for mobile networks. This followed the broadening of the declaration for these services to include code division multiple access services in the previous year.

The ACCC monitors telecommunications markets for **anti-competitive conduct**, using information gathered from record keeping rules and other sources. This year it continued monitoring broadband markets using record keeping rules currently in place. The ACCC also produced a quarterly report on take-up of **broadband services**, using data voluntarily provided by the industry. A **telecommunications infrastructure survey** was also completed, gathering information from industry on network deployment and the supply of telecommunications services across Australia.

Bundling has emerged as a competition issue over the last few years. **New record keeping rules** were issued this year to Telstra, requiring it to keep records and provide the ACCC with quarterly reports in relation to **bundled services**, including the discounts given on a bundle of services, the number of customers receiving bundled services and whether customers currently receiving a bundle of services previously received individual services from Telstra or another provider. The ACCC also released a paper outlining its **proposed approach to bundling**, providing guidelines for how it will assess whether specific bundling conduct in the telecommunications industry is anti-competitive.

The ACCC conducted 11 **anti-competitive conduct investigations**. In particular, an investigation was conducted into Telstra's agency arrangements. The ACCC conducted seven **consumer protection investigations**. Each matter may represent conduct that affects many consumers. Three matters were progressed to court: Global Pre Paid Communications Pty Ltd and In-Touch Networks Pty Ltd regarding pre-paid calling cards; Telstra Pty Ltd about the say g'day pre-paid long distance calling cards; and National Telecommunications Group Pty Ltd regarding 'free' phone systems. An investigation into Vodafone fastfone pre-paid services was finalised out of court, with the ACCC accepting undertakings from Vodafone.

The ACCC removed access regulation from some services, granting an **exemption for the local carriage service** in central business districts of major capitals. The ACCC was satisfied that there are a number of alternatives by which local call services can potentially be delivered in these business areas and the removal of regulation should encourage use of these alternatives. The ACCC added regulation to others services, **declaring the line sharing service** in August 2002. Despite commercial agreements negotiated for the supply of these services, given that Telstra is the sole provider of these services, the ACCC decided to declare the service. An **internet interconnection declaration inquiry** started in April 2003, seeking to establish whether internet interconnection should be regulated. The ACCC is concerned to ensure that the terms and conditions for interconnection between domestic internet service providers are competitive.

A **guide to the resolution of access disputes** was issued in October 2002, incorporating revised dispute resolution processes. In May 2003 the ACCC revised the guide to take account of the December 2002 amendments to the access regime, including the removal of merits review on final ACCC arbitrations decisions and introduction of a new power to enable the ACCC to choose to defer arbitrations when undertakings are lodged.

Two arbitrations continued on analogue broadcast **subscription television (pay TV) services**. The ACCC deferred these arbitrations while the **Foxtel/Optus content sharing agreement** was considered. In November 2002 it accepted court enforceable undertakings from members of the pay TV industry that addressed concerns about the content sharing agreement. As foreshadowed in these undertakings, Foxtel and Telstra Multimedia lodged **separate access undertakings for analogue subscription pay TV services**, proposing the terms and conditions on which each would give access to their pay TV services. A decision on the access undertakings, a separate process from acceptance of the court enforceable undertakings, will be made within the legislative deadline. Again, as foreshadowed in the court enforceable undertakings, Foxtel and Telstra Multimedia lodged **anticipatory exemptions for digitisation** of their pay TV services in December 2002, using new provisions in the access regime. Neither company has as yet digitised their networks and equipment, but have committed to do so via the initial undertakings, should this exemption be accepted. If the exemption were granted, and each company digitised its services, each would be exempted from standard access obligations that would apply if a digital subscription TV service were declared in the future. Consideration of this exemption by the ACCC is a separate process from acceptance of the initial undertakings and a final decision will be made within the legislative deadline.

The ACCC participated in meetings of the **Australian Communications Industry Forum** addressing regulatory and policy issues about next generation networks.

Vodafone fastfone prepaid services

result | court enforceable undertakings September 2002 | Vodafone agreed to offer refunds and full disclosure of contract conditions; company acknowledged that it did not inform all customers of changes to expiry period and that old advertising material was available at point of sale.

Telstra's agency arrangements with Optus

result | agency recognition agreement signed April 2003 | Telstra and Optus acknowledged the other's role in assisting businesses that decided to change whole-of-business service providers; Telstra amended its standard form of agreement to meet ACCC's broader concerns that it gave Telstra the right to withhold consent to a customer's request to appoint an agent or third party to manage its telecommunications services.

Local carriage service exemptions

result | two local carriage service exemptions granted July 2002 | an individual exemption to Telstra for the supply of wholesale local calls in the central business district areas of Sydney, Melbourne, Brisbane, Adelaide and Perth effective July 2003, and a class exemption to all other carriers and carriage service providers in the same areas effective 31 July 2002.

Line sharing service declaration

result | ACCC declared line sharing service August 2002 | although Telstra had entered into agreements to provide these services, which enable two separate carriers to provide separate services over a single line, the ACCC declared it was doubtful about the long-term durability of these agreements as Telstra is the sole provider of the service.

Content sharing agreement—Foxtel and Optus

result | ACCC accepted court enforceable undertakings November 2002 | proposed by Foxtel, Optus, Telstra and Austar to address ACCC concerns about the potential anti-competitive effects of planned pay TV content sharing arrangements between Foxtel and Optus; ACCC assessed there was evidence that the competitive position of Optus in the market was being adversely affected by its inability to access and supply key content, which would be remedied by these arrangements.

Pricing principles for mobile services

result | issued pricing principles October 2002 | setting out the broad principles that it would follow if called on to arbitrate a dispute in the supply of general services for mobile or code division multiple access termination.

aviation

this year the ACCC

completed regulatory reports covering quality of service monitoring, price cap administration and financial reporting for phase I and II airports, as well as Sydney airport

assessed Sydney airport's terminal 2 price restructuring notification

reviewed quality of service indicators and financial reporting requirements

completed two assessments of Airservices Australia's price notifications

This year a **new regulatory regime** for airports was introduced. The ACCC's main responsibilities for the major seven airports—Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, Darwin—now include: under the Prices Surveillance Act monitoring of prices, costs and profits relating to aeronautical services and aeronautical-related services; under the Airports Act reporting on financial accounts and quality of service monitoring. Monitoring involves collecting information and reporting on prices, quality and financial accounts, but the ACCC has no power to prevent price increases.

The ACCC's **financial accounts and quality monitoring** functions also apply to some smaller airports—Alice Springs, Gold Coast, Hobart, Launceston and Townsville. Aeronautical services for regional airline services at Sydney airport are also still subject to a **price cap**. The ACCC is also responsible for assessing proposals by **Airservices Australia** to increase charges for en route and terminal navigation services and rescue and fire fighting services.

Each year since 1997–98 the ACCC has released **regulatory reports** for the regulated airports. The reports provide details on quality of service, financial accounts, compliance with the former price caps on aeronautical services, and prices, costs and revenue information of monitored aeronautically related services. This year the ACCC reported the final **price cap** results for a number of airports. These showed that over the five years that prices were capped, Brisbane airport exceeded its price cap by a total of $2.4 million. Perth airport was also over its price cap by $0.5 million, but Melbourne airport complied with the cap with a small under-recovery of $0.2 million at the end of the regulatory period.

The ACCC monitors airport **quality of service**, collecting information from airport operators, Australian Customs Service, Airservices Australia and airlines. The information includes data from customer perception surveys and airline surveys. Findings were: quality of services has generally been good for all airports during the five year period of reporting; service quality has not been sacrificed to reduce costs under the price cap arrangements; at **Brisbane airport** there have been consistently high standards of quality reported; recent survey results for **Sydney airport** indicate a high degree of satisfaction with the quality of services provided; results for **Melbourne airport** showed that users have been satisfied with the availability and standard of the facilities and services each year except 1999–2000, however issues identified then have since been addressed; **Perth airport** surveys of users indicate reasonable levels of satisfaction with the services provided, although some lower recent ratings from airlines were apparent. This is the second year in which quality of service monitoring has been conducted for the phase II airports, and survey results indicated that airline users are generally satisfied with the quality of service at these airports.

The **financial accounts** show that all the regulated airports continued to make positive earnings before interest and tax. Except for Sydney, Townsville and Hobart, however, all airports made losses after the deduction of interest and tax and writing off of lease premiums.

The current review of the **Airports Act** by the Department of Transport and Regional Services follows the government's recent policy response to the report by the Productivity Commission on price regulation of airport services. The ACCC made a submission to the department's review arguing that both part 7 (financial accounts and reports) and part 8 (quality of service) remain relevant and necessary to complement price monitoring. The submission also recommends that the definitions of aeronautical services for separate accounts reporting be brought into line with definitions for monitoring prices, costs and profits under the Prices Surveillance Act. The submission favours continued application of parts 7 and 8 only to those airports subject to price monitoring: Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin, but not for other smaller airports. The ACCC also recommended a **more efficient quality monitoring framework**, which would involve the government setting the objectives and matters to be monitored in broad terms, while the ACCC administered the scheme, including determining appropriate quality indicators following consultation with stakeholders.

price notifications

Sydney Airports Corporation Limited

result | October 2002 | final decision; ACCC did not object to the proposal to offer a passenger-based charge for regional air services at the common use terminal now known as terminal two, the former Ansett domestic terminal; proposed price structure was unlikely to lead to a price increase in excess of the consumer price index; regional air services given the choice of electing to pay a terminal charge on either of two bases: elect to pay existing charges, originally approved for users of the domestic express terminal, for terminal facilities, apron parking and check in counters; or pay a new passenger facilitation charge of $4.50 per arriving and departing passenger.

Airservices Australia 2002–03 pricing

result | 25 July 2002 | ACCC did not object to the proposal which allowed for a temporary 5.1 per cent weighted average increase in prices across all services comprising an average 5.9 per cent increase for terminal navigation charges (across 9 of the 22 locations where those services are provided), an average 8.1 per cent increase for aviation rescue and fire fighting charges (across all 16 locations where these services are provided) and a 3.9 per cent increase in charges for enroute navigation services.

Airservices Australia 2003–04 pricing

result | June 2003 | final decision to object to the proposed price increases but to allow Airservices Australia to continue current prices for a further 12 month period, until 30 June 2004; the main reason being that Airservices had failed to develop a longer-term approach to pricing that would provide better incentives to innovate in order to minimise costs; rather Airservices was proposing a short-term, rate of return-based approach that tends to result in the highest charges when airlines are under the most financial pressure.

rail

this year the ACCC

monitored Australian Rail Track Corporation's compliance with its obligations outlined in its access undertaking

accepted the minor amendments to track description variation in the undertaking

The ACCC administers the terms and conditions of **access to rail tracks** owned or leased by Australian Rail Track Corporation. The tracks are part of the interstate mainline standard gauge track linking Kalgoorlie in Western Australia, Adelaide, Wolseley and Crystal Brook in South Australia, Broken Hill in New South Wales and Melbourne and Wodonga in Victoria.

waterfront and shipping

this year the ACCC

- administered international liner cargo shipping arrangements
- issued report monitoring container stevedoring costs and profits

The Treasurer directed the ACCC under the Prices Surveillance Act to monitor prices, costs and profits of **container stevedoring operators** in the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney to inform the community about the progress of waterfront reform at major container terminals, as well as the absorption of the stevedoring levy.

The ACCC released its fourth **container stevedoring report** in October 2002 examining trends in prices, costs and profits of the three major stevedoring companies, P&O Ports Pty Ltd, Patrick Stevedores Operations Pty Ltd, and CSX World Terminals Pty Ltd for the two half year periods July to December 2001 and January to June 2002. The **average industry wide cost** per twenty-foot equivalent unit for the six months July to December 2001 was $130, which fell slightly to $129 for the six months to June 2002. Average unit revenue also fell slightly from $166 per twenty-foot equivalent unit in the six months to December 2001 to $165 for the first six months of 2002. The ACCC monitoring highlighted **major productivity improvements** in the container stevedoring industry. In long-run trends, industry wide average revenue (indicative prices) and average costs are much lower than in 1995 when the previous stevedoring monitoring program ended.

post

this year the ACCC

- completed assessment of Australia Post's proposal to increase the price of the basic postage stamp and related services, including large letters and PreSort mail
- completed assessment of Australia Post's proposal to change the pricing structure for reply paid mail

The ACCC is responsible for assessing proposals by Australia Post to increase charges for monopoly postal services. It also has a role in resolving disputes over the price charged to users of Australia Post's bulk interconnection services.

postal price changes

result | 7 October 2002 | ACCC did not object to Australia Post's proposal to increase the basic postage rate from 45 cents to 50 cents, the first rise since 1992; opposed increases originally proposed in bulk rates and large letters, which was already making good profits for Australia Post and cross-subsidising ordinary mail users; users of bulk mail services have been affected by recent price increases after the phasing out of AdPost and discounts for unbarcoded mail; the proposed increase in the cost of postage stamps will enable Australia Post to achieve adequate returns for at least the next five years; it should also ensure Australia Post continues to provide the high level of service consumers have become accustomed to.

reply paid mail

result | March 2003 | ACCC did not object to changes in reply paid services: for barcoded small letters a decrease of 6 cents to 40 cents; for non-barcoded small letters an increase of 9 cents to 60 cents; for large letters an increase of 8 cents in the per item administration fee from 2 cents to 10 cents; the introduction of an annual fee of $60 for each reply paid permit number; requirement that all reply paid customers hold a current Australia Post business charge account.

petrol

this year the ACCC

monitored the retail prices of unleaded petrol, diesel and automotive liquefied petroleum gas in the capital cities and about 110 country towns

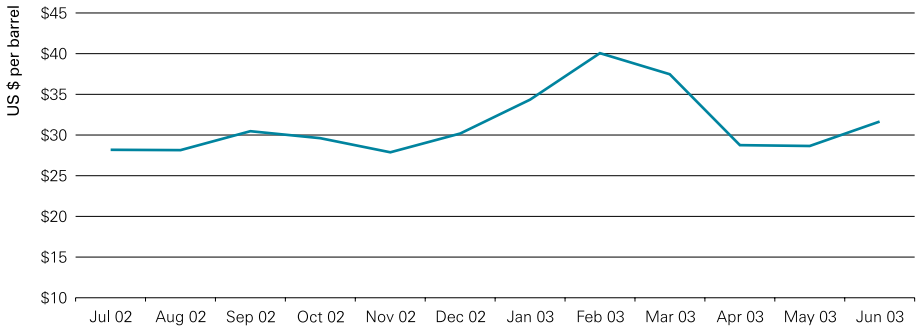
monitored international crude oil and refined product prices, published terminal gate prices of the oil majors and the city–country price differential

increased monitoring of domestic retail petrol prices in the five major metropolitan cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) during the war in Iraq to determine if movements in prices were consistent with international product prices

dealt with 2105 inquiries and complaints on fuel pricing

Monitoring of unleaded petrol prices indicated that average retail unleaded petrol prices in metropolitan and country areas were volatile principally because of movements in the international product price (measured by the spot price for Singapore Mogas 95 unleaded) and the Australian/United States dollar exchange rate. The monthly movement in the international product price was fairly stable for the first five months of the year before increasing in December 2002, January and February 2003, the period immediately before the war in Iraq. Following the start of the war in March the international product price fell significantly. The monthly average exchange rate ranged from a low of around 0.54 cents in August 2002 to a high of around 0.66 cents in June 2003.

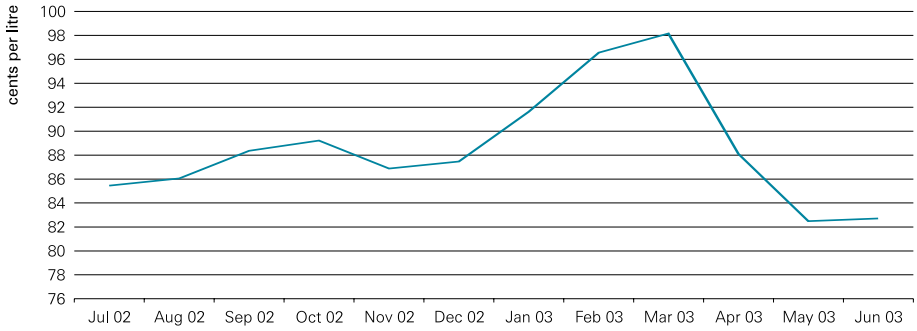
☐ monthly average price of Singapore Mogas 95 unleaded; July 2002–June 2003



source: Platts, energy information division of McGraw-Hill, Inc.

Movements in the average monthly five capital city **unleaded petrol prices** were similar to the movements in the international product price. The average price during the year was 88.6 cents per litre which was 5.2 cents per litre above the average price the year before.

monthly average five capital city unleaded petrol prices; July 2002–June 2003

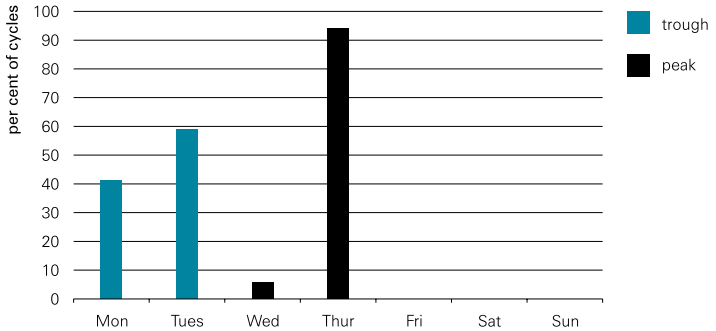


The average price in **country towns** was fairly stable for the first six months and then increased in the first three months of 2003, before declining in April, May and June. As a result of lower volume turnover rates in the country, country prices do not respond as quickly as those in metropolitan areas to international price changes. The average differential between average retail petrol prices in the five major metropolitan cities and country areas was 4.9 cents per litre. The monthly differential ranged from a high of 8.3 cents per litre in April 2003 to a low of 3.0 cents per litre in February 2003.

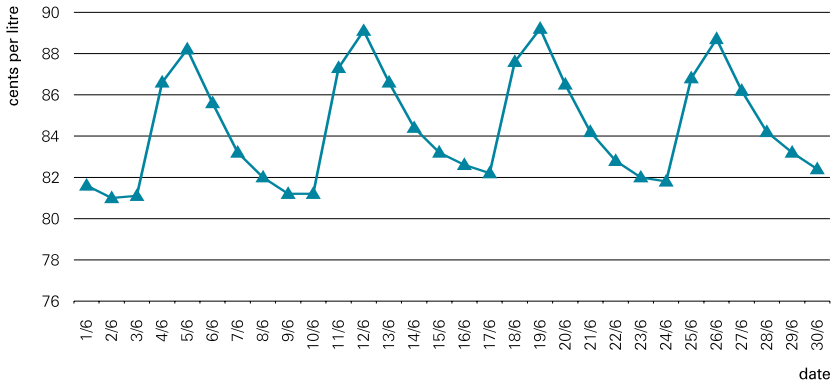
On 19 November 2002 the ACCC launched its initiative to increase consumers' understanding of **petrol price cycles** and how to take advantage of them. The ACCC's website provides data on unleaded petrol price cycles in the five major metropolitan cities. It does not include Canberra, Hobart or Darwin as petrol prices in those cities do not have regular price cycles. Consumers can make significant savings by buying petrol at the bottom of the price cycle.

Information for each city is available on: the **days of the week** when prices were at the bottom or top of price cycles in the previous four months (this provides a simple guide to the best days of the week, in general, on which to buy petrol); average **retail petrol prices** over the past 30 days (this enables consumers to see previous cycles and where the latest price may be in the current cycle); and the **length of price cycles** over the previous four months (this provides a guide to consumers about how long the current cycle may last). Examples of these charts for Sydney are shown below. The website also includes information on what determines Australian petrol prices, country petrol prices and answers to some frequently asked questions. It has links to a number of other websites that have information about petrol prices and petrol pricing issues.

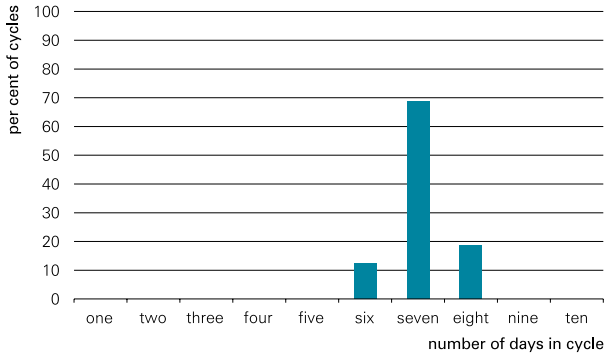
days of the week for peaks and troughs of unleaded petrol prices in Sydney; 1 March to 30 June 2003



☐ average daily retail prices for unleaded petrol in Sydney; 1 June 2003 to 30 June 2003



☐ length of price cycles for unleaded petrol in Sydney; 1 March to 30 June 2003



On 23 April 2003 the ACCC released a **report on terminal gate pricing arrangements** in Australia and other fuel pricing arrangements in Western Australia. Terminal gate pricing broadly refers to the sale of fuel from the terminal gate without additional services that may be provided such as freight, branding and marketing. Terminal gate pricing arrangements were introduced on a regulatory basis in Western Australia and Victoria in 2001 and on a voluntary basis in the other states by a number of the oil companies in 2002.

The report commented that it was hard to conclude that the **Western Australian fuel pricing** arrangements have been successful to date, and noted that Perth average petrol prices had increased by 2.5 cents per litre to 3.0 cents per litre against various benchmarks (although a significant proportion of this increase may be due to tighter fuel standards in Western Australia).

For terminal gate pricing arrangements in **Victoria**, the report concluded that it was difficult to form a view on their impact because the extent to which they apply to the petroleum market in Victoria was not clear. However, it found that since their introduction, average petrol prices in Melbourne had increased by 1.0 cents per litre and average country prices had increased by 0.5 cents per litre compared with a benchmark indicator.

insurance and prices oversight

On 5 July 2002 the Parliamentary Secretary to the Treasurer, Senator Ian Campbell, requested that the ACCC monitor costs and premiums in the **public liability and professional indemnity** sectors of the insurance market every six months for two years to consider the effect on insurance premiums of actions taken by governments to reduce and contain legal claims costs and to improve data available to insurers to evaluate and price risk. On 1 January 2003, at the request of the government, the ACCC began monitoring **medical indemnity insurance** premiums to assess whether they are actuarially and commercially justified. The ACCC also monitors **bank fees** and charges, including credit cards and personal transaction accounts.

intellectual property

The ACCC surveys of the prices of **books and computer software** in Australia and overseas have consistently shown that Australians pay more than overseas consumers for best selling business software and books. In March 2003 Parliament, using the data provided, amended the Copyright Act to allow, among other things, parallel importation of computer software.
In March 2003 the ACCC made a submission to the Senate Economics Legislation Committee supporting the right of repair as an appropriate way of excluding **spare parts** from the new design registration scheme. The committee's report of May 2003 agreed with the ACCC's view.

regulators forum

The ACCC, with state and territory regulatory agencies, set up a public **utility regulators forum** to share information and develop understanding of the activities of various regulators and industries as they implement reform. The forum was formed when public utilities in many industries were experiencing competition for the first time. All regulators are involved in encouraging efficient price setting principles, ensuring access to essential facilities, and minimising inefficiencies of interstate trade. The forum published three newsletters with updates on regulatory activities as well as articles on common challenges.

when we did it

July 02

instituted proceedings against Synergy small business development program

received API/Sigma merger authorisation application

did not object to temporary price increase for Airservices Australia

deregulated local telephone call services in major capital cities

instituted proceedings against Wesfil Australia Pty Ltd for alleged country of origin deception on air filters

opposed joint venture between Farm Pride Foods and Pace Farms

court ordered NRMA health insurance advertisements misleading

launched rural and regional information program

stopped pyramid scheme in home loan industry

court ordered Dell to publish corrective advertisements

issued warning on unsafe fire extinguisher

submitted review of the Dawson inquiry into the Trade Practices Act

recommended consistent pricing principles for mobile telephone services

Telstra cut charges for transferring business numbers

August 02

court found television production company misled job seekers, aided by network

issued draft report on disclosure of telecommunications information

merger between Consolidated Meat Group and Teys Bros not opposed

banned dangerous confectionery jelly cups containing konjac

Woolworths beef advertisements false and misleading

court found Wesfil misled about filters' country of origin

proposed to approve revenue increase for Gasnet

Graincorp/Cargill's proposed acquisition of Milling Australia not opposed

real estate agent refunded GST on commission

opposed acquisition of Milling Australia by Australian Wheat Board to protect competition in flour milling

issued final decision on transmission ring fencing guidelines

Ford Credit to provide over $430 000 in GST refunds on car leases

launched compulsory vehicle third party claim charter

sought to intervene in South Sydney rugby league case

issued final approval on Moomba to Adelaide gas pipeline access arrangement

September 02

reported to the Senate on wholesale grocery prices

Vodafone refunded customers misled by fastfone changes

United States web-based pyramid selling scheme banned in Australia

instituted against Commonwealth Bank over 'cricket' home loan advertising

instituted against Dodo Internet Pty Ltd

launched free internet-based training program

alleged misleading conduct by Internet Registrations Australia

alleged predatory pricing in Fraser Island barges

approved access arrangement for Ballera to Mount Isa gas pipeline

approved access arrangement for Wallumbilla to Brisbane gas pipeline

denied authorisation for API and Sigma merger

published country of origin guide for the food and beverage industry

completed trifecta against Gold Coast punting software promoters

instituted legal action against Fila for AFL licensed apparel policy

October 02

court found Rockhampton obstetricians' boycott of 'no-gap' billing breached competition laws

took action against BMW (Australia) over jacks

Wizard found to have misled or deceived home loan consumers

announced final decision on postal prices

Tamar Knitting Mills fined, false labelling and misleading information

authorised scheme to increase the number of skilled bricklayers in New South Wales

received public liability pooling proposal for not-for-profit organisations

Westfund health insurance fund misled consumers

issued research report into competition and consumer issues in Indigenous communities

warned internet domain name resellers against misleading, deceptive conduct

acquisition of Budget by Avis not opposed

instituted against the producers of Viva olive oils

Incitec/Pivot merger not opposed

offered undertaking by company supplying unsafe children's cot

Golden Casket to reform procedure for assessing gaming applications

released guide on telecommunications dispute resolution processes

issued decision on collective negotiations in New South Wales chicken meat industry

court verdict given on Saatchi & Saatchi element in NRMA advertising

stopped false professional credentials claim by accounting firm

November 02

court declared Free2aiR misled, harassed consumers

IAG acquisition of Aviva's CGU Insurance not opposed

proceedings against South Australian fire protection companies

approved changes to contracting provisions to cover power shortfalls

informed consumers how to exploit petrol price cycles

issued Victorian gas transmission decisions

Telstra freecall misled, deceived consumers

November 02 continued

instituted against Pest Free Australia Pty Ltd over its plug-in pest free device alleging misleading conduct

allowed Telstra proposed pay television notification to stand

accepted Foxtel–Optus pay television deal

instituted proceedings against Harvey Norman Holdings Pty Ltd

acted on mirror Sydney Opera House website

proposed to allow CSR concrete cartage protocols

approved changes to Transgrid's revenue cap

court fined publisher for wrongfully accepting payment for advertising

instituted against Baxter Healthcare Pty Ltd for bundling parenteral fluid products

December 02

John Holland's proposed acquisition of Transfield Construction and Walter Construction not opposed

accepted cosmetic relabelling program by Dr Lewinn Private Formula

found Yellow Pages service misled consumers

made final determination on market and system operations rules to benefit Victorian energy industry

court disapproved of Dell's price advertising

issued warning on product safety for pool toys

gave certainty to doctors within general practices on fee-setting

issued discussion paper on Telstra and Foxtel's analogue access undertakings for pay television

reported container stevedoring costs reach historic low

accepted undertakings from Hoyts, Greater Union and Village Roadshow on cinema advertising

kept watch on internet trading over Christmas/new year

rejected basic bank account agreement proposal

issued revenue cap decision for Victorian electricity transmission network

made decision that will reduce electricity transmission charges in South Australia

Virgin Mobile advertisements found to be false and misleading

Allans Music fined $80 000 for misleading Christmas catalogue

issued Northern Territory Amadeus Basin to Darwin pipeline final decision

concluded investigation into allegations of unlawful conduct in art acquisition involving National Gallery of Australia and the Tasmanian Museum and Art Gallery

proposed to authorise new technical standards for national electricity code

final determination made on national electricity market rebidding code changes

court action taken against alleged attempt to fix flour prices by George Weston Foods Limited

allowed Queensland to continue forward-looking calculation of electricity loss factors

court found Daewoo engaged in unconscionable conduct

issued final determination on nurses in Victoria

Queensland Newspapers Pty Ltd offered undertakings to allow internet advertising in classifieds

domain name reseller provided refunds

Duty Free Group gave undertakings over misleading advertising

took action against Berwick Springs general practitioner for alleged attempt to induce boycott of bulk-billing

January 03

released paper on bundling Telco services

accepted undertakings from Alliance WA Pty Ltd over mobile telephone advertising: refunds for consumers

approved Gasnet's revised access arrangement

initiated court hearing on Peter Foster and slimming products

issued discussion paper on Telstra and Foxtel's digital pay television exemption applications

authorised Inghams to continue collective negotiations with South Australian chicken growers

issued report on disclosure of telecommunications information

warned consumers, retailers to check for banned jellies

reported on price cap for phase I privatised airports

February 03

received EFTPOS reform proposal

interim decision approved industry code to restrict manufacture of illegal amphetamines

concluded investigation into Bpay scheme

Furniture Direct misled consumers in store cost plus $1 campaign

issued paper for improving electricity network investment framework

weight-loss promoter fined $9000 for contempt of court

merger between Australian Cement Holdings and Queensland Cement Limited not opposed

published report on aspects of competition in the pharmacy sector

instituted legal proceedings against National Telecoms Group

Dodo internet service provider engaged in misleading, deceptive and unconscionable conduct

led international internet sweep for travel offers

consumers refunded for claimed health cures sold by Transformation 2012 over internet

internet trader jailed for contempt

Boral decision highlighted difficulties in establishing misuse of market power

facilitated smooth introduction of full electricity retail competition in the Australian Capital Territory

filed proceedings against global vitamin C cartel

instituted proceedings against demolition and asbestos removal companies for alleged price fixing

found misleading and deceptive conduct in sale of orange juice machines

proposed surgical college reform to help address surgeons shortage

allowed CSR's Western Australia concrete cartage arrangements

acquisition by Burns Philp Limited of Goodman Fielder Limited not opposed

March 03

approved access arrangement for Amadeus Basin to Darwin gas pipeline

finalised oil companies investigation

consumers and small business gained from lower software prices

approved changes to Victorian transmission regulatory arrangements

produced country of origin guidelines for the furnishing industry

March 03 continued

Greenstar pyramid scheme found to be illegal

issued record keeping rule to Telstra for bundling

proposed to approve code of ethical conduct for the employment services industry

allowed BHP Billiton joint venture in the Pilbara region

doctor prevented from inducing boycotts of bulk-billing, after hours service at medical centre

authorised new technical standards for national electricity code

April 03

Queensland lottery agents' negotiating group not approved

James Cook University enrolment policy allowed to continue

defined Pan Pharmaceutical consumers refund rights for recalled pharmaceuticals

obtained $1.2 million refunds for misled Feminique health product consumers

Haier, Retravision consumers refunded over energy claims

issued discussion paper of key performance indicators on Telstra's service performance

Dawson report released: criminal sanctions major step forward for competition policy

instituted proceedings against Global Pre Paid Communications Pty Ltd and In-Touch Networks Pty Ltd

acted against car firms for non-compliant vehicle jacks

cosmetic surgery consumers benefitted from declarations

set bar for sideshow alley arrangements

set model price terms and conditions for core telecommunications services

considered Qantas/Air New Zealand alliance very anti-competitive and not in public interest

obtained interim orders against Aboriginal-style souvenir dealer

Telstra met obligations to low income customers

final decision made on Australia Post reply paid mail

no intervention in brick merger acquisition of Bristile Limited by Brickworks Limited

Sunny Queen's acquisition of Farm Pride Foods' egg business not opposed

acquisition of Theo's Liquor by Coles Myer Ltd not opposed

proposed to allow public liability insurance scheme for not-for-profit organisations

May 03

orders made against Woolworths and Arnhem Club over alcohol sales

instituted proceedings against Radio Rentals

merger of Graincorp Ltd and Grainco Australia Ltd not opposed

set revenues for Murraylink electricity interconnector

joined international effort to combat internet spam

accepted undertaking from Pfizer Pty Ltd

Will Writers Guild contravened franchising code and misled franchisees

instituted proceedings against Tasmanian fish farmer and trade association

declaration against Billbusters' conduct on Telstra's bills; warning to consumers

May 03 continued

final decision allows greenhouse gas, ozone recovery program

Xstrata Plc's acquisition of Mim Holdings Limited not opposed

acquisition of Geelong independent newspaper masthead by Geelong Advertiser Limited not opposed

Mitre 10 admitted misleading sale advertising

Voyages Hotels misled consumers about tours to Aboriginal land

June 03

reform of surgeons' training program required

court found Safeway engaged in price fixing, misused market power

alleged Econovite stockfeeding misrepresentation

alleged Metro Brick and Midland Brick price fixing

alleged Woolworths, Liquorland anti-competitive liquor deals

released leniency policy to expose hard core cartels in Australia

allowed New South Wales hotels to collectively bargain with TAB, Sky Channel

issued new accounting separation rules for Telstra

code of conduct proposed greater consumer awareness of drug companies' dealings with doctors

blocked price increases for air navigation services

acquisition of Peats Ridge by Coca-Cola Amatil not opposed

Australian Stock Exchange electronic trading system rules maintained

issued latest figures broadband growth remains flat

sunglasses recalled

approved changes to enhance security of Victorian gas transmission system

allowed concrete carriers to negotiate collectively with CSR

opposed AGL acquiring a stake in Loy Yang Power

allowed more small businesses to enter into the motor vehicle fleet servicing industry

allowed short-term authorisation of Qantas and British Airways joint services agreement

acquisition of Neverfail Springwater by Coca-Cola Amatil not opposed

received undertakings from Outback Juice orange juice producer

decision allowed Myer/Grace Bros concession businesses to participate in discount promotions

acquisition of Stevenson Transport Pty Limited by Cootes Holdings Pty Limited not opposed

allowed Star Alliance discount programs for corporate and convention travellers