

part two

performance

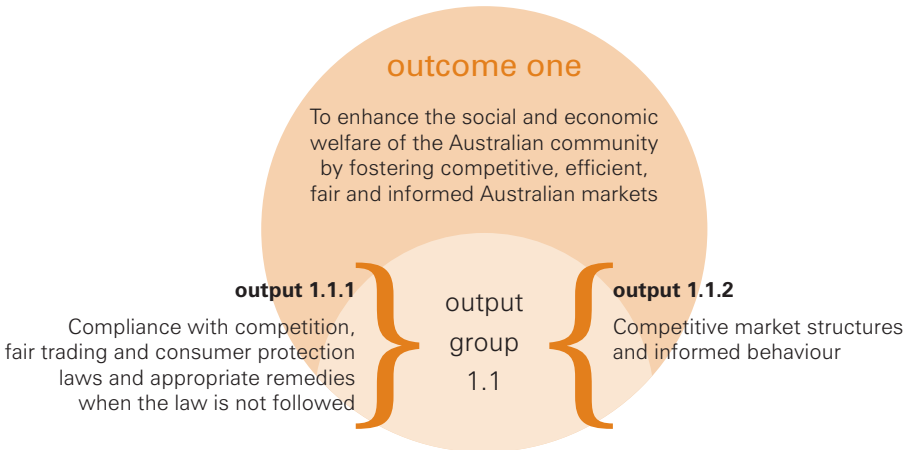
achieving outcome one

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

Australian Competition and Consumer Commission

Overall outcome

Strong, sustainable economic growth and the improved wellbeing of Australians



To achieve outcome one through appropriate outputs the ACCC seeks to:

- promote effective competition and informed markets
- encourage fair trading and protect consumers
- regulate infrastructure service markets and other markets where competition is restricted

resource table

outcome one

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

| | output 1.1.1 compliance with competition, fair trading and consumer protection laws | | | output 1.1.2 competitive market structures and informed behaviour | | | output group 1.1 | | |
|---------------------------------|--|---------|---------|--|---------|---------|------------------|---------|---------|
| | 2002-03 | 2003-04 | 2004-05 | 2002-03 | 2003-04 | 2004-05 | 2002-03 | 2003-04 | 2004-05 |
| budget \$'000 | 41 290 | 48 382 | 59 597 | 21 270 | 25 766 | 38 210 | 62 560 | 74 148 | 97 807 |
| additional revenue \$'000 | 332 | (580) | | 255 | 1 097 | | 587 | 517 | |
| total revenue \$'000 | 41 622 | 47 802 | | 21 525 | 26 863 | | 63 147 | 74 665 | |
| actual expenses \$'000 | 52 293 | 52 317 | | 21 057 | 29 386 | | 73 350 | 81 703 | |
| net surplus (deficit) \$'000 | (10 671) | (4 515) | | 468 | (2 523) | | (10 203) | (7 038) | |

| | average staffing levels | | |
|-------|-------------------------|---------|---------|
| | 2002-03 | 2003-04 | 2004-05 |
| total | 468.7 | 449.1 | 475.0 |



case study

World and National Consumer Rights Day

Scams and spams were the focus of National Consumer Rights Day on 15 March 2004 with the ACCC warning consumers—if it sounds too good to be true, it probably is!

National Consumer Day promotes the rights of Australian consumers and falls on the same day as World Consumer Rights Day, which has been celebrated internationally since 1983.

To mark the occasion, the ACCC launched a *Scams and spam* booklet informing consumers about common types of scams and giving tips on how to avoid getting caught out. An anti-scamming mouse mat was also produced and launched at the National Consumer Congress in Melbourne.

In February the ACCC also coordinated the international internet sweep, with 76 consumer agencies from 24 countries taking part.

Most of the suspicious websites identified by the ACCC were work-at-home and/or get-rich-quick schemes. Others were lottery scams, pyramid selling schemes, educational offers, prizes and 'free' offers.

Globally a record 1847 suspicious sites were flagged by sweepers. Participating agencies are acting on results in a number of ways, including educating traders about compliance, advising consumers about how to avoid being duped, sending warnings to traders, seeking settlements and taking enforcement action.

output 1.1.1



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

introduction

Compliance programs and strategies are becoming increasingly important in Australia. It is not only regulators, such as the ACCC, who are promoting their use; courts and corporations are also acknowledging the value of compliance programs and strategies. Courts in particular are requiring compliance programs to form part of a corporation's response to a contravention of the Act.

The ACCC helps businesses comply with competition and consumer protection laws by consulting with them and by publishing general and targeted material about their obligations under law. It also provides information to the many inquirers who contact the ACCC each year.

A common perception is that compliance is only done to keep the regulators happy. It has frequently been seen as a burden, rather than as an opportunity to improve corporate performance or a corporation's relationship with stakeholders. There are three good reasons to implement a compliance program:

- > it is good corporate governance
- > it minimises the risks of breaching the law, which could have serious consequences, both in the marketplace and in the courts
- > if litigation does occur an effective compliance system can significantly reduce penalties imposed by the courts. Financial penalties for anti-competitive conduct are substantial with fines reaching up to \$10 million for companies and half a million for individuals. Also, managers and directors can be held personally liable for damages if the law is breached.

Businesses can have a good compliance program and a strong bottom line. The two are not diametrically opposed. A good compliance program can ensure a business is fulfilling its responsibilities and give it a competitive edge.

However, if businesses choose to ignore their compliance obligations and act unlawfully, then the ACCC will treat this behaviour very seriously and enforce compliance with the law.

This year the ACCC investigated over 200 matters in detail—many of which came to our attention through the Australian public, both businesses and consumers, who act as the ACCC's undercover investigators in detecting non-compliance with the law.

Businesses that break the law hurt **some** consumers directly and **all** consumers indirectly by sabotaging the dynamics of competition.

For those anti-competitive and deceptive practices by unscrupulous businesses that are not readily detectable by consumers, the ACCC makes inquiries, and conducts research and analysis, to identify breaches of the Act.

However, the ACCC cannot investigate all the complaints that come to its attention, and focuses on those that fall within its priorities. During the year, it recorded in its national database nearly 49 000 complaints and inquiries that came through from the ACCC's Infocentre, its regional offices, as well as direct to the Commission and staff. Over 23 000 were resolved during the initial contact and about 480 matters investigated. Around 220 matters were investigated in detail during the year, court proceedings were commenced in 22 matters and 33 public undertakings were obtained.



case study

Competing Fairly Forum

The ACCC's Competing Fairly Forum hit cyberspace in 2003–04 with the forum becoming available for the first time on the internet through video streaming.

An integral part of the ACCC's Small Business Rural and Regional Program, the Competing Fairly Forum had previously only been available through individual video presentations.

However, with the help of modern technology, the seventh forum—Growing Good Business Relationships—reached a much wider audience.

The forum, hosted by ABC journalist and presenter, Emma Alberici, discussed supply chain relationships in the horticultural industry.

Trade practices issues covered in the 40-minute panel discussion included misleading or deceptive conduct, unconscionable conduct, price fixing, authorisations, transparency in commercial relationships, good business practice and avoiding business disputes.

The aim of the forums is to advise businesses, especially those in rural and regional Australia, about their rights and responsibilities under the Trade Practices Act.

output 1.1.1

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



communicating with businesses and consumers

this year the ACCC

issued 261 media releases—of these 113 explained the institution and/or outcome of enforcement activities and 23 related to educational activities, such as speeches and seminar appearances

undertook an extensive number of speaking engagements and briefings, both private and public, by the chairman, commissioners and senior staff

performance indicator



publicise litigation and education activities

enhanced electronic investigations capabilities by: upgrading equipment and software; maintaining up-to-date training of electronic investigations staff in use of forensically sound data acquisition, analysis and data presentation tools; and providing training for ACCC staff in basic techniques, procedures and protocols in electronic evidence gathering

initiated 2 internet orientated consumer campaigns—online contracts and scams

collaborated with US FTC resulting in businesses being informed about the way open relay ports and open proxies on servers can be closed to make it more difficult to relay spam—included contacting businesses and a media campaign

performance indicator



develop new consumer protection and initiatives for e-commerce

held about 1200 meetings with small business and regional consumers, gave 200 presentations, and represented the ACCC at 56 international meetings

undertook more than 130 external liaisons with consumer and community organisations, 2 presentations, participated in three conferences or seminars; produced 6 articles on consumer issues and a country of origin compliance guide for the electrical goods industry

held Consumer Consultative Committee meetings in September and November 2003, and February and May 2004 and coordinated the campaign targeting at risk consumers

provided information regarding the ACCC's campaign to protect disadvantaged and vulnerable consumers to more than 200 consumer and community organisations

distributed material to small business retailers and key industry associations about two-price advertising

performance indicator



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

produced 81 new publications—10 new compliance publications, 13 corporate publications, 34 about competition, and 25 about fair trading and consumer protection; printed and distributed more than 306 000 copies of publications; 56 publications were specifically for business, produced videos and CDs on compliance issues, distributed 200 video copies and 90 CDs

issued 261 media releases, 157 speeches delivered by commissioners and senior staff

sent *ACCC Consumer Express* monthly email newsletter to 1500 subscribers and *ACCC Briefing* bi-monthly email newsletter to 1700 small businesses; emailed *ACCC Infolink* monthly one-pager for small businesses to more than 1700 subscribers; produced one edition of *Retail Flash*, a newsletter for retailers and distributed 20 000 copies; sent *ACCC update* to 8000 subscribers, the *ACCC journal* (hard copy) to 292 subscribers and the new *ACCC ejournal* to 585 subscribers

received 1 063 200 visits to its website for business publications

delivered video presentations of the May 2003 Competing Fairly Forum, a hypothetical style discussion hosted by Geoffrey Robertson, to communities throughout regional Australia; released online the Competing Fairly Forum entitled 'Growing Good Business Relationships', featuring panel discussion on a number of issues within the fresh fruit and vegetable supply chain

coordinated 76 agencies (including 26 International Consumer Protection and Enforcement Network (ICPEN) agencies) from the 24 countries in the 'Too good to be true' international internet sweep—sweepers scoured thousands of sites looking for potential scams with a total of 1847 sites tagged for extra scrutiny

hosted 27 delegations from 16 countries

received 167 requests for information from 38 countries and made 112 requests to 18 countries, including on enforcement issues

conducted 2 staff exchanges with Chinese Taipei and Ireland

signed a tripartite arrangement regarding spam with the New Zealand Commerce Commission, Secretary of State for Trade and Industry, and UK Office of Fair Trading

performance indicator

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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

performance indicator

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

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

commenced public consultation process with industry and consumer groups, regulators and other stakeholders regarding ACCC's proposed guidelines for developing and endorsing effective industry codes of conduct

assisted the Australian Communications Industry Forum in the development of a number of codes by participating on its working groups

continued to liaise with industry on the review of the Retail Grocery Industry Code of Conduct and provided submissions on specific issues raised by the Commonwealth Office of Small Business

performance indicator

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develop industry specific codes of conduct

produced more than 27 submissions, papers and reports in response to parliamentary and government requests

made submissions to reviews of 7 mandatory product safety standards, 5 Australian standards and 1 product safety ban

made submissions to the Senate Economics References Committee Inquiry into the effectiveness of the Trade Practices Act in protecting small business

performance indicator

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

held 3 Small Business Advisory Group meetings and 2 Franchise Consultative Panel meetings with industry and consumer representatives, and 4 meetings of the Consumer Consultative Committee

participated in 6 bi-monthly meetings of the Therapeutic Goods Advertising Code Council

worked with Food Standards Australia New Zealand on the development, implementation and variation of food standards

liaised with Treasury on product safety standards

performance indicator

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

provided technical assistance to 2 countries: Thailand and the Philippines

hosted study visits by officials from Botswana, Brazil, Indonesia, Iran, Korea, Malaysia, Mongolia, Papua New Guinea, Philippines, Singapore and South Africa

provided a public submission on Singapore's draft competition law

participated in 5 conferences and forums concentrating on promoting fair market practices

performance indicator

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

information and liaison activities

meetings and conferences

The ACCC has put in place more formal arrangements for meetings of its **consultative committee** as part of improving consultation with key stakeholders. The committee met four times during the financial year for an open exchange of information and views on current issues affecting the ACCC and its work. The committee's activities, discussion topics during 2003–04 and membership are fully detailed in appendix 5 at the back of the report.

The ACCC continued its participation in the **Standing Committee of Officials on Consumer Affairs** on industry codes, property investment advisers, unfair contract provisions and consumer education. It also worked with other agencies, including Action Group into the Law Enforcement Implications of Electronic Commerce and Australian Consumers Association, to develop strategies and material to educate businesses and consumers about e-commerce issues, such as online security, spam and best practice.

The ACCC continued to liaise with the **Commonwealth Department of Health and Ageing** and **Treasury** on the development of tobacco labelling regulations and various food regulatory policy guidelines. It also participated in an analysis of compliance of the Trade Practices Act with OECD guidelines for protecting consumers from fraudulent and deceptive commercial practices across borders with Treasury and ASIC.

The ACCC conducted regular phone meetings with the **US Federal Trade Commission** to foster cooperation and to coordinate relevant e-commerce activities including investigations, educative initiatives, training and capacity building.

Consumer networks were expanded through the **Consumer Consultative Committee** and the campaign to protect vulnerable and disadvantaged consumers. A review of the membership of the Consumer Consultative Committee is currently underway. The **Regional Consultative Committee** provides information about trade practices and business issues affecting small business, and regional and rural communities in South Australia. Consultation between state and federal regulators is encouraged by the **Utility Regulators Forum**. It discusses issues in the network industries where public utilities that traditionally operated as monopolies are being opened up to the competition reform process. Membership of these committees is detailed in appendix 5.

The ACCC, with 76 agencies from 24 countries, evaluated thousands of websites worldwide looking for **internet scams** that were 'too good to be true'. More than 1800 websites were identified internationally as warranting further examination. In Australia more than 30 traders took down or amended misleading and deceptive sites. The most common types of scams were promises of instant wealth, miracle cures and free offers and prizes that were not actually free.

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.

The ACCC has worked with **real estate industry bodies** to develop materials targeted towards helping participants comply with their obligations under the Act. Discussions were held with **automotive body repairers**, their industry associations and major insurers, and a public discussion paper was released on these issues in September 2003.

Through meetings of the **small business advisory group** and the **franchising consultative panel** the ACCC liaised with small business industry groups and other key stakeholders. This is a two-way process where the ACCC provides guidance on explaining when and how it will enforce the law, and small business industry groups can relay concerns to relevant areas of the ACCC. Membership of both groups can be found in appendix 5.

The ACCC considers **voluntary industry codes** an important part of its strategy to encourage fair trading in Australia, and during the year was involved with technical assistance or the review of more than 30 industry and consumer codes. The ACCC's proposed guidelines have prompted industry to review their existing codes of conduct as well as encouraged some industries to seek assistance to develop effective codes using the framework outlined in the guidelines. The ACCC also reviewed 34 compliance audit programs.

At the third annual **International Competition Network** conference in April 2004 members, including the ACCC, established a Cartels Working Group and two sub-groups, one of which the ACCC is co-chair.

The *Review of the impact of Part IV of the Trade Practices Act 1974 on the recruitment and retention of medical practitioners in rural and regional Australia* released in November 2002, highlighted the importance of communication between the ACCC and the **medical profession** regarding the requirements of the Trade Practices Act as it relates to the profession, and recommended the formation of an advisory committee to facilitate this communication.

Consequently, the **Health Services Advisory Committee (HSAC)** was established in September 2003. It meets quarterly and is an effective forum for constructive dialogue between the ACCC, doctors, relevant health professionals and health consumers.

publications and reports

The ACCC has worked closely with HSAC (see above) in the development of the **ACCC Info kit for the medical profession**—a package of information providing doctors with guidance on their rights and obligations under the Act, including for medical rosters, fee setting and collective bargaining arrangements. Copies of the Info kit are available from the ACCC Infocentre: 1300 302 502 or from the ACCC website.

Report to the Australian Senate on private health insurance—on 25 November 2003 the ACCC tabled its 5th report on anti-competitive and other practices by health funds and providers which reduce the extent of health cover for consumers and increase their out-of-pocket medical and other expenses.

The ACCC has consulted with key small business and consumer organisations on the revision of its **guide to unconscionable conduct**. It details significant developments in the law of unconscionable conduct in recent years and is expected to be released this year.

output 1.1.1

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



enforcing for businesses and consumers

this year the ACCC

concluded 52 cases of the 95 matters before the court during the year, plus 33 public undertakings accepted; commenced 22 new cases, 6 of which were concluded this year; 43 cases currently before the courts

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

introduced its leniency policy on 30 June 2003 to increase detection and breaking of collusive conduct such as market sharing, price fixing and bid rigging—several leniency applications were lodged about a number of matters which are being pursued

reinforced the seriousness of price fixing and market sharing, concluding litigation against suppliers of electricity transformers, fire protection services, bricks, rural newspapers, salmon and liquor; obtained court enforceable undertakings in respect of collusive arrangements in the taxi industry in 2 regional centres

stopped a boycott at a construction site and halted anti-competitive arrangements to prevent importation of CDs

in investigations, issued 377 notices under its powers to compulsorily acquire information (section 155); 141 notices to provide information in writing (section 155(1)(a)), 155 notices to provide documents (section 155(1)(b)), 105 notices to appear in person (section 155(1)(c)) and 1 notice to enter premises and inspect documents (section 155(2))

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

conducted 28 surveys at retail outlets across Australia for products subject to safety standards and 9 surveys for a newly banned product; 5 enforceable undertakings resulted from product safety investigations; other enforcement for minor breaches required administrative action for 33 separate products

contributed to the promotion and ongoing development of the e-consumer.gov international consumer complaints site/facility continued and reviewed and updated e-commerce information for consumers and businesses on the new ACCC website

performance indicator



**seek appropriate
remedies when there
is a breach of the law**

performance indicator



**enforce mandatory
product safety and
information standards**

performance indicator



**develop new consumer
protection and
investigative initiatives
for e-commerce**

output 1.1.1

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



major litigation

During the year the more significant litigation undertaken by the ACCC concerned anti-competitive conduct.

The seriousness of illegal cartel conduct was underlined in the record \$35 million penalties imposed by the Federal Court against companies and executives involved in price fixing and market sharing in the electricity transformer industry. During the year the court handed down penalties of \$14 million against the remaining company and executive defendants in the case. Penalties of \$21 million had been imposed last year against other members of the cartel. This investigation began following an email to the ACCC by an anonymous whistleblower.

Price fixing conduct in the NSW fire protection industry attracted penalties of \$3.5 million; while one of the participants in a cartel to fix the price of bricks in Western Australia was fined \$1 million. The other participant in the brick cartel had approached the ACCC and voluntarily disclosed the potential contraventions and fully cooperated with the ACCC’s investigation.

The High Court found that an arrangement between suppliers of regional newspapers constituted an illegal boycott and was anti-competitive. The High Court also affirmed the decision of the Full Federal Court that the conduct of a waste paper collection company in attempting to reach an agreement to prevent a competitor from taking its customers was illegal.

The Full Federal Court dismissed appeals by two major music companies against a decision by the Federal Court that they had engaged in illegal exclusive dealing when responding to the parallel importation of CDs by small business. Penalties of more than \$2 million were affirmed.

litigation and administrative settlements

| | effective competition and informed markets | fair trading and consumer protection | total | TOTAL |
|--|--|--------------------------------------|-------|-------|
| concluded | | | | |
| litigation commenced and concluded during 2003–04 | 1 | 5 | 6 | |
| litigation commenced before and concluded during 2003–04 | 17 | 29 | 46 | 52 |
| continuing | | | | |
| litigation commenced before 2003–04 and continuing | 12 | 15 | 27 | |
| litigation commenced during 2003–04 and continuing | 5 | 11 | 16 | 43 |
| undertakings | | | | |
| undertakings accepted during 2003–04 | 7 | 26 | 33 | 33 |

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effective competition and informed markets

alleged in cases currently before the court

that commenced this year

collusion in property development, petrol retailing and agricultural shows

price maintenance in sporting goods

that commenced before this year

collusion in supermarkets, scrap metal auctions, barge services, flour wholesaling, petrol retailing, asbestos removal industry, vitamins and recyclable waste paper

boycotts in retail liquor supply

misuse of market power in the medical supplies and sportswear industries

price maintenance in beauty products

fair trading and protecting consumers

alleged in cases currently before the court

that commenced this year

misleading claims about mobile phone plans, claims about property seminars, misleading renewal notices for domain names, place of origin claims, pyramid selling, real property advertising, claims regarding a device which reduces mobile phone radiation, unconscionable conduct in appliance rental, accepting payment for security services not supplied

that commenced before this year

phone account auditing claims, fine print and bait advertising, unsolicited business services, responsibility of advertising agents for misleading advertisements, unconscionable conduct in supply of vacuum cleaners and in internet related services, property investment scams, misleading claims about pest control devices, health and medical claims, misleading claims about business opportunities, safety of car jacks and misleading claims on the internet regarding the sale of contraceptives

other enforcement issues include

product safety | detected unsafe children's cosmetics, disposable lighters, lead wick candles, children's dart guns, vehicle jacks and sunglasses

health and medical | stopped misleading advertising for private medical insurance regarding waived waiting periods; corrected misleading claims about effectiveness of male impotency treatment; stopped use of the heart foundation tick logo without authorisation; incorrect labelling of pasta which claimed a low glycemic index; spurious claims about the capabilities of fitness equipment

income earning and business opportunities | pursued companies who failed to provide disclosure documents to franchisees; stopped misleading claims about the purchase price and profitability of franchises; addressed unconscionable conduct regarding retail tenancy; misleading claims about provision of a freight transport contract; stamped out pyramid selling and referral selling schemes

authenticity and place of origin | stopped misleading claims that art was hand painted by artists of Aboriginal descent; stopped the use of 'made in Australia' claims in relation to eucalyptus oil, olive oil, fruit juice products and road sweepers; stopped promotion of stock feed supplement which did not contain ingredients claimed; cordial products that did not contain the extracts of fruit depicted on packaging; stopped claims that fruit juice products were 100 per cent juice; addressed misleading claims of accreditation of child care courses; stopped misleading claims about weight-loss products, the efficacy and sponsorship of pest repellent devices, and the efficiency comparisons of airconditioning ducting; correction of claims for oven capacity of microwaves; correction of misleading claims of rear power windows in a particular automobile

environmentally friendly claims | concerning claims that plastic bags were biodegradable, and concerning airconditioning refrigerants

real property and investment seminars | secured undertakings and refunds for misleading claims made about land sales; pursued companies who made misleading claims about the profitability of investment and property seminars

retail prices and print advertising | pursued companies who made false and misleading claims regarding no establishment fee for home loan offer; stopped misleading promotion of household appliance rentals; obtained full price disclosure of model kit parts series; and addressed non-delivered security services advertised and paid for

debt collection and harassment | stopped companies from acting unconscionably and using undue harassment tactics while performing debt collection services

internet and phones | stopped misleading advertising about mobile phone packages, mirroring of an official site as part of an alleged international ticket scam, and false claims regarding the price of telephony services

unsolicited goods | stopped companies from demanding payment for unsolicited goods such as model kits and magazine subscriptions

output 1.1.1

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



the Infocentre

The Infocentre is a telephone and email information and complaints service for consumers and businesses. It is the initial response centre for all telephone and email inquiries and complaints to the ACCC on competition and consumer issues in Australia.

Infocentre project officers are required to have a good working knowledge of all ACCC functions and current issues affecting the ACCC. The Infocentre is proving to be a significant educative tool for consumers and businesses alike informing them of their rights and responsibilities.

The information received from businesses and consumers is recorded in the ACCC complaints and inquiries database, with Infocentre project officers creating about 90 per cent of those entries. This information is available to all staff to analyse complaint trends and identify possible areas of further inquiry. Investigators can also contact the Infocentre when they require specific information from callers relating to their investigation.

The overwhelming majority of people who contact the Infocentre do so as consumers, because they have a complaint. Consumers typically detail their issues in dispute and are provided with information or advice to enable them to pursue their complaint. The more serious allegations are passed directly to investigators for follow-up action. All matters alleging a breach of the anti-competitive conduct provisions of the Act are passed directly through to an investigator. Alternatively, when a consumer complains about circumstances for which the ACCC or the Trade Practices Act has no remedy, Infocentre staff endeavour to find another agency or organisation that can help that caller.

The most complained about industry continued to be telecommunications, especially in relation to obtaining access to internet facilities and the associated provisions that come with the service as well as domain name registrars.

Infocentre telephone 1300 302 502 | Internet www.accc.gov.au

this year the ACCC Infocentre

received 63 695 inquiries and complaints; 8922 through email and 54 773 through telephone calls from businesses and consumers; 43 575 of these matters were recorded in the ACCC's national complaints and inquiry database; sent out 16 266 publications to callers

answered within 20 seconds 46 084 (88.2 per cent) of the 52 239 served telephone calls received by the Infocentre

performance indicator



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

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

this year last year

telephone calls

| | | |
|-----------|--------|--------|
| received | 54 773 | 65 349 |
| served | 52 239 | 62 205 |
| abandoned | 2462 | 2910 |
| engaged | 35 | 69 |
| voicemail | 37 | 165 |

email complaints

| | | |
|--------------------------------|------|------|
| number of emails received | 8922 | 8348 |
| answered by telephone response | 4093 | 4937 |
| answered by return email | 2456 | 1843 |
| sent elsewhere for response | 488 | 398 |
| no response required | 1885 | 1170 |

business information complaints or inquiries

| | | |
|--------------------------------------|------|------|
| about a small business | 7971 | 9575 |
| from a small business | 9424 | 7843 |
| about a franchise matter | 1557 | 1390 |
| about an online trader or e-commerce | 3204 | 2926 |
| escalated for investigation | 2035 | 1537 |
| flagged for future review | 1603 | 1746 |

top ten industries for complaints

| | | |
|---------------------------------------|------|------|
| telecommunication services | 5125 | 4247 |
| business services generally | 4664 | 2536 |
| domestic appliance retailing | 3285 | 3117 |
| retailing generally | 2078 | 2055 |
| real estate agents | 1556 | 1378 |
| automotive fuel retailing | 1169 | 1836 |
| car retailing | 1158 | 1008 |
| services to finance and investment | 990 | 902 |
| general insurance | 873 | 825 |
| sport and camping equipment retailing | 644 | 534 |

top ten possible contraventions of the Trade Practices Act *predominately fair trading and consumer protection* part V

| | | |
|---|-------|------|
| | * | |
| misleading or deceptive conduct | 11605 | 9601 |
| retail warranties | 5450 | 4848 |
| price misrepresentation | 1911 | 1657 |
| misrepresentation of quality | 1055 | 667 |
| misrepresentation of performance | 1015 | 525 |
| misrepresentation of warranties, rights | 841 | 713 |
| accepting payment non-supply | 670 | 461 |

predominately effective competition and informed markets part IV

| | | |
|----------------------------------|-----|-----|
| | * | |
| exclusive dealing | 775 | 698 |
| agreements lessening competition | 603 | 713 |
| misuse of market power | 553 | 830 |

* This year's figures include complaints where there is an allegation of more than one contravention. In cases where a complainant alleges more than one contravention, each contravention is counted separately. In last year's figures only the primary contravention was counted.

this year

last year

publications sent to callers

| | | |
|--|------|------|
| Warranties and refunds | 6345 | 4860 |
| The franchisee's guide | 1315 | 1312 |
| Small business and the Trade Practices Act | 1047 | 1279 |
| Franchisees Guide to the Code of Conduct (flyer) | 943 | n/a |
| Refusal to deal | 657 | 137 |
| How to comply with the TPA | 490 | 54 |
| ACCC role and functions | 468 | 105 |
| Care labelling | 451 | 158 |
| Country of origin claims and the TPA | 392 | 183 |
| Country of origin claims (flyer) | 367 | n/a |

geographic location of inquirers and complainants

| | | New South Wales | Victoria | Queensland | Western Australia | South Australia | Australian Capital Territory | Tasmania | Northern Territory | others | total |
|---------------------|------------|-----------------|----------|------------|-------------------|-----------------|------------------------------|----------|--------------------|--------|--------------|
| part IV | last year | 1502 | 1062 | 1023 | 541 | 399 | 174 | 114 | 60 | 23 | 4898 |
| | this year* | 1649 | 1232 | 958 | 544 | 422 | 175 | 90 | 79 | 15 | 5164 |
| part V | last year | 10871 | 9405 | 7519 | 3561 | 2458 | 1506 | 739 | 390 | 293 | 36742 |
| | this year* | 11780 | 10996 | 8415 | 3628 | 3026 | 1579 | 884 | 494 | 287 | 41089 |
| part VB | last year | 308 | 208 | 128 | 69 | 61 | 35 | 14 | 14 | 3 | 840 |
| | this year* | 123 | 59 | 39 | 24 | 20 | 14 | 5 | 3 | 1 | 288 |
| part IVA/B | last year | 325 | 198 | 233 | 123 | 97 | 32 | 25 | 17 | 5 | 1055 |
| | this year* | 355 | 293 | 311 | 134 | 122 | 35 | 20 | 30 | 49 | 1349 |
| prices surveillance | last year | 43 | 39 | 67 | 17 | 16 | 4 | 7 | 3 | 0 | 196 |
| | this year* | 37 | 21 | 34 | 5 | 8 | 6 | 7 | 2 | 0 | 120 |
| other | last year | 3145 | 2400 | 1944 | 968 | 551 | 362 | 137 | 177 | 117 | 9801 |
| | this year* | 2673 | 1776 | 1518 | 639 | 450 | 275 | 97 | 117 | 104 | 7649 |
| total | last year | 16194 | 13312 | 10914 | 5279 | 3582 | 2113 | 1036 | 661 | 441 | 53532 |
| | this year* | 16617 | 14377 | 11275 | 4974 | 4048 | 2084 | 1103 | 725 | 456 | 55659 |

* This year's figures include complaints where there is an allegation of more than one contravention. In cases where a complainant alleges more than one contravention, each contravention is counted separately. In last year's figures only the primary contravention was counted.

output 1.1.1

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



snapshots of litigation and administrative settlements

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

- 1. Litigation commenced and concluded during 2003–04
- 2. Litigation commenced before 2003–04 and concluded during 2003–04
- 3. Litigation commenced before 2003–04 and continuing
- 4. Litigation commenced during 2003–04 and continuing
- 5. Undertakings accepted during 2003–04

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 VB and XIAA | price exploitation concerning GST |
| Part VC | criminal conduct in fair trading and consumer protection |

1. Litigation commenced and concluded during 2003–04

> effective competition and informed markets

litigation

Minister for Industry, Tourism and Resources v Mobil Australia Pty Ltd

intervention | 19 February 2004 | the court to consider whether a joint submission as to pecuniary penalty is within the permissible range, and if so, impose the 'agreed' penalty

| | | |
|---------------|---|--|
| result | Justice Branson, Sackville and Gyles Full Federal Court Sydney 30 March 2004 | court followed and explained the authority of NW Frozen Foods Pty Ltd v ACCC |
|---------------|---|--|

significance | clarification of how the court will approach a joint submission as to pecuniary penalty

> fair trading and consumer protection

art

Australian Aboriginal Art Pty Ltd

alleged | 5 September 2003 | misleading or deceptive conduct | represented that its hand painted aboriginal-style souvenirs were 'Aboriginal Art', when many artists were not Aboriginal

| | | |
|---------------|--|--|
| result | Justice Cooper Federal Court Brisbane 4 May 2004 | orders by consent; declarations, injunctions; order to attend trade practices compliance seminar and costs |
|---------------|--|--|

significance | claims of authenticity should be accurate

plastic bags

Lloyd Brooks Pty Ltd

alleged | 31 March 2004 | misleading or deceptive conduct | regarding the environmental benefits of its Earthstrength range of plastic kitchen, garbage and freezer bags

| | | |
|---------------|---|--|
| result | Justice Crennan Federal Court Melbourne 25 May 2004 | declarations, injunctions, establishment of a trade practices compliance program and costs |
|---------------|---|--|

significance | environmental benefit claims must be accurate

eucalyptus oil

National Chemical Pty Ltd

alleged | 18 August 2003 | misleading or deceptive conduct, misrepresentations | regarding product of Australia claims on labelling of eucalyptus oil

| | | |
|---------------|--|--|
| result | Justice Weinberg Federal Court Melbourne 30 October 2003 | orders by consent: found conduct misleading and falsely represented the place of origin; declarations, injunctions and costs |
|---------------|--|--|

significance | place of origin should be accurately stated

investment seminar

National Training Conference

alleged | 28 June 2004 | misleading or deceptive conduct | regarding property investing seminars

| | | |
|---------------|--|---------------------------------------|
| result | Justice Madgwick Federal Court Sydney 29 June 2004 | orders by consent; corrective notices |
|---------------|--|---------------------------------------|

significance | promotion of property investment seminars should be accurate

airconditioning

Sanyo Airconditioning Australia, Fujitsu Australia Ltd, Daikin, Hitachi

alleged | 11 September 2003 | misleading or deceptive conduct, misrepresentations | that refrigerants are environmentally friendly

| | | |
|---------------|--|--|
| result | Justice Lindgren Federal Court Sydney 11 November 2003 | orders by consent; declarations, injunctions, trade practices compliance program and costs |
|---------------|--|--|

significance | environmental benefit claims must be accurate

2. Litigation commenced before 2003–04 and concluded during 2003–04

> 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 | price fixing, market sharing | in markets for distribution transformers

| | | |
|---------------|--|---|
| result | Justice Emmett Federal Court Sydney 7 April 2004 | declaration; penalties totalling \$8.5 million against ABB, and penalties against ABB's executives; costs penalties had been awarded earlier against the other parties (see last year's annual report) |
|---------------|--|---|

significance | price fixing and collusion is a serious breach

electricity power transformers

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

alleged | 1 October 1999 | price fixing, market sharing | in markets for domestic power transformers

| | | |
|---------------|--|--|
| result | Justice Emmett Federal Court Sydney 7 April 2004 | declaration; penalty of \$5.5 million against ABB, and penalties against ABB's executives; costs penalties had been awarded earlier against the other parties (see last year's annual report) |
|---------------|--|--|

significance | price fixing and collusion is a serious breach

medical practitioners

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

alleged | 28 July 2000 | 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

| | | |
|---------------|--|---|
| result | Justice Carr Federal Court Perth 9 July 2003 | found that there was no understanding between Mayne Group, the AMA(WA) and the doctors that fixed prices or substantially lessening competition |
|---------------|--|---|

significance | ACCC concerned about potential anti-competitive arrangements

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 | 16 May 2003 | secondary boycott | maintained a picket at the entrance to the construction site of the Patricia Baleen gas plant near Orbst preventing construction workers and vehicles delivering materials from entering

| | | |
|---------------|--|--|
| result | Justice Gray Federal Court Melbourne 30 April 2004 | orders by consent: injunctions, trade practices compliance program and penalties of \$100 000 for each union |
|---------------|--|--|

significance | boycott not substantially related to pay and conditions

vitamins

Bray v F Hoffmann-La Roche Enterprises Pty Ltd and others

alleged | 6 May 2002 | price fixing, market sharing | intervention in class action regarding human and animal vitamins—global cartel

| | | |
|---------------|---|---|
| result | Justices Carr, Branson and Finkelstein Full Federal Court Melbourne 15 July 2003 | ACCC granted leave to intervene in appeal against orders concerned with service of process outside the Commonwealth and the extended application of the Trade Practices Act appeal dismissed |
|---------------|---|---|

significance | test jurisdictional reach of the Act to international cartels

fire protection

FFE Building Services Ltd, Tyco Australia Pty Ltd and others

alleged | 11 July 2002 | price fixing, market sharing and misleading conduct | New South Wales fire protection industry tenders for the provision of fire protection services

| | | |
|---------------|--|--|
| result | Justice Wilcox Federal Court Sydney 19 December 2003 | injunctions and declarations by consent; penalties of \$3.5 million imposed on FFE and of \$50 000 imposed on one individual |
|---------------|--|--|

significance | price fixing and collusion is a serious breach

fire protection

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

alleged | 17 October 2002 | agreements lessening competition, exclusionary provision, price fixing | companies in South Australia installing fire sprinklers, alarms, and other systems made anti-competitive agreement

| | | |
|---------------|---|---------------------|
| result | Justice Mansfield Federal Court Adelaide 14 August 2003 | matter discontinued |
|---------------|---|---------------------|

significance | alleged conduct not shown to be ongoing

PlayStation

Kabushiki Kaisha Sony Computer Entertainment v Stevens

intervention | 17 July 2001 | anti-circumvention Copyright Act | modification of region coding in PlayStation consoles (chipping), allows consumers to use imported games and legitimate backup copies

| | | |
|---------------|---|---|
| result | Justices French, Lindgren and Finkelstein Full Federal Court Canberra 30 July 2003 | injunction to stop Mr Stevens selling circumvention devices; costs; matter remitted to primary judge for determination of appellant's damages claim |
|---------------|---|---|

significance | interaction of copyright and competition law

fuel retailing

Leahy Petroleum Pty Ltd

alleged | 21 May 2002 | resale price maintenance | on Buangor service station owner

| | | |
|---------------|---|---------------------|
| result | Justice Merkel Federal Court Melbourne 19 November 2003 | matter discontinued |
|---------------|---|---------------------|

significance | discontinued in light of available evidence, separate proceedings for alleged price fixing are ongoing

bricks

Midland Brick Company Pty Ltd, Bristle Operations Pty Ltd and another

alleged | 27 June 2003 | price fixing | supply of bricks to builders

| | | |
|---------------|---|--|
| result | Justice Lee Federal Court Perth 9 June 2004 | monetary penalties of \$1 million, injunctions, declarations, compliance program and costs |
|---------------|---|--|

significance | price fixing is a serious breach

rugby league

News Limited v South Sydney District Rugby League Football Club Ltd

intervention | 6 August 2003 | in appeal from a decision of the Full Federal Court concerning the exclusion of South Sydney team from the premier rugby league competition

| | | |
|---------------|---|----------------|
| result | Justices Gleeson CJ, Kirby, McHugh, Gummow and Callinan High Court 13 August 2003 | appeal allowed |
|---------------|---|----------------|

domestic airline

Qantas Airways Ltd

alleged | 7 May 2002 | 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

| | | |
|---------------|---|--------------------------------|
| result | Justice Gyles Federal Court Sydney 21 November 2003 | matter discontinued by consent |
|---------------|---|--------------------------------|

significance | final court resolution uncertain and lengthy, changed market conditions since institution

media

Rural Press Ltd and others

alleged | 19 July 1999 | misuse of market power, anti-competitive agreement | 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

| | | |
|---------------|--|---|
| result | Justices Gleeson CJ, Gummow, Kirby, Hayne, Callinan and Heydon High Court 11 December 2003 | found an arrangement between competitors that contained an exclusionary provision (overturned decision of the Full Federal Court), also found an anti-competitive agreement but no misuse of market power (affirmed decision of Full Federal Court) |
|---------------|--|---|

significance | important guidance on interpretation of the Act

salmon farming

Tasmanian Salmonid Growers Association Ltd, Tassal Ltd

alleged | 24 April 2003 | price fixing, exclusionary conduct | Atlantic salmon farmers in Tasmania agreed to restrict production to avoid oversupply and price fall

| | | |
|---------------|---|---|
| result | Justice Heerey Federal Court Hobart 1 August 2003 | orders by consent: declaration; costs; court enforceable undertaking; trade practices training program for relevant staff |
|---------------|---|---|

significance | anti-competitive agreement limiting supply

CDs

Universal Music Australia Pty Ltd and others

alleged | 3 September 1998 | misuse of market power and exclusive dealing | threatened to and actually withdrew trading benefits from CD retailers stocking parallel imports

| | | |
|---------------|--|---|
| result | Justices Wilcox, French and Gyles Full Federal Court Sydney 25 August 2003 | penalties to \$1 million for exclusive dealing contravention; court found no misuse of market power |
|---------------|--|---|

significance | restrictions on parallel imports

CDs

Warner Music Australia Pty Ltd and others

alleged | 3 September 1998 | misuse of market power and exclusive dealing | threatened to and actually withdrew trading benefits from CD retailers stocking parallel imports

| | | |
|---------------|--|---|
| result | Justices Wilcox, French and Gyles Full Federal Court Sydney 25 August 2003 | penalties to \$1 million for exclusive dealing contravention; court found no misuse of market power |
|---------------|--|---|

significance | restrictions on parallel imports

takeaway liquor retailing

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

alleged | 11 December 2002 | price fixing | of certain alcohol products in Nhulunbuy

| | | |
|---------------|---|---|
| result | Justice Mansfield Federal Court Darwin 18 February 2004 | ordered declarations, injunctions, and costs against Rhonwood; noted court enforceable undertakings to pay \$85 000 to an alcohol prevention program in Nhulunbuy similar orders had been made earlier against the other parties (see last year's annual report) |
|---------------|---|---|

significance | price fixing is a serious offence

> fair trading and consumer protection

medical claims

Advanced Medical Institute Pty Ltd and others

alleged | 19 April 2002 | false, misleading or deceptive conduct | misrepresentations of impotence and erectile dysfunction treatments

| | | |
|--------|---|--|
| result | Justice Whitlam | orders by consent: declarations, injunctions, corrective advertisements, trade practices compliance program and costs; court enforceable undertaking; refund identified patients |
| | Federal Court Sydney 2 December 2003 | |

significance | treatment claims should be substantiated

franchise

Arnold's Ribs and Pizza Australia Pty Ltd

alleged | 12 March 2002 | misleading, deceptive and unconscionable conduct | misrepresentations about earnings by franchisees; unconscionable conduct concerning terms and conditions imposed under franchise agreements

| | | |
|--------|---|--|
| result | Justice Conti | orders by consent: declarations, injunctions and compensation for affected franchisees |
| | Federal Court Sydney 13 October 2003 | |

significance | representations of profits must be accurate

aboriginal art

Australian Icon Products Pty Ltd (in liquidation)

alleged | 19 March 2003 | misleading or deceptive conduct | represented that its hand painted aboriginal-style souvenirs were 'Aboriginal Art' or 'authentic', when many artists were not Aboriginal

| | | |
|--------|--------------------------------------|---|
| result | Justice Cooper | declarations (Australian Icon Products had earlier taken action to re-label its products and correct its website) |
| | Federal Court Brisbane 6 May 2004 | |

significance | claims of authenticity should be accurate

fruit drinks

Berri Ltd

alleged | 13 August 2001 | misleading or 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

| | | |
|--------|---------------------------------------|--|
| result | Justice Crennan | orders by consent: injunction, independent label review and contribution to ACCC's costs |
| | Federal Court Melbourne 4 May 2004 | |

significance | place of origin should be accurately stated

nannies training

Black On White Pty Ltd, trading as Australian Early Childhood College, and others

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

| | | |
|--------|---|--|
| result | Justice Spender | orders made against manager and his son for monetary compensation including interest, final payment October 2003 by manager's son under redirection of earnings, matter of payment by manager continuing |
| | Federal Court Brisbane 21 April 2004 | |

significance | accreditation claims must be accurate and contract terms fully disclosed

fruit drinks

Cadbury Schweppes Pty Ltd

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

| | | |
|---------------|--|---------------------------------------|
| result | Justice Gray Federal Court Melbourne 29 April 2004 | declarations and part of ACCC's costs |
|---------------|--|---------------------------------------|

significance | accuracy of labelling

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

| | | |
|---------------|--|-------------------------------------|
| result | Justice Conti Federal Court Sydney 9 December 2003 | declarations and corrective notices |
|---------------|--|-------------------------------------|

significance | accuracy of advertising and fine print qualifications

electronic muscle stimulation

Danox Direct Pty Ltd

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

| | | |
|---------------|---|--|
| result | Justice Dowsett Federal Court Brisbane 22 August 2003 | declarations and corrective advertisements; noted court undertakings |
|---------------|---|--|

significance | claimed capabilities of products should be accurate

weight loss

David Francis

alleged | 31 October 2002 | misleading or deceptive conduct, misrepresentations | unsubstantiated claims for products represented as being able to assist in weight loss

| | | |
|---------------|--|--|
| result | Justice Gray Federal Court Melbourne 26 April 2004 | orders by consent: declarations, injunctions and costs |
|---------------|--|--|

significance | claims made about weight loss products should be accurate

stock feed

Econovite

alleged | 27 June 2003 | misleading or deceptive conduct, misrepresentations | stock feed supplements and mineral supplement do not contain ingredients listed on the label

| | | |
|---------------|--|--|
| result | Justice French Federal Court Perth 10 September 2003 | orders by consent: declarations; injunctions, corrective notices, trade practices compliance program and costs |
|---------------|--|--|

significance | product ingredient claims must be accurate

debt collection

Esanda Finance Corporation Ltd, Nationwide Mercantile Services

alleged | 12 April 2001 | use of physical force, undue harassment and unconscionable conduct | by finance company and debt collectors in repossessing a motor vehicle

| | | |
|---------------|--|---|
| result | Justice Lee Federal Court Perth 25 November 2003 | declarations, injunctions, compensation, compliance program and costs |
|---------------|--|---|

significance | use of physical force, undue harassment and unconscionable conduct in debt collection not acceptable

negative ion mat

Giraffe World Australia Pty Ltd (in liquidation)

alleged | 6 May 1998 | misleading and deceptive representations, pyramid selling | mats claimed to have particular health benefits, promotion of a pyramid selling scheme and referral selling

| | | |
|---------------|--|---|
| result | Justice Barrett Supreme Court Sydney 5 November 2003 | found that the liquidator of Giraffe World could refuse a claim by creditors for commission income earned from illegal pyramid selling activity |
|---------------|--|---|

significance | participants in pyramid scheme unable to benefit from illegal activity

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

| | | |
|---------------|---|---|
| result | Justice Nicholson Federal Court Perth 13 April 2004 | declarations; injunctions, compliance programs, compensation orders for two individuals and costs |
|---------------|---|---|

significance | pyramid selling and referral selling schemes illegal

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

| | | |
|---------------|--|---|
| result | Justice Kiefel Federal Court Brisbane 9 September 2003 | orders by consent: injunctions, compliance program; court enforceable undertakings: to buy back franchise, implement records management and complaints handling systems |
|---------------|--|---|

significance | representations made about purchase price and profitability must be accurate

health insurance

Medibank Private Ltd

alleged | 26 October 2000 | misleading or deceptive conduct | concerning no rate increase for 2000; and for consumers switching from other funds, the waiving of waiting periods and 30 days free

| | | |
|---------------|--|---|
| result | Justice Ryan Federal Court Melbourne 13 May 2004 | orders by consent; declaration; corrective advertising; also agreed to pay \$5 million into a special fund to pay for leading-edge clinical interventions not otherwise eligible for payments |
|---------------|--|---|

significance | accuracy of advertising and fine print qualifications

health insurance

Medical Benefits Fund of Australia Ltd

alleged | 5 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

| | | |
|---------------|--|---|
| result | Justices Moore, Mansfield and Stone Full Federal Court Sydney 16 December 2003 | declaration; corrective advertising and costs |
|---------------|--|---|

significance | accuracy of advertising and fine print qualifications

legal services

Morgan Buckley Pty Ltd and another

alleged | 26 June 2003 | misleading or deceptive conduct, misrepresentations | issuing tax invoices for legal fees to a client that implied the invoices had been calculated according to a retainer, resulting in the client being overcharged

| | | |
|---------------|---|---|
| result | Justice Mansfield Federal Court Darwin 4 May 2004 | matter discontinued (Morgan Buckley denied liability, repaid the affected client, and also provided court enforceable undertakings) |
|---------------|---|---|

significance | accuracy of invoice pricing practices

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

| | | |
|---------------|---|---|
| result | Justice Spender Federal Court Brisbane 7 January 2004 | orders by consent: declarations, payment of \$80 000 to Parker Freight Express and Mr Parker and part of ACCC's costs |
|---------------|---|---|

significance | accuracy of contract provisions

free telecommunications services

National Telecoms Group Pty Ltd

alleged | 13 February 2003 | 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

| | | |
|---------------|---|---|
| result | Justice Weinberg Federal Court Melbourne 18 December 2003 | orders by consent: declarations and injunctions; court enforceable undertakings |
|---------------|---|---|

significance | advertised telephony service costs must be accurate

latex gloves

Pacific Dunlop Ltd

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

| | | |
|---------------|---|--|
| result | Justice North Federal Court Melbourne 4 February 2004 | concluded by consent: undertakings provided to the court regarding a trade practices compliance program and safety advice warnings on gloves; contribution to ACCC's costs |
|---------------|---|--|

significance | consumer safety advice warnings

Sydney Opera House bookings

Richard Chen

alleged | 3 October 2002 | 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

| | | |
|--------|--|------------------------------|
| result | Justice Sackville | declarations and injunctions |
| | Federal Court Sydney 27 August 2003 | |

significance | internet consumer fraud or deception across borders

advertising

Saatchi & Saatchi Australia Pty Ltd

alleged | 24 October 2002 | misleading or deceptive conduct | as primary contravener in preparing health insurance advertising for NRMA Health Pty Ltd

| | | |
|--------|---|--|
| result | Justices Moore, Mansfield and Stone | dismissed ACCC appeal, found that the mere preparation by an advertising agency of a misleading advertisement does not constitute the making of a misleading statement |
| | Full Federal Court Sydney 25 February 2004 | |

significance | responsibilities of advertising agencies under the Act

olive oil

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

alleged | 15 October 2002 | 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

| | | |
|--------|--|--|
| result | Justice Finn | orders by consent: declarations, injunctions, corrective advertising and costs |
| | Federal Court Adelaide 14 July 2003 | |

significance | country of origin claims must be accurate

franchising

Synergy in Business Pty Ltd (in liquidation) and others

alleged | 22 July 2002 | 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

| | | |
|--------|---|---|
| result | Justice Stone | orders by consent: declarations, injunctions, directors to inform franchisees of the court's findings, pay part of ACCC's costs |
| | Federal Court Sydney 28 January 2004 | |

significance | application of mandatory Franchising Industry Code of Conduct

household appliance rental

Thorn Australia Pty Ltd trading as Radio Rentals

alleged | 23 May 2003 | misleading or deceptive conduct, misrepresentations, 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

| | | |
|--------|---|---|
| result | Justice French | orders by consent: declarations, injunctions, corrective notices, trade practices compliance program, costs; no orders in relation to full cash price conduct |
| | Federal Court Perth 28 February 2004 | |

significance | inadequate disclosure of terms and conditions associated with offers

shopping centre lease

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

alleged | 29 October 2001 | misleading, deceptive and unconscionable conduct | 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 not to assist or allow the ACCC to further investigate the matter

result
Justice Kiefel
Federal Court Brisbane
17 January 2004

undertaking to the court, payment of confidential amount to former retail tenant, pay part of ACCC's costs

significance | bargaining power of shopping centre owners

will writing

Will Writers Guild Pty Ltd and another

alleged | 26 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

result
Justice Marshall
Federal Court Hobart
2 May 2003

orders for payment of \$137 697 to a franchisee for losses sustained in purchasing a will writing franchise
additional orders had earlier been made against the company (see last year's annual report)

significance | disclosure of information under the mandatory Franchising Industry Code of Conduct

pyramid and referral selling schemes

World Netsafe Pty Ltd and another

alleged | 19 November 1999 | contempt of court | promotion and marketing of illegal international pyramid and referral selling scheme; breaches of substantive court orders

result
Justice Spender
Federal Court Brisbane
16 December 2003

imposed \$1000 fine on director for contempt as well as 1 month imprisonment to be served if failed to publish website notice and advise customers

significance | enforcement of court orders

parts and accessories franchises

4WD Systems Pty Ltd and others

alleged | 26 September 2001 | 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

result
Justice Selway
Federal Court Adelaide
13 August 2003

injunctions and part of ACCC's costs

significance | franchisors obligation to deal fairly and honestly with franchisees

3. Litigation commenced before 2003–04 and continuing

> 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

| | | |
|---------------|----------------------------|--|
| status | High Court 28 July 2003 | application for special leave to appeal Full Federal Court's decision of 30 June 2003 to be heard on 30 September 2004 |
|---------------|----------------------------|--|

medical fluids

Baxter Healthcare Pty Ltd

alleged | 1 November 2002 | 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 Allsop Federal Court Sydney 18 May 2004 | judgment reserved 7 July 2004 |
|---------------|---|-------------------------------|

beauty products

Dermalogica Pty Ltd

alleged | 21 November 2002 | resale price maintenance | company requested two retailers to stop discounting through 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 15 July 2003 | judgment reserved |
|---------------|---|-------------------|

scrap metal

DM Faulkner Pty Ltd and others

alleged | 24 December 2001 | anti-competitive agreements | between competing scrap metal merchants on how they would bid at scrap metal auctions

| | | |
|---------------|--|-------------------|
| status | Justice Bennett Federal Court Sydney 23 March 2004 | judgment reserved |
|---------------|--|-------------------|

barge services

Eurong Beach Resort Ltd and others

alleged | 5 September 2002 | 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 6 February 2004 | case review conference 3 August 2004, proceedings continuing |
|---------------|---|--|

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 | Justices Heerey and Kenny Federal Court Melbourne 2 April 2004 | pecuniary penalty of \$3 million imposed against Fila; application for injunctions and declarations adjourned; matter withdrawn against third respondent and continuing against second respondent |
|---------------|--|---|

wheaten flour

George Weston Foods Limited

alleged | 5 December 2002 | 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 12 July 2004 | penalty hearing 16 August 2004 |
|---------------|---|--------------------------------|

petrol supply

Leahy Petroleum Pty Ltd and others

alleged | 21 May 2002 | 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 Merkel Federal Court Melbourne 27 May 2004 | trial continuing (judgment reserved 26 July 2004) |
|---------------|--|---|

liquor retailing

Liquorland (Australia) Pty Ltd, Woolworths Ltd

alleged | 27 June 2003 | 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 27 July 2004 | next directions hearing 2 February 2005 |
|---------------|--|---|

demolition and asbestos removal industry

McMahon Services Pty Ltd and others

alleged | 28 January 2003 | price fixing | in relation to government tender in the demolition and asbestos removal industry

| | | |
|---------------|--|--------------------------------|
| status | Justice Selway Federal Court Adelaide 6 May 2004 | penalty hearing 20 August 2004 |
|---------------|--|--------------------------------|

vitamins

F Hoffmann-La Roche Ltd, BASF Aktiengesellschaft and others

alleged | 24 August 2001 | price fixing and market sharing | in the global market for vitamin C

| | | |
|---------------|--|-------------------------------------|
| status | Justice Merkel Federal Court Melbourne 19 September 2003 | directions hearing 29 November 2004 |
|---------------|--|-------------------------------------|

recyclable waste paper

Visy Paper Pty Ltd

alleged | 18 November 1998 | market sharing | attempt to induce Northern Pacific Paper into a market sharing agreement for recyclable waste paper collection

| | | |
|--------|---|--|
| status | Justices Gleeson, McHugh, Gummow, Hayne, Kirby and Callinan High Court 8 October 2003 | appeal dismissed, matter remitted to Federal Court for penalty hearing on 6 October 2004 |
|--------|---|--|

> fair trading and consumer protection

medical services

Australian Biologics Testing Services Pty Ltd

alleged | 27 June 2003 | misleading and deceptive conduct | no reasonable grounds for statement about thermography, live blood analysis and the Bolans clot retraction test

| | | |
|--------|---|-----------------------|
| status | Justice Moore Federal Court Sydney 22 June 2004 | mediation 2 July 2004 |
|--------|---|-----------------------|

telephone bills

Billbusters Pty Ltd and another

alleged | 29 May 2003 | misrepresentations | in claiming methods of reviewing and checking Telstra telephone accounts

| | | |
|--------|------------------------------|---|
| status | High Court 15 August 2003 | Mr Kendrick-Smith filed application for special leave to appeal the decision of the Full Federal Court to dismiss his appeal of the Federal Court decision; awaiting hearing date |
|--------|------------------------------|---|

car jacks

BMW (Australia) Ltd

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

| | | |
|--------|---|--|
| status | Justices Gray, Weinberg and Goldberg Full Federal Court Melbourne 28 June 2004 | upheld decision of Federal Court that BMW had contravened the Act; matter returned to Federal Court for reconsideration of relief, hearing 27 September 2004 |
|--------|---|--|

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 6 April 2004 | proceedings continuing |
|--------|---|------------------------|

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 Kiefel Federal Court Brisbane 2 February 2004 | proceedings continuing |
|--------|---|------------------------|

contraceptives

David Zero Population Growth Hughes trading as Crowded Planet

alleged | 24 September 2003 | misleading or deceptive conduct | false representations about the supply of oral contraceptives on the internet, nondisclosure of significant health risks; breaches of substantive court orders

| | | |
|--------|---|---|
| status | Full Federal Court Sydney 21 May 2004 | Mr Hughes appealed against Federal Court's 29 April 2004 contempt finding and six months imprisonment (four months suspended) |
|--------|---|---|

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 29 June 2004 | judgment reserved |
|--------|--|-------------------|

pre-paid telephone cards

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

alleged | 19 March 2003 | 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 18 June 2004 | directions hearing 24 August 2004 |
|--------|---|-----------------------------------|

software

Harvey Norman Holdings Pty Ltd

alleged | 7 November 2002 | 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 28 May 2004 | court ordered mediation 26 July 2004 |
|--------|--|--------------------------------------|

computers

Info4pc.com Pty Ltd and another

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 two years; supply not intended

| | | |
|--------|---|----------------------|
| status | Justice Nicholson Federal Court Perth 23 April 2004 | trial date to be set |
|--------|---|----------------------|

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 | listed for trial 16 July 2004 |
|--------|--|-------------------------------|

advertising

John Bevins Pty Ltd

alleged | 8 February 2001 | misleading or deceptive conduct | advertising agency knowingly concerned in misrepresentations of Medical Benefits Fund of Australia Limited

| | | |
|--------|-------------------------------|---|
| status | High Court 13 January 2004 | ACCC application for special leave to appeal Full Federal Court's decision of 16 December 2003; tentative hearing date 30 November 2004 |
|--------|-------------------------------|---|

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 19 January 2004 | judgment reserved |
|--------|---|-------------------|

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 | Justices Heerey, Sunberg and Dowsett Full Federal Court Brisbane 21 May 2004 | on 5 July 2004 the Full Court dismissed the ACCC's appeal and upheld the appeal by Mr Quinlivan |
|--------|--|---|

pest control services

Pest Free Australia Pty Ltd

alleged | 13 November 2002 | misleading or deceptive conduct, misrepresentations | regarding the effectiveness of electronic pest repellent devices

| | | |
|---------------|--|------------------------|
| status | Justice Emmett Federal Court Adelaide 30 June 2004 | proceedings continuing |
|---------------|--|------------------------|

4. Litigation commenced during 2003–04 and continuing

> effective competition and informed markets

property development

Anglo Estates Pty Ltd and others

alleged | 24 March 2004 | price fixing and exclusionary provision | in seeking an arrangement with the Shire of Esperance over the sale of the shire's land

| | | |
|---------------|---|--------------------------------------|
| status | Justice French Federal Court Perth 22 June 2004 | directions hearing 27 September 2004 |
|---------------|---|--------------------------------------|

sporting goods

High Adventure Pty Ltd and another

alleged | 19 December 2003 | resale price maintenance | to prevent discounting of paragliders by retailer

| | | |
|---------------|---|---|
| status | Justice Gray Federal Court Melbourne 19 December 2003 | proceedings commenced; seeking declarations, injunctions, penalties and costs |
|---------------|---|---|

fuel retailing

Leahy Petroleum Pty Ltd and others

alleged | 7 November 2003 | price fixing | of petrol in the Geelong area as part of a price fixing arrangement between distributors and retailers (18 respondents)

| | | |
|---------------|--|----------------------------------|
| status | Justice Gray Federal Court Melbourne 7 June 2003 | directions hearing 9 August 2004 |
|---------------|--|----------------------------------|

electricity and gas

NT Power Generation Pty Ltd v Power and Water Authority & Gasco Pty Ltd

intervention | 12 September 2003 | ACCC granted leave to intervene in High Court appeal on the issue of derivative Crown immunity

| | | |
|---------------|--|-------------------|
| status | Justices McHugh, Gummow, Kirby, Callinan and Heydon High Court 10 March 2004 | judgment reserved |
|---------------|--|-------------------|

recreational show

Showmen's Guild of Australasia and others

alleged | 19 February 2004 | boycotts | an arrangement not to supply amusement services to independent organisers of amusement areas for certain events

| | | |
|--------|--|----------------------------------|
| status | Justice Hill Federal Court Sydney 9 March 2004 | directions hearing 3 August 2004 |
|--------|--|----------------------------------|

> fair trading and consumer protection

security services

Chubb Security Australia Pty Ltd

alleged | 3 June 2004 | accepting payment not intending to supply | relating to arrangements to provide security services within specified period

| | | |
|--------|---|---------------------------------|
| status | Justice Bennett Federal Court Sydney 24 June 2004 | penalty hearing 15 October 2004 |
|--------|---|---------------------------------|

internet

Domain Names Australia Pty Ltd and another

alleged | 2 October 2003 | misleading or deceptive conduct, asserting a right to payment for unsolicited services | concerning issuing of notices to businesses with a registered internet domain name which represented the registration was about to expire and offering to re-register the existing name for a fee

| | | |
|--------|--|---|
| status | Full Federal Court Melbourne 1 June 2004 | Domain Names' appeal against Federal Court's orders of declaration, injunction and costs; to be heard on 24 August 2004 |
|--------|--|---|

debt management

Fox Symes & Associates Pty Ltd and others

alleged | 13 April 2004 | misleading or deceptive, unconscionable conduct | in claiming that their debt administration services would relieve clients from debt, clients' credit rating not affected, creditors repaid in full, debts frozen and interest would not accrue

| | | |
|--------|--|---|
| status | Justice Lander Federal Court Adelaide 16 June 2004 | hearing regarding particulars 10 September 2004 |
|--------|--|---|

real estate

Gary Peer & Associates Pty Ltd

alleged | 4 December 2003 | misleading or deceptive conduct | advertising of undervalued price for residential property

| | | |
|--------|---|------------------------|
| status | Justice North Federal Court Melbourne 15 May 2004 | proceedings continuing |
|--------|---|------------------------|

specialised drink retailing

Ikuson Trading Company Pty Ltd, Ixon Japan KK

alleged | 28 November 2003 | misleading or deceptive conduct, misrepresentations | in claims that honey drink was a ‘product of Australia’, ‘A gift from Tasmania’, contained Leatherwood propolis and honey, and was manufactured and bottled in Australia

| | |
|---|---------------------------------|
| status Justice Wilcox Federal Court Sydney 16 December 2003 | directions hearing 13 July 2004 |
|---|---------------------------------|

investment seminar

National Investment Institute Pty Ltd, Henry Kaye

alleged | 30 September 2003 | misleading and deceptive conduct | that property investment strategy could turn ordinary Australians into millionaires with no money down, no equity and no debt

| | |
|--|-------------------|
| status Justice Kenny Federal Court Melbourne 23 March 2004 | judgment reserved |
|--|-------------------|

>
case study

property problems

Property was a hot topic for many Australians and for the ACCC in 2003–04.

In September the ACCC announced it would be targeting misleading and deceptive behaviour in the property industry, an announcement which sparked more than 300 complaints and inquiries about industry practices to the ACCC’s Infocentre. Issues of concern included property seminars and auctioneer bidding processes.

One practice generating concern for both the ACCC and governments is ‘dummy bidding’—that is when someone with no intention of buying makes bids to drive up the price. Unless it is fully disclosed at the start of the auction and at the time of the bid, the ACCC considers all bidding on behalf of the vendor to be deceptive and misleading.

Governments in several states have now moved to outlaw dummy bidding and the ACCC has made a commitment to take action to enforce the Act in this area if and when behaviour contravenes it.

Meanwhile, as the allure of investing in property grows, so do property investment seminars, many of which make promises to turn ordinary ‘mum and dad’ investors into millionaires.

In 2003–04 the ACCC took action against Mr Henry Kaye and National Investment Institute Pty Ltd over their free seminars, during which people were encouraged to enrol for a fee of \$15 000 in the ‘mastery’ program. Kaye made the promise that he would turn 1000 ordinary people in the program into millionaires within 12 months.

Kaye claimed he used strategies requiring no money down, no equity and no debt, with a price protection guarantee that they would not lose their money if the market were to fall.

In proceedings beginning in October 2003 the ACCC alleged misleading and deceptive conduct. Later that month Henry Kaye and National Investment Institute Pty Ltd agreed not to publish any further advertisements promoting the ‘millionaires’ property investment strategy pending the final outcome of the court proceedings.

The case was heard in March 2004 and judgment is reserved.

mobile phone accessories

Phoneflasher.com Pty Ltd and others

| | | |
|--|---|---------------------------------|
| alleged 3 June 2004 misleading or deceptive conduct in claiming that the company's mobile phone accessory reduces radiation and has significant health benefits | | |
| status | Justice Finn Federal Court Adelaide 3 June 2004 | directions hearing 20 July 2004 |

household appliance hire

Radio Rentals Ltd, Walker Stores Pty Ltd

| | | |
|---|---|---|
| alleged 11 December 2003 unconscionable conduct in relation to multiple rental agreements with an intellectually disabled individual | | |
| status | Justice Selway Federal Court Adelaide 19 April 2004 | next directions hearing 12 October 2004 |

television

Seven Network Ltd

| | | |
|--|---|---|
| declaration 8 April 2004 challenge under s. 163A to ACCC's statutory demand for information | | |
| status | Justice Branson Federal Court Sydney 16 June 2004 | application dismissed 9 July 2004; appeal lodged 30 July 2004 |

mobile phones

Telstra Corporation Ltd

| | | |
|---|--|-------------------|
| alleged 19 August 2003 misleading or deceptive conduct, misrepresentations in claims that mobile phones handsets are available for '\$0 upfront' on monthly member plans where the cost of the phone over the minimum contract period is in addition to the member plan requirements | | |
| status | Justice Gyles Federal Court Sydney 2 February 2004 | judgment reserved |

pyramid selling

Worldplay Services Pty Ltd

| | | |
|--|---|-------------------|
| alleged 1 December 2003 pyramid selling operation of an online gambling service by Australian company with overseas membership, gambling service a pyramid scheme | | |
| status | Justice Finn Federal Court Brisbane 8 June 2004 | judgment reserved |

5. Undertakings accepted during 2003–04

> effective competition and informed markets

brick manufacturing

Bristle Operations Pty Ltd

alleged | price fixing | supply of bricks to builders

| | | |
|--------|--------------|--|
| result | Perth | ordered monetary penalties, injunctions, declarations, compliance program and costs; court enforceable undertakings, as an ancillary provision to the court order, compliance program to be approved by solicitors or compliance professionals with expertise in trade practices law, annual audit of the three year program |
| | 24 June 2004 | |

significance | price fixing is a serious offence

weight loss product

Constantine Xenoudakis

alleged | 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

| | | |
|--------|---------------|--|
| result | Darwin | consent orders; penalty of \$25 000; injunctions and other orders in ACCC litigation against Chaste Corporation Pty Ltd (in liquidation) and others including Mr Xenoudakis; court enforceable undertaking to participate in a trade practices compliance training program |
| | 30 March 2004 | |

significance | accuracy in promotion of franchise and weight loss product

taxi services

Des's Cabs Pty Ltd

alleged | primary boycott, lessening competition | roster agreement between taxi owners

| | | |
|--------|------------------|--|
| result | Adelaide | court enforceable undertakings; refrain from agreeing to or operating a roster system that specifies when taxi owners or operators are permitted to seek work, and directors attend a trade practices compliance seminar |
| | 11 November 2003 | |

significance | collective boycotts not acceptable

taxi services

Tamworth Radio Cabs Co-operative Limited

alleged | primary boycott, lessening competition, misuse of market power | sharing of jobs in excess of 30 kilometres between drivers, ban on drivers accepting private or direct bookings, restrictions on where drivers could buy fuel

| | | |
|--------|---------------|---|
| result | Sydney | court enforceable undertakings; terminate 'points' system to allocate jobs; amend rules and by-laws in relation to private bookings and fuel supply and advise all taxi operators; trade practices compliance program |
| | 17 March 2004 | |

significance | taxi drivers not restrained in competition for customers or in purchase of fuel

salmon

Tassal Limited

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

| | | |
|--------|----------------------------|--|
| result | Tasmania 19 August 2003 | consent orders; declarations, costs; court enforceable undertakings to implement a trade practices training program for relevant staff |
|--------|----------------------------|--|

significance | anti-competitive agreement limiting supply

cinema operators

The Greater Union Organisation Pty Limited

alleged | lessening competition | arrangement to prevent a competitor from entering cinematic film exhibition market

| | | |
|--------|--------------------------|--|
| result | Canberra 29 June 2004 | court enforceable undertakings; intended to reduce the risk of collaboration; inform ACCC of significant industry developments |
|--------|--------------------------|--|

significance | cinema industry arrangements should not substantially lessen competition

cinema operators

Village Roadshow Limited

alleged | lessening competition | arrangement to prevent a competitor from entering cinematic film exhibition market

| | | |
|--------|--------------------------|--|
| result | Canberra 29 June 2004 | court enforceable undertakings; intended to reduce the risk of collaboration; inform ACCC of significant industry developments |
|--------|--------------------------|--|

significance | cinema industry arrangements should not substantially lessen competition

> fair trading and consumer protection

male impotency treatment

Advanced Medical Institute Pty Limited

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

| | | |
|--------|----------------------------|--|
| result | Sydney 26 February 2004 | court enforceable undertakings; provide refunds to identified patients |
|--------|----------------------------|--|

significance | treatment claims should be substantiated

fruit juice

All Australian Owned Fruit Juice Company Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | in labelling claims that products were made from Australian juice and were 100% juice

| | | |
|--------|------------------------------|---|
| result | Melbourne 20 January 2004 | court enforceable undertaking; amend labels, not repeat conduct, implement a trade practices compliance program |
|--------|------------------------------|---|

significance | place of origin and product composition should be accurately stated

weight loss product

Astrix Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | in promotion and selling via a number of websites of ECA Stack weight loss product concerning the efficacy and safety of the product

| | | |
|--------|---------------------------|---|
| result | Canberra 23 March 2004 | court enforceable undertakings; cease the conduct; corrective advertisements on the websites; write to purchasers of the product and provide refunds where requested; directors attend trade practices compliance seminar |
|--------|---------------------------|---|

significance | accuracy of claims for weight loss products

gifts, porcelain, figurines and glassware

Bonnet Imports Pty Ltd

alleged | contravention of product safety standards | supply of frog ornaments incorporating candles with lead wicks which do not comply with banning notice under the Trade Practices Act

| | | |
|--------|--------------------------|--|
| result | Darwin 19 August 2003 | court enforceable undertakings; comply with the banning notice; provide retailers with a letter prepared by the ACCC; provide retailers with a warning sign to be displayed by them; attend a trade practices awareness program; acquaint officers and employees with prescribed consumer protection notices relating to products supplied |
|--------|--------------------------|--|

significance | product safety addressed

real estate

Brendon Barry Davenport and Michael John Braithwaite

alleged | misleading or deceptive conduct, misrepresentations | concerning the nature of interest in land for sale at Hill End NSW

| | | |
|--------|-----------------------|--|
| result | Hobart 11 May 2004 | court enforceable undertakings; cease conduct; corrective advertisements; refund purchasers; attend a trade practices compliance seminar |
|--------|-----------------------|--|

significance | advertising for land sales must be accurate

pest repellent devices

Danoz Direct Pty Ltd, Danoz Directions Pty Ltd, Emjoi Australasia Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | about the efficacy and sponsorship of Pest Contro and Pest Offence devices

| | | |
|--------|--------------------------|---|
| result | Adelaide 9 March 2004 | court enforceable undertakings; cease conduct; offer refunds; corrective advertising; send letters to all Danoz retailers/distributors concerning the undertakings; expand trade practices compliance program |
|--------|--------------------------|---|

significance | claims about performance or approval must be accurately stated

magazine

DeAgostini UK Ltd

alleged | full cash price not stated | in sale of a magazine series containing parts to build a radio-controlled model of a Subaru Impreza car

| | | |
|--------|-------------------------|---|
| result | Canberra 27 May 2004 | informal undertaking; advise purchasers of full cash price and establish refund process for purchases before that time; ensure future series contain adequate information on full price |
|--------|-------------------------|---|

significance | adequate disclosure of full price of product

sunglasses

Denbri Investments Pty Ltd

alleged | **contravention of product safety standards** | sunglasses—incorrectly labelled, did not carry a warning stating not suitable for driving, did not comply with minimum unobstructed viewing area requirement

| | | |
|---------------|--------------------------|---|
| result | Perth 15 January 2004 | court enforceable undertakings; cease supply; have retailers withdraw from sale and return; recall notices; refund parties who return glasses; trade practices compliance program |
|---------------|--------------------------|---|

significance | product safety addressed

egg products

Go Drew Pty Ltd

alleged | **misleading or deceptive conduct** | in relation to the use of a logo deceptively similar to the National Heart Foundation Tick logo on two varieties of egg products

| | | |
|---------------|------------------------------|---|
| result | Melbourne 3 February 2004 | court enforceable undertakings; cease conduct; trade practices compliance program |
|---------------|------------------------------|---|

significance | sponsorship or affiliation on packaging must be accurately stated

airconditioning

Heatshield Ductair Pty Ltd

alleged | **misleading or deceptive conduct, misrepresentations** | in claiming ducting product had been tested against competitors' products, possessed superior performance characteristics, savings by using its ducting systems

| | | |
|---------------|------------------------------|--|
| result | Adelaide 10 December 2003 | court enforceable undertakings; cease conduct; apologise in writing to its customers and competitors; trade practices compliance program |
|---------------|------------------------------|--|

significance | efficiency comparisons and claims must be accurate

model kits

Kirin Direct Marketing Pty Ltd

alleged | **asserting right to payment for unsolicited goods** | for a model kit series, Building the Cutty Sark

| | | |
|---------------|-----------------------|--|
| result | Sydney 13 May 2004 | court enforceable undertakings; cease conduct; refunds; trade practices compliance program |
|---------------|-----------------------|--|

significance | cannot demand payment for unsolicited goods

motor vehicle repairs

Kwik Fix International Pty Ltd

alleged | **breach of industry code of conduct** | concerning franchising of mobile repair services for car paint, plastic and interiors

| | | |
|---------------|--------------------------|---|
| result | Brisbane 30 July 2003 | consent orders; injunctions, compliance program; court enforceable undertakings; repurchase complainant's franchise; implement an additional internal complaints handling/dispute resolution system; implement a document/records management system |
|---------------|--------------------------|---|

significance | representations made about purchase price and profitability must be accurate

armour linings

Lawson's Trading Co Pty Ltd

alleged | **breach of industry code of conduct** | failure to provide disclosure documents to franchisees and failure to provide dispute resolution process

| | | |
|---------------|-----------------------------|--|
| result | Brisbane 27 January 2004 | court enforceable undertakings; cease conduct; provide appropriate disclosure documentation; refunds; trade practices compliance program; director attend a trade practices compliance seminar |
|---------------|-----------------------------|--|

significance | franchisees are fully informed and provided with dispute resolution process

children's toys

Minmetals Australia Pty Ltd

alleged | **contravention of product safety standards** | supplied children's toy dart gun sets with suction darts that are subject to ban under the Trade Practices Act

| | | |
|---------------|------------------------------|--|
| result | Melbourne 23 October 2003 | court enforceable undertakings; cease supply; recall notices; retailers display recall notices; trade practices compliance program |
|---------------|------------------------------|--|

significance | product safety addressed

legal services

Morgan Buckley Pty Ltd

alleged | **misleading or deceptive conduct, misrepresentation** | issuing tax invoices for legal fees to a client that implied the invoices had been calculated according to a retainer, resulting in the client being overcharged

| | | |
|---------------|---------------------------|--|
| result | Canberra 27 April 2004 | court enforceable undertakings; use best endeavours to retain quality assurance accreditation under AS/NZS ISO9001:2000 for three years; notify the ACCC in writing if it does not retain such quality assurance accreditation |
|---------------|---------------------------|--|

significance | accuracy of invoice pricing practices

telephony services

National Telecoms Group Limited

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

| | | |
|---------------|--------------------------|---|
| result | Sydney 6 January 2004 | consent orders; declarations, injunctions, costs; court enforceable undertakings; review trade practices compliance program |
|---------------|--------------------------|---|

significance | advertised telephony service costs must be accurate

mobile phone

Optus Mobile Pty Ltd

alleged | **misleading or deceptive conduct, bait advertising** | widespread advertising of Nokia 7250 handset for \$0 on a \$55 plan under a 24-month contract without having sufficient stock to be able to meet reasonable demand for the product

| | | |
|---------------|------------------------|--|
| result | Sydney 24 June 2004 | court enforceable undertakings; cease conduct; refund customers who paid more for the phone; re-offer handset for same price on a cheaper monthly plan for additional month; corrective advertising; implement a 'raincheck' policy; create a handset supply panel to review supply process; strengthen trade practices compliance program |
|---------------|------------------------|--|

significance | sufficient stocks should be available for advertised specials

orange juice

The Outback Juice Company Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | label claims that products were '100% orange juice' and '100% fresh orange juice'

| | | |
|---------------|----------------------------|---|
| result | Brisbane 13 August 2003 | court enforceable undertakings; should the company recommence operations it will notify the ACCC, it will not engage in similar conduct, and it will implement a trade practices compliance program |
|---------------|----------------------------|---|

significance | labelling on products about composition must be accurate

magazine subscription

Reader's Digest (Australia) Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations, asserting right to payment for unsolicited goods | demanding payment for unsolicited mail order products

| | | |
|---------------|----------------------------|--|
| result | Sydney 19 December 2003 | court enforceable undertakings; independent audit; notify people on mailing list of failed process and new compliance measures; produce a trade practices training video for staff; corrective advertising; trade practices compliance program |
|---------------|----------------------------|--|

significance | cannot demand payment for unsolicited goods

pasta

San Remo Macaroni Company Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | claiming on packaging of 'San Remo medium grain CousCous' that the product had a low glycemic index (a ranking of foods based on their immediate effect on blood glucose levels)

| | | |
|---------------|------------------------------|---|
| result | Adelaide 15 December 2003 | court enforceable undertakings; refrain from making GI representations unless it has a reasonable foundation in scientific knowledge or testing; trade practices compliance program |
|---------------|------------------------------|---|

significance | health related claims must be accurate

road sweepers

Schwarze Industries Australia Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | about the Australian content of road sweepers and the country of origin of some of the constituent parts of the road sweepers

| | | |
|---------------|-----------------------------|--|
| result | Brisbane 6 November 2003 | court enforceable undertakings; cease conduct; corrective notice to affected consumers; relevant staff attend a trade practices compliance seminar |
|---------------|-----------------------------|--|

significance | place of origin must be accurate

microwave ovens

Sharp Corporation of Australia Pty Ltd

alleged | misleading or deceptive conduct, misrepresentations | regarding the capacity (expressed in litres) of some models of microwave ovens

| | | |
|---------------|----------------------|--|
| result | Perth 1 July 2003 | court enforceable undertakings; cease conduct; re-label existing stock; corrective notices; offering affected consumers a number of remedies; funding a consumer awareness campaign; institute a complaints handling system; trade practice compliance program |
|---------------|----------------------|--|

significance | capacity claims for product must be accurate

sunglasses

Sonya Valentine Pty Ltd

alleged | contravention of product safety standards, misleading or deceptive conduct, misrepresentations | sunglasses did not carry the required labelling, did not meet the standard's requirements for refractive properties, UV protection sticker not valid

| | | |
|---------------|---------------------------|--|
| result | Brisbane 10 March 2004 | court enforceable undertakings; cease supply; have retailers withdraw from sale and return; recall notices; refunds parties who return glasses; trade practices compliance program; trade practices training program for stock controllers |
|---------------|---------------------------|--|

significance | product safety addressed

motor vehicles

Toyota Motor Corporation Australia Ltd

alleged | misleading or deceptive conduct, misrepresentations | regarding the availability of rear power windows on Toyota Corolla Levin wagons

| | | |
|---------------|-------------------------------|--|
| result | Melbourne 20 November 2003 | court enforceable undertakings; write to all purchasers of Levin wagons; consumer redress measures; review website for accuracy and consistency of representations and description of Toyota vehicles in the website |
|---------------|-------------------------------|--|

significance | representations on features of products must be accurate

security systems

Tyco Australia Pty Ltd trading as ADT Security

alleged | misleading or deceptive conduct, accepting payment not intending to supply | clients paying for a preventative maintenance service that was not delivered

| | | |
|---------------|----------------------------|---|
| result | Townsville 23 June 2004 | court enforceable undertakings; contact and provide compensation to affected customers; continue existing trade practices compliance program; implement a complaints handling system that complies with Australian Standard 4269-1995 |
|---------------|----------------------------|---|

significance | services paid for must be delivered

trolley jacks

Western Tool Distributors Pty Ltd

alleged | contravention of product safety standards | supplied trolley jacks with package marking and instructions that did not comply with the mandatory standard

| | | |
|---------------|-------------------------|---|
| result | Perth 26 August 2003 | court enforceable undertakings; amend instructions to comply with the standard; trade practices compliance program (the company had earlier advised all retailers to remove remaining stock from sale and placed recall advertisements in newspapers providing the option of return, exchange, or provision of new instructions and labelling to persons with a non-compliant jack) |
|---------------|-------------------------|---|

significance | product safety addressed

output 1.1.1

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



where we did it

[the ACCC investigates matters throughout Australia through its regional and national offices]



concluded cases

- Advanced Medical Institute
- Arnold's Ribs and Pizza
- Commonwealth Bank of Australia
- FFE
- Giraffe World Australia
- Sanyo Airconditioning Australia
- Universal Music
- Warner Music

continuing cases

- Australian Biologics
- Chubb Security
- DM Faulkner
- David Hughes
- Fila Sports Oceania
- George Weston
- Global Pre Paid Communications
- Ikuson and Ixon Japan KK
- Liquorland and Woolworths
- Showmen's Guild of Australasia
- Telstra Corporation
- Visy Paper

undertakings

- Advanced Medical Institute
- Kirin Direct Marketing
- Optus Mobile
- Reader's Digest
- Tamworth Radio Cabs



concluded cases

- AMWU, AWU & CEPU
- Berri
- Cadbury Schweppes
- David Francis
- Leahy Petroleum (RPM)
- Lloyd Brooks
- National Chemical
- National Telecoms
- Pacific Dunlop (Ansell)

continuing cases

- Billbusters
- BMW (Australia)
- Dermalogica
- Domain Names Australia
- Gary Peer
- Harvey Norman Holdings
- High Adventure
- Leahy Petroleum (Ballarat)
- Leahy Petroleum (Geelong)
- Safeway

undertakings

- All Australian Fruit Juice
- Go Drew
- Minmetals Australia
- National Telecoms
- Toyota



Brisbane

concluded cases

Australian Aboriginal Art
Australian Icon Products
Black on White
Danoz Direct
Kwik Fix International
Westfield Shopping Centre
World Netsafe

continuing cases

Dataline.net.au
Oceana Commercial

undertakings

Kwik Fix International
Lawson's Trading Company
Outback Juice Company
Schwarze Industries Australia
Sonya Valentine



Perth

concluded cases

Econovite
Esanda Finance Corporation
Greenstar Cooperative
Mayne Nickless
Midland Brick Company and Bristle Operations
Thorn Australia

continuing cases

Anglo Estates
Emerald Ocean Distributors
Info4pc.com
IT&T AG
Lux

undertakings

Bristle Operations
Denbri Investments
Sharp Corporation
Western Tool Distributors



Darwin

concluded cases

Woolworths (SA), the Arnhem Club, Rhonwood

continuing cases

Chaste Corporation and others

undertakings

Bonnet Imports
Constantine Xenoudakis



Canberra

concluded cases

ABB Distribution Transformers
ABB Power Transformers
Bray v F Hoffmann-La Roche
Kabushiki Kaisha Sony Computer Entertainment
Medibank Private
Medical Benefits Fund of Australia
Mobil Australia
Morgan Buckley and another
National training conference
Qantas Airways
Richard Chen
Saatchi & Saatchi
South Sydney Rugby League, News Ltd

continuing cases

Baxter Healthcare
Henry Kaye
John Bevins
NT Power Generation, Power and Water Authority
Roche, BASF and others
Seven Network
Worldplay Services

undertakings

Astrix Pty Ltd
DeAgostini
Greater Union Organisation
Morgan Buckley
Village Roadshow



Adelaide

concluded cases

FFE, Tyco and others
Rural Press
SA Olive Corporation
Synergy in Business
4WD Systems

continuing cases

Fox Symes
McMahon Services and others
Pest Free Australia
Phoneflasher
Radio Rentals

undertakings

Danoz Direct and Emjoi Australasia
Des's Cabs
Heatshield Ductair
San Remo Macaroni Company



Hobart

concluded cases

Tasmanian Salmonid Growers
Will Writers Guild

continuing cases

0

undertakings

Brendon Davenport and
Michael Braithwaite
Tassal Limited



Townsville

continuing cases

Eurong Beach Resort

concluded cases

Multigroup Distribution Services

undertakings

Tyco Australia t/a ADT Security

output 1.1.2



competitive market structures and informed behaviour

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 unilateral or coordinated market power.

this year the ACCC

issued 24 media releases on mergers, 39 on authorisation and notification decisions, 7 on undertakings, 14 on telecommunications access arrangements and decisions, 16 on energy access arrangements, decisions and discussion papers and 26 on inquiries and reports

performance indicator



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

examined 189 mergers, acquisitions and asset sales for their compliance with section 50 of the Trade Practices Act; 48 in less than two weeks, 54 in 2–3 weeks, 31 in 4–6 weeks, 183 were not opposed, 6 were opposed and 2 were allowed to proceed after the acceptance of court enforceable undertakings

performance indicator



assess the competition effects of mergers, acquisitions and asset sales

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

those not opposed included

Bilfinger Berger Australia Pty Ltd and Abigroup Limited
 Tabcorp Holdings Limited and Tab Limited
 Alinta Limited and Duke Energy
 Star Track Express acquisition by Qantas Airways Limited and Australia Postal Corporation
 Westfield Holdings and AMP Shopping Centre Trust
 Alliance between Coles Myer and The Shell Company of Australia Limited

those opposed were

Coca-Cola Amatil Limited and Berri Limited
 MiTek Australia Limited and Austrim Nylex's Pryda Reid Group
 AGL's acquisition of a 35 per cent interest in Loy Yang Power
 Boral Ltd's proposed acquisition of Adelaide Brighton (currently in the Federal Court)

those initially opposed but resolved by court enforceable undertakings were

Pacific National's acquisition of Freight Australia
 Perkins Shipping's acquisition of Gulf Freight Services

mergers and joint ventures

| | this year | last year |
|-------------------------------|------------|------------|
| not opposed | 183 | 182 |
| opposed | 6 | 9 |
| resolved through undertakings | (2) | (2) |
| total | 189 | 191 |

number of mergers by industry

| | this year | last year |
|---------------------------|------------|------------|
| finance/banking/insurance | 24 | 33 |
| energy | 13 | 21 |
| food industry/produce | 15 | 18 |
| manufacturing | 21 | 18 |
| health | 7 | 13 |
| mining/forestry | 14 | 19 |
| communications | 22 | 13 |
| transport | 22 | 6 |
| computer | 6 | 32 |
| other | 45 | 18 |
| total | 189 | 191 |

Mergers, acquisitions and asset sales were assessed for their compliance with section 50 of the Trade Practices Act. In total 189 matters were examined with six being opposed outright and two being 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

Coca-Cola Amatil Limited and Berri Limited

result | acquisition opposed

background | in October 2003 the ACCC advised Coca-Cola that the proposed acquisition would likely substantially lessen competition in the national market for production and wholesale supply of chilled and ambient fruit juice and fruit drink; in November 2003 the ACCC determined it would not accept behavioural undertakings from Coca-Cola and announced it would oppose the proposed acquisition

Bilfinger Berger Australia Pty Ltd and Abigroup Limited

result | acquisition not opposed

background | Bilfinger Berger is a wholly owned subsidiary of Bilfinger Berger AG (a multinational construction organisation) and trades through its Australian subsidiary, AW Baulderstone Holdings Pty Ltd, in building and construction activities throughout Australia; Abigroup's main trading activities include building and construction with a primary focus on road construction in Queensland, Victoria and New South Wales

the ACCC considered that the merged entity is likely to face significant competitive constraints from strong competitors like the Leighton Group of entities, which includes Leighton Contractors, Thiess, John Holland and Transfield

the acquisition would also have the effect of providing Abigroup with the financial and balance sheet support to better compete in the large project markets against the Leighton Group—accordingly, the acquisition was not likely to lead to a substantial lessening in competition

MiTek Australia Limited and Austrim Nylex's Pryda Reid Group

result | acquisition opposed

background | the two main suppliers of software-supported metal connector plate fasteners and associated design and engineering support services used in the manufacture of pre-fabricated timber roof trusses and wall frames

likely substantial lessening of competition as the merged entity would account for 85–90 per cent market share; no readily available imports and highly unlikely that a viable new entrant could emerge; and an absence of countervailing power by the fabricators of timber roof trusses and wall frames

Perkins Shipping acquisition of Gulf Freight Services

result | accepted section 87B undertaking on acquisition

background | concerns that competitive access to port facilities at Gove and services to coastal communities may be lessened, were resolved by undertakings

Tabcorp Holdings Limited and Tab Limited

result | not opposed

background | the provision of exclusive state wagering licences during privatisation of the industry resulted in the formation of what are essentially state-based monopolies with a significant level of regulation, there is therefore limited cross-border competition between the TABs and their pricing, and day-to-day operations have been closely regulated; the ACCC also did not identify any competition concerns regarding the control of the Sky Channel by the proposed merged entity

Acquisition of a 35 per cent interest in Loy Yang Power by Australian Gas Light

result | acquisition opposed

background | in late 2003 AGL sought a declaration from the Federal Court that its acquisition of a 35 per cent interest in Loy Yang Power did not amount to a contravention of section 50 of the Trade Practices Act; AGL is the largest electricity retailer in Victoria and Loy Yang Power is the largest electricity generator in Victoria

Justice French granted the declaration subject to the applicant and respondent entering into appropriate undertakings—agreed to in early 2004

Westfield Holdings and AMP Shopping Centre Trust

result | takeover not opposed

background | in July 2003 the ACCC considered Westfield Trust's takeover offer for units in the AMP Shopping Centre Trust; Westfield will only obtain management control of two of the nine regional shopping centres in which the AMP Trust has ownership interests; any change in ownership or management control of the shopping centres would be subject to further review

Coles Myer and The Shell Company of Australia Limited

result | alliance not opposed

background | in July 2003 the ACCC considered a proposed alliance between Coles Myer and Shell whereby Coles Myer would take over the management of Shell's core retail service station network encompassing 584 sites across Australia; the proposal will not cross any of the ACCC's concentration thresholds for the exercise of market power; in effect, the proposed alliance will result in Coles Myer taking over an existing position in fuel retailing currently occupied by Shell

Qantas Airways Limited and Australia Postal Corporation, and Star Track Express

result | acquisition not opposed

background | in December 2003 the ACCC considered a bid for Star Track Express by Qantas Airways Limited and Australian Postal Corporation, the owners of Australian Air Express; Star Track is primarily focused on road express services while Australian Air Express provides mainly air express services as well as on-selling express air freight line-haul services to other carriers on a contract basis; market participants consider the industry to be innovative and competitive

Alinta Limited and Duke Energy

result | sale not opposed

background | in early 2004 the ACCC considered the likely competitive effects of a wide range of bidders for Duke Energy; the key assets of Duke Energy consisted of gas pipelines (including the Eastern gas pipeline, the Tasmanian gas pipeline and the Queensland gas pipeline) as well as electricity generators in Western Australia and Victoria; Alinta Limited was announced as the successful acquirer of Duke Energy; Alinta had only minor involvement in any of the relevant markets and the ACCC did not oppose the acquisition



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

issued 24 media releases on mergers, 39 on authorisation and notification decisions, 7 on undertakings, 14 on telecommunications access arrangements and decisions, 16 on energy access arrangements, decisions and discussion papers and 26 on inquiries and reports

performance indicator



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

made 34 final determinations for 84 applications for authorisation (including gas, electricity, mergers and other authorisations)

received 39 new applications for authorisation, 16 new applications for minor variation to an existing authorisation, 15 new applications to revoke an existing authorisation and grant a substitute authorisation, no requests to revoke an existing authorisation, and 543 notifications for exclusive dealing

performance indicator



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

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

main adjudication issues

final decisions

- Showmen’s Guild of Australasia collective bargaining through the guild’s code of conduct and rules
- Australian Newsagents’ Federation and Queensland Newsagents’ Federation collective bargaining with newspaper and magazine distributors
- Air New Zealand Ltd Star Alliance Corporate Agreement and Conventions Plus Program
- Allianz Australia Insurance Ltd, QBE Insurance (Australia) Ltd and NRMA Insurance Ltd collective supply of public liability insurance
- EFTPOS interchange fees—collective agreement to reduce interchange fees to zero

Sisters of Charity Health Service Limited joint negotiation of hospital purchaser provider agreements (HPPA)

Air New Zealand Limited and Qantas Airways Ltd—acquisition by Qantas of 22.5 per cent of Air New Zealand and coordination of pricing and scheduling of passenger and freight services

TAB Agents' Association of New South Wales collective negotiation agreements

certain petrol discount shopper docket exclusive dealing arrangements

draft decisions

Port Waratah Coal Services Ltd capacity distribution system to reduce queue of vessels waiting off the Port of Newcastle

interim decisions

Tasmanian Farmers & Graziers Association collective bargaining with McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Ltd

Bartter Enterprises Pty Ltd, La Ionica, Hazeldene, Baiada, Inghams collective negotiation by consenting chicken meat growers

Victorian Farmers Federation collective negotiation by chicken meat growers

Port Waratah Coal Services Ltd capacity distribution system

International Air Transport Association minor variations to Passenger Agency Program

Australian Payments Clearing Association revocation and substitution of their *Consumer electronic payment system* regulations manual

Australian Direct Marketing Association extension of current authorisation and amendment of code of practice

authorisation applications

| | opening balance | new applications | applications withdrawn | applications decided | balance |
|--|--------------------|---------------------|---------------------------|-------------------------|----------------|
| authorisation applications | 24 (44) | 18 (39) | 1 (1) | 30 (57) | 11 (25) |
| minor variation applications | 3 (9) | 1 (16) | 3 (3) | 0 (18) | 1 (4) |
| revoke and substitute authorisation applications | 10 (10) | 15 (15) | 0 (0) | 9 (9) | 16 (16) |
| applications to revoke authorisations previously granted | 0 (0) | 0 (0) | 0 (0) | 0 (0) | 0 (0) |
| total | 37 (63) | 34 (70) | 4 (4) | 39 (84) | 28 (45) |
| last year | 32 (73) | 58 (104) | 10 (22) | 43 (89) | 37 (66) |
| per cent change | +15.6 (-13.7) | -41.4 (-32.7) | -60 (-81.8) | -9.3 (-5.6) | -24.3 (-31.8) |

notes: figures in brackets indicate total applications including electricity and gas matters, while figures without brackets indicate applications dealt with by the ACCC's Adjudication Branch; opening balance includes 12 applications relating to National Electricity Code changes and 8 applications relating to gas supply market rules; closing balance includes 6 applications relating to National Electricity Code and 11 applications relating to gas supply market rules.

| | this year | last year | per cent change |
|--|-----------|-----------|-----------------|
|--|-----------|-----------|-----------------|

notifications

| | | | |
|------------------|-----|-----|-------|
| opening balance | 51 | 89 | -42.7 |
| new applications | 543 | 248 | +119 |
| withdrawn | 4 | 3 | +33.3 |
| decided | 514 | 268 | +91.8 |
| balance | 78* | 66 | +18.2 |

* closing balance includes 2 notifications previously allowed to stand and now under review

certification trade marks

| | | | |
|------------------|----|----|-------|
| opening balance | 48 | 44 | +9 |
| new applications | 17 | 33 | -48.5 |
| withdrawn | 1 | 2 | -50 |
| decided | 21 | 27 | -22.2 |
| balance | 43 | 48 | -10.4 |

applications for review by the Australian Competition Tribunal

| | | | |
|------------------|---|---|-------|
| opening balance | 1 | 3 | -66.6 |
| new applications | 3 | 1 | +200 |
| withdrawn | 1 | 2 | -50 |
| decided | 2 | 1 | +100 |
| balance | 1 | 1 | 0 |

The adjudication workload continues to be high. The ACCC made 34 final determinations for 84 applications for authorisation, including gas and electricity.

Collective negotiation arrangements have comprised a significant portion of authorisation decisions. This reflects a growing awareness by businesses of the authorisation process for collective negotiations that deliver public benefits. Over the past year ACCC authorisation has enabled collective negotiation by TAB agents, hotels, newsagents, lottery agents, showmen and private hospitals, among others.

Resources were also devoted to assessing complex applications for authorisation involving conduct in the public liability insurance sector, a system to reduce a queue of coal ships at Newcastle and the collective setting of EFTPOS interchange fees.

Another significant feature of the adjudication workload in the past year has been the number of matters before the Australian Competition Tribunal.

major authorisations and notifications

building and construction

Victorian Brick and Blocklaying Training Foundation Ltd (VBBTF)

result | 4 December 2003 | granted interim authorisation, 21 April 2004 draft determination proposing to revoke and grant substitute authorisation

background | revocation of an existing authorisation regarding an agreement to impose levies on the sale of clay bricks and concrete masonry products in Victoria to fund bricklayer apprentice training which was due to expire on 31 December 2003, and substitution with an authorisation regarding the same arrangements except for an increase in the levy amount for a further three years

building and construction

Clay Brick and Paver Institute (CBPI)

result | 21 April 2004 | draft determination proposing to grant authorisation

background | agreement between CBPI and Concrete Masonry Association of Australia members to impose levies on the sale of clay bricks and pavers and concrete masonry blocks in the states of NSW, SA, Qld, WA and the ACT to fund bricklayer apprentice training

chicken growing services

Inghams Enterprises Pty Ltd

result | 17 December 2003 | granted interim authorisation, 19 May 2004 revoked and granted substitute authorisation

background | revocation of an existing authorisation for Tasmanian chicken meat growers to collectively negotiate chicken growing contracts with Inghams which was due to expire on 31 December 2003, and its substitution with a new authorisation on the same terms for a further six years

chicken growing services

Bartter Enterprises and other Victorian chicken meat processors

result | 9 June 2004 | granted interim authorisation to certain aspects of the applications

background | five Victorian chicken meat processors and some chicken meat growers applied for authorisation to allow them to give effect to existing chicken growing contracts and to collectively negotiate future contracts

chicken growing services

The Victorian Farmers Federation (VFF)

result | 9 June 2004 | granted interim authorisation to certain aspects of the application

background | the federation applied for authorisation for chicken meat growers to collectively bargain, including the right to collectively boycott chicken growing contracts by Victorian chicken meat growers with processors; interim authorisation does not allow the growers to collectively boycott

direct marketing

Australian Direct Marketing Association (ADMA)

result | 13 August 2003 | granted interim authorisation

background | revocation of an existing authorisation to ADMA regarding arrangements to adopt and enforce provisions contained in the Direct Marketing Code of Practice and its substitution with a new code

payments system

EFTPOS interchange fees

result | 11 December 2003 | granted authorisation (decision appealed)

background | the ACCC granted authorisation allowing a number of financial institutions to reduce EFTPOS interchange (or wholesale) fees to zero

insurance

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

result | 24 March 2004 | granted conditional authorisation

background | allowed the joint provision by Allianz, QBE and NRMA of public liability insurance to eligible not-for-profit organisations until 31 December 2006

lottery agents

Golden Casket Agents' Association

result | 4 September 2003 | granted authorisation

background | collective bargaining by the Golden Casket Agents' Association, on behalf of its members, about the terms and conditions of agency agreements and arrangements with the Golden Casket Lottery Corporation

medical

Medicines Australia

result | 14 November 2003 | final determination granting authorisation

background | Medicines Australia sought authorisation for a code of conduct regulating the promotion and marketing of prescription medicines by pharmaceutical companies; conditions of authorisation included that the applicant continue to monitor pharmaceutical company promotional activities and that breaches of the code be published annually on the internet

newsagents

Australian Newsagents' Federation (ANF)/Queensland Newsagents' Federation (QNF)

result | 28 April 2004 | granted authorisation subject to conditions

background | the ANF and QNF sought authorisation for collective bargaining by newsagents' representative associations, on behalf of their members, with the major publishers and distributors of newspapers and magazines

coal services

Port Waratah Coal Services Ltd

result | 8 April 2004 | draft determination proposing to grant authorisation and extending the interim authorisation granted on 5 March

background | 5 February 2004 Port Waratah Coal Services Ltd sought authorisation to implement a capacity distribution system to reduce the queue of vessels waiting off the Port of Newcastle to transport export coal

primary produce

Tasmanian Farmers and Graziers Association (TFGA)

result | 21 April 2004 | granted interim authorisation

background | collective bargaining of the terms and conditions of growing contracts by TFGA vegetable grower members with two processors—McCain Foods (Aust) Pty Ltd and Simplot Australia Pty Ltd

rural and regional shows

Showmen's Guild of Australasia

result | 17 December 2003 | granted authorisation subject to conditions

background | collective bargaining by the Showmen's Guild on behalf of its members with rural and regional agricultural show societies; the guild's code of conduct and rules

sports betting

TAB Agents' Association of NSW

result | 28 April 2004 | granted authorisation

background | collective bargaining by the TAB Agents' Association (NSW), on behalf of its members, with TAB Limited regarding the terms and conditions of services provided by members to TAB Limited

health services

Sisters of Charity Health Service

result | 5 March 2003 | final determination granting authorisation

background | authorisation granted to a network of Catholic health facilities to collectively bargain with health funds, the Repatriation Commission and other suppliers through a common agent

waste management

Camden, Campbelltown, Liverpool, Wollondilly and Wingecarribee councils

result | 16 June 2004 | draft determination proposing to grant authorisation

background | collective tendering by the councils for the services of qualified contractors, able to process, market or otherwise dispose of kerbside collected waste materials

waste management

Hornsby, Hunters Hill, Lane Cove, North Sydney, Ryde, Willoughby, Mosman and Warringah councils

result | 3 March 2004 | granted interim authorisation; 16 June 2004 draft determination proposing to grant authorisation

background | collective tendering by the councils for the services of qualified contractors to provide waste transfer, processing and disposal services

Australian Competition Tribunal

EFTPOS Interchange Fees

result | May 2004 | the Australian Competition Tribunal set aside the ACCC’s decision to allow a group of financial institutions to collectively reduce EFTPOS interchange (or wholesale) fees to zero

NSW Health pathology

result | April 2004 | the Australian Competition Tribunal granted conditional authorisation to NSW Health to require private inpatients in public hospitals to obtain pathology services from public pathologists

Qantas and Air New Zealand

result | May 2004 | Australian Competition Tribunal heard application for review by Qantas and Air New Zealand of ACCC’s determination to deny authorisation to their proposed arrangements (alliance and equity proposal); as at 1 July decision pending

Federal Court matters

chicken growing services

Marven poultry and other Victorian chicken meat processors

result | 5 August 2003 | authorisation set aside from 4 September 2003

background | on 28 June 2001 the ACCC granted authorisation for Victorian chicken growers to collectively bargain with chicken meat processors in response to an application lodged by the processors; the Victorian Farmers Federation Chicken Meat Group applied to the Federal Court for a review of the authorisation under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth)

on 5 August 2003 the Full Court of the Federal Court set aside the authorisation as and from 4 September 2003 on the grounds that the processors were not a party to arrangements they had sought to have authorised and were therefore unable, absent of the consent of any person who was a party to the arrangements, to apply to have those arrangements authorised

Notifications of exclusive dealing

tow trucks

IAG Insurers

result | 17 December 2003 | ACCC decision not to intervene to remove third line forcing immunity granted to the IAG Insurers, but will conduct a review in 12 months

background | IAG Insurers will offer certain services to assist policy holders in a motor vehicle accident on condition that the policy holder has their vehicle towed by a preferred accident towing operator

grocery retail

Metcash Trading Limited

result | 25 February 2004 | notification allowed to stand

background | supply of business development and support services and offer of discounts on various grocery products to IGA supermarkets signing a retail alliance agreement with IGA on condition that they will not participate in any other supermarket business other than an IGA business, or any other buying or promotional network in competition with the IGA network

petrol and grocery retail

Eureka Operations Pty Ltd

result | 6 February 2004 | notification allowed to stand

background | Eureka (subsidiary of Shell) offer to provide 4 cent per litre discount on petroleum products on condition that groceries of at least \$30 value have been bought from Coles or Bi-Lo supermarkets, or Liquorland stores; decision not to intervene was also made regarding numerous similar notifications lodged by various companies, including Woolworths/ Caltex alliance sites



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]

performance

energy

The ACCC has powers and responsibilities to regulate the non-competitive sectors of the electricity and gas industries, transmission wires and pipelines. The ACCC’s responsibilities include **overseeing 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. The ACCC’s regulatory functions will be progressively transferred to the **Australian Energy Regulator** over the coming years. While being a separate legal entity, the AER will be a constituent part of the ACCC.

All businesses must comply with the Trade Practices Act’s prohibition of anti-competitive conduct and its fair trading and consumer protection provisions.

| | | |
|----------------------|--|--|
| some technical terms | ancillary services services provided to continuously balance demand and supply of electricity, or restore the balance between demand and supply when necessary | inter-regional settlements residues these arise because transmission losses and constraints on interconnections create a mismatch between the money received from market customers and those paid to generators as a result of the National Electricity Market settlements process |
| | 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 | network service providers businesses that own and/or operate the transmission and distribution wires and pipelines |
| | electricity spot market this 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 | 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 |
| | | |

electricity

this year the ACCC

approved the conversion of the Murraylink interconnector to regulated status, increasing the potential for competition between generators in Victoria and South Australia and the National Electricity Market more generally and finalised the revenue cap

authorised code changes relating to metering arrangements, prudential arrangements, pricing of ancillary services and inter-regional settlements; authorised exemptions from provisions of the National Electricity Code to enable management of negative settlement residues and facilitate Tasmania's entry to the NEM; authorised minor variations to the existing authorisations of the code addressing the registration of generators and provisions for power system testing

approved EnergyAustralia's ring fencing waiver application; commenced assessment of the conversion of Directlink to regulated status

finalised an NEM access code variation

reduced from 4 to 2 the outstanding code change applications (refer to table on 'Authorisations' below)

reduced the time taken to complete authorisations from six months to four months on average (refer to graph on 'Authorisations comparison')

performance indicator

>

encourage competition in markets that depend on monopoly services

preliminary approval given to substantial increases in transmission investment, around \$1.8 billion in the last 3 revenue cap decisions, with only modest price increases¹

currently reviewing the existing regulatory principles, notably the capital expenditure framework, with the primary aim of improving the incentive for efficient transmission network investment

reviewed the regulatory test and released a revised test to help with timely and efficient network investment decisions

finalised Transend's revenue cap; commenced the revenue cap decisions for transmission businesses of TransGrid and EnergyAustralia (New South Wales and ACT)

approved a pass through application from SPI Powernet and an application from VENCORP for an adjustment to its maximum allowable aggregate revenue

performance indicator

>

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

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

¹ These decisions relate to electricity transmission companies in NSW and Tasmania. The NSW revenue cap decisions are only at a draft stage, final decisions are expected in April 2005.

authorisations

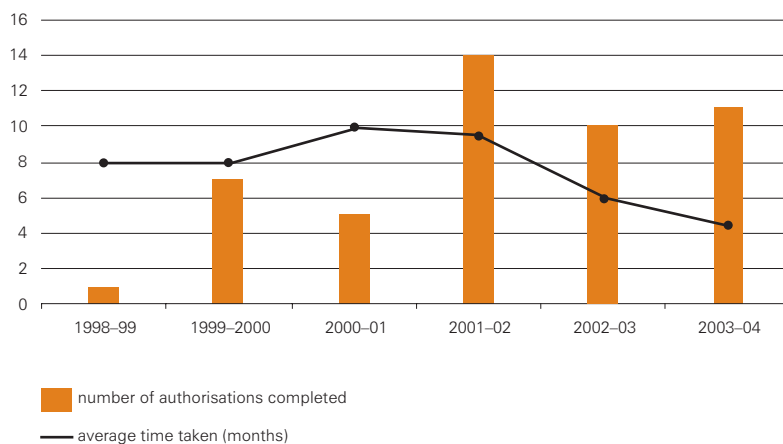
| | this year | last year | per cent change |
|----------------------------------|-----------|-----------|-----------------|
| opening balance | 4 (12) | 4 (12) | 0.00 |
| add new applications | 9* (27) | 10 (30) | - 10.0 |
| less applications decided | 11* (33) | 10 (30) | 10.00 |
| closing balance | 2* (6) | 4 (12) | - 50.00 |

Notes: * these figures include minor variation matters; figures in brackets indicate total applications. For each authorisation matter there are three applications.

summary of decisions

| | this year | last year |
|---|-----------|-----------|
| authorisations | 9 | 10 |
| minor variations to authorisations | 2 | 1 |
| final approvals for access undertakings | 1 | 2 |
| final decisions for revenue caps | 2 | 3 |
| discount recovery applications considered | 1 | 4 |
| access code variations finalised | 1 | 0 |

authorisations comparison



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** (NEMMCO) 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 NEMMCO schedules which generators will operate for each five-minute period.

participants in the National Electricity Market

| | generators | retailers | transmission | distribution |
|-----------------|------------|-----------|--------------|--------------|
| New South Wales | 4 | 18 | 2 | 4 |
| Victoria | 10 | 15 | 2 | 5 |
| Queensland | 6 | 19 | 1 | 2 |
| South Australia | 5 | 10 | 2 | 1 |
| ACT | 0 | 13 | 0* | 1 |
| Total | 25 | 75 | 7 | 13 |

* ACT transmission is included in New South Wales

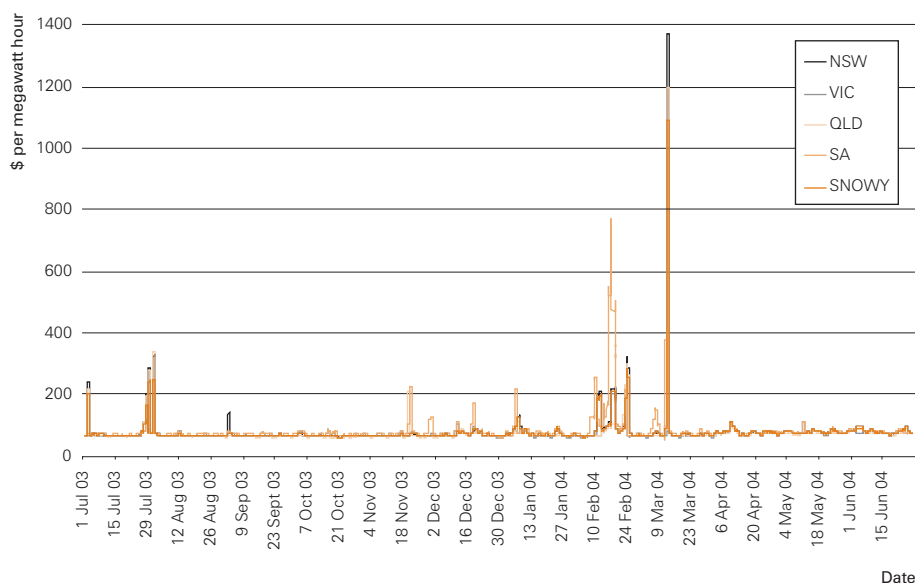
Retailers purchase electricity through the **spot market**. They manage the risk of trading through the pool by purchasing financial contracts directly from other market participants including generators. All market participants supply NEMMCO with information to manage system security (the ability to meet all electricity demand) and 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

The figure on the next page depicts rolling average daily spot prices for all regions in the National Electricity Market for July 2003 to June 2004. There were price spikes during late February which were associated with high demand. There was also a price spike in early March coinciding with outages in NSW and reduced availability from generation. However, for much of the year prices were stable at around \$30–\$50/Megawatt hour.

rolling average daily spot prices for all regions July 2003–June 2004



The ACCC continues to **monitor the performance** of the market to determine whether efficient outcomes are being achieved. Recent **investment** outcomes show over \$4.6 billion in electricity transmission investments; this investment includes new and replacement investment and amounts to 30–40 per cent of the current transmission asset base in the National Electricity Market.

| | capital expenditure over 5 years (1) | proportion of existing assets (7) (%) |
|---|---|---|
| Transgrid/ EnergyAustralia (NSW) | \$1195 m (2) | 27 |
| Powerlink (Qld) | \$1280 m (3) | 39 |
| SPI PowerNet (Vic) | \$700 m (4) | 20 |
| ElectraNet (SA) | \$358 m (5) | 23 |
| Transend (Tas) | \$307 m (6) | 31 |
| entrepreneurial links > Murraylink > Directlink > Basslink | around \$800 m to \$1 billion | n/a |
| total | \$4640 m | 36 |

(1) includes new and replacement investment

(2) actual expenditure

(3) expected expenditure

(4) ACCC decision

(5) ACCC decision

(6) ACCC decision

(7) valued at replacement cost

Work continued on the statement of principles for the regulation of electricity transmission assets and the following papers were issued: an **issues paper** discussing the draft regulatory principles and possible improvements; **service standards guidelines** 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 draft decision was issued on the **regulatory test** that all transmission network investment must satisfy to receive regulated status; and a discussion paper was issued on a **new investment framework** for electricity transmission companies.

amendments to the National Electricity Code

extension of reserve trader sunset clause

result | 6 August 2003 | the reliability safety net, or reserve trader arrangements in the market allow NEMMCO to enter into reserve contracts to ensure that the reliability of supply in a region meets the standard determined by the reliability panel; the proposed code change seeks an extension to these arrangements; the ACCC authorised the code amendments

ombudsman access to metering data

result | 20 August 2003 | the proposed code changes allow ombudsmen direct access to metering information to provide consumers with better service and quicker resolution of complaints; the ACCC authorised the code amendments

regional pricing of ancillary services

result | 17 September 2003 | the proposed code changes amend the cost allocation arrangements for ancillary services when part of the market is isolated and services need to be sourced locally; the ACCC authorised the code amendments

connection point responsibility

result | 19 September 2003 | the proposed code changes alter the market rules to develop and enhance connection point responsibility, enhance metering obligations, create deemed connection point responsibility, allow for adjustments and revised settlement statements; the ACCC authorised the code amendments

prudential framework and SRA amendments

result | 21 January 2004 | the proposed code changes improve the prudential framework and the settlement residue auction arrangements; the ACCC authorised the code amendments

generator registration

result | 3 March 2004 | the proposed code changes increase NEMMCO's flexibility in classifying generators and correct errors in the code; the ACCC considers the changes to be minor variations and agrees to vary existing authorisations A40074, A40075, A40076 to include authorisation of the code amendments

inter-network testing

result | 3 March 2004 | the proposed code changes are designed to improve the current power system testing provisions when there are major network augmentations or additions; the ACCC considers the changes to be minor variations and agrees to vary existing authorisations A40074, A40075, A40076 to include authorisation of the code amendments

inter-regional settlements agreements

result | 25 March 2004 | the proposed code changes allow payments between regions for use of network assets, using settlement residue auction proceeds; the ACCC authorised the code amendments

dispatching the market

result | 28 March 2004 | the proposed derogations address dispatch arrangements that are ineffective in managing system security or result in poor use of transmission capacity; the approach has the benefit of promoting inter-regional trade by providing firmness in the settlement residue auctions, which is essential to promoting a national market; the ACCC authorised the derogations

Hydro Tasmania Chapter 8 metering derogation

result | 7 April 2004 | Hydro Tasmania is preparing for Tasmania's entry into the NEM but has sought a derogation to exempt any metering installations that have not been upgraded from the provisions of the code for a maximum of 12 months after Tasmania enters the market; the ACCC believes the derogation will facilitate Tasmania's entry to the NEM; the ACCC authorised the derogation

Victorian derogations—transmission pricing

result | 19 May 2004 | the Victorian derogations to the code were amended to make technical changes and clarify the application of the derogations; the amendments clarify the regulatory framework for VENCORP as a not-for-profit transmission company in Victoria; the ACCC authorised the amendments to the derogations

Victorian derogations—full retail contestability

review | the proposed amendments extend Victoria's current metering derogations whereby metering services are provided exclusively by distribution businesses; the ACCC is completing its analysis

New South Wales derogations—transmission pricing

review | New South Wales has sought derogations from the code to ensure that TransGrid and EnergyAustralia are able to use the ACCC's draft revenue cap decision when calculating transmission prices in 2004–05; the ACCC is completing its analysis

network regulatory work

Murraylink Transmission Company

result | Murraylink's application for conversion from market to regulated network service provider status was approved; Murraylink's opening asset base was set at \$97.3 million and the maximum allowed revenue was \$8.9 million for the period ending 30 June 2004; the maximum allowed revenue was later increased to \$12.38 million to correct for errors in the opening asset base estimation

Victorian transmission network

result | a change in land tax arrangements in Victoria led SPI PowerNet to request a pass-through approval so that it could incorporate the new taxes into its revenue cap; VenCorp then asked for its maximum allowed revenue to be re-estimated so that it could fund SPI PowerNet's increased charges; the ACCC approved both applications

Tasmanian transmission network

result | the Transend revenue cap was finalised resulting in a maximum allowed revenue of \$100 million in 2004–05 rising to \$132 million in 2008–09; the revenue cap allows for a total capital expenditure of \$307 million over the regulatory period

Transend access undertaking

result | Transend's access undertaking, submitted in accordance with schedule 5.8 of the code, was accepted

NSW and ACT transmission network

review | the draft revenue cap decisions for TransGrid and EnergyAustralia were released; the draft decisions provide for total investment in NSW and the ACT worth about \$296 million on average each year or nearly \$1.5 billion over five years, allowing TransGrid and EnergyAustralia to respond to the large increases in forecast demand while improving the reliability of their transmission networks by replacing ageing assets

regulatory principles

service standards guidelines

result | the ACCC aims to provide increased incentives for regulated transmission network service providers to achieve more efficient outcomes through its regulatory regime; the service standards guidelines will provide a performance incentive scheme under which a TNSP will be allowed to increase its revenue when it improves service and must reduce its revenue when it lets service levels drop

principles for the regulation of electricity transmission networks

review | the ACCC's draft statement of principles for the regulation of transmission revenues was released in May 1999, outlining how the ACCC regulates electricity transmission network service providers under the National Electricity Code. The ACCC has already applied these principles in making various transmission revenue cap decisions and is now reviewing the regulatory principles in the light of experiences to date; as part of the review process a discussion paper has been released; a draft decision is expected in August 2004; the ACCC also released the post-tax revenue model electricity module and handbook to explain how the ACCC undertakes its regulatory modelling; a discussion paper about the framework for regulation of capital expenditure has also been released; the paper considers setting a firm cap on transmission investment in the National Electricity Market

regulatory test

review | the regulatory test must be passed by a transmission network service provider (TNSP) before expanding its network through capital developments; the ACCC released a draft decision and expects to release a final decision in August

gas

this year the ACCC

| | |
|---|---|
| analysed ring fencing reports of 21 gas transmission service providers to ensure their compliance with the code | performance indicator > encourage competition in markets that depend on monopoly services |
| made a final decision and approval for Moomba to Sydney pipeline access | |
| maintained incentive mechanisms in access arrangements for the sharing of efficiency savings in future reference tariffs | performance indicator > ensure that access regulation provides incentives for efficient business investment and use of infrastructure |
| ensured that reference tariffs for access to monopoly gas pipeline services reflected efficient costs of providing the services with 1 new access arrangement approved and 4 annual tariff resets completed | performance indicator > ensure that businesses using monopoly services pay prices that reflect efficient costs |

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

| | this year | last year |
|---|-----------|-----------|
| final approvals for access arrangements | 1 | 5 |
| final decisions for access arrangements | 1 | 3 |
| ring fencing reports assessed | 21 | 8 |
| minor variations to authorisations | 4 | 6 |
| authorisations | 2 | 3 |
| VENCorp annual budget approved | 1 | 1 |
| competitive gas tender approved | 1 | 1 |

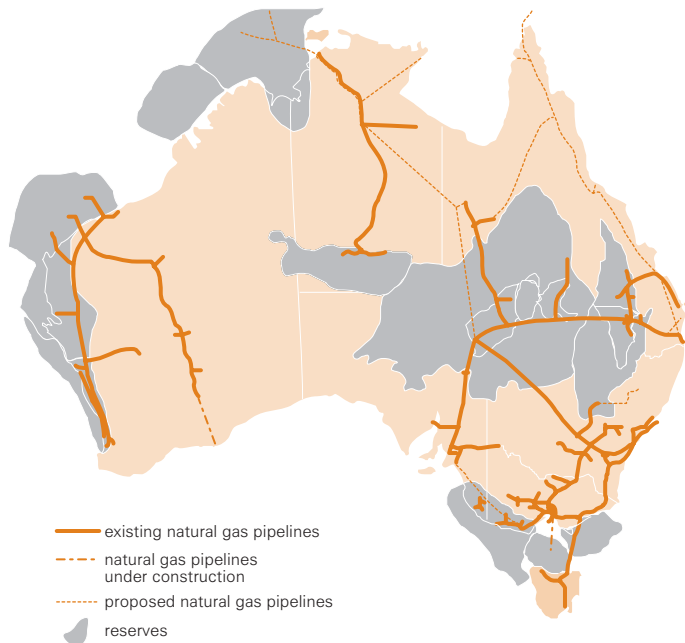
recent developments

In 2003–04 one final decision and one final approval for access arrangements to gas pipelines were issued by the ACCC. The decline in these decisions represents the finalisation of the first round of access arrangements for pipelines regulated by the ACCC.

Authorisation decisions are driven by the number of applicants seeking to have conduct authorised where there is net public benefit from activities that might otherwise breach the Act. The decline in authorisations for 2003–04 represents a reduced demand for authorisations in the gas industry.

the national gas code

transmission 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.

access arrangements

Moomba to Sydney pipeline system: East Australian Pipeline Limited

result | final approval rejected the 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; EAPL applied to the Australian Competition Tribunal for review of elements of the decision; the tribunal hearing of the matter concluded in April

tribunal reviews

Moomba to Adelaide pipeline system review: Epic Energy

result | the Australian Competition Tribunal varied the revised access arrangement drafted and approved by the ACCC for Epic Energy regarding the cost of steel pipe used to establish the initial capital base and the inclusion by the ACCC of a recent expansion as part of the regulated pipeline; Epic Energy had earlier withdrawn its application regarding elements of the initial capital base and the rate of return

tribunal reviews

Victorian GasNet system review: GasNet

result | the Australian Competition Tribunal varied the revised access arrangement drafted and approved by the ACCC for GasNet regarding risk-free rate, asymmetric risks and debt raising costs, but did not accept GasNet's contentions concerning adjustments for inflation; GasNet had earlier withdrawn its application for equity beta

competitive tenders

Central Ranges tender

result | a decision approving the outcome of a competitive tender for the construction of a natural gas transmission system to the Central Ranges region of New South Wales was issued

pricing

VENCorp's proposed budget and tariffs for 2004–05

result | approval of VENCorp's annual statement setting out forecasts of its total annual costs and market fees for the forthcoming financial year; VENCorp, a Victorian Government statutory authority with responsibility for operating Victoria's gas transmission network and its wholesale gas 'spot' market, is required to submit an annual statement for approval each year

authorisation

authorisation of retail market rules in SA and WA

result | interim authorisation has been granted for gas retail market rules designed to facilitate the implementation of full retail competition in South Australia and Western Australia natural gas markets; the rules provide efficient arrangements for customer transfers between retailers and metering and balancing; a draft determination proposing to grant authorisation for the retail market rules has also been made

Victorian market and system operations rules

result | four applications for minor variation to the market and system operations rules authorisation were determined; authorised rule changes included the treatment of force majeure events, allocation of maximum daily quantities, settlement revisions, dispute resolution and injection of non-firm gas

result | two applications for amendment to VENCORP's access arrangement have been approved; the MSO rules contained in the access arrangement have been amended to be consistent with the version that is authorised

guidelines

dispute resolution guideline

result | a draft guideline, *Resolution of transmission pipeline access disputes under the gas code*, was developed and released in May 2004 for public comment; the draft guideline steps through the detailed process of dispute resolution under the gas code, explaining the ACCC's intended approach and requirements for parties notifying disputes and respondents

guidelines

Regulatory reporting guideline

result | a draft guideline, *Regulatory reporting guidelines for gas pipeline service providers*, was developed and released on May 2004 for public comment; the draft guideline sets out procedures for service providers to establish accounting guidelines for compliance with the gas code's ring fencing obligations

submissions

Productivity Commission review of the gas code

The final report of the review of the gas access regime by the Productivity Commission has been completed and was sent to the Australian Government for consideration on 11 June 2004.

result | the ACCC provided two substantial submissions to the review in September 2003 and March 2004; the ACCC submissions argued and provided evidence that the gas access regime is a successful policy initiative; the regime has delivered substantial benefits for the Australian economy and the gas industry and these benefits are likely to increase in the future

telecommunications

Telecommunications markets were opened to full competition in 1997. 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 two types of competition notices in response to allegations of anti-competitive conduct—Part A and Part B notices. Importantly, an effect of a Part A notice is to give the ACCC the ability to pursue penalties for the time the notice was in force. The effect of a Part B notice is to reverse the onus of proof for the matters stated in the notice.

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 that apply once a service is declared. Such exemptions can be granted to services already declared or can take the form of anticipatory exemptions for new services or those that are not declared.

this year the ACCC

issued Telstra with a Part A competition notice in relation to its broadband wholesale and retail pricing

implemented enhanced accounting separation of Telstra's wholesale and retail operations, including the release of three public reports

performance indicator

>

encourage competition in markets that depend on monopoly services

issued a new declaration for the mobile terminating access service

issued a new declaration for the transmission capacity service

accepted access undertakings for analogue subscription pay TV services

accepted anticipatory exemptions for digital subscription pay TV services

released a telecommunications infrastructure survey

performance indicator

>

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

issued determinations regarding model price and non-price terms and conditions of access for core services

issued a new pricing principle for the mobile terminating access service and specified price-related terms and conditions of access to the service

issued a new pricing principle for geographic number portability

performance indicator

>

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

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

| | this year | last year |
|---|-----------|-----------|
| anti-competitive conduct investigations | 9 | 11 |
| consumer complaints investigations | 29 | 7 |
| services declared | 2 | 1 |
| access undertakings received | 6 | 3 |
| exemption applications received | 2 | 0 |

The ACCC undertook nine **anti-competitive conduct investigations**, four of which were concluded this financial year. In particular, an investigation was initiated into Telstra's pricing of broadband services following a reduction in Telstra's retail broadband prices. In February 2004 the ACCC issued Telstra with an **advisory notice**, advising Telstra to reduce its wholesale broadband prices to a level below its retail broadband prices. In March 2004 the ACCC issued Telstra with a **Part A competition notice**, having formed reason to believe that Telstra had engaged, or was engaging, in at least one instance of anti-competitive conduct. At 30 June 2004 the competition notice was still in force and the ACCC was continuing to investigate Telstra's pricing of its broadband internet service.

Other investigations into anti-competitive conduct this year included the issue of carriers introducing new retail products to the market before or without making them available to their wholesale customers. The ACCC continues to investigate whether Telstra's introduction of additional features to its retail fixed line services that have to date not been offered to wholesale customers, may be anti-competitive. The ACCC has also investigated alleged anti-competitive conduct by Telstra in the corporate sector of the telecommunications market, with a focus on an alleged price squeeze regarding fixed to mobile services.

There was a significant increase in the number of **consumer protection investigations** this year, with 29 investigations conducted. Eleven of these investigations were concluded before 30 June 2004. Each matter may represent conduct that affects many consumers. One matter was progressed to court: \$0* mobile telephone advertising by Telstra Corporation Ltd. Several investigations were finalised out of court, for example: mobile telephone advertising and sales by Optus Mobile Pty Ltd, with the ACCC accepting undertakings from Optus; and unilateral changes to BigPond and Communic8 terms and conditions by Telstra, with Telstra developing internal policies for contract variation processes. One matter progressed to court in 2002-03 and was also concluded this financial year, with injunctions granted and undertakings received from National Telecoms Group about false and misleading representations.

The ACCC delivered its three annual telecommunications reports to the Minister for Communications, Information Technology and the Arts in June 2004. In its **competitive safeguards report** the ACCC noted its continued concern that competition has not developed to the extent expected since the industry was substantially deregulated in 1997. This was supported by the **changes in prices for telecommunications services report**, which found that the average price paid by consumers increased by 1 per cent in real terms in 2002-03. This is the first increase since the ACCC began monitoring price changes in 1996-97 and is underpinned by increases in the average price paid for both fixed line (PSTN) and mobile services. In its **price control report** the ACCC indicated it is satisfied that Telstra had adequately complied with all price control arrangements established by the government.

The minister has directed the ACCC to review the **price control arrangements** that will apply to Telstra from June 2005. The ACCC commenced its review of these arrangements with the release of a discussion paper in June 2004 and is required to provide its final report to the minister by 31 January 2005.

This year the ACCC continued its wide ranging review of mobile telecommunications services in Australia, releasing two final decisions in June 2004. The ACCC issued a new declaration continuing the regulation of the **mobile terminating access service**. The declaration relates to terminating access of voice calls on all digital mobile networks (including third generation, or 3G mobile networks). The ACCC also released a new pricing principle for the service. The pricing principle requires the price of the service to follow an adjustment path so that there is a closer

association of the price and underlying cost of providing the service. This contrasts with the retail benchmarking principle previously applied. The new pricing principle also specifies price-related terms and conditions relating to access to the service. The ACCC also decided to discontinue regulation of the **mobile originating access service**, finding little evidence of mobile operators being able to take advantage of their control over access to this service. This was supported by an absence of evidence of carriers setting excessively high access charges for, or denying access to, the service. The mobile services review will continue in 2004–05, focusing on the domestic and international inter-carrier roaming services.

The ACCC discontinued access regulation for 14 capital–regional transmission routes, issuing a new declaration for **telecommunications transmission services** in April 2004. These routes currently have at least three carriers supplying, or readily capable of supplying, transmission capacity services. Pricing principles for **non-geographic number portability** were also issued by the ACCC this year, following the decision to mandate this service in mid-2003.

The minister issued the ACCC with a direction in June 2003, requiring it to make a record keeping rule and publish reports to implement enhanced **accounting separation** of Telstra's wholesale and retail operations. In 2003–04 the ACCC released three accounting separation reports on current costs, key performance indicators and imputation analysis. The reports are based on 'initial' record keeping rules issued in June 2003. The ACCC intends to implement 'final' record keeping rules for accounting separation in early 2004–05. The minister's direction also requires the ACCC to report on the state of competition in telecommunications services provided to corporate business customers. The ACCC issued a public consultation paper in November 2003 and its first six-monthly **corporate competition report** was provided to the minister in early 2004–05.

More broadly, the ACCC released select revenue and usage information provided by five carriers under the existing regulatory accounting framework. This information, covering the 2001–02 and 2002–03 financial years, was released in two **telecommunications market indicator reports**.

As required under the *Telecommunications Competition Act 2002* the ACCC issued a final determination in October 2003 on price and non-price **model terms and conditions** of access for the three core services: the local carriage service, the unbundled local loop service, and public switched telephone network originating and terminating access services. Following the release of the determination, Telstra withdrew its January 2003 undertakings for the core services and submitted revised **core service undertakings** in November 2003. The revised Telstra undertakings are being considered by the ACCC and will be assessed within the statutory timeframes.

Following the ACCC's declaration of the line sharing service (LSS) in 2002, Telstra also submitted an **LSS undertaking** in September 2003. The ACCC issued a draft decision in June 2004 proposing to reject the undertaking largely because the access charge proposed by Telstra is well above cost.

The ACCC monitors telecommunications markets for **anti-competitive conduct** using information gathered from record keeping rules and other sources. This year it continued to monitor 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 released, gathering information from industry on network deployment and the supply of telecommunications services across Australia.

The ACCC continued to monitor **bundling**, using record keeping rules introduced in the previous financial year. An **information paper on bundling** was released, providing guidelines on how the ACCC will assess whether specific bundling conduct in the telecommunications industry is anti-competitive. The ACCC also released a revised **competition notice guideline** in February 2004.

Revised access undertakings from Telstra Multimedia (TMM) and Foxtel regarding **analogue subscription TV services** submitted in December 2003 were accepted by the ACCC in March 2004. Acceptance of the undertakings followed the rejection of earlier undertakings submitted in late 2002. The long standing pay TV disputes between TMM and Foxtel and TARBS and C7, which had been put on hold pending the assessment of the undertakings, were resolved with the withdrawal of the dispute notifications in June 2004. The ACCC also accepted the **anticipatory exemptions for digital pay TV services** from Telstra and Foxtel in December 2003. This decision exempts Telstra and Foxtel from the standard access obligations that would apply if a digital subscription service is declared in the future. The decision is subject to appeal before the Australian Competition Tribunal.

Two potential third line force **notifications** were also considered by the ACCC this year regarding Telstra's proposal to bundle Austar's pay TV and Foxtel's proposal to resupply free-to-air channels. In both instances the ACCC elected not to intervene as the public benefits were likely to outweigh resulting public detriment.

The ACCC participated in meetings of the **Australian Communications Industry Forum** addressing regulatory and policy issues including next generation networks as well as prices, terms and conditions in contracts, internet dumping, fairness of terms in contracts and connect outstanding.

enforcement for consumers

broadband competition notice

result | competition notice issued March 2003: the ACCC issued Telstra with a Part A competition notice for its wholesale broadband prices, following the issuing of an advisory notice in February 2004

National Telecoms Group

result | injunction and court enforceable undertakings December 2003: the Federal Court granted injunctions restraining NTG from making false and misleading representations to consumers and NTG provided court enforceable undertakings to the ACCC, undertaking to resolve existing customer complaints and review its trade practices compliance program

Optus Mobile Pty Ltd

result | court enforceable undertakings December 2003: Optus provided court enforceable undertakings regarding its camera phone bait advertising that it will refund affected consumers, run corrective advertising, implement a 'raincheck' policy, re-offer the handset for the same price for an additional month, strengthen its trade practices compliance program and create a handset supply panel

mobile termination declaration

result | ACCC declared mobile termination service June 2004: the ACCC continued the regulation of the mobile service through the declaration, including a new approach to regulate the price of the service, ensuring a closer correlation between the price and the cost of service delivery

transmission capacity service declaration

result | ACCC declared transmission capacity service April 2004: the ACCC continued the regulation of the transmission capacity service, reducing the number of capital-regional transmission routes and issuing new pricing principles

analogue subscription TV services

result | ACCC accepted undertakings March 2004: the undertakings submitted by Telstra Multimedia (TMM) and Foxtel, specifying the terms and conditions of access to TMM's cable and Foxtel's set-top units, were accepted

digital TV services

result | ACCC accepted anticipatory exemptions December 2003: the exemptions, which apply to the standard access obligations that would apply to Telstra and Foxtel if a digital subscription service were to be declared, were accepted

pricing principles for non-geographic number portability

result | issued pricing principles October 2003: setting out the broad principles that it would follow if called upon to arbitrate a dispute in the supply of non-geographic number portability

model terms and conditions of access for core services

result | ACCC issued determination October 2003: price and non-price model terms and conditions for the three core services were determined—the local carriage service, the unbundled local loop service and the PSTN originating and terminating access service

aviation

this year the ACCC

did not oppose price increases for Airservices Australia

performance indicator

>

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

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

price notifications

Airservices Australia 2003–04 pricing

result | 28 April 2004 | ACCC did not object to the proposal which introduced a temporary price for a new aviation rescue and fire fighting service at Ayers Rock airport, pending the establishment of long-term pricing arrangements

Airservices Australia 2003–04 pricing

result | 9 June 2004 | ACCC did not object to the proposal which allowed for current prices to remain in place until 31 December 2004 to allow Airservices time to finalise its forthcoming proposal for a five-year pricing plan

The **airports regulatory reports** produced this year reflect the ACCC's changed responsibilities for airports. The ACCC's main responsibilities for the major seven airports: Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin now include under Part VIIA of the Trade Practices Act (previously the Prices Surveillance Act)²: 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 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.

While the ACCC has been reporting on prices at airports since privatisation began in 1997, this year's reports reflected the **ACCC's changed regulatory role** relating to airports. The price monitoring and financial report provided information on the prices, costs and profitability performance of the major seven airports. Key findings were that average aeronautical charges per passenger increased by between 40 and 160 per cent between 2000–01 to 2002–03; total aeronautical revenue generated by the monitored airports increased by 63 per cent; and aeronautical operating expenses per passenger increased by between 11 and 72 per cent over the same period. Aeronautical margins per passenger increased at all these airports in 2002–03, ranging from \$1.07 to \$3.77.

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 service at Brisbane, Melbourne, Perth and Sydney airports has generally been satisfactory to good, with no marked change in survey ratings in 2002–03 for any of the major seven airports. Brisbane airport has been consistently rated higher by airlines than the other airports. New information on runway traffic indicates that there do not appear to be any significant runway capacity constraints.

The **financial accounts** show that all the regulated airports except for Darwin continued to make positive earnings before interest and tax. In addition, Brisbane, Sydney and Alice Springs made losses after the deduction of interest and tax.

The Department of Transport and Regional Services is currently conducting a **review of the Airports Act**, following the government's 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 in March 2003 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 recommended that the definitions of aeronautical services for separate accounts reporting be brought into line with definitions for monitoring prices, costs and profits under the Trade Practices Act. The submission favoured 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.

² The provisions of the *Prices Surveillance Act 1983* were included in Part VIIA of the *Trade Practices Act 1974* under the *Trade Practices Legislation Amendment Act 2003*.

rail

this year the ACCC

| | |
|--|---|
| monitored Australian Rail Track Corporation's compliance with its obligations outlined in its access undertaking | performance indicator > ensure that businesses using monopoly services pay prices that reflect efficient costs |
|--|---|

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

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

| | |
|--|---|
| issued stevedoring monitoring report showing average company costs continued to decline | performance indicator > ensure that businesses using monopoly services pay prices that reflect efficient costs |
| monitored prices formally and informally for container stevedoring and freight rates for international liner cargo administered international liner cargo shipping arrangements | performance indicator > monitor prices to assess the impact of market conditions on price levels of goods and services |

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

In October 2003 the ACCC commenced an investigation into significant price increases implemented by members of the Asia Australia Discussion Agreement—a group of shipping lines operating between North East Asia and Australia. The investigation concluded that there were not sufficient grounds to recommend the revocation of an agreement which exempts that group from some of the anti-competitive provisions of the Trade Practices Act.

The Treasurer directed the ACCC on 20 January 1999 under the then 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.

The ACCC released its fifth **container stevedoring report** in October 2003 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 2002 and January to June 2003. As a result of increases in unit revenue while unit costs remained constant, the stevedores' unit profit margins continued to rise during 2002–03. The rise in margins is consistent with the four previous reports which found that industry margins had increased each year because average costs fell more than average revenue. There have also been significant productivity improvements over this period.

post

this year the ACCC

required Australia Post to keep records relevant to the ACCC's functions of testing for cross-subsidy, assessing proposals for price increases and dispute inquiry, under recent amendments to the Australian Postal Corporation Act

performance indicator

>

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

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

Australia Post proposals to increase charges for **monopoly postal services** are assessed by the ACCC. Australia Post did not submit any such proposals this year. The ACCC also has a role in resolving disputes over the price charged to users of Australia Post's bulk interconnection services. No disputes were notified to the ACCC this year.

Amendments to the Australian Postal Corporation Act have recently been enacted, giving the ACCC the ability to require Australia Post to keep **records** that are relevant to the ACCC's functions of testing for cross-subsidy, assessing proposals for price increases and dispute inquiry. One of the key reasons behind the requirement on Australia Post to keep records about different parts of its business is to enable the ACCC to assess allegations raised by competitors that Australia Post is competing unfairly by subsidising competitive services with revenues raised from its monopoly services. The ACCC issued for consultation draft record keeping rules for Australia Post.

petrol

this year the ACCC

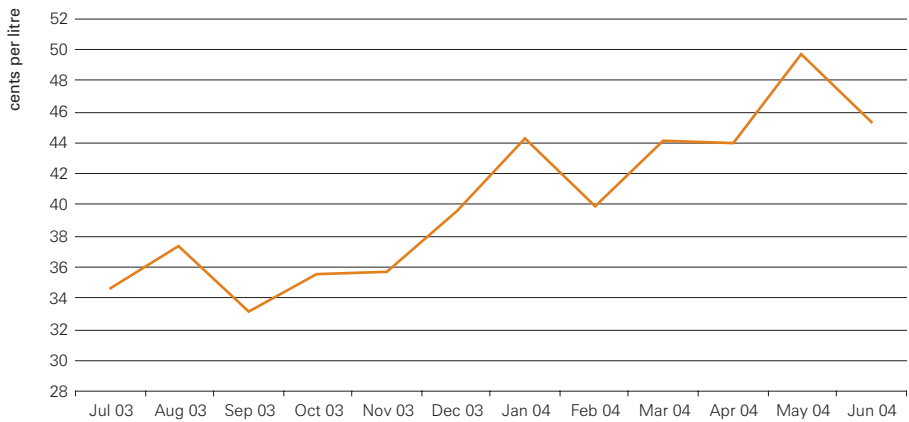
- monitored the retail prices of unleaded petrol, diesel and automotive liquefied petroleum gas in the capital cities and about 110 country towns
- monitored international crude oil and refined product prices, published terminal gate prices of the oil majors and the city-country price differential

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

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

Monitoring of unleaded petrol prices indicated that average retail unleaded petrol prices in metropolitan and country areas increased 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 international product price was at a year low in September 2003 before increasing steadily from October 2003 to January 2004. It declined in February 2004 then increased over the three months to May and decreased in June. The monthly average exchange rate ranged from a low of around 0.65 cents in August 2003 to a high of around 0.77 cents in February 2004.

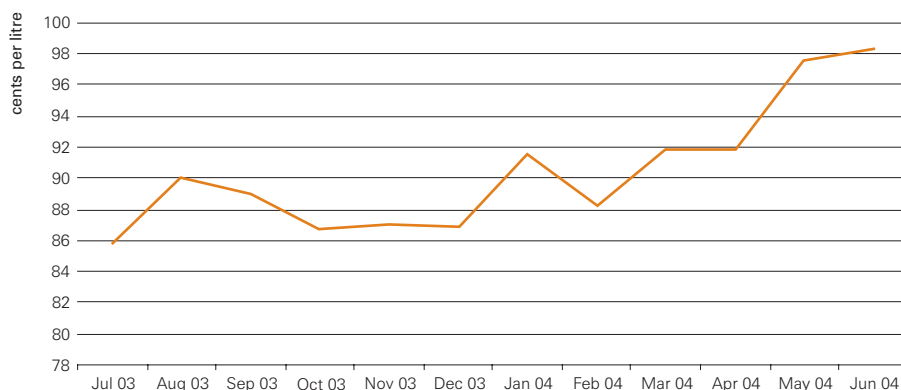
monthly average price of Singapore Mogas 95 unleaded: July 2003–June 2004



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 90.3 cents per litre which was 1.7 cents per litre above the average price the year before.

monthly average five capital city unleaded petrol prices: July 2003–June 2004



Country prices do not respond as quickly as those in metropolitan areas to movements in international prices. The average differential between average retail prices in the five major metropolitan cities and country areas was 4.2 cents per litre. The monthly differential ranged between a high of 5.7 cents per litre in June to a low of 3.0 cents per litre in March.

The consumer awareness initiative on **petrol price cycles** on the ACCC website, which started in November 2002, continued in 2003–04. It aims to increase consumers' understanding of petrol price cycles and how to take advantage of them. Consumers can make significant savings by buying petrol at the bottom of the price cycle.

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. 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.

As noted earlier on 6 February 2004 the ACCC released its report on **shopper docket discounts and acquisitions in the petrol and grocery sectors**. Following the gradual commencement of the Coles/Shell and Woolworths/Caltex joint ventures over the last year the ACCC has been closely monitoring the effect of the supermarket alliances on competition and prices in the petroleum industry. The ACCC has noticed that there have been decreases in average retail prices relative to a benchmark indicator in all five major capital cities in 2003–04.

There have been significant developments in the petroleum industry over the last year, including the entry of supermarket alliances into the retail market, the tighter Commonwealth fuel standards that took effect from 1 January 2004 and the Australian Government's downstream petroleum reform package. The ACCC has been involved in these developments and continues to monitor the recent changes to the petroleum market.

The ACCC dealt with 1171 inquiries and complaints on fuel pricing.

insurance and prices oversight

this year the ACCC

monitored prices for public liability, professional indemnity insurance and medical indemnity insurance

performance indicator

>

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

Measured against performance indicators defined in the ACCC portfolio budget statements 2003–04

On 5 July 2002 the then 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 on a six-monthly basis over a two-year period 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.

The ACCC's first monitoring report, which was released by the government on 4 August 2003, found that for both classes of insurance, premiums were stable or fell between 1997 and 1999 before increasing during 2000 to 2002, whereas insurers' costs had increased between 1997 and 2002. Financial performance of insurers improved in 2002 compared to 2001 when insurers made a loss on both classes of insurance. Data on financial performance before 2001 was not available.

The report noted that some insurers expected the reforms to constrain rises in public liability insurance claims costs by around 5 per cent and constrain premium increases by about 3 per cent in 2003. Insurers did not expect reforms enacted as at 31 December 2002 to affect professional indemnity insurance costs and premiums in 2003. This was because claims under professional indemnity policies tend to reflect pure economic loss rather than personal injury. The majority of law reform implemented before 2003 targeted reducing personal injury claims costs rather than compensation for economic loss.

The government released the second ACCC monitoring report on 23 February 2004, which updated a subset of the information contained in the first report by including an additional six months of data from insurers. Premiums for both classes of insurance continued to rise in the first half of 2003, although at a much lower rate than that observed in 2002. Average claims costs increased for professional indemnity insurance, and fell for public liability insurance. Insurers' profitability for both classes of insurance in the first six months of 2003 was not substantially different to that experienced in 2002.

On 19 November 2002 the Treasurer, the Hon. Peter Costello MP, requested that the ACCC monitor, on an annual basis over a three-year period, **medical indemnity insurance** premiums to assess whether they are actuarially and commercially justified.

The first of these reports, which was released by the government on 23 February 2004, noted that the medical indemnity industry as a whole had incurred losses in recent years. The ACCC found that premiums charged by four of five medical indemnity providers in 2003–04 were actuarially justified, but it was unable to determine if premiums of the remaining provider were actuarially justified because of a lack of information provided. The ACCC also found that the premiums set by all five medical indemnity providers were commercially justified in the market environments at that time.

The ACCC also monitors **bank fees** and charges, including credit cards and personal transaction accounts, on an informal basis.

intellectual property

The ACCC has prepared draft **intellectual property guidelines** that will be released for public consultation when proposed legislation to amend section 51(3) of the Trade Practice Act is introduced to parliament. The draft guidelines outline the proposed approach of the ACCC to applying section 51(3) and Part IV of the Act to the licensing and assignment of intellectual property rights. Section 51(3) provides an exception from the application of certain sections of Part IV of the Act for conditions in the licensing and assignment of intellectual property rights.

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. All regulators are involved in encouraging efficient price setting, ensuring access to essential facilities and minimising inefficiencies of interstate trade. The forum published three *Network* newsletters with updates on regulatory activities as well as articles on common challenges. Membership is listed in appendix 5.

when we did it

03
July

court decides Sony PlayStation owners cannot have their games consoles 'chipped'
sought special leave to appeal to High Court over case against Safeways Stores Pty Ltd
decided not to intervene in Westfield Trust acquisition of AMP Shopping Centre Trust
court found BMW (Australia) Ltd supplied vehicle jacks and owner manuals that failed to comply with mandatory consumer product safety standard
court found The South Australian Olive Corporation Pty Ltd and Inglewood Olive Processors Limited's ads were misleading and deceptive
accepted undertakings from GrainCorp Ltd in relation to the sale of the interest in Australian Bulk Alliance
proposed to grant authorisation to amendments for ombudsman access to metering data in the National Electricity Code
court decided ACCC had not established claim that Mayne Group Limited and two former officers breached the Trade Practices Act
issued discussion paper on longer term accounting separation rules for Telstra
announced decision to allow full portability of premium rate numbers
Sharp Corporation of Australia Pty Ltd provided court enforceable undertakings over microwave ovens claim
instituted proceedings against Australian Biologics Testing Services Pty Ltd and its director over alleged false and misleading claims
instituted proceedings against Morgan Buckley Pty Ltd and Mr Anthony Whitelum over fees for legal services

03
August

granted interim authorisation to the Australian Payments Clearing Association Rules governing operation of the Consumer Electronic Clearing System
granted interim authorisation to the Australian Stock Exchange Rules governing operation of the Clearing House Electronic Subregister System
issued discussion paper reviewing Draft Statement of Principles for the Regulation of Transmission Revenues
court declared Mr Richard Chen misled and deceived consumers over website and tickets
accepted court enforceable undertakings from Bonnet Imports Pty Ltd
court upheld that Warner Music and Universal Music breached the Trade Practices Act
proposed to allow network of Catholic health facilities to collectively bargain with health funds, the Department of Veterans' Affairs and other suppliers
instituted court proceedings addressing mobile phone advertisements
issued reports on competitive safeguards and price changes for telecommunications services and Telstra's compliance with price control arrangements
instituted proceedings against National Chemical Pty Ltd alleging misleading and deceptive conduct in relation to country of origin labelling of eucalyptus oil

court found 4WD franchisor misled franchisees and contravened the Franchising Code of Conduct, issued injunctions

extended arrangement between agricultural and animal chemical manufacturers to charge a levy on the purchase of the chemicals by farmers

introduced a system of endorsement for high quality voluntary industry codes of conduct

authorised request by the National Electricity Code Administrator to change how costs of some frequency control ancillary services are recovered within the National Electricity Market

rejected a proposal by banks and others to fix the wholesale fees for EFTPOS transactions

issued final information paper on bundling of services in telecommunications industry

issued public liability and professional indemnity insurance monitoring report 2003

court declared Tassal Limited and the Tasmanian Salmonid Growers Association involved in an anti-competitive agreement

instituted court proceedings against Mr David ZeroPopulationGrowth Hughes

announced decision to allow Telstra to bundle Austar's pay TV service with Telstra's telecommunications services

issued draft decision on a revenue cap for Tasmania's electricity transmission services

published issues paper on relationship between the Australian motor body/smash repair industry and the general insurance sector

authorised a change to the way costs of certain frequency control ancillary services are recovered within the National Electricity Market

issued a Telecommunications Market Indicator report

court found Econovite Pty Ltd contravened consumer protection provisions of the Trade Practices Act by making false claims regarding livestock feed

instituted court proceedings against Sanyo Airconditioners Manufacturing Singapore Pte Ltd alleging misleading and deceptive conduct

proposed to grant authorisation to amendments relating to connection point responsibility in the National Electricity Code

Kwik Fix and the Bruckshaws agree to undertakings in court case

denied approval to proposed alliance between Qantas Airways Limited and Air New Zealand Limited

announced public inquiry reviewing the transmission capacity service declaration

court found advertising claims by Danoz Direct Pty Ltd about Abtronic Fitness System misleading or deceptive to consumers

Western Tool Distributors Pty Ltd provided court enforceable undertaking over trolley jacks

authorised collective negotiation arrangements by Queensland Golden Casket Agents' Association

authorised implementation of two programs offered by the Star Alliance, including Air New Zealand Limited

issued draft pricing principles for non-geographic number portability

issued report outlining results of monitoring of retail price movements for mobile services

03 October

issued pricing principles for non-geographic number portability

decided to reduce access charges for core telecommunications services

authorised industry code to restrict manufacture of illegal amphetamines

action resulted in stopping sale of dangerous children's toy dart gun sets

court declared Commonwealth Bank misled consumers over home loan campaign

court action settled as Arnolds franchisor agrees it breached Trade Practices Act

issued guidelines for endorsed industry codes of conduct for comment

announced investigation of increasing charges for international freight

Henry Kaye agreed to stop 'property millionaires' advertising following court action

draft decision maintained life insurance bar on genetic testing

win against Visy in High Court under s. 45

issued snapshot of broadband deployment

granted interim authorisation for concession businesses to take part in David Jones promotions

granted authorisation for code of ethical conduct for the employment services industry

granted authorisation for Recruitment & Consulting Services Association for code for ethical conduct and procedures for enforcing the code

approved conversion of the Murraylink interconnector to a regulated interconnector

decided not to intervene in Foxtel proposal to re-supply free-to-air channels

announced draft decision requiring Foxtel and Telstra to refine terms for access to pay TV services

issued *Telecommunications Infrastructure in Australia 2002* report

instituted proceedings against Domain Names Australia Pty Ltd & Chesley Paul Rafferty over false and misleading representations

issued Moomba to Sydney gas pipeline final decision

instituted proceedings against Henry Kaye, National Investment Institute Pty Ltd over property investment promotion

03 November

proposed allowing self regulation for Mortgage Industry Association of Australia disciplinary rules

opposed proposed acquisition of Berri Limited by Coca-Cola Amatil Limited

report to the Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance tabled

released Commonwealth Bank from Colonial Ltd undertaking early

court action involving Qantas Airways Limited regarding misuse of market power resolved

issued final determination granting authorisation to amendments relating to connection point responsibility in the National Electricity Code

discontinued proceedings alleging resale price maintenance by Leahy Petroleum Pty Ltd and its general manager

authorised code of conduct governing drug companies' dealings with doctors

issued country of origin guidelines for the electrical goods industry

rejected acquisition of Austrim Nylex's Pryda Reid Group by MiTek Australia Limited

issued airport quality monitoring report

issued 2002-03 monitoring report on quality of service at major Australian airports

court ordered Esanda Finance Corporation Ltd to pay \$20 000 compensation over unconscionable conduct and undue harassment by debt collectors

instituted proceedings against 8 companies and 10 individuals over alleged fixed retail petrol prices in the Geelong area

court found Sanyo Airconditioners Manufacturing Singapore Pte Ltd engaged in false, misleading and deceptive conduct over advertising of airconditioning units

court declared eucalyptus oil claims by National Chemical Pty Ltd to be misleading and deceptive

court ordered Will Writers Guild Pty Ltd and its director to compensate franchisee by paying \$137 697

instituted action against High Adventure Pty Limited and its sole director alleging resale price maintenance

accepted undertaking from Perkins Shipping

released draft decision removing regulation of parts of existing transmission capacity service declaration

authorised a code of conduct for showmen

Reader's Digest (Australia) Pty Ltd admitted it demanded payment for unsolicited mail order products after investigation and made court enforceable undertakings

issued first Telstra accounting separation reports

court declared National Telecoms Group misled customers

determined that Manildra divestiture undertaking satisfied

proposed joint venture bid by Qantas and Australia Post for Star Track Express not opposed

court found elements of property scheme misleading

granted authorisation allowing David Jones to offer broader range of discounts to customers

allowed proposal to improve towing services for IAG policy holders

merger between TABcorp Holdings Limited and TAB Limited; or merger between UNiTAB and TAB Limited not opposed

issued decision on revenue cap for Tasmania's electricity transmission services

acquisition of Harris & Company Ltd by Rural Press Ltd not opposed

court upheld decision that MBF Health Insurance advertising was false and misleading

instituted proceedings against Ixon Japan KK and Ikuson Trading Company Pty Ltd over honey drink alleging misleading country of origin claims

issued discussion paper calling for submissions on Telstra's revised access undertakings for core telecommunications services

granted exemption to Foxtel/Telstra for digital pay TV services

instituted proceedings against Radio Rentals Limited and Walker Stores Pty Ltd alleging unconscionable conduct

accepted undertaking from Heatshield Ductair Pty Ltd over false and misleading representations made about the energy efficiency of its flexible ducting products

authorised proposal by banks and others to fix the wholesale fees for EFTPOS transactions at zero

court ordered Commonwealth Bank to publish corrective advertisements

allowed a two-year extension of an agreement between life insurers which provides that they will not require applicants for life insurance to undergo genetic testing

December 03 continued

issued Moomba to Sydney gas pipeline final approval

released fifth container stevedoring monitoring report

instituted proceedings against Gary Peers and Associates Pty Ltd over alleged real estate underquoting

proposed to authorise, subject to conditions, changes to the National Electricity Code

proposed acquisition of Abigroup Limited by Bilfinger Berger Australia Pty Ltd not opposed

court declared Advanced Medical Institute and managing director misled patients about impotency treatments

January 04

joined international campaign to reduce spam

court declared Newcastle-based business a franchising scheme and its franchises protected by the mandatory Franchising Code of Conduct

court declared Multigroup Distribution Services Pty Ltd engaged in misleading or deceptive conduct

February 04

issued advisory notice to Telstra over Bigpond broadband plan

issued first airport monitoring report

issued medical indemnity insurance monitoring report—December 2003

issued second insurance report

decided to appeal decision in Oceana Commercial and others case

granted authorisation of Mortgage Industry Association of Australia's disciplinary rules

moved against Showmen's Guild of Australasia over alleged exclusionary conduct

took part in internet sweep crackdown on scammers

proposed acquisition of Cashcard Australia Limited by First Data Resources Asia Pacific Limited not opposed

issued preliminary view paper on revised access undertakings for pay TV

decided to allow shopper docket petrol discounts to continue following review

accepted court enforceable undertaking from Toyota Motor Corporation Australia Limited regarding errors on its website relating to Corolla Levin Wagon

accepted court enforceable undertaking from GO Drew Pty Ltd about a logo on its Essential Foods branded egg products

court accepted undertakings from Ansell Limited (formerly Pacific Dunlop limited) about product safety advice to consumers about its latex gloves

accepted a court enforceable undertaking from Lawson's Trading Co. Pty Ltd relating to alleged contraventions of the mandatory Franchising Code of Conduct

decided not to appeal court decision to grant AGL a declaration which would allow it to proceed to buy a minority interest in Loy Yang power station

instituted proceedings against Lloyd Brooks Pty Ltd alleging misleading and deceptive conduct over Earthstrength bags

issued preliminary decision recommending continued regulation of mobile termination services

accepted new analogue pay TV access undertakings of Foxtel/Telstra multimedia

instituted court proceedings against Anglo Estates Pty Ltd and its directors' property developer over alleged attempted price fixing

proposed authorisation allowing NSW TAB agents to collectively bargain with TAB Limited

granted conditional authorisation to enable insurance companies to collectively offer public liability insurance to eligible not-for-profit organisations

issued two papers discussing the framework for transmission expansion in the National Electricity Market

provided submission in response to the Productivity Commission's draft report on the national gas access regime

issued Part A competition notice to Telstra over broadband internet pricing

Sonya Valentine Pty Ltd gave court enforceable undertaking over sunglasses that failed product safety standard

sought comment on accounting framework for Australia Post

Danoz group took corrective action following misleading claims allegations over electronic pest repellents

action results in additional \$85 000 for alcohol rehabilitation funding following court decision on Northern Territory price fixing agreement

authorised Catholic health facilities to collectively bargain with health funds

issued consultation notice to Telstra over broadband price squeeze allegations

gave interim approval to reduce coal vessel queue at Port of Newcastle

issued broadband take-up figures for September 2003

court declared Radio Rentals advertising to be misleading

Mr David Hughes jailed for contempt over contraceptive sales following ACCC action

signed an MOU facilitating cooperation and coordination between ACCC and Food Standards Australia New Zealand

authorised newsagents to engage in collective bargaining with major publishers and distributors of newspapers and magazines

authorised NSW TAB agents to collectively bargain with TAB Limited

court found internet domain name facilitator, Mr Chesley Paul Rafferty, guilty of misleading and deceptive conduct

weight-loss promoter Mr David Francis, declared to have breached the Trade Practices Act over claims made about ThermoSlim product

proposed authorising schemes which would help alleviate shortage of skilled bricklayers

proposed authorising collective bargaining by Tasmanian chicken growers with Inghams for a further five years

instituted proceedings against Fox Symes & Associates Pty Ltd, its directors and a related company alleging misleading and deceptive conduct and unconscionable conduct

action resulted in compensation for two consumers who paid membership fees for illegal Greenstar Pyramid Scheme

April 04 continued

proposed authorisation to allow system to reduce coal vessel queue at Port of Newcastle to continue

penalties of \$14 million ordered against companies involved in power transformer and distribution transformer cartels

court ordered \$25 000 penalty for manager's involvement in Chaste Corporation weight-loss product

issued two reports relating to accounting separation of Telstra

issued position paper concluding there should be partial revocation of cargo shipping line agreement

court ordered penalties of \$3 million against Fila Sport Oceania for breach of Trade Practices Act

issued new declaration for the transmission capacity service

decided not to intervene in Visy's acquisition of ACI's non-beverage plastic container and closure businesses

May 04

announced proposed changes to informal merger clearance guidelines

DeAgostini UK Ltd provided refunds and amended advertising of its *Radio Control* magazine series following ACCC concerns

court found environmental claims about plastic bags by Lloyd Brooks Pty Ltd misleading, making orders by consent

authorised ongoing collective bargaining by Tasmanian chicken growers with Inghams

recommended removing regulation of mobile originating access services

MYOB's acquisition of Solution 6's accounting, compliance business not opposed

court enforceable undertakings given by Hill End Recreation Park Pty Ltd after alleged misleading or deceptive conduct

court made consent orders to settle long running case against Medibank Private

decision to amend interim authorisation granted to the capacity distribution system proposed by Port Waratah Coal Services

proposed acquisition by Boral Ltd of Adelaide Brighton Ltd opposed

accepted court enforceable undertakings in case against Morgan Buckley Pty Ltd and Mr Anthony Whitelum for allegedly misleading conduct in relation to billing

court made orders in case against souvenir producer Australian Aboriginal Art Pty Ltd, and former directors

issued draft decisions on the revenue caps for TransGrid and Energy Australia

court imposed \$300 000 penalties for secondary boycott by unions

court found that Cadbury Schweppes Proprietary Limited breached the Act over packaging

court made orders by consent against Berri Limited for alleged breaches of the Act

issued final decision not to object to pricing proposal by Airservices Australia for a new fire service at Ayers Rock airport

issued final report on mobile terminating access services, confirming draft decision that regulation of the service continue

issued draft guide outlining pricing principles for transmission capacity services

issued second Telecommunications Market Indicator Report

issued two reports in relation to accounting separation of Telstra

National Training Conference agreed to correct misrepresentations made about investment seminars following court orders

instituted proceedings against Phoneflasher.com Pty Ltd over mobile phone accessory

issued a discussion paper commencing review of the retail price control arrangements for Telstra

Optus gave court enforceable undertakings to give refunds and place corrective advertisements

findings released of consumer websites

proposed a monthly access charge for Telstra's line sharing service of around \$7–\$8 per service

instituted criminal proceedings against Chubb Security Australia for failing to provide mobile patrol services

issued draft decisions proposing to authorise two groups of Sydney councils to collectively tender for the provision of waste management services

concluded investigation of the Qantas Frequent Flyer program

issued annual reports on telecommunications competition, price changes and price controls

settled unconscionable conduct, misleading conduct action against Westfield Shopping Centre Management Co. (Qld) Pty Limited (and associated companies and individuals)

granted interim authorisations allowing Victorian chicken growers to collectively bargain with processors

court ordered Bristle Operations, trading as Metro Brick, to pay pecuniary penalty of \$1 million for price fixing

instituted proceedings against Boral Limited over its proposed acquisition of Adelaide Brighton Limited

issued Snapshot of Broadband Deployment update



case study

decision to continue regulation of the mobile terminating access service

Consumers are likely to benefit from cheaper calls to mobile phones and increased competition in telecommunications markets following the ACCC's final decision to continue regulation of the mobile terminating access service.

The mobile terminating access service is supplied by the owner of a mobile network and allows someone connected to that network to receive calls from people connected to other networks.

When a consumer calls someone who is on a different mobile network, their network owner will buy a termination service from the other network owner. The price of the termination service is 'passed-on' in the price a network owner charges the consumer regardless of whether the call is made from a fixed-line phone or a mobile phone.

In reaching its decision the ACCC found that the existing termination price (of around 22.5 cents per minute, on average) was well in excess of the cost of delivering the service. The ACCC estimates the cost of the service to be in the range of 5 to 12 cents per minute.

In announcing its final decision in June 2004 to continue regulation of the service, the ACCC also reached a final view on the pricing principle that would be appropriate for this service. The pricing principle requires the price of the service to reduce from its current high level towards a level closer to its underlying cost over a two-and-a-half year adjustment period.

Already there are signs of a win for consumers with AAPT and Macquarie Corporate recently declaring their intentions to reduce the prices of calls for their fixed-line consumers when making calls to mobile phone users.

The decision is part of an ongoing ACCC review of the regulation of Australian mobile telephone services, which has involved extensive consultation with the telecommunications industry.