



Australian
Competition &
Consumer
Commission

ACCCOUNT

A report of the Australian Competition and
Consumer Commission's activities

July to September 2007

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Overview

The Australian Competition and Consumer Commission's core business is to ensure future compliance with the *Trade Practices Act 1974*. We do this by promoting competition and informed markets; encouraging fair trading and protecting consumers. The ACCC is committed to carrying out its functions in a timely, professional and determined manner. We manage our regulatory and enforcement processes to achieve effective outcomes maximising the use of ACCC resources. In the September 2007 quarter:

- The ACCC commenced 12 new enforcement litigation matters. These included three cartel matters (relating to mortgages, ports and orthodontists) and three resale price maintenance matters (relating to bicycles, sailboats and sportswear).
- Criminal proceedings were commenced in a matter relating to petrol substitution; and consumer protection matters included the ACCC's action against Google and Trading Post, Telstra (relating to Next G coverage) and Edirect (mobile phone sales to Indigenous communities).
- The ACCC conducted 97 merger reviews of which 86 were not opposed, one was publicly opposed outright, and four were resolved during their review with court enforceable undertakings. Merger assessments continue to be conducted in a timely manner, with 79 per cent of merger assessments made in six weeks or less.
- In the area of small business, the ACCC launched *Franchising complaints, investigations and outcomes*—a new space on the ACCC website. This was developed to provide detailed information on the ACCC's processes for investigating franchising complaints, as well as on the outcomes of a number of such investigations.
- A mandatory safety standard for prams and strollers was developed, as well as banning orders for toothpaste containing greater than 0.25 per cent diethylene glycol and lead in children's toys.
- The *Trade Practices Legislation Amendment Act (No. 1) 2007*, which, among other things introduced various important changes to ss. 46 and 51AC, received Royal Assent on 24 September 2007.

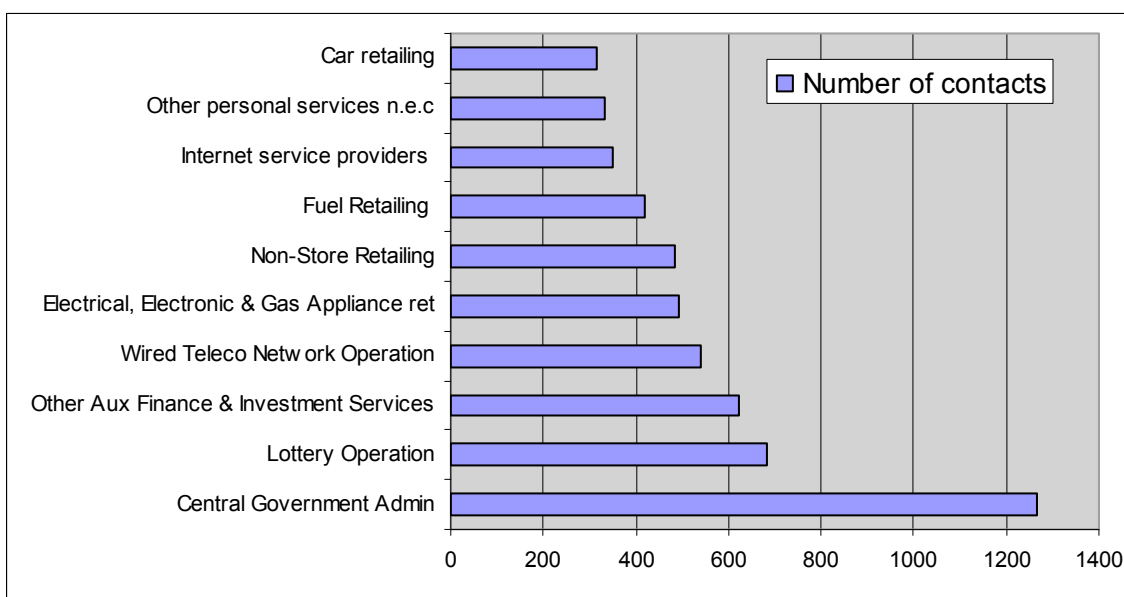
1. Enforcement of the Trade Practices Act

Complaints and inquiries—an overview

During the September 2007 quarter the ACCC Infocentre received 21 866 complaints and inquiries from businesses and consumers (email: 4608; and telephone: 17 258).

13 204 of these complaints and inquiries were entered into the ACCC's database. The number of contacts is around 3500 higher than the quarterly average in 2006.

The ten industries attracting the most complaints and inquiries during the quarter were:



The Central Government Administration category relates to requests for ACCC publications, it is not complaints. The top industry categories remain constant over time—telecoms; requests for publications; lotteries and financial fraud and the retail sector (three categories).

Seventy-two per cent of the complaints and inquiries entered into the ACCC's database related to consumer protection matters, which is 3 per cent higher than the quarterly average in 2006 (69 per cent), Competition matters accounted for 4 per cent of contacts (compared with 7 per cent quarterly average in 2006) and other matters accounted for 24 per cent (compared with 24 per cent quarterly average in 2006).

There has been an increase in contacts received for scam activity. Misleading and deceptive conduct for scams is the highest recorded during the quarter accounting for 15 per cent of total contacts received. This is followed by contacts for retail warranties, which represents 12 per cent of total contacts. General price increase complaints have increased this quarter accounting for 5 per cent of total contacts, this can mainly be attributed to the 165 complaints regarding fuel retailing received in September, an increase of 56 per cent in comparison to the previous month of August.

September quarter litigation activity

Twelve proceedings were commenced in the Federal Court during the September 2007 quarter.

Litigation commenced

1. *ACCC v Trading Post Australia Pty Ltd*—NSD1323/2007: proceedings under Part V for alleged misleading and deceptive conduct by failing to adequately distinguish 'sponsored links' from 'organic' search results on the Google website.
2. *ACCC v Edirect and Ors*—NTD13/2007: proceedings under Part V for alleged misleading and deceptive conduct and accepting payment without intending or being able to supply as ordered relating to telemarketing calls for mobile phone packages.
3. *ACCC v Netti Atom Pty Ltd and Anor*—VID681/2007: proceedings under Part IV for alleged resale price maintenance of bicycles imported by Netti Atom.
4. *ACCC v Gregory Millar and Anor*—WAD156/2007: proceedings under Part V for alleged misleading and deceptive conduct in the promotion of various industry exhibitions.
5. *ACCC v ANZ Banking Group Limited*—QUD252/2007: proceedings under Part IV for alleged price fixing agreements by the ANZ Bank seeking to limit the level of refund its Mortgage Refunds section could provide to customers.
6. *ACCC v Skins Compression Garments Pty Ltd*—SAD136/2007: proceedings under parts IV and V for alleged resale price maintenance and misleading and deceptive conduct in the retail sports goods industry.
7. *ACCC v Toll (PRK) Ltd* (formerly known as Patrick Corporation Ltd and also as Lang Corporation Ltd) ACN 008 660 124 and Ors—NSD1703/2007: proceedings under Part IV for allegedly entering into contracts, arrangements or understandings that restrict dealings or affect competition and into agreements to share their motor vehicle wharf facilities around Australia and to jointly acquire other facilities
8. *ACCC v Dojoo Pty Ltd*—QUD293/2007: criminal proceedings relating to alleged false representations about the quality and composition of petrol sold at 12 BP-branded service stations in northern New South Wales.
9. *ACCC v Santo Pennisi*—QUD290/2007: criminal proceedings relating to alleged false representations about the quality and composition of petrol sold at 12 BP-branded service stations in northern New South Wales
10. *ACCC v Ranu Pty Ltd and Ors*—TAD29/2007: proceedings under Part IV for alleged price fixing and exclusionary provisions by orthodontic businesses in northern Tasmania.
11. *ACCC v Hobie Cat Australasia Pty Ltd*—SAD145/2007: proceedings under Part IV for alleged resale price maintenance of Kayak and Sailboat products.

12. *ACCC v Telstra Corporation Limited*—VID855/2007: proceedings under Part V for alleged misleading and deceptive conduct in representations concerning Telstra's Next G mobile network.

Proceedings concluded

Ten litigation proceedings were finalised during the September 2007 quarter.

1. *ACCC v Mina Guirguis*—VID297/2007: proceedings under Part V for allegedly supplying retail packages of tobacco in packets and cartons that did not comply with the mandatory product information standard because the retail packages did not display the required messages and graphic images. On 17 July 2007 the Federal Court, Melbourne ordered injunctions; declarations and costs by consent.
2. *ACCC v Trade Quip and Anor*—VID334/2006: proceedings under Part V for alleged misleading or deceptive conduct and the supply of a good that did not comply with a prescribed consumer product safety standard. On 1 August 2007 the Federal Court made the following order by consent:
 - findings of fact
 - declarations
 - injunctions
 - implement a trade practices compliance program
 - pick up of any non-compliant jack supplied by Trade Quip that a person wishes to return
 - costs.
3. *ACCC v Dally M Publishing and Research Pty Limited and Anor*—VID238/2007: proceedings under Part IV for alleged agreements lessening competition through attempted price fixing, allegedly attempting to force celebrants in the mortuary business to charge a set fee for everyone. On 10 August 2007 the Federal Court ordered:
 - declarations
 - injunctions
 - that Dally M Publishing and Research Pty Ltd implement a trade practices compliance program
 - pecuniary penalties
 - costs.
4. *ACCC v G.O. Drew Pty Ltd and Anor*—VID1395/2005: proceedings under Part V for alleged misleading and deceptive conduct and false or misleading representations. On 17 August 2007 Justice Gray of the Federal Court ordered:
 - declarations

- injunctions
- costs.

Justice Gray declined to make one of the injunctions sought by the ACCC (relating to future labelling of eggs as 'organic'). Justice Gray noted a previous s. 87B undertaking and noted payments to be made by the respondents.

5. *ACCC v Liquorland (Australia) Pty Ltd and Anor*—NSD769/2003: proceedings under Part IV for alleged primary boycotts, restrictive agreements. On 27 August 2007 Justice Allsop of the Federal Court declined to impose general restraining injunctions on Woolworths. No order was made as to costs.
6. *ACCC v Pacnet Services Ltd and Ors*—QUD60/2007: proceedings under Part V for alleged misleading and deceptive conduct by persons and companies not party to the current litigation. On 17 July 2007 the Federal Court made consent orders for payment of funds relating to the promotions and previously paid into court to be transferred to a trust fund for return to consumers.
7. *ACCC v John Lincoln Knight and Anor*—SAD22/2007: proceedings under Part IV for alleged market sharing arrangements between cardiothoracic surgeons in Adelaide. On 5 July 2007 the Federal Court, Adelaide:
 - made declarations
 - ordered pecuniary penalties totalling \$110 000
 - respondents to attend trade practices/competition code compliance training
 - costs.
8. *ACCC v Dataline.net.au Pty Ltd and Ors*—QUD458/2006: proceedings under parts IV and V for alleged unconscionable conduct, misleading or deceptive conduct, false representations, resale price maintenance, price fixing and undue harassment. On 7 September 2007 the ACCC appeal to the Full Federal Court was dismissed.
9. *IMB Group Pty Ltd (In liquidation) and Ors v ACCC and Ors*—QSD139/2005: ACCC and four individual defendants were sued for alleged malicious prosecution, misfeasance in public office, defamation, negligence and unlawful interference with contractual relations. On 5 September 2007 the High Court of Australia dismissed IMB's application for leave to appeal against the Supreme Court of Queensland's decision to dismiss its case against the ACCC.
10. *ACCC v IPM Operation and Maintenance Loy Yang Pty Ltd (formerly known as Edison Mission Operation and Maintenance Loy Yang Pty Ltd) and Anor*—VID68/2007: proceedings under Part IV for alleged prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services. On 7 August 2007 the Full Federal Court, Melbourne dismissed an appeal by the Communications Electrical Plumbing Union (CEPU) against a decision by the Federal Court earlier this year that it had procured and induced a power station operator to contravene the Trade Practices Act. The Full Federal Court comprising Justices Weinberg, Bennett and Rares affirmed the original decision of Justice Young.

Current Full Federal Court applications

Only one matter is currently under appeal to the Full Federal Court.

- *ACCC v Baxter Healthcare Pty Ltd and Ors*—alleged misuse of market power and exclusive dealing. On 20 September 2006 the ACCC sought special leave to appeal the decision of the Full Court of the Federal Court, which had been handed down on 24 August 2006. The matter was heard by the High Court on 15 May 2007 and judgment was handed down 29 August 2007. This matter is now before Full Federal Court for consideration of the substantive matters under ss. 46 and 47 of the Trade Practices Act.

Current Supreme Court applications

There are no current Supreme Court applications.

Current High Court applications

There are no current High Court applications.

Section 87B undertakings accepted

The ACCC accepted eight s. 87B court enforceable undertakings during the September 2007 quarter. Undertakings were received from:

1. Lunel Pty Ltd (t/as Harvey Norman Noarlunga)—court enforceable undertaking to only advertise the prices for fares for air travel in a way that allows consumers to readily ascertain the single total fare without having to perform complex calculations and review its existing trade practices compliance program
2. United Airlines—court enforceable undertaking to only advertise the prices for fares for air travel in a way that allows consumers to readily ascertain the single total fare without having to perform complex calculations and review its existing trade practices compliance program
3. Kwala Skateboards Pty Ltd—court enforceable undertaking to refrain from the conduct, to write to resellers advising them of the undertaking and to establish a trade practices compliance program.
4. Quiznos—court enforceable undertaking to offer franchisees who have formally complained to the ACCC payments of at least a full refund of the standard franchise fee
5. Jordan Tatum Enterprises Pty Ltd—court enforceable undertaking not to engage in any activity constituting price fixing or attempting to fix prices; to publish in an Australian hotel industry newsletter an article concerning price fixing; and to implement a trade practices compliance program.
6. Uniden Australia Pty Ltd—court enforceable undertakings to:
 - cease representations that its Atlantis 250 VHF marine handheld two-way radio is waterproof given that the standard Uniden used to support its claim only referred to the classification of ‘splash-proof’

- replace all marine radio packaging containing the term 'waterproof' with revised packaging containing the term 'splash-proof'
 - write to all Uniden retailers/wholesalers and service agents advising of the ACCC's concerns, the packaging changes and the additional rights available to consumers who have the option of obtaining a full refund, replacement or repair
 - extend its warranty protection to cover for water damage in relation to marine radios represented as being 'waterproof'
 - publish a public disclosure notice on the Uniden website
 - establish a trade practices compliance program.
7. Automated Positioning Systems Pty Ltd, Machine Guidance Technology Pty Ltd and ABC Lasers—court enforceable undertakings not to enter into or give effect to agreements not to compete for sales of machine guidance products into the mining and civil construction industries in the future, and to implement trade practices compliance programs.
 8. Bovis Lend Lease—court enforceable undertaking requiring the review of Bovis Lend Lease's trade practices compliance programs.

2. Mergers

A total of 97 reviews (including confidential and public merger reviews) were conducted by the ACCC between 1 July and 30 September 2007. Of these, 86 were not opposed, one was publicly opposed outright and four were resolved during their review with court enforceable undertakings. The ACCC expressed concerns following two confidential reviews.

Additionally, four reviews were conducted where no decision was made, as either the ACCC was advised that the proposal was withdrawn or would no longer be proceeding or a view could not be formed on a confidential basis. Further, 49 of the 98 reviews were conducted publicly.

Merger reviews undertaken in the September 2007 quarter

	Confidential	Public	Total
Total reviews undertaken 1 July to 30 September 2007	48	49	97
This total can be broken down into the following categories:			
Not opposed	44	42	86
Finished—no decision (including withdrawn) ¹	2	2	4
Opposed outright	0	1	1
Confidential review—ACCC concerns expressed	2	0	2
Resolved through undertakings ²	0	4	4
Variation to undertaking accepted	0	0	0

Notes:

1. These are matters where no decisions were made. They are not included in the timings in table 3 below.
2. Only public matters can be resolved through undertakings

Time taken to assess mergers

The following table provides a breakdown of the time taken by the ACCC to complete its assessments in the quarter 1 July to 30 September 2007. This does not include four matters where no decisions were made. The matters that took more than eight weeks to review were completed within 12 weeks.

Time taken to undertake merger reviews	Number of reviews	Percentage of mergers
2 weeks or less	37	40
4 weeks or less	25	67
6 weeks or less	12	79
8 weeks or less	9	89
More than 8 weeks*	10	11

Statements of issues

Of the public reviews decided in the July to September 2007 quarter, four statements of issues were released:

1. Fairfax Media Ltd—acquisition of Riverina Media Group—15 August 2007
2. Healthscope Ltd—proposed acquisition of Symbion Health Ltd's pathology, medical centre and imaging businesses—20 June 2007
3. PMP Ltd and McPherson's Ltd—joint venture—20 June 2007
4. Video Ezy Australasia Pty Ltd—proposed acquisition of Blockbuster Australia Pty Ltd—8 May 2007

Additionally, four statements of issues were released during the quarter on matters that are yet to be decided:

1. Woolworths Ltd—proposed acquisition of Officeworks and either Kmart or Target—5 September 2007
2. Macquarie Media Group—proposed acquisition of Southern Cross Broadcasting (Australia) Ltd—13 September 2007
3. Macquarie Media Group—proposed acquisition of certain regional radio assets owned by Fairfax Media Limited—13 September 2007
4. Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd—13 September 2007

Public competition assessments

The ACCC issued four public competition assessments relating to the following matters during this quarter:

1. Tattersall's Ltd—proposed acquisition of Golden Casket Lottery Corporation—8 August 2007
2. PMP Ltd and McPherson's Ltd book printing businesses—proposed joint venture—27 August 2007
3. Healthscope Ltd, Ironbridge Capital and Archer Capital—proposed acquisition of Symbion Health Ltd—19 September 2007
4. Singapore Power and Babcock and Brown—proposed acquisition of Alinta Ltd—19 September 2007

Section 87B undertakings

Section 87B undertakings were accepted during four reviews relating to:

1. Tattersall's Ltd—proposed acquisition of Golden Casket Lottery Corporation Limited, 20 July 2007, 28 July 2007, 1 August 2007

2. Singapore Power, Babcock and Brown Ltd—proposed acquisition of Alinta Ltd, 13 August 2007
3. Healthscope Limited, Ironbridge Capital and Archer Capital—proposed acquisition of Symbion Health Limited (medical centres, diagnostic imaging), 15 August 2007
4. Video Ezy Australasia Pty Ltd—proposed acquisition of Blockbuster Australia Pty Ltd, 18 September 2007

Under s. 87B undertakings to the ACCC for Toll and Asciano relating to the Toll Holdings and Patrick Corporation merger and demerger, directors of those companies, as they are appointed, are required to submit certain undertakings relating to their independence. Eleven such undertakings were received in the last quarter.

Matters currently under review

At the end of the quarter the ACCC was in the process of considering a number of significant merger reviews, including:

- Woolworths Limited—proposed acquisition of Officeworks and either Kmart or Target
- Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd
- Macquarie Media Group—proposed acquisition of Southern Cross Broadcasting (Australia)
- Macquarie Media Group—proposed acquisition of certain regional radio assets owned by Fairfax Media Ltd

Summaries of major matters:

Woolworths Limited—proposed acquisition of Officeworks and either Kmart or Target

On 15 June 2007 the ACCC commenced its informal review of Woolworths Ltd's proposed acquisition of Officeworks and either Kmart or Target. The ACCC released a statement of issues on 5 September 2007, outlining a number of issues that may raise concerns and seeking further submissions from market participants. The closing date for submissions from interested parties was 19 September 2007. The ACCC proposes to announce its findings on 17 October 2007.

Macquarie Media Group—proposed acquisition of Southern Cross Broadcasting (Australia)

On 23 July 2007 the ACCC was able to commence market inquiries relating to a proposal by Macquarie Media Group (MMG) to acquire Southern Cross Broadcasting.

Following extensive market inquiries, the ACCC released a statement of issues on 13 September 2007, highlighting a number of competition concerns in 12 geographic regions. The concerns related mainly to the supply of advertising opportunities in those regions.

Further market inquiries were conducted with submissions due by 26 September 2007. The ACCC proposes to announce its findings on 10 October 2007.

Macquarie Media Group—proposed acquisition of certain regional radio assets owned by Fairfax Media Ltd

On 23 July 2007 the ACCC was able to commence market inquiries relating to a proposal by MMG to acquire nine radio stations from Fairfax Media Limited.

Following extensive market inquiries, the ACCC released a statement of issues on 13 September 2007, highlighting a number of competition concerns in Bundaberg, Port Lincoln and the Spencer Gulf. The concerns related mainly to the supply of advertising opportunities but also related to the supply of content to consumers.

Further market inquiries were conducted with submissions due by 26 September 2007. The ACCC proposes to announce its findings on 10 October 2007.

BUPA Australia Pty Ltd—proposed merger with MBF Australia Limited

On 31 August 2007 the ACCC commenced its informal merger review of the proposed merger of BUPA Australia Pty Ltd with MBF Australia Limited under the merger review process guidelines. The closing date for submissions from interested parties was 20 September 2007. The ACCC is currently reviewing responses received from the market to determine whether they raise issues under s. 50 of the Trade Practices Act. The ACCC proposes to announce its decision on 31 October 2007.

Major matters completed during the 1 July–30 September 2007 quarter

Major matters completed during the 1 July to 30 September 2007 quarter included:

- Rio Tinto Ltd—proposed acquisition of Alcan Inc (decision 3 October)
- Video Ezy Australasia Pty Ltd—proposed acquisition of Blockbuster Australia Pty Ltd
- Enforcement of Dampier Bunbury Pipeline's s. 87B undertaking
- PMP Ltd and McPherson's Ltd book printing business—proposed joint venture
- Healthscope Ltd, Ironbridge Capital and Archer Capital—proposed acquisition of Symbion Health Ltd
- Singapore Power and Babcock and Brown—proposed acquisition of Alinta Ltd
- Tattersall's Ltd—proposed acquisition of Golden Casket Lottery Corporation

Rio Tinto Ltd—proposed acquisition of Alcan Inc.

Result: acquisition not opposed

Summary: on 3 October 2007 the ACCC announced it would not oppose the proposed acquisition of Alcan Inc. by Rio Tinto Ltd. Both companies have significant bauxite, alumina and aluminium production facilities in Australia. On 19 July 2007 the ACCC commenced market inquiries with a wide range of industry participants, focusing on customers and competitors.

A public competition assessment of this matter will be released in due course.

Video Ezy—proposed acquisition of Blockbuster

Result: acquisition not opposed subject to s. 87B undertaking

Summary: on 18 September 2007 the ACCC announced its decision not to oppose Video Ezy Australasia Pty Ltd's proposed acquisition of Blockbuster Australia Pty Ltd and the master franchise rights to the Blockbuster business in Australia, after Video Ezy provided court enforceable undertakings to the ACCC.

The ACCC considered that, following the offer of the s. 87B undertaking by Video Ezy, the proposed acquisition would be unlikely to substantially lessen competition in any of the relevant markets. The ACCC had expressed concerns about the impact of the proposed acquisition in the national market for the wholesale purchase of new release DVDs and in local markets for the rental supply of DVDs to consumers.

The undertaking accepted by the ACCC:

- restricts Video Ezy's ability to exclusively purchase DVD titles in the rental and retail market
- requires that a comprehensive compliance program be implemented
- places restrictions on the sharing of confidential information between the Video Ezy and Blockbuster networks.

The undertaking is to continue for five years. The ACCC will issue a public competition assessment on its decision in due course.

Enforcement of Dampier Bunbury pipeline's s. 87B undertaking (Dated 27 October 2004)

Result: Federal Court of Australia ordered declaration of s. 87B undertaking breach

Summary: in late October 2004 a consortium of buyers—DUET (60 per cent), Alinta (20 per cent) and Alcoa (20 per cent)—purchased the Dampier to Bunbury natural gas pipeline (the DBNGP). The consortium and the operator of the gas pipeline, DBNGP (WA) Transmission Pty Ltd (DBP), gave undertakings to the ACCC under s. 87B of the Act (the undertakings).

Alinta's wholly owned subsidiary Alinta Network Services (ANS) (now known as Alinta Asset Management (AAM)) provides pipeline operation and management services to DBP.

The undertakings were put in place to ensure that Alinta's position as both a partial owner of and shipper on the DBNGP did not result in an anti-competitive outcome for other shippers on the DBNGP. In particular, clause 5.4(a) of the undertakings provides:

Alinta undertakes that no person who is a director or secretary or member of the staff of Alinta or any of its related bodies corporate (other than ANS [now called AAM]) will be involved in commercial negotiations between DBNGP Holdings (and, or EEWAT) [the pipeline operator, now called DBP] with other shippers relating to gas transportation on the DBNGP.

On 14 September 2006 the ACCC commenced proceedings in the Federal Court against Alinta, alleging a breach of clause 5.4 of the undertakings. On 29 August 2007 the Federal Court made orders settling the litigation between the ACCC and Alinta 2000 Ltd by consent of the parties.

The orders include a declaration that Alinta breached s. 87B undertakings and an order that Alinta pay the ACCC's costs.

The Federal Court has ordered the following:

- a declaration that at all material times from 23 January 2006 until 6 October 2006, a member of Alinta staff was in a position in which she was involved in commercial negotiations between DBNGP Holdings Pty Limited and gas shippers
- a declaration that Alinta's conduct in transferring the member of staff into the above position, and permitting her to remain there in circumstances where Alinta Ltd knew that she was involved in commercial negotiations with gas shippers, constituted a breach by Alinta of the undertakings
- an order that Alinta pay the ACCC's costs.

The parties consented to orders made.

Healthscope Limited—proposed acquisition of Symbion Health Limited's medical centre, diagnostic and pathology businesses

Result: acquisition not opposed subject to s. 87B undertaking

Summary: on 15 August 2007 the ACCC announced its decision not to oppose Healthscope Limited's proposed acquisition of Symbion Health Limited's medical centre, diagnostic and pathology businesses after Healthscope provided court enforceable undertakings to the ACCC. The ACCC considered that, following the offer of a s. 87B undertaking by Healthscope, the proposed acquisition would be unlikely to substantially lessen competition in the Victorian community pathology services market.

The undertaking accepted by the ACCC required Healthscope to divest a number of general pathology businesses—namely, the Gippsland, Benalla and Albury businesses operated by Symbion and the Wangaratta business operated by Healthscope—within a fixed period of time. The divested businesses' operations are in regions of Victoria identified as being where the merged entity would have been the sole or dominant private general pathology provider post-acquisition.

On 19 September 2007 the ACCC issued a public competition assessment relating to this matter.

PMP Ltd and McPherson's Ltd book printing business—proposed joint venture

Result: acquisition approved

Summary: On 15 August 2007 the ACCC announced its decision to oppose the proposed joint venture between Griffin Press (a subsidiary of PMP Limited) and the printing division of McPherson's Limited.

The ACCC made extensive inquiries with market participants in this matter. The area of concern in this proposal was the likely effect on competition in the printing of mono trade books ('read for pleasure' books). The proposed joint venture would have brought together the operations of the only two players capable of satisfying the printing requirements of trade publishers under what are known as the 'grid contract arrangements'.

Grid contracts offer publishers prices for their requirements over a range of sizes, formats and number of copies to be printed. Publishers rely on these grid contracts as the most efficient means of having their printing requirements met in a cost-effective and timely manner, and in a way that minimises wastage.

Griffin and McPherson's are the only two printers in Australia that operate high-speed fixed-format web-fed presses that can accommodate the demands of larger publishers through the provision of grid arrangements. Market inquiries indicated that barriers to entry are significant in this market. Market inquiries also indicated that having printing done offshore was not a viable alternative for a significant part of the requirements of publishers of mono-trade books.

On 27 August 2007 the ACCC issued a public competition assessment relating to this matter.

Singapore Power and Babcock and Brown—proposed acquisition of Alinta Ltd

Result: acquisition not opposed subject to s. 87B undertaking

Summary: On 13 August 2007 the ACCC decided not to oppose the proposed acquisition of Alinta by a consortium involving Singapore Power and Babcock and Brown after accepting court enforceable undertakings from Singapore Power and Babcock and Brown subsidiaries.

The consortium proposed to acquire Alinta under a scheme of arrangement by which a suite of assets—including Alinta's gas and electricity assets, a 35 per cent interest in the Australian Pipeline Trust and shares in Australian Pipeline Limited—would be allocated between Singapore Power and Babcock and Brown. Competition concerns arose about the potential aggregation of interests in the transport of wholesale gas via pipelines in New South Wales and Western Australia. These issues arose from the proposed acquisition by the consortium of Alinta's 35 per cent interest in the Australian Pipeline Trust together with a number of Alinta's assets.

In Western Australia, the Babcock and Brown Infrastructure Fund (BBI) proposed to acquire the operation and management functions on the DBNGP, which is the main supply of wholesale gas to Perth. The Babcock and Brown Power fund (BBP) owns a 70 per cent interest in a gas-fired power station; it also proposed to acquire Alinta's gas and electricity retail business. Therefore, the acquisition was also likely to result in

the integration of gas-fired electricity generation and gas retail assets with upstream gas pipeline interests in Western Australia.

The undertakings require BBI to ensure that information relating to the operation of the Dampier to Bunbury Natural Gas Pipeline in Western Australia is not disclosed to other Babcock and Brown entities, including BBP. The Babcock and Brown Power Fund operates energy businesses that obtain gas supply from the DBNGP and which compete against other businesses that also rely upon the pipeline for their supplies of gas.

The undertakings also ensure that Alinta's 35 per cent interest in APT, which owns the Moomba to Sydney pipeline and the Parmelia pipeline, as well as the operating and maintenance contracts for the Moomba to Sydney and Parmelia pipelines, and the APL shares, are divested. The undertakings also ensure that the APT units and the operating and maintenance contracts would be ring-fenced from the consortium parties' respective businesses until they are divested.

On 19 September 2007 the ACCC released a public competition assessment relating to this matter.

Tattersall's Ltd—proposed acquisition of Golden Casket Lottery Corporation

Result: acquisition not opposed subject to s. 87B undertaking

Summary: On 18 July 2007 the ACCC decided not to intervene in the acquisition of Golden Casket Lottery Corporation by Tattersall's Limited, subject to court enforceable undertakings provided by Tattersall's. On 20 July 2004 the ACCC accepted undertakings from Tattersall's.

Tattersall's is a publicly listed company with lotteries, gaming and wagering activities throughout Australia. In particular, Tattersall's operates state and national lotteries in Victoria, Tasmania and the Northern Territory. A wholly owned Tattersall's subsidiary, Maxgaming, is one of two licensed monitors (LMOs) of electronic gaming

Golden Casket was a Queensland Government-owned corporation holding the licence to operate national and state lotteries in Queensland. A subsidiary of Golden Casket, Bounty Limited (Bounty) provides monitoring software and technical support to the other licensed monitor of electronic gaming machines (EGMs) in Queensland, Odyssey Limited (Odyssey).

The acquisition resulted in the merger of two potential acquirers of future lotteries licences in Australia, as well as a transfer of ownership of the only licence to run public lotteries in Queensland. The transaction also resulted in the merger of the only two suppliers of monitoring software to LMOs in Queensland.

The relevant markets were found to be:

- the operation of public lotteries in Queensland
- the acquisition of future lotteries licences
- the monitoring and maintenance of EGMs in Queensland

- the supply of QCOM compliant monitoring software.

The ACCC did not consider that competition concerns arose in the lotteries markets, given the bare transfer of a monopoly lotteries licence that occurred in the Queensland market and the presence of other well-resourced potential bidders for future lotteries licences.

However, in the monitoring and software markets, the ACCC found that barriers to entry were high and that the acquisition would have been likely to give Tattersall's the incentive and ability to vertically foreclose its only competitor in the monitoring market, Odyssey.

To alleviate the ACCC's competition concerns, Tattersall's provided, and the ACCC accepted, s. 87B undertakings requiring Tattersall's to divest Bounty to a purchaser approved by the ACCC within a specified timeframe.

On 8 August 2007 the ACCC released a public competition assessment relating to this matter.

3. Compliance activities

Consumers, small business, rural and regional programs

Liaison education activities

The ACCC works actively with other regulators, government departments, business and consumer associations in monitoring emerging trade practices issues and educating relevant stakeholders as to their effect.

During the September 2007 quarter, the ACCC regional outreach team attended 48 meetings with government and industry representatives, small business operators and consumer groups nationally; 14 franchising expos and field days; conducted 18 presentations to small business operators, industry associations and consumer groups; and provided a media interview. In addition to this, the ACCC assisted:

Consumers

- met with the Australian Securities and Investments Commission to discuss collaboration and information sharing on consumer protection and other common interests
- presented at the conference of the Federation of Ethnic Community Councils of Australia regarding the translation of various ACCC consumer education materials and its work program regarding disadvantaged and vulnerable consumers
- continued the ACCC's disadvantaged and vulnerable consumer program, designed to ensure that the special needs of these groups are identified and addressed
- maintained the SCAMwatch website, and issued six SCAMwatch Radar email alerts over the quarter. Close to 3500 consumers have subscribed to receive these alerts.
- continued in its role as the secretariat for and chair of the Australasian Consumer Fraud Taskforce (ACFT) representing federal, state and territory government consumer protection and related agencies
- worked with the Australian Greenhouse Office on the revision of the ACCC's green marketing guide, which advises traders and suppliers of their trade practices obligations when making claims regarding the environmental impact of their products
- presented at the AFGC Masterclass on food labelling at the 2007 Food Safety Conference and at the 'Health Kids' Australian Canteen food industry update.

Businesses

- reviewed 15 trade practices compliance programs, considered and accepted 12 compliance program review reports and finalised 14 matters

- continued to liaise with small business and franchising sector representatives in developing new compliance and educational strategies for the sector
- received an Australian Research Council Linkage Grant for 'Towards the resolution of franchising conflict,' a world-first project that will educate future ACCC enforcement and compliance initiatives in the franchising sector by providing insight into the dynamics of franchising relationships and the influence of market pressures on the stability of franchising systems
- liaised with the Australian Defence Force regarding educational initiatives to advise ADF members about the protections afforded to them by the Trade Practices Act
- worked with the Office of Small Business to finalise the review of the Franchising Code of Conduct
- continued to educate stakeholders and promote compliance with the two newest mandatory codes of conduct under the Trade Practices Act, conducting 12 meetings and presentations on the Oilcode and 23 presentations on the Horticulture Code of Conduct
- conducted 44 media interviews on the Horticulture Code of Conduct
- met with members of the Biological Farmers of Australia's Board to discuss the ACCC's view on developments in the organic industry, including support for a proposed new Australian standard.
- attended the meeting of Standards Australia Committee FT-032 on Organic and Biodynamic Products, which is developing that standard.

Publications, papers and DVDs

In the September 2007 quarter the ACCC produced and promoted the following publications and messages for:

Consumers

- a suite of three brochures under the title *Your consumer rights*, addressing the issues of warranties, refunds and warranties for services
- the online *Franchisee checklist*, providing step-by-step guidance on essential due diligence steps for pre-starter franchisees
- a revised version of the *Franchisee manual*, a comprehensive publication developed to assist all prospective and existing franchisees to understand and comply with the Franchising Code of Conduct
- a Somali language version of *Know how to complain*
- two new publications addressing Indigenous arts and crafts, the first for consumers looking to purchase Indigenous art and the second aimed at educating Indigenous artists and the art centres supporting them about unconscionable conduct

- in conjunction with the Australian Securities and Investment Commission (ASIC), published *Dealing with Debt: your rights and responsibilities*, in six languages (Chinese, Italian, Greek, Arabic, Vietnamese and Turkish).
- provided regular contributions to the Consumer Telecommunications Network (CTN) bulletins and to each Consumer Federation of Australia (CFA) quarterly newsletter, including details of completed consumer-related enforcement activity and education and information programs
- a consumer information brochure on the practice of 'rent bidding'.

Businesses

- four new small business fact sheets: *Comparative advertising*, *A simple guide to the Franchising Code of Conduct*, *Bait advertising* and *Resale price maintenance and power tool sales—the Tooltechnic decision*.
- 'Franchising complaints, investigations and outcomes', a new space on the ACCC website, was developed to provide detailed information on ACCC processes for investigating franchising complaints, as well as on the outcomes of a number of such investigations
- a product safety bulletin on diethylene glycol (DEG) in a banned brand of toothpaste
- A Horticulture Code fact sheet, *Can growers collectively bargain?*

Codes of conduct

Voluntary industry codes of conduct:

Effective voluntary industry codes serve the purpose of fostering more effective compliance with the Trade Practices Act. During the September 2007 quarter, the ACCC participated in the development and/or review of a number of voluntary industry codes of conduct:

- The national code of practice—beekeeping in the Australian environment

In June 2006 the Australian Honey Bee Industry Council (AHBIC) received an Action Partnership Grant to develop a national code of practice and a training package to provide beekeepers with environmental credentials to move the industry forward.

The aim of the code is to improve access to pollen supplies by demonstrating that the beekeeping industry has a comprehensive understanding of its environmental impact and can adequately manage that impact. The Department of Agriculture, Fisheries and Forestry has requested the ACCC's comments on the draft code.

- Film Exhibition and Distribution Code

The ACCC made a presentation about the recently revised code at the Australian International Movie Convention on August 13. The ACCC has assisted an

independent exhibitor with a complaint regarding the requirement by a distributor to provide the exhibitor's box office receipts to Neilsen EDI.

- Code of Practice for the Management of Clinical and Related Wastes (Fourth edition, 2004)

The fifth edition of this code was released following the ACCC's recommendations to the Australian and New Zealand Clinical Waste Management Industry Group about developing effective industry codes of conduct. The ACCC will, however, continue to raise concerns about the revised code to the ANZCWM Industry Group.

- Indigenous Australian Art Commercial Code of Conduct

The Senate Standing Committee on the Environment, Communications, Information Technology and the Arts recommended in its report *Indigenous Art—Securing the Future: Australia's Indigenous visual arts and craft* that the National Association of Visual Arts Ltd seek input from the ACCC on the effective drafting and implementation of a code of conduct for the Australian Indigenous commercial art industry.

- Jewellery and Timepieces Industry Code

The ACCC met with the Jewellers Association of Australia about the Jewellery and Timepieces Industry Code to provide guidance in developing an effective voluntary industry code of conduct for the jewellery industry. The JAA is currently developing a draft code in accordance with the ACCC's *Guidelines for developing effective voluntary codes of conduct* and will seek comment from the ACCC on the completion of a draft.

- Live Performance Australia

The ACCC met with Live Performance Australia to discuss developing an effective voluntary industry code of conduct for the performing arts industry. Live Performance Australia is developing a draft code using the ACCC's *Guidelines for developing effective voluntary codes of conduct* with the assistance of a trade practices consultant and will seek comment from the ACCC on the completion of a draft.

Mandatory codes

The ACCC is responsible for administering the three prescribed industry codes of conduct—the Franchising Code, the Oilcode and the Horticulture Code.

- Trade Practices (Industry Codes—Oilcode) Regulations 2006 (the Oilcode)

The Oilcode regulates the conduct of suppliers, distributors and retailers in the downstream petroleum retail industry. It came into effect on 1 March 2007 as a prescribed mandatory code of conduct under the Trade Practices Act.

During the September 2007 quarter, the ACCC:

- continued to liaise with, and distribute its educational and compliance materials to, industry stakeholders such as associations, petroleum retailers and distributors and the Department of Industry, Tourism and Resources
- considered ten inquiries (four of which were complaints) in relation to the Oilcode, on matters including failure to supply declared petroleum products, alleged predatory pricing and various aspects of fuel re-selling agreements
- distributed 11 articles to industry associations for publication in their newsletters, journals and magazines
- continued to maintain the Oilcode Information Network free subscription services, which enables groups including government agencies, industry associations, service stations, distributors and other interested parties to received up-to-date information on developments relating to the Oilcode.
- Trade Practices (Horticulture Code of Conduct) Regulations 2006 (the Horticulture Code)

The Horticulture Code regulates the trading of horticulture produce between growers and traders in the horticulture produce industry. It came into effect as a prescribed industry code of conduct under the Trade Practices Act on 14 May 2007.

During the September 2007 quarter, the ACCC:

- liaised with the Department of Agriculture, Fisheries and Forestry, various central markets and peak grower associations on topics, including template horticulture produce agreements and the importance of compliance with the code
- maintained the Horticulture Code Information Network and provided subscribers with regular updates on code compliance information and developments
- distributed more than 1900 hard-copy Horticulture Code publications to various industry stakeholders
- responded to 47 complaints and inquiries about the Horticulture Code.

Product safety

The ACCC is responsible for developing and reviewing Trade Practices Act product safety and information standards, developing and monitoring product bans, receiving s. 65R product recall notifications and entering the recalls on the Product Recalls Australia website.

It also provides advice to suppliers on correct recall procedures and monitors emerging safety issues including the investigation of injury reports.

The September quarter saw the creation of a mandatory safety standard for prams and strollers, as well as banning orders for toothpaste containing greater than 0.25 per cent DEG and lead in children's toys. More detail on these matters appears below.

Also in the September 2007 quarter:

- The ACCC continued its product safety survey program, surveying 3430 items at 498 retail outlets across Australia. This resulted in 40 products being withdrawn from sale and a number of ongoing investigations into possible breaches of mandatory product safety standards.
- Reviews of mandatory standards for cosmetics, flotation toys and swimming aids, trolley jacks and vehicle support stands continued.
- The ACCC arranged for testing of toys for lead and other toxic elements, testing of toothpaste for DEG and testing of clothing for formaldehyde within the period.
- The ACCC continued to foster a joint initiative of the Infant and Nursery Products Association of Australia and Standards Australia for developing a hazard-based ('horizontal') approach to standards development in relation to nursery products.
- The ACCC contributed to national product safety initiatives, including reviewing models for a harmonised Australian product safety system and harmonised product safety regulation.
- The ACCC worked to combat non-compliance with the mandatory information standard for basketball rings and backboards by placing a full-page advertisement of its product safety bulletin for basketball rings and backboards in *SportsLink*, a magazine, read by the wholesale sporting goods industry.
- The ACCC also continues to liaise with state and territory fair trading and consumer affairs agencies with regard to Standing Committee of Officials of Consumer Affairs (SCOCA) issues, including the product safety framework, review of the product safety system, harmonisation of standards and bans, and a baseline epidemiology study.
- Responses were sent to 192 email inquiries dealing with product safety and product recalls.

Mandatory product and information standards

Prams and strollers

A mandatory safety standard for prams and strollers was published on the *Federal Register of Legislative Instruments* on 2 July 2007 and will take effect from 1 July 2008. Industry and consumer groups are extremely supportive of the new standard, which includes critical requirements drawn from the Australian/New Zealand Standard for prams and strollers that help prevent entrapment. In recognition of recent tragic incidents where children have been killed or injured when their strollers rolled away from carers, the standard requires a tether strap to give carers a means of restraining prams and strollers, in addition to the requirement for a parking brake.

Child restraints in motor vehicles

A revised safety standard for child restraints in motor vehicles was published on the *Federal Register of Legislative Instruments* on 5 September 2007. The updated standard reflects more relevant and recent Australian Standards; a footnote was removed to overcome possible interpretation problems.

Product bans

Toothpaste containing more than 0.25 per cent diethylene glycol

On 3 August 2007 a Trade Practices Act unsafe goods notice was published in the *Commonwealth Gazette*, declaring toothpaste containing more than 0.25 per cent DEG as unsafe goods. It is considered that long-term exposure to DEG may have adverse health effects, especially for children. Similar controls were introduced in the United States of America and Europe.

Lead in toys

On 19 September 2007 a notice declaring toys with lead migration levels above the limit specified in the current Australian Standard (90 parts per million) to be unsafe goods was published in the *Commonwealth Gazette*.

As mentioned above, the ACCC is currently conducting a formal regulation impact assessment of the options to control lead and other potentially toxic elements in toys. This ban is an important interim measure to help protect Australian children from toys containing inappropriate lead levels while the broader regulation impact assessment process is completed.

The ACCC has also worked closely with the Australian Toy Association to ensure the commitment and responsiveness of ATA members to addressing this hazard.

Developing standards and codes

Portable cots

A regulation impact statement that proposes to adopt key safety performance and design requirements in the published Australian Standard on these products has been circulated to stakeholders for comment. Comments are now being analysed prior to the finalisation of the regulation impact statement.

Hot water bottles

A draft regulation for a mandatory standard for hot water bottles is currently being analysed. The draft regulation includes safety requirements that address thickness, seam strength, filling aperture size and warning labelling. Some drafting problems have been experienced due to the regulation being necessarily based on a British standard.

Lead and other toxic elements in toys

A regulation impact statement proposing a new standard prescribing maximum levels of lead and other toxic elements in toys has been circulated to the Consumer Product Advisory Committee for comment, prior to circulation to a wider group of stakeholders.

Key issues being addressed in the regulation impact statement include whether the full range of elements (eg mercury, barium, arsenic) should be regulated in addition to lead, the appropriate age range to be addressed by the regulation and whether compliance with overseas standards should be accepted.

Reduced ignition propensity cigarettes

A regulation impact statement and consultation process has begun to examine the case for a possible new safety standard under the Trade Practices Act that would

require cigarettes to meet the ignition propensity test in the current Australian Standard.

Nursery furniture

The Infant and Nursery Products Association Australia aims to improve standards of product safety and compliance and to raise consumer awareness about infant and nursery products. The ACCC met with INPAA to discuss the challenges involved in developing a voluntary industry code for the industry given the nature of the products involved. As a result of these discussions, the industry association has decided that rather than proceed with the development of a voluntary code of conduct, the Association will develop an accreditation system for industry stakeholders that ensures compliance with product safety standards.

Product Recalls Australia

The Product Recalls Australia website, which provides consumers and state and territory regulators with up-to-date information on all Australian safety-related recalls, continued to operate effectively. Some 177 new recalls were entered on the database during the September 2007 quarter. Of these, the ACCC monitored and assessed 63 consumer product recalls, including three high-profile recalls concerning lead in toys. The remaining recalls represented food products (8), therapeutic goods (60) and motor vehicles (46)

4. Adjudication

Authorisations

During the September 2007 quarter, the ACCC commenced nine new authorisation matters (excluding gas and electricity applications).

The total number of authorisation matters being considered by the ACCC on 30 September 2007 (excluding those being considered on gas and electricity matters) was five matters. The discussion below focuses on authorisation matters with milestones for the period.

Applications lodged

Qantas Airways Limited

Qantas has lodged an application for revocation and substitution of an authorisation in relation to tariff arrangements with designated airlines that are required under Australia's air service agreements with other countries, subject to the authorisation only offering protection under certain conditions.

The ACCC has consulted interested parties and is currently progressing with the draft determination.

Australian Property Institute

The Australian Property Institute has applied for minor variations to authorisation A90545, granted on 29 April 1994 by the Trade Practices Commission. The proposed variations are for disciplinary rules and classes of membership.

The ACCC is currently seeking comments from interested parties.

Dalrymple Bay Coal Terminal Pty Limited

Dalrymple Bay Coal Terminal Pty Limited have sought re-authorisation of a queue management system (QMS) designed to address the imbalance between demand for coal-loading services at Dalrymple Bay and the capacity of the Goonyella coal chain. The imbalance between demand and capacity of the coal chain caused a substantial queue of ships to form off Dalrymple Bay. The ACCC granted authorisation to the current QMS arrangements on 15 December 2005.

The ACCC is currently seeking comments from interested parties on an amended QMS.

Information Technology Contract and Recruitment Association

The Information Technology Contract and Recruitment Association has applied for authorisation of its code of conduct.

The ACCC is currently seeking comments from interested parties.

Matters finalised

ThoroughVision Pty Limited and Ors

On 15 February 2007 Sky Channel Pty Ltd, Tabcorp Holdings Ltd and ThoroughVision Pty Ltd (collectively referred to as the parties) lodged an application for authorisation. The parties sought authorisation for a memorandum of understanding (MOU) which broadly sets out the commercial terms between Sky and TVN for the sharing of thoroughbred racing content.

On 4 July 2007 the ACCC issued a final determination granting authorisation to the MOU, subject to a condition, until 31 December 2012.

Singapore Airlines Limited on behalf of Star Alliance

Singapore Airlines Limited lodged an application in respect of two arrangements:

- 'Corporate Plus': the proposed continuation of an arrangement essentially identical to the existing authorised and implemented arrangement, pursuant to which members will enter into 'Star Alliance Corporate Plus Agreements' with corporate customers.
- 'Convention Plus': an arrangement, essentially identical to the existing authorised—but not locally implemented—arrangement, pursuant to which members will make joint bids for appointment as the official airline alliance for international conventions and enter into 'Star Alliance Convention Plus Official Airline Network Agreements' with convention organisers.

The ACCC issued a determination in relation to this matter on 18 July 2007, granting authorisation for five years.

Qantas Airways Limited

Qantas Airways Limited, on behalf of its wholly owned subsidiary Australia Asia Airlines Limited, sought revocation of authorisation A90525. The original authorisation, granted in 1991, applies to air service agreements reached outside the International Air Transport Association on tariffs and related conditions between Australia Asia Airlines and China Airlines Limited, on behalf of Mandarin Airlines and Eva Airways Corporation, for services between Australia and Taiwan.

Qantas applied for revocation of the authorisation because it no longer operates flights to Taiwan, either under Australia Asia Airlines or any other subsidiary. In addition to this, Australia Asia Airlines is no longer in existence as a company.

On 25 July 2006 the ACCC issued a determination revoking the authorisation and the determination came into force on 16 August 2007.

Construction Material Producers Association Inc.

The Construction Material Producers Association Inc. sought authorisation to develop and publish a number of standard form contracts for its members.

The ACCC issued a final determination on 29 August 2007 granting authorisation, subject to a condition, for five years.

Shopping Centre Council of Australia Limited

The Shopping Centre Council of Australia Limited (SCCA) lodged applications for authorisation concerning the Casual Mall Licensing Code of Practice, and in particular clause 6, which provides that a lessor must not grant a casual mall licence that results in the unreasonable introduction of a competitor of an adjacent lessee.

On 29 August 2007 the ACCC issued a final determination granting authorisation to the SCCA for five years.

The South East Potato Growers' Association

The South East Potato Growers' Association (SEPGA) applied for authorisation to allow it to engage in collective negotiations on behalf of its members with two potato buyers, McCain Foods and Safries (owned by McCain Foods).

SEPGA also sought authorisation to participate in any dispute resolution mechanism in relation to disputes between McCain Foods and Safries and members of SEPGA with regard to agreements collectively negotiated.

On 29 August 2007 the ACCC issued a determination granting authorisation to the arrangement for five years.

National Foods Milk Limited and Australia Co-operative Foods Limited

National Foods Milk Limited and Australian Co-operative Foods Limited (Dairy Farmers) sought authorisation in relation to a joint tender process for milk haulage services in South Australia.

On 12 September 2007 the ACCC issued a final determination granting authorisation to applications A91051 and A91053 for an agreement between National Foods, Dairy Farmers and the successful tenderer not extending beyond 31 December 2014. The ACCC denied authorisation to application A91052 for a subsequent agreement between National Foods, Dairy Farmers and the successful tenderer.

Nestle Australia Ltd

Nestle lodged an application for a minor variation to authorisations A90539 and A90540, which relate to the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement. The minor variation was requested to allow for the addition of future parties to the arrangement and to include an eight- to 10-year time limit on the authorisation.

On 30 August 2007 the ACCC issued a determination granting minor variation to the authorisation.

The Real Estate Institute of Western Australia

The Real Estate Institute of Western Australia lodged an application for a minor variation for a proposed amendment to REIWA's auction code of conduct. The proposed variation is designed to enable real estate agents who are members of REIWA to act in court ordered auctions where no reserve price has been set and where the seller wishes to place a bid on the property.

On 5 September 2007 the ACCC issued a determination granting minor variation to the authorisation.

International Air Transport Association

IATA lodged an application for minor variation to authorisation A90855, relating to the IATA Cargo Agency System. IATA has sought a minor variation to extend the duration of the protection afforded to the Cargo Agency System by three months beyond the current expiry date of 31 August 2007 to 30 November 2007.

On 19 September 2007 the ACCC issued a final determination granting minor variation to the authorisation.

Office Choice Limited

Office Choice, Office National and Office Products Depot and their franchisees proposed to collectively negotiate (and/or appoint a representative to collectively negotiate on their behalf) the terms and conditions for obtaining office supplies.

On 19 September 2007 the ACCC issued a determination granting authorisation to the arrangement until 22 October 2013.

Phonographic Performance Company of Australia

The Phonographic Performance Company of Australia (PPCA) sought authorisation for its collective-licensing arrangements for the public performance or broadcast of sound recordings and music videos. The PPCA grants licenses to users and distributes licence fees to the record labels and Australian recording artists registered with PPCA.

A pre-decision conference was held on 14 August 2007. On 27 September 2007 the ACCC issued a determination granting authorisation to the conduct until 31 March 2011 subject to various conditions.

Draft determinations issued

The Distilled Spirits Industry Council of Australia and Ors

The Distilled Spirits Industry Council of Australia Inc. and others are seeking authorisation for certain aspects of a proposed alcohol beverages advertising (and packaging) code and its associated rules and procedures, which establish a system for the removal of inappropriately named or packaged alcohol products from the market (the retailer alert scheme).

On 12 September 2007 the ACCC issued a draft determination proposing to grant conditional authorisation to the retailer alert scheme until 30 June 2011.

Notifications

During the quarter ending 30 September 2007 the ACCC received 78 new notifications across 59 new matters for exclusive dealing. Notifications of interest being considered during the quarter include:

Bakers Delight Holdings Ltd

Bakers Delight Holdings Ltd (Bakers Delight) lodged a notification on 23 June 2006 proposing to require franchisees to acquire certain key products only from Bakers Delight approved suppliers. In light of concerns raised earlier this year, the ACCC

conducted a review of the notification. In September 2007, the ACCC advised that it did not intend to take any further action on the matter at this time.

Football Federation Victoria

The Football Federation Victoria Inc. (FFV) proposes to require clubs which participate in FFV competitions to use only licensed apparel during FFV competitions.

On 4 July 2007 the ACCC released a draft notice proposing to revoke the notification. On 13 August 2007 the FFV advised of proposed changes to the manner in which the licensing program is administered. Consultation with interested parties was undertaken with the notification being considered further.

Geelong Port Pty Ltd

Geelong Port Pty Ltd proposes to provide access to Lascelles Wharf in Geelong Port on condition that potential port users use Geelong Port's figee cranes for the purpose of unloading fertiliser and other dry bulk cargoes.

On 28 June 2007 following consultation with interested parties, the ACCC issued a draft notice proposing to revoke the notification. The ACCC has sought submissions on the draft notice and the matter is under consideration. Geelong Port has undertaken not to engage in the notified conduct until the matter has been finalised.

Seal-A-Fridge

The notifications detail a proposed arrangement whereby Seal-A-Fridge franchisees are required to acquire door seal supplies from Seal-A-Fridge Pty Ltd (N50196) or nominated approved suppliers (N50197, N50198, N50199 and N92676).

On 13 September 2007 the ACCC issued notices revoking third line forcing notifications N50197, N50198, N50199 and N92676 lodged by the Seal-A-Fridge franchisors. The ACCC does not propose to take any further action on notification N50196 at this time.

Wentworth Courier

In 1993 Eastern Suburban Newspapers lodged a notification in respect of contracts entered into between it and eastern suburban Sydney real estate agents. The contracts provide that the real estate agent agrees to place 75 per cent of the total suburban advertising by it, or on behalf of its vendor/clients, for eastern suburbs real estate display advertising, with the *Wentworth Courier*. Concerns about this notification have been expressed to the ACCC.

The ACCC has sought submissions from interested parties and the matter is under consideration.

Harness Racing Victoria

On 11 July 2007 Harness Racing Victoria lodged a notification proposing to offer a rebate on the fee otherwise payable (for the supply of race field data) by six nominated bookmakers for a particular month in relation to any layoffs or bet-backs placed by these bookmakers in that month with the Victorian TAB (Tabcorp) on harness races within Australia. HRV also require the nominated bookmakers to hold an interstate or international wagering or bookmaking licence.

On 6 September 2007 the ACCC issued a draft notice proposing to revoke the notification. The ACCC sought submissions from HRV and interested parties on the issues raised in the draft notice and the matter is under consideration.

Racing and Wagering Western Australia

On 16 August 2007, Racing and Wagering Western Australia (RWVA) lodged a notification proposing to offer a licence to conduct horse-training activities on condition that horse trainers obtain workers compensation insurance from a nominated insurer.

On 29 August the ACCC issued a draft notice proposing to revoke the notification. The ACCC sought submissions from RWVA and interested parties on the draft notice and RWVA has requested a pre-decision conference, scheduled for 11 October 2007.

5. Infrastructure regulation

Communications

In the September 2007 quarter the ACCC:

- published a draft decision in the inquiry into re-declaration of the line sharing service (LSS)
- commenced a public inquiry in response to Telstra's applications for partial exemption from the standard access obligations for the local carriage service (LCS) and wholesale line rental (WLR)
- instituted proceedings against Telstra for allegedly misleading advertising of the Next G network
- continued to arbitrate 31 access disputes in total, as at 30 September 2007
- commenced an arbitration for an access dispute over the unbundled local loop service (ULLS)
- published final determinations and accompanying statements of reasons in three access disputes concerning the LSS
- published interim determinations and accompanying statement of reasons in two access disputes concerning the LCS and the WLR
- issued a discussion paper on the proposed digital radio access regime
- published the telecommunications market indicator report for 2005–06
- issued the March and June 2007 quarterly reports under the accounting separation regime for Telstra.

Declarations

Draft decision on future of the line sharing service

On 21 August 2007 the ACCC published a draft decision indicating that it intends to continue to regulate the LSS on a national basis until 31 July 2009. This decision is subject to a further stage of public consultation. The regulation of the service will be reconsidered as part of the proposed comprehensive review of fixed line services regulation, which will commence in 2008. The ACCC also issued draft indicative prices for the service.

The ACCC invited interested parties to make written submissions on the draft declaration by 17 September 2007. A final declaration decision will be issued by 31 October 2007.

Enforcement

Institution of proceedings against Telstra for allegedly misleading Next G Advertising

On 17 September the ACCC announced that it had instituted proceedings in the Federal Court against Telstra for alleged contraventions of the TPA for the promotion of its Next G network.

The ACCC alleges that Telstra has engaged in misleading or deceptive conduct by representing that the Next G mobile network 'covers the entire country' and has 'coverage everywhere you need it'.

The ACCC alleges that these representations contravene ss. 52 and 53 of the Act.

The ACCC is seeking a range of remedies from the court including declarations regarding the alleged contravening conduct and corrective advertising.

Access pricing—disputes and undertakings

The ACCC is vested with powers to arbitrate telecommunications access disputes on declared services and to make a final binding determination to resolve a dispute. Arbitration hearings are private and the ACCC generally does not make any public comment on disputes except to announce when a dispute has been notified or a determination has been made.

One new access dispute was notified to the ACCC under Part XIC of the TPA in the September quarter of 2007. On 28 August 2007 the ACCC announced that TPG Internet Pty Ltd had notified an access dispute with Telstra Corporation Limited. The access dispute relates to the charges associated with the supply of the ULLS service from Telstra.

Final determinations

On 24 August 2007 the ACCC announced that it had made final determinations, and published the accompanying statement of reasons, in three separate access disputes regarding the supply of the LSS from Telstra to three access seekers—Chime Communications, Primus Telecommunications and Request Broadband. These determinations had been finalised and communicated to the involved parties on 1 August 2007.

In making the final determinations, the ACCC maintained consistency with longstanding pricing principles for the LSS. The determinations provide that the charges payable by the three access seekers for the period of 1 February 2006 to 31 December 2007 are \$2.50 per service per month. The determinations also reduced the charges and the timeframes for wholesale customers seeking to migrate certain services to the LSS.

Interim determinations

On 3 July 2007 the ACCC announced that it had made interim determinations, and published the accompanying statement of reasons, in two access disputes regarding the supply of the LCS and WLR from Telstra to Chime Communications Ltd. These interim determinations had been finalised and communicated to the involved parties on 6 June 2007.

In making the interim determinations, the ACCC maintained consistency with pricing principles and indicative prices for LCS and WLR. The determinations provide that the charges payable by Primus to Telstra for the period up to 31 December 2007—except where the parties agree otherwise—are:

- LCS: 17.92c per call
- WLR: indicative prices of \$23.12 for Home Line Part and \$25.84 for Business Line Part

Content, applications and convergence

Discussion paper on Telstra's local carriage service and wholesale line rental service exemption

On 31 August 2007 the ACCC issued a discussion paper on Telstra's applications for exemption from the standard access obligations for the LCS and WLR.

Telstra lodged its exemption application on 9 July 2007. Telstra sought the exemption in 371 exchange service areas, arguing that there is sufficient competitive infrastructure in these areas for continued regulation of these services to be unnecessary.

As part of assessing the exemption applications, the ACCC is inviting interested parties to respond to issues raised in the discussion paper. The ACCC is seeking comment on issues relevant to the consideration of the exemption applications, including whether 'enduring bottlenecks' continue to exist, market definition, current and potential state of competition in upstream and downstream markets, and the effect of the exemptions on incentives for efficient investment.

The ACCC has invited interested parties to lodge written submissions by 18 October 2007.

Discussion paper on digital radio access regime

On 21 September 2007 the ACCC issued a discussion paper on the access regime that will apply to digital radio.

Digital radio licences are expected to be allocated to joint venture companies which will manage the digital radio transmission equipment in each licence area. Once the digital radio licences that are subject to the access regime have been allocated by the Australian Communications and Media Authority, the licensees must lodge an access undertaking with the ACCC.

The access undertakings specify the manner in which the licensees are to provide access to transmission capacity to individual digital radio broadcasters in each licence area.

The ACCC is seeking submissions from interested parties on the issues raised in the discussion paper. Interested parties are requested to make submissions by 2 November 2007.

Reports

Telecommunications market indicator report 2005–06

The ACCC released its annual report on telecommunications market indicators. The market indicator report shows that:

- In 2005–06 the five largest service providers earned around \$18.1 billion from retail services.
- Internet and mobile services have each contributed to the continued growth in reported retail revenues and have offset reductions in fixed-line revenues—this is despite line rental revenues also declining for the first time in 2005–06.
- Amongst the major five service providers, market shares remained relatively steady in 2005–06, with Telstra earning around 60 per cent and Optus earning around 26 per cent of reported retail revenues.
- Telstra’s retail market share remained strongest in fixed-line services, where in 2005–06 Telstra earned around 75 per cent of reported revenues.

Accounting separation report for the March and June 2007 quarters

In this period, the ACCC issued its 15th and 16th imputation testing and non-price terms and conditions report under the enhanced accounting separation regime for Telstra. The reports presented data for the quarters ending 31 March and 30 June 2007.

The reports presented an imputation analysis that compared Telstra’s retail prices to the prices of three core telecommunications access services. The analysis is designed to indicate whether there is likely to be sufficient margins to allow efficient firms to compete at the retail level using those access services. The analysis is not intended to detect all forms of potentially anti-competitive conduct.

The imputed margins that are reported across the bundle of fixed-voice services increased in the March quarter and decreased in the June quarter.

The reports also compared Telstra’s customer service levels for wholesale and retail fixed-line telephony and ADSL customers. Neither reports indicated any systematic discrimination by Telstra against its wholesale customers.

Energy regulation

Electricity decisions

Transmission guidelines—final

On 28 September 2007, the AER issued a package of six final guidelines and accompanying explanatory statements for electricity transmission businesses. These guidelines are required under chapter 6A of the National Electricity Rules (NER). The six guidelines relate to:

- the post-tax revenue model

- the roll forward model
- an efficiency benefit sharing scheme
- a service target performance incentive scheme
- submission guidelines and
- cost allocation guidelines.

Information guidelines—final

On 28 September 2007 the AER released its final decision on information guidelines for electricity transmission businesses. The information guidelines are also required under chapter 6A of the NER.

The information guideline facilitates the annual collection of information on the performance of Transmission Network Service Providers (TNSPs) within the regulatory control period. This guideline sets out general guidance and protocols that underlie the collection of information and cover a range of information requirements as specified under chapter 6A of the NER.

The final information guidelines are available from the AER website.

Note that the AER is also required to develop and/or maintain a number of other guidelines to complete the package of transmission regulatory guidelines. Other guidelines under development relate to the regulatory test and to transmission pricing. The AER will issue these separately.

Powerlink pass through application

On 14 September 2007 the AER received an application from Powerlink requesting approval to pass through costs associated with the provision of grid support during the 2006–07 financial year.

Process guidelines for contingent projects—final

On 7 September 2007 the AER released its final process guidelines for contingent projects. A contingent project as specified under clause 6A.8.1 of the NER is a project the AER considers is reasonably required but is generally excluded from a TNSPs ex ante capex allowance in a revenue determination due to uncertainty surrounding the project. The project is considered necessary when a specific event, the trigger event that is outlined in the revenue determination, occurs.

The AER is required under clause 6A.8.2(d) of the NER to assess contingent project applications made by TNSPs. The NER also set out TNSPs' requirements in lodging applications and the obligations on the AER in assessing applications.

The NER do not require the AER to publish a guideline on contingent project applications. The purpose of writing the guideline is to assist TNSPs to lodge an application that complies with the NER. The benefit to the AER is to create a streamlined process that will assist it to meet its obligation to make a decision within 30 business days.

SP AusNet transmission determination

On 31 August 2007, the AER released its draft decision on SP AusNet's transmission determination for 1 April 2008 to 31 March 2014. The AER held a pre-determination conference on 11 September for the purposes of explaining its draft decision and taking submissions from interested parties.

The AER invites written submissions from interested parties. Submissions close on 14 November 2007. Issues raised at the pre-determination conference and in submissions will be taken into consideration in reaching the final decision.

ElectraNet transmission determination

On 29 June 2007 the AER published ElectraNet's revenue proposal, proposed negotiating framework and proposed pricing methodology for 1 July 2008 to 30 June 2013 for consultation. The AER will make its draft decision on or before 30 November 2007.

The AER received eight submissions from interested parties commenting on ElectraNet's revenue proposal, proposed pricing methodology and proposed negotiating framework. Issues raised in submissions will be considered in reaching a draft decision.

Service target performance incentive scheme

The AER released its final transmission service target performance incentive scheme and final decision on 31 August 2007 as required under chapter 6A of the NER. The final decision sets out the reasons for the scheme. The scheme provides an economic incentive mechanism to encourage TNSPs to improve or maintain their service performance levels.

The AER will commence a review of the parameters that apply to TransGrid, Transend and EnergyAustralia (which are due to lodge their revenue proposals by 31 May 2008) under the scheme immediately and finalise the scheme to apply to those TNSPs on or before 1 April 2008. This review will be undertaken in accordance with the transmission consultation procedures set out in the NER.

Proposed (draft) transmission pricing methodology guidelines

On 25 July 2007 the AER released its proposed pricing methodology guidelines and an explanatory statement outlining the reasons underpinning the proposed guidelines. The AER engaged Network Advisory Services (NAS) to advise it on the development of the proposed guidelines.

The AER received five submissions from interested parties on the proposed guidelines. The AER will consider issues raised in submissions prior to developing and publishing final guidelines on or before 31 October 2007.

In accordance with the NER, transmission network service providers are required to submit to the AER a proposed pricing methodology relating to prescribed transmission services which are subject to a transmission determination. The AER is required to assess whether the proposed pricing methodology is consistent with the pricing principles contained in the NER and the AER's pricing methodology guidelines.

Network service provider exemptions

In July 2007 the AER released its decision to grant specific exemptions to Brisbane Airport Corporation and Cowell Electric from the requirement to register as network service provider (NSP).

Brisbane Airport Corporation owns and operates a distribution system within Brisbane Airport. Cowell Electric operates distribution systems servicing the Iron Knob, Pimba and Woomera areas in South Australia.

Gas code decisions

Dawson Valley pipeline access arrangement

On 23 August 2007 the ACCC released its final decision under the National Third Party Access Code for Natural Gas Pipeline Systems (the gas code) with respect to the access arrangement proposed for the Dawson Valley Pipeline (DVP) by Anglo Coal (Dawson) Limited, Anglo Coal (Dawson Management) Pty Ltd and Mitsui Moura Investment Pty Ltd, the service providers of the DVP.

The ACCC's final decision, under s. 2.16(b)(i) of the gas code, is to approve the revised access arrangement as lodged on 23 July 2007 by the DVP service providers.

Documents associated with the access arrangement including the ACCC's final decision are available from the AER website: www.aer.gov.au.

Ring-fencing compliance 2006–07

In accordance with s. 4 of the gas code, all gas transmission pipeline service providers are required to submit ring-fencing compliance reports to the ACCC at the conclusion of each financial year.

The ACCC has received compliance reports for 2006–07 from all service providers known to operate those transmission pipelines. This information will be assessed against the minimum ring-fencing obligations in the gas code.

The ACCC expects to release its assessment of the ring-fencing compliance report for 2006–07 in late 2007.

Review of trigger mechanisms

The access arrangement for the Carpentaria Gas pipeline (CGP, also known as the Ballera to Mt Isa pipeline) commenced on 1 October 2002 for an initial period of 20 years. The Queensland Government set this period. While the access arrangement for the Amadeus Basin to Darwin pipeline (ABDP) commenced on 28 March 2003 for an initial period of 10 years.

The gas code provides that, for an access arrangement longer than a five-year period, the ACCC must consider whether any mechanisms would trigger an early review of the access arrangement. The ACCC recently sought submissions from the service providers of the CGP and ABDP and other interested parties as to whether any events had occurred that might trigger a review of either access arrangement.

The service provider of the CGP, the APA Group, was the only party to lodge a submission. The APA Group submitted that no trigger event had occurred to date, but noted that the potential reversal of flow on the South West Queensland pipeline may

lead to the introduction of a new source of gas from south-east Queensland. The ACCC has since received further information regarding the CGP. The trigger event mechanism is still under consideration.

Three submissions were received regarding the ABDP. All submissions stated that no trigger event has occurred to date. It was further submitted that an event might occur in future due to the introduction of gas into the Northern Territory from the Blacktip field in the Bonaparte Basin.

The ACCC has reviewed the submissions and other market information and has concluded that no event has occurred that would trigger a review of the ABDP access arrangement at this time.

National Energy Reform

Retail Policy Working Group

On 23 July 2007 the AER made a submission to the Ministerial Council on Energy's Retail Policy Working Group (RPWG) composite consultation paper developed by Allens Arthur Robinson (AAR). The RPWG is charged with development of the 2007 legislative package to complete the transfer of the non-economic regulation of distribution and retail functions to the AEMC and AER. The composite consultation paper consolidates AAR's recommendations on the national framework for energy non-economic distribution and retail regulation following consultation on five previous working papers.

Markets

16 January 2007 investigation

On 11 September 2007 the AER published its report on its investigation into the events of 16 January 2007, when bushfires caused the main transmission links into Victoria to fail.

The report identified a number of shortcomings in NEMMCO's systems and procedures. The AER proposed to make two rule changes:

- making it clear in clause 4.2.3(f) of the NER that NEMMCO has full responsibility for the reclassification process and decisions with the goal of making the reclassification process more transparent, rigorous and consistent
- recommending the removal of the obligation on NEMMCO to set the dispatch price to value of lost load (VoLL) following automatic load shedding resulting from a contingency event.

The AER recommended the establishment of formal and effective communication processes between all parties involved in load shedding to ensure that appropriate action can be taken. The AER sought an undertaking from NEMMCO obliging it to take all steps necessary to ensure that it does not breach clause 3.9.3 of the NER in the future. The AER also recommended that the Victorian Government remove the chapter 9 derogations relating to generator technical standards.

National electricity market compliance monitoring

The AER released the quarterly compliance report for April to June 2007 detailing its monitoring and enforcement activities for that period on 9 August 2007. The report also provides an overview of the results of investigations conducted by the AER that have been published separately, and the results of the AER's targeted compliance program.

Report into prices above \$5000/MWh in the NEM in June 2007

On 17 July 2007 the AER released a report into 42 events in the New South Wales, Queensland and Snowy regions of the national electricity market (NEM) from 12 to 28 June 2007 where the spot prices exceeded \$5000/MWh.

A number of contributing factors to these high price events were identified:

- high demand across the NEM, including record peak winter demands in New South Wales and Queensland
- constrained electricity supply across the NEM; hydro generating capacity in the Snowy, Tasmania and Victoria continued to be affected by drought
- drought also reduced the availability for cooling coal-fired generators, particularly in Queensland
- flooding in the Hunter Valley reduced some generator capability in June.

The affect of this tight supply—demand balance was further exacerbated by the bidding practice of some generators, particularly Macquarie Generation.

State of the energy market 2007

The AER released its *State of the energy market 2007* report on 26 July 2007. The report provides a comprehensive factual overview of Australia's electricity and gas industries. It focuses on the AER's current and future areas of responsibility, including the entire energy supply chain from electricity generation and gas production through to energy retailing. The report comprises a survey of market activity in electricity and gas supported by essays that develop particular issues in more depth.

Transport and prices oversight

Part IIIA arbitrations

ARTC access undertaking for interstate network

On 8 June 2007 Australian Rail Track Corporation (ARTC) submitted a rail access undertaking for assessment under Part IIIA of the *Trade Practices Act 1974*. The proposed access undertaking is for tracks under its control in New South Wales, Victoria, South Australia and across to Kalgoorlie in Western Australia.

ARTC owns tracks in the interstate network in South Australia and leases tracks in Victoria. In June 2004 ARTC also took out a 60-year lease over the interstate tracks and the Hunter Valley coal network in New South Wales. The proposed access

undertaking covers terms and conditions of access to standard gauge tracks along the interstate network, including the track leased in New South Wales. The undertaking does not cover access to tracks in the Hunter Valley coal network; these will be the subject of a separate access undertaking that ARTC is expected to lodge to the ACCC later in 2007 or early 2008.

The ACCC's process for assessing the undertaking is now well underway. A previously released issues paper—and interested parties submissions to that issues paper, are available on the ACCC website.

Involvement in proceedings in the Copyright Tribunal of Australia

In December 2006, the *Copyright Act 1968* was amended to allow the ACCC to become a party to certain applications and references made to the Copyright Tribunal of Australia.

Reference for 'fitness class' tariffs by the PPCA

The ACCC was made a party to this reference by consent in May 2007. The Phonographic Performance Company of Australia is due to serve and file its evidence on or before 26 November 2007 and a directions hearing is scheduled for 18 December 2007.

Reference for 'digital music services' by APRA|AMCOS

The ACCC was made a party to reference in September 2007. APRA|AMCOS filed its statement of points in September and other parties to the reference (including the ACCC) are due to provide any statement of points on or before 9 November 2007. Directions are scheduled for 7 December 2007.

Petrol monitoring

The ACCC monitors retail prices of petrol, diesel and automotive LPG in the capital cities and around 110 country towns, as well as international crude oil and refined petrol prices. It also closely follows developments in the petroleum industry.

In early June 2007 the ACCC detected a substantial divergence between movements in domestic petrol prices and movements in the international benchmark price for refined petrol (i.e. Singapore Mogas 95 Unleaded). On 6 June 2007 the ACCC issued a media release noting that the Singapore benchmark price significantly declined towards the end of May 2007. While wholesale petrol prices declined, the average retail price at the bowser across the major capital cities continued to increase. The ACCC expressed concern that while the lower international prices were being reflected at the wholesale level, they were not being passed on to consumers.

Inquiry into the price of unleaded petrol

The ACCC subsequently wrote to the Treasurer seeking approval for an inquiry into the price of unleaded petrol pursuant to ss. 95G(3) and 95H(2) of the Act. On 15 June 2007 the Treasurer responded, agreeing to this request. Matters being taken into consideration by the inquiry include: the current structure of the industry; the extent of competition at the refinery, wholesale and retail levels; the determination of prices at each of these levels; and current impediments to efficient petrol pricing and possible methods to address them.

On 29 June 2007 the ACCC released an issues paper for the inquiry. It identified a range of issues on which the ACCC sought information and comment. In response, the ACCC received over 40 public submissions to the inquiry.

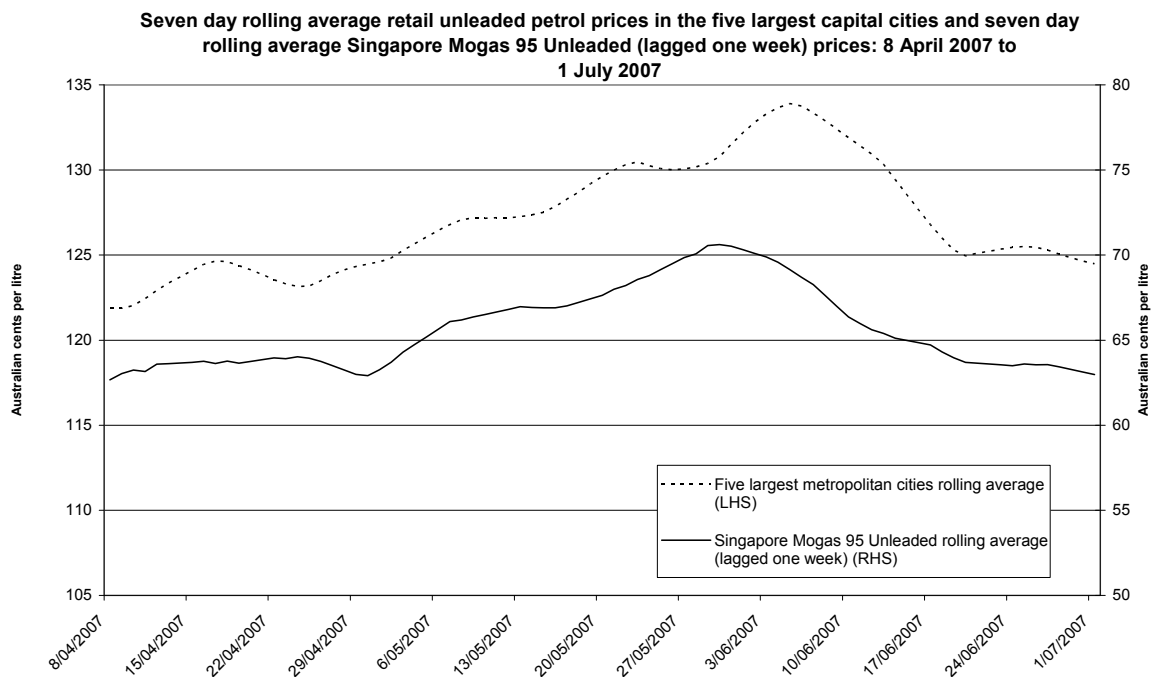
During August and September the ACCC held 18 public hearings in all capital cities and in some regional centres. Over the same period, a large amount of information was also provided by major participants in the petrol industry in response to notices issued by the ACCC.

The ACCC wrote to the Treasurer on 6 September 2007 requesting an extension of time from the original reporting date in order to provide a rigorous and thorough examination of the emerging issues. The ACCC announced additional hearings for the inquiry. These hearings will involve both the recall of some witnesses and calling evidence from new witnesses.

On 21 September 2007 the Treasurer approved the ACCC's request for an extension of the reporting date for the inquiry. The inquiry is to be completed and a report submitted to the Treasurer by 15 December 2007.

The following chart shows movements in retail prices and movements in Singapore Mogas 95 unleaded prices (lagged by one week) in Australian cents per litre over the past three months, and the difference between the two. It is important to remember that a comparison of these two series is indicative only rather than an exact science and that there are other factors that can influence retail petrol prices in the short run.

Retail unleaded petrol prices in the five largest metropolitan cities and Singapore Mogas 95 Unleaded prices—seven day rolling averages—5 July 2007 to 4 October 2007



6. International activities

The ACCC's international activities aim to construct a framework to effectively enforce Australia's competition and consumer laws by promoting best practise regulation and establishing networks and mechanisms to achieve effective enforcement and compliance outcomes on cross-border matters. This is done through:

- managing the ACCC's involvement in international forums, including the coordination and preparation of contributions on issues of relevance to the ACCC
- coordinating information-sharing and enforcement assistance with counterpart agencies
- managing ACCC's technical assistance activities with developing economies
- research, analysis and reporting of international developments
- building and sustaining strong links with key international officials and organisations.

Bilateral meetings

- On 31 July the ACCC chairman, commissioners and senior staff met with the counterpart representatives from the NZCC in Wellington for the annual bilateral joint meeting to discuss ways to increase cooperation and coordination in enforcement activities.
- From 6–13 August the ACCC hosted a visit from the head of the Canadian Competition Bureau, Ms Sheridan Scott. The bilateral talks focused on strengthening cooperation between the agencies.
- On 9 August the ACCC met with officials from the Japan Fair Trade Commission in Tokyo to discuss the proposed cooperation agreement.
- On 28 August the ACCC hosted meetings with the Indonesian Agency for Industrial Research and Development in the Ministry of Industry to discuss general competition law in Australia and the role of the ACCC.
- On 29–30 August the ACCC hosted a visit by the Vietnamese Ministry of Trade Competition Administration Department.
- On 7 September ACCC officials met with the Vice Minister of State Administration for Industry and Commerce, People's Republic of China to exchange information about consumer protection and consumer product safety.
- On 14 September ACCC officials met with representatives of the US Embassy to discuss recent developments and a current review of the product safety regime in the US.

- On 28 September ACCC officials met with representatives of the Chinese Embassy to discuss ways in which there could be greater cooperation.

Cooperation agreements

- On 31 July the ACCC and the NZCC signed a new cooperation agreement on competition and consumer protection cooperation.
- On 8–9 August ACCC officials discussed a proposed cooperation agreement with the Japan Fair Trade Commission as a part of the Japan Australia Free Trade Agreement and in separate bilateral discussions between the enforcement agencies.

Free trade agreements

The ACCC continues to be an active participant in the free trade agreement negotiations (FTA) rounds regarding ASEAN/NZ, Japan, Chile, Malaysia, the Gulf Cooperation Council and China.

Information requests

The ACCC continues to be active in information-sharing with its international counterpart agencies. During this quarter the ACCC received a number of requests from Canada, Chile, China, Egypt, Hong Kong, Ireland, Japan, Mexico, New Zealand, Pakistan, Peru, Singapore, South Africa, UK, USA and Vietnam.

As part of investigations in this period the ACCC has made requests to the following counterparts: Canada, China, the EU, Ireland, Spain, UK and the USA.

International conferences

- From 10 to 14 September the ACCC participated in an OECD Competition Committee training program held in Malaysia.
- The ACCC was invited to present at the Thailand Department of Internal Trade's conference on exporting to Australia with the focus on Australia's competition policy and competition and consumer protection laws. Separate meetings were also held with the department and business representatives.
- Executive General Manager, Mark Pearson, presented at a Philips Fox competition law seminar in Auckland on 17 September.
- Executive General Manager, Mark Pearson, presented at Fordham competition law conference in New York on 26–28 September.

Staff exchanges

On 26 July the ACCC commenced a three-month staff placement with the Canadian Independent Electricity System Operator. This exchange will be followed by a three-month placement of a representative of the IESO in the AER Markets Branch.

7. Reviews, reports and inquiries

Reviews

Productivity Commission

In the reporting quarter the ACCC responded to inquiries from the Productivity Commission about the ACCC's submission to the PC's inquiry into Australia's consumer policy framework.

Legislative amendments

The *Trade Practices Legislation Amendment Act (No. 1) 2007* introduced, among other things, various important changes to ss. 46 (abuse of market power) and 51AC (unconscionable conduct) which was passed by Parliament during the quarter. The Act commenced on the day after it received Royal Assent. It was given Royal Assent on 24 September 2007.

The major changes include:

- the introduction of a new predatory pricing offence (subsection 46(1AA)), known as the Birdsville amendment
- the introduction of 'relevant cost' for a 'sustained period' as a factor that the court may consider in relation to a possible contravention of 46(1), which relates to a corporation with 'substantial market power'
- amendments designed to stop a corporation from misusing its market power in any market (not just the market in which it has market power)
- amendments that clarify what can be taken into account when determining whether a corporation has a substantial degree of market power
- the introduction of a unilateral variation consideration in determining whether unconscionable conduct has occurred and increasing the threshold below which s. 51AC may apply.

8. Consultative committee liaison activities

On 17 August 2007 the ACCC hosted a meeting of the ACCC's Consumer Consultative Committee where such topics as high pressure sales and debt collection practices were discussed.

During the September quarter the ACCC completed its review of the membership arrangements for the Franchising Consultative Panel. The panel will reconvene in early 2008. The Franchising Consultative Panel now consists of:

- Mr Richard Evans, Australian Retailers Association
- Prof. Lorelle Frazer, Griffith University
- Mr Robert Gardini, Home Wilkinson Lowry
- Mr Jason Gehrke, WordWerx
- Mr Tim Hantke, Franchising Solutions
- Mr Paul Mimnaw, Hydrodog Master Franchisee
- Ms Monica Longmire, Franchisee Just Cuts
- Mr John O'Brien, Franchising Council of Australia
- Mr Sue Scanlan, MTAA
- Mr Derek Sutherland, Dibbs Abbott Stillman

Forthcoming consultative committee meetings:

- Small Business Advisory Group: 16 November 2007.
- Health Sector Consultative Committee: 23 November 2007
- Infrastructure Consultative Committee: 6 December 2007.
- Consumer Consultative Committee: 7 December 2007

Appendix

Speeches

The chairman, commissioners and staff gave 47 addresses and presentations in the September quarter. Significant presentations (in chronological order) included:

ACCC Chairman

3 July—National Small Business Summit: *Competition and fair trading—A fair go for small business*

Commissioner Martin

14 August—Energise Enterprise—Victorian Government Small business Festival: *Small Business and the Trade Practices Act*

19 June—Victorian Farmers Federation Annual General Meeting: *Collective Bargaining and Horticulture Code of Conduct current issues*

Commissioner Willett

24 August—Australian Bankers Association Banking Regulation Forum—*The ACCC's role in promoting competition and protecting Australian consumers*

AER Chairman

29 August—CEDA Luncheon: *Australia's Energy Sector: The state of the market*

News releases

During the September 2007 quarter, the ACCC issued 95 news releases and the AER issued five news releases.

Publications

Publications released during the September 2007 quarter

Corporate plan and priorities 2007–08 (booklet)

Trade Practices Act

Summary of the Trade Practices Act 1974: and additional responsibilities of the ACCC under other legislation (book)

ACCC reports

Arbitration report: Sydney water access dispute (report)

Industry codes of conduct

Can growers collectively bargain? (fact sheet)

For consumers

Dealing with debt: your rights and responsibilities (brochure)
Dealing with debt: your rights and responsibilities—Arabic (brochure)
Dealing with debt: your rights and responsibilities—Chinese (brochure)
Dealing with debt: your rights and responsibilities—Greek (brochure)
Dealing with debt: your rights and responsibilities—Italian (brochure)
Dealing with debt: your rights and responsibilities—Turkish (brochure)
Dealing with debt: your rights and responsibilities—Vietnamese (brochure)
Indigenous art and craft: Thinking of buying Indigenous art? (brochure)
Know how to complain: stand up for your consumer rights—Amharic (brochure)
Know how to complain: stand up for your consumer rights—Somali (brochure)
Product safety bulletin September 2007: Banned DEG in toothpaste
Unconscionable conduct in the Indigenous art and craft sector (fact sheet)
Your consumer rights: refunds (brochure)
Your consumer rights: rent bidding (brochure)
Your consumer rights: warranties (brochure)
Your consumer rights: warranties for services (brochure)

For small business

A simple guide to the Franchising Code of Conduct, (small business fact sheet)
Bait advertising (small business fact sheet)
Comparative advertising (small business fact sheet)
Resale price maintenance and power tool sales—the Tooltechnic decision (fact sheet)
Resale price maintenance and the skincare and cosmetics industry (small business fact sheet)
The franchisee manual (book)

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