



Australian
Competition &
Consumer
Commission

ACCCOUNT

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

1 October to 31 December 2007

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Contents

Overview	v
1 Enforcement and compliance	6
Responding to businesses and consumers.....	6
Enforcing for businesses and consumers	7
Communicating with businesses and consumers	12
2. Mergers	18
3. Adjudication.....	26
Authorisations	26
Notifications—exclusive dealing.....	28
Collective bargaining notifications.....	30
4. Regulatory affairs.....	31
Communications	31
Energy.....	34
Markets	39
Transport and prices oversight.....	40
5. International activities	44
Bilateral meetings.....	44
Free trade agreements.....	45
Information requests	45
Information exchange meetings and study visits.....	45
Capacity building activities	46
6. Reviews, reports and inquiries	47
Legislative amendments	47
7. Consultative committee liaison activities	48
Appendix.....	49
Speeches	49
News releases.....	49
Publications.....	49
Contacts	51

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 December 2007 quarter the ACCC commenced **10 new enforcement litigation matters**. Six matters were Part V proceedings that related to: product safety (bunk beds and bean bags); catalogue advertising (Harris Scarfe and Ray's Outdoors); cars (Audi) and food (Arnott's). The other three consisted of a breach of s. 87B (Stores Online); an application for orders preventing contact with witnesses (Rana) and an intervention (Australasian College of Dermatologists). The ACCC was also the respondent to an application for a s. 155 notice by Korean Airlines.

The most significant litigation outcome during the quarter was Visy, supported by other cartel outcomes in the abalone industry and Tasmanian orthodontists. Three resale price maintenance matters were concluded during the quarter: Navman (penalty \$1.25m); Netti Atom (penalty \$121 250) and TEAC (penalty \$121 250). Significant consumer protection judgments in the ACCC's favour were obtained in the Channel Seven and Telstra Next G cases. This case together with Telstra Next G and Netti Atom marked the effective use of the new fast-track system in the Melbourne registry of the Federal Court by the ACCC.

Criminal proceedings completed were John Patrick Neville (with penalties imposed for breach of s. 155) and Ballina Petrol. A finding against the ACCC in the Kylloe (Polar Krush) case helped to interpret the operation of the Franchising Code of Conduct.

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.

On 14 December 2007 the ACCC submitted its inquiry report into the price of unleaded petrol and the factors that influence price change to government. This was the first such inquiry directed to the ACCC under Part VIIA of the Act. Following receipt of the report, the Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen outlined three measures as part of the government's preliminary response to the report. They were:

- writing to the ACCC giving it formal monitoring powers over petrol prices
- requiring the ACCC to report to government every year on its monitoring
- writing to all of the state and territory leaders seeking their input on possible candidates for the role of Petrol Commissioner.

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.

1 Enforcement and compliance

Maintaining and enhancing compliance with the Trade Practices Act is a key objective of the ACCC. We do this by promoting competition and informing markets, encouraging fair trading and protecting consumers. The enforcement function of the ACCC, including litigation, is well supported by its liaison, analysis, outreach and compliance arms.

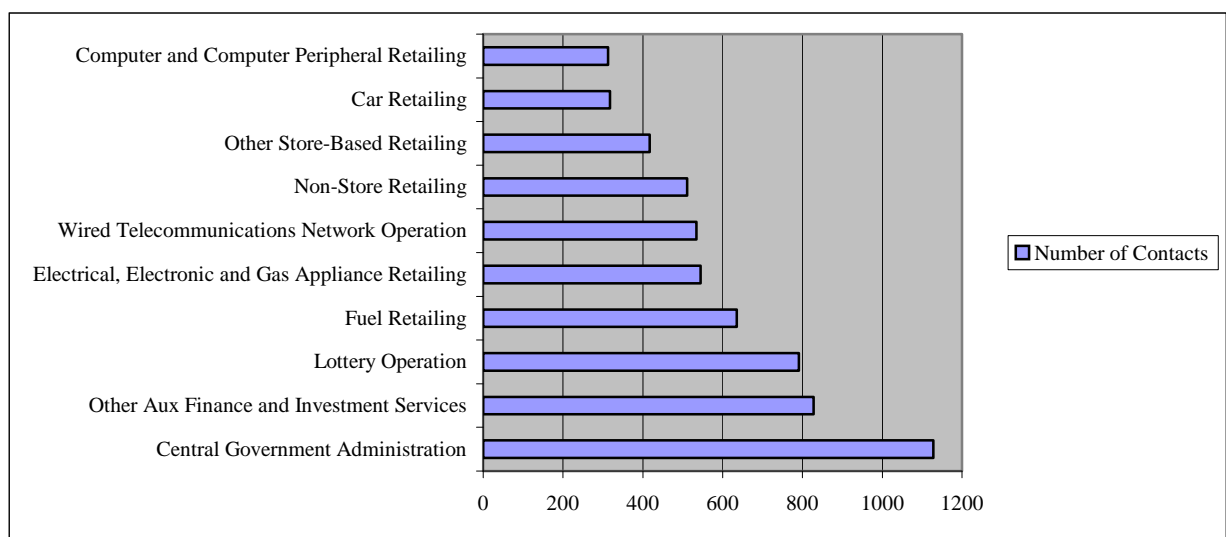
Responding to businesses and consumers

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

During the December 2007 quarter the ACCC Infocentre received 22 194 complaints and inquiries from businesses and consumers (email: 4438 and telephone: 17 756).

13 611 of these complaints and inquiries were entered into the ACCC's database. The number of contacts is around 5500 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-five per cent of the complaints and inquiries entered into the ACCC's database related to consumer protection matters, which is per six cent higher than the quarterly average in 2006 (69 per cent), Competition matters accounted for four per cent of contacts (compared with seven per cent quarterly average in 2006) and other matters accounted for twenty-one per cent (compared with 24 per cent quarterly average in 2006).

Enforcing for businesses and consumers

In undertaking its enforcement activity the ACCC remains committed to conducting its work in a timely, professional and determined manner. We manage our enforcement processes to achieve effective outcomes and use of ACCC resources.

Litigation commenced

Ten proceedings were commenced in the Federal Court during the December 2007 quarter.

Arnott's Biscuits Ltd

commenced 15 November 2007 | **file no.** NSD2252/2007

proceedings under Part V for alleged misleading or deceptive conduct in relation to the labelling and packaging of biscuit products

Audi Australia Pty Ltd

commenced 13 November 2007 | **file no.** VID1018/2007

proceedings under Part V for alleged false, misleading or deceptive conduct in relation to advertisements for its Q7 SUV and Q7 3.6 SE motor vehicles

Harbin Pty Ltd

commenced 17 December 2007 | **file no.** SAD179/2007

proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations in relation to print advertisements of barbeques

Harris Scarfe Australia Pty Ltd

commenced 13 October 2007 | **file no.** SAD155/2007

proceedings under Part V for alleged misleading and deceptive conduct in relation to a Harris Scarfe TV commercial and sale catalogue for a 20–60 per cent off storewide sale held in October 2006

Hercules Iron Pty Ltd

commenced 20 December 2007 | **file no.** VID1186/2007

proceedings under Part V for alleged breach of mandatory product safety standard (bunk beds)

Kmart Australia Ltd

commenced 6 December 2007 | **file no.** VID1145/2007

proceedings under Part V for alleged breach of mandatory product safety standard (Elmo bean bags)

Kiran Rubina Shahid v Australasian College Of Dermatologists

commenced 19 November 2007 | **file no.** WAD113/2007

intervention by ACCC to the Full Federal Court appeal; intervention limited to the finding by Justice Nicholson that the conduct of the college was not 'in trade or commerce'

Korean Air Lines Co Ltd

commenced 3 December 2007 | **file no.** NSD2371/2007

Federal Court application by Korean Air Lines Co Ltd to review ACCC decision to issue notice and declarations under s. 163A of Trade Practices Act.

Paul Rana & Ors

commenced 29 June 2007 |

notice of motion by ACCC seeking to restrain Paul Rana, Christopher Rana and Michael Rana from communicating with certain witnesses who gave evidence in the ACCC's civil cancer misrepresentation case against the Ranas and several NuEra companies

Storesonline International Inc.

commenced 5 October 2007 | **file no.** NSD1991/2007

proceedings under Part VI for alleged breach of s. 87B undertakings

Litigation concluded

Fourteen cases were finalised during the December 2007 quarter.

Australian Abalone Pty Ltd & Ors

commenced 9 November 2005 | **concluded** 26 November 2007 | **file no.** VID1418/2005: proceedings under Part IV for alleged price fixing and primary boycotts in relation to the abalone industry

Justice Weinberg | Federal Court Melbourne

outcome | injunctions, penalties (\$927 500) costs (\$161 000)

Leahy Petroleum & Ors

commenced 7 November 2003 | **concluded** 27 November 2007 | **file no.** VID1012/2003: proceedings under Part IV for alleged price fixing of petrol in the Geelong area. On 27 May 2007 the judge dismissed the ACCC's application in this matter; costs reserved

Justice Gray | Federal Court Melbourne

outcome | ACCC ordered to pay costs for several respondents

Navman Australia Pty Ltd & Ors

commenced 6 December 2006 | **concluded** 21 December 2007 | **file no.** NSD2395/2006: proceedings under Part IV for alleged resale price maintenance in the supply of Navman marine, in-car and personal navigation products

Justice Jacobson | Federal Court Sydney

outcome | declarations and ordered injunctions and penalties (\$1.36m)

Netti Atom Pty Ltd & Anor

commenced 2 August 2007 | **concluded** 26 October 2007 | **file no.** VID681/2007: proceedings under Part IV for alleged resale price maintenance of bicycles imported by Netti Atom

Justice Finklestein | Federal Court Melbourne

outcome | declarations and ordered injunctions; penalties (\$121 250), publications orders, implementation of a trade practices compliance program; and costs (\$10 000)

Ranu Pty Ltd & Ors

commenced 14 September 2007 | **concluded** 5 December 2007 | **file no.** TAD29/2007: proceedings under Part IV for alleged price fixing and exclusionary provisions by orthodontic businesses in Northern Tasmania

Justice Heerey | Federal Court Hobart

outcome | declarations and ordered injunctions, an education and training program for three years; and costs (\$15 000)

Teac Australia Pty Ltd & Anor

commenced 29 June 2007 | **concluded** 28 November 2007 | **file no.** VID563/2007: proceedings under Part IV for allegedly attempting resale price maintenance in the sale of consumer electronic goods

Justice Kenny | Federal Court Melbourne

outcome | declarations and ordered injunctions, implementation of trade practices compliance program, TEAC to send a letter to all TEAC retail customers advising them that they are free to set the price for the products they purchase from TEAC and resell, penalties (\$200 000) and costs (\$10 000)

Visy Holdings Pty Ltd & Ors

commenced 21 December 2005 | **concluded** 2 November 2007 | **file no.** VID1650/2005: proceedings under Part IV for allegedly entering into and giving effect to anti-competitive arrangements, including engaging in price fixing and market sharing with its principal competitor Amcor Ltd in the supply, throughout Australia, of corrugated fibreboard containers

Justice Heerey | Federal Court Hobart

outcome | declarations and ordered injunctions, penalties (totalling \$38m), implementation of a trade practices compliance program and costs

Audi Australia Pty Ltd

commenced 13 November 2007 | **concluded** 7 December 2007 | **file no.** VID1018/2007
proceedings under Part V for alleged false, misleading or deceptive conduct in relation to advertisements for its Q7 SUV and Q7 3.6 SE motor vehicles.

Justice Gordon | **Federal Court Melbourne**

outcome | declarations and ordered a publication order and costs (\$25 000)

Seven Network Ltd & Ors

commenced 27 September 2005 | **concluded** 12 October 2007 | **file no.** NSD1807/2005
proceedings under Part V for alleged misleading and deceptive conduct in items aired on the Channel Seven television program *today tonight* in late 2003 and early 2004 known as the 'Wildly Wealthy Women Millionaire Mentoring Program'

Justice Bennett | **Federal Court Brisbane**

outcome | declarations and ordered injunctions, a publication order (against 8th respondent only) and costs. The application against the first respondent was dismissed. (Note: current appeal: Channel Seven Brisbane & Ors v ACCC NSD2129/2007)

Telstra Corporation Ltd

commenced 17 September 2007 | **concluded** 19 December 2007 | **file no.** VID855/2007
proceedings under Part V for alleged misleading and deceptive conduct in representations concerning Telstra's Next G mobile network

Justice Gordon | **Federal Court Melbourne**

outcome | declarations and ordered injunctions and costs (Note: current appeal: Telstra Corporation Limited v ACCC)

Dojoo Pty Ltd

commenced 12 September 2007 | **concluded** 19 December 2007 | **file no.** QUD293/2007
criminal proceedings in relation to alleged false representations about the quality and composition of petrol sold at 12 BP branded service stations in Northern NSW

Justice Logan | **Federal Court Brisbane**

outcome | penalties (\$400 000) and costs

John Patrick Neville

commenced 9 May 2007 | **concluded** 16 October 2007 | **file no.** NSD606/2007
criminal proceedings for allegedly providing false or misleading evidence during course of s. 155(1)(c) examinations

Justice Lindgren | **Federal Court Sydney**

outcome | penalties (\$2160) and defendant to perform 200 hours of community service

Kyloe Pty Ltd & Ors

commenced 20 July 2006 | **concluded** 18 October 2007 | **file no.** VID837/2006
proceedings under Part IVB for alleged breach of the Franchising Code of Conduct (FCOC).

Justice Tracey | **Federal Court Melbourne**

outcome | Justice Tracey of the Federal Court dismissed the ACCC's application against Kyloe Pty Ltd & Ors; Justice Tracey found that the distributor relationships were not covered by the FCOC and therefore the Polar Krush sub-distributors were not entitled to the protections offered under the code

Santo Pennisi

commenced 12 September 2007 | **concluded** 19 December 2007 | **file no.** QUD290/2007
criminal proceedings in relation to alleged false representations about the quality and composition of petrol sold at 12 BP-branded service stations in northern NSW

Justice Logan | **Federal Court Brisbane**

outcome | penalties (\$70 000)

Current Full Federal Court applications

Three matters are currently under appeal to the Full Federal Court.

Baxter Healthcare Pty Ltd and others

commenced 1 November 2002

misuse of market power and exclusive dealing in relation to the supply of health products to state government purchasing authorities

status 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 on 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.

Channel Seven Brisbane Pty Ltd & Ors v ACCC

commenced 27 September 2005

misleading or deceptive conduct in relation to the promotion of millionaire property investment mentoring program 'Wildly Wealthy Women'

status on 12 October 2007 Justice Bennett of the Federal Court, Brisbane made declarations and ordered injunctions, a publication order and costs. On 26 October 2007 Channel Seven Brisbane Pty Ltd & others appealed to the Full Federal Court. The grounds of the appeal are that the court erred in holding that the appellants made the 'Wildly Wealthy Women' representations, and that the exemption from liability for contraventions of the Trade Practices Act contained in s. 65A of the Act did not apply to the conduct of the appellants.

Telstra Corporation Ltd v ACCC

commenced 21 September 2007

misleading and deceptive conduct in representations concerning Telstra's Next G mobile network

status on 19 December 2007, Justice Gordon of the Federal Court, Melbourne made declarations and ordered injunctions and costs. On 24 December 2007 Telstra Corporation Ltd appealed Justice Gordon's whole judgment. The ACCC is waiting for this matter to be listed before the Full Federal Court.

Undertakings accepted

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

AFWM Pty Ltd trading as Cosmetics Plus

undertaking | Cosmetics Plus and its director, Mr Larry Norden, have provided court enforceable undertakings to the ACCC that it:

- will not supply sunglasses and fashion spectacles that do not fully comply with the relevant mandatory consumer product safety and information standards
- will implement a trade practices compliance program.

Designer Direct (SA) Pty Ltd

undertaking | Designer Direct (SA) Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- offer refunds to consumers who bought a 'Mahogany Summer' or 'Mahogany Winter' brand quilt represented to contain 50 per cent down
- refrain in future from making any down content claims for its 'Mahogany Summer' or 'Mahogany Winter' or other own-brand down products unless the claims can be substantiated by independent testing on its finished down products where the manufacturing process has been completed
- implement a trade practices compliance program.

iSelect Health Pty Ltd

undertaking | iSelect Health Pty Ltd has provided court enforceable undertakings that for a period of three years it will:

- not make the representations of concern in specified circumstances where they may be misleading
- inform certain customers who arranged to purchase a health insurance policy of the range of insurance policies which it compared for them
- maintain a trade practices compliance program.

Louise Dalgish Smith

undertaking | Cinnamon Bear has provided court enforceable undertakings to the ACCC that it:

- would not in future supply or offer for supply any children's nightwear that does not fully comply with the prescribed consumer safety standard
- will ensure that the correct warning labels as per the standard are printed and attached to any non-compliant baby sleeping bags in the possession of Cinnamon Bear
- will ensure that it will make the appropriate fire hazard labels available to any consumers who wish to have their baby sleeping bags relabelled
- publish a corrective notice
- establish a trade practices compliance program.

Mainstyle Holdings Pty Ltd

undertaking | Mainstyle Holdings Pty Ltd also known as Platinum Menswear has given court enforceable undertakings that it will:

- not use country of origin claims in future advertising and marketing campaigns unless those products were in fact sourced from the country claimed in the advertising
- publish corrective advertising (both in print media and 'in-store')
- offer a refund to all Platinum Menswear customers who bought a Studio Italia suit and were misled by the place of origin representation and had been provided with a Studio Italia suit that was made in China instead of one made in Australia as advertised
- implement trade practices law compliance program.

Myer Pty Ltd

undertaking | Myer Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- ensure for a period of three years that goods supplied by Myer that are subject to a prescribed safety and/or information standard under the Trade Practices Act comply with the relevant standard
- implement a trade practices compliance program.

Overstockoutlet Pty Ltd

undertaking | Overstock Outlet Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- not supply bicycles that do not comply with any prescribed consumer product safety standards in force at the time
- not promote a bicycle as being suitable for freestyle or trick riding when it is labelled as being unsuitable for stunt riding
- withdraw the bicycles from sale.

Tasman Sheepskin Tannery Pty Ltd

undertaking | Tasman Sheepskin Tannery Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- refrain from representing that its medical sheepskins comply with the standard in circumstances where they do not
- write to each of its customers informing them of the undertaking and offering to replace or refund any of its medical sheepskins that do not display the labelling required under the standard and/or contain grass seed matter
- implement a trade practices compliance program.

Communicating with businesses and consumers

The ACCC's commitment to strong liaison, outreach and advocacy programs continues as evidenced in the wide range of activities undertaken. Industry associations play a key role in helping to disseminate information and draw industry issues to our attention. Our expanded product safety role has seen us active in enforcement, monitoring and standard setting.

Liaison education activities

The ACCC works with other regulators, government departments, businesses and consumer associations in monitoring emerging trade practices issues and educating relevant stakeholders.

During the December 2007 quarter, the ACCC attended 75 meetings with government and industry representatives, small business operators and consumer groups nationally; participated in seven franchising expos and field days; and conducted 20 presentations to small business operators, industry associations and consumer groups at such forums as the National Franchise and Small Business Convention, the Richmond 'Farming small areas' field days and the Curtin University Business School. The ACCC was also involved in the following areas:

Consumers

- created a range of initiatives to help consumers with disabilities to access ACCC services, including the creation of large print, audio and Braille versions of the ACCC publication *'Know how to complain: stand up for your consumer rights'* and provided access to people with hearing or speech impediments through the National Relay Service (NRS)
- considered and addressed a range of consumer issues relating to food, such as addressing an AFGC Masterclass on the issue of food labelling, participating in meetings of Standards Australia's Committee on Organic and Biodynamic products and meeting with the TGA to discuss 'super juice' advertising claims
- met with the Telecommunications Industry Ombudsman and the Australian Securities and Investments Commission (ASIC) to discuss debt collection practices in the telecommunications industry
- participated in the 'Fair go for tourists' initiative hosted by the Commonwealth Department of Industry Tourism and Resources to address consumer protection issues faced by inbound tourists
- provided input to the Communications Alliance on the Telecommunications Consumer Protection Code
- 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, which received more than 70 000 visits during this quarter and the SCAMwatch Radar email alert subscription service; SCAMwatch will also be the web portal for the Australasian Consumer Fraud Taskforce's annual scam awareness campaign in February 2008

- continued its role as a signatory to the National Indigenous Consumer Strategy (NICS) through working to meet the aims of the NICS action plan *Taking Action Gaining Trust*
- participated in the Consumer Standing Committee of Standards Australia, which addresses consumer issues in standards development

Businesses

- reviewed 27 trade practices compliance programs, considered and accepted 35 compliance program review reports and finalised 16 matters
- continued to liaise with small business and franchising sector representatives, including the Council of Small Business of Australia, in developing new compliance and educational strategies on a range of trade practices issues of concern to the sector, such as unconscionable conduct
- presented to the Australian Toy Association and the Infant Nursery Product Association Australia (INPAA) on the role and responsibilities of the ACCC in an effort to enhance compliance in the sector
- liaised with a number of industry associations to develop information and educational initiatives to assist their members on trade practices issues of specific concern
- continued to educate stakeholders and promote compliance with the two latest mandatory codes of conduct under the Trade Practices Act, conducting a mailout to 5565 service stations to provide information on the Oilcode and making 15 presentations on the Horticulture Code of Conduct to industry participants

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 December 2007 quarter, the ACCC participated in the development and/or review of a number of voluntary industry codes of conduct, including:

- **Information Technology Contract and Recruitment Association**—the aim of this code is to be an effective part of a meaningful strategy for upholding ethical work practices in the IT contract and recruitment industry.
- **The Australian Retail Credit Association**—the aims of this code are to:
 - establish a benchmark for best practice in credit management
 - promote responsible lending
 - comply with current regulatory requirements
 - protect authorised users of shared data
 - protect the privacy rights and general legal rights of individuals
 - provide an avenue for individuals to address grievances

- **Indigenous Australian Art Commercial Code of Conduct**—the ACCC provides advice on this code to the National Association for the Visual Arts Ltd on the effective drafting and implementation of a code of conduct for the Australian Indigenous commercial art industry, which aims to:
 - promote practices that support Indigenous artists, their culture and communities
 - promote practices that ensure a fair economic return to Indigenous artists
 - encourage ethical practice throughout the Indigenous art industry
 - provide a set of standards that will set a benchmark for the industry
 - contribute to the discussion of ethical trade strategies

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—Franchising) Regulations 1998

The purpose of this code is to regulate the conduct between franchisors and franchisees. It came into effect on 1 July 1998.

During the December 2007 quarter, the ACCC:

- continued to work with the Office of Small Business to finalise the review of the Franchising Code of Conduct
 - developed a strategy for educating industry participants about the amendments to the disclosure provisions of the code, which come into effect on 1 March 2008
 - considered 179 inquiries (79 of which were complaints) about various aspects of the code, including early termination of a franchise agreement, franchisor harassment and intimidation of franchisees, failure to meet disclosure obligations and misleading representations made by franchisors to franchisees
- 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 December 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 13 inquiries (five of which were complaints) in relation to the Oilcode, on matters including the early termination of a fuel re-selling agreement, expiry and renegotiation of a fuel re-selling agreement and disclosure obligations under the Oilcode

- distributed an article to industry associations for publication in their newsletters, journals and magazines and attended two industry association meetings
- continued to maintain the Oilcode Information Network free subscription services, which enables groups including government agencies, industry associations, service station distributors and other interested parties to receive regular updates on Oilcode developments
- 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 December 2007 quarter, the ACCC:

- liaised with the Department of Agriculture, Fisheries and Forestry, various central markets and peak grower associations and participated in the inaugural Horticulture Code Committee meeting
- maintained the Horticulture Code Information Network, providing subscribers with regular updates on code compliance information and developments and maintaining the Horticulture Code pages on the ACCC website
- responded to 30 inquiries (eight of which were complaints) about the Horticulture Code, on topics such as trading without a compliant Horticulture produce agreement, unconscionable conduct and failure to agree on a price before or immediately upon delivery of produce
- distributed more than 550 hard copies of the Horticulture Code publications to various industry stakeholders

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.

In the December 2007 quarter:

- ACCC investigations resulted in the national recall of a range of products including caravan jacks that failed to meet the labelling requirements of the mandatory product safety standard, bunk beds that did not meet mandatory design and performance requirements, children's toys that failed to comply with the mandatory lead in toys banning order and bean bags that did not meet the labelling requirements of the mandatory standard.
- Reviews of mandatory standards for cosmetics, flotation toys and swimming aids, trolley jacks and vehicle support stands and vehicle jacks continued.

- The ACCC conducted a supplier education campaign targeting major retailers, suppliers and relevant industry associations to remind them of their obligation to comply with the mandatory product safety standard for basketball rings and backboards.
- The ACCC contributed to major Ministerial Council of Consumer Affairs/Standing Committee of Officials of Consumer Affairs projects including reviewing models for a harmonised Australian product safety system and harmonised product safety regulation.
- Liaison between the ACCC and cosmetic industry representatives in relation to the current review of the cosmetic labelling regulations continued.
- Responses were sent to 230 email inquiries dealing with product safety and product recalls.

Mandatory product and information standards

Portable cots

A regulation impact statement (RIS) proposing a new mandatory standard for portable cots was developed and published for public consultation. The RIS was revised based on comments received and supported by the Office of Best Practice Regulation. A final submission to the new minister recommending a new mandatory standard for portable cots is planned for early February 2008.

Hot water bottles

Following public consultation on a draft regulation impact statement (RIS) and endorsement of the RIS by the Office of Best Practice Regulation, drafting instructions were provided for the preparation of regulations specifying safety performance requirements and informative warning labelling for rubber and PVC hot water bottles. A final version of the regulations is under preparation with a view to introduce them in early 2008, with effect from 1 June 2008.

Lead in toys

A draft RIS proposing a new mandatory standard prescribing maximum levels of lead in toys was developed and published for public and stakeholder comment. Comments were due by 20 December 2007. Comments received will be analysed and assessed in the first quarter of 2008.

Reduced ignition propensity cigarettes

An RIS was drafted and subjected to preliminary comment by key stakeholders and the Office of Best Practice Regulation. A revised draft is planned for publication for broad stakeholder consultation in January 2008. The proposal is to require cigarettes to self-extinguish when tested in accordance with the relevant Australian Standard with the objective of reducing smoking-related domestic and bush fires.

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 187 new recalls were entered on the database

during the December 2007 quarter. Of these, the ACCC monitored and assessed 46 consumer product recalls, the remaining recalls represented food products (17), therapeutic goods (86) and motor vehicles (38).

2. Mergers

A primary aim of the ACCC is to encourage competitive market structures and informed behaviour. This objective is supported through the assessment of mergers, acquisitions, asset sales and certain collaborative arrangements under ss. 50 and 45 of the Trade Practices Act.

A total of 107 reviews (including confidential and public merger reviews) were conducted by the ACCC between 1 October and 31 December 2007. Of these, 94 were not opposed, two were publicly opposed outright and two were resolved during their review with court enforceable undertakings. The ACCC expressed concerns following two confidential reviews.

Additionally, two variations to original undertakings were accepted and five reviews were conducted where no decision was made, because the ACCC was either advised that the proposal was withdrawn/would no longer be proceeding, or a view could not be formed on a confidential basis. Further, 52 of the 107 reviews were conducted publicly.

Merger reviews undertaken in the December 2007 quarter

	Confidential	Public	Total
Total reviews undertaken 1 October to 31 December 2007	55	52	107
This total can be broken down into the following categories:			
Not opposed	51	43	94
Finished—no decision (including withdrawn) ¹	2	3	5
Opposed outright	0	2	2
Confidential review—ACCC concerns expressed	2	0	2
Resolved through undertakings ²	0	2	2
Variation to undertaking accepted	0	2	2

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 October to 31 December 2007. This does not include two variations to undertakings or five 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	31	31%
4 weeks or less	71	71%
6 weeks or less	88	88%

Time taken to undertake merger reviews	Number of reviews	Percentage of mergers
8 weeks or less	90	90%
More than 8 weeks*	10	10%

Statements of issues

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

1. A&R Whitcoulls Group Holdings Pty Limited (Angus & Robertson)—proposed acquisition of Borders Australia Pty Ltd, 28 November 2007.
2. P&O Automotive & General Stevedoring Pty Ltd—proposed joint venture with Tasports, 13 December 2007.

Public competition assessments

To improve the handling of matters and provide an enhanced level of transparency in its decision making, the ACCC provides a public competition assessment outlining how it reached its final conclusion on matters that are of particular public interest or important precedence value.

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

1. Woolworths Limited—proposed acquisition of Kmart and Officeworks, 17 October 2007
2. Video Ezy Australasia Pty Ltd—proposed acquisition of Blockbuster Australia Pty Ltd, 18 October 2007
3. Wesfarmers Limited—proposed acquisition of Coles Group Limited, 5 November 2007
4. Rio Tinto Limited—proposed acquisition of Alcan Inc., 8 November 2007
5. Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd, 13 November 2007
6. Proposed merger of BUPA Australia Pty Ltd and MBF Australia Ltd, 17 November 2007
7. Macquarie Media Group—proposed acquisition of Southern Cross Broadcasting (Australia) Ltd and nine radio stations from Fairfax Media Ltd, 27 November 2007
8. Google Inc.—proposed acquisition of DoubleClick Inc., 6 December 2007

Section 87B undertakings

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

1. Macquarie Media Group—proposed acquisition of certain regional radio assets owned by Fairfax Media Limited, 17 October 2007

2. Macquarie Media Group—proposed acquisition of Southern Cross Broadcasting (Australia) Ltd, 17 October 2007

Major merger 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:

- A&R Whitcoulls Group Holdings Pty Limited (Angus & Robertson)—proposed acquisition of Borders Australia Pty Ltd, 28 November 2007
- P&O Automotive & General Stevedoring Pty Ltd - proposed joint venture with Tasports, 13 December 2007

As well as monitoring:

- Fairfax Media Limited—compliance with the s. 87B undertaking
- BHP Billiton Ltd—possible acquisition of Rio Tinto Ltd
- Illyria Pty Limited and Consolidated Press Holdings Limited—proposed acquisition of Consolidated Media Holdings Limited

Summaries of major matters

A&R Whitcoulls Group Holdings Pty Limited (Angus & Robertson)—proposed acquisition of Borders Australia Pty Ltd

summary | on 8 October 2007 the ACCC commenced its informal review of A&R Whitcoulls Group Holdings Pty Limited (Angus & Robertson)—proposed acquisition of Borders Australia Pty Ltd. The ACCC released a statement of issues on 28 November 2007, outlining a number of issues likely to raise concerns and seeking further submissions from market participants. The closing date for submissions from interested parties was 5 December 2007. The ACCC proposes to announce its findings on 6 February 2008.

P&O Automotive & General Stevedoring Pty Ltd—proposed joint venture with Tasports
summary | on 30 October 2007 the ACCC commenced an informal review of a proposed joint venture between Tasports and P&O Automotive and General Stevedoring. The ACCC released a statement of issues on 13 December 2007 outlining preliminary competition issues with the proposed joint venture and calling for further submissions from market participants. The closing date for submissions on the SOI was 18 January 2008, though the parties have requested a two-week extension to make their own submission. Consequently the ACCC's timeline has been suspended, and the proposed date for an announcement of the ACCC's findings is now 20 February 2008.

Fairfax Media Limited—s. 87B undertaking

summary | in April 2007 the ACCC did not oppose the proposed acquisition of Rural Press Limited by Fairfax. It did so following the ACCC's acceptance of an undertaking by Fairfax that was designed to address concerns about competition for advertising in the community newspaper sector in the Newcastle and Hunter Valley area.

The undertaking required Fairfax to sell *The Newcastle and Lake Macquarie Post* and *The Hunter Post* (the Post), free weekly newspapers circulating in the Hunter Valley and the Newcastle region. Fairfax retained *The Newcastle and Lake Macquarie Star* and *The Lower Hunter Star* (the Star), free weekly newspapers with a similar circulation area to the Post.

Immediately before the sale of the Post in November 2007, a number of changes were made to its format and content, which the ACCC considered were inconsistent with the terms of Fairfax's undertaking, and which may have affected the viability of the Post. Following concerns raised by the ACCC about Fairfax's compliance with the undertaking, Fairfax agreed to implement certain arrangements designed to ensure the competitive viability of the Post. The arrangements included:

- Reappointment of the independent manager of the Post until at least April 2008.
- Fairfax will offer to the buyer of the Post a non-exclusive licence to use the 'Domain' (real estate) brand in the Post for at least 12 months and during this time Fairfax will not use the brand in the Star.
- Fairfax will offer to assign to the buyer of the Post the 'TE' and 'That's Entertainment' brand and Fairfax will cease using this brand in the Star.
- For the first four editions of the Star in 2008, Fairfax will not publish entertainment or real estate advertising (unless contracted to do so before 24 December 2007), and until April 2008 entertainment and real estate advertising will only appear in the Star in the same format, layout and volume as it appeared before the sale of the Post.
- Restrictions on Fairfax approaching real estate and entertainment advertisers who had advertised in the Post immediately before its sale, until April 2008; and the publication of a notice in the Star to advise readers of these arrangements.

The ACCC will continue to make inquiries into this matter and monitor the situation, to ensure that the Post is able to operate as a viable, competitive going concern.

BHP Billiton Ltd—possible acquisition of Rio Tinto Ltd

summary | on 12 November 2007 the ACCC commenced monitoring the possible acquisition after market speculation led to an announcement by BHPB. Rio Tinto has so far refused to enter into negotiations with respect to the possible acquisition. The UK Takeovers Panel has determined that BHPB has until 6 February 2008 to make a formal offer or it will be prevented from doing so for a period of 6 months.

Major matters completed during the 1 October to 31 December 2007 quarter

Major matters completed during the December 2007 quarter included:

- Rio Tinto Ltd—proposed acquisition of Alcan Inc.
- Woolworths Limited—proposed acquisition of Kmart and Officeworks
- Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd
- Proposed merger of BUPA Australia Pty Ltd and MBF Australia Ltd
- Macquarie Media Group—proposed acquisition of Southern Cross Broadcasting (Australia) Ltd and nine radio stations from Fairfax Media Ltd
- Google Inc.—proposed acquisition of DoubleClick Inc.

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 was released on 8 November 2007.

Woolworths Limited—proposed acquisition of Officeworks and Kmart

result | acquisition opposed

summary | on 17 October 2007 the ACCC announced its decision to oppose the proposed acquisition.

The ACCC conducted extensive market inquiries with participants into this matter including releasing a statement of issues on 5 September 2007. The ACCC formed the view that the proposed Kmart acquisition would be likely to substantially lessen competition in several markets, in contravention of s. 50. The ACCC concluded that Kmart and Big W were each other's closest competitors in most respects. They were both national discount department store chains positioned closely in terms of price, store format, range and service. Kmart and Big W therefore imposed the strongest constraint on each other in a range of markets.

Market inquiries indicated that other retailers, including Target and speciality retailers were positioned differently from Kmart and Big W and were unlikely to prevent the merged entity from increasing prices.

The ACCC identified a number of product markets where a substantial lessening of competition was likely. These were the markets for the retail sale of basic footwear; men's basic apparel; women's basic apparel; children's basic apparel; toys; books and DVDs.

The ACCC also concluded that barriers to entry on a large national scale were significant. It was considered especially difficult to obtain access to a large network of suitable store sites.

On 7 November 2007 Cole's shareholders voted in favour of a scheme of arrangement resulting in Wesfarmers Limited acquiring the entire Coles Group.

In relation to Officeworks, the ACCC concluded that the acquisition of Officeworks alone would not result in a substantial lessening of competition (Woolworths does not presently operate a similar business, so there is limited competitive overlap). However, the ACCC was asked only to consider the acquisition of both Officeworks and Kmart. Given its opposition to the acquisition of Kmart, the ACCC would therefore also oppose the acquisition of Officeworks and Kmart. On 17 October 2007 the ACCC issued a public competition assessment on its decision.

Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd

result | acquisition opposed

summary | on 31 October 2007 the ACCC decided to oppose the proposed acquisition.

Pact Group and Brickwood were both suppliers of high density polyethylene (HDPE) and PET bottles to the food and beverage industry. The most significant supplier of PET bottles in Australia was Visy. If Pact Group were to acquire Brickwood, the merged entity and Visy would control a very substantial share of the manufacture and supply of PET bottles to beverage suppliers in Australia.

PET bottles are predominantly supplied to very large beverage suppliers by Visy and Brickwood. Market inquiries indicated that smaller PET bottle suppliers were unlikely to have the manufacturing capability and credibility to meet the requirements of large beverage suppliers. As a result, the proposed acquisition would result in the removal of the most significant and direct competitive constraint on Visy in the supply of PET bottles to large beverage suppliers.

In its assessment, the ACCC had regard to the commercial and family relationships between Pact Group and Visy, and their potential impact on the effectiveness of competition between Visy and Pact Group in the supply of PET bottles post acquisition.

The ACCC published its statement of issues on 12 September 2007, in which it identified three aspects of the proposed acquisition as potentially leading to competition concerns:

- coordinated effects—that Visy and Pact Group were not independent competitors, by virtue of commercial and family relationships

- unilateral effects—that the merged entity and Visy would control a high share of the supply of PET bottles in Australia without threat of entry or expansion
- portfolio effects—that the merged entity and Visy would be able to leverage its wide range of products to foreclose competition in one or more product markets.

After a comprehensive review, the ACCC formed the view that the proposed acquisition was likely to substantially lessen competition in the markets for the manufacture and supply of PET bottles in Queensland, New South Wales and Victoria. On 13 November 2007 the ACCC issued a public competition assessment on its decision.

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

result | not opposed subject to s. 87B undertaking

summary | on 17 October 2007 the ACCC decided not to oppose Macquarie Media Group's (MMG) proposed acquisition of Southern Cross Broadcasting (Australia) Ltd (Southern Cross) after MMG provided court enforceable undertakings to the ACCC.

MMG owns and operates 87 commercial radio licences in 45 licence areas across regional locations in Queensland, New South Wales, Victoria, Tasmania, South Australia and Western Australia. Southern Cross controls commercial television broadcasting licences in a number of regional licence areas.

The ACCC considered that, following the offer of the s. 87B undertaking by MMG, 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 Tasmania. In Burnie, Devonport and Launceston, the ACCC considered that there was a combined market for advertising on radio and television. In these regions, market inquiries revealed a significant proportion of advertisers considered radio and television substitutable. MMG already owned both commercial radio stations in Burnie and Devonport, and one commercial radio station in Launceston. The ACCC considered the acquisition of Southern Cross television by MMG would be likely to substantially lessen competition in the market for the supply of television and radio advertising in each of these licence areas.

The undertaking accepted by the ACCC required MMG to divest radio stations in Launceston, Burnie, Devonport, Queenstown and Scottsdale. Although the ACCC did not consider there were competition concerns specifically in Queenstown and Scottsdale, MMG's radio stations in these towns were included as part of the divestiture package to ensure there was a suite of assets providing the divestiture business with a sufficient scale and scope such that a prospective purchaser could establish a viable and independent competitor to the merged entity. On 27 November 2007 the ACCC issued a public competition assessment in relation to this matter.

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

result | not opposed subject to s. 87B undertaking

summary | on 17 October 2007 the ACCC decided not to oppose Macquarie Media Group's (MMG) proposed acquisition of nine regional radio stations owned by Fairfax Media Limited (Fairfax) after MMG provided court enforceable undertakings to the ACCC.

MMG owns and operates 87 commercial radio licences in 45 licence areas across regional locations in Queensland, New South Wales, Victoria, Tasmania, South Australia and Western Australia. Fairfax has substantial media assets including commercial radio licences in regional locations in Queensland and South Australia.

The ACCC considered that, following the offer of the s. 87B undertaking by MMG, 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 Bundaberg, Port Lincoln and Spencer Gulf.

In Bundaberg, the proposed acquisition would have the result that MMG would be the sole owner of all three commercial broadcasting radio stations. Market inquiries indicated that other

forms of advertising did not act as a strong constraint on radio advertising in this region. The ACCC considered that the acquisition by MMG of the Fairfax radio station in Bundaberg would be likely to substantially lessen competition in the market for the supply of radio advertising in this licence area. The ACCC also had concerns that the acquisition would create potential for MMG to reduce the quality of local news and information broadcast on the radio stations in Bundaberg due to the removal of its closest competitors.

In Port Lincoln and Spencer Gulf, MMG would own both television and radio stations (following its acquisition of Southern Cross television stations in these areas). In these regions, the ACCC considered that there was a combined market for advertising on radio and television. Market inquiries revealed a significant proportion of advertisers considered radio and television substitutable. The ACCC considered that the acquisition by MMG of Fairfax radio stations in Port Lincoln and Spencer Gulf would likely substantially lessen competition in the market for the supply of television and radio advertising these licence areas. The ACCC also had concerns that the acquisitions would create the potential for MMG to reduce the quality of local news and information broadcast to these regions.

The undertaking accepted by the ACCC required MMG to divest radio stations in Bundaberg, Port Lincoln and Spencer Gulf.

On 10 December 2007 MMG announced that the acquisition of the nine regional radio stations owned by Fairfax would not proceed. Accordingly, the undertakings accepted in relation to this proposed acquisition did not come into effect. On 27 November 2007 the ACCC issued a public competition assessment in relation to this matter.

BUPA Australia Pty Ltd—proposed merger with MBF Australia Limited

result | not opposed

summary | on 7 November 2007, the ACCC decided not to oppose the proposed acquisition.

The ACCC formed the view that the proposed merger was unlikely to substantially lessen competition in the following relevant markets:

- state-based markets for the supply of private health insurance to consumers
- local, regional or state/territory-based markets for the acquisition of services from private hospitals by private health insurance providers.

Factors informing this conclusion included:

- existing private health insurance providers in South Australia compete strongly with BUPA and are likely to continue to constrain BUPA post merger
- insufficient evidence to establish that the negotiation dynamic between BUPA and private hospitals would be significantly altered as a result of the proposed merger, particularly in South Australia where BUPA would have the most significant market share.

On 17 November 2007 the ACCC issued a public competition assessment on its decision.

Google Inc.—proposed acquisition of DoubleClick Inc.

result | not opposed

summary | on 30 October 2007 the ACCC decided not to oppose the proposed acquisition of DoubleClick Inc. (DoubleClick) by Google Inc. (Google). Google's principal activities are the sale of online advertising space on its search engine website www.google.com and other websites published by Google such as YouTube; and products that enable the display of advertisements on Google's websites and Google's network of third party websites (via affiliation agreements with the third party website publishers). Google also supplies software that assists website publishers and advertisers understand how internet users interact with Google's search engine.

DoubleClick's principal activities are the provision of advertising serving (ad serving) and reporting services to advertisers and publishers. Ad serving mainly comprises the hardware, software and personnel that enables the display of advertisements on websites as well as provide reports to advertisers regarding how their ad campaigns are performing across multiple websites. Ad servers are used by both advertisers and website publishers. DoubleClick also

supplies software called DART for Search, which assists advertisers to manage advertising campaigns across multiple search engines.

The ACCC commenced an informal review of the proposed transaction on 22 August 2007. The ACCC conducted extensive market inquiries with website publishers, advertisers, media sales agencies, and competing suppliers of ad serving and search advertising software.

The Google-DoubleClick proposed merger was investigated by international regulatory agencies including the United States Federal Trade Commission (FTC) and the European Commission (EC).

The ACCC formed the view that the proposed transaction was unlikely to substantially lessen competition in an Australian market on the basis that there was minimal overlap between the merger parties in the supply of ad serving products, as well as a number of other suppliers of ad serving products. The ACCC also concluded that the proposed merger would not increase the merged entity's incentive or ability to exercise market power in the supply of search engine marketing software. On 6 December 2007 the ACCC issued a public competition assessment on its decision.

3. Adjudication

A key objective of the Trade Practices Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.

Authorisations

During the December 2007 quarter, the ACCC commenced 10 new authorisation matters (excluding gas and electricity applications).

The total number of authorisation matters being considered by the ACCC on 31 December 2007 (excluding those being considered on gas and electricity matters) was 11 matters. The discussion below focuses on authorisation matters in which milestones have occurred during the period.

Applications lodged

Pacific National (NSW) Pty Limited & Ors

background | on 16 November 2007 the ACCC received an application for authorisation from Pacific National, Queensland Rail and Port Waratah Coal Services (the applicants) for a proposed vessel queue management system (VQMS) to operate in the Hunter Valley in 2008. The proposed VQMS seeks to address the imbalance between the demand for coal haulage and loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain. The proposed VQMS is intended to replace the medium term capacity balancing system (CBS) currently operating at the Port of Newcastle (under current authorisations A91033–5), which expired on 31 December 2007.

At the time of lodging the application, the applicants requested urgent interim authorisation of the proposed VQMS so they could commence the necessary steps to implement the VQMS on 1 January 2008. On 13 December 2007 the ACCC decided not to grant interim authorisation for the proposed VQMS at that time.

Donaldson Coal Pty Limited

background | Donaldson Coal Pty Limited is seeking authorisation for a system to address capacity imbalances between the demand for coal loading services at the Port of Newcastle and the available capacity of the Hunter Valley coal chain in 2008.

Donaldson requested urgent interim authorisation due to the pending expiration of the authorisation of the current CBS, which was granted on 20 December 2007. The ACCC is seeking comments from interested parties on the substantive application for authorisation.

Newcastle Port Corporation

background | Newcastle Port Corporation is seeking authorisation for a proposed system to address the imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain in 2008. Newcastle Port Corporation has indicated that the proposed system is, in all material respects, consistent with the CBS which expired on 31 December 2007.

NPC requested urgent interim authorisation due to the pending expiration of the authorisation of the current CBS. On 20 December 2007 the ACCC decided to grant interim authorisation to NPC's application. The ACCC is seeking comments from interested parties on the substantive application for authorisation.

North West Shelf Gas Pty Ltd

background | North West Shelf Gas Pty Ltd has lodged an application for the revocation of authorisation A18492 as the joint venturers have formed the view there is no need to maintain the authorisation. Authorisation A18492 was granted by the Trade Practices Commission on 15 February 1977 for an unlimited period, authorising the joint venturers 'to discuss and agree together the common terms and conditions (including price) upon which natural gas produced pursuant to their programme(s) ... will be offered for sale to potential customers to discuss and agree a method(s) for marketing such gas.' The ACCC is seeking comments from interested parties in relation to the application.

Tabcorp Manager Pty Ltd

background | Tabcorp Manager Pty Ltd is seeking authorisation for the 2007 SuperTAB Pooling Agreement between Tabcorp and TOTE Tasmania. The 2007 Pooling Agreement governs TOTE Tasmania's participation in the SuperTAB Pool operated by Tabcorp. Tabcorp sought interim authorisation to enable Tabcorp and TOTE Tasmania to give effect to the 2007 Pooling Agreement. On 21 November 2007 the ACCC denied Tabcorp's request for interim authorisation. The ACCC is progressing with the draft determination.

Rural Doctors Association of Australia Limited

background | The Rural Doctors Association of Australia Limited and its constituent state associations seek authorisation to collectively negotiate with state/territory health departments, the terms of contracts for visiting medical officers in rural areas, particularly with respect to payments for services provided to public patients and for on-call services. The ACCC is seeking comments from interested parties about the proposed arrangements.

ACT Health Food Co-Operative Ltd

background | the ACT Health Food Co-operative Ltd (the Co-operative) seeks authorisation to allow current and future members of the Co-operative to collectively negotiate the terms and conditions (including price) at which they will obtain health food products from various suppliers and distributors. The ACCC has consulted interested parties and is progressing with the draft determination.

North East Valley Wine Group Pty Ltd

background | North East Valley Wine Group seeks authorisation for itself and on behalf of growers identified in the applications, for the appointment by winegrape growers of a common agent (NEV) to provide (by itself and through Winegrapes Australia as a subagent):

- commercial consulting services in relation to grape supply contracts, including pricing advice
- sales agency services in respect of grape sales
- farm supply procurement services.

The ACCC is seeking comments from interested parties about the proposed arrangements.

Refrigerant Reclaim Australia Ltd

background | Application A91079 seeks the revocation of A91008 and its substitution by a new authorisation to allow RRA to increase the industry agreed levy from \$1.50 to \$2.00 per kilogram of ozone depleting and synthetic greenhouse gas refrigerants imported as bulk or contained in equipment and sold in Australia. The ACCC is seeking comments from interested parties in relation to the application.

Shopping Centre Council of Australia Limited

background | SCCA seeks a minor variation to authorisations A91049 and A91050. The authorisation relates to the SCCA's 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. The SCCA seeks to extend the period of authorisation such that authorisation will expire on 31 December 2012 rather than 29 August 2012. The ACCC is seeking comments from interested parties in relation to the application.

Matters finalised

The Distilled Spirits Industry Council of Australia

background | the Distilled Spirits Industry Council of Australia Inc. and others sought authorisation in relation to 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).

result | on 31 October 2007 the ACCC issued a determination granting conditional authorisation to the Retailer Alert Scheme until 30 June 2011.

The Victorian Farmers Federation—Sunraysia Branch

background | VFF Sunraysia sought authorisation for its members, present and future, to collectively negotiate terms and conditions (including price) of dried vine fruit with present and future dried vine fruit processors. VFF Sunraysia, under the proposed conduct, would also have the ability to negotiate on behalf of its members.

result | on 12 December 2007 the ACCC issued a determination granting authorisation to the arrangements for five years.

Qantas Airways Limited

background | Qantas 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.

result | on 19 December 2007 the ACCC issued a determination granting authorisation to the arrangements until 31 December 2017.

Australian Property Institute

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

result | on 14 November 2007 the ACCC issued a determination varying the authorisation.

Draft determinations issued

Information Technology Contract and Recruitment Association

background | the Information Technology Contract and Recruitment Association has applied for authorisation of its code of conduct.

result | on 19 December 2007 the ACCC issued its draft determination, proposing to grant authorisation to clauses 4.4, 5.8, 7.1, 7.2, schedule A and schedule B of ITCRA's code of conduct.

Dalrymple Bay Coal Terminal Pty Limited

background | Dalrymple Bay Coal Terminal Pty Ltd has 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.

result | on 20 December 2007 the ACCC issued a draft determination proposing to grant authorisation for a transition period of 12 months, to enable a long-term solution to the vessel queue to be developed and implemented.

Notifications—exclusive dealing

During the quarter ending 31 December 2007 the ACCC received in the order of 130 new notifications across 88 new matters for exclusive dealing. Notifications of interest considered during the quarter include:

Football Federation Victoria

background | the Football Federation Victoria Inc proposes to require clubs which participate in FFV competitions to use only Licensed Apparel during FFV competitions.

result | 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. The ACCC sought submissions from interested parties. In October 2007 following further amendments to the arrangements, the ACCC advised it did not intend to take any further action in relation to this matter at this time.

GeelongPort Pty Ltd

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

result | 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. GeelongPort has undertaken not to engage in the notified conduct until the matter is finalised.

Wentworth Courier

background | 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, in respect of eastern suburbs real estate display advertising, with the *Wentworth Courier* in consideration for reduced advertising rates. Concerns have been expressed to the ACCC in relation to the notification.

result | on 10 December 2007 the ACCC issued a draft notice proposing to revoke the notification. The ACCC has sought submissions from interested parties on the draft notice and the matter is under consideration.

Harness Racing Victoria

background | 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 in respect of a particular month, in relation to any layoffs or bet-backs placed by these bookmakers with the Victorian TAB (Tabcorp) on harness races within Australia. HRV will also require the nominated bookmakers to hold an interstate or international wagering or bookmaking licence.

result | on 6 September 2007 the ACCC issued a draft notice proposing to revoke the notification and on 24 October 2007 HRV withdrew the notification, replacing it with a revised notification (N93221) discussed below.

Harness Racing Victoria

background | Harness Racing Victoria lodged a notification on 19 November 2007 for similar conduct to that of the notification withdrawn by HRV in October 2007. HRV proposes to enter into a Race Field Approval Agreement with six bookmakers who wish to use race fields for Victorian harness racing and accept bets on Victorian harness racing.

Under the notification HRV is proposing to offer a rebate to the bookmakers, on the condition that the bookmakers:

- place bet-backs with Victorian TAB or
- place bet-backs with any other wagering operator licensed in Victoria for Victorian harness racing or
- have made a relevant economic contribution, approved by HRV to the Victorian harness racing industry.

result | HRV is also proposing to require the bookmakers to hold an interstate or international wagering or bookmaking licence to accept wagers on harness racing in Victoria.

On 19 December 2007 the ACCC decided not to take any further action in relation to this matter at this time.

Racing and Wagering Western Australia

background | on 16 August 2007 Racing and Wagering Western Australia lodged an exclusive dealing notification regarding its proposal 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 2007 the ACCC issued a draft notice proposing to revoke the notification. A pre-decision conference requested by RWWA was held on 11 October 2007.

result | on 20 December 2007 following further consultation with interested parties on the issues raised at the pre-decision conference, the ACCC issued a final notice revoking the notification.

Collective bargaining notifications

During the quarter ending 31 December 2007 the ACCC received 2 new notifications for collective bargaining. Notifications considered during the quarter include

Australian Medical Association (Vic) Pty Ltd

background | the AMA Victoria proposed to collectively negotiate, on behalf of 39 doctors, the terms and conditions (including price) of their VMO contracts with Latrobe Regional Hospital.

result | a draft objection notice was issued on 12 October 2007 and on 19 December 2007, the ACCC issued a final objection notice.

Australian Medical Association (Vic) Pty Ltd

background | the AMA Victoria proposed to collectively negotiate, on behalf of 26 doctors, the terms and conditions (including price) of their VMO contracts with Werribee Mercy Hospital.

result | a draft objection notice was issued on 8 November 2007 and on 26 November 2007, the AMA Victoria withdrew the notification.

The Wangaratta Anaesthetic Group

background | a group of anaesthetists, who are members of the Wangaratta Anaesthetic Group, propose to collectively negotiate with BUPA Australia Health (trading as HBA) in relation to anaesthesia fees. Specifically, the group propose to collectively negotiate a value above the scheduled fee for the provision of no-gap billing to members of HBA.

result | on 17 December 2007 the ACCC issued an assessment not objecting to the notification. Protection afforded by the notification came into effect on 19 December 2007 and will cease three years from the date of lodgement (21 November 2010).

4. Regulatory affairs

The ACCC and AER have roles in promoting competition in network industries: communications, energy, post, water and transport. The ACCC is also involved in monitoring prices of selected goods and services. The ACCC and the AER ensure that participants in the regulated industries comply with access obligations, and revenue pricing arrangements that apply to such facilities as gas transmission pipelines, electricity transmission networks, telecommunications networks and airports.

Communications

In the December 2007 quarter the ACCC:

- issued for public consultation two papers related to next generation telecommunication networks. The first is a draft decision on a 15-year special access undertaking (SAU) submitted by the G9 for its proposed FTTN upgrade; the second is a position paper on the possible variation of the definition of the declared Unconditioned Local Loop Service (ULLS)
- re-declared the line sharing service (LSS), commenced a public inquiry to review the digital data access service (DDAS) and integrated services digital network (ISDN) declarations in regional areas, and issued pricing principles for the ULLS
- commenced public consultation on three exemption applications made by Telstra for the supply of declared services in certain geographic areas; and published two further exemption applications from Telstra
- received and published an access undertaking from Telstra for the supply of the ULLS which proposes a \$30 monthly charge for services in Band 2
- released a pricing principle for the mobile terminating access service (MTAS) and made a final decision to reject the Optus MTAS undertaking proposing a price of 12 cents per minute
- welcomed the Federal Court's decision to uphold the ACCC's decision to accept a special access undertaking from Foxtel for its digital Pay TV set-top unit service
- received final orders from the Federal Court affirming that it was not entitled to issue the Part A competition notice which alleged Telstra had acted anti-competitively by raising the wholesale price of its Home Access line rental service
- announced and commenced arbitration in five new access disputes, and published final and interim determinations in a range of disputes
- continued to progress the infrastructure audit with the receipt of the first round of 'customer access network' data from Telstra and the release of a second RKR for 22 specified carriers to report locations of their core/CAN network infrastructure.

Declarations

Line Sharing Service (LSS) declaration review

On 29 October 2007 the ACCC announced its final decision to re-declare the LSS on a national basis until 31 July 2009. At the same time, the ACCC also released pricing principles and indicative prices for the LSS. These are based on analysis undertaken by the ACCC in three recent LSS arbitration final determinations and will apply between 1 January 2008 and 31 July 2009.

Digital data access service and Integrated services digital network declaration review

On 16 November 2007 the ACCC released a discussion paper to review the digital DDAS and ISDN declarations. These declarations are due to expire on the 30 June 2008. The ACCC invited interested parties to make written submissions on the review of the declaration by 21 December 2007. The ACCC expects to issue a draft report setting out its preliminary findings early in 2008.

ULLS pricing principles and variation

In November 2007 the ACCC issued final pricing principles for the ULLS which apply until 31 June 2009.

In December 2007 the ACCC released a position paper as part of its inquiry into the possible variation of the definition of the declared ULLS. It notes the need for the ULLS declaration to be updated to keep in step with ongoing network modernisation, including the evolution of traditional switched telecommunications networks to internet protocol. The position paper seeks the views of interested parties on a proposed variation to the ULLS service description. Submissions are due by 22 February 2008.

Telstra's exemption applications

In the December quarter of 2007 the ACCC commenced public consultation in relation to the following exemption applications lodged by Telstra:

- supply of the domestic transmission capacity service (DTCS) on 20 specified regional capital routes
- supply of PSTN OTA in 404 exchange service areas (ESAs) and
- supply of LCS and WLR in 16 ESAs in metropolitan Melbourne. These follow earlier applications for LCS and WLR exemptions in 371 ESAs (lodged in July 2007) which the ACCC has also commenced public consultation on.

The ACCC also published two exemption applications lodged by Telstra for:

- supply of tail-end and inter-exchange DTCS in certain CBD, metropolitan centres and regional centres
- supply of regulated fixed line services to Optus within Optus' currently deployed HFC cable network footprint in Sydney, Melbourne and Brisbane.

Access pricing—disputes and undertakings

Access disputes

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.

In the December 2007 quarter, the ACCC announced five new access disputes:

- Telstra and Hutchison 3G Australia Pty Ltd relating to the price paid by Telstra to Hutchison for the MTAS
- Agile Pty Ltd and Telstra relating to the monthly and connection prices paid by Agile to Telstra for the ULLS
- Soul Pattinson Telecommunications Pty Ltd and Telstra relating to the monthly price paid for the ULLS
- Telstra and Optus Mobile Pty Limited for the supply of MTAS and
- Telstra and Optus Networks Pty Limited for the supply of MTAS.

Final determinations

In the December 2007 quarter the ACCC made and published a final determination for a dispute between Optus and Telstra in relation to the supply of the ULLS in multi-dwelling units such as those in an apartment block or shopping centre. The final determination specifies that where there is an existing pair of wires between Telstra's exchange and the customer's premise, Telstra must, if requested, re-use the existing wires to provide a ULLS to Optus.

The ACCC also made final determinations in relation to a further ULLS dispute, six LSS disputes and four MTAS disputes.

Interim determinations

In the December 2007 quarter the ACCC published four interim determinations in relation to the supply of the PSTN OTA services from Telstra to Optus Networks Pty Ltd and Optus Mobile Pty Ltd, and made an interim determination in an LSS dispute between Telstra and Chime. The ACCC will now progress a final determination in these matters.

G9/FANOC FTTN special access undertaking

In December 2007 the ACCC issued a draft decision to reject a SAU lodged by FANOC on the basis that it was not satisfied that the proposed terms and conditions were reasonable. That said, in this draft decision the ACCC indicated that it was generally comfortable with elements of the SAU. Submissions from interested parties on the draft decision are due by 4 February 2008.

MTAS pricing principles and undertaking

In the December 2007 quarter the ACCC issued the *MTAS pricing principles determination* relevant for 1 July 2007 to 31 December 2008. It specified an indicative price for the MTAS of 9 cents per minute for this period.

The ACCC also announced its final decision to reject the access undertakings submitted by Optus Mobile Pty Limited and Optus Network Pty Limited (together, Optus) which proposed a price of 12 cpm for the MTAS. The ACCC rejected the Optus 2007 undertaking because it was not satisfied that the price terms and conditions were reasonable.

Reports

Infrastructure audit

In the December 2007 quarter the ACCC received the first round of information from a record-keeping-rule (RKR) which requires Telstra to report on services provided over its customer access network, including ULLS and LSS take-up.

In the second phase of the infrastructure audit project, the ACCC also issued a Record-Keeping Rule (RKR) requiring 22 specified carriers to report on the locations of their core network and Customer Access Network infrastructure.

A number of carriers have indicated that they expect no burden in complying with the rule, as its required reporting format matches their internal record-keeping procedures. The ACCC has also indicated to a further nine carriers that their proposals for alternative reporting formats can be accommodated through the flexibility in reporting provided by the Infrastructure RKR.

Energy

Responsibility for regulation of electricity and gas transmission businesses is currently shared between the AER and the ACCC.

Electricity decisions

Revocation and substitution of EnergyAustralia's 2004-2009 revenue cap

On 21 December 2007 the AER decided to revoke and substitute EnergyAustralia's 2004–05 to 2008–09 revenue cap. EnergyAustralia requested the AER re-open its revenue cap in March 2007 on the grounds there was a material error in setting its revenue cap. Revocation and substitution of the revenue cap is permitted in these circumstances under clauses 6.2.4(d)(1) and (2) of the National Electricity Code (the code).

Following consultation with affected parties the AER determined that there was an error in establishing EA's cost of debt and had the material error not occurred the ACCC would have reached a different conclusion in setting the revenue cap. In the circumstances the AER considered it appropriate to revoke and substitute the revenue cap, in accordance with the provisions of the code.

Public forums in preparation for the ACT and NSW electricity distribution determinations

In December 2007 the AER held public forums in Sydney and Canberra to outline the process for the upcoming regulatory determinations for electricity distribution network service providers (DNSPs) in the ACT and NSW.

AER Chairman Steve Edwell and senior management hosted the forums which were attended by representatives from the AER, jurisdictional regulators, distribution businesses and stakeholder groups. These forums allowed the AER to explain its role, the legislative framework and key regulatory issues to be addressed in the upcoming distribution determinations. They also offered an opportunity for interested parties to provide initial feedback and input as the AER prepares for the 2009–2014 distribution determinations.

The ACT and NSW DNSPs are required to submit their regulatory proposals for the 2009–14 regulatory control period by 2 June 2008. The AER's regulatory determinations for these businesses will take effect from 1 July 2009.

Consultation papers on guidelines for ACT and NSW electricity distribution determinations for 2009–14

The AER will be required to make distribution determinations in May 2009 for the electricity distribution network service providers in the ACT and NSW. The AER is developing a number of transitional guidelines in preparation for these distribution determinations.

The AER has released three papers for consultation:

- a paper on 22 November 2007 outlining preliminary positions with respect to the application of:
 - a post-tax revenue model
 - roll-forward models
 - an efficiency benefit sharing scheme
 - a service target performance incentive scheme
 - a guideline on control mechanisms for direct control services
- a paper on 22 November 2007 discussing issues associated with the application of:
 - a demand management incentive scheme
 - control mechanisms for alternative control services
 - a guideline on materiality for pass through events
- a paper on 21 December 2007 outlining preliminary positions with respect to the application of:
 - a demand management incentive scheme

- control mechanisms for alternative control services
- a guideline on materiality for pass through events

Development of electricity distribution guidelines

On 30 November 2007 the AER released two issues papers related to its new functions in electricity distribution regulation as part of a preliminary consultation process for the development of guidelines under the National Electricity Rules (NER).

The NER does not mandate this initial process. The AER is undertaking preliminary consultation in the lead-up to commencing its new role in the national regulation of electricity distribution in 2008. The intention is to provide stakeholders with an early opportunity to provide input and comments before the AER commencing the formal consultation process required under the NER.

The first issues paper outlines the development of:

- a post-tax revenue model
- a roll-forward model
- cost allocation guidelines
- an efficiency benefit sharing scheme.

The second issues paper deals specifically with the development of a Service Target Performance Incentive Scheme.

VENCorp transmission determination

On 30 November 2007 the AER issued its draft decision on VENCORP's electricity transmission determination for the regulatory period 1 July 2008 to 30 June 2014.

The draft decision provides for over \$200 million of new investment in network growth over the next six years, and allows revenues for VENCORP that increase from \$373 million in 2008–09 to \$517 million in 2013–14.

The AER scheduled a pre-determination conference on this draft decision in Melbourne on Wednesday, 12 December 2007. The purpose of pre-determination conference was to explain the draft decision and receiving oral submissions from interested parties.

The AER also invited written submissions from interested parties. Submissions will close on 19 February 2008. Issues raised at the pre-determination conference and in submissions will be taken into consideration by the AER in making its final decision.

ElectraNet transmission determination

On 28 November 2007 the AER released its draft decision on the ElectraNet transmission determination for the period 1 July 2008 to 30 June 2013. The draft decision approves maximum allowed revenues for ElectraNet that increase from \$209 million in 2008–09 to \$271 million in 2012–13. The revenue allowance is based

on an opening asset value of around \$1.2 billion and a weighted average cost of capital of 9.66 per cent.

The draft decision provides for \$606 million worth of investment in ElectraNet's electricity transmission network over the next five years. A total operating and maintenance allowance of over \$291 million is provided for the regulatory control period. The transmission determination also provides for a service target performance incentive scheme to apply to ElectraNet, as well as approving ElectraNet's negotiating framework and negotiated transmission service criteria.

The AER invited written submissions from interested parties on the draft determination. Submissions close on Monday, 18 February 2008.

In its draft decision the AER decided not to approve ElectraNet's proposed pricing methodology. In accordance with the AER's agreed interim requirements relating to pricing methodology, ElectraNet was required to submit a revised proposed pricing methodology to the AER by 14 December 2007. The AER also invited written submissions from interested parties on ElectraNet's revised proposed pricing methodology. Submissions close by Thursday, 31 January 2008. Issues raised in submissions will be taken into consideration by the AER in making its final decision.

Powerlink application for pass-through of network support costs

On 26 November 2007 the AER formally advised Powerlink that it approved its pass-through application for \$2.4 million in costs associated with the provision of network support during the 2006–07 financial year. The pass-through amount will be added to the Powerlink 2007–08 maximum allowed revenue. The AER has assessed the application in accordance with section 5.6.2 of the ACCC's 2001 Powerlink revenue cap.

Regulatory test for electricity networks

On 2 November 2007 the AER issued a revised regulatory test for electricity network businesses along with explanatory and dispute resolution guidelines.

The regulatory test is used by transmission and distribution businesses in the National Electricity Market to assess the efficiency of network investment proposals. The AER's revisions simplify and clarify aspects of the regulatory test and align the regulatory test to the NER issued by the Australian Energy Market Commission at the end of 2006.

In conjunction with the revised regulatory test, the AER has developed its first regulatory test application guidelines that are designed to provide greater guidance to businesses applying the regulatory test, and enhance transparency and consistency in investment decision making.

The AER also issued regulatory test dispute resolution guidelines to assist parties in understanding the regulatory test dispute resolution rules and process.

Pricing methodology guidelines—final

On 29 October 2007 the AER released its final pricing methodology guidelines. The guidelines relate to:

- the information requirements of a transmission pricing methodology

- the locational component of transmission charges
- the non-locational component of transmission charges
- the allocation of assets necessary to derive prices, and
- confidentiality provisions

In making its final decision the AER has taken into account submissions from interested parties.

The National Electricity Rules (NER) require the AER to develop pricing methodology guidelines. The guidelines will assist transmission network businesses in the development of pricing methodologies that the AER will assess. The guidelines are part of a suite of transmission guidelines developed by the AER.

Gas Code decisions

GasNet draft access arrangement

On 14 November 2007 the ACCC issued its draft decision on GasNet's revised 2008–12 access arrangement. The decision sets out 32 amendments GasNet must make to the access arrangement for approval by the ACCC.

The draft decision provides for \$75 million of refurbishment and replacement investment over the next five years, which is 28 per cent above the amount approved for the current access arrangement period. The draft decision is based on a weighted average cost of capital of 9.38 per cent.

The ACCC's proposed amendments to the access arrangement will result in an initial real average tariff increase of 16 per cent to \$0.34/GJ for 2008, as compared to a 36 per cent increase to \$0.40/GJ proposed by GasNet.

The majority of this real average tariff increase between access periods, however, is due to users paying a lower than the forecast average tariff at the end of the current access period. As a result, users have paid lower tariffs that are not indicative of the long-term sustainable tariff level. While the initial average tariff is rising by 16 per cent, the ACCC's draft decision means that the average level of tariffs will be broadly similar over the two access periods.

The draft decision did not approve GasNet's proposed cost allocation methodology on the basis that it will result in reference tariffs that are not cost reflective in both the short and long run.

GasNet and interested parties had until 14 December 2007 to respond to the ACCC's draft decision. After considering submissions, the ACCC will issue its final decision, scheduled for February 2008.

Moomba to Adelaide pipeline system coverage revocation

Following a decision by the South Australian Minister for Energy, effective at 30 September 2007, the Moomba to Adelaide pipeline system (MAPS) is no longer a covered pipeline under the Gas Pipelines Access Law or the under the National Third Party Access Code for Natural Gas Pipeline Systems. The effect of this decision is that the MAPS is no longer regulated by the ACCC.

Moomba to Sydney pipeline High Court decision

On 27 September 2007 the High Court handed down its judgment regarding the Moomba to Sydney pipeline (MSP) access arrangement, in which it reinstated the Australian Competition Tribunal's (ACT) decision. The earlier ACT decision rejected the access arrangement that the ACCC approved for the MSP in December 2003.

Markets

Report into prices above \$5000/MWh in the NSW on 22 October 2007

On 27 November 2007 the AER released a price report detailing the events of 22 October 2007, when the 30-minute spot price exceeded \$5000/MWh in New South Wales.

National electricity market quarterly compliance report

On 16 November 2007 the AER released the quarterly compliance report for June to September 2007 detailing its monitoring and enforcement activities during that period. 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.

State Electricity Commission of Victoria \$60,000 penalty

On 29 October 2007 the AER imposed a penalty of \$60 000 on the State Electricity Commission of Victoria (SECV), trading as Vicpower Trading.

Vicpower Trading offers frequency control services into the NEM on behalf of an aluminium smelter at Point Henry, near Geelong in Victoria. The smelter's three potlines are separately registered by the National Electricity Market Management Company (NEMMCO) to provide frequency services.

On 16 January 2007 bushfires caused the main transmission links into Victoria to fail, interrupting electricity supplies to the smelter. The smelter shut down and was unavailable to provide frequency services for more than 30 minutes.

Vicpower Trading continued to offer frequency control services into the market even though it was unable to provide the services. The AER has reason to believe that the failure by Vicpower Trading to revise its bids following the shutdown of the three smelter loads amounts to a breach of clause 4.9.8(d) of the NER.

The AER issued three infringement notices alleging that Vicpower Trading breached clause 4.9.8(d) of the NER by failing to ensure that at all times it was able to comply with the latest market ancillary service offer with respect to its ancillary service loads PTH01, PTH02 and PTH03 when all ancillary service loads were shut down. In accordance with clause 4.9.8(d) of the NER an infringement penalty of \$20 000 for each breach was imposed on SECV.

Transport and prices oversight

Part IIIA access undertakings and arbitrations

ARTC access undertaking for interstate network

On 8 June 2007 Australian Rail Track Corporation (ARTC) submitted a rail access undertaking application for assessment under Part IIIA of the *Trade Practices Act 1974*.

On 22 June 2007 the ACCC released an issues paper seeking views on the June undertaking. Seven submissions were received from stakeholders. Drawing on submissions, the ACCC sought further information and clarification from ARTC on its June undertaking. On 15 October 2007 ARTC withdrew its June undertaking and on the 20 December 2007 submitted a revised access undertaking application to the ACCC. On 14 January 2008, the ACCC released an issues paper seeking views on ARTC's December 2007 undertaking.

ARTC's access undertaking application is for access to the interstate rail network which covers rail tracks 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 in mid-2008. The ACCC's process for assessing the interstate access undertaking is now well underway.

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.

In December 2006 the ACCC released a draft *Copyright licensing and collecting societies: a guide for copyright licensees* for public consultation and received a number of submissions. The ACCC intends to issue a revised version of the guide for further comment, taking into account its experience as a party to current tribunal proceedings (mentioned below) and the submissions received.

Since this legislative amendment came into effect the ACCC has been made a party to the copyright tribunal of Australia on two separate occasions. Progress of the references follows.

- **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 the remainder of its expert evidence on or before 18 January 2008.

- **Reference for ‘digital music services’ by APRA AMCOS**—the ACCC was made a party to this reference in September 2007. The Australasian Performing Right Association Limited and the Australasian Mechanical Copyright Owners’ Society Limited filed their statement of points in support of their case in September 2007. Parties served with a list of categories for discovery of documents have until 31 January 2008 to respond. A directions hearing in this matter is scheduled for 6 February 2008.

Container stevedoring

On 31 October 2007 the ACCC issued its 2006–07 *Container stevedoring monitoring report* covering prices, costs and profitability of container terminal operators at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney. The report shows average revenues and costs for stevedoring activities fell, while productivity levels improved. Profitability of the container stevedoring industry as measured by an average rate of return on assets increased slightly in 2006–07 and remains at a high level. This is in contrast to much lower levels of profitability reported by the stevedoring industry during the period prior to the waterfront reforms.

The report highlights that current industry approaches to expanding port capacity could potentially provide opportunities, to varying degrees, for greater competition in the market for stevedoring services.

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 June 2007 the then Treasurer approved the holding of a public inquiry by the ACCC, under Part VII of the Act, into the price of unleaded petrol in Australia. This was the first inquiry conducted by the ACCC under these provisions.

Matters considered by the inquiry included: 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.

The inquiry was originally directed to report to the then Treasurer by 15 October 2007. Subsequently the deadline was extended to 15 December 2007. The report of the inquiry was provided to the Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen, on 14 December 2007.

The inquiry concluded that the unleaded petrol industry is fundamentally competitive and that there is no obvious evidence of price fixing or collusion between the major participants in the industry. However, the inquiry uncovered issues of concern related to the petrol industry structure and importing. Specifically:

- the Australian refining industry is relatively concentrated
- there are significant barriers to entry at the refining level
- there are significant impediments to large-scale importing of petrol by parties other than refiner-marketers.

Among the recommendations of the report to address these issues were:

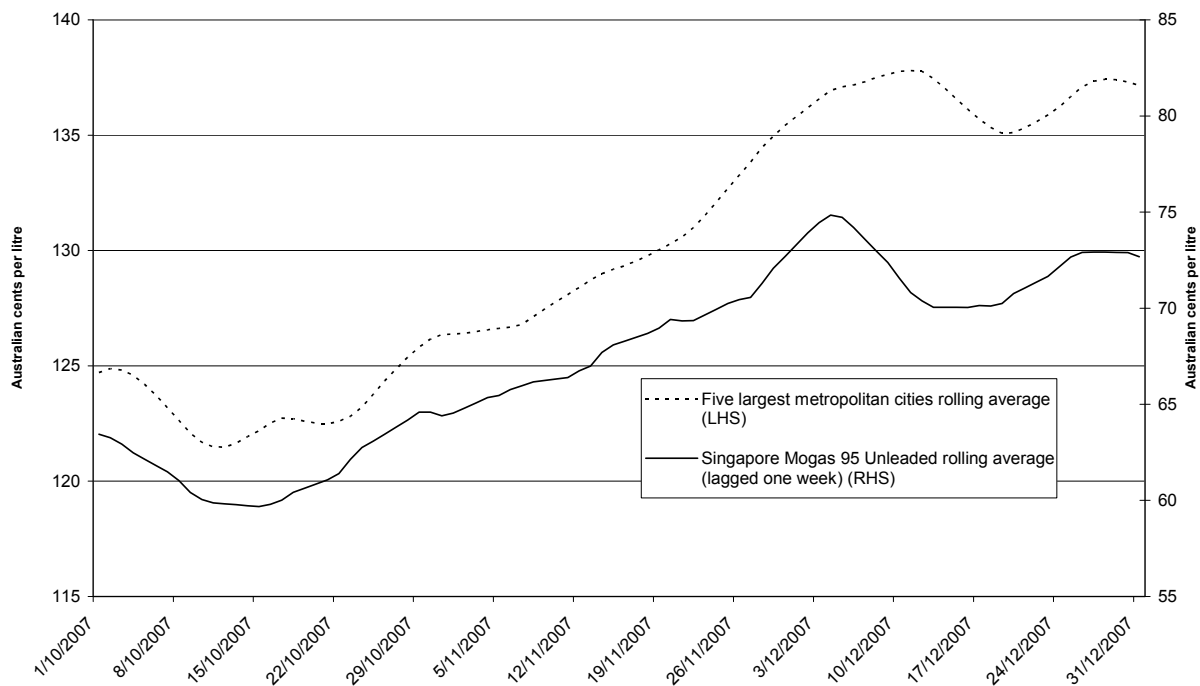
- a more detailed examination and ongoing monitoring of buy–sell arrangements to fully assess whether they are exclusionary in nature, or have the purpose or effect of substantially lessening competition in contravention of s. 45 of the Act
- subject to meeting environment policy objectives, Commonwealth and state governments endeavour to align Australian fuel standards with appropriate fuel standards overseas
- a comprehensive audit of terminals suitable for importing refined petrol into Australia—the audit should cover current and future terminal capacity, current and future use of terminal capacity, and details of terminal leases and terminal sharing arrangements
- following the audit, an ongoing monitoring of the use, leasing and sharing of terminals suitable for importing refined petrol into Australia.

On 18 December 2007 the Minister for Competition Policy and Consumer Affairs, outlined three measures as part of the government's preliminary response to the report. They were:

- writing to the ACCC giving it formal monitoring powers over petrol prices
- requiring the ACCC report to the government every year on its monitoring
- writing to all of the state and territory leaders seeking their input on possible candidates for the role of petrol commissioner.

The following chart shows movements in retail prices in the five largest metropolitan cities in Australia and movements in Singapore Mogas 95 unleaded prices (lagged by one week) in Australian cents per litre over the last three months of 2007, and the difference between the two. Retail prices are shown on the left-hand side and Singapore Mogas prices are on the right-hand side. 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 (lagged one week)—seven day rolling averages—1 October 2007 to 31 December 2007



On 21 December 2007 the ACCC expressed its serious concern that a significant divergence had again occurred between the Australian retail price of unleaded petrol relative to the price of Singapore Mogas 95 unleaded, and wrote to the Chief Executives of the oil companies and the two major supermarket chains in Australia seeking an explanation.

5. International activities

The ACCC's international activities support the work of the ACCC through promoting international enforcement assistance and best practice regulation as well as developing and maintaining effective networks and linkages with international counterpart agencies. Core activities undertaken include:

- managing the ACCC's involvement at 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; and
- building and sustaining strong links with key international officials and organisations.

Bilateral meetings

The ACCC participates in a variety of international events throughout the year. Attendance at these events advocates the work of the ACCC, promotes competition and consumer protection in the region, assists in the ACCC receiving updates, information and best practice strategies on enforcement activities from counterpart agencies and assists in building and sustaining strong links with key international officials and organisations. During the December 2007 quarter the ACCC:

- presented at the Telecom and Broadcasting Regulatory Forum in Taiwan
- participated in the OECD Competition Committee meeting and the OECD Committee on Consumer Policy in Paris
- presented at the International Bar Association Conference in Singapore
- attended the International Council on Large Electronic Systems conference in New Zealand
- attended the International Competition Network Cartel Workshop in El Salvador
- participated in the Consumers International World Congress in Sydney
- attended the East Asia and Pacific Infrastructure Regional Forum in Jakarta
- participated in the International Consumer Protection Enforcement Network Conference (ICPEN) and presented at ICPEN's Best Practices Workshop
- attended PROSAFE and the International Consumer Product Safety Caucus meetings in Istanbul

- moderated and presented at sessions of the International Symposium in relation to Anti-Monopoly Enforcement in Beijing in relation to consumer protection and consumer product safety.

Free trade agreements

The ACCC continues to be an active participant in the Free Trade Agreement (FTA) negotiation rounds contributing to the work in relation to competition and consumer protection issues. The ACCC's goal in participating in such negotiations is to promote competition in the region, ensure that the agreements are compatible with Australia's competition regulations, are practical in implementation and that there are mechanisms in the FTAs to assist in building upon cooperative arrangements between the relevant enforcement authorities. The ACCC participated in the following negotiation rounds:

- 22 & 24 October—China FTA in Canberra
- 7 November—Japan FTA in Canberra
- 11 December—Chile FTA in Canberra.

Information requests

The ACCC continues to be active in relation to information sharing with the ACCC's international counterpart agencies. During the period the ACCC received a number of requests from: Canada, Egypt, Ireland, Israel, New Zealand, Singapore, South Korea, Sri Lanka, Tanzania, Thailand, UK, USA, and Vietnam. Examples of types of information included the ACCC's activities in relation to: environmental claims; enforcement; merger activities and processes; consumer product safety (e.g. cosmetic contact lenses); cross-border mass marketing fraud and various internet sites; selling below cost and predatory pricing; ACCC monitoring of court orders and undertakings; monitoring of advertising; and general competition and consumer protection processes and law.

The ACCC made similar requests to the following counterparts: EU, Netherlands, Canada, Japan, UK and USA in relation to: mass marketing fraud; consumer product safety; scams targeting small business; cartels; mergers; and groceries and supermarkets.

Information exchange meetings and study visits

In conjunction with information requests, the ACCC meets with counterpart authorities to share experiences or to provide ACCC expertise to assist in the development of that authority. The following meetings and study visits took place this quarter:

- Delegations from both Indonesia and Korea in separate meetings to discuss issues such as market definition for new services, multi media services and market power evaluation.

- South African Department of Trade and Industry to exchange information in relation to consumer protection enforcement processes.
- Egyptian Consumer Protection Agency to discuss Australia's consumer protection framework and ACCC complaint handling, compliance and education activities.
- ACCC organised a Tanzanian study tour where the delegation attended various meetings in Sydney and Canberra from 5–8 November with ACCC, CHOICE, NSW OFT and Treasury to discuss consumer protection and advocacy issues.
- Jiangxi Provincial Administration for Industry and Commerce, China, to discuss ACCC's experience in protecting consumers and providing a fair and competitive market.
- Delegation from the Gansu provincial Administration for Industry and Commerce, China, to exchange information in relation to industry regulation, price monitoring and business compliance measures.
- Officials from the Korean Financial Regulator, the Financial Supervisory Service, in a joint meeting with ASIC to discuss supervision of debt collection and various business aspects.
- Officials from the UK Competition Commission in Canberra to discuss the UK's recent grocery inquiry.
- State Administration for Industry and Commerce, China, to exchange information in relation to consumer protection, consumer product safety and competition laws and to strengthen agency relations.
- Hosted a study tour from the Vietnam Ministry of Finance to exchange information in relation to prices surveillance work.

Capacity building activities

The ACCC has an active technical assistance program that is highly regarded internationally and ACCC involvement in technical assistance programs provides staff with valuable experience in training delivery. Capacity building activities that took place this quarter include:

- 12–13 November—provided assistance to Papua New Guinea's Independent Consumer and Competition Commission to develop their information management system as part of an AusAID project.
- 22 November—met with deputy ministers from various agencies of Vietnam as part of the AusAID Australian Leadership Awards Fellowship Program on New Public Management.
- 5–7 December—presented at the OECD—Korea Regional Centre for Competition Regional Antitrust Workshop on Competitive Effects, Remedies and Joint Ventures in Seoul.

6. Reviews, reports and inquiries

Legislative amendments

Copyright Act 1968

In December 2006 the *Copyright Act 1968* was amended to give the ACCC new specific roles in relation to copyright in relation to:

1. In proceedings concerning voluntary licences and licence schemes, the Copyright Tribunal of Australia must, if requested by a party to the proceedings, have regard to relevant guidelines (if any) made by the ACCC.
2. The tribunal may make the ACCC a party to a matter before the tribunal (if the ACCC asks to be made a party and the tribunal is satisfied that it would be appropriate to do so).

Water Act 2007

The *Water Act 2007* gives effect to the National Plan for Water Security announced by the Prime Minister in January 2007. The Water Act creates a number of new bodies and confers new roles and functions to existing bodies including the ACCC. Although the legislation passed through Parliament in August 2007, it did not come into effect until 3 September 2007.

To fulfil its new roles and functions the ACCC has established a Water Regulatory Branch. Additional resources were provided to the ACCC for these new functions.

Part IV of the *Water Act 2007* creates new functions and roles for the ACCC. It establishes new roles for the ACCC to develop, monitor and enforce water charge rules and water market rules in the Basin. The ACCC is also required to provide advice to the Murray Darling Basin Authority on water trading rules.

Part VIII of the *Water Act 2007* contains enforcement mechanisms to support compliance with its provisions. These include injunctions, enforceable undertakings, civil penalties and enforcement notices. The ACCC is responsible for enforcing water charge and market rules.

The Water (Consequential Amendments) Act 2007

The *Water (Consequential Amendments) Act 2007* amends s. 155 of the Trade Practices Act, enabling the ACCC to issue s. 155 notices in relation to designated water matters. The amended section states that a designated water matter refers to the performance of a function or the exercise of a power conferred on the ACCC.

7. Consultative committee liaison activities

Consumer Consultative Committee

The ACCC hosted a meeting of the Consumer Consultative Committee in December 2007. Topics covered in this meeting included Centrepay, debt collection practices, product safety and mobile phone issues.

The next meeting is due to be held in March 2008 in Perth.

Health Sector Consultative Committee

The Health Sector Consultative Committee met in November. The ACCC provided briefings to the committee on misleading advertising, organic and other food labelling issues and recent court and adjudication decisions. ACCC publications were also discussed.

The next meeting is due to be held in April 2008 in Canberra.

Infrastructure Consultative Committee

The Infrastructure Consultative Committee (ICC) met on 6 December 2007 for its fourth meeting and welcomed two new members—Anne Hurley, Communication Alliance Ltd and Gordon Jardine representing Electricity Transmission Network Owners (ETNOF). The meeting provides the opportunity for members to raise and discuss current issues regarding infrastructure performance and regulatory practices. In turn the ACCC provided short briefings on the new regulatory arrangements regarding water and airports. An update on the petrol inquiry (now concluded) was also provided by the Chairman. Agreement was reached on commencing a new research project for the ICC. An advisory committee was formed to steer the new project—benchmarking international regulatory practices—over the next 12 months.

The next meeting is due to be held in April 2008 in Melbourne.

Small Business Advisory Group

In November 2007 the Small Business Advisory Group met and discussed a range of issues including unconscionable conduct, the recent legislative amendments (in particular to s. 46 of the Trade Practices Act), the Franchising Code of Conduct and recent cases, including the Visy matter.

The next meeting is due to be held in April 2008 in Canberra.

Appendix

Speeches

The chairman, commissioners and staff gave 35 addresses and presentations in the December quarter. Significant presentations (in chronological order) included:

ACCC Chairman

12 October—John Curtin Institute of Public Policy—Policy Forum: *Promoting Competition or protecting consumers— the role of competition policy and its implications*

16 October—Walkley National Business Journalism Luncheon: *Will the media survive the digital revolution?*

ACCC Deputy Chair

12 October—CEO Forum Group International HR Director Forum—*Maintaining competitive and fair markets*

Commissioner Willett

13 November—Energy Australia and Integral Energy Energy Delivery: Solutions for the 21st century: *Energy Reform and the Australian Energy Regulator*

News releases

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

Publications

Publications released during the December 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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