

From the Small Business Commissioner

The Commission continues to expand its information and outreach program and now has in place the Rural and Regional team created with additional resources announced in the May 2001 Budget.

Early in October the third Competing Fairly Forum, a satellite broadcast to groups in over 90 regional towns throughout Australia, dealt with the topic of Advertising and Selling.

In August the Commission held its periodic consultations with the ACCC Small Business Advisory Group which consists of over 20 industry and professional associations representing small business.

Other recent important developments included:

- Federal Court decisions making findings in favour of the ACCC against Rural Press for misuse of market power and against VISY for anti-competitive conduct
- An upsurge in complaints to the Commissions from primary producers concerning their dealings with processors, agents, wholesalers and retailers
- The ACCC has established closer links with the newly appointed Retail Grocery Industry Ombudsman
- Further moves on a National Retail Tenancy Code
- A review of the Cinema Code
- Productivity Commission reports on a range of matters affecting the ACCC roles in respect of access to essential services, airports, telecommunications and prices surveillance

Competing Fairly Forum

The ACCC's third successful satellite Forum was held on Tuesday 2 October and broadcast to over 90 towns across regional Australia. The Forum focussed on good business practices in advertising and selling. Issues covered included fine print advertising, product safety and country of origin. The program was hosted by George Negus and featured an expert panel headed by Professor Alan Fels. The panel answered participants' questions ranging from issues dealing with Internet advertising to 'hidden' disclaimers. For a full list of participating towns see back page. For more information on the Forums see www.accc.forums.gov.au

Unconscionable Conduct

Primary Producers

The Commission has received an upsurge in complaints from a range of primary producers including fruit and vegetable growers in relation to their dealings with larger businesses further down the supply chain (ie. processors, agents, wholesalers and retailers). These matters are currently being dealt with through discussion and consultation with industry groups and some specific areas of complaints are being investigated.

Retail Tenancy

The Commission has held discussions with the Australia Retailers Association, the Shopping Centre Council and a range of other interested parties over concerns about relationships between tenants and large landlords especially arrangements with sitting tenants. Some parties have suggested that with differing regimes for retail tenancy in each State and Territory, a self regulatory national Code of Conduct could establish a more consistent approach to fair and reasonable practices by the industry consistent with the needs of investors and consumers as well as retail tenants.

The ACCC is also participating directly in consultations being held by the South Australian Government in relation to retail tenancy legislation amendments being considered in that State to further protect the interests of retail tenants.

Retail Grocery Industry Ombudsman

Following the appointment of the new Retail Grocery Industry Ombudsman Bob Gausen, the ACCC has set up a regular communication channel with the Ombudsman covering areas of common interest and overlap of responsibilities. The Ombudsman has indicated in a recent Report to the Office of Small Business, his concern about a lack of powers to ensure effective dispute resolution processes and to protect complainants from victimisation.

Industry Codes

Film Code Review

The ACCC completed its review of the voluntary Code of Conduct for Film Exhibition and Distribution.

The review found while that the Code had led to more communication in the industry a number of long-standing issues continued to be a concern for many exhibitors especially those in regional communities. These included problems relating to film hire rates, minimum season lengths and terms of supply. The ACCC has recommended a number of changes to the Code including:

- that film hire rates should be referenced to the number of weeks after national release;
- that the special role of heritage-listed cinemas be acknowledged.

A full copy of the review is available on the ACCC website

Consumer and Small Business Protection

Misleading Tax Refund Advertisement

As a part of a settlement agreement ITP (The Income Tax Professionals) agreed to broadcast a series of corrective ads and provide refunds to affected consumers after ACCC action to stop misleading ads about tax refund services.

In an extensive television advertising campaign ITP had earlier offered consumers a 48-hour tax refund, saying 'no conditions' applied. However, ITP did not obtain Tax Office refunds in 48 hours but instead arranged loans for consumers against the amount of the anticipated refund. Most consumers were charged an additional fee between \$70 and \$200 to get the 48-hour loan. **MR 3/9/01**

Misleading Car Ads

Misleading advertising by a major Townsville motor dealer has led to court-enforceable undertakings being given to the ACCC. Following up a complaint made by a small business, the ACCC found that Mike Carney Motors had placed advertisements for 15 Toyota Diesel Hilux utilities with a steel drop side body and featuring a bull bar. The vehicles were advertised at a '*GST inclusive on the road drive away*' price of \$25,990. Subsequent inquiries showed the price did not include the GST or the bull bar and was not 'GST-inclusive' or an 'on the road drive away price'. **MR 16/8/01**

Car Ramp Product Safety

The ACCC has instituted legal proceedings in the Federal Court, Darwin against Autobarn Pty Ltd, Autobarn Darwin and Dictomax Pty Ltd alleging that the 'Raizall 3 in 1 Jackramp' does not comply with the mandatory product safety standard for portable vehicle ramps. It is alleged that testing by an independent body for the ACCC showed the Jackramp failed the structural integrity and design tests as set out in the safety standard. It is further alleged that the Jackramp was supplied with incomplete instructions for use and incorrect labelling, contrary to the requirements of the safety standard. In particular, it is alleged that the Jackramp was missing several markings including the mandatory safety warning. The ACCC is seeking a recall of the product by the manufacturer Dictomax. **MR 10/9/01**

Unsubstantiated Claims on the Internet

Purple Harmony Plates Pty Ltd, an Internet company based in Melbourne, was found to have engaged in misleading and deceptive conduct by making unsubstantiated claims about health and other benefits from its anodised aluminium products.

This decision is the first for an Australian court regarding misleading conduct on the Internet. It also highlights that businesses using '.com' domain names or overseas registration cannot evade the jurisdiction of Australian courts. **MR 9/8/01**

H.C.F. and Fine Print Qualifications

HCF of Australia Ltd will drop waiting periods for 1,207 new members following court-enforceable undertakings given to the ACCC. This followed ads that may have misled or deceived, or may have been likely to mislead or deceive, the public about the benefits, conditions and characteristics of HCF cover.

The ACCC is currently in continuing court action against Medibank Private and MBF on similar issues. **MR 30/8/01**

Health Industry Guide

The ACCC has published a guide to assist the health sector to better understand its rights and responsibilities. *Fair treatment: Guide to the Trade Practices Act for the advertising or promotion of medical and health services* is available free of charge from the ACCC, the HCCC and is available at www.accc.gov.au.

Labelling

Misrepresented Origin of Polo Shirts

The ACCC has initiated criminal proceedings in the Federal Court alleging that GIA Pty Ltd, trading as Tamar Knitting Mills, and its Managing Director contravened the Act by falsely representing that Chinese made polo shirts sold by Tamar were made in Tasmania by Tamar – a well known manufacturer of knitwear items in Launceston, Tasmania and is now in liquidation.

It is alleged that over a 12 month period, Tamar purchased Chinese-made polo shirts, removed the original collar label on each polo shirt which stated that the item was made in China, substituted a 'Tamar' brand collar label, and attached a swing tag to each polo shirt falsely representing that the item was 'Tasmanian' or was 'Made in Tasmania by Tamar Knitting Mills'. **MR 3/9/01**

Fruit Juice Labelling

The ACCC has instituted separate legal proceedings against three separate fruit juice companies for allegedly misrepresenting the country of origin in their labels.

Pauls Victoria

The ACCC alleges that between February 1999 to May 2001 Pauls Victoria Ltd supplied Coles Supermarkets Australia Pty Ltd with the Savings orange, and orange and mango 2lt fruit drinks which were labelled 'Product of Australia'. It is alleged that the drinks contained imported juice.

Berri

Similar allegations have been made against Berri Limited for supplying Coles Supermarkets Australia Pty Ltd between March 1999 and June 2000 with Farmland brand orange juice concentrate that was labelled 'Made in Australia from Australian Fruit Juice' but contained imported juice. Around June 2000 the labels on certain juice products were changed to 'Made from a blend of quality Australian and Imported fruit juices depending on seasonal availability'. It is alleged this and similar labelling was misleading because Berri failed to use so far as available, a majority of Australian produce in these products. It is alleged in one instance that the Farmland 200ml apple juice contained no Australian juice.

Entee

Entee Food & Beverage Wholesalers & Distributors Pty Ltd have allegedly made inaccurate claims on the labels of their 'Darwin Squeezed Orange Juice' and their 'Orange Juice - Australian Squeezed'. From January 2001 to June 2001 the products contained 15 per cent orange juice reconstituted from orange juice concentrate imported from Brazil and were packaged using orange juice prepared in Brisbane. Also, there has been no Entee juice squeezing plant in Darwin since approximately June 2000. **MR 6/8/01/MR 21/8/01/MR 5/9/01**

Belt Labels

Royale & Co (Aust) Pty Ltd, a major Australian men's accessories company, has provided the ACCC court-enforceable undertakings after admitting to labelling belts as leather when, in some cases, the belts contained no leather at all.

The ACCC accepted undertakings in this instance because A. Royale brought the matter to its attention and immediately withdrew and relabelled all offending belts.

Trade associations do not consider bonded leather to be leather. An imported belt that contains less than 50 per cent genuine leather should not be labelled as being 'leather' under the Commerce (Import) Regulations. **MR 20/8/01**

Restrictive Trade Practices

Misuse of Market Power by Rural Press

The Federal Court imposed penalties totalling \$600,000 against Rural Press Group for misusing its market power and for making and giving effect to a market sharing agreement. The judge found that from July 1997 to April 1998 senior representatives of Rural Press threatened Waikerie Printing House not to solicit advertising in The River News from the Mannum area.

The Court also imposed penalties totalling \$70,000 against the General Manager of Rural Press' Regional Publishing Division and its South Australian State Manager for being knowingly concerned in the contraventions. Penalties totalling \$75,000 were imposed against Waikerie Printing House and its director for entering into the market sharing arrangement with Rural Press. Rural Press, however, appealed the decision. **MR 7/8/01**

Court Wins ACCC Visy Appeal

The Full Federal Court has upheld the ACCC's appeal that Visy Paper Pty Ltd had been involved in anti-competitive agreements.

Visy had attempted to reach an agreement to prevent its competitor, Northern Pacific Paper Pty Ltd, a waste paper collection company, from taking Visy's customers but claimed this was not unlawful because of a technicality in the Act.

The courts by this decision have closed a potential loophole in the law. The decision should discourage companies using clever technical drafting of legal agreements to prevent their competitors from taking their customers or engaging in a wide range of other kinds of prohibited conduct. **MR 10/8/01**

Anti-Competitive Lease

A North Queensland Council and IQC Quarries have provided court enforceable undertakings to the ACCC ending contractual conditions that led to preferential treatment in council contracts.

Johnstone Shire Council, under a 20-year quarry lease to IQC Quarries, agreed that all council contracts involving quarry products be bought from IQC Quarries.

The ACCC was concerned that the council tenders requiring IQC Quarries product was probably 'third line forcing', a specific form of exclusive dealing. Like other businesses, local authorities which are categorised as being in 'trade or commerce' cannot engage in exclusive dealing. **MR 17/8/01**

Agreements Restricting Liquor Trading

The ACCC is seeking assistance from applicants for liquor licences in a major investigation of alleged anti-competitive agreements between proprietors of licensed premises. The investigation follows complaints received by the ACCC that established bottleshop operators have been trying to ensure that new operators of hotels do not compete against them by requiring the new operators to enter agreements which prevent them from:

- ever opening a competing bottleshop or driveway facility for the sale of takeaway liquor;
- selling takeaway liquor over the counter to hotel patrons;
- advertising or conducting promotions for the sale of takeaway liquor over the counter to hotel patrons; and
- preventing the hotel from home delivery of takeaway liquor, eg for parties, functions or home consumption.

Agreements by businesses not to compete with each other are generally unlawful. **MR 24/8/01**

Authorisations

Franklins Joint Marketing Arrangements

Following its approval of a managed sell down of the Franklins supermarket chain, the ACCC issued a draft determination proposing, temporarily, to allow Franklins and some buyers of its supermarkets jointly to promote products sold in Franklins supermarkets

The ACCC also proposes to authorise a clause in the sales agreements of independent buyers of Franklins stores continuing to trade under the Franklins banner which requires these buyers to comply with Franklins' promotional programs for a limited period.

The ACCC has granted authorisation until the date the last Franklins store is closed or sold, or 1 April 2002, whichever occurs sooner.

MR 31/8/01

AGVET Chemical Safety Program

The ACCC has issued a draft determination proposing to authorise an agricultural and veterinary chemical (agvet chemical) industry self-regulation compliance program overseen by Agsafe Ltd.

The proposed authorisation applies to Agsafe's industry accreditation scheme requiring persons and premises involved in the transport, handling, and storage of agvet chemicals to be accredited and to comply with a Code of Conduct. The authorisation also enables Agsafe to apply trading sanctions to premises that fail to meet accreditation standards. The ACCC considers that the Agsafe program is of particular benefit to rural and regional Australia where agvet chemicals are predominantly used, and has been operating successfully under ACCC authorisation for more than 10 years. **MR 31/8/01**

NSW Private Hospitals

The ACCC has granted authorisation to eight independent private hospitals located throughout regional NSW and Sydney to collectively negotiate with health insurance funds on the level of fees payable by funds for hospital services provided to their members. The agreement also allows fee and non-fee related information sharing between the hospitals. .

The ACCC was satisfied that the agreement would deliver public benefits in the form of efficiency gains resulting from access to an improved contracting and negotiation process. **MR 21/8/01**

Mergers/Takeovers

Proposed Acquisition by Cockburn Cement

The ACCC did not oppose the proposed acquisition of certain assets of Westlime by Cockburn Cement. The ACCC conducted market inquiries with submissions from competitors, customers, industry associations and State Government departments. Reports confirmed that ongoing problems prevented Westlime from remaining viable. The ACCC also noted that Cockburn was the only entity to make a formal offer for the Westlime assets and market inquiries supported the view that there are no other players likely to enter the Western Australian lime industry in the near future. **MR 6/9/01**

Regulated Services

Mobile Transfer Charge

The ACCC expressed concern about a reported charge by Telstra for transferring or 'porting' mobile phone numbers. This has implications for competition if consumers currently with Telstra are forced to reconsider changing if faced with such a high charge. Subsequently Telstra announced a transfer charge of \$8 that is considerably less than had originally been suggested. Full mobile phone portability for most customers commenced on 25 September.

MR 29/8/01

Telstra Low-Bill Customers

Low-bill customers will get an improved offer from Telstra following ACCC negotiations over Telstra's HomeLine Budget plan. The revised proposal is designed to off-set any increases in line rental charges for these customers.

The Government's price control determination provides that Telstra cannot introduce increases until it has made or will make available products, or other arrangements, to ensure that the average telephone bill of low-bill customers does not increase in real terms.

MR 29/8/01

Pay TV Declaration

The High Court of Australia has rejected an application by Foxtel for special leave to appeal the validity of the ACCC's pay TV service declaration. In 1999 the ACCC's decision to declare the Analogue Subscription Television Broadcast Carriage Service was found valid by the Full Federal Court. Telstra and Foxtel had challenged the validity of the declaration.

This declaration is important for the development of competition in the market for pay-TV services, as it allows a range of alternative content providers to offer their services to consumers over Telstra's cable network. As a result Telstra must, subject to capacity being available, provide access to its HFC network to access seekers for the supply of analogue pay-TV services.

MR 10/8/01

Changes to Electricity Code

The ACCC has issued its determination on amendments to the National Electricity Code to facilitate the introduction of full retail competition (FRC). FRC will eventually enable all customers, including households, to choose their electricity retailer.

Amongst the proposed changes the code will allow that retail level metering data to be used in the current wholesale electricity market. Final details relating to FRC are currently being finalised by state governments in consultation with consumer groups, industry participants, regulators and other state governments.

MR 2/8/01

Telstra and High Speed Internet Service

The ACCC alleged in a Competition Notice that Telstra is engaging in anti-competitive conduct in the provision of broadband ADSL services to competitors. The Competition Notice gave Telstra 12 weeks to change its conduct, failing which it will be exposed to the possibility of large penalties. Once the Competition Notice comes into effect it would allow parties such as ISPs and carriers to take court actions to seek damages against Telstra.

The ACCC has taken this action as it believes that Telstra:

- supplies its wholesale ADSL highspeed Internet services at prices whereby competitors buying the wholesale service are unable to compete with Telstra's own BigPond retail prices;
- refuses to structure the wholesale ADSL service so that it would allow its competitors to offer services substantially different from those Telstra offers eg video on demand and voice telephony over the Internet; and
- refuses to configure its wholesale ADSL service so as to allow for a high speed Internet service to be provided to a residential customer at a different quality of service from what Telstra BigPond offers.

MR 7/9/01

Sydney Airport Charges

The ACCC has allowed charges for international services at Sydney Airport to be restructured. This is not expected to increase the revenue of Sydney Airport nor lead to increases in international ticket prices.

The restructuring will introduce a 'per passenger' charge to replace some of Sydney Airport's current charges that are based on aircraft weight. The charge, to be levied on airlines, is \$38.62 (GST incl) per passenger for a return international flight to or from Sydney. The charge covers use of the runways and some terminal facilities.

MR 23/8/01

Canberra Taxi Fee

Canberra Airport's appeal against a judgement that taxi fees at Canberra Airport are covered by the price cap on aeronautical services was dismissed by the Federal Court Canberra. This is in line with the ACCC's view that the proceeds of the taxi charge must be taken into account when assessing Canberra Airport's compliance with the price cap. This is also relevant to taxi charges at other privatised airports, including the charge recently introduced by Melbourne Airport.

MR 27/8/01

CPI and the New Tax System

Quix Price Exploitation

The ACCC has agreed to measures proposed by Quix convenience stores. Quix admitted to price exploitation in over-pricing mainly beverages, confectionery and grocery products at its 99 convenience stores. Quix will commission an independent audit to assess how much it has over-charged consumers in all the targeted products and reduce prices to refund the amount over-charged. Quix will also advise consumers of the reduced prices by corrective notices placed in-store and in major daily newspapers in locations where it operates.

MR 10/9/01

ACT

Canberra

New South Wales

Armidale
Bathurst
Bega
Blue Mountains
Broken Hill
Coffs Harbour
Cooma
Cootamundra
Dubbo
Glen Innes
Gosford
Grafton
Gunnedah
Inverell
Kempsey
Lismore
Lithgow
Maitland
Narrabri
Orange
Port Macquarie
Scone
Singleton
Sydney
Tamworth
Tweed Heads
Wagga Wagga
Young

Northern Territory

Alice Springs
Darwin
Katherine

Queensland

Beaudesert
Brisbane
Bundaberg
Cairns
Emerald
Innisfail
Longreach
Mackay
Mareeba
Maroochydoore
Mount Tamborine
Rockhampton
Roma
Southport
Toowoomba
Townsville

South Australia

Adelaide City
Berri
Ceduna
Coober Pedy
Kadina
Kangaroo Island
Loxton
Millicent
Mount Gambier
Naracoorte
Port Augusta
Port Lincoln
Port Pirie
Renmark
Roxby Downs
Victor Harbour
Waikerie

Tasmania

Burnie
Devonport
Hobart
Launceston
Queenstown
Scamander

Victoria

Albury-Wodonga
Bairnsdale
Ballarat
Bendigo
Broadford/Kilmore
Echuca
Geelong
Horsham
Melbourne
Mildura
Shepparton
Swan Hill
Traralgon
Warrnambool

Western Australia

Albany
Broome
Carnarvon
Geraldton
Northam
Perth

For more information on the Forums visit www.forums.accc.gov.au