

From the Small Business Commissioner

Following the announcement of the Dawson Review of major trade practices issues the ACCC has released its submission to the review in early July. This is the first major review of the TPA in over a decade and has followed the establishment of the ACCC in 1995 with extensive new powers and coverage. The ACCC has argued for further strengthening of the TPA to bring criminal sanctions against major cartel and collusive behaviour and making the abuse of market power section less difficult to prove. On the other hand the review has received submissions criticising the Commission in relation to some of its processes, alleged trial by media and there have been some proposals for a body to oversight the role of the ACCC. The review is also looking at ways to the authorisation of collective bargaining arrangements by small business groups could be simplified.

Other matters covered in this ACCC briefing include:

- ◆ A reference to some Productivity Commission reports which are likely to effect substantial areas of ACCC regulatory role in relation to monopoly utility pricing, telecommunications and access (in areas such as airports, harbour towage and prices surveillance more generally).
- ◆ Developments in relation to proposals for a crash repair code
- ◆ A major ACCC conference on TPA enforcement and compliance
- ◆ An industry wide solution to secure all-inclusive airfare advertising in Australia

Enforcement Conference

The ACCC held its inaugural ACCC Enforcement Conference on 4 – 5 July 2002 the conference was extremely well attended from legal, business & Government representatives. Issues discussed included:

- ◆ ACCC leniency policy;
- ◆ International trends in competition and consumer law enforcement;
- ◆ Developments in the fields of international and domestic cartels;
- ◆ Anti-competitive agreements and boycotts;
- ◆ Consumer protection litigation; and
- ◆ Value to the community from vigorous enforcement.

Speakers included: Mr Jim Griffin, United States Department of Justice, Deputy Assistant Attorney General; and Mr Adrian Walker-Smith, United Kingdom Office of Fair Trading, Director of Cartel Investigations. **MR 18/6/02**

Items in *ACCC Briefing* at times refer to Media Releases and their dates eg MR 12/7/01. These can be found on the ACCC website www.accc.gov.au.

For e-mail copies of *Briefing* please send details to andrew.rodriques@accc.gov, or phone 02 6243 1183.

For TPA information - ACCC Infocentre 1300 302 502

Victorian Taxi Association

The ACCC's recent meeting with the Victorian Taxi Association highlighted a number of issues for country taxi services. The VTA indicated that Australia's regions have less public transport than their metropolitan counterparts, making reliable taxi services even more important.

It also noted that inconsistent demand for taxi services in country areas can lead to high driver turnover. It was proposed that having more experienced, longer-term drivers would improve service standards and enhance safety. The ACCC has agreed to consider proposals to address these issues.

Smash repair industry round table

The ACCC also met with representatives of the smash repair industry, including repairers, insurers and consumer representatives. All present recognised the need to address certain issues in the sector, including payment times to repairers, transparency of preferred repairer schemes, the quality of parts used, customer relationships, and the provision of guarantees for repair work. Collective bargaining and a proposed code of conduct were also explored.

Industry associations and insurers will provide further information to the ACCC to assist in preparing an issues paper. The next meeting is scheduled for September.

Retail Grocery Inquiry

The ACCC's Retail Grocery Inquiry draft report is nearing completion. The ACCC has conducted, and continues to conduct, consultations with key industry members and organisations regarding the draft report. A likely release date for the final report will be confirmed shortly.

Professions a High Priority

The ACCC has allocated about \$1 million to a special ACCC Professions Unit. In 1995 the coverage of the Trade Practices Act was extended to apply to many professions. Since that time the ACCC has been educating the professions about their new rights and responsibilities under the Act through seminars, presentations and special guides for particular sectors. The new unit is examining issues pertinent to all the professions and is working with professional associations to identify issues and promote effective compliance. **MR 16/5/02**

Price monitoring

Postage Stamp Price Rise

The ACCC held a series of public forums across Australia to discuss a proposal by Australia Post to increase the cost of various postal services, including the price of the basic postage stamp from 45 cents to 50c from January 2003. It also proposes to increase the price of sending greeting cards, large letters and pre-sorted mail. The ACCC is required to assess the proposed price increases as they are declared services under the *Prices Surveillance Act 1983*. Some submissions and a technical forum in July have challenged Australia Post's assumptions in some areas including, future demand and productivity. The ACCC will release a draft decision in August. **MR 6/6/02**

Consumers' Health Interests

The fourth ACCC *Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance* was tabled in the Senate. The report outlines ACCC enforcement action and a number of the ACCC's concerns about the private health sector including:

- the lack of accuracy and completeness of information provided by funds to consumers about health insurance products;
- the lack of signatories in the private hospital/day hospital facility sector to the industry Code of Practice which addresses contract negotiation processes with health funds;
- doctors failing to make consumers aware of expected out-of-pocket costs for medical services; and
- the need for agents who are intermediaries between consumers and health funds to more accurately convey information to consumers about health insurance policies.

MR 26/6/02

Agencies join to Target "money making" Scams

The ACCC has joined with the Australian Securities and Investments Commission, the Australian Tax Office and the Department of Consumer and Employment Protection in Western Australia to warn consumers about illegal money-making scams. The agencies will target illegal scams promoted by unscrupulous individuals and traders whether they are promoted across the Internet or involve the more traditional methods such as mail-based schemes. The warning relates to a wide range of illegal behaviour including pyramid selling, competitions and lotteries, investment seminars, wealth promotions, get rich quick schemes and envelope stuffing, and other work from home schemes. **MR 11/6/02**

Overseas Fax Directory Scam

The ACCC instituted proceedings in the Federal Court, Perth against a Swiss-based company, IT&TAG, alleging it engaged in misleading and deceptive conduct in relation to an international fax directory operated by the company. The ACCC alleges that during the period from May 2001 until about March 2002 IT&TAG, sent unsolicited documents by mail from Switzerland to Australian business consumers regarding the IT&T International Fax Directory which is published on the Internet and available on CD-ROM. The ACCC alleges that given the general appearance of the documents, including their design, layout and content, IT&TAG falsely represented that it had a prior business relationship with the Australian businesses; that it had an existing right to payment; and that a payment to IT&TAG for listing the business in the directory was due and payable. **MR 12/6/02**

Security Services "Upgrades"

Canberra based firm, Custom Security Services, provided court enforceable undertakings offering refunds and full disclosure to some of its customers following an ACCC investigation. Numerous complaints were made to the ACCC and the ACT Office of Fair Trading by CSS customers who were charged for security system upgrades which were undertaken without prior consultation in early 2001. In most cases customers became aware of the upgrade only when they received an invoice for \$99. **MR 19/6/02**

All-Inclusive Price Advertising

An industry wide solution has guaranteed all-inclusive prices for airline customers in Australia. The ACCC accepted court-enforceable undertakings from Qantas and Virgin Blue not to exclude additional taxes, levies and charges from the advertised price of their airfares. The ACCC raised concerns late last year that the headline airfares being advertised were not actually available. The ACCC and leading industry players believe this will avoid confusion by consumers as to the actual prices they are likely to pay if they purchase airline tickets. The ACCC has put the whole travel industry on notice that it expects all forms of price advertising to comply with an all-inclusive approach. There has been a good response from the travel industry. Any enquiries should be addressed to Melanie Sherrin 02 6243 **MR 13/5/02**

NAB Rewards Program

The NAB informed consumers that it will maintain the 1 for 1 conversion rate for Qantas Frequent Flyer points earned prior to their July 2002 credit card statement cycle. From July 2002 the conversion rate for new NAB points accrued after that time will be 1.5 NAB points for 1 Qantas Frequent Flyer point, reflecting changes made to other NAB rewards. This followed a query from the ACCC at the request from the Federal Treasurer, Mr Peter Costello. **MR 11/6/02;**
MR 21/5/02

Missed Fire Protection Services

Fire Fighting Enterprises will compensate its customers for its failure to carry out contracted services of fire protection systems in various buildings in Queensland. The Australian Standards require regular inspection, testing and maintenance routines for fire sprinkler, alarm and hydrant systems, and are critical to the reliability and performance of these systems. The ACCC alleged that FFE had engaged in misleading conduct by issuing certificates of maintenance to building owners without knowing whether such routines had been performed and had made false representations regarding the standard or quality of services provided. **MR 24/5/02**

Skin Product Advertisements

The ACCC instituted proceedings against Collagen Aesthetics Australia, a company that supplies various collagen and hyaluron products which are inserted into the skin for the purpose of reducing wrinkles and/or filling lips. The ACCC alleged that Collagen Aesthetics made false and misleading representations including that the products were registered on the Australian Register of Therapeutic Goods, were safer to use than its competitor's products and that the treatment was painless. **MR 27/5/02**

Action Against Free2aiR

The ACCC instituted proceedings in the Federal Court against Internet TV Australia trading as Free2aiR alleging that Free2aiR misled its customers in that the Internet access services supplied were subject to terms and conditions that were not brought to the attention of potential customers before subscribing to its services, including a condition that would allow a quarterly administration fee in addition to the set up fee. The ACCC further alleged that Free2aiR engaged in unconscionable conduct that included threatening to disconnect customers if they contacted Free2aiR to query the imposition of the administration fee. **MR 5/6/02**

Supplier Attempt to Stop Discount

The Federal Court founds against Colgate-Palmolive for trying to stop discount retailer, Chickenfeed Bargain Stores in Tasmania, advertising Colgate's Ajax, Palmolive and Colgate lines at cheap prices. The Federal Court found that the imposition of the advertising restrictions by Colgate-Palmolive constituted resale price maintenance. Penalties of \$500,000 were imposed on Colgate-Palmolive. **MR 15/5/02**

Petrol Price Fixing in Country Victoria

The ACCC instituted court proceedings against seven companies and seven individuals in the Ballarat region alleging that they entered into and gave effect to arrangements to fix retail petrol prices. The ACCC alleged that the companies arranged to raise prices by telephoning one another and communicating the size and approximate time of the price rise. It is alleged they then contacted retail sites to implement the rise. It is also alleged that when one became aware that a service station had not raised its price, further calls were made to each other to try to have the site raise its prices. **MR 23/5/02**

Visy Paper Appeal

Visy Paper was granted leave to appeal to the High Court against the finding of the Full Federal Court that it had contravened Section 45 of the Trade Practices Act 1974. The Full Federal Court found on 10 August 2001 that Visy had contravened Section 45(2) by attempting to induce its competitor, Northern Pacific Power, a waste collection company, to make a contract containing an exclusionary provision which prevented NPP from taking Visy's customers. **MR 31/5/02**

Mergers and Acquisitions**Pacific Access Acquisition of Citysearch**

The ACCC did not oppose Pacific Access' proposed acquisition of CitySearch online. Pacific Access is a subsidiary of Telstra Corporation Ltd and is a leading Australian information, advertising and directories business, providing print, voice and online products and services. CitySearch is a wholly owned subsidiary of John Fairfax Holdings Ltd and is the number two provider of print and online business directories, behind Yellow Pages. The ACCC was satisfied that the proposed acquisition was unlikely to substantially lessen competition because of the ongoing availability of Fairfax business data and access to directory copyright held by Fairfax which is available for any business seeking to enter the market, or to use the data to provide related services. **MR 23/5/02**

Foxtel/Optus

The ACCC concluded that proposed arrangements between Foxtel and Optus in relation to pay television are likely to breach the TPA as the agreement in its present form is likely to substantially lessen competition in a number of markets. The ACCC received detailed submissions from Foxtel, Optus and other participants in the pay television and other industries that would be affected by the content sharing agreement. Extensive discussions were held with all parties including Foxtel and Optus who have offered undertakings to try to overcome the competition concerns raised by the ACCC. The ACCC intends to consider these and consult interested parties before determining whether the undertakings meet its competition concerns.

Arrangements Between International Airlines

The ACCC issued a draft decision indicating that, subject to comments from interested parties, it proposes to authorise the travel agency program of the International Air Transport Association (IATA), the industry association for the world's international airlines. Under the program the world's international airlines determine the means by which air travel is distributed and sold through travel agents. The proposed authorisation is conditional on IATA taking action in a number of areas including reviewing the conditions of accreditation for travel agents and facilitating the processing of ticket refunds. These conditions will ensure that the public benefits arising from the agent program in its current form are realised and outweigh any anti-competitive detriment. The next phase of the review will examine IATA's activities in areas other than travel agents with a particular focus on air cargo and agreements between airlines on fares. **MR 17/5/02**

Agvet Chemical Safety Program

The ACCC granted authorisation to an agricultural and veterinary chemical (agvet chemical) industry self-regulation compliance program overseen by Agsafe Limited. The 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 Agsafe program has been operating successfully under ACCC authorisation for more than 10 years. In that time the program has provided benefits to users and the community generally through promoting the safe use of agvet chemicals and Australia-wide uniformity in the storage of agvet chemicals. **MR 28/5/02**

Councils to Collectively Bargain

The ACCC issued an authorisation for two groups of Sydney councils to collectively tender for facilities to sort recyclable household waste (paper, bottles etc). The ACCC was satisfied that minimal public detriment would result from the councils' proposals. In particular, the price of goods made from recycled waste would be unlikely to rise. Costs incurred by councils in transporting waste to these facilities would fall, and, air and noise pollution and traffic congestion would be eased. The ACCC also considered that it would cost councils less to tender for sorting facilities collectively. **MR 7/6/02**

General Practitioners and Fee Arrangements

The ACCC issued a draft authorisation following an application by the Royal Australian College of General Practitioners. Under the draft decision, all GPs in partnerships would be able to agree on fees. The draft confirms that most are already able to do this. Further, it proposes to authorise GPs in partnerships with corporate partners to agree on fees where all partners are co-located. Broadly, agreements between partners, including on fees, are exempt from the Act except where the partnership includes a corporation (this is to ensure the exemption is not misused). In proposing to grant authorisation, the ACCC noted that partnerships are a traditional form of business structure that should remain available to GPs. **MR 20/6/02**

Telco Competition Report

The ACCC has issued three annual reports covering:

- ◆ competitiveness in the telecommunications industry
- ◆ changes in prices of telecommunications services and
- ◆ Telstra's price control compliance.

The reports revealed mixed results, prompting the ACCC to take a cautious approach in its consideration of the current and future state of competition in the telecommunications industry.

- The report on competitiveness notes that Telstra's extensive market power is likely to remain in many telecommunications markets in the future.
- The report on changes in the prices paid for telecommunications services finds that, overall, consumers are now paying less for the majority of telecommunications services, although there is still a considerable gap between price and cost for some telecommunications services.
- The report on Telstra's price control compliance indicates that Telstra is decreasing prices for most telecommunications services at a slower rate than for the industry as a whole. **MR 31/5/02**

Electricity Information Guidelines

Under the National Electricity Code, the ACCC is responsible for the regulation of transmission revenues in the National Electricity Market and has issued its Final Decision in respect of the Information Requirements Guidelines. The guidelines have been developed to reinforce the effectiveness of the regulatory processes by limiting the ability of the Transmission Network Service Providers (TNSPs) to extend their monopoly powers from the network business to the contestable parts of the industry. The ACCC is seeking to ensure that regulated activities do not cross-subsidise contestable activities. The Code will require TNSPs to separate out prescribed and non-prescribed services when performing their regulatory accounting. TNSPs are also required to reasonably allocate costs that are shared between prescribed services and any other activities. **MR 7/6/02**

Draft Greenfields Guideline

The ACCC released its Draft Greenfields Guideline for Natural Gas Transmission Pipelines. The guideline has been prepared to ensure prospective investors in the gas industry, understand how new natural gas (greenfields) transmission pipelines are regulated. This guideline seeks to address any perceived risks by creating greater certainty about when a prospective pipeline is covered by the regulatory framework and what obligations are imposed if regulation applies. The guideline will provide greater clarity and understanding of the approach to greenfields gas regulation and address some of the misconceptions in the pipeline, investment and financing industries about the regulatory system. **MR 25/6/02**

Broadband Services Figures

The ACCC issued an update to its Snapshot of Broadband Deployment, a report providing statistics on broadband take-up across Australia. Growth in the take-up of digital subscriber line (DSL) technology has significantly exceeded the growth take-up in cable technologies. Take-up of DSL services increased by 206% in the nine months to March 2002. By comparison, there was a 71% increase in the number of subscribers for cable broadband services. Although the number of cable services (157,800) still significantly exceeds the number of DSL services (85,800).

Broadband infrastructure is of particular and growing importance to the future of Internet services. For the Internet to develop beyond its existing technical and commercial limitations, it needs broadband access technologies made available on a reasonable basis.

MR 20/6/02

More Broadband Offerings

Significant improvements to Telstra's wholesale broadband services will open up high-speed Internet access. Late last year the ACCC issued Telstra with a Competition Notice that came into force on 21 March 2002. The ACCC had found that Telstra's conduct in relation to its wholesale and retail ADSL services was holding back competition in the provision of broadband services resulting in limited choice for consumers and small businesses. The ACCC has revoked the Notice following price reductions of up to 25 per cent in Telstra's wholesale price and changes to the architecture of the wholesale service which allow wholesale customers to compete against Telstra retail ADSL services. **MR 16/5/02**

Productivity Commission

The Productivity Commission (PC) has over recent months issued reports on matters impacting on trade practices issues. Some will have a direct impact on the regulatory role played by the ACCC in controlling prices or promoting competitive outcomes in utility sectors with monopoly powers. The major reports are:

- **Price Regulation of Airport Services:** The Government has accepted the recommendation that Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin airports be subject to price monitoring for five years.

- **Telecommunications Competition Regulation** issues include the retention and operation of the telecommunications specific anti-competitive conduct legislation, the retention, scope and operation of a third party access regime for telecommunications, and issues associated with pay TV and regional telecommunications. *Report: 21 December 2001*

- **Economic Regulation of Harbour Towing** recommends that the current declaration of harbour towing services under the *Prices Surveillance Act 1983* (PSA) not be renewed when it expires in September. As a transitional measure, the PC has recommended that towing services at the currently-declared ports be subject to limited price monitoring by the ACCC for three years. *Position Paper: 6 June 2002 (report due August 2002)*

- **National Access Scheme** recommends that it should have a tighter focus that places greater emphasis on incentives to invest. The PC has also called for modifications to provide a clearer guidance to regulators and industry, and to make the processes more workable, are also required. *3 October 2001(not released)*

- **Review of the PSA** proposed changes to limit the potential for inappropriate application of regulation, and to allow the regulations to operate more effectively and rapidly where they can improve on market outcomes. *Draft Report: 14 August 2001 (not released)*

ACCC State Briefing

Tasmania

From late May to July several information sessions were conducted throughout Tasmania to various groups, including members of the Chartered Secretaries Australia Ltd and advertising staff of the Examiner newspaper. The ACCC also attended the Local Government conference held in Hobart, establishing valuable contacts with Councillors and staff. During the Area Consultative Committee meeting held in Bothwell, I provided an overview of the ACCC's outreach activities to the committee members. On Friday, 12 July, the Hon. Don Wing MLC launched the ACCC's Tasmanian Rural and Regional Program in Launceston. The launch was well attended by political and government representatives, business leaders and a number of community organisations.

Shane Jeppson

Acting Small Business Manager/ROO Tas Ph. 03 6215 9306

South Australia

The South Australian Regional Office has received a number of complaints in regards contractors in the building industry issuing quotes exclusive of GST. Contact has been established with the two industry bodies representing the building industry in South Australia. Both industry bodies have included the GST checklist for small business regarding the display of prices in their respective newsletters that carried an article alerting their members on the correct method of quoting and displaying prices. Major building industry suppliers whose pricing policy reflected a GST exclusive price have been identified and informal visits undertaken

Lucien Dec, Small Business Manager, SA. Ph 08 8213 3450

My recent round of regional trips included speaking engagements at Robe in the South East, Kimba on the Eyre Peninsula, and Clare in the Mid North. Last month involved a special focus on liaison with local government, with a seminar presented to the Local Government Association of South Australia. A series of regional seminars with Local Government are planned for September and October.

Regional Communities in SA that would like to hear more are encouraged call me direct.

Greg Trengove, ROO, SA. Ph 08 8213 3456

Queensland - South

Albert Julum visited a number of communities this month, establishing a number of information supporters including Yeppoon; Rockhampton; Gracemere; Blackwater; Emerald; Springsure; Moura; Biloela; Calliope and Mt Morgan. We welcome our information supporters who will spread the word about the Commission's Rural program and provide ACCC publications to their communities.

The Farmfest in June brought together a range of rural and regional stakeholders from across the country to Oakey. ACCC staff received a number of enquiries over the three days of the event and feedback about the Commission's Rural and Regional program and overall general presence in the marketplace was positive.

Brisbane hosted the launch of the weeklong celebration of NAIDOC (National Aborigines & Islander Day Observance Committee). This year's theme was "Recognition, Rights and Reform" commemorating the 10th anniversary of the historic High Court decision in Mabo. ACCC staff supplied information on the Storecharter and the Rural and Regional program.

Albert Julum ROO, Sth Qld Ph 07 3835 4641

Paul Jones Small Business Manager, Qld. Ph 07 3835 4622

Queensland - North

There has been much activity to report in the north Queensland region. The annual show and agricultural field days circuit has kept the Townsville ROO on the hop... beginning with the Mt Isa Mining Expo then the Julia Creek and North Queensland Field Days and shows at Mackay, Townsville and Cairns. All events were well attended with many more people in rural and regional Australia becoming aware of the ACCC, what it does, and how they can protect both their business and consumer interests with an increased knowledge of the TPA.

There were also a number of radio interviews on Regional ABC radio both in western and far northern Queensland. Small Business Assistance Officer of Work North, Julie Clark, hosted a one hour small business radio community outreach program on Townsville's 4TTT on 1 July 02. During the show the ROO was able to speak not only about the rural and regional program, but about the work of the ACCC more generally. **Ralph Lake ROO, Townsville Ph 07 4729 2666.**

Western Australia

Tracy Young continued with her outreach work in the Great Southern region with visits to Beverley, Waroona, Harvey, Wandering and Wickepin. Tracy noted a chill in the air as Wandering lived up to its reputation for "crisp" mornings. She attended meetings in Wickepin.

Between meetings and presentations in Karratha, Port Hedland, Newman, Tom Price, Paraburdoo and Onslow Vern Gardam enjoyed the play of sunlight on the Hamersley, Chichester, and Kunderong Ranges as he drove between Pilbara towns. He met with small business owners and consumers who brought up various issues and some of these matters are now being pursued. **Vern Gardam, ROO, WA Ph 08 9325 0616**

New South Wales

ACCC staff attended the annual NSW Farmers' Association Horticultural Conference in Griffith. The conference brought together growers from all over NSW from varied sectors within the Horticulture Industry. From broad beans to limes, all the growers appear to have similar concerns, whether it is transport costs, water rights or prices received by growers from wholesalers or retailers. The ACCC will be looking to work closely with various grower groups, the Retail Grocery Industry Ombudsman and other government departments. The focus will be on dispute resolution, transparency within the fresh produce markets and improving the knowledge of growers and wholesalers about the Trade Practices Act. **Nick Heys, Project Officer, New South Wales ph 02 6243 1251**

Victoria

In association with the Australian Institute of Company Directors and CPA Australia, the ACCC has held information sessions for CPAs at Bendigo, Ballarat, Geelong and Traralgon. Sessions will also be held at Shepparton and Warrnambool. New ACCC Regional Supporter the Regional Connectivity Project will assist in providing publications and information to their local communities. Regional Connectivity manages 23 Community Enterprise Centres throughout Western Victoria and is supported by the University of Ballarat and Networking the Nation. **Mark Schramm, Small Business Manager, Vic. Ph 03 9290 1887**