



ACCC

briefing

October 2004

FROM THE SMALL BUSINESS COMMISSIONER

With the federal election now decided, the various amendments relating to the Dawson Review of the Trade Practices Act, including a notification procedure for collective negotiations and some other small business provisions, are expected to proceed through parliament. This is likely to include establishing a second Deputy Chair position at the ACCC to be filled by the Small Business Commissioner, recognising the importance of small business dealings in the role of the ACCC. However the actual appointment remains subject to the agreement of the states and territories.

Two important issues are well documented in this edition of *ACCC Briefing*:

- **franchising**—the subject of a Competing Fairly Forum available in DVD or video format. This is essential viewing for all involved in, or contemplating joining, the franchising sector as a franchisee or franchisor.
- **access to Telstra infrastructure by third party providers**—while the subjects of telephony, wireless, internet and cable-based communications are complex, it is important that small business grasp technological innovation, competition and fair dealing issues related to the ACCC watchdog role in this critical area of business performance.

REPORTS, SPEECHES & MAJOR DEVELOPMENTS

ACCC investigative powers

The Full Federal Court has re-confirmed the strong powers of the ACCC to investigate possible breaches of the Trade Practices Act, unanimously dismissing an appeal lodged by Seven Network. The decision upholds an earlier decision of the Federal Court to dismiss Seven Network's challenge to a Notice issued under section 155 of the Act which required Seven Network to give the ACCC information relating to an investigation into the Wildly Wealthy Women Millionaire Mentoring Program. The ACCC had requested information about the identity of people involved in the creation and production of *Today Tonight* items that featured the program. The decision further confirms the ACCC's ability to use section 155 to identify individuals who are expected to be able to provide information relevant to matters being investigated.

MR 216/04 (06.10.04)

Contact the ACCC



Infocentre: 1300 302 502



Website: www.accc.gov.au

International shipping: Productivity Commission inquiry

In a bid to improve shipping services for Australian exporters and importers, the ACCC has suggested reforming the legislation that currently allows agreements between shipping lines blanket exemptions from some of the anti-competitive prohibitions contained in the Trade Practices Act. In a submission to the Productivity Commission's review of Part X of the Act, the ACCC suggests that the specialised treatment of the international liner cargo shipping industry be revoked. Given the potential for poor outcomes for Australian exporters and importers using the services provided by the liner agreements—lower quality, reduced services and higher prices—the ACCC is proposing that the net public benefit of particular agreements between shipping lines be established before they are exempted from Australia's competition law. As *ACCC briefing* went to press the Productivity Commission released its draft report generally supporting this kind of reform.

MR 198/04 (15.09.04)

UNCONSCIONABLE CONDUCT

NT indigenous communities

The ACCC has begun proceedings against Ramon Keshow for alleged unconscionable and misleading and deceptive conduct in the promotion and supply of educational materials in indigenous communities in the Northern Territory. The ACCC has alleged Mr Keshow visited a number of indigenous communities soliciting customers for the supply of educational materials and securing payment for these goods by having customers sign a periodic payment form, which authorised deductions to be made indefinitely from the customers' bank accounts. The ACCC alleges that Mr Keshow exploited the customers' lack of commercial experience, failed to explain to consumers the effect of the periodic payment form and failed to supply customers with any, or adequate, goods. If the ACCC is successful in its action, it proposes to apply for compensation on behalf of the indigenous people alleged to have suffered loss or damage because of the conduct.

MR 206/04 (22.09.04)

HOT SPOT—MEDICAL INFO KIT

A new ACCC *Info kit for the medical profession* is now available. The kit is a practical guide developed specifically for doctors and practice managers that discusses their rights and obligations under the Trade Practices Act. The kit explains how the Act applies to a number of key areas including medical rosters, fee setting and collective negotiations. It was developed after a review found that there was uncertainty within the medical profession about how the Act applied to doctors. The *Info kit* was devised in consultation with the ACCC's Health Services Advisory Committee which acts as a forum between the ACCC, doctors, other relevant health professionals and health consumers. The ACCC *Info kit for the medical profession* is a free publication, and is available by calling the ACCC Infocentre on 1300 302 502. **MR 179/04 (26.08.04)**

Items in *ACCC briefing* refer to media releases and their dates e.g. MR 12.2.04. These can be found on the ACCC website <www.accc.gov.au>. Other reports and documentation are also generally available on the website. To be placed on the *ACCC briefing mailing list*, email small.business@accc.gov.au. For TPA information contact the ACCC infocentre 1300 302 502.

HOT SPOT—FRANCHISING FORUM

Competing Fairly Forum: Franchising: is it right for you?

The ACCC has released the eighth Competing Fairly Forum, *Franchising, Is it right for you?* The latest forum, which is presented in video and CD format, was launched at the Franchise Council of Australia annual conference. It examines topical issues in the franchising sector and includes practical information for franchisees and franchisors in identifying the right franchise system and preventing and resolving disputes by focusing on a problem-solving approach. The forum provides vital information on the mandatory Franchising Code of Conduct which is administered by the ACCC. The forum is available throughout Australia by web streaming on the ACCC website and can be presented to interested groups. It is also available for sale in video or CD format for \$10 for a single copy. For more information please contact the ACCC Infocentre on 1300 302 502. **MR 188/04 (30.08.04)**

FRANCHISING CODE OF CONDUCT

Franchising: ContactPlus Group

The ACCC has instituted legal proceedings against ContactPlus Group and its sole director alleging contraventions of the mandatory Franchising Code of Conduct and false, misleading and/or deceptive conduct. ContactPlus operated a business selling licences to its software and marketing database to recruitment and employment service businesses. The ACCC alleges that the ContactPlus licence agreements are franchise agreements and ContactPlus has contravened the Franchising Code of Conduct in several ways, including by failing to provide proper disclosure documents to prospective franchisees and by terminating franchise agreements without following the procedures specified under the code. The ACCC also alleges ContactPlus and its director made false, misleading and/or deceptive representations about the license fee, the databases and the allocation of exclusive areas to franchisees.

MR 161/04 (19.08.04)

CONSUMER AND SMALL BUSINESS PROTECTION

'WAS' price advertising

The ACCC has accepted a court enforceable undertaking from Parke Muir's, trading as Ross Parke The Good Guys Discount Warehouses, about its use of 'WAS' price advertising, resolving concerns that Parke Muir's may have engaged in misleading conduct in breach of the Trade Practices Act. Parke Muir's advertised in the *Geelong Advertiser* that the price for a GW712 model Fisher & Paykel washing machine 'was \$1,099'. After inquiries by the ACCC, Parke Muir's reviewed its sales records for that product and could not find a record of that product being sold for \$1,099. Parke Muir's has given court enforceable undertakings that it will not advertise a 'WAS' price for a product unless it has enough evidence to demonstrate that such an advertisement is not misleading, publish an apology notice in the *Geelong Advertiser* and establish a trade practices compliance program.

MR 211/04 (24.09.04)

Product safety: vehicle jacks

The Federal Court has declared that BMW Australia contravened the Trade Practices Act by supplying BMW 318i model vehicles during 2002 equipped with a jack that failed to meet product safety standards. The user safety warning and instructions provided with the jacks failed to mention the use of vehicle support stands. In June this year, following an appeal by BMW, the Full Federal Court upheld an earlier finding by the Federal court in this regard. The judge ordered, among other things, that BMW Australia send all owners of BMW 318i model vehicles supplied during 2002 and equipped with a vehicle jack, a letter providing owners with a warning notice label and corrected manual insert.

MR 213/04 (27.09.04)

Product safety: elastic luggage straps

The ACCC has accepted court enforceable undertakings from Ray's Outdoors to resolve ACCC concerns that, in supplying Wild Country elastic luggage straps, Ray's Outdoors may have breached the mandatory product safety standard for elastic luggage straps prescribed under the Trade Practices Act. Because of the potential harm that elastic luggage straps can cause, the mandatory standard requires them to have a permanently attached label containing a specifically worded warning of a certain size and colour.

MR 212/04 (27.09.04)

Property investment promotion

The ACCC has instituted legal proceedings against Giann & Giann and its director alleging misleading and deceptive conduct over the promotion of a *Secrets of a Real Estate Millionaire* property investment seminar. Giann & Giann trades under the name Break Free Events and is alleged to be responsible for advertisements which appeared in a number of Australian newspapers in late 2003, promoting a 'Free Event' to be presented by property investor Mr Peter Flanagan. The ACCC has alleged, among other things, that in the newspaper advertisements, as well as brochures handed out to attendees of the free seminars advertising a four-day course, representations were made about property investment strategies and wealth creation that Giann & Giann did not have reasonable grounds to make.

MR 203/04 (21.09.04)

Sweets labelling: Australian ownership

The ACCC has accepted a court enforceable undertaking from Cadbury Schweppes about labelling of The Natural Confectionery Company (TNCC) range of confectionery products. Cadbury Schweppes, which is part of the worldwide Cadbury Schweppes group of companies, acquired Sunrise Confectioners (Aust) in April 2003. Sunrise distributed TNCC products in packaging that stated: 'The company has been in the same family for four generations and is 100% Australian owned.' Cadbury Schweppes has undertaken, among other things, to publish a consumer notice and apology in Australia's daily newspapers and offer a full refund (redeemable by way of a store voucher) to all consumers who bought TNCC products from April 2003 in the old packaging on the basis of the ownership representations.

MR 197/04 (14.09.04)

International online pyramid selling scheme

A Gold Coast company, Worldplay Services, has been found to have breached the Trade Practices Act by providing support services to an illegal international online pyramid selling scheme operated by World Games Inc (WGI). The operations of the WGI scheme are fragmented, with a company in the British Virgin Islands having overall control, and service companies contributing to the scheme from Britain, Gibraltar, the Netherlands Antilles and Australia. The ACCC was concerned that in the WGI scheme, an Australian company was being used to target foreign consumers. The judge made orders restraining Worldplay Services from taking part in the World Games scheme or in other similar schemes.

MR 193/04 (02.09.04)

Pyramid selling—1Cellnet and Unified Interactive

The ACCC has instituted proceedings against 1Cellnet, a company incorporated in the USA, Unified Interactive and two individuals for alleged pyramid selling. The ACCC alleges that 1Cellnet has established and promoted a scheme on the internet in which participants make a payment to 1Cellnet and can earn income from the 1Cellnet Global Bonus Points (GBP) scheme. The ACCC alleges the payment is induced by the prospect held out to new participants that they will be entitled to payments if they introduce further members. The ACCC alleges that Unified Interactive designed and supplied the scheme to 1Cellnet, promoted the scheme by responding to customer inquiries about the scheme, took part in the scheme by collecting all payments on behalf of 1Cellnet and allowed itself to be held out by 1Cellnet as an accredited licensee and the Australian operational base of 1Cellnet and/or the scheme.

MR 187/04 (30.08.04)

Misrepresentation and bait advertising: Harvey Norman

The Federal Court has made orders by consent in the ACCC's proceedings against companies and individuals in the Harvey Norman group. The ACCC alleged that advertising conducted for Harvey Norman Computers and Communications franchise stores for an accounting software package, which was to include bonus software, constituted bait advertising because it was advertised, and continued to be advertised, when the parties were aware that none of the bonus software bundles were available, or not in sufficient quantities to meet consumer demand. The ACCC further alleged that representations made in the same advertising misled consumers about their eligibility for GST-related taxation benefits on purchases of digital cameras and 'approval' of goods for GST Start-Up Assistance from the Federal Government.

Derni, a subsidiary of Harvey Norman Holdings, consented to declarations that it had made misleading or deceptive representations and had been knowingly concerned in bait advertising by the stores. Harvey Norman Holdings provided court enforceable undertakings to the ACCC that it would continue to review its trade practices compliance program.

MR 151/04 (10.08.04)

HOT SPOT—SOUVENIR GUIDELINES

Country of origin news for the souvenir industry

The ACCC has issued a leaflet on country of origin claims made for souvenirs. The leaflet will help manufacturers, importers and retailers of souvenirs identify the circumstances in which origin claims may be implied by the use of packaging, pictorial representations and icons, such as maps of Australia or pictures of Australian native flora and fauna. The publication also outlines issues relevant in determining whether an origin claim will negate a misleading impression created by the use of icons and pictorial representations. It also explains the ACCC's interpretation of the Made in Australia and Product of Australia defences set out in the Trade Practices Act. The leaflet is available in both English and Chinese on the ACCC website, or by contacting the ACCC Publishing Unit on (02) 6243 1143. The publication is free. **MR 202/04 (21.09.04)**

MERGERS AND ACQUISITIONS

New guideline for future informal merger reviews

The ACCC has implemented new processes for reviewing informal merger proposals. The processes, outlined in the ACCC's *Guideline for informal merger reviews*, will be applied to all new complex merger proposals, supplementing the existing *Merger guidelines*. The new guidelines provide greater transparency and accountability in ACCC reviews while preserving the benefits of the existing informal system.

MR 224/04 (15.10.04)

Boral takeover bid withdrawn

The ACCC has agreed to end litigation proceedings against Boral following Boral's withdrawal of its bid for cement and concrete manufacturer Adelaide Brighton and its provision of enforceable undertakings to the Federal Court. Boral has given undertakings that it will not nominate a person for election, or vote its shares in Adelaide Brighton in favour of the election of any person who is an associate of Boral, to the board of Adelaide Brighton or acquire any relevant interest in shares in Adelaide Brighton for a period of one year without the prior written consent of the ACCC. The ACCC's investigation showed that Boral's acquisition of Adelaide Brighton would have led to a substantial lessening of competition in cement, aggregates, flyash, concrete and concrete masonry product markets in Australia.

MR 221/04 (08.10.04)

Yeast and Bakery acquisition

The ACCC will not oppose the proposed acquisition of the Yeast and Bakery Division of Burns Philp & Co. by Associated British Foods having decided that the acquisition is unlikely to substantially lessen competition in the relevant markets. Although the acquisition exceeds the ACCC's thresholds for the exercise of coordinated market power in the bread improver market, the ACCC concluded that strong competitors, low barriers to entry and significant countervailing power held by customers will effectively constrain the merged entity in this market. The ACCC also found that competition in the bread market is unlikely to be affected.

MR 207/04 (22.09.04)

Radiology acquisition

Following an offer of divestment undertakings, the ACCC did not oppose DCA Group's proposed acquisition of MIA Group. DCA's court enforceable undertaking includes the divestiture of seven diagnostic imaging suites in Adelaide and the release from existing contracts of radiologists, nuclear physicians, radiographers and sonographers currently working at the seven divestiture sites who wish to acquire or work at one or more of the seven sites. The ACCC believes that the undertaking ensures that DCA will continue to face competitive constraints in South Australia. DCA will, within three weeks of completing the acquisition of MIA, advertise the sites for sale in a major South Australian newspaper.

MR 201/04 (17.09.04)

Macquarie Bank radio acquisitions

The ACCC will not intervene in Macquarie Bank's acquisition of RG Capital Radio and DMG Regional Radio. The ACCC accepted court enforceable undertakings from Macquarie Bank that it will divest radio stations in Albury, Cairns, Mackay, Rockhampton and Townsville, allaying concerns of a substantial lessening of competition in these local markets for advertising on commercial broadcast radio. The ACCC will conduct market inquiries regarding the divestitures in around three months' time.

MR 195/04 (10.09.04)

Duet Consortium bid for natural gas pipeline

The ACCC has decided not to intervene in the Duet Consortium bid for the Dampier to Bunbury natural gas pipeline (DBNGP) after agreeing to court enforceable undertakings designed to alleviate some competition concerns. The undertakings prevent Alinta Limited, which has a 20 per cent interest in the Duet Consortium, from being involved in any commercial negotiations between the Duet Consortium and other shippers that transport gas down the DBNGP. This is to prevent Alinta gaining the ability to affect anti-competitive outcomes in relevant downstream markets, thus making it much harder for new entrants to retail gas and generate electricity in Western Australia. The ACCC has now made a final decision not to intervene on the basis of the final undertakings.

MR 191/04 (31.08.04)

South Australian grains industry merger

The ACCC will not oppose ABB Grain's acquisition of AusBulk, and AusBulk's holding company United Grower Holdings, subject to the parties providing acceptable court enforceable undertakings to provide for fair and reasonable access to port storage and handling services for grains export post merger. The ACCC was concerned that the vertical integration of South Australia's main storage and handling provider, AusBulk, with ABB could allow the merged entity to use its market power in storage and handling at South Australian port terminals to deny access to, or discriminate against, competing traders and grain exporters. The ACCC also carefully considered the competitive impact of the proposed acquisition in the relevant grains, storage and handling and malt markets, concluding that the merger would be unlikely to result in a substantial lessening of competition.

MR 190/04 (31.08.04)

Vopak Port Botany lease

The ACCC decided not to take action concerning the storage lease agreement between Vopak Terminals Sydney and the Shell Company of Australia at the Vopak Terminal, Port Botany. Shell acquired the 65 000 cubic metres of storage at Port Botany that is currently leased to Trafigura Fuels Australia, whose lease expired at the end of August 2004. Had the ACCC opposed the leasing of the terminal space by Shell it is likely that the 65 000 cubic metres storage would have remain unused.

The ACCC noted changes in the independent importing industry resulting from the introduction of tighter fuel standards by state and Commonwealth governments. Market inquiries revealed that major independent retailers have sought longer term contracts with domestic refiner/marketers to protect their operations and that independent imports had become less viable. The loss of these contracts made it difficult for independent importers to develop a profitable business case for the leasing of the Vopak facilities. The ACCC ultimately came to the view that the Vopak/Shell arrangements would not substantially lessen competition for the purposes of the Trade Practices Act.

MR 171/04 (24.08.04)

HOT SPOT—CRACKING CARTELS

Cracking cartels—ACCC enforcement conference

The world's leading enforcement regulators will be in Sydney this November to take part in the International Competition Network Cartel and Leniency workshops, to be held by the ACCC. The ACCC will be providing Australian competition lawyers, and business, industry and consumer representatives with a unique opportunity to meet these experts at the *Cracking Cartels: International and Australian Developments* conference on 24 November 2004. Conference discussion will focus on how competition regulators are dealing with illegal cartel behaviour around the world. *Cracking Cartels* will feature the latest investigative issues in the fight against cartels, the effectiveness of leniency policies in curtailing hard core cartels and cooperation by enforcement agencies to combat international cartels. **MR 157/04 (16.08.04)**

RESTRICTIVE TRADE PRACTICES

Agricultural consultants' fees

The ACCC has accepted court enforceable undertakings from the Australian Association of Agricultural Consultants (WA) regarding its requirement that members charge their clients minimum recommended fees. The recommended fee scale set minimum hourly rates for consultants, depending on their experience, and also set minimum rates for specific tasks undertaken by consultants. Although members who did not comply with the recommended fee scale could be reprimanded, fined or disqualified from membership, it appears that no member has ever been punished for failing to comply. Responding to ACCC concerns the association has implemented a review of its instruments (including its constitution and code of ethics) and removed the recommended fee scale from its website. It has now also undertaken, among other things, not to engage in similar conduct in the future, to complete the review of its instruments and forward copies of the revised instruments to its members.

MR 200/04 (15.09.04)

Penalty for attempted price fix: flour industry

George Weston Foods has been penalised \$1.5 million by the Federal Court after the company conceded that a former divisional chief executive had attempted to fix the price of flour with a competitor. The ACCC began legal action in late 1999 alleging that Mr Paul Benedict Loneragan, a then director of George Weston Foods and chief executive of its flour milling division, had telephoned a competitor seeking to fix the wholesale price of flour. The competitor did not respond to Mr Loneragan's approach. When imposing the penalty Justice Gyles noted the case showed a deliberate attempt to breach the Act by a very substantial corporation with a very poor record of prior contraventions. Furthermore, as the flour industry affects staple foods, the potential loss and damage to the public was very great. Justice Gyles made orders that George Weston Foods be restrained from similar conduct for four years.

MR 175/04 (25.08.04)

Resale price maintenance—giftware suppliers

The ACCC has instituted legal proceedings against RM Hall, Westminster Retail and directors of each of the companies for alleged resale price maintenance. RM Hall is the exclusive Australian agent and importer of Florence Sculpture d'Arte figurines, known as Armani figurines. Westminster operates, and is the franchisor, of a number of retail stores throughout Australia, most of which have retailed Armani figurines. The ACCC alleges that RM Hall engaged in resale price maintenance in several ways, including by issuing price lists to dealers to try to induce them not to advertise or sell the figurines below the price specified in the price list, and by making it known to Westminster that it would not supply the figurines unless they agreed to the minimum selling price. Similarly, the ACCC alleges that Westminster contravened the Act in a number of ways, including by entering into franchise agreements with a term specifying that the franchisees would not advertise or sell goods supplied by Westminster at a price less than its specified price and by issuing Stock Supply Procedures and invoices specifying the retail price of the goods.

MR 174/04 (25.08.04)

AUTHORISATIONS AND NOTIFICATIONS

Qantas/British Airways 'kangaroo route' alliance

The ACCC has proposed granting five years continued authorisation to an alliance which has operated between Qantas and British Airways since 1995 on the Australia to Britain 'Kangaroo route'. The ACCC recently rejected an alliance between Qantas and Air New Zealand after finding that the public benefit did not outweigh the anti-competitive detriment. This was decided after investigations revealed that those companies jointly held a 90 per cent share of the trans-Tasman market and that inadequate competitive constraint existed from other carriers. In this case, however, the ACCC believes that any lessening in the competition in the market for business passengers travelling between Australia and Britain is outweighed by benefits arising from cost savings, the availability of discount seats and schedule connections. There is strong competition in the leisure passenger markets in which the joint service agreement (JSA) partners operate and there is a strong possibility that cost savings made by Qantas and BA under the JSA will end up, one way or another, in the hands of consumers.

MR 168/04 (23.08.04)

AWB/GrainCorp joint venture

The ACCC has decided to grant interim authorisation to a joint venture company between GrainCorp and the Australian Wheat Board (AWB) providing transport and logistics services to both companies in Queensland, New South Wales and Victoria for export bound grain. GrainCorp and the AWB state that the purpose of forming the joint venture company is to improve efficiencies and to achieve logistics cost savings for grain exports by better coordinating export grain storage and transport activities, and increased information to facilitate the export grain task. The ACCC has decided to grant interim authorisation given the size and proximity of the upcoming harvest and the need for improved coordination between the applicants and the rail transport providers in managing the harvest and export task. The ACCC will take account of the practical impacts of the joint venture arrangements over the coming harvest season. **MR 219/04 (07.10.04)**

Collective bargaining: SA milk vendors

South Australian milk vendors will be able to start collectively negotiating the terms and conditions of distribution contracts with milk processors under an interim authorisation granted by the ACCC. The Milk Vendors Association (SA) has sought authorisation for proposed collective bargaining with National Foods Milk and Dairy Vale Foods. The ACCC found that there is likely to be little, if any, public detriment in allowing the arrangements to go ahead in the short term given the large disparity in bargaining power between the processors and the vendors. The interim authorisation does not compel individual vendors and processors to take part in the proposed arrangements. While interim authorisation allows the parties to engage in the conduct while the ACCC considers the merits of the substantive application, a decision to grant interim authorisation does not necessarily indicate its final decision.

MR 218/04 (07.10.04)

BP shopper docket scheme

The ACCC has recently received several notifications from BP Australia and 35 BP-branded service stations advising that they, in conjunction with Action Supermarkets, have begun a 'shopper docket' promotion similar to those currently offered by Woolworths/Caltex and Coles/Shell. The ACCC has decided to allow the BP notifications to stand. In support of its notification, BP argued, and the ACCC agrees, that their shopper docket promotion scheme is a pro-competitive response to other petrol discount schemes. Therefore, consistent with its earlier decisions, the ACCC has allowed the notifications.

MR 172/04 (24.08.04)

Banks joint venture—voucher processing facilities

The ACCC will not intervene in the proposed joint venture of the voucher processing facilities of the Commonwealth Bank of Australia, the National Australia Bank and Westpac Banking Corporation having concluded that it is unlikely to result in a substantial lessening of competition. The joint venture company will act as a service entity. The parties to the arrangement will collectively outsource their voucher processing requirements, but the banks will continue to compete for the provision of voucher processing services to downstream customers. While the ACCC considers that the barriers to entry to the market are high, it does not consider that there will be any change to customers who acquire voucher processing services.

MR 166/04 (20.08.04)

REGULATED SERVICES

Telstra retail price control hearings

As part of the current ACCC review of the price control arrangements that apply to Telstra, due to expire next year, the ACCC held public hearings throughout late August and early September in Cairns, Brisbane, Canberra, Wagga Wagga, Sydney, Dubbo, Hobart, Melbourne, Adelaide, Perth, Darwin and Alice Springs. The ACCC is currently reviewing:

- the price cap that allows Telstra to lift line rentals each year
- the price cap requiring price reductions in local, fixed-to-mobile and domestic and international long distance calls
- the requirement on Telstra to cap calls at 22 cents per call (40 cents from a public payphone)
- the requirement that Telstra must ensure its customers in non-metropolitan areas pay broadly the same price for untimed local calls as those in metropolitan areas.

MRs 159–160, 164–165, 167, 170, 177, 181–182, 184–186

Telstra telecommunications access services

The ACCC has issued a draft report on its assessment of Telstra's revised access undertakings for core telecommunications services. The draft decision is a qualified acceptance of Telstra's undertakings for the public switched telephone network (PSTN) services and local carriage service (LCS), but to reject Telstra's undertaking for the unconditioned local loop service (ULLS). The undertakings specify the price and some non-price terms and conditions proposed by Telstra for access by other providers to the PSTN originating and terminating services, and the ULLS over three financial years. The terms and conditions for the LCS apply for one financial year. These core services enable Telstra's competitors to provide local, long distance, international, fixed-to-mobile and mobile-to-fixed calls, as well as certain broadband services. Reasons for the decision are available on the ACCC website. The ACCC seeks submissions by interested parties by no later than 10 November 2004.

MR 223/04 (14.10.04)

Telstra's line sharing service access charge

The ACCC has made a final decision to reject Telstra's line sharing service (LSS) undertaking, which proposed a monthly access charge of around \$15 per service, largely because it considered that the charge was well above that justified by efficient costs. Such a price is unlikely to encourage service providers to invest in their own facilities to provide broadband services and also unlikely to encourage efficient use and investment in infrastructure by Telstra. The ACCC believes the monthly charge should be closer to \$7–\$9 per service. The LSS enables two carriers to provide separate services over a single metallic 'line', enabling Telstra's competitors to provide high-speed broadband services, such as ADSL, to the customer on the same line.

MR 180/04 (27.08.04)

Domestic inter-carrier roaming services

Australian mobile carriers will be required to give the ACCC details of the terms and conditions they charge for domestic inter-carrier roaming (domestic roaming) services on mobile telephone networks, under a draft decision issued this month. Domestic roaming is a wholesale service sold by one mobile network carrier to another. Mobile carriers use this service to enable their subscribers to make and receive mobile phone calls in areas where they do not have network coverage by using (or 'roaming' on to) another carrier's network. The decision to monitor these terms and conditions follows a draft decision by the ACCC not to declare a domestic roaming service at the moment. Following further consideration of submissions, the ACCC expects to issue its final decision in late-November.

MR 220/04 (07.10.04)

One million broadband services connected

The take up of broadband services has passed the one million mark, according to the latest ACCC *Snapshot of Broadband Deployment* report. The report shows that at the end of June 2004, there were 1 047 800 broadband services connected across Australia. Broadband take-up increased by 218 500 in the June 2004 quarter—the largest quarterly increase since the survey began. Broadband take-up has doubled in the past year.

MR 189/04 (31.08.04)

Internet interconnections

The ACCC has issued a draft report seeking comment on whether internet interconnection arrangements should be subject to a two-year monitoring period. Internet interconnection allows customers—business, residential or others—that are connected to one internet network to send and receive emails and access websites connected to others. Having conducted an inquiry into whether to regulate internet interconnection, the ACCC will closely monitor the industry over the next two years. The ACCC is proposing that monitoring be carried out under a record keeping rule that would apply to a cross-section of key players, and would identify essential information indicating structural or behavioural problems. Interested parties are invited to make submissions until 12 November 2004.

MR 222/04 (14.10.04)

ISDN and data service declaration review

The ACCC has announced that it will hold a public inquiry reviewing the ISDN and digital data access service (DDAS) declarations. The ISDN is used to carry information such as voice, data, high quality sound, text, still images and video over the public switched telephone network. It is a digital communications service using the same copper wire lines as for standard telephone services. The DDAS is an access service for the domestic carriage of data. The ACCC has issued a discussion paper identifying relevant issues and seeking comments on particular aspects of ISDN, DDAS and related markets and of the impact of regulation. The public inquiry will determine whether the declaration of the ISDN and DDAS services should be maintained, varied or revoked by the ACCC when they expire in June 2005. The ACCC expects to issue a draft report setting out its preliminary findings early in 2005.

MR 204/04 (22.09.04)

New Australia Post service

The ACCC will not oppose prices proposed for a new Australia Post service. The new service—Impact Mail—will allow bulk quantities of irregular shaped (non-rectangular) mail to be posted. Australia Post is required to lodge a price notification under the Trade Practices Act because the Impact Mail service falls within the definition of Australia Post's reserved services. The ACCC reached its decision after considering information provided by Australia Post and the submissions it received from interested parties about whether the proposed price was appropriate.

MR 214/04 (29.09.04)

Electricity regulatory report—transmission networks

The ACCC has issued its first electricity regulatory report covering the financial and operational performance of transmission network service providers in the National Electricity Market. The report details the performance of Powerlink, TransGrid, SPI PowerNet, VENCORP and ELeCtraNet for 2002–03. The ACCC will have discussions with Energy Australia, whose revenues are also regulated, about publishing its information. The report focuses on the revenue and expenditure performance of the networks, as well as their performance against the ACCC's service standards. Publishing such information benefits the public by raising transparency about the performance of these transmission networks.

MR 169/04 (23.08.04)

Electricity: Revised draft regulatory principles & regulatory test

The ACCC has issued its *Draft Statement of Principles for the Regulation of Electricity Transmission Revenues* (DRP). The DRP is a guide for the regulation of electricity transmission business revenues. The focus of the review has been on improving the climate for investment through greater certainty, improving incentives for efficiency, and providing greater transparency about transmission network performance.

The ACCC has also issued its final decision on the review of the electricity regulatory test. The regulatory test is a cost-benefit test used by transmission and distribution businesses to assess interconnectors and other network investments. The decision outlines a workable methodology for the inclusion of competition benefits in the regulatory test.

MR 163/04 & MR 162/04 (19.08.04)

South West Queensland gas pipeline

The ACCC has issued its draft decision on Epic Energy's proposed access arrangement revisions for the South West Queensland pipeline. Under the gas code, operators of covered pipelines must submit an arrangement to the ACCC describing the terms, conditions and reference tariffs for access to the pipeline. These arrangements provide for revisions to be submitted to the ACCC at specified review periods. This particular review is of services other than the forward haul service. The ACCC is proposing two amendments to Epic's proposal. It has accepted Epic's proposal to no longer offer certain non-forward haul and interruptible services as reference services, subject to an undertaking on future tariffs for these services, and required Epic to re-insert the review trigger in the access arrangement.

MR 217/04 (07.10.04)

Tribunal's gas code rulings

The ACCC is seeking a judicial review of the Moomba to Sydney pipeline access arrangement decision handed down on 8 July to clarify the meaning of key provisions of the gas code. The ACCC application is confined to the tribunal's application of the law, consideration of evidence and reasonableness of its propositions relating to the methodology to be applied when establishing the initial capital base of the pipeline. Since 2001 there have been four appeals to the tribunal over gas code access arrangement decisions by the ACCC. The ACCC concern is that the current approach rewards 'cherry picking' by encouraging appeals where the applicants have nothing to lose and everything to gain by challenging specific aspects of ACCC decisions. The result of this has been the creation of a level of inconsistency in gas code interpretation which the ACCC is seeking to clarify.

MR 156/04 (13.08.04)

Productivity Commission review of the gas code

The ACCC has welcomed the issue of the final report of the Productivity Commission's review of the gas access regime. Many of the recommendations will streamline the functioning of the current regime resulting in lower administration and compliance costs. Recognising positive developments in the gas markets under the current regime, the report recommends the retention of a gas-specific regulatory regime, but with the addition of a price monitoring option. The report has also accepted a number of the ACCC's suggestions including clarification of the status of pipeline expansions, removing one step in the decision making process and adjusting the merits review process. One of the key recommendations in the report is the introduction of a second tier of regulation that is less intrusive than the current approach of setting reference tariffs. The ACCC considers it critical that a second tier still provides effective regulatory oversight.

MR 153/04 (10.08.04)

Air navigation service pricing

The ACCC has issued a paper seeking public comment on a pricing proposal by Airservices Australia. Airservices Australia is the monopoly provider of en route air navigation, terminal navigation and aviation rescue and fire-fighting services in Australia. These services are declared under Part VIIA of the Trade Practices Act, which means that Airservices must notify the ACCC when it wishes to increase prices. Airservices is proposing a long-term pricing arrangement that will apply for five years, beginning in October 2004, covering all its air navigation services throughout Australia. The proposal recommends increases in the prices of terminal navigation, aviation rescue and fire fighting services, and decreases in the prices charged for en route navigation services. The ACCC will review submissions and retains the option to object or not object to the proposed increases.

MR 158/04 (17.08.04)

ACCC State Briefing

QLD

Delivering the Competing Fairly Forum

The Queensland Regional Outreach Manager has been busy arranging a number of live viewings of the latest Competing Fairly Forum video, *Franchising: Is it right for you?*, in south east Queensland and northern NSW. A viewing of the video was conducted in Ballina in northern NSW in late September which attracted an audience of 20 people. Further presentations are to follow in Grafton, Bundaberg, Rockhampton and other locations from October through to early December. Contact Albert Julum on (07) 3835 4641.

SA

The ACCC in South Australia recently had the opportunity to brief representatives of the six Business Enterprise Centres and business advisors of the 13 Regional Development Boards at their September coordination meeting. The theme was franchising and the promotion of the ACCC's latest Competing Fairly Forum. BECs and business advisors play a critical role informing, educating and assisting new and existing businesses to be alert to risks and aware of the law. Providing them with a working knowledge of the Franchising Code of Conduct and the role played by the ACCC should translate into practical assistance to a diverse number of new and existing franchisees.

The franchising CFF is also providing valuable assistance to a large number of Mitsubishi workers facing retrenchment from the Lonsdale plant next year. The ACCC is working collaboratively with the Southern Success BEC and the Department of Employment and Workplace Relations (through its labour adjustment package) to ensure that workers gain an understanding of the elements of the Franchising Code while they consider their future options. Contact Greg Trengove on (08) 8213 3456.

TAS

Screenings of the *Franchising: Is it right for you?* Competing Fairly Forum

The latest Competing Fairly Forum, *Franchising: Is it right for you?*, was screened in St Helens on 19 October 2004 and scheduled for Launceston on 10 November 2004 (contact Bridget Rowlings, region north!, on 6331 3988). The forums may include short presentations from local franchisors/franchisees and an ACCC representative will be present to answer any questions relating to franchising and/or the ACCC. The forum will feature a 40-minute video panel discussion of the commercial relationship between franchisors and franchisees. For further information on these forums, or presentations planned for other Tasmanian centres, please contact John Bardenhagen on (03) 6215 9309.

NSW

Ag-Quip Field Day

In August the Rural and Regional Program in NSW hosted a stand at the Ag-Quip agricultural expo held outside Gunnedah, in north western NSW. Ag-Quip is billed as Australia's largest rural field day. Over the course of the three-day event, it regularly attracts attendances of around 100 000 people.

Over the three days, we raised the profile and recognition of the ACCC, often to an audience that would not normally be reached by other activities conducted under the Rural and Regional Program. Various issues were discussed on the rights of businesses and consumers alike. Contact David Badewitz on (02) 9230 9166.

VIC

Seminars in regional Victoria

The Regional Outreach Manager for Victoria has been out and about presenting seminars in regional Victoria, including a seminar for the Winegrape Growers Association in Wangaratta on fair trading practices under the Trade Practices Act, and a screening of the Competing Fairly Forum, *Growing better business relationships*, for the Victorian Farmers Federation Shepparton branch. Contact Fiona MacRae on (03) 9290 1952.

Any other queries regarding the activities of the Small Business Rural and Regional Program can be directed to the National Coordinator, Ann Czajor on (02) 6243 1356.

LATEST PUBLICATIONS FROM THE ACCC

[ACCC ejournal](#)

Published: 20 October 2004. Electronic: free

The ACCC ejournal is now produced as an online publication. Hard copy journal back issues (1 to 49) are available for \$10 each.

[Guide to unconscionable conduct](#)

Published: 19 October 2004. Electronic: free ; Printed: \$10

This guide explains how the unconscionable conduct provisions of the Trade Practices Act apply in the dealings between businesses, and between businesses and consumers.

[When are 'souvenirs of Australia' Australian souvenirs?](#)

Published: 21 September 2004. Electronic: free ; Printed: free

Flyer, A4. If consumers are led to believe that a souvenir is a product of Australia or is made in Australia when in fact it isn't, then the manufacturer, importer, distributor and/or retailer may find themselves in breach of the Trade Practices Act.

[ACCC info kit for the medical profession](#)

Published: 20 August 2004. Electronic: free ; Printed: free

This ACCC Info kit for the medical profession provides simple and straightforward guidance to help doctors comply with the Trade Practices Act.