



ACCC

# briefing

August 2004

## FROM THE SMALL BUSINESS COMMISSIONER

Amendments to the Trade Practices Act arising from the Dawson review have now been introduced into parliament. These changes include provisions for collective bargaining and boycott notification for small businesses. Additional legislative amendments have been foreshadowed to expand the unconscionable conduct provision to cover misuse of unilateral variation clauses in contracts and increase the transactional threshold level from \$3 million to \$10 million.

Two new commissioners, Dr Stephen King and David Smith have been appointed, bringing the Commission to a full strength of seven commissioners. While the commissioners make decisions on a joint basis, each commissioner takes the lead in a particular part of the ACCC's functions. The responsibilities are as follows:

- Graeme Samuel—Chairman
- Louise Sylvan—Deputy Chair, adjudication, consumer issues
- John Martin—small business, rural/regional, franchising, transport
- Ed Willett—telecommunications, energy
- Jennifer McNeill—litigation, compliance
- David Smith—enforcement, compliance
- Stephen King—mergers, other restrictive trade practices

As this edition reports, the ACCC has made an important submission to the Productivity Commission (see item this page) pointing to the need for further reforms in telecommunications, electricity and road/rail transport. Continuing barriers to competition in these sectors adversely affect the cost base and competitiveness of all Australian business.

## REPORTS, SPEECHES & MAJOR DEVELOPMENTS

### Telco market 'not truly competitive'

Aspects of the telecommunications market remain far from truly competitive, ACCC Chairman, Graeme Samuel, told the Australian Council for Infrastructure Development in July. Mr Samuel noted the dependence of competitors on Telstra for access to its copper wire and cable networks and Telstra's ability, demonstrated recently, to stymie efforts by major competitors to roll out their own cable networks, by rolling out more of its own cable in response. The ACCC has to work within this framework to promote competition and protect consumers. The ACCC Chairman said a comprehensive assessment of Telstra's full ownership of the main pay TV distribution network and copper network, and its 50 per cent shareholding in Foxtel, is warranted.

MR 136/04 (22.07.04)

### Contact the ACCC



Infocentre: 1300 302 502



Website: [www.accc.gov.au](http://www.accc.gov.au)

### Further competition reforms justified

National Competition Policy and other competition-based reforms have helped improve Australia's economic performance, according to an ACCC submission to the Productivity Commission's *Review of National Competition Policy Arrangements*. ACCC Chairman, Graeme Samuel, has said however that 'it is now time to reinvigorate and refine the current competition framework' as 'competition in some industries is held back by legislation or the structure of the industry.' Consideration should be given to removing barriers to competition including the:

- high degree of concentration in the telecommunications sector
- regulations restricting competition in the broadcasting sector
- recent mergers within the electricity industry
- inconsistent pricing of road and rail infrastructure and bottle necks in the transport industry.

These barriers to competition cannot be addressed by the Trade Practices Act—they require policy changes from governments.

MR 126/04 (16.07.04)

### Paper on collective bargaining and collective boycotts

The ACCC has released an issues paper to explain what criteria the ACCC considers when businesses request immunity to engage in collective bargaining and collective boycotts. Collective bargaining can be a means for smaller business to redress an imbalance in bargaining power when negotiating with larger businesses and achieve more favourable commercial outcomes. Before granting immunity, the ACCC must be satisfied in each case that it is in the public interest. Legislation recently introduced by the Federal Government is designed to provide a simpler and speedier process for small businesses seeking to collectively bargain. In conjunction with the passage of the Bill, the ACCC will be issuing public guidelines to assist small businesses in lodging collective bargaining notifications.

MR 119/04 (07.07.04)

### Federal Court upholds investigative powers of ACCC

The Federal Court has confirmed the powers of the ACCC to use section 155 to compel information from persons it believes capable of providing information which may assist in an investigation of a possible breach of the Act. The court rejected Seven Network's contention that the ACCC had improperly used these powers in a notice issued to it. The notice was issued to gain information relating to an investigation into the 'Wildly Wealthy Women Millionaire Mentoring Program', which had been featured on the Seven Network's *Today Tonight* program. ACCC Chairman, Mr Graeme Samuel, said the decision was significant because it confirms that section 155 is simply an investigative tool and not an allegation of wrongdoing.

MR 121/04 (09.07.04)

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](http://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](mailto:small.business@accc.gov.au). For TPA information contact the *ACCC infocentre* 1300 302 502.

## UNCONSCIONABLE CONDUCT

### Unconscionable conduct by vacuum cleaner company

Following ACCC action, Lux Pty Ltd was found to have engaged in unconscionable conduct in relation to the door-to-door sale of a Lux vacuum cleaner to a clearly vulnerable woman while she was at home alone. A Federal Court judge concluded that it should have been apparent to the Lux sales agent that the woman was substantially illiterate, unable to understand commercial matters in any depth and was therefore patently a person of some vulnerability. It was also found that the representative did not give the woman the opportunity to get independent advice or assistance before having her sign up to the contract to buy the vacuum cleaner. The judge described the meeting as 'irreconcilable with what was right or reasonable'.

**MR 127/04 (19.07.04)**

### Retail Tenancy action settled

An ACCC action against Westfield Shopping Centre Management (Qld) and associated companies and individuals alleging unconscionable and misleading conduct towards former retail tenants at the Indooroopilly Shopping centre in Brisbane (formerly managed by Westfield), was settled on a without admissions basis. In proceedings instituted against Westfield in 2001 the ACCC alleged that Westfield had acted unconscionably towards former tenants who had previously taken out private litigation against Westfield. During the settlement of the private litigation, Westfield sought to have the former tenants sign a deed of release containing a clause which would compel them not to take any further action on the subject matter of their private litigation, including any administrative or governmental investigation against Westfield. The ACCC was concerned that this condition was not reasonably necessary to protect Westfield's legitimate interests and that it arose in circumstances where there was a significant difference in the relative bargaining strengths of the parties. As part of the settlement, Westfield has paid an agreed amount to the former tenants and undertaken to the Federal Court that, in future, it will use an acceptable release of liability clause when entering into settlement agreements with retail tenants.

**MR 096/04 (17.06.04)**

## HOT SPOT—ACCC CARTEL CONFERENCE

What are the latest investigative issues in the fight against cartels? How effective are leniency policies in curtailing hard core cartels? How do enforcement agencies cooperate to combat international cartels? These questions and more will be tackled by the world's leading cartel regulators at the ACCC conference titled *Cracking Cartels*.

Speakers will be in Sydney to participate in the International Competition Network (ICN) Cartel and Leniency Workshops to be hosted by the ACCC in the days preceding the conference. *Cracking Cartels* will be held at the Four Points by Sheraton Darling Harbour, Sydney on Wednesday 24 November. For more details go to the 'conferences' section of the ACCC website at [www.accc.gov.au](http://www.accc.gov.au)

## FRANCHISING CODE OF CONDUCT

### Distributorships breaches

Legal proceedings were instituted against Mr Bon Levi, who allegedly has sold various distributorships, including ones for snack foods, cookies and fruit juices, under the Little Joe and Joey's brands. The ACCC alleges that the distributorships in question are, in fact, franchises and that by failing to provide distributors and prospective distributors with disclosure documents and copies of the Franchising Code of Conduct as the Code requires, Mr Levi breached the Trade Practices Act. The ACCC also alleges that Mr Levi engaged in misleading or deceptive conduct by making representations, without reasonable grounds, about guaranteed income for distributors, secured distribution outlets for the products and, in the case of the snack foods, that he would conduct a national advertising campaign sufficient to establish the brand as a substantial competitor to the major snack food brands in Australia. The ACCC is seeking court orders including declarations, injunctions and costs.

**MR 150/04 (06.08.04)**

## CONSUMER AND SMALL BUSINESS PROTECTION

### Misleading conduct: Business fax directory

A Swiss company, IT&T AG, which sought payment from Australian businesses for unauthorised listings in its international fax directory, has been found to have engaged in misleading and deceptive conduct. The Federal Court has found that the company's website created the impression that each of the Australian businesses listed (more than 5,000 in total) had corresponded with IT&T AG and given their authority or consent to have their particulars listed. ACCC inquiries found that, of a sample of 136 companies contacted, none confirmed they had given such consent. Further, the court found that by writing to Australian businesses seeking payment for these listings, IT&T AG had breached other provisions of the Trade Practices Act.

**MR 137/04 (26.07.04)**

### Property investment seminar misrepresentations

After swift ACCC action, misrepresentations made in conjunction with two separate property investment seminars run in Australia were corrected at the time of the seminars themselves by prominent signage and oral statements made to attendees. On 29 June National Training Conference, an American organisation, agreed to consent orders to correct misrepresentations it made in invitations mailed directly to Australian consumers for an 'Australian Financial Superstars Conference'. On 20 July two other companies, Vision Pursuit and Giann & Giann, the promoters of the 'Robert Allen Millionaire Matrix Seminar', agreed to consent orders requiring them to correct misrepresentations that the ACCC alleged. Clarification was made at the seminars that references to wealth creation strategies by private mortgage notes, brokering mobile home notes, and leveraging 'tax certificates' and/or 'tax deeds', referred to strategies applicable in the United States of America that have no application in Australia. Mr Robert G Allen, the principal speaker at the seminar, also consented to orders requiring him to not make, publish or cause the publication of certain representations about wealth creation strategies.

**MRs 109/04 (29.06.04), 131/04 (20.07.04) & 133/04 (21.07.04)**

## **Telstra's \$0 advertising misleading**

A Federal Court judgment has found that Telstra's use of \$0 mobile phone advertising was misleading and deceptive. The ACCC had alleged that certain \$0 mobile phone representations made in Telstra advertisements were misleading because customers who signed up to Telstra's \$0 'phone option' did not receive call credits that are available to other customers on Telstra's monthly member plans. In addition, customers had to commit to a longer minimum contract term involving a higher early termination charge. It is the ACCC's view that \$0 advertising is not acceptable if the full package effectively costs more with the product offered for \$0 than the remaining goods and services cost without it.

**MR 140/04 (30.07.04)**

## **Country of origin guidelines for toys industry**

The ACCC has issued guidelines on country of origin claims for the toys industry to help manufacturers, importers and retailers of toys who want to make country of origin claims within the provisions of the Trade Practices Act. A working party, led by the ACCC and including the CEO of the Australian Toy Association Ltd, produced the guidelines in consultation with the Department of Industry and the Australia Made Campaign. The guide is the final in a series of six ACCC publications designed to ensure compliance with the Trade Practices Act country of origin rules and to promote greater understanding among consumers and industry.

**MR 141/04 (02.08.04)**

## **Medical tests not diagnostic**

Proceedings against Australian Biologics Testing Services and its director, Ms Janette Burke, were settled by consent with the parties undertaking not to make 29 specific claims about the efficacy of its services. They also agreed to forward a notice to all practitioners who referred patients to Australian Biologics and to all patients who used its services between 1 July 2001 and 2 July 2004. This followed ACCC allegations that representations made in brochures and on the Australian Biologics' website in 2001 and part of 2002 were false, misleading and deceptive. The ACCC alleged that claims regarding three testing services offered, Thermography, Live Blood Analysis and the Bolans Clot Retraction Test, were not supported by scientific (or medical) testing. Australian Biologics and Ms Burke have agreed that these tests are not diagnostic tests and the results of such tests are not indicative of a specific medical condition.

**MR 125/04 (15.07.04)**

## **Trolley jacks**

Proceedings have been instituted against TWM Imports relating to trolley jacks that allegedly do not comply with the prescribed consumer product safety standard. It is alleged that the company imported and supplied trolley jacks which failed to comply in relation to: design and construction, requirements for performance, marking requirements of the jack and its packaging, and the maintenance, safe usage and assembly instructions that should be supplied with the jack.

**MR 120/04 (07.07.04)**

## **HOT SPOT—E-BUSINESS—KEEPING IT SAFE**

The Department of Communications Information Technology and the Arts has just produced an information package *Internet Security Essentials for Small Business*. This is available on line at <http://www2.dcita.gov.au/ie/trust/protecting/e-security>

The *E-crime—A Crime Prevention Kit for Small Business* is available from [www.ag.gov.au](http://www.ag.gov.au) (Publications link). The kit covers areas such as online credit card fraud, online fraud and proper storage of computer records should they be needed as evidence.

## **International cooperation against spam**

The ACCC, Australian Communications Authority, US Federal Trade Commission and UK agencies have joined forces in the international fight against spam by signing a memorandum of understanding. Spam is a serious and growing problem, which creates considerable costs for businesses, is often misleading and deceptive and undermines consumer confidence. The ACCC is also currently exploring the possibility of entering into cooperation agreements with other counterpart agencies to ensure that cross-border investigations and enforcement activities can be undertaken in a timely and effective manner.

**MR 118/04 (05.07.04)**

## **Shopping online: traders warned**

Australian businesses using the internet as a sales point have been told to review their sites following disturbing findings of an ACCC survey. The survey examined 265 Australian transactional sites containing online terms and conditions, finding that more than 50 per cent attempted to disclaim consumers' warranty rights or limit liability. A particular concern was the level of disclosure of statutory warranties and conditions. Australian businesses are reminded that the rights of consumers in all other kinds of retailing apply equally online. The ACCC has issued a paper about the survey, *Shopping online*, and a flyer, *Your online rights*.

**MR 105/04 (25.06.04)**

## **Failure to provide security services**

Chubb Security Australia has appeared before the Federal Court on numerous charges, brought by the ACCC, of contravening sections of the Trade Practices Act that prohibit accepting payment without intention or ability to supply as ordered. Chubb informed the court that it proposed to plead guilty to the charges and the matter was listed for a hearing to determine the appropriate penalty. These charges relate to Chubb entering into agreements with clients to provide security services when, at the time of entering into the agreements, there were reasonable grounds, of which Chubb was aware, for believing that it would be unable to supply all contracted services within the period agreed. The contracts were entered into between 5 June 2001 and 4 November 2002 and affected clients in Sydney, the Gosford region, Canberra and Tasmania.

**MR 101/04 (24.06.04)**



## **Qantas frequent flyer program**

An extensive investigation of the Qantas Frequent Flyer program has been concluded. Discussion commenced following consumer complaints to the ACCC about inadequate disclosure of terms and conditions relating to the restrictions placed on Award seat availability. The ACCC has found insufficient evidence to establish a breach of the Trade Practices Act. Qantas has agreed to continue reviewing and improving its disclosure of the limited availability of Frequent Flyer seats and has recently introduced an online search function which allows members to more readily see Award seat availability. It has also indicated that it is acting towards making more Award seats available for Frequent Flyers and improving transparency about the operation of the program.

**MR 098/04 (21.06.04)**

## **MERGERS AND ACQUISITIONS**

### **Generator acquisition approved in-principle**

The ACCC has agreed in principle not to intervene in the acquisition of Edison Mission Energy by International Power after agreeing in-principle to court enforceable undertakings. The ACCC was concerned that the acquisition would give International Power the ability to exercise market power in the Victorian region of the National Electricity Market, which would likely lead to electricity prices higher than warranted by normal supply and demand factors. International Power offered to provide undertakings, and negotiations are continuing on the terms and conditions for the divestiture of Valley Power, a 300MW gas fired electricity generator that is currently 60 per cent owned by Edison Mission. It is intended that the final form of the undertakings will ensure that the acquisition of Edison Mission's Australian assets will not give International Power the enhanced ability to raise wholesale electricity prices above competitive levels.

**MR 143/04 (03.08.04)**

### **Radiology acquisition questioned**

DCA's proposed acquisition of 113 radiology facilities throughout Australia from MIA, as it stands, is likely to substantially lessen competition in radiology markets in Adelaide, particularly for the supply of MRI, nuclear medicine and some other radiology services. The ACCC is discussing specific remedies to overcome the competition concerns with DCA. These include provisions about the employment of radiologists and the condition of the facilities after DCA's acquisition.

**MR 139/04 (29.07.04)**

### **SP Energy acquisition of TXU Australia**

The ACCC will not intervene in SP Energy's acquisition of TXU Australia, having been satisfied that court enforceable undertakings offered by SPE will neutralise its competition concerns about the joint ownership of parts of the National Electricity Market transmission network. The ACCC was concerned by the potential joint ownership of transmission network assets and SPE's interests in generation. However, the court enforceable undertaking submitted by SPE provides for the separation of these two businesses. The undertaking also covers non-discrimination, access to information and enhanced ring fencing commitments. A subsidiary company has also

agreed to provide the ACCC with an annual report detailing the measures it has undertaken to ensure compliance with its obligations under the undertaking.

**MR 132/04 (21.07.04)**

## **INFORMAL MERGER CLEARANCE GUIDELINES**

Australian business will benefit from proposed changes to the ACCC's informal merger clearance guidelines. The additional guidelines are aimed at engendering greater levels of accountability, transparency, certainty, efficiency and timeliness in merger decisions, to the advantage of both business and the Commission. The additional guidelines would include factors such as: timeframes to create greater transparency and certainty in the mergers process; outlines of specific information requirements to avoid delays in collecting such information; avenues of communication with ACCC staff and commissioners; a statement of concerns to be issued by the ACCC and made publicly available to the parties; and the public disclosure of reasons for all decisions. The additional guidelines will be underpinned by the International Competition Network's recommended practices and guiding principles for merger reviews. The ACCC will be consulting with interested parties, including business and its advisers, as part of the process to finalise these guidelines.

**MR 090/04 (28.05.04)**

### **Pacific National acquisition of Freight Australia**

The ACCC did not intervene in the acquisition of Freight Australia by Pacific National, having accepted revised court enforceable undertakings that remedy specific concerns about potential substantial lessening of competition. The ACCC was concerned that the acquisition would cement Pacific National's large market share in rail freight between the eastern states and Perth. The undertakings given by Pacific National include a commitment to give control of the tracks it owns between Somerton rail terminal (in Melbourne) and the main line interstate tracks, to the Commonwealth Government-owned Australian Railtrack Corporation to facilitate easier access by potential market entrants to the use of rail terminal space there. General concerns were raised by market participants about the level of competition in parts of the rail industry and access to rail freight infrastructure. However, the ACCC must confine its assessment to the impact of this particular acquisition.

**MR 117/04 (02.07.04)**

### **Boral court proceedings**

Proceedings have been instituted against Boral in the Federal Court over its proposed acquisition of Adelaide Brighton. The ACCC is seeking an injunction to prevent Boral taking any steps to acquire or exercise substantial influence or control over the business, assets or affairs of Adelaide Brighton. The ACCC is also seeking a declaration that if Boral were to acquire shares in or assets of Adelaide Brighton which would enable it to substantially influence or control the business, assets or affairs of Adelaide Brighton, Boral would be in breach of s. 50 of the Trade Practices Act. Section 50 prohibits the acquisition of shares or assets in a company which would amount to a substantial lessening of competition for goods or services in any market.

**MR 093/04 (07.06.04)**

## **Woolworths acquisition of IGA Charnwood supermarket**

The ACCC did not oppose Woolworths' acquisition of the IGA Charnwood supermarket in the ACT. Although the acquisition leads to Woolworths having a very high market share for supermarkets in Charnwood and the surrounding area, the ACCC considered several factors affecting the local retail and wholesale markets that make it unlikely that the acquisition will result in a substantial lessening of competition. First, the ACT Government has announced its intention to sell land just 2.5 kms away to Aldi Stores to establish a discount supermarket, which will intensify competition in the area. Second, a number of IGA stores remain in adjacent suburbs and a Coles supermarket at Westfield Belconnen 4.5 kms away. Third, and in relation to the wholesale market, Metcash, the independent wholesaler previously supplying the majority of IGA Charnwood's purchases, continues to experience strong growth. Given the modest size of the acquisition, the ACCC considers it unlikely that it will substantially lessen competition by damaging independent wholesalers' ability to compete with chains.

**MR 116/04 (01.07.04)**

## **RESTRICTIVE TRADE PRACTICES**

### **Cinema operators' undertakings**

The ACCC has accepted court enforceable undertakings from Greater Union, Village Roadshow and two Village executives, intended to reduce the risk of collaboration between them. Both companies have also agreed to keep the ACCC informed of significant industry developments. The undertakings follow an ACCC investigation into a complaint that Greater Union and Village had allegedly entered into arrangements or understandings in the late 1990s to oppose market entry and/or expansion by other cinema operators, in contravention of the Trade Practices Act. The alleged conduct was said to have been arranged during meetings that were convened as part of a longstanding joint venture agreement between Greater Union, Village and other companies. All of the undertakings are offered without admissions of any contraventions of the Act and acceptance of these undertakings concludes the ACCC's inquiries.

**MR 115/04 (01.07.04)**

### **Competition whistleblowers encouraged**

Leniency policy was the subject of ACCC Deputy Chair, Louise Sylvan's speech at the NT Expo in June. Ms Sylvan encouraged NT whistleblowers to follow the example of several companies and individuals who have been the first to reveal cartel conduct, such as price fixing, bid rigging and market sharing, to the ACCC and have received in return a clear, transparent and certain offer of leniency and, in some cases, immunity from penalties. 'Hard core cartels are the very worst violations of competition law', she said, 'They always hurt consumers and businesses by artificially inflating the price of goods and services.' The ACCC has a dedicated fax number for companies or individuals that wish to make a leniency application on (02) 6243 1156.

**MR 100/04 (24.06.04)**

## **Leniency policy works in brick price-fix**

Bristle Operations, trading as Metro Brick, has been ordered by the Federal Court to pay a pecuniary penalty of \$1 million for making price fixing arrangements with Midland Brick Company, trading as Midland Brick. A senior manager of Metro Brick, Mr Scott, was also ordered to pay \$25 000 for his involvement in the arrangements. In January 2002 Boral, of which Midland Brick is a wholly-owned subsidiary, approached the ACCC and voluntarily disclosed the potential contraventions under the ACCC's leniency policy which grants a more lenient enforcement of the Act against the disclosing party. Both companies were declared to have contravened the Act, put under an injunction restraining similar conduct for five years and ordered to pay costs, however, no pecuniary penalties were sought from Midland Brick.

**MR 094/04 (09.06.04)**

## **AUTHORISATIONS AND NOTIFICATIONS**

### **Australia Post new impact mail service**

Australia Post has advised the ACCC of a price notification for a proposed new service called Impact Mail. This service will allow the postage of bulk quantities of irregular shaped mail. Under the Trades Practices Act Australia Post is required to lodge a price notification because the Impact Mail service falls within the definition of Australia Post's reserved services. The ACCC is responsible for assessing the proposed price to determine whether it is appropriate and has sought submissions from interested parties to assist with its consideration.

**MR 142/04 (02.08.04)**

### **EFTPOS and ATM clearing rules**

The ACCC has found net public benefit in a draft decision proposing to re-authorise minimum standards and procedures imposed by the Australian Payments Clearing Association for the conduct and settlement of exchanges of ATM and EFTPOS payment instructions. These are contained within the Consumer Electronic Clearing System (CECS) Regulations and Manual. The public benefit arises through the protection of the integrity and security of the ATM and EFTPOS networks and from the efficiency benefits that arise from the collective setting of rules. The ACCC is satisfied that there are provisions to ensure that the rules continue to be set at appropriate levels that are not detrimental to the growth and use of the ATM and EFTPOS networks, and to ensure that the views of stakeholders that do not qualify for CECS membership are taken into account.

**MR 134/04 (22.07.04)**

### **Shipping exemptions questioned**

After detailed investigations, the ACCC cannot recommend the revocation of the Asia-Australia Discussion Agreement (AADA) which allows members to agree on freight rates for cargo being shipped from North East Asia to Australia. Under Part X of the Trade Practices Act, participants in the international cargo shipping industry are granted exemption for some forms of anti-competitive conduct which other industries must apply to the ACCC for. Exemptions can only be revoked if evidence is produced to show that anti-competitive detriments exceed any benefit. There was insufficient evidence to prove categorically that recent price rises and perceived deterioration in service quality on the route are attributable to the

arrangements of the AADA and not to broader market trends of an increase in global demand for North East Asian manufactures. However, ACCC investigations revealed that no significant public benefit associated with the AADA could be substantiated. A Productivity Commission review has been announced into the future role of Part X.

#### **MR 128/04 (19.07.04)**

##### **Woolworths and Caltex arrangement**

The long-term arrangement between Woolworths and Caltex was not opposed by the ACCC. The decision comes after a previous decision by the ACCC not to oppose short-term arrangements between the two companies about the retailing of motor fuel. The ACCC has carefully reviewed the long-term competitive impacts of the arrangement before making its decision. While Woolworths will gain a small increase in market share in fuel retailing, the existence of other strong vertically integrated petroleum suppliers and the presence of Coles in the retail market leads the ACCC to conclude that the long-term arrangement is unlikely to result in a substantial lessening of competition in any market.

#### **MR 123/04 (09.07.04)**

##### **Collective bargaining: Victorian chicken growers**

Victorian chicken meat growers will be able to collectively negotiate the terms and conditions of growing contracts with processors under interim authorisations granted by the ACCC, bringing back some certainty and stability into the industry. Separate applications for collective bargaining have been submitted to the ACCC from chicken meat processors on the one hand and from chicken meat growers (represented by the Victorian Farmers' Federation) on the other. It is the ACCC's view that ideally the processors and growers would get together to develop a single set of arrangements, however, the ACCC can only consider the applications before it. It should be noted that this interim authorisation does not compel any party to take part in the proposed arrangements and nor does it cover collective boycott rights, which will be addressed at a later date.

#### **MR 095/04 (09.06.04)**

##### **Digital third line force notifications**

Telstra pay TV has been granted continued immunity from the third line forcing provisions of the Trades Practices Act to resell Foxtel and Austar's new digital pay TV services on condition that customers also acquire telecommunications services from Telstra. The ACCC assessed that, on current information, the public benefits associated with the incorporation of pay TV services into Telstra's existing bundles of telecommunications services, through discounts or bonuses to some Telstra customers, would outweigh any public detriments resulting from the conduct. However, the ACCC is concerned by signs that the competitive environment surrounding the supply of pay TV and telecommunications may have diminished since the 2002 notifications and will continue to monitor the effects of the bundling conduct on competition in the future.

#### **MR 124/04 (12.07.04)**

## **REGULATED SERVICES**

### **Electricity transmission service standards**

A draft decision on transmission service standards in the national electricity market (NEM) has been issued. It contains a proposal to quantify and report on the impact of transmission network constraints and outages on the market. At the present time a service standard incentive scheme based on outages and circuit availability is in place. Performance is measured against specified targets and penalised or rewarded accordingly. The new proposal seeks to overcome the limitations of this system by establishing a new service standards scheme in which transmission network service providers' regulated revenues will in part be linked to market outcomes. Interested parties can make submissions on the draft decision by 1 September. A final decision is expected in October 2004.

#### **MR 148/04 (06.08.04)**

##### **Moomba to Sydney pipeline**

An application has been launched by the ACCC with the Federal Court of Australia seeking judicial review of the Australian Competition Tribunal's decision on the Moomba to Sydney Pipeline (MSP) access arrangement. The tribunal's decision, handed down on 8 July, rejected the valuation methodology applied by the ACCC and that proposed by the pipeline owner, East Australian Pipeline Ltd. Instead, the tribunal endorsed an alternative depreciated optimised replacement cost methodology as the preferred approach for valuing the MSP.

#### **MR 146/04 (04.08.04)**

##### **Telstra competition notice**

The competition notice issued to Telstra on 19 March 2004 in relation to Telstra's pricing of its broadband services will remain in force. Evidence obtained by the ACCC to date suggests that Telstra's revised wholesale pricing structure still has significant limitations, and that these are likely to substantially hinder the ability of Telstra's wholesale customers to compete with Telstra BigPond at the retail level. More evidence is being gathered from industry and negotiations with Telstra continue.

#### **MR 129/04 (19.07.04)**

##### **Snapshot of broadband deployment**

Australians were continuing to take up broadband services prior to recent price reductions but at a slowing rate, according to the latest ACCC *Snapshot of broadband deployment* update report. At the end of December 2003 there were 698 700 broadband services connected across Australia, up from 363 500 at the same time last year. However, the rate of growth had slowed over the last three quarters of 2003. In fact, the 14.4 per cent growth rate for the December 2003 quarter represented the lowest quarterly increase recorded in the period covered by the survey.

#### **MR 092/04 (04.06.04)**

## **Mobile terminating access services regulation**

Regulation of mobile termination access services—the wholesale input that allows customers to call mobile phone users connected to another network—will continue following a final report issued by the ACCC confirming an earlier draft decision. The final decision introduces a more direct pricing principle for these services, requiring mobile operators to reduce prices immediately to 21c per minute, and to 12c by 1 January 2007, reflecting more accurately the true cost of providing these services.

**MR 113/04 (30.06.04)**

## **Communications transmission pricing guidelines**

A draft guide has been issued that outlines the pricing principles the ACCC will generally apply when assessing arbitrations and undertakings for the transmission capacity service. This is aimed at increasing certainty about the ACCC's approach and should also assist industry in reaching commercial agreements on the price of the transmission capacity service. Transmission capacity is a generic service that can be used for the carriage of voice, data or other communications using wideband or broadband carriage. Carriers can use transmission capacity to set up their own networks for aggregated voice or data channels, or for integrated data traffic.

**MR 112/04 (30.06.04)**

## **Telstra accounting separation regime**

The ACCC has sought comment on two draft record keeping rules issued under the accounting separation regime for Telstra. The first includes provisions for additional reports on key performance indicators (KPIs) for Telstra's ADSL services. It is envisaged that this will provide greater transparency about the manner in which Telstra supplies these services to its retail and wholesale customers respectively. The first draft rule also includes provisions for reporting on recurring faults for basic access services. The ACCC believes that the enhancements outlined in the draft rule will address a number of industry concerns and will better ensure that the KPIs develop into the effective regulatory regime envisaged by government when it mandated accounting separation. The second draft rule specifies the requirements on Telstra to fully implement the current cost accounting framework and reflects changes to asset valuation and report preparation methodologies.

**MR 149/04 (06.08.04)**

## **Telecommunications market report**

A second *Telecommunications market indicator report*, containing selected revenue and usage information for 2002–03 and market shares from the previous year, has been released. The report is compiled using information provided by Telstra, Optus, AAPT, Primus and Vodafone, who are required to prepare financial statements in a common format under the Regulatory Accounting Framework. The report is limited at the present time. However, it is hoped that the continued preparation of this information for the public will improve the integrity and transparency of the data provided by the reporting carriers and help the ACCC to more effectively administer the telecommunications provisions of the Trade Practices Act

**MR 111/04 (30.06.04)**

## **Telstra price control arrangements review**

A discussion paper has been issued commencing the ACCC review of the retail price control arrangements applying to Telstra, requested by the Minister for Communications, Information Technology and the Arts. The direction from the minister requires the ACCC to hold a public inquiry into the nature of the price control arrangements that should apply after the current price control arrangements expire on 30 June 2005. The ACCC will consider the impact of existing and future price control arrangements on competition, investment and different groups of consumers and also the implication of new and emerging technologies. The ACCC aims to issue a draft report by the end of October 2004. Interested parties will be provided with an opportunity to provide submissions on the draft report by the end of November 2004.

**MR 107/04 (28.06.04)**

## **Line sharing service access charges**

A draft report has been issued proposing to reject Telstra's line sharing services (LSS) undertaking, after the view was formed that the monthly \$15 per service charge is unlikely to encourage providers to invest in their own facilities to provide broadband services. According to the ACCC's preliminary view of efficient costs, the monthly charge should be closer to \$7–\$8 per service. The LSS is a service that enables two carriers to provide separate services over a single metallic pair or line. It allows Telstra to supply basic telephone services to a consumer while also enabling its competitors to provide high speed broadband services, such as ADSL, to the customer on the same line.

**MR 103/04 (25.06.04)**

## **Annual reports: telecommunications**

The ACCC has issued three reports on issues relating to competition in the telecommunications industry in 2002–03. The competitive safeguards report noted that competition in the provision of infrastructure and facilities-based services had not developed to the extent expected. The report on prices paid for telecommunications services shows that, overall, average prices paid by consumers increased by 1 per cent during 2002–03. This is the first time this index has risen since the base year in 1996–97.

**MR 097/04 (17.06.04)**



# ACCC State Briefing

## TAS

### Tasmanian Rural and Regional Supporters Network

The Tasmanian Rural and Regional Supporters Network was established to ensure that people in rural and regional communities have greater access to information on their rights and obligations under the Trade Practices Act. To assist the ACCC in realising its goals, regional/community support agreements have been established throughout Tasmania. During 2004 our supporters are Advance Burnie, Mersey Business Enterprise Centre, Region North and Break O'Day Business Enterprise Centre. Consumers and small businesses are invited to contact these local supporters who have access to a wide range of ACCC publications and maintain regular contact with the ACCC Regional Outreach Manager.

## NSW

### New South Wales Rural and Regional Supporters Network

Access to government services and information can be difficult in regional areas. The NSW Rural and Regional Program aims to address this issue by developing relationships with organisation in all areas of NSW to enable local communities to understand the role of the ACCC and the Trade Practices Act. In recent months the Regional Outreach Manager in NSW has travelled to the far north/west and west of the state, to work with local organisations as part of the Supporters Network. Organisations such as business enterprise centres, area consultative committees, local councils, community technology centres and government access centres, will be able to assist initially. Alternatively, contact Dave Badewitz (Regional Outreach Manager) in the Sydney office of the ACCC on 02 92309133, to discuss your concerns further.

## VIC

### Delivering the Competing Fairly Forums in Victoria

The recently appointed Regional Outreach Manager for Victoria has been busily presenting the *Growing better business relationships* Competing Fairly Forum to growers groups in the Lilydale, Mildura, Swan Hill, Horsham, Edenhope, Nhill, Beulah areas and will be presenting the forum in Shepparton in September.

The presentations of the forum, which is aimed at parties within the horticultural supply chain, were a joint project with the Victorian Farmers Federation (VFF). The VFF saw the forum as an essential tool to inform its members of their legal rights under the Trade Practices Act and also to help their members comply with the Act. The next Competing Fairly Forum, focusing on franchising, will be available for presentation throughout Australia in early September. Should you wish to discuss the delivery of the forums in Victoria, please contact Fiona on 03 9290 1952.

## WA

### 2004 Quairading Small Business Expo—11–12 June 2004

The ACCC participated in the Quairading Small Business Expo presenting on the topic of 'The business competition rules', conducting an interview with local radio and holding an information stand. ACCC staff at the stand gave attendees 'Expo packs' of publications and discussed business or consumer concerns with attendees.

There were a total of 25 presentations spread over the two days with Tom O'Toole, the motivational speaker from the Beechworth Bakery Victoria, making a unique and challenging presentation for the final session. The 24 other sessions covered a wide range of topics such as the use of hydroponic fodder, entrepreneurship, small business bookkeeping, how your local politician can help your small business, agri-tourism and retirement finance.

### FeNaCING Festival, Karratha—31 July – 1 August 2004

FeNaCING? The name, locals explain, comes from the chemical symbols FE (iron ore), NaCl (salt) and NG (natural gas). They happily admit that although NG does not strictly represent natural gas, it does make the unique name work. When asked what happens at 'the FeNaCING', the answer is usually along the lines of 'an ag show without the agriculture ... a showcase of all kinds of arts, crafts and local handiwork ... a fair with all kinds of things to buy and food stalls to try ... a good carnival with a concert on the Saturday night and finale fireworks on the Sunday ... that's FeNaCING and it's a great weekend!'. This is not a bad explanation of what makes up the festival.

The ACCC stand at FeNaCING distributed show bags and staff answered questions about the Act and the ACCC's work.

## SA

### South Australian Rural and Regional Network Survey

A survey of the South Australian network has recently been conducted by Adelaide outreach staff. Respondents were asked to outline their information needs and to provide feedback on the style and content of ACCC information produced for a small business audience, including news releases of recent cases, publications about particular topics and instructive articles that outline what small business operators need to do to comply with the Trade Practices Act.

The results of the survey have now been compiled and suggest that messages to the small business community need to be topical, relevant to the audience and localised to the region or industry if they are to be read and absorbed. Respondents felt that publications are a good way of explaining the legal requirements of the Act in plain English. News releases and articles providing instructive advice are the most popular format for email and newsletter distribution.

Overall the survey confirmed that a structured network to disseminate information, together with a planned 'drip feed' release of articles into the local media and to local business associations is the best mechanism to reach the small business audience.