

**February 2006**

### From the Small Business Commissioner

The Commission has entered the new year with some important initiatives which will further help small businesses deal with the Trade Practices Act.

Accessibility to information and assistance has been enhanced by a *small business easy access point* on the ACCC website, a dedicated *small business helpline* and an *online small business complaints form*. The ACCC has since 1998 had a dedicated small business program which includes comprehensive outreach and efforts within the Commission to recognise the difficulties small businesses face in dealing with regulatory compliance. This edition of *Briefing* provides details of the new small business initiatives and other developments including:

- a good outcome from an ACCC warning about inappropriate motor vehicle advertising
- an effective campaign against 'light and mild' cigarette advertising funded by the Tobacco companies
- examples of ACCC action against illegal comparative advertising, bait advertising and misleading descriptions of warranty rights.

Small business operators will be aware of the high level debate occurring in relation to regulation of telecommunications carriers and are encouraged to consider some of the *Briefing* items that highlight competition and access issues the ACCC is dealing with in the telecommunication sector – a vital input to small business viability.

**John Martin**  
Small Business Commissioner

business trade practices concerns.

MR 306/05

### Corporate compliance guide

Medium to large companies now have a dedicated corporate trade practices compliance guideline developed by the ACCC to better inform them about the essential elements of the law. A complementary ACCC publication focusing on the requirements of small and micro business is due to be issued during 2006.

The ACCC views the introduction of a compliance program as a way of minimising the risk of future compliance failure and welcomes inquiries from companies wanting to develop effective trade practices compliance programs.

MR 302/05

### Streamlined collective bargaining process

The ACCC further streamlined the authorisation process for small businesses for standard collective bargaining arrangements after noting that small businesses were concerned about the time and cost involved in past authorisation applications.

For many years, the ACCC has provided an accessible authorisation process for small business collective bargaining arrangements. Under the streamlined process, it will undertake to deal with applications within set timetables and with a better indication of likely outcomes.

A draft determination will be issued within the first 28 days and a final determination within three months of receiving an application.

MR 314/05

### NEW DEVELOPMENTS

#### Better links to small business

The ACCC has established a dedicated **small business helpline** to help small businesses resolve their trade practices issues and concerns and to keep them informed of their rights and responsibilities under the TPA. Small business operators can now speak directly to staff highly trained in small business and franchising issues. Online trade practices information has also been made more accessible with the inclusion of a **small business easy access point** on the homepage of the ACCC website. Small businesses can also more easily lodge complaints with the ACCC using an **online small business complaints form** specifically tailored for use by small businesses and accessible from the small business section of the website.

These initiatives demonstrate continuous upgrading of the ACCC dedication to be accessible and meaningful to small

#### \$9 million low yield cigarettes campaign\*

A \$9 million consumer awareness campaign advising smokers that 'light' and 'mild' cigarettes are not a healthier option was launched on 26 December 2005.

The funding for the campaign was contributed by Philip Morris Ltd, British American Tobacco Australia Ltd and Imperial Tobacco Australia Ltd as part of court-enforceable undertakings obtained by the ACCC.

The high profile campaign informed consumers of health concerns and aims to raise awareness that low yield cigarettes are not necessarily a healthier option.

MR 317/05

Some items in *ACCC briefing* refer to media releases (MR, with number and year shown). These can be found on the ACCC website <[www.accc.gov.au](http://www.accc.gov.au)>. Most other reports and documentation are also available on the website. Subscribe to *ACCC briefing* by emailing [small.business@accc.gov.au](mailto:small.business@accc.gov.au). For TPA information—ACCC Infocentre 1300 302 502.

## Private health sector report

The ACCC noted some concerns with the private health insurance sector in its latest annual Report to the Senate on anti-competitive and other practices by health funds and health service providers.

The report outlines the ACCC's activities in relation to the private health sector during the past financial year and noted some of the major issues of concern including;

- difficulty for members to transfer between funds without incurring penalty
- inadequate information for consumers about restrictions and exclusions applicable to particular health insurance products
- concerns expressed by health insurance funds and health service providers about continuing difficulties in the contracting environment including delays in negotiations and inappropriate negotiation tactics.

MR 300/05

## CONSUMER AND SMALL BUSINESS PROTECTION

### Car advertising improves after ACCC warning

Advertising practices in the motor vehicle industry have improved considerably following a warning from the ACCC in late 2005.

Despite the issuing of *Guidelines for pricing in the motor vehicle industry*, which was circulated throughout the industry, an ACCC assessment showed a high level of non-compliance in motor vehicle advertising. Problems included fine print qualifications in an inadequate font size, insufficient information about additional fees and charges and information about fees and charges that were isolated from the main price representation.

The ACCC was pleased at the rapid response to rectify its concerns and will continue to work with the industry to improve advertising practices.

MR 312/05

### Fruit juice distributor corrects misleading labels

Dannon Pty Ltd, which distributes Ceres fruit juice products in Australia, has acknowledged that the '100 per cent fruit juice' labelling on some of its products may have misled customers.

The ACCC was concerned that the illustrations on the packaging of many of the Ceres range of juices created the impression that the juices contained 100 per cent of the characterising fruit, when in fact they contained several different juices. The ACCC was also concerned that all the juices were labelled as '100% fruit juice blend' when the addition of vitamin C meant this was not the case.

When the matter was brought to the company's attention it cooperated fully and swiftly and has provided court-enforceable undertakings to the ACCC in relation to the packaging.

MR 319/05

## Diamond price advertising

The ACCC has initiated criminal proceedings in the Federal Court alleging that Gold Coast based Carrerabenz Diamond Industries and its managing director, Mr Shahid Chaudhary, used misleading price comparisons in advertising diamond clearance sales across four Australian states.

The ACCC alleges that Carrerabenz advertised diamonds for sale using comparative pricing that implied consumers could obtain a substantial saving amounting to the difference between the advertised 'Usual Mark.Price' and the lower 'Crazy Price'. The ACCC alleges that the diamonds in question had not previously been offered for sale to the public at the higher price and that Mr Chaudhary was knowingly concerned in the company's conduct.

MR 332/05

### Auto sound promotion

The ACCC has accepted court-enforceable undertakings from Repco Limited after raising concerns that Repco's '\$1 Million Sizzling Sound Sellout' may have contravened the bait advertising provisions of the TPA.

The sale was promoted with the circulation of 3.9 million catalogues as well as advertising on Repco's website. Five of the products in the catalogue were advertised at a discount of between 66 and 92 per cent off their original pre-sale price. More than one third of Repco's 290 stores did not have any of the five products available during any part of the sale period. Of those stores that did have stock, most did not have any stock available to consumers after the first day of the sale.

A key feature of the Repco undertaking to the ACCC is that alternative stock or a \$100 Repco gift voucher will be given to those consumers who made written complaints to the ACCC or to Repco and who have not otherwise received compensation from Repco.

MR 333/05

### Electronics firm's misleading warranty statements

The ACCC has instituted proceedings against LG Electronics Australia Pty Ltd for alleged false and misleading warranty statements in breach of the TPA.

The ACCC alleges that LG made false representations and/or engaged in misleading or deceptive conduct in relation to statements made in online LG mobile phone user manuals concerning the existence, exclusion or effect of consumer statutory warranties, conditions rights or remedies.

MR 336/05

### International packing tape scam

The Federal Court has declared that L&L Supply, an international office supply company based in Florida in the US, misled its customers in relation to the supply of packing tape and contravened ss. 52, 53 and 64 of the TPA.

The ACCC alleged that L&L Supply employed sales representatives, based in a call centre in Miami, who would telephone employees of Australian businesses and make false

representations about links between L&L and the customer and sought the customer's agreement to accept some packing tape either for free or at very low prices. The target's details would then be forwarded to a warehouse which then despatched an order of packing tape with an invoice (usually about \$2000) to the 'customer'.

The Federal Court has ordered that L&L Supply compensate a number of its customers and undertake a range of corrective steps to prevent the illegal conduct from recurring. L&L Supply has also been ordered to pay the ACCC's costs.

*MR 001/06*

## PRODUCT SAFETY

### Selecting safe toys for kids

The ACCC launched a revised edition of *Safe toys for kids*, which aims to help parents and carers select safe toys. The publication gives important advice on what to look for before buying a toy and how to ensure it remains safe for the child playing with it.

The new edition of the booklet includes information on various types of playthings, including basketball rings and backboards, which are now subject to a mandatory standard, and trampolines.

*MR 310/05*

### Banned toy dart gun

A banned children's toy dart gun has been discovered and withdrawn from Darwin shops during one of the ACCC's regular product safety surveys. The Super Hero Dart Gun was banned because the suction-tipped darts were too short and posed a choking hazard to small children.

ACCC staff contacted the local distributor who cooperated in contacting the supermarkets in which the gun was found and in recalling the product. The ACCC is confident that all of the dart guns have either been recalled or accounted for and no longer pose a risk.

*MR 323/05*

### Court action over high lift vehicle jacks

The ACCC instituted legal proceedings in the Federal Court, Hobart, against TWM Imports Pty Ltd in relation to high lift vehicle jacks supplied by TWM throughout Australia during 2004–05.

The ACCC alleges that the jacks do not comply with either of the prescribed consumer product safety standards relating to vehicle jacks, in breach of s. 65C of the TPA. The standards relate to mandatory performance requirements and mandatory labelling requirements.

*MR 334/05*

### Rubber tarp straps recalled

A national recall of Highland EPDM rubber tarp straps has been conducted after the straps failed a mandatory consumer product

safety standard. The standard dictates that a warning label be used to alert consumers to the potential dangers and the straps' correct use. The straps failed because they did not have a warning permanently attached in the specific words required by the standard.

The products were imported and distributed by Cequent, a division of TriMas Corporation Pty Ltd. TriMas has given the ACCC a court-enforceable undertaking that it will not supply non-compliant goods subject to a consumer product safety or information standard prescribed for the purposes of the TPA. It has also undertaken to implement a trade practices law compliance program, with a particular emphasis on product safety.

*MR 005/06*

## RESTRICTIVE TRADE PRACTICES

### \$8.9 million penalty for price fixing by retailer

The full court of the Federal Court has imposed a penalty of \$8.9 million on Australian Safeway Stores Pty Ltd for fixing the price of bread and misusing its market power in a number of instances.

The Full Court unanimously agreed that the ACCC had established that Safeway had engaged in price fixing of bread to be sold at the Tip Top bakery store in Preston Market. The court also declared that Mr Mark Jones, the bread category manager at the time, was knowingly concerned in the arrangement and ordered Mr Jones pay a penalty of \$50 000.

*MR 015/06*

### \$470 000 in penalties for Brisbane petrol price fixing

The Federal Court ordered penalties totalling \$470 000 for price fixing conduct against the owners of the Matilda Woodridge service station, O'Keefe Nominees Pty Ltd (OKN) and Meribell Pty Ltd and the site's manager Mr Terence O'Keefe.

The ACCC instituted proceedings against the Matilda Woodridge and BP Logan City service stations (a BP branded site only, not operated by BP) in May 2005. On the basis of jointly submitted facts, the court declared that the suppliers of petrol at the two stations made a number of agreements to fix retail petrol prices, and one agreement to fix LPG prices in breach of s. 45 of the TPA.

While the directors of OKN and Meribell were neither aware of, nor involved in, the contravening conduct they had ceded control of pricing at the site to Mr O'Keefe and taken no steps to ensure or encourage his compliance with the Act.

*MR 294/05*

### Appeal upheld on penalty for paraglider retailer

The Full Federal Court has upheld an appeal by the ACCC over the penalty imposed on a paragliding company, High Adventure Pty Limited, for engaging in resale price maintenance. The court set aside the \$3000 penalty imposed by the trial judge and replaced it with a \$20 000 penalty.

One of the main reasons the trial judge imposed a low penalty was his concern that the penalty sought by the ACCC would

financially ruin the respondent. The Full Court said that by focusing on the detriment to the respondents the trial judge ignored both the seriousness of the contravention as well as the need to fix upon an appropriate penalty by reference to the need to defer future contraventions.

MR 295/05

### **Proceedings against alleged abalone cartel**

The ACCC has instituted proceedings in the Federal Court, Melbourne, alleging Australian Abalone Pty Ltd, a number of licensed Victorian abalone quota holders and other persons have contravened the price fixing and boycott prohibitions in the TPA or the Competition Code of Victoria.

The ACCC alleges that in 2004 and 2005, the respondents gave effect to the alleged anti-competitive agreements and is seeking declarations that the conduct contravened s. 45 of the Act or Code, injunctions restraining similar conduct in future, pecuniary penalties against each of the 19 respondents, trade practices training or compliance programs and costs.

MR304/05

### **Penalty for predatory pricing**

Pecuniary penalties totalling \$900 000 were ordered by the Federal Court, Brisbane, against a former operator of barges to Fraser Island, for predatory pricing and other conduct in breach of the TPA. The ACCC had instituted proceedings against Eurong Beach Resort Ltd (EBR), Mr Sidney Albert Melksham, Jaigear Pty Ltd, Oser Pty Ltd and Ms Angela Kay Burger.

The court declared, on the basis of facts agreed by the parties, that EBR had a substantial degree of power in the market for supply of vehicular barge services on Fraser Island, and took advantage of that power for the purpose of eliminating or substantially damaging a competitor, the operator of the Manta Bay barge, in contravention of s. 46 of the TPA.

The court also declared that arrangements by Jaigear and Oser and later adopted by EBR involving payments to other barge operators to restrict their supply of services was likely to have had the effect of substantially lessening competition. The court declared the companies had engaged in exclusive dealing in breach of s. 47 of the Act. Mr Melksham and Ms Burger also admitted being knowingly concerned in and party to the contraventions by the corporate respondents.

MR 316/05

### **Alleged cartel in box market**

The ACCC has instituted proceedings in the Federal Court, Melbourne, against Visy Industries Holdings Pty Ltd, Visy Industries Australia Pty Ltd and Visy Board Pty Ltd alleging that the respondents engaged in conduct that was anti-competitive, including price-fixing and market sharing, in contravention of s. 45 of the TPA.

Proceedings have also been taken against a number of individuals for allegedly being knowingly concerned in or party to the contravening conduct by the Visy respondents.

The ACCC alleges that the Visy respondents entered into or gave effect to anti-competitive arrangements with its principal

competitor Amcor Ltd in the supply, throughout Australia, of corrugated fibreboard containers. Amcor and its former senior executives have to date received immunity from legal proceedings by the ACCC after the company came forward with information about the alleged conduct.

MR 327/05

## **MERGERS AND ACQUISITIONS**

### **Merger review guidelines issued**

The ACCC has issued for consultation a draft *Merger review process guideline* which outlines the ACCC's processes for dealing with all mergers it reviews, including confidential mergers. The draft guideline expands upon the *Guideline for informal merger review*, issued in October 2004.

The draft *Merger review process guidelines* expands on the 2004 guideline and the ACCC has taken the opportunity to further improve its efficiency in dealing with mergers, for example, by reducing timeframes and increasing transparency of responses to ACCC concerns.

The ACCC will revise these guidelines if and when new formal merger processes proposed by the government are enacted so that all the ACCC's merger review processes are in a single guideline.

MR 318/05

### **Lion Nathan's acquisition of Coopers not opposed**

The ACCC did not oppose the acquisition of Coopers Brewery Limited by Lion Nathan Limited. The ACCC recognised that Coopers' market share, while growing, remains small and is substantially smaller than the two major beer producers in Australia, CUB and Lion Nathan.

The evidence received in response to the ACCC's statement of issues suggested that most competitive tension in the beer market is generated by competition between Lion Nathan and CUB and the removal of Coopers as an independent beer wholesaler would be unlikely to result in a substantial lessening of competition.

MR 296/05

### **Cinema acquisition not opposed**

The ACCC did not oppose proposed transactions between Greater Union and Hoyts. Between 1998 and 2001, Hoyts and Greater Union entered into various arrangements for joint ventures and the sharing of operations at cinemas in the Perth, Brisbane and Sydney CBDs.

Greater Union and Hoyts now propose to unwind these arrangements and divide the joint venture interests between them. The ACCC considers the transactions are unlikely to substantially lessen competition for first-release film exhibition in these areas.

MR 298/05



### **Acquisition of flour producer not opposed**

The ACCC will not oppose George Weston Food's acquisition of Cripps Nubake Pty Ltd, which operates a plant bread baking business in Tasmania, and Tasmanian Flour Mills Pty Ltd, which operates the only mill in Tasmania.

The ACCC explored concerns regarding the acquisition of the sole local flour producer in Tasmania but, given it is viable to import flour into Tasmania from the mainland, the ACCC was satisfied that it would be unlikely to substantially lessen competition.

*MR 308/05*

### **Abattoir bid not opposed**

The ACCC will not oppose a bid for the EG Green Group, by a joint venture between Elders Ltd and T&R Pastoral Ltd. EG Green, which operates the largest abattoir in Western Australia, is being sold after going into administration in 2005. Elders is a major livestock agent in WA and T&R Pastoral operates a major abattoir in South Australia.

The ACCC was concerned that the proposed acquisition might facilitate Elders requiring cattle farmers to use it as an agent if they wished to have their cattle slaughtered at EG Green or, similarly, requiring farmers to have their cattle slaughtered at EG Green's if they wished to use Elders as an agent.

The ACCC is satisfied that Elders would be constrained from imposing these requirements by the potential for farmers to respond by switching to other agents and/or abattoirs or live cattle exporters.

*MR 322/05*

### **Proceedings to prevent Toll's takeover of Patrick**

The ACCC has instituted proceedings against Toll Holdings limited in the Federal Court to prevent Toll's takeover of Patrick Corporation Limited. This follows a request by the ACCC to Toll to provide undertakings not to proceed with the takeover, which Toll said it would not provide.

The ACCC believes the proposed acquisition would be likely to substantially lessen competition in several markets in the transport sector. In particular, there are concerns about the strength of a combined Toll-Patrick across many related areas in the transport sector and that the acquisition would prevent Toll and Patrick from developing their own separate integrated systems in strong competition with each other.

A combined Toll-Patrick would also control significant rail and wharf 'bottle-neck' infrastructure, which could be used to discriminate against or foreclose rival transport and logistics providers. This would damage competition, hinder potential competition and raise prices. The ACCC is seeking an injunction to prevent Toll acquiring any further interest in Patrick and a declaration that, if Toll acquires shares of Patrick that would enable it to substantially influence or control the business, Toll would be in breach of s. 50 of the TPA.

*MR 008/06, 011/06 and 023/06*

### **P&O Ports acquisition not opposed**

The ACCC will not oppose the proposed acquisition of P&O Ports, a global container terminal and stevedore services provider, by DP World. P&O Ports' Australian subsidiaries lease, operate and manage terminals in Brisbane, Sydney, Melbourne and Fremantle. DP World owns, operates and manages container terminals and other port infrastructure around the world.

The ACCC believes the proposed acquisition is not likely to result in substantial lessening of competition given the limited overlap of DP World and P&O's operations in Australia. DP World's presence in Australia is limited to Adelaide Port where P&O does not currently operate.

*MR 009/06*

## **AUTHORISATIONS AND NOTIFICATIONS**

### **Central Ranges pipeline decision**

The ACCC has approved a revised access arrangement submitted by Central Ranges Pipeline for its transmission pipeline in the Central Ranges region of NSW.

The NSW Independent Pricing and Regulatory Tribunal also issued its final decision to approve a revised access arrangement for the Central Ranges Pipeline distribution network, which will distribute gas from the transmission pipeline to end customers.

The ACCC and IPART had earlier approved a competitive tender process for the development of the pipeline. This established key provisions now contained in the revised access arrangement to enable the pipeline infrastructure to proceed in accordance with the national gas code. These decisions are significant as this is the first time a competitive tender has determined elements of an access arrangement approved under the national gas code.

*MR 301/05*

### **Homeworkers Code re-authorised**

The ACCC has re-authorised the arrangements that comprise the Homeworkers Code of Practice. The code is a voluntary self-regulatory scheme and provides for accreditation of parties in the garment industry to assist in ensuring that homeworkers are employed according to relevant award conditions.

The ACCC is satisfied that the arrangements help reduce the risk of exploitation of a susceptible group, improve the flow of information to homeworkers and facilitate compliance with statutory requirements.

*MR 305/05*

### **Authorisation proposed for mining joint venture**

The ACCC granted authorisation to agreements involving BHP Billiton Iron Ore for the mining and export of iron ore to purchasers in Japan. The agreements relate to the establishment of the JW4 Joint Venture for the mining, processing and transport of iron ore from the Yandi site in Western Australia.

*MR 017/06*

### **Dairy farmer bargaining arrangements to continue**

The ACCC issued a draft decision proposing to grant authorisation to the Australian Dairy Farmers Limited and its member dairy farmers for a further five years.

The ADF will continue to receive immunity first granted to groups of dairy farmers in 2002. This allows them to collectively negotiate terms of supply for raw milk with dairy processors. The ACCC considers that the ADF arrangements will continue to result in benefits to the public. Importantly, the arrangements are voluntary, providing the industry the flexibility to take advantage of the benefits of collective bargaining but also to opt out of the arrangements if they are not in the individual's or the organisation's interests.

*MR 313/05*

### **Coal terminal queue management system authorised**

The ACCC granted authorisation to a queue management system designed to address the imbalance between the amount of coal that producers want to export and the capacity of the infrastructure which moves coal from mines in the Goonyella coal chain onto vessels at Dalrymple Bay Coal Terminal.

The imbalance led to the formation of large queues in 2005 and in response to an urgent request from the operator of the terminal, Dalrymple Bay Coal Terminal Pty Ltd, the ACCC granted interim authorisation to allow DBCTPL to conduct an extended review of the system. The system essentially reduces the amount of coal each producer can export through the terminal on a pro rata basis to better match the overall terminal capacity.

The ACCC is satisfied that the total volume of coal exports from the chain is unlikely to be reduced and that incentives exist under the system for all industry participants to maximise coal exports. The system is a transitional measure until the scheduled expansion projects at the terminal are operational.

*MR 315/05*

### **Hotels to collectively negotiate**

The ACCC has proposed to authorise the Australian Hotel Association Divisions in Victoria, South Australia, Western Australia, Tasmania and the Northern Territory to collectively negotiate with service providers of wagering and broadcasting services. Hotels in New South Wales received similar authorisation previously.

The ACCC considers that the proposed collective bargaining arrangements will help hotels achieve more efficient commercial outcomes and that they are likely to pass on to consumers at least some of the benefits. This could include improvements in the level of services provided by hotels to consumers.

The ACCC is satisfied that, subject to proposed restrictions on group size, the arrangements are likely to result in limited anti-competitive conduct.

*MR 326/05*

### **Wool promotion levy allowed**

The ACCC has authorised arrangements to establish a levy on bales of wool sold at auction or by private treaty.

The Federation of Australian Wool Organisations applied for authorisation to raise funds for a test marketing campaign for the promotion of Australian wool in the US. The National Council of Wool Selling Brokers of Australia Ltd and the Private Treaty Wool Merchants of Australia Inc. are also parties to the arrangements.

The ACCC is satisfied the proposed arrangements are likely to improve the international demand for Australian wool and that there is likely to be little, if any, public detriment arising from the proposed arrangements.

*MR 004/06*

### **Joint marketing of PNG gas**

The ACCC issued a draft decision proposing to authorise the joint marketing in Australia of gas from the PNG Gas Project, a joint venture enterprise involving the production and sale of PNG gas to customers in Australia.

This would enable ExxonMobil Group, Oil Search Group, Mineral Resources Development Company Limited Group and the Merlin Petroleum Company to agree on common terms and conditions including the price at which they will offer gas for sale.

The ACCC considers that the project will generate substantial public benefits but cannot be certain that the benefits will outweigh any potential anti-competitive detriment for the entire life of the project and proposes to grant authorisation for 16 years.

*MR 007/06*

### **Councils collectively tendering to be authorised**

The ACCC proposes to grant authorisation to a group of South Sydney councils to collectively tender and contract for the provision of waste collected during 'Council Clean Ups'.

The ACCC considers that a coordinated approach to the councils' waste management services will result in service efficiencies which will be reflected in a lower domestic waste management charge to ratepayers. In addition, competition for the relevant services in the region is currently limited and it is anticipated that the arrangements may encourage new providers to enter the market.

*MR 013/06*

## **REGULATED SERVICES**

### **PNG gas pipeline to spur other developments**

The ACCC believes the proposed development of a natural gas pipeline from Papua New Guinea to eastern Australia could spur on the development of new Queensland gas fields. The access regime applied to the pipeline will be crucial to the success of any such projects.

The best approach to maintaining Australia's low energy prices is to continue to facilitate competition when feasible and, when it is not, apply effective regulation to restrain monopoly positions and mimic effective competition.

*MR 297/05*

### **Gas access guideline issued**

The ACCC has issued its *Access arrangement process guideline*, a guideline prepared to advise service providers and other interested parties on ACCC and Australian Energy Regulator processes to meet the access arrangement approval requirements of the gas code.

The ACCC currently regulates natural gas transmission pipelines under the gas code but governments have agreed that this function will be undertaken by the AER, along with the regulation of the distribution pipelines. The guideline will help parties understand the current assessment process which may result in a reduction of assessment timeframes.

*MR 303/05*

### **Telecommunications network services review**

The ACCC announced an inquiry to examine the future regulation of certain key fixed network and wholesale services, resulting from the ongoing need to review several existing declarations of fixed services, as required by the TPA.

The ACCC will look at whether regulation of those fixed services is required, including what combination of services may still need to be regulated, in view of emerging market, technological and network developments.

The ACCC has also been requested by the government to advise on the compatibility of some elements of wholesale pricing with the government's policy on retail pricing parity.

*MR 324/05*

### **More than 2.5 million broadband services connected**

The latest ACCC snapshot of broadband deployment shows the take-up of broadband services has passed 2.5 million. This is an increase of more than one million customers, or 98 per cent, over the preceding 12-month period.

This outcome continues the growth that was stimulated by a more competitive broadband market that emerged during 2004–05. While the take-up of ADSL services continues to outstrip other broadband technologies, the take-up of satellite broadband services is also growing steadily.

*MR 002/06*

### **Telstra accounting separation reports issued**

The ACCC has issued the fifth current cost accounting separation report for Telstra. The report is to provide greater transparency of Telstra's operations to ensure that it does not unfairly discriminate between access seekers using its network services and its own retail operations.

The report contains current cost financial information for 'core' telecommunications access services and constitutes the

information the ACCC is required to make public under ministerial direction.

The ACCC has also issued its ninth imputation and non-price terms and conditions report under the enhanced accounting separation regime for Telstra. The report presents key performance indicators comparing Telstra's customer service performance in meeting certain non-price terms and conditions for its wholesale and retail customers.

The report also presents an imputation analysis designed to indicate whether there is likely to be sufficient margins between Telstra's retail prices and the prices it charges other service providers to use the core services to allow competition at the retail level. Overall, there was little change in Telstra's performance against the key performance indicators.

*MR 307/05 and 335/05*

### **Decision issued on ULLS and LSS undertakings**

The ACCC has issued its final decision on Telstra's unconditioned local loop service (ULLS) and line sharing service (LSS) monthly charges undertakings, and its draft decisions on Telstra's ULLS and LSS connection charges undertakings.

The two services allow access to the most basic elements of Telstra's customer access network. They are considered key inputs into the development of infrastructure-based competition in Australian telecommunications and can be used by all telecommunications companies to provide a wide range of services to end users.

The ACCC rejected Telstra's monthly charges undertakings for the ULLS and the LSS and has also reached a draft decision to reject the connection charge undertakings as it was not satisfied that the terms and conditions of those undertakings were reasonable.

*MR 006/06 and 325/05*

### **Consultation notice over wholesale line rental increase**

The ACCC has issued a consultation notice on Telstra's decision to increase the price for line rental that it charges its wholesale customers.

The potential competition concerns arise from Telstra's recent introduction of changes to the Home Access rate plan to its wholesale customers and HomeLine part-rate plan to its retail customers.

The ACCC received complaints from some of Telstra's wholesale customers stating that the prices offered by Telstra for the line rental component of the majority of its retail fixed line service are below Telstra's prices for the line rental component of its wholesale Home Access service. The ACCC is concerned that Telstra's conduct hinders the ability of its competitors to compete for the supply of fixed line services to consumers.

The consultation notice gives Telstra an opportunity to make submissions before the ACCC determines whether or not to issue a competition notice.

*MR 328/05*

### **Vodafone undertaking rejected**

The ACCC has issued a draft decision to reject the access undertaking submitted by Vodafone on the supply of the mobile terminating access service (MTAS) on its second generation GSM network.

The undertaking proposed price and non-price terms under which Vodafone offered to supply the MTAS and has been rejected because the ACCC considers that the terms and conditions are not reasonable.

*MR 330/05*

### **Telecommunications access arbitrations**

The ACCC has commenced the arbitration processes for Part XIC access disputes between Telstra, Optus and other telecommunications providers. The disputes relate variously to domestic mobile terminating access services, the unconditioned local loop service and the line sharing service.

*MR 309/05, 320/05, 321/05 and 003/06*

### **Air service rescue price change**

The ACCC did not object to a proposal from Airservices Australia (AA) to change the prices of its aviation rescue and fire fighting services. AA is the monopoly provider of these services at Australian airports and is required, under the provisions of Part VIIA of the TPA, to notify the ACCC of proposed price increases.

*MR 329/05*

### **Liner cargo shipping draft report**

The ACCC has issued a draft report into an alleged breach of s. 10.41 of Part X of the TPA by the Australia to Europe Liner Association.

Section 10.41 of Part X requires liner cargo shipping conferences to provide peak shopper bodies with 'reasonably necessary' information, upon request, for the purposes of negotiation. The Australian Peak Shippers Association alleged that AELA had breached the section by refusing its request to sight contracts between AELA and AELA's provider of stevedoring services, P&O Ports, during negotiations on a proposed increase in outward terminal handling charges (OTHCs).

After preliminary inquiries the ACCC decided to investigate the matter and is required under Part X of the TPA to report to the Minister for Transport and Regional Services on its investigation. The report cites a draft view that grounds exist for the minister to be satisfied that AELA contravened s. 10.41 in negotiations with APSA on OTHCs.

*MR 147/05*