



ACCC

briefing

June 2004

From the Small Business Commissioner

As we finalise this briefing, the government has just announced details of a major package of Trade Practices Act reforms to 'improve the operation of fundamental provisions in the Act and to enhance administrative processes' with a particular impact on small business.

These initiatives follow major reviews into the Trade Practices Act and benefits for small business are focused on:

- notification of processes for collective bargaining by small businesses with big business
- clarifying the prohibition on misuse of market power in section 46 of the Trade Practices Act
- extending the application of the prohibition on unconscionable conduct in business transactions in section 51A(c) of the Trade Practices Act.

The reforms also include new merger processes, reforms to non-merger authorisation processes, the treatment of genuine joint ventures and increased penalties for breaches of competition provisions.

Legislation to implement the package of reforms is to occur before Parliament rises in June. When the legislation is approved, we will give our small business network more detailed information about these new provisions.

REPORTS AND SPEECHES

Property scams will be pursued

In a speech to the Real Estate Institute of Victoria the ACCC Chairman, Graeme Samuel, reiterated the ACCC's commitment to protecting consumers from misleading property scams. These scams will be pursued regardless of the methods used to entice potential investors, be they through seminars or methods such as spam mail, direct marketing, telemarketing and door-to-door.

Among the ACCC's concerns are dummy bidding and under-and over-quoting. The ACCC views these practices as misleading and deceptive because they inhibit prospective buyers and the general public from making decisions informed by accurate price information. Mr Samuel noted advances in state legislature in these areas and cautioned that the ACCC can and will intervene, regardless of state laws, if realtors are believed to be acting in contravention of the Trade Practices Act and engaging in deceptive or misleading conduct.

MR 046 (25.03.04)

Contact the ACCC



Infocentre: 1300 302 502



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UNCONSCIONABLE CONDUCT

Alleged unconscionable conduct—debt relief

The ACCC instituted proceedings against the debt relief administrator, Fox Symes & Associates, its directors, and also a related company, alleging misleading and deceptive conduct and unconscionable conduct.

The ACCC alleges that Fox Symes made false or misleading representations when advertising and counselling clients that:

- 1) their services would release clients from debt and that it was not bankruptcy
- 2) all of their consultants were professional debt management consultants
- 3) clients' credit ratings would not be adversely affected
- 4) creditors would be repaid in full, when, in fact, Debt Relief Services Pty Ltd, an undisclosed related company, received part of the repayment sum
- 5) debts would be frozen immediately
- 6) interest would not accrue.

The ACCC further alleges that the two companies engaged in unconscionable conduct because they were aware that their customers were likely to be financially or socially vulnerable but nonetheless knowingly exploited that vulnerability.

MR 061 (15.04.04)

CONSUMER AND SMALL BUSINESS PROTECTION

International website sweep

The online environment is safer after an Australian-led international internet sweep, which resulted in more than 30 Australian traders taking down or amending websites found to be misleading and deceptive. The international sweep involved consumer protection agencies from 24 countries that are members of the International Consumer Protection and Enforcement Network (ICPEN). In Australia, the ACCC and state/territory fair trading agencies examined over 3000 sites for misleading representations or other breaches of the law.

The ACCC targeted websites that were 'too good to be true', such as those promoting work-at-home schemes with unbelievable promises, miracle cures, lottery scams, pyramid selling schemes, get-rich-quick schemes, prizes and free offers which were not actually free.

MR 070 (30.04.04)

Refunds from property developer

Property buyers will receive refunds following an ACCC investigation of a property development at Hill End, in central New South Wales. The directors of the property developer Hill End Recreation Park Pty Ltd (trading as Hill End Property Group) have acknowledged that consumers were misled by the actions of the company and its representatives, and have given the ACCC personal undertakings to ensure all buyers receive refunds.

MR 085 (14.05.04)

Some 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. Subscribe to *ACCC briefing* by emailing small.business@accc.gov.au. For TPA information - ACCC infocentre 1300 302 502.

False and misleading weight-loss promotion

The Federal Court has found a promoter of weight-loss products, Mr David Francis, made false and misleading claims about a 'ThermoSlim' wafer-biscuit product. Mr Francis had made various representations about the benefits of eating ThermoSlim wafers including that people could lose weight without undertaking any other method of weight-loss (including dieting or exercise).

The court has ordered Mr Francis not to make representations that consuming ThermoSlim, or any substantially similar food product, can cause people to lose weight by burning the body's fat. Mr Francis was also ordered to pay costs to the ACCC.

MR 064 (28.04.04)

Domain name billing

An Australian internet domain name registrar, Domain Names Australia, and its sole director, Mr Chesley Paul Rafferty, have been found to have engaged in misleading conduct in the distribution of particular domain name registration notices. The notices in question invited recipients to register a particular internet domain name that was in many cases very similar to their existing internet domain name.

Specifically, it was found the notice falsely conveyed that:

- 1) the registration of the recipient's existing domain name had expired or would expire if payment was not made by the 'Return Date'
- 2) Domain Names Australia Pty Ltd was offering to re-register or renew the recipient's existing domain name
- 3) the recipient would be required to pay the amount mentioned in the notice to maintain the registration of his existing domain name.

The ACCC was particularly concerned that the notices affected consumers and businesses that are vulnerable and disadvantaged because of their lack of internet experience and knowledge. The company and Mr Rafferty are under orders to restrain them from engaging in conduct of this nature for three years.

MR 065 (27.04.04)

Misleading cordial labelling

The need for food manufacturers to exercise caution in product labelling was underlined by a Federal Court finding that Cadbury Schweppes Pty Ltd engaged in misleading conduct in marketing its Cottee's banana mango and apple kiwi cordials. The labelling, which displayed pictorial representations of bananas, mangoes, kiwis and apples, was found to have the potential to convey the impression that the cordial contained real bananas and mangoes when it did not. Justice Gray emphasised the importance of the overall impression given to consumers and found that using the phrase 'flavoured cordial' was not enough to overcome the effect of the depiction of real fruit.

Cadbury Schweppes no longer manufactures or supplies the banana mango flavoured cordial and has relabelled the apple kiwi flavoured cordial concentrate. Cadbury Schweppes was ordered to pay 70 per cent of the ACCC's costs.

MR 074 (03.05.04)

Origin labelling—fruit juice

Orders by consent have been made against Berri Ltd for alleged misleading conduct in the place of origin labelling of a number of its fruit juice and fruit drink products.

The orders without a finding of liability provide for:

- 1) an injunction restraining Berri from making representations that its fruit juice products containing reconstituted fruit juice were made 'from Australian and imported reconstituted fruit juice depending on seasonal availability'
- 2) an order that Berri conduct a review of its fruit juice labels, by an independent person with trade practices expertise
- 3) a contribution to the ACCC's costs of \$100 000.

ACCC Chairman, Mr Graeme Samuel, noted Berri's cooperation in concluding the proceedings.

MR 073 (03.05.04)

Medical insurance

The Federal Court has made orders by consent against Medibank Private Limited for misleading advertising of its health insurance products in two separate advertising campaigns run in relation to the introduction of lifetime health cover in March–June 2000 and August 2000.

The first campaign represented that the cost of its PackagePlus health insurance product would not increase in 2000, when in fact premiums did increase. The second campaign claimed that consumers who switched from another health insurance fund to Medibank Private were eligible to have 'any waiting periods waived' and would 'get 30 days free' health insurance cover, when only certain waiting periods were waived and conditions applied to the 30 days free cover.

As part of the resolution of the proceedings Medibank Private has agreed to pay \$5 million to establish a special fund to provide benefits to be paid to members normally ineligible for claims, for leading edge clinical intervention procedures.

MR 082 (14.05.04)

Environmental bag claims

The distributor of Earthstrength plastic kitchen, garbage and freezer bags, Lloyd Brooks, has been found guilty of misleading and deceptive conduct in claiming beneficial environmental characteristics that its bags do not possess. Earthstrength's plastic bags were distributed nationally to retailers such as Coles, K-mart and Woolworths.

Environmental claims on the packaging included that 'this bag won't contribute to the landfill problem. It will make it disappear'. Lloyd Brooks also represented on its Earthstrength's website that the plastic bags were made from technology using tapioca starch which, when composted, would biodegrade in 28 days. Lloyd Brooks could not substantiate these claims.

The Federal Court made orders restraining the company from supplying Earthstrength bags in their current packaging and from promoting that the bags biodegrade, disintegrate or will be of benefit to the environment unless it has independent scientific evidence to support such claims.

MR 087 (25.05.04)

Food regulation cooperation

Greater cooperation is planned between the ACCC and the body responsible for developing food standards, Food Standards Australia New Zealand (FSANZ), after they signed a Memorandum of Understanding on 29 April 2004.

In Australia, consumers spend more than \$75 billion annually on food, representing 45 per cent of total Australian retail consumer spending. The MOU will enable a nationally

coordinated approach to promoting and enforcing trade practices compliance within the food industry.

MR 068 (29.04.04)

MERGERS AND ACQUISITIONS

Visy acquisition allowed

The ACCC will not intervene in Visy Industrial Packaging's proposed acquisition of ACI Plastics Packaging's non-beverage container and closure businesses. Visy and ACI both currently produce a variety of plastic containers and plastic closures. ACI's non-beverage containers are used for industrial, household and niche food markets, personal care and pharmaceutical applications, as well as laminated tubes for personal care products.

The ACCC has concluded that the new merged entity would be subject to significant competitive market forces. The market for non-beverage rigid plastic containers, the relevant market in this proposition, is subject to competitive forces from domestic suppliers, both large and small, importers, and from suppliers of different packaging materials such as glass, metal and paper products.

MR 051 (01.04.04)

MYOB acquisition allowed

The ACCC will not oppose MYOB's proposed acquisition of Solution 6's Accounting and Compliance Business. MYOB and Solution 6 are major, Australian-based suppliers of software to the accounting profession and other businesses.

The ACCC carefully considered the likely impact of the acquisition on the business management application software market. It conducted extensive market inquiries with many customers, accounting bodies and competitors of the merging parties. The ACCC noted their concerns about quality and service levels.

Overall, the ACCC found that the merged entity, although enjoying a significant market share, would be subject to significant competition from other expanding software suppliers and new entrants to the market, thereby constraining any attempts to raise prices to customers.

MR 084 (19.05.04)

ACCC to oppose Boral's proposed acquisition

The ACCC opposed the proposed acquisition by Boral of Adelaide Brighton. Both companies are involved in the production and/or distribution of various cement and concrete products.

An extensive and wide ranging ACCC investigation found that the proposed acquisition would likely result in a substantial lessening of competition in downstream markets, including pre-mixed concrete and concrete masonry markets in a number of geographical areas, placing it in breach of the Trades Practices Act. Adelaide Brighton currently constitutes a significant competitive element in the cement and concrete industries. Boral's acquisition of Adelaide Brighton would remove this largely independent source of cement supply from the market. ACCC market inquiries found that imports were unlikely to act as a sufficient competitive constraint on the remaining Australian cement producers should the acquisition take place.

MR 080 (13.05.04)

HOT SPOT—Competing Fairly Forum 2004: Franchising

The topic for this year's ACCC Competing Fairly Forum will be 'Franchising: Is it right for you?' The panel will consist of the Chairman of the ACCC, Graeme Samuel; Richard Evans, Chief Executive of the Franchising Council of Australia; a franchisor, a franchisee, and a representative from the Office of the Mediation Advisor. The forum will be hosted by Emma Alberici of ABC's *Business show* and more recently the *7.30 Report*. Discussion will examine: issues to consider before entering a franchise; maintaining good franchisee-franchisor relationships during a franchise agreement; and issues surrounding the termination of a franchise agreement. The forum will be video taped and distributed via the ACCC's Small Business, Rural and Regional outreach program from September/ October. Watch this space for more details...

RESTRICTIVE TRADE PRACTICES

Illegal selective distribution policy

FILA Sport Oceania must pay penalties of \$3 million following ACCC proceedings and a Federal Court finding that its selective distribution policy for the supply of Australian Football League-licensed apparel to retailers breached the Trade Practices Act.

FILA operated as a wholesaler of apparel merchandise for the Adelaide Crows, Essendon Bombers, Geelong Cats, Melbourne Demons and Western Bulldogs.

The court found that FILA implemented a policy in late 1999 to only supply clothing retailers with FILA AFL-licensed apparel if retailers agreed not to stock AFL-licensed apparel from FILA's competitors. During the 19 months the policy was in place, FILA withdrew its supply of FILA AFL-licensed apparel from several major retailers who did not embrace the FILA policy.

Justice Heerey found that FILA had misused its market power and engaged in exclusive dealing. He commented that: '...this was a serious, blatant contravention extending over a substantial period of time which caused major damage to several businesses'.

MR 053 (02.04.04)

Alleged attempted price fixing—property developer

The ACCC instituted proceedings against property developer Anglo Estates and its directors alleging that they attempted to broker a price fixing and other arrangement with the Shire of Esperance over the sale of the shire's land.

It is alleged that between September 2002 and February 2003 Anglo Estates wrote to and had meetings with the shire, seeking an arrangement where the shire would not sell vacant residential lots of land in its Flinders Estate development for less than \$80 000 per lot when they first became available, with annual CPI adjustments for subsequent years; or that the shire would not develop and sell to the public until the end of 2010 some of its vacant residential lots in its Flinders Estate development.

The ACCC has not alleged that the shire has contravened the Trade Practices Act in any way. The ACCC is seeking declarations, injunctions, pecuniary penalties, trade practice compliance programs and costs.

MR 044 (25.03.04)

Penalty for resale price maintenance

Former General Manager of the Chaste Corporation, Mr Xenoudakis, has been ordered by the Federal Court to pay a personal penalty of \$25 000 for his involvement in resale price maintenance in promoting and selling the TRIMit weight-loss product. Mr Xenoudakis admitted that he recruited area managers to enter into agreements with Chaste stating that Chaste would be responsible for setting the price at which area managers sold TRIMit to retailers and that there would be no discounting or price cutting, in breach of the resale price maintenance provisions of the Trade Practices Act.

The court has made injunctions restraining Mr Xenoudakis from repeating this conduct and ordered that he also pay costs of \$8000. The ACCC's case continues against Chaste (in liquidation), Mr Peter Foster and six other respondents.

MR 056 (07.04.04)

Record penalties in Transformer Cartel bust

Penalties for companies and senior executives involved in the power transformer and distribution transformer cartels have reached record levels of \$35 million following an order of \$14 million in penalties against ABB Power Transmission (in liquidation) and ABB Transmission and Distribution by the Federal Court in Sydney.

The ABB respondents were found to be involved in price fixing and market sharing contraventions of the Trade Practices Act. These illegal arrangements affected the supply of power transformers and distribution transformers to many of the largest electricity transmission and distribution utilities across Australia. However, as ACCC Chairman Graeme Samuel has said, by impeding competition 'it is the Australian consumer who has ultimately paid the price'.

MR 057 (07.04.04)

Cargo shipping rate rises

An ACCC position paper concludes that there should be a partial revocation of an agreement which exempts a group of cargo shipping lines from some of the anti-competitive provisions of the Trade Practices Act. The ACCC investigation follows allegations from Australian importers of unreasonable increases in freight rates for cargo being shipped from North East Asia to Australia.

The Act allows international shipping cargo operators a special exemption from several laws that prohibit anti-competitive conduct on the basis that the public benefits of improved scheduling and certainty of services outweigh any anti-competitive detriment. However, the ACCC has a responsibility to investigate situations where the exemption may have been used to unreasonably raise prices.

After investigating the conduct of the cargo shipping group in question, the Asia-Australia Discussion Agreement, the ACCC concludes that the AADA's power to legally fix prices should be disallowed. Following public consultation, the ACCC will determine its final position and report to the Minister for Transport and Regional Services who will make a decision on the ACCC's recommendation.

MR 054 (05.04.04)

Unions penalised for secondary boycott

Unions that engaged in pickets at the Patricia Baleen gas plant in Victoria in October of 2002 are to be penalised a total of \$300 000 for breaching the secondary boycott provisions of the

Trade Practices Act. It was alleged that unions prevented construction workers and vehicles from entering the site and induced construction workers not to attend work.

The unions submitted that they engaged in the unlawful conduct because the company operating the plant post-construction had refused to negotiate certified agreements with the unions governing the terms and conditions of its employees and proposed using non-local labour. The court granted injunctions against the unions restraining them from engaging in similar conduct at any land-based gas processing plant located or under construction in Victoria until 2008. The unions were also ordered to implement a trade practices compliance program and place in their respective journals a public notice detailing the substance of the orders made by the court. The orders were made with the consent of the parties.

MR 075 (03.05.04)

Taxi company—anti-competitive practices

The ACCC has reminded taxi companies not to engage in anti-competitive practices after Tamworth Radio Cabs Co-operative Ltd provided the ACCC with a court enforceable undertaking to cease various anti-competitive practices. The ACCC considered that a points system which shared jobs longer than 30 kilometres between drivers, Tamworth Radio Cab's ban on drivers accepting private or direct bookings, and restrictions on where drivers could buy fuel breached the Trade Practices Act.

Tamworth Radio Cabs Co-Operative Limited has ceased the conduct and provided an undertaking to the ACCC that it will notify all taxi operators of the changes, hold a meeting to amend and engage a solicitor to review its rules and develop a trade practices compliance program.

MR 048 (29.03.04)

AUTHORISATIONS AND NOTIFICATIONS

Tasmanian chicken growers to collectively bargain

Tasmanian chicken growers will be able to continue bargaining collectively with Inghams for a further six years following an ACCC authorisation. The ACCC was of the view that several benefits would result from the authorisation, the most significant of which was the cost savings that would accrue from allowing the growers to negotiate collectively rather than individually. The competitive pressure to which Inghams and its growers are subject from retailers and fast food chains would likely ensure that these cost savings would, for the most part, be passed on to consumers.

MR 062 (16.04.04)

Collective bargaining for newsagents

Newsagents will be able to engage in collective bargaining with major publishers and distributors of magazines after the ACCC issued an authorising decision. The decision was announced after negotiations with industry bodies to limit any anti-competitive effect. It is hoped that this decision will provide newsagents with an opportunity to have greater input into the terms and conditions of their contracts with major publishing companies. Small publishers and distributors are not affected by this decision. Under the authorisation bargaining groups are restricted to the state level; there is a limit to the terms and conditions to be negotiated collectively; and any newsagents, publishers and distributors who wish to continue to negotiate individually are free to do so.

MR 067 (28.04.04)

Collective bargaining for NSW TAB agents

The ACCC saw a benefit in allowing TAB agents in NSW, most of which are small businesses, to collectively bargain with TAB. This is likely to give agents greater input into contracts and lead to the most effective terms and conditions. Although the price at which wagering services are supplied to consumers is regulated by government legislation, the ACCC considers this decision may result in competition between agents to provide the highest levels of service to consumers.

In granting authorisation for a period of five years, the ACCC notes that it in no way compels TAB agents or TAB Limited to participate in the collective bargaining process proposed by the TAB Agents' Association.

MR 066 (28.04.04)

Levy schemes to help bricklayer shortage

The ACCC issued draft decisions proposing to authorise levy schemes to help alleviate the current shortage of skilled bricklayers in Australia. Industry associations applied to impose small levies on products manufactured and sold in NSW, SA, WA, QLD and the ACT while Victorian associations have also applied to continue to operate a similar scheme in Victoria. The proposed levies will be imposed at a rate of \$2 per thousand bricks and 10c per square metre of concrete masonry blocks sold and will be matched by voluntary industry contributions.

The ACCC has assessed that the public benefit arising from the possibility of more skilled brick layers will outweigh any detriment flowing from increases in the cost of building materials to consumers. The ACCC will undertake public consultation on its draft decision before making a final decision.

MR 063 (21.04.04)

Port of Newcastle coal vessel queue

The ACCC has proposed to grant authorisation to a capacity allocation system to reduce the queue of vessels waiting to load coal at the Port of Newcastle. The proposal is to authorise the system until the end of 2004, creating a breathing space for the coal industry to develop a longer term solution, while stopping ongoing public detriment which may derive from the distortion of competition between producers.

The ACCC found that the capacity allocation system allows for a reduction in the queue without negatively affecting the amount of coal exported. It does so by matching demand for coal exports with the capacity of the infrastructure to deliver it.

The interim authorisation has since been amended, prohibiting coal producers from selling coal export allocations to one another. The ACCC is continuing to investigate the system.

MR 058 (08.04.04) & MR 081 (13.05.04)

EFTPOS challenge upheld

A regulatory solution may now be the best means of changing the system of EFTPOS (electronic funds transfer at point of sale) transaction wholesale fees following an Australian Competition Tribunal decision to deny authorisation to an agreement by banks to fix the wholesale fees for EFTPOS transactions at zero.

Disagreement between retailers and the banks had arisen over the proposed agreement. After the challenge by retailers and the tribunal's decision, the proposed voluntary agreement between banks will not proceed as proposed.

The tribunal considered that, on the evidence available, any public benefits arising from the agreement were outweighed by the detriments. It has, however, acknowledged the importance of access reform to 'enhance competition, and as a consequence efficiency'.

MR 088 (27.05.04)

Public liability insurance for not-for-profit organisations

Public liability insurance will be more easily obtainable for not-for-profit organisations after the ACCC granted a conditional authorisation for Allianz Australia, QBE Insurance (Australia) and NRMA Insurance to provide a joint public liability insurance product.

This decision is a response to the recent difficulties these organisations faced in obtaining insurance and the resulting cancellation of some community events. While the ACCC is concerned that the arrangement may have a detrimental effect on competition, it has concluded that, subject to certain conditions relating to statistical collection and dispute resolution processes, the arrangement is likely to result in a net public benefit. The ACCC has granted conditional authorisation to the arrangements until 31 December 2006.

MR 042 (25.03.04)

Competition tribunal upholds NSW Health authorisation

The NSW Department of Health will be conditionally allowed to require private in-patients in NSW public hospitals to obtain pathology services from NSW Health pathologists after the Australian Competition Tribunal reviewed an ACCC decision. The tribunal found the conduct generates significant public benefits such as efficiency gains and funding of education and research, as well as the pathology service more broadly. The tribunal has authorised this policy of NSW Health for five years.

The tribunal's decision confirms NSW Health should allow doctors to seek second opinions from private pathologists if this is in the best interests of the patients. Allowing doctors to use alternative private pathologists minimises any detriments associated with the removal of choice, including constraining pathology charges in the public sector.

MR 059 (13.04.04)

REGULATED SERVICES

Electricity transmission decisions

Draft decisions released by the ACCC pave the way for an increase in revenue caps for TransGrid and EnergyAustralia, the transmission network service providers in the NSW and ACT region, in turn allowing for greater investment in the transmission networks from 2004–09.

ACCC commissioner, Mr John Martin, said, 'The draft decisions provide for total investment in NSW and the ACT worth about \$296 million on average each year, a significant increase from the current level of about \$237 million per year. 'Investment will total nearly \$1.5 billion over five years, allowing TransGrid and EnergyAustralia to respond to the large increases in forecast demand while improving the reliability of their transmission networks by replacing ageing assets.'

The investment expenditure will be accompanied by modest price increases, substantially less than those proposed by TransGrid and EnergyAustralia. The ACCC sought comments on the draft decisions.

MR 076 (04.05.04)

Telecommunications transmission services

Increases in competition along capital-regional transmission routes have enabled the ACCC to step down regulation on 14 routes. This is provided for in a new declaration for the transmission capacity service released by the ACCC to cover the next five years, replacing an expired declaration.

The transmission capacity service is a wholesale high bandwidth service used for transmitting voice, data or other communications between points located throughout Australia.

The ACCC has also decided to discontinue the inter-capital transmission monitoring program that has operated since 1999, on the basis that there is now sustained competition on all these inter-capital routes.

However, other transmission markets, excluding capital-capital routes, continue to exhibit insufficient competitive forces and will continue to be declared. The ability of access seekers in these markets to buy these services from other carriers, notably Telstra, provided for under the declaration, provides an important means of entry into downstream markets, leading to increased competition.

MR 052 (01.04.04)

Telstra accounting separation reports

The ACCC has issued two of its reports about the accounting separation of Telstra between its wholesale and retail operations. They cover Telstra's performance in the December quarter 2003.

One report contains an imputation analysis designed to reveal whether there is a sufficient margin between Telstra's retail prices and the prices it charges access seekers to use its network (plus related costs) to enable efficient firms to compete at the retail level. The imputation analysis does not apply to the wholesale ADSL service which is the subject of a current ACCC Competition Notice to Telstra.

The second report provides key performance indicators on terms and conditions other than pricing that compare Telstra's service performance between its retail and wholesale supplied basic access services.

The ACCC will provide a fuller assessment of its views later.

MR 055 (06.04.04)

Telstra revised broadband pricing

The ACCC welcomed the revision by Telstra of its wholesale broadband pricing structure. The ACCC subsequently continued analysing the new pricing offer and conducting market inquiries.

ACCC Chairman, Graeme Samuel, has told Telstra wholesale customers that they, 'should not expect the ACCC to require Telstra to go beyond the point of providing a competitive pricing structure' and that, 'It is now incumbent on Telstra's wholesale customers to engage in constructive negotiations in relation to the pricing structure'.

Mr Samuel has highlighted two lessons from the whole process. Firstly, 'It is highly desirable for Telstra to consult and engage with the ACCC at an early stage before embarking on this course of action that has been evidenced here. This action has caused a significant degree of angst and uncertainty to both Telstra and its wholesale customers over the past few weeks some of which could have been avoided by earlier consultation.'

Secondly, 'the process has revealed that the competition notice procedures under the Trade Practices Act can be used to bring about a swift and effective response to alleged anti-competitive conduct and provide a framework for the resolution of serious issues.'

MR 050 (31.03.04)

Mobile termination services

The ACCC plans to continue to regulate the mobile termination service to ensure mobile operators provide access to their mobile termination service at competitive rates. The preliminary decision is part of a wide-ranging ACCC review of the regulation of Australian mobile telephone services, which has involved extensive consultation with the telecommunications industry.

A mobile termination service allows a mobile subscriber to receive incoming calls from a network other than their own service provider. The service is provided by the 'receiving network' and paid for by the 'calling party's network'.

The way in which the service is charged, and the rate at which it is charged, has been the subject of ACCC investigations. It has been found that because the termination service is paid for by the calling network, this has provided a real incentive for mobile operators to maximise the price of the termination service. ACCC investigations have suggested that current prices amount to at least twice the cost of delivering the service. These costs are passed on to consumers in the prices they pay for fixed-to-mobile and mobile-to-mobile calls and affect competition in the market for fixed-to-mobile calls.

The ACCC has recommended a more direct pricing principle in which mobile operators will be required to gradually reduce mobile termination service prices from over 21c per minute to 12c per minute by 2007.

The ACCC sought submissions on its draft decision.

MR 047 (26.03.04)

Mobile originating access services

The ACCC has drawn up preliminary plans to end regulation of the wholesale mobile originating access service after 30 June 2004. This service enables mobile callers to receive calls from a different network. Without access to this service, the receiving network cannot receive the call. The declaration of this service is currently limited to calls made to 13/1300 and 1800 numbers.

The ACCC, after receiving submissions from interested parties and holding public forums, has heard no substantial evidence to suggest regulation is required to protect the long-term interests of the end-users of telecommunications services. There have been no instances of carriers denying access to their networks or setting excessively high charges for mobile originating access services reported to the ACCC since 1999.

The ACCC has sought further submissions on its draft decision from interested parties.

MR 085 (20.05.04)

ACCC State Briefing

TAS

Agfest expo, May 2004

Agfest is the most important expo held in Tasmania, attracting 75 000 visitors and over 700 exhibitors. As part of the rural and regional program, the ACCC participated as an exhibitor on 5, 6 and 7 May 2004. This is the fourth year of attendance and the most successful so far in terms of visitor numbers. The ACCC profile was enhanced by sharing space with the Tasmanian Office of Consumer Affairs and Fair Trading (OCAFT). The ACCC and OCAFT, attracting visitors to the stand through a competition, jointly distributed over 3000 showbags.

QLD

Monthly TPA seminars for new business begin

Links with existing government and private agencies are important to ensure that information about the Trade Practices Act and the ACCC reaches new small businesses. The Queensland Small Business Manager has begun a program of monthly seminars with the Mooloolaba State Development Business and Innovation Centre advising new business operators about their obligations and the protections provided under the Trade Practices Act. These seminars include information about illegal practices like price fixing and misleading and deceptive conduct in advertising and selling, and how to avoid becoming a victim of unconscionable conduct.

The seminars are part of a broader state-wide information series for small business throughout Queensland.

SA

Forum to facilitate information flow to small businesses

The ACCC SA Small Business Manager was instrumental in identifying the benefit of holding a 'Business meets Government Agencies' forum in the northern metropolitan area, in conjunction with the Northern Area Business Enterprise Centre (NABEC). The NABEC has invited the South Australian Small Business Educational Network, an informal network of state and federal government agencies with an interest in small business, to support the NABEC in its effort to promote government services to business. The City of Playford will host a pilot forum on 28 June 2004.

The forum will deliver key messages to small business from each of the 10 participating agencies. Business leaders and senior agency officers will engage in a hypothetical debate. The forum will provide an opportunity for local business to meet face-to-face with agency representatives.

WA

Grantsmart Expo, York, 27 May 2004

The ACCC, together with 15 other government departments and agencies, had a stand at the Australian Government's Grantsmart Expo. The expo showcased government grants, funding and assistance programs for regional communities, employers, businesses, service providers and training providers. About 120 delegates represented a range of cultural and community organisations, regional small businesses, economic development agencies and industry groups. The ACCC Perth office representative delivered a presentation to delegates on Small Business and the Trade Practices Act.

Kimberley regional visit, May 2004

Broome Recreation and Aquatic Centre hosted the 2004 North West Expo and 9000 visitors enjoyed a comprehensive and varied show presented in superb facilities. Visitors to the ACCC information booth were offered an ACCC show bag of publications to take home and a chance to discuss business or consumer problems and concerns with staff.

The ACCC representative visited Broome, Derby, Fitzroy Crossing, Wyndham and Kununurra, with meetings and presentations arranged with groups such as indigenous resource centres, TAFE, ATSIC and the local shire. Two radio interviews were conducted.

Balingup Small Farm Field Day, 24 April 2004

The ACCC hosted an information booth at this year's Balingup Small Farm Field Day, themed 'Bountiful backyards'. This community run event showcases products for and from small farm and cottage industries and focuses on sustainability, lifestyle, self sufficiency and how to use and care for the land.

NSW

Franchising fact finding

The NSW ACCC Rural and Regional Program has been travelling around rural NSW and monitoring trends in franchising in the state. Franchising has become an increasingly popular method for starting a business in the past few years. In an uncertain marketplace, it is often seen as a less risky way of doing business. This has been especially true in the Sydney metropolitan area for some time. The travel into rural NSW has highlighted its increased popularity in these areas as well. Franchising, already popular in the area of food retailing, is spreading into a wide range of retail outlets that were previously only seen in the big cities. Further travel, as part of the Rural and Regional Program, will reveal how far this trend has spread.