



Australian
Competition &
Consumer
Commission

ACCCOUNT

A report of the Australian Competition and
Consumer Commission's activities

1 January to 31 March 2008

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Overview

The Australian Competition and Consumer Commission's core business is to ensure future compliance with the *Trade Practices Act 1974*. We do this by promoting competition and informed markets; encouraging fair trading and protecting consumers. The ACCC is committed to carrying out its functions in an efficient and professional manner. We manage our regulatory and enforcement processes to achieve effective outcomes maximising the use of ACCC resources.

On 16 February 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen, MP, announced Mr Patrick Walker as the government's nominee for the new Petrol Commissioner. Mr Walker commenced at the ACCC on 31 March 2008.

On 22 January 2008 the Assistant Treasurer requested the ACCC to hold a public inquiry into the competitiveness of retail prices for standard groceries under Part VIIA of the Act. Public hearings around Australia are scheduled to start from 1 April 2008.

In the March 2008 quarter the ACCC commenced six new enforcement litigation matters. Five matters were Part V proceedings that related to: mobile phone advertising (Crazy John's); motor vehicle advertising (GM Holden); LPG pricing (Wesfarmers Kleenheat); food and beverage advertising (Nudie Foods) and verbal representations about employment conditions (Duco Magic). The final matter was a proceeding brought under Parts IVA, IVB and V in the telecommunications industry (Allphones).

Twelve litigation proceedings were finalised during the March 2008 quarter. Nine of these were civil matters and the remaining three were criminal matters.

The most significant litigation outcome during the quarter was in the criminal proceedings against Paul John Rana, for offences under s. 155(5) of the Trade Practices Act and s. 11 of the *Criminal Code Act 1995*. In this matter, Paul John Rana was sentenced to six months imprisonment, which is the first custodial sentence imposed for a breach of the Trade Practices Act. Michael Lee Rana also received a two-month suspended sentence for a breach of s. 155 of the Act and Rana's company, NuEra Wellness Pty Ltd, was fined \$6000 for a breach of s. 155. The ACCC was awarded declarations, injunctions, penalties and costs in the proceedings instituted against FCHEM (Aust) Ltd, Osmose Australia Pty Ltd, Coppers Australia Pty Ltd and Edward Mark Greenacre for price fixing. The ACCC was also awarded declarations, injunctions, penalties and costs in the proceedings instituted against Hobie Cat Australasia Pty Ltd for resale price maintenance.

On 11 January 2008 the Minister for Competition and Consumer Affairs released for public consideration an exposure draft of the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008. The draft Bill proposes to create new criminal offences for serious cartel conduct in the *Trade Practices Act 1974*.

On 31 January 2008 the AER released its final decision on the transmission determination to apply to SP AusNet for the 2008–14 regulatory control period. The final decision provides for over \$750 million of new investment in SP AusNet's electricity transmission network over the next six years, in aggregate some 57 per cent above the amount invested by SP AusNet over the 2003–08 period.

On 5 February 2008 Australia Post provided the ACCC with a draft price notification proposing to increase the price of a number of its reserved mail services including increasing the basic postage rate (BPR) from 50 to 55 cents. The ACCC is currently seeking the views of interested parties on key issues to assist the ACCC in its consideration of Australia Post's proposal.

1. Enforcement and compliance

Maintaining and enhancing compliance with the Trade Practices Act is a key objective of the ACCC. We do this by promoting competition and informing markets, encouraging fair trading and protecting consumers. The enforcement function of the ACCC, including litigation, is well supported by its liaison, analysis, outreach and compliance arms.

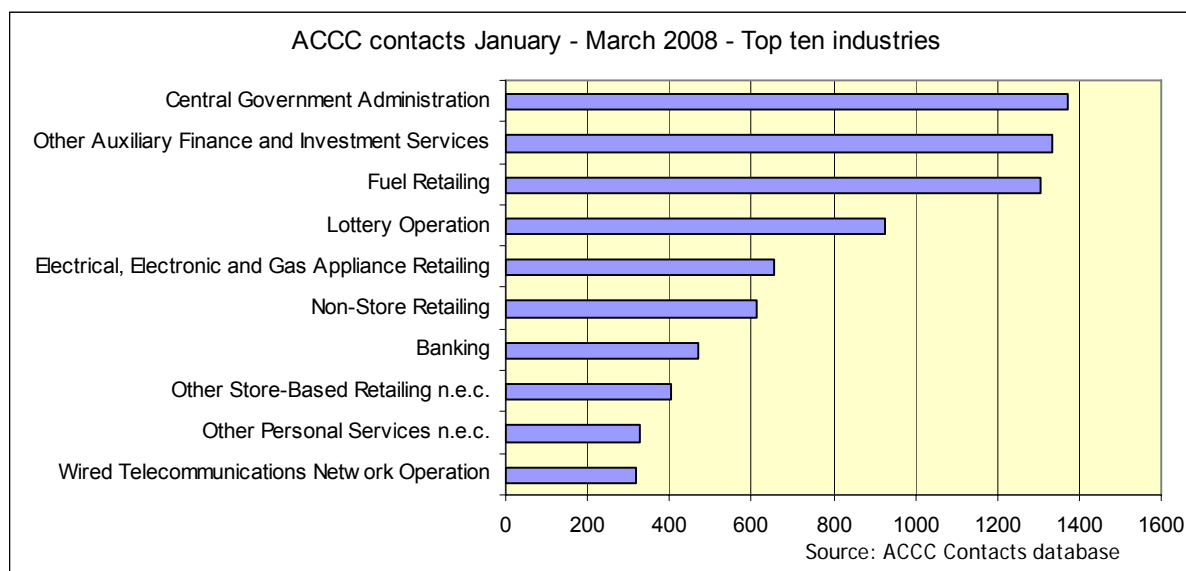
Responding to businesses and consumers

The ACCC Infocentre is a telephone and email information and complaints service for consumers and businesses. It is the initial response centre for all telephone, email inquiries and complaints to the ACCC on competition and consumer issues in Australia.

During the March 2008 quarter the ACCC Infocentre received 21 801 complaints and inquiries from businesses and consumers (email: 5094 and telephone: 16 707).

14 794 of these complaints and inquiries were entered into the ACCC's database. This level of contact is around 20 per cent higher than the same period last year, but only 10 per cent higher than the average 2007 quarterly level. One significant driver of these higher contact levels was the level of concern expressed about fuel pricing during the early 2008 Easter period.

The ten industries attracting the most complaints and inquiries during the quarter were:



The 'Central Government Administration' category relates to requests for ACCC publications rather than complaints. Contacts recorded against the industry groups 'Other Auxiliary Finance and Investment' and 'Lottery Operation' refer primarily to complaints received about advance fee, lottery and other financial fraud schemes.

62 per cent of the complaints and inquiries entered into the ACCC's database related to consumer protection matters, slightly higher than the 2007 quarterly average of 54 per cent. Competition matters accounted for 3 per cent of contacts, compared with

the 4 per cent quarterly average seen during 2007. Other matters accounted for 35 per cent, down from the 42 per cent 2007 quarterly average.

Enforcing for businesses and consumers

In undertaking its enforcement activity the ACCC remains committed to conducting its work in an efficient and professional manner. We manage our enforcement processes to achieve effective outcomes and use of ACCC resources.

Litigation commenced

Six proceedings were commenced in the Federal Court during the March 2008 quarter.

ACCC v Mobileworld Operating Pty Ltd (t/a Crazy John's)

commenced 16 January 2008 | **file no.** VID16/2008

proceedings under Part V for alleged misleading or deceptive conduct by representing that handsets on its Crazy Phone Plans are available 'FREE' or for '\$0', when in fact consumers are required to pay for the handsets through higher call rates than those available on comparable plans which do not include a handset.

ACCC v GM Holden Ltd

commenced 16 January 2008 | **file no.** WAD16/2008

proceedings under Part V for alleged misleading and deceptive conduct and false representations concerning 'green' claims made in the advertising of Saab vehicles by GM Holden.

ACCC v Wesfarmers Kleenheat Pty Ltd

commenced 5 February 2008 | **file no.** QUD31/2008

proceedings under Part V for alleged misleading and deceptive conduct concerning the pricing of bulk LPG supplied under contract.

ACCC v Nudie Foods Australia Pty Ltd

commenced 13/02/2008 | **file no.** WAD32/2008

proceedings under Part V for alleged misleading claims on packaging and in promotional material for two of Nudie's fruit juice products.

ACCC v Duco Magic Pty Ltd

commenced 4 March 2008 | **file no.** QUD47/2008

proceedings under Part V for alleged misleading and deceptive conduct in relation to representations about the income which would be earned by technicians, and overstatement of the expected demand for the services of a Duco Magic technician.

ACCC v Allphones Retail Pty Ltd

commenced 25 March 2008 | **file no.** NSD408/2008

proceedings under Parts IVA, IVB and V for allegedly failing to comply with the Franchising Code of Conduct and misleading and deceptive conduct and unconscionable conduct towards its franchisees in contravention of ss. 51AC, 51AD, 52 and 59.

Litigation concluded

Twelve litigation proceedings were finalised during the March 2008 quarter. Of these, two were heard and finalised in the March 2008 quarter in the Federal Court in Brisbane.

FCHEM (Aust) Limited and Ors

commenced 31 July 2006 | **concluded** 20 March 2008 | **file no.** NSD1461/2006:

Proceedings under Part IV for alleged price fixing in relation to the supply of various wood preservative chemicals

Justice Cowdroy | **Federal Court Sydney**

outcome | declarations, injunctions, penalties (\$1.25m against FChem, \$1.25m against Osmose and \$120 000 against Greenacre) and costs

The Original Mama's Pizza and Ribs & Ors

commenced 25 November 2005 | **concluded** 18 March 2008 | **file no.** NSD2333/2005:

proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations concerning the existence of a right in respect of the sale of a pizza system to convenience stores and service stations

Justice Madgwick | **Federal Court Sydney**

outcome | declarations and ordered injunctions, publication orders and costs. The 2nd and 3rd respondents must also provide to the ACCC a list of all persons who have purchased the oven system or any other piece of equipment used for the preparation of food; and a list of all relevant finance companies

Rural Network Pty Ltd & Anor

commenced 28 April 2005 | **concluded** 03 March 2008 | **file no.** QUD108/2005:

proceedings under Part V for alleged misleading or deceptive conduct in relation to the promotion of introduction agency

Justice Spender | **Federal Court Brisbane**

outcome | declarations and ordered injunctions, publication orders and costs

Duco Magic (Australia) Pty Ltd & Anor

commenced 4 March 2008 | **concluded** 26 March 2008 | **file no.** QUD47/2008:

proceedings under Part V for alleged misleading and deceptive conduct in relation to representations about the income which would be earned by technicians, and overstatement of the expected demand for the services of a Duco Magic technician

Justice Dowsett | **Federal Court Brisbane**

outcome | declarations, injunctions and costs

Wesfarmers Kleenheat Gas Pty Ltd

commenced 5 February 2008 | **concluded** 21 February 2008 | **file no.** QUD31/2008:

proceedings under Part V for alleged misleading and deceptive conduct concerning the pricing of bulk LPG supplied under contract

Justice Spender | **Federal Court Brisbane**

outcome | declarations, injunctions and costs

EDirect Pty Ltd (trading as VIPtel Mobile) & Ors

commenced 24 July 2007 | **concluded** 12 February 2008 | **file no.** NTD13/2007:

proceedings under Part V for alleged misleading or deceptive conduct and accepting payment without intending or being able to supply as ordered in relation to the telemarketing of mobile phone packages

Justice Reeves | **Federal Court Darwin**

outcome | declarations, EDirect to implement trade practices compliance program, specified 'no coverage' customers be allowed to terminate their contract with out incurring any

additional fees, EDirect to arrange for a community service announcement outlining the key elements in the ACCC *Fair call* publication to be broadcast on remote indigenous radio stations and costs

KMart Australia Ltd

commenced 5 December 2007 | **concluded** 30 January 2008 | **file no.** VID1145/2007: proceedings under Part V for alleged breach of mandatory product safety standard (bean bags)

Justice Finklestein | Federal Court Melbourne

outcome | declarations, review and upgrade of KMart's compliance program, appointment of an independent person to advise and assist KMart in conducting a trade practices risk assessment and costs

Hercules Iron Pty Ltd

commenced 14 December 2007 | **concluded** 5 February 2008 | **file no.** VID1186/2007: proceedings under Part V for alleged breach of mandatory product safety standard (bunk beds)

Justice Gordon | Federal Court Melbourne

outcome | declarations, injunctions, recall notice, implementation of a trade practices compliance program and costs

Paul John Rana

commenced 29 June 2007 | **concluded** 20 March 2008 | **file no.** VID571/2007: criminal proceedings for offences under s. 155(5) of the Trade Practices Act and s. 11 of the *Criminal Code Act 1995*

Justice North | Federal Court Melbourne

outcome | 6 months imprisonment—the time spent in custody (93 days) taken into account

Micheal Lee Rana

commenced 29 June 2007 | **concluded** 20 March 2008 | **file no.** VID575/2007: criminal proceedings for offences under s. 155(5) of the Trade Practices Act and s. 11 of the *Criminal Code Act 1995*

Justice North | Federal Court Melbourne

outcome | two month suspended sentence and a recognisance order for a period of 18 months

NuEra Wellness Pty Ltd

commenced 29 June 2007 | **concluded** 20 March 2008 | **file no.** VID576/2007: criminal proceedings for offences under s. 155(5) of the Trade Practices Act

Justice North | Federal Court Melbourne

outcome | fined \$6000

Hobie Cat Australasia Pty Ltd

commenced 17 September 2007 | **concluded** 28 March 2008 | **file no.** SAD145/2007: proceedings under Part IV for alleged resale price maintenance

Justice Finn | Federal Court Adelaide

outcome | declarations, injunctions, penalty (\$168 000), implement and maintain trade practices compliance program, Hobie Cat to notify all Hobie Dealers of court orders and costs

Current Full Federal Court applications

There are three matters currently under appeal to the Full Federal Court:

Baxter Healthcare Pty Ltd and others

commenced 1 November 2002

misuse of market power and exclusive dealing in relation to the supply of health products to state government purchasing authorities

status on 20 September 2006 the ACCC sought special leave to appeal the decision of the Full Court of the Federal Court, which had been handed down on 24 August 2006. The matter was heard by the High Court on 15 May 2007 and judgment was handed down on 29 August 2007. This matter is now before the Full Federal Court for consideration of the substantive matters under ss. 46 and 47 of the Trade Practices Act.

Channel Seven Brisbane Pty Ltd & Ors v ACCC

commenced 27 September 2005

misleading or deceptive conduct in relation to the promotion of the millionaire property investment mentoring program 'Wildly Wealthy Women'

status on 12 October 2007 Justice Bennett of the Federal Court, Sydney made declarations and ordered injunctions, a publication order and costs. On 26 October 2007 Channel Seven Brisbane Pty Ltd & others appealed to the Full Federal Court. The grounds of the appeal are that the court erred in holding that the appellants made the 'Wildly Wealthy Women' representations, and that the exemption from liability for contraventions of the Trade Practices Act contained in s. 65A of the Act did not apply to the conduct of the appellants.

Telstra Corporation Ltd v ACCC

commenced 21 September 2007

misleading and deceptive conduct in representations concerning Telstra's Next G mobile network

status on 19 December 2007 Justice Gordon of the Federal Court, Melbourne, made declarations and ordered injunctions and costs. On 24 December 2007 Telstra Corporation Ltd appealed Justice Gordon's whole judgment. The ACCC is waiting for this matter to be listed before the Full Federal Court.

Undertakings accepted

The ACCC accepted seventeen section 87B court enforceable undertakings during the March 2008 quarter. Undertakings were received from:

Korean Inbound Tour Operators Council Incorporated (KITOCA)

undertaking | KITOCA has provided court enforceable undertakings that it:

- will not seek or procure its members to enter into anti-competitive arrangements because Korean travel agents have offered for sale packaged tours below a retail price
- will not seek to procure its members to enter into arrangements as to the wholesale price they will charge Korean travel agents for tour services
- will send a letter to each of its members outlining KITOCA's responsibilities in terms of ss. 45, 45A and 45(4D) of the Trade Practices Act, and will advise its members that if they did reach any agreements that were likely to breach the Trade Practices Act, then those agreements should be immediately discontinued
- will conduct trade practices compliance training for its offices and employees.

JB Hi-fi Group Ltd

undertaking | JB Hi-Fi Group Ltd has provided court enforceable undertakings that it:

- will not, for a period of three years, enter into any contract, arrangement or understanding with any person with whom it is (or is likely to be) in competition to the effect that the person will cease trading, unless that contract, arrangement or understanding would not contravene s. 45 of the Act
- JB Hi Fi has also undertaken to extend its current compliance program, which was given to the ACCC under a s. 87B undertaking signed in December 2006, covering only Part V of the Act, to include Part IV of the Act.

Slumbertrek Australia Pty Ltd

undertaking | Slumbertrek Australia Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- continue to publish a notice in terms set out in annexure A of the undertaking for a further 40 days on its internet website, www.slumbertrek.com.au
- not in trade or commerce supply bean bags or bean bag covers that do not comply with any relevant prescribed consumer product safety standard(s) in force at the time of supply
- implement and maintain a trade practices compliance program
- provide a copy of any documents required by the ACCC in accordance with annexure B of the undertaking.

Australian Linen Supply Pty Ltd t/as Confident Care Products

undertaking | Australian Linen Supply Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- refrain from representing that medical sheepskins supplied by it comply with the standard when they do not
- write to each of its customers informing them of the undertaking and offering to replace or refund any medical sheepskins supplied by it that do not display the labelling required under the standard and/or contain grass seed matter
- implement a trade practices compliance program for CCP employees and other persons involved in its business.

Country Contacts International Pty Ltd (CCI) and Voula Saris

undertaking | Country Contacts International Pty Ltd (CCI) and Voula Saris have provided court enforceable undertakings to the ACCC that it will:

- provide refunds to former members totalling \$11 510
- only use images and descriptions of women in advertisements if the women have given written consent
- not represent certain fees are due when it knows this not to be the case or has no reason to believe it is the case
- only accept as a prepayment, 30 per cent of the total fee payable, to the extent they provide services into Queensland and Victoria
- implement a trade practices compliance program
- develop a complaints-handling system.

Rite Price Wholesalers Pty Ltd

undertaking | Rite Price Wholesalers Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- not in future supply any children's toys that do not fully comply with the relevant mandatory consumer product safety standards
- contact retailers that it has supplied the toy to and request that they display an information notice in their stores
- implement a trade practices compliance program.

Wesfarmers Kleenheat Gas Pty Ltd

undertaking | Wesfarmers Kleenheat Gas Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- refund specified 'Managed Monthly Account' and 'Quickhit' customers
- write to each of the customers to whom refunds are to be paid
- display a website for a period of three months, accessible from Kleenheat Gas' home page, informing customers how LPG is priced
- implement procedures to inform bulk LPG customers of the nature and extent of circumstances in which Kleenheat Gas may vary the price for bulk LPG supplied under any term contract, and to ensure customers understand what they are signing
- investigate any additional customer accounts that it becomes aware may have been the subject of the 'Managed Monthly Account' and 'Quickhit' practices, and refund them as appropriate
- review its trade practices compliance program.

Tasti Products Ltd

undertaking | Tasti Products Ltd has provided court enforceable undertakings to the ACCC that it will:

- amend the packaging of the identified 'Weight Watchers' fruit cereal bars
- publish a corrective notice in a Saturday edition newspaper in each Australian state and Territory
- publish a corrective notice on its website www.tasti.co.nz
- review and implement changes to its trade practices law compliance program.

Captain Choppers Pty Ltd

undertaking | Captain Choppers Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- not in future supply any children's toys that do not fully comply with the relevant mandatory consumer product safety standards
- contact retailers that it has supplied the toy to and request that they display an information notice in their stores
- implement a trade practices compliance program.

Erceg Holdings Pty Ltd

undertaking | Erceg Holdings Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- not trade in horticulture produce with growers who have not entered into a code compliant horticulture produce agreement with Erceg
- offer growers code compliant horticultural produce agreements (contracts)
- make publicly available its terms of trade
- have company officers or employees authorised to sign horticulture produce agreements on its behalf attend trade practices compliance training
- confirm it has written to all growers to whom it has sent copies of the 'Farm Produce Supply Agreement' informing them that:
 - the 'Farm Produce Supply Agreement' did not meet the mandatory requirements of the code
 - trading in horticulture produce without a compliant horticulture produce agreement (contract) in place is contrary to regulation 6 of the code and a breach of the Act.

Rural Network Pty Ltd

undertaking | Rural Network Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- provide refunds to former members totalling \$118 476
- provide copies of court orders made in the Federal Court to certain existing and new members
- attend trade practices compliance training
- develop a complaints-handling system.

ATI Enterprise Pty Ltd

undertaking | ATI Enterprise Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- complete a voluntary recall of cots sold through the Oz-Mall account
- ensure that products sold through the Oz-Mall account comply with the relevant mandatory product information and safety standards
- publish a corrective notice on its eBay website
- implement and maintain a trade practices compliance program with an emphasis on product safety.

Edirect Pty Ltd

undertaking | Edirect Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- refund customers identified as living in areas of Australia with no Optus GSM Network coverage.

Australian Discount Retail Pty Ltd

undertaking | Australian Discount Retail Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- maintain at its business premises up-to-date copies of all consumer product safety standards and consumer information standards prescribed under the Act that relate to goods ADRT supplies or offers to supply
- ensure that the goods ADRT supplies that are subject to a safety and/or information standard prescribed under the Act comply with the relevant standard
- implement a trade practices compliance program
- provide at its own expense, a copy of any document the ACCC may reasonably request relating to its compliance with the undertakings stated above.

Fertility Solutions Sunshine Coast Pty Ltd

undertaking | Fertility Solutions Sunshine Coast Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- ensure future advertising and other forms of promotion will comply with the Act and will not contain testimonials that are not genuine testimonials provided by its own patients
- place a corrective notice in the Bundaberg and region *NewsMail* at its own expense within 21 days
- create and maintain a trade practices compliance program.

Pacific Magazines Pty Ltd

undertaking | Pacific Magazines Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- not supply any product subject to a prescribed safety and/or information standard under the Trade Practices Act that does not comply with the relevant standard
- publish a recall notice on the website www.marieclaire.com.au
- publish an educative piece about the importance of sunglass safety
- review its trade practices compliance procedures.

Mobile World Operating Pty Ltd

undertaking | Mobile World Operating Pty Ltd has provided court enforceable undertakings to the ACCC that it will:

- notify consumers on the affected plans of the existence of compensation
- refrain from advertising \$0* or FREE* handsets in a misleading manner
- implement a trade practices compliance program
- pay a portion of the ACCC's legal costs in the matter.

Communicating with businesses and consumers

The ACCC's commitment to strong liaison, outreach and advocacy programs continues as evidenced in the wide range of activities undertaken. Industry associations play a key role in helping to disseminate information and draw industry issues to our attention. Our expanded product safety role has seen us active in enforcement, monitoring and standard setting.

Liaison education activities

The ACCC works with other regulators, government departments, businesses and consumer associations in monitoring emerging trade practices issues and educating relevant stakeholders.

During the March 2008 quarter, the ACCC attended 61 meetings with government and industry representatives, small business operators and consumer groups nationally; participated in 10 franchising expos and field days; and conducted 14 presentations to small business operators, industry associations and consumer groups at such forums as the National Consumer Congress, the Sydney Franchise and Business Opportunity Expo, 'Legalwise' seminars and the Australian Environmental Business Network's Industry and Greenhouse conference. The ACCC has engaged in a number of educative and liaison activities in the March 2008 quarter, relating to specific consumer and business issues. Examples of these activities are broken down into consumer issues and business issues.

Consumer issues

Food and therapeutic goods

- the ACCC addressed the Food Allergen Bureau conference in February on the issue of food allergen labelling
- the ACCC participated in meetings of Standards Australia's Committee on Organic and Biodynamic products
- the ACCC met with the Therapeutic Goods Advertising Code Council to discuss advertising claims

Disadvantaged and vulnerable consumers

- the ACCC continued the disadvantaged and vulnerable consumer program including further translation of our core consumer publication *Know how to complain: stand up for your consumer rights* into Arabic, Vietnamese and traditional Chinese languages
- the ACCC continued its role as a signatory to the National Indigenous Consumer Strategy (NICS) by working with other government agencies to meet the aims of the NICS action plan, Taking Action Gaining Trust; the ACCC contributed to the development of the new NICS website which was launched during the March 2008 quarter

Scams

- between 24 February and 8 March 2008 the ACCC participated in Fraud Fortnight. Fraud Fortnight is a campaign of the Australasian Consumer Fraud Taskforce which comprises 19 federal and state government regulatory agencies and departments (including New Zealand) that have a responsibility for consumer protection in relation to frauds and scams; this year's campaign focused on raising awareness about deceptive and seductive scams and the steps consumers can take to protect themselves from these types of scams
- in response to visitor feedback the ACCC made changes to the SCAMwatch website to help Australians recognise and protect themselves from scams; specifically, the ACCC published a new 'see-a-scam' page which enables visitors to see how scams look and work; the SCAMwatch website was the portal for the 2008 Fraud Fortnight and received more than 8000 unique visits during this quarter
- the ACCC issued a revised version of the publication, *The little black book of scams*, which highlights a variety of scams which target Australian consumers and small business; these scams occur in areas such as internet shopping, mobile phones, online banking, lotteries, employment and investment opportunities; the revised version was launched on 24 February 2008 by the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen, MP

Telecommunications

- the ACCC worked with fellow regulators, the Australian Communications and Media Authority and the Telecommunications Industry Ombudsman to address current consumer issues in the telecommunications sector

Fact sheets released in the March 2008 quarter:

- *Your consumer rights: mobile phone handsets*, which explains what consumers can do when they are having problems with their mobile phone handset
- *Your consumer rights: environmental claims*, which provides a range of tips to help consumers understand and evaluate some common environmental claims in the context of the Trade Practices Act.

Businesses

in the March 2008 quarter the ACCC:

- completed 24 trade practices review reports, sent 6 reports confirming completion of trade practices training, finalised 9 matters.
- released a publication, *Green Marketing and the Trade Practices Act*, a revised guide for businesses and industry on the possible trade practices concerns that may arise out of 'green' claims such as 'environmentally friendly' or 'carbon neutral'
- presented on the topic of 'Green marketing and the Trade Practices Act' at business and industry conferences and seminars
- undertook extensive industry consultation on the topic of carbon offset claims to inform guidance that will be issued later in 2008
- worked with the media and held an industry presentation to warn retrenched Mitsubishi workers about scams targeting those contemplating starting-up a business; the presentation was also an opportunity to highlight the importance of

the requirements set out in the Franchising Code of Conduct and the need for due diligence when running a business

- published the first edition of a new quarterly newsletter for the ACCC's Outreach supporters
- released a small business fact sheet on misleading health and therapeutic claims

Codes of conduct

Mandatory codes of conduct

The ACCC is responsible for ensuring compliance with three industry codes of conduct prescribed under the Trade Practices Act— the Franchising Code of Conduct, the Oilcode and the Horticulture Code of Conduct.

- *Trade Practices (Industry Codes—Franchising) Regulations 1998* (Franchising Code of Conduct)

The purpose of this code is to regulate the conduct between franchisors and franchisees. It came into effect on 1 July 1998.

On 1 March 2008 the Australian Government implemented a number of amendments to the code. These amendments aim to increase the transparency, quality and timeliness of disclosure to existing and prospective franchisees.

During the March 2008 quarter, the ACCC:

- continued to educate industry participants about their rights and responsibilities regarding the Franchising Code with a particular focus on raising awareness about the amendments to the code
- published and made available a number of new and updated publications
- set up a Franchising Code Information Network (FCIN)—a free subscription service for those people who wish to be kept up-to-date with developments on the Franchising Code from the ACCC. The service currently has 263 subscribers. The ACCC conducts regular mail-outs to subscribers of the FCIN to inform them about the availability of new publications, provide information about the amendments to the code and provide updates on court outcomes and cases relevant to franchising that the ACCC is pursuing in court
- considered 98 complaints and 60 inquiries about various aspects of the code. The subject matter of these complaints and inquiries varied, but included harassment and intimidation of franchisees, failure to meet disclosure obligations, transferring a franchise and misleading representations
- engaged with the franchising sector in educational seminars including presentations at Legalwise Seminars, Franchise Academy seminars and more broadly through the ACCC's outreach and small business programs in each state and territory

- attended the Sydney Franchising Expo to engage with prospective franchisees about their rights and responsibilities under the Franchising Code
- continued to engage with Griffith University on a joint research project to better understand conflict in franchise systems
- continued to liaise with the Department of Innovation, Industry, Science and Research about the amendments to the Franchising Code
- *Trade Practices (Industry Codes—Oilcode) Regulations 2006 (Oilcode)*

The Oilcode regulates the conduct of suppliers, distributors and retailers in the downstream petroleum retail industry. It came into effect on 1 March 2007.

During the March 2008 quarter the ACCC:

- continued to liaise with, and distribute its educational and compliance materials to, industry stakeholders such as associations, petroleum retailers and distributors
- considered four inquiries and two complaints in relation to the Oilcode; the subject matter of these complaints and inquiries varied, but included the application of the Oilcode to commission agents, disclosure obligations under the Oilcode and allegations of unconscionable conduct
- continued to liaise with the Department of Resources Energy and Tourism about the ACCC's activities in the downstream petroleum retail industry and engaged with them about the upcoming review of the Oilcode
- *Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Horticulture Code)*

The purpose of the Horticulture Code is to regulate the trading of horticulture produce between growers and traders in the horticulture produce industry. It came into effect on 14 May 2007.

During the March 2008 quarter, the ACCC:

- continued to educate industry participants about their rights and obligations in relation to trading under the Horticulture Code with a particular emphasis on trading with compliant agreements
- attended and presented at the Melon Industry conference promoting educational materials available to industry
- conducted a mail-out to the Horticulture Code Information Network with 411 subscribers providing media releases on horticulture code enforcement outcomes, the ACCC grocery inquiry and the new services agreement fact sheet
- provided stakeholders with access to printed and electronic copies of all of the compliance materials relative to the Horticulture Code of Conduct

- reviewed 17 complaints and eight inquiries about the code—the subject matter of these complaints and inquiries varied, but included traders not providing compliant horticulture produce agreements, failure to agree on a price, failure to pay within the terms of the horticulture produce agreements and non-compliant warranty requirements

Voluntary industry codes of conduct

Effective voluntary industry codes serve the purpose of fostering more effective compliance with the Act. During the March 2008 quarter the ACCC participated in the development and review of a number of voluntary industry codes of conduct, including:

- the Banking Industry Code of Conduct—the aim of this code is to formalise the standards of good banking practice for members when dealing with individual and small business customers (or prospective customers) and their guarantors
- the MTAA/MIANZ Code of Conduct (Medical Technology Association of Australia, formerly the Medical Industry Association of Australia)—the aim of this code is to formalise legal and ethical business practices for member companies and promote socially responsible conduct required of companies in the medical technology industry sector
- the AANA Code of Advertising for Children—the aim of the code is to ensure that advertisers develop and maintain a high sense of social responsibility in advertising to children in Australia
- the Complementary Healthcare Council Code of Practice for Ensuring Raw Material Quality & Safety—the aim of the code is to define the principles and minimum documentation requirements that will ensure the quality and safety of raw materials being used in complementary medicines

Product safety

The ACCC is responsible for developing and reviewing product safety and information standards, developing and monitoring product bans, receiving s. 65R product recall notifications and entering the recalls on the Product Recalls Australia website.

It also provides advice to suppliers on correct recall procedures and monitors emerging safety issues including the investigation of injury reports.

In the March 2008 quarter:

- a number of importers, suppliers and retailers provided court enforceable undertakings to the ACCC regarding unsafe products including bean bags, toy car sets, baby cots, bunk beds and sunglasses
- fashion sunglasses supplied as a free gift with the February edition of *Marie Claire* magazine were voluntarily recalled by Pacific Magazines Pty Ltd, *Marie Claire*'s publisher, after testing commissioned by the ACCC, indicated that some glasses did not comply with the mandatory safety standard for sunglasses and fashion spectacles; the ACCC accepted court enforceable undertakings from Pacific Magazines including an undertaking to publish an educative article about the importance of sunglass safety and a review of its compliance procedures

- the ACCC presented at a Sunglass Compliance Seminar organised by the Sunglass Association of Australia in Sydney in January 2008;. major topics covered at the seminar, attended by sunglass manufacturers, wholesalers and retailers, included mandatory requirements of the product safety standard for sunglasses and fashion spectacles, the role of the ACCC in enforcing mandatory standards and the development of compliance programs by suppliers
- at the request of the Australian Toy Association, the ACCC conducted a Product Safety Compliance Workshop in Sydney in March 2008; the workshop was a capacity building exercise designed to assist ATA members to design their own compliance programs to ensure compliance with regulations
- the ACCC continues to liaise with representatives from the cosmetic industry about the current review of the cosmetic labelling regulations; recent changes to the *Therapeutic Goods Administration Act (1989)* have provided new enforcement challenges for the ACCC and liaison with the cosmetics industry aims to ensure continued compliance with the ACCC regulations
- the ACCC reviewed the mandatory standards for cosmetics, flotation toys and swimming aids; the review of trolley jacks and vehicle support stands and vehicle jacks continued

Mandatory product safety and information standards

- **Portable cots**
A new mandatory standard for children's portable folding cots was entered on the Federal Register of Legislative Instruments (FRLI) on 22 February 2008. The standard prescribes safety and performance standards for children's portable folding cots, and will apply to portable cots supplied from 1 March 2009.
- **Hot water bottles**
A new mandatory standard for hot water bottles was entered on the FRLI on 7 March 2008, to take effect from 1 June 2008. The safety requirements of the new standard are drawn from the 2006 British Standard on hot water bottles and include:
 - physical properties (capacity, wall thickness and filling characteristics)
 - integrity of stoppers (to prevent leakage)
 - performance characteristics (strength of seams, pressure tolerance)
 - informative labelling
- **Lead in toys**
A draft Regulatory Impact Statement (RIS) proposing a new mandatory standard prescribing maximum levels of lead in toys was developed and published for public and stakeholder comment. Comments on the RIS are currently being assessed, analysed and summarised. A decision on the final content of the new mandatory standard is expected by the end of April. It is expected that the mandatory standard will be introduced in the second half of 2008.
- **Reduced fire risk cigarettes**
An RIS proposing to require cigarettes to self-extinguish when tested in accordance with the relevant Australian Standard to reduce smoking-related domestic and bush fires was drafted in late 2007. The RIS was subjected to

preliminary comment by key stakeholders and the Office of Best Practice Regulation. A revised draft was published for broad stakeholder consultation in January 2008. The submissions received are currently being assessed to determine the final content and introduce a new mandatory standard in the second half of 2008.

- Product Recalls Australia (www.recalls.gov.au)

The Product Recalls website provides consumers and state and territory regulators with up-to-date information on all Australian safety-related recalls. One hundred and eighty new recalls were entered on the database during the March 2008 quarter. These comprised of 42 consumer product recalls, 15 food product recalls, 84 therapeutic good recalls and 39 motor vehicles recalls.

2. Mergers

A primary aim of the ACCC is to encourage competitive market structures and informed behaviour. This objective is supported through the assessment of mergers, acquisitions, asset sales and certain collaborative arrangements under ss. 50 and 45 of the Act.

A total of 88 reviews (including confidential and public merger reviews) were conducted by the ACCC between 1 January and 31 March 2008. Of these, 77 were not opposed, one was publicly opposed outright and the ACCC expressed concerns following one confidential review.

Additionally, one variation to an existing s. 87B undertaking was accepted and eight reviews were conducted where no decision was made, because the ACCC was either advised that the proposal was withdrawn/would no longer be proceeding, or a view could not be formed on a confidential basis. Further, 46 of the 88 reviews were conducted publicly.

Merger reviews undertaken in the March 2008 quarter

	Confidential	Public	Total
Total reviews undertaken 1 January to 31 March 08	42	46	88
This total can be broken down into the following categories:			
Not opposed	35	42	77
Finished—no decision (including withdrawn) ¹	6	2	8
Opposed outright	0	1	1
Confidential review—ACCC concerns expressed	1	0	1
Resolved through undertakings ²	0	0	0
Variation to undertaking accepted	0	1	1

Notes:

1. These are matters where no decisions were made. They are not included in the timings in the table below.
2. Only public matters can be resolved through undertakings.

Time taken to assess mergers

The following table provides a breakdown of the time taken by the ACCC to complete its assessments in the March 2008 quarter. This does not include the eight matters where no decisions were made and one variation to an existing undertaking.

Time taken to undertake merger reviews	Number of reviews	Percentage of mergers
2 weeks or less	38	48 %
4 weeks or less	58	73 %
6 weeks or less	67	85 %
8 weeks or less	72	91 %
More than 8 weeks	7	9 %

Statements of issues

Three statements of issues were released during the March quarter:

- Sumitomo Forestry Company Limited—proposed acquisition of certain assets of Carter Holt Harvey Limited's Woodproducts Australia business—16 January 2008
- Cabcharge Australia—proposed acquisition of Suburban Transport Services—25 February 2008
- Lake Imaging & Western Medical Imaging—proposed merger—27 February 2008

Public competition assessments

To improve the handling of matters and provide an enhanced level of transparency in its decision making, the ACCC provides a public competition assessment outlining how it reached its final conclusion on matters that are of particular public interest or important precedence value.

The ACCC issued two public competition assessments relating to the following matters during this quarter:

- A&R Whitcoulls Group Holdings Pty Limited (ARW) —proposed acquisition of Borders Australia Pty Limited—27 February 2008
- Sumitomo Forestry Company Limited - proposed acquisition of certain assets of Carter Holt Harvey Limited's Woodproducts Australia business—13 March 2008

Section 87B undertakings

No s. 87B undertakings were accepted in relation to matters reviewed within the March quarter.

One variation to an existing s. 87B undertaking for Toll Holdings Ltd's proposed acquisition of Patrick Corporation was accepted in relation to:

- Asciano undertakings—monitoring and compliance post-restructure—6 February 2008

Major merger matters currently under review or being monitored

At the end of the March 2008 quarter the ACCC was in the process of considering a number of significant merger reviews, including:

- Ilyria Pty Limited and Consolidated Press Holdings Limited—proposed acquisition of Consolidated Media Holdings Limited (now withdrawn)
- Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd (decision expected 23 April 2008)
- Incitec Pivot Limited—proposed acquisition of Dyno Nobel Limited

At the end of the March 2008 quarter the ACCC was monitoring:

- BHP Billiton Ltd—proposed acquisition of Rio Tinto Ltd and Rio Tinto plc (public review yet to commence on receiving submission from BHP)
- Fairfax Media Limited—monitoring compliance with the s. 87B undertaking offered for the acquisition of Rural Press Limited
- Possible sale—Australian Co-operative Foods Limited (Dairy Farmers)

Summaries of major matters under consideration

Joint venture—Illyria Pty Limited and Consolidated Press Holdings Limited—proposed acquisition of Consolidated Media Holdings Limited

summary | on 22 January 2008 the ACCC commenced monitoring of the proposed acquisition. On 15 February 2008 the ACCC commenced an informal review. The ACCC commenced market inquiries and began assessing whether the proposal would be likely to give rise to competition concerns in light of the relationships between Illyria and News Corporation and between Lachlan and Rupert Murdoch. On 7 March 2008 the ACCC paused its assessment of the proposal due to an ASX announcement made by the parties concerning the funding of the proposal. On 7 April 2008 CMH announced to the ASX that the proposal by Illyria and CPH to acquire CMH had been withdrawn. The ACCC review concluded without a decision being made.

Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd

summary | on 8 February 2008 the ACCC commenced a second informal review of the Pact Group's proposed acquisition of Brickwood in the packaging industry. In August 2007 the Pact Group sought informal clearance of the proposed acquisition of Brickwood. On 31 October 2007 the ACCC announced that it opposed the proposed acquisition. The ACCC is presently investigating the second proposed acquisition. The parties have argued changed circumstances since the ACCC considered the matter in 2007. The proposed date for the announcement of the ACCC's findings is scheduled for 23 April 2008.

Incitec Pivot Limited—proposed acquisition of Dyno Nobel Limited

summary | on 27 March 2008 the ACCC commenced an informal review of the proposed acquisition of Dyno Nobel Limited (Dyno) by Incitec Pivot Limited (IPL). IPL is a manufacturer, importer and distributor of fertiliser products in eastern Australia. Dyno is a commercial explosives company, which supplies bulk and packaged explosives, initiating systems and distribution and other related services to the mining, quarrying and construction industries. The closing date for submissions from interested parties is 17 April 2008. The ACCC proposes to announce its findings on 15 May 2008.

BHP Billiton Ltd—proposed acquisition of Rio Tinto Ltd and Rio Tinto plc

summary | on 12 November 2007 the ACCC commenced monitoring the proposed acquisition after market speculation led to an announcement by BHP Billiton. On 6 February 2008 BHP Billiton announced inter-conditional offers for both Rio Tinto plc and Rio Tinto Ltd. The offers are subject to preconditions relating to regulatory approvals, including in Australia. The ACCC is currently monitoring the proposed acquisition and will commence a review on receiving a submission from the parties. The ACCC anticipates that this is likely to take place in late April 2008.

Possible sale—Australian Co-operative Foods Ltd (Dairy Farmers)

summary | on 17 March 2008 the ACCC commenced monitoring the possible sale of Dairy Farmers after recent press articles indicated that it may be considering entering into a sales process.

Fairfax Media Limited—s. 87B undertaking

summary | on 18 April 2007 the ACCC did not oppose the proposed acquisition of Rural Press Limited by Fairfax. It did so following the ACCC's acceptance of an undertaking by

Fairfax that was designed to address concerns about competition for advertising in the community newspaper sector in the Newcastle and Hunter Valley area.

The undertaking required Fairfax to sell *The Newcastle* and *Lake Macquarie Post* and *The Hunter Post* (*The Post*), free weekly newspapers circulating in the Hunter Valley and the Newcastle region. Fairfax retained *The Newcastle* and *Lake Macquarie Star* and *The Lower Hunter Star* (*The Star*), free weekly newspapers with a similar circulation area to *The Post*.

Immediately before the sale of *The Post* in November 2007, several changes were made to its format and content, which the ACCC considered were inconsistent with the terms of Fairfax's undertaking, and which may have affected the viability of *The Post*. Following concerns raised by the ACCC about Fairfax's compliance with the undertaking, Fairfax agreed to implement certain arrangements designed to ensure the competitive viability of *The Post*.

During this quarter the ACCC has continued to make inquiries and monitor compliance with the original undertaking and the interim arrangements agreed by Fairfax in January 2008 to ensure that *The Post* is able to operate as a viable, competitive going concern.

Major matters completed

Major matters completed during the March 2008 quarter included:

- A&R Whitcoulls Group Holdings Pty Limited (Angus & Robertson) —proposed acquisition of Borders Australia Pty Ltd
- P&O Automotive & General Stevedoring Pty Ltd—proposed joint venture with Tasports
- Sumitomo Forestry Company Limited—proposed acquisition of Carter Holt Harvey Limited's Woodproducts Australia business

A&R Whitcoulls Group Holdings Pty Limited (Australia)—proposed acquisition of Borders Australia Limited.

result | acquisition not opposed

summary | on 13 February 2008 the ACCC decided not to oppose the proposed acquisition.

After a comprehensive review, the ACCC formed the view that the proposed acquisition was unlikely to substantially lessen competition in the relevant markets, namely:

- local markets for the retail supply of books (from retailers to consumers)
- national market for the acquisition of books (by retailers from publishers and wholesalers).

Factors informing this conclusion included:

- While the proposed acquisition would result in the removal of an effective competitor; the merged entity will face constraints from a combination of the DDS chains, Dymocks, and to a lesser extent QBD, Collins and independents.
- ARW currently prices above the recommended retail price on most of its backlist titles. If this practice is introduced into Borders stores post-acquisition, the ability of consumers to switch to other retailers who do not price above RRP will act as a competitive constraint.
- Publishers possess sufficient countervailing power to prevent any increase in negotiating power by the merged firm from amounting to a substantial lessening of competition in the national acquisition of books market.

In reaching this decision, the ACCC considered information provided by the merger parties and extensive market inquiries.

On 27 February 2008 the ACCC issued a public competition assessment on its decision. It has since been reported that the parties were unable to reach a sale agreement, so the transaction will not proceed.

P&O Automotive & General Stevedoring Pty Ltd—proposed joint venture with Tasports
result | acquisition not opposed

summary | on 19 February 2008 the ACCC did not oppose the proposed joint venture of P&O Automotive & General Stevedoring Pty Ltd with Tasports. The ACCC did not form a concluded view on market definition, but noted that, within the context of Tasmania, there was scope for defining geographically narrow markets at each port, and for defining product markets for general and bulk stevedoring and for container stevedoring. The ACCC considered that the vertical integration component of the proposed joint venture had the potential to give rise to competition issues. Considering information from market participants, however, the ACCC considered it was not able to establish that such potential issues were likely to amount to a substantial lessening of competition for the purposes of s. 50.

Sumitomo Forestry Company Limited—proposed acquisition of Carter Holt Harvey Limited's Woodproducts Australia business

result | acquisition opposed

summary | on 27 February 2008 the ACCC decided to oppose the proposed acquisition.

SFC and CHH were both suppliers of raw medium density fibreboard (MDF) and CHH also produced value-added MDF. The only other manufacturer and supplier of raw MDF in Australia was Laminex, which was largely focused on value-added MDF. If SFC were to acquire CHH, the merged entity would control a very substantial share of the market for the manufacture and supply of raw MDF in Australia.

Market inquiries indicated that there were unlikely to be strong competitive constraints on the merged entity as:

- high barriers to entry existed
- imports were unlikely to act as a constraint within a 5 to 10 per cent price range
- Laminex would have limited incentive to vigorously compete in the supply of raw MDF to value-adders with which it competes downstream.

As a result, the proposed acquisition would result in the removal of a significant and direct competitive constraint on SFC in the manufacture and supply of raw MDF in Australia.

After a comprehensive review, including the issuing of a statement of issues on 16 January 2008, the ACCC formed the view that:

- the proposed acquisition was likely to substantially lessen competition in the market for the manufacture and supply of raw MDF in Australia
- that the merged entity's ability to exercise market power in the manufacture and supply of raw MDF would likely provide it with the ability and incentive to foreclose downstream competition for the supply of value-added MDF products.

On 13 March 2008 the ACCC issued a public competition assessment outlining its decision.

3. Adjudication

Authorisations

During the March 2008 quarter, the ACCC commenced five new authorisation matters (excluding gas and electricity applications).

The total number of authorisation matters being considered by the ACCC on 31 March 2008 (excluding gas and electricity matters) was 10. The discussion below focuses on the milestones during the period.

Applications lodged

CEMEX Australia Pty Limited (formerly Rinker Australia) (CEMEX)

CEMEX (trading as Readymix) has sought re-authorisation of a cartage allocation system for concrete carriers in Western Australia. On a rolling 12-month basis, the system ensures that each carrier receives an even amount (± 10 per cent of the Western Australian fleet average) of work from CEMEX.

The ACCC granted interim authorisation to these arrangements on 20 February 2008 and is progressing with its assessment of the substantive application.

International Air Transport Association (IATA)

The IATA has applied for authorisation of the contracts, arrangements or understandings constituting the IATA Passenger Tariff Coordination Conference and the new system adopted through resolutions of the conferences.

The ACCC is currently seeking submissions from interested parties about the application.

Insurance Council of Australia Limited (ICA)

The ICA seeks authorisation for an agreement between its current and future members to voluntarily adopt a common definition of 'flood' to provide flood insurance services to the community.

The ACCC is currently seeking submissions from interested parties about the application.

Job Futures Limited (Job Futures)

On 25 March 2008 Job Futures lodged two applications for authorisation for an arrangement between its members (current and future) to permit Job Futures to:

- tender on behalf of members for government contracts to provide services that assist unemployed and disadvantaged people to gain work on condition that members will not tender for the same or similar program while delivering that program or similar program under subcontract to Job Futures; Job Futures will also not tender for new contracts against a member organisation where they have historically provided that program in that location

- develop cooperative tendering arrangements that include agreements about the price that will be tendered and the price paid for services provided by members to Job Futures; and agreements about the territories in which members and Job Futures will tender to deliver services.

Job Futures has also requested interim authorisation for its arrangements. The ACCC is currently seeking submissions from interested parties regarding the request for interim authorisation and the substantive application.

Matters finalised

Shopping Centre Council of Australia Limited (SCCA)

The SCCA sought a minor variation to authorisations A91049 and A91050. The SCCA sought to extend the period of authorisation so that authorisation will expire on 31 December 2012 rather than 29 August 2012.

On 31 January 2008 the ACCC issued a determination varying the authorisation.

ACT Health Food Co-operative Ltd

On 26 November 2007 the ACT Health Food Co-operative Ltd lodged an application for authorisation to allow current and future members of the Co-operative to collectively negotiate the terms and conditions (including price) at which they will obtain health food products from various suppliers and distributors.

On 6 February 2008 the ACCC issued a final determination granting authorisation to the arrangement for five years.

Dalrymple Bay Coal Terminal Pty Limited

Dalrymple Bay Coal Terminal Pty Ltd sought re-authorisation of a queue management system designed to address the imbalance between demand for coal loading services at Dalrymple Bay and the capacity of the Goonyella coal chain. The imbalance between demand and capacity of the coal chain caused a substantial queue of ships to form off Dalrymple Bay.

The ACCC granted authorisation to these arrangements until 31 December 2008 as a transition period to enable the development and implementation of a long-term solution to excessive vessel queues.

North West Shelf Gas Pty Ltd

North West Shelf Gas Pty Ltd requested the revocation of authorisation A18492. The authorisation concerned the joint marketing of gas to the Western Australia domestic market. In its letter of 14 December 2007, North West Shelf Gas Pty Ltd advised the ACCC that the joint venture considers there is no need to maintain the authorisation. The joint venturers advise they will continue their gas marketing practices, including ongoing administration of gas supply contracts, without it.

On 5 March 2008 the ACCC revoked the authorisation.

Premium Milk Ltd

Premium Milk lodged an application for minor variation to authorisation A90972 on 11 February 2008.

Authorisation A90972 was originally granted by the ACCC on 9 November 2005. The authorisation relates to collective negotiations by Premium Milk on behalf of current

and future Queensland milk producers with Parmalat Australia Limited in relation to farm-gate milk prices and milk quality standards.

The variation sought by Premium Milk was to extend the coverage of the collective bargaining group to include milk producers outside of Queensland.

On 13 March 2008 the ACCC advised Premium Milk that the proposed variation was not minor and that the ACCC was therefore unable to assess the application for minor variation.

Information Technology Contract and Recruitment Association

The Information Technology Contract and Recruitment Association applied for authorisation of its code of conduct.

On 27 February 2008 the ACCC granted authorisation to those clauses identified as potentially raising competition issues (clauses 4.4, 5.8, 7.1, 7.2, Schedule A and Schedule B) of ITCRA's code of conduct until 30 June 2010.

Tabcorp Manager Pty Ltd

Tabcorp Manager Pty Ltd sought authorisation for the 2007 SuperTAB pooling agreement between Tabcorp and TOTE Tasmania. The 2007 pooling agreement governs TOTE Tasmania's participation in the SuperTAB pool operated by Tabcorp.

On 5 March 2008 the ACCC granted authorisation for the parties to make and give effect to the four provisions identified by Tabcorp as raising trade practices issues, that is clauses 2.1, 5.1, 5.6 and 8, for the term of the agreement (until 14 August 2012).

North East Valleys Wine Group Pty Ltd

On 21 December 2007 North East Valleys Wine Group and 39 identified growers of wine grapes in the North East Valleys located in the Alpine and King Valleys in the north-east region of Victoria (Growers) lodged applications for authorisation A91080 and A91081. Broadly, authorisation was sought for NEV to act as an agent for the collective sale of the growers' wine grapes and as a purchasing agent for farm services.

On 19 March 2008 the ACCC granted authorisation until 30 June 2012 for current and future growers to appoint a common agent (either NEV or Winegrapes Australia Pty Ltd) to provide:

- commercial consulting services for grape supply contracts, including pricing advice
- sales agency services for grape sales
- farm supply procurement services for telecommunications services and insurance products.

Draft determinations issued (not otherwise appearing above)

Rural Doctors Association of Australia

The Rural Doctors Association of Australia Limited and its constituent state associations seek authorisation to collectively negotiate with state/territory health departments, the terms of contracts for visiting medical officers in rural areas, particularly with respect to payments for services provided to public patients and for on-call services.

On 6 March 2008 the ACCC issued a draft determination proposing to grant authorisation until 30 June 2013. The ACCC is currently seeking comments from interested parties on the draft determination.

Exclusive dealing notifications

During the March quarter 2008 the ACCC received 88 new notifications across 71 new exclusive dealing matters. Notifications of interest considered during the quarter include:

GeelongPort Pty Ltd

GeelongPort Pty Ltd proposed to provide access to Lascelles Wharf in Geelong Port on condition that potential port users use GeelongPort's figee cranes to unload fertiliser and other dry bulk cargoes.

The ACCC issued a draft notice proposing to revoke the notification on 28 June 2007 and following consultation with interested parties, the ACCC issued a notice to revoke on 4 February 2008.

Wentworth Courier

In 1993 Eastern Suburban Newspapers lodged a notification for contracts entered into between it and eastern suburban Sydney real estate agents. The contracts provide that, for reduced advertising rates, the real estate agent agrees to place 75 per cent of the total advertising for eastern suburbs real estate by it, or on behalf of its vendor/clients with the *Wentworth Courier*. In June 2007 interested parties wrote to the ACCC requesting a review of the notification.

On 10 December 2007 the ACCC issued a draft notice proposing to revoke the notification. The ACCC has sought submissions from interested parties on the draft notice and the matter is under consideration.

Techtronic Industries Australia Pty Ltd (Techtronic) & Bunnings Group Limited (Bunnings)

Notifications were lodged by Techtronic and Bunnings relating to the supply of Ryobi power tools and power garden equipment.

In particular, Techtronic proposes to supply Bunnings with Ryobi products on condition that Bunnings does not acquire some power tools or power garden tools that were previously acquired from Techtronic's competitors and that Bunnings determines duplicate or are similar to the Ryobi power tools and power garden equipment.

Bunnings proposes to acquire Ryobi power tools and power garden equipment from Techtronic Industries Australia Pty Ltd on condition that Techtronic will not:

- supply Ryobi power tools and power garden equipment to competitors of Bunnings
- supply Ryobi power tools and power garden equipment supplied to Bunnings to competitors of Bunnings or
- supply Ryobi power tools and power garden equipment, comparable to Ryobi power tools and power garden equipment supplied to Bunnings, to competitors of Bunnings.

The ACCC is currently seeking comments from interested parties and the matter is under consideration.

National Association of Speedway Racing Incorporated & Ors

A number of parties, including the National Association of Speedway Racing Pty Ltd (NASR) and various racing body organisations and raceways, have lodged notifications relating to the offer and supply of NASR licences to drivers and NASR approval of race tracks and venues.

The ACCC is currently seeking comments from interested parties and the matter is under consideration.

Collective bargaining notifications

On 1 January 2007 the Trade Practices Act was amended to allow small business to notify the ACCC of conduct that amounts to collective bargaining, conduct which would ordinarily breach the anti-competitive provisions of the Act. The ACCC expected that a large number of small businesses would take the opportunity to collectively negotiate with large suppliers; however, this has not been the case. During the March quarter the ACCC has received two new notifications for collective bargaining. The notifications considered during the quarter were:

RJ Nuss Removals Pty Ltd

R J Nuss Removals Pty Ltd, on behalf of a group of removalists, sought to collectively negotiate an annual volume growth rebate for rail linehaul services with Asciano Service Pty Ltd (trading as Pacific National).

The ACCC did not object to the collective bargaining notification. Protection provided for by the notification lodged by Nuss Removals commenced on 18 February 2008 and will cease three years from the date of lodgment (4 February 2011).

Ken Hardisty

Mr Ken Hardisty proposes to negotiate, on behalf of a group of telecommunications subcontractors, the terms of their contracts with Service Stream Communications Pty Ltd (Service Stream).

Service Stream has contracts with Telstra Corporation Limited (Telstra) to provide telecommunications installation and maintenance services to Telstra clients. Service Stream engages subcontractors to perform this work. The collective bargaining notification relates to the terms and rates contained in Service Stream's contracts with its subcontractors.

The ACCC is currently seeking comments from interested parties and the matter is under consideration.

4. Regulatory affairs

The ACCC and AER have roles in promoting competition in network industries: communications, energy, post, water and transport. The ACCC is also involved in monitoring prices of selected goods and services. The ACCC and the AER ensure that participants in the regulated industries comply with access obligations, and revenue pricing arrangements that apply to such facilities as gas transmission pipelines, electricity transmission networks, telecommunications networks and airports.

Communications

In the March 2008 quarter the ACCC:

- issued a discussion paper commencing public consultation on Telstra's application for exemption from providing regulated fixed-line services to Optus in areas where it has deployed its HFC cable network
- issued a discussion paper commencing public consultation on Telstra's second application for exemption from domestic transmission capacity service (DTCS)
- noted FANOC's withdrawal of its proposed special access undertaking (SAU) on 8 March 2008
- published Telstra's revised \$30 unconditioned local loop service (ULLS) undertaking for Band 2 exchange service areas
- announced and commenced arbitration in 10 new access disputes and published a final determination and 8 interim determinations in a number of disputes
- provided a submission to the Communications Alliance for industry-agreed processes for ULLS in particular migration from line sharing services (LSS)
- issued the ninth public report in relation to current cost accounts prepared by Telstra
- welcomed the submission of infrastructure information by reporting carriers in response to the Infrastructure Audit record keeping rule
- issued its latest assessment of Telstra's compliance with retail price control arrangements
- welcomed a High Court decision to confirm the constitutional validity of Part XIC of the *Trade Practices Act 1974* as it applies to the ULLS and LSS.

Declarations

DTAS and Integrated services digital network (ISDN) declaration review

On 14 March 2008 the ACCC issued its draft report proposing an extension of the declarations of DTAS and ISDN services until 30 June 2009 or a further 12 months from the expiry date of the current declaration to provide a transition period for migration to alternative services. The ACCC expects to issue its final decision in June 2008.

Telstra's exemption applications

In the March quarter the ACCC issued a discussion paper for consultation on Telstra's application for exemption from standard access obligations regarding the domestic transmission capacity service in the number of exchange service areas for inter-exchange and tail-end transmission capacity. Submissions were due by 14 March 2008.

Access pricing— undertakings and disputes

Undertakings

The ACCC published Telstra's revised ULLS monthly charge access undertaking in March 2008. Telstra proposes a monthly charge of \$30 for each ULLS in Band 2 exchange service areas applying for the period to 31 December 2010. The ACCC will prepare a discussion paper to seek submissions from interested parties.

G9/FANOC FTTN special access undertaking

On 8 March 2008 the ACCC received formal notification from the G9 consortium of telecommunications companies that it would withdraw the SAU lodged by it with the ACCC on 30 May 2007.

Access disputes

The ACCC is vested with powers to arbitrate telecommunications access disputes on declared services and to make a final binding determination to resolve a dispute. Arbitration hearings are private and the ACCC generally does not make any public comment on disputes except to announce when a dispute has been notified or a determination has been made.

In the March 2008 quarter the ACCC announced 10 new access disputes:

- EFTel and Telstra relating to the supply of LSS
- Wideband Networks and Telstra relating to the supply of the LSS
- Primus Telecommunications and Telstra relating to the supply of LSS
- Digiplus and Telstra relating to the supply of whole sale line rental (WLR)
- Telstra and Digiplus relating to the supply of the LCS
- TransACT Capital Communications Pty Ltd and Telstra relating to the supply of the ULLS
- TPG Internet Pty Ltd and Telstra relating to the supply of the LSS
- Agile Pty Ltd and Telstra relating to the supply of the LSS
- Saunders Property Pty Ltd and Telstra relating to the supply of the LSS
- Request Broadband Pty Ltd and Telstra relating to the supply of the LSS

Final determinations

In the March 2008 quarter the ACCC made one final determination concerning Telstra's supply of the ULLS to Macquarie Telecom.

Interim determinations

In the March 2008 quarter the ACCC published eight interim decisions, six in relation to the LSS and two in relation to the mobile terminating access service.

The following table summarises the determinations made in the March quarter and the active disputes as at 31 March 2008.

	Total
Active disputes at 31 March 2008	28
Total arbitrations commenced	10
Final determinations	1
Interim determinations	8

Reports

The ACCC issued the ninth public report in relation to current cost accounts prepared by Telstra in accordance with a direction issued by the Minister for Communications, Information Technology and the Arts on 19 June 2003.

Energy

Responsibility for regulation of electricity and gas transmission businesses is currently shared between the AER and the ACCC.

Electricity decisions

Recent high priced events in the SA electricity market

Since 1 January 2008 electricity half-hourly spot market prices have increased to \$5000/MWh or more in South Australia on 51 occasions. These price events saw the highest average prices in South Australia since the market started in 1998. Over January, February and March prices averaged \$243/MWh compared to an average price of \$69/MWh over the same period in 2007. The previous highest average price for the quarter was \$110/MWh in 2001.

Under the National Electricity Rules (NER), the AER is required to report on spot prices that exceed \$5000/MWh. The AER has completed reports into high priced events on 4 and 10 January and 18 and 19 February 2008, with further reports due to be released shortly. The AER's investigations have found that the high prices were caused by a combination of high demand, generator bidding and transmission constraints. In fact, during March 2008 the temperature in Adelaide exceeded 35 degrees for a record 15 days in succession.

While high temperatures increased air conditioning use and electricity demand, bids from AGL contributed to high prices. AGL owns the largest generator in South Australia—Torrens Island. AGL priced more than 75 per cent of its capacity at or

close to the price cap of \$10,000/MWh during the high price events. This represents around one-third of South Australia's demand at those times.

While bidding high prices is not a breach of the NER, AGL did revise its bids a number of times. The Rules require generators to rebid in 'good faith'. The AER is investigating AGL's compliance with the good faith provision.

A significant proportion of South Australia's electricity requirements are sourced from generators in Victoria using the Heywood and Murraylink transmission inter-connectors. In December the South Australian transmission network service provider (Electranet) reduced the maximum allowable flow on Heywood, the larger of the two inter-connectors, by around 100 MW or 25 per cent. Accordingly, the AER is also investigating the reduced flow capacity between South Australia and Victoria.

SP AusNet transmission determination

On 31 January 2008 the AER released its final decision on the transmission determination to apply to SP AusNet for the 2008–14 regulatory control period.

The final decision provides for over \$750 million of new investment in SP AusNet's electricity transmission network over the next six years, in aggregate some 57 per cent above the amount invested by SP AusNet over the 2003–08 period. The revenues approved for SP AusNet increase from \$453.35 million in 2008-09 to \$541.82 million in 2013–14.

The final decision provides for a cost of debt that is relatively high compared with previous regulatory decisions. This is reflective of the higher cost of borrowing prevailing in financial markets that would be faced by an efficient transmission network service provider TNSP. These increases appear to be driven mainly by the 'sub-prime crisis' in the USA.

Publication of the AER's PTRM and RFM for the 2009–14 ACT/NSW distribution determinations

On 30 January 2008 the AER published the post-tax revenue model (PTRM) and roll-forward model (RFM) that it will use for the 2009–14 ACT/NSW electricity distribution determinations. Under clause 6.5.1(d) of the transitional chapter 6 rules the AER had to publish the PTRM and RFM that it will use by 1 February 2008.

In addition to the models, the AER published the following:

- final decision document on the PTRM
- final decision document on the RFM
- the PTRM handbook
- the RFM handbook

Release of statement, guideline and schemes for the ACT and NSW 2009 distribution determinations

On 29 February 2008 the AER published a guideline, a statement and two schemes on matters relevant to the ACT and NSW 2009 distribution determinations. These matters were:

- control mechanisms for direct control services
- control mechanisms for alternative control services
- efficiency benefit sharing scheme
- demand management incentive schemes.

The AER has decided not to apply a service target performance incentive scheme for the ACT and NSW 2009–14 regulatory control period.

Release of decisions on cost allocation methods for the ACT and NSW 2009 electricity distribution businesses

On 31 March 2008 the AER published its decision to approve the cost-allocation methods proposed by the ACT and NSW electricity distribution businesses. The cost-allocation methods approved for ActewAGL, Country Energy, EnergyAustralia and Integral Energy are to be used in their regulatory proposals for 2009–14.

The approval of the cost allocation methods is the first decision made by the AER as part of its first distribution determination in NSW and the ACT. Approval of the cost allocation methods is a new requirement of the National Electricity Rules which took effect from January 2008.

TransGrid notice of proposed pass-through for network support

On 7 December 2007 TransGrid submitted a notice of proposed pass-through for network support of \$30.5 million over the 2008–09 financial year relating to the cost of upgrading Bayswater generator transformers to 500 kV.

On 24 January 2008 the AER formed the opinion that the proposed pass-through amount of \$30.516 million to be applied over the 2008–09 financial year satisfies the pass-through rules requirements.

TransGrid notice of proposed pass-through for network support

On 13 March 2008 TransGrid, the New South Wales electricity transmission network service provider, submitted a notice of proposed pass-through for network support of \$21.9 million over the 2008–09 financial year for 350 MW of support during summer.

The AER is assessing the notice in accordance with the pass-through rules outlined in the NSW and ACT Transmission Network Revenue Cap—TransGrid 2004–05 to 2008–09 decision. The AER invited comment from interested parties.

The AER is required to notify TransGrid by 13 May 2008 of its opinion on the notice or decide to extend the assessment period for a further two months.

ElectraNet transmission determination

On 18 January 2008 ElectraNet submitted its revised revenue proposal in response to the AER's draft decision of 29 November 2007 on its electricity transmission determination for the regulatory control period 1 July 2008 to 30 June 2013.

In accordance with the NER, the AER invited interested parties to make written submissions on its draft decision, ElectraNet's revised proposed pricing methodology

and revised revenue proposal. The AER received two submissions on ElectraNet's revised proposed pricing methodology and five submissions on the AER's draft decision and ElectraNet's revised revenue proposal.

The AER will issue its final decision on the ElectraNet transmission determination taking into account submissions by 30 April 2008.

Network service provider exemption for Moranbah North joint venture partners

On 17 March 2008 the AER issued its decision to grant an exemption under section 13(1) of the National Electricity Law (NEL), clause 2.5.1(d) and 2.9.3 of the NER to the Moranbah North joint venture partners (as the owners of the Moranbah North Coal Network) from the requirement to register as a network service provider (NSP) and the operation of chapter 5 of the National Electricity Rules. The Moranbah North joint venture comprises:

- Moranbah North Coal Pty Ltd (ABN 99 007 083 249), Moranbah North Coal (No. 2) Pty Ltd (ABN 41 009 871 425), JFE Mineral (Australia) PTY Ltd (ABN 72 007 294 117), Mitsui Moranbah North Investment Pty Ltd (ABN 11 106 018 268), Shinsho Australia Pty Ltd (ABN 63 076 566 562), NS Resources Australia Pty Ltd (ABN 88 082 160 432) and Nippon Steel Australia Pty Ltd (ABN 64 001 445 049).

Moranbah North Management (the operator of the Moranbah North Coal Network) was nominated by the Moranbah North joint venture as the intermediary to act on its behalf and has accordingly registered with the National Electricity Market Management Company (NEMMCO) as the distribution network service provider.

Approval of 2008–09 distribution loss factors (DLF)

On 20 March 2008 the AER approved distribution loss factors (DLF) for 16 distribution network service providers across all six National Electricity Market jurisdictions under clause 3.6.3 of the NER. DLF's were approved for:

- CitiPower & Powercor, Alinta AE & United Energy, SP AusNet, Aurora Energy, ETSA Utilities, Integral Energy, Energy Australia, Country Energy, OneSteel, Ergon Energy, Energex, Oaky Creek Network Service Provider, Capcoal Network Service Provider and ActewAGL.

On 28 March 2008 the AER approved Aurora Energy's revised distribution loss factors for 2008–09. This revision arose as a result of the findings of a review of loss factors in the West Coast region. The AER also approved the distribution loss factor for the Moranbah North Coal Network for 2008–09. These approvals were under clause 3.6.3 of the NER.

Australian Energy Market Commission (AEMC) review of jurisdictional transmission reliability standards

The AEMC (through the Reliability Panel) is conducting a Transmission Reliability Standards Review, following a recommendation of the Energy Reform Implementation Group Report. The issues paper, released on 21 December 2007, discussed existing transmission reliability standards, alternative frameworks for nationally consistent standards, links between transmission standards and other parts of the regulatory regime, and implementation issues surrounding the

establishment of a new nationally consistent framework for network security and reliability.

The AER has submitted to the issues paper that the reliability standards should be redrafted in line with the following high-level principles:

- set a rigorous cost/benefit assessment and thorough public consultation following a transparent process
- set independently of the transmission network service provider
- be as specific as possible, preferably outlining the reliability standard to be achieved at each connection point
- be set in such a way as to be neutral between the technologies that are used to meet the given standard.

The Reliability Panel has received five submissions on their issues paper. At the highest level, all submissions agree with the need for greater clarity and transparency around the establishment of reliability standards.

Initial indications from the Reliability Panel suggest that there has been a positive response to the AER submission and that there is strong potential for a new framework, consistent with these key principles. A draft report is due in April 2008.

Gas Code decisions

Notification and consultation about gas flow reversal on South West Queensland pipeline (SWQP)

Following a reversal of gas flow of the SWQP, the AER has commenced a consultation and notification process for two Queensland pipelines affected i.e. the SWQP and the Carpentaria gas pipeline (CGP). The purpose of the consultation is to publicly notify interested parties that the flow reversal has occurred and determine the implications of this event for each pipeline.

The SWQP access arrangement contains a 'review trigger mechanism' (clause 13(c)), which provides for a review of the access arrangement before the scheduled review date if a specified event occurs. The service provider, Epic Energy Queensland Pty Ltd (Epic Energy), has confirmed that the flow of gas on the SWQP has been reversed and therefore a specified event has occurred. However, Epic Energy has indicated in a letter dated 9 November 2007 that the review of the access arrangement should be deferred. At this stage the ACCC proposes to commence the formal review process on 1 July 2008. Submissions are currently being sought on the matter.

The CGP access arrangement contains a 'review trigger mechanism' (clause 8.4) which provides for a review of the access arrangement before the scheduled review date if a specified event occurs. In 2007 the ACCC commenced inquiries into whether a specified event under clause 8.4 had occurred. The ACCC has continued to monitor the situation in light of the reversal of the flow of gas on the SWQP and any possible implications for the CGP access arrangement. In correspondence to the ACCC dated 15 November 2007, the APA Group, the owner of the CGP, stated that in its view the reversal of flow of gas on the SWQP has no implications for the CGP access arrangement. Accordingly, the APA Group submitted that no specified event

under clause 8.4 of the access arrangement has occurred that would trigger a review of the access arrangement. The due date for submissions is 18 April 2008.

Markets

Auditing of generator performance standards

The AER has committed to a program of auditing generators' performance standards. To commence this process, it was decided to audit the compliance programs (required under chapter 4 of the NER) of those generators that were explicitly referred to in the AER investigation report of 16 January. In that report the AER also indicated that it intended to audit SP AusNet's protection and control systems and load shedding facilities. The process of auditing generators' performance standard obligations and SP AusNet's protection and control system obligations has now commenced.

Under clause 3.13.7(d) of the NER, the AER is also in the process of publishing reports relating to events when prices exceeded \$5000/MWh. These events occurred on 31 December 2007; and on 4, 10, 26 and 30 January 2008.

National transmission planning arrangements

The AER made a submission on 21 December 2007 responding to the AEMC's issues paper for the implementation of new national electricity transmission planning arrangements. The submission addressed four key issues, namely:

- the scope of the national planning function and the kind of information and level of detail appropriate to a national plan
- the relationship between AER and national planner
- the development of governance arrangements for the national planner
- the establishment of a regulatory investment test (RIT) based on integrated limbs of the regulatory test.

The submission also provided responses to specific questions raised in the issues paper about the scope of the national planning function and the establishment of a RIT.

The AEMC's draft report on national transmission planning is anticipated to be released in late April 2008. The AER will continue to participate in this review.

North West Shelf joint venturers—application for revocation of authorisation

On 14 December 2007 the North West Shelf joint venture partners requested a revocation of authorisation A18492. The joint venturers have reviewed their activities and consider there is no need to maintain the authorisation. The joint venturers will continue their gas joint marketing practices without it. Interested parties were consulted on the revocation application over December 2007 and January 2008, all of the submissions received by the ACCC supported the application for revocation of the authorisation. The ACCC revoked the North West Shelf joint marketing authorisation on 6 March 2008.

Rule change proposal

On 17 March 2008 the AER submitted two rule change proposals to the Australian Energy Market Commission relating respectively to the reclassification of contingency events and price setting by NEMMCO. These proposals resulted from the AER's investigation into the events of 16 January 2007 in Victoria, when bushfires caused transmission lines between Victoria and New South Wales to fail and around a quarter of the demand in Victoria to be interrupted.

The AER's first rule change proposal requests that clause 4.2.3 of the NER be changed to set out a clearer process for NEMMCO to re-classify contingency events during abnormal conditions, such as those on 16 January. The proposed changes would ensure greater consistency, transparency and rigour to the process of re-classifying contingency events.

The second rule change proposal seeks to remove the obligation imposed on NEMMCO under clause 3.9.2 to set the dispatch price to the price cap following the shedding of interruptible load as a result of a contingency event. The AER's investigation found that requiring NEMMCO to assess whether prices should be set to the price cap in circumstances such as those that existed on 16 January could compromise system security. The AER's proposed rule change would allow NEMMCO to focus solely on returning the power system to a secure operating state in such cases.

The AEMC has begun the consultation process on the AER's rule change proposals.

Transport and prices oversight

Formal price inquiries

On 22 January 2008 the Assistant Treasurer requested the ACCC to hold a public inquiry into the competitiveness of retail prices for standard groceries under Part VIIA of the Trade Practices Act. The inquiry is currently being conducted by ACCC Chairman, Mr Graeme Samuel and Commissioners Dr Stephen King and Mr John Martin. On 11 February 2008 the ACCC released an issues paper and called for submissions from interested parties. The ACCC will commence public hearings around Australia from 1 April 2008. Hearings are to be held in Sydney, Brisbane, Cairns, Griffith, Canberra, Hobart, Launceston, Shepparton, Darwin, Perth, Bunbury, Adelaide, Port Lincoln and Melbourne. The ACCC has summonsed a number of parties to appear before the ACCC at public hearings to ensure that no inferences can be drawn from a company's attendance at a public hearing.

Part IIIA access undertakings

ARTC interstate rail access undertaking

ARTC was established in 1998 to manage the infrastructure and access to the standard gauge rail network connecting the mainland capital cities between Brisbane and Perth (i.e. the Interstate rail network). In September 2004 ARTC entered a 60-year lease over the interstate NSW rail tracks and the NSW Hunter Valley coal network.

On 20 December 2007 ARTC lodged a voluntary access undertaking application (the December undertaking) with the ACCC for the Interstate rail network. The December undertaking is a revised version of an earlier undertaking application made by ARTC

in June 2007 to the ACCC (the June undertaking) but was withdrawn by ARTC on 15 October 2007.

The December undertaking does not cover access to tracks in the Hunter Valley coal network. ARTC is expected to lodge a separate access undertaking for the Hunter Valley coal network with the ACCC some time in 2008.

On the 14 January 2008 the ACCC released an issues paper calling for submissions on ARTC's December undertaking. The last submission was received on 21 February 2008. The ACCC is required to use its best endeavours to make a decision to accept or reject ARTC's undertaking within six months of the application.

The ACCC is expected to release a draft decision on ARTC's interstate rail access undertaking by the end of April. ARTC's undertaking is assessed against the criteria of s. 44ZZA of Part IIIA of the Trade Practices Act.

Involvement in copyright-related matters

Since the legislative amendments to the *Copyright Act 1968* took effect, the ACCC has been made a party to proceedings before the Copyright Tribunal on two separate occasions. The progress of these proceedings in the March 2008 quarter is as follows:

- Reference for 'fitness class' tariffs by the PPCA

In May 2007 the ACCC was made a party to this reference by consent. The Phonographic Performance Company of Australia (PPCA) has now served its lay and expert evidence. PPCA has filed an amended reference providing a proposed rate for the use of sound recordings by fitness centres in fitness classes of \$4.54 per member of a fitness centre per month and 99 cents per visit by a casual attendee. The ACCC has met with its expert witness and is considering the evidence of PPCA.

- Reference for the tariff for 'digital music services' by APRA/AMCOS

The ACCC was made a party to this reference in September 2007. The Australasian Performing Right Association Limited and the Australasian Mechanical Copyright Owners' Society Limited has served its lay evidence. At the directions hearing on 19 March 2008 issues regarding categories for discovery and confidentiality were the subject of discussion as parties prepare for production of documents. The ACCC has engaged an expert witness to assist it in the proceeding. Two respondents have recently withdrawn from the proceedings.

Airports monitoring

The ACCC is responsible for reporting annually on aeronautical pricing and quality of service at the major Australian airports. On 13 March 2008 the ACCC released its 2006–07 airport monitoring report, which for the first time combined reports on the prices and quality of aeronautical services at Adelaide, Brisbane, Canberra, Darwin, Melbourne, Perth and Sydney airports.

The report shows that prices for aeronautical services have continued to increase in 2006–07 although less significantly than experienced in previous years. An exception was Adelaide airport which reported an average price increase of 55 per cent after

the first full year application of the passenger facilitation charges following commencement of operations at the new Terminal 1 during the previous financial year. This significantly influenced the increase in aeronautical revenue at Adelaide airport.

The report found that in terms of overall rating of quality of service over the past five years, Brisbane has been the top-ranked airport, achieving an overall rating of good. This year for the first time Brisbane was joined by Adelaide as the top-ranked airport. This represents a significant change for Adelaide airport which was generally rated at the satisfactory level in the past. Melbourne and Sydney airports rated at the mid-point between satisfactory and good. Perth airport has been rated between satisfactory and good. Both Canberra and Darwin have generally rated at the overall satisfactory level although Canberra fell slightly below the overall satisfactory level in 2006–07.

There was a large increase in passenger numbers in 2006–07. Passenger numbers increased at all airports for the fourth consecutive year, most notably at Darwin and Perth. The effect of airports generally charging on a per passenger basis has been an increase in revenues. Costs have increased to a lesser extent, as they are largely fixed and are less influenced by passenger volumes, resulting in increased margins.

Most airports reported increased average prices for 'aeronautical-related' services (which are predominantly car-parking and check-in counters), with the more significant increases being at Adelaide and Darwin. However, the margins earned on these aeronautical-related services varied across airports with Canberra and Darwin posting the most significant increases.

Petrol monitoring

The ACCC monitors retail prices of petrol, diesel and automotive LPG in the capital cities and around 110 country towns, as well as international crude oil and refined petrol prices. It also closely follows developments in the petroleum industry.

On 17 December 2007 the Assistant Treasurer and Minister for Competition and Consumer Affairs, the Hon. Chris Bowen, MP, directed the ACCC to formally monitor the prices, costs and profits relating to the supply of unleaded petroleum products in the petroleum industry, under s. 95ZE of Part VIIA of the Act. The ACCC is required to produce annual reports to the minister for a period of three years. During the first quarter of 2008 the ACCC has been establishing the framework for this monitoring.

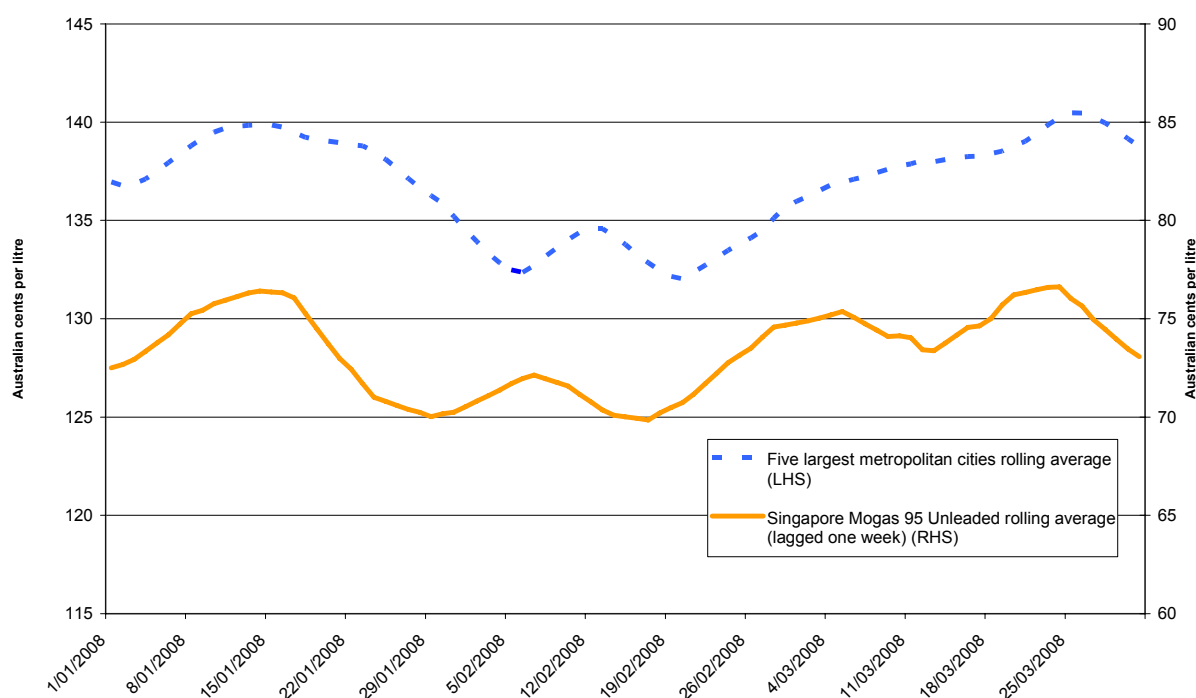
As part of its petrol price monitoring activities, the ACCC examines movements in domestic retail petrol prices compared with movements in international benchmark prices (i.e. the price of refined petrol from Singapore (Singapore Mogas 95 Unleaded).

More specifically, the ACCC examines movements in seven-day rolling average retail unleaded petrol prices in the five major metropolitan cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) and seven-day rolling average prices for Singapore Mogas 95 Unleaded (lagged one week) in Australian cents per litre.

The following chart shows movements in retail prices in the five largest metropolitan cities in Australia and movements in Singapore Mogas 95 unleaded prices (lagged one week) in Australian cents per litre over the first three months of 2008 and the difference between the two. Retail prices are shown on the left-hand side and Singapore Mogas prices are on the right-hand side. It is important to remember that

a comparison of these two series is indicative rather than an exact science and that there are other factors that can influence retail petrol prices in the short run.

**Retail unleaded petrol prices in the five largest metropolitan cities and Singapore Mogas 95 unleaded prices (lagged one week)—seven day rolling averages—
1 January 2008 to 31 March 2008**



In late January 2008 the ACCC expressed concern that a significant divergence had occurred between the retail price of unleaded petrol in Australia relative to the price of Singapore Mogas 95 Unleaded and sought an explanation from the major petrol retailers. Responses focussed on supply issues in NSW, Victoria and Queensland which occurred as a result of refinery and terminal problems.

Before Easter 2008 the ACCC wrote to all of the major petrol retailers seeking information on any factors that could lead to an increase in prices over the Easter period. It also monitored petrol prices closely during this time.

Australia Post

Assessment of draft notification to increase reserved letter prices

Australia Post provided the ACCC with a draft price notification on 5 February 2008. Australia Post propose to increase the price of a number of its reserved mail services (i.e. services over which Australia Post has a statutory monopoly), including increasing the basic postage rate (BPR) from 50 to 55 cents. The ACCC has a role in assessing Australia Post's proposed price increases for reserved services under the price notification provisions under Part VIIA of the Act.

Australia Post also propose to increase the price of other mail services including large and small ordinary letters, large and small pre-sort ordinary letters, clean mail, reply paid mail, impact mail and local delivery mail. The proposed price increases are

the first for the BPR and other ordinary letters since January 2003 and the first general increase to pre-sort letters since January 1992.

The ACCC released an issues paper on 29 February 2008 seeking the views of interested parties on key issues to assist the ACCC in its consideration of Australia Post's proposal. Following consideration of submissions in response to the issues paper and further consideration of the draft notification, the ACCC will release a preliminary view for public consultation. Taking account submissions in response to the preliminary view, the ACCC will release a final view on the proposed price increases.

5. International activities

The ACCC's international activities support the work of the ACCC through promoting international enforcement assistance and best practice regulation as well as developing and maintaining effective networks and linkages with international counterpart agencies. Core activities undertaken include:

- managing the ACCC's involvement at international forums, including the coordination and preparation of contributions on issues of relevance to the ACCC
- coordinating information sharing and enforcement assistance with counterpart agencies
- managing ACCC's technical assistance activities with developing economies
- research, analysis and reporting of international developments
- building and sustaining strong links with key international officials and organisations.

Bilateral meetings

The ACCC participates in a variety of international events throughout the year. Attendance at these events advocates the work of the ACCC, promotes competition and consumer protection in the region, assists in the ACCC receiving updates, information and best practice strategies on enforcement activities from counterpart agencies and assists in building and sustaining strong links with key international officials and organisations. During the March 2008 quarter the ACCC:

- participated in the OECD Competition Committee meeting and the OECD Committee on Consumer Policy in Paris
- presented at the American Bar Association Conference in San Francisco, USA
- attended the International Consumer Product Health and Safety Organisation meeting in Washington DC, USA
- attended and presented at the International Mass Marketing Fraud Conference in Washington DC, USA
- attended the American Bar Association Anti-trust Spring Conference in Washington DC, USA.
- attended the International Competition Network Mergers Workshop in the Czech Republic
- presented at the Indian International Competition Conference in New Delhi, India
- participated in the International Consumer Protection Enforcement Network Conference (ICPEN) and presented at ICPEN's Best Practices Workshop

Free trade agreements

The ACCC continues to be an active participant in the Free Trade Agreement (FTA) negotiation rounds contributing to the work in relation to competition and consumer protection issues. The ACCC's goal in participating in such negotiations is to promote competition in the region, ensure that the agreements are compatible with Australia's competition regulations, are practical in implementation and that there are mechanisms in the FTAs to build cooperative arrangements between the relevant enforcement authorities.

Information requests

The ACCC continues to be active in information sharing with the ACCC's international counterpart agencies. During the period the ACCC received a number of requests from: Canada, Egypt, Fiji, Ireland, Israel, New Zealand, Singapore, South Korea, Sri Lanka, Tanzania, Thailand, UK, USA and Vietnam. Examples of shared information included the ACCC's activities regarding environmental claims, enforcement, merger activities and processes, cross-border marketing fraud and general competition and consumer protection processes and law.

The ACCC made similar requests to the following counterparts: EU, Ireland, Canada, Japan, UK and the USA in relation to: mass marketing fraud, consumer product safety, scams targeting small business; cartels, mergers, groceries and supermarkets.

Information exchange meetings and study visits

In conjunction with information requests, the ACCC meets with counterpart authorities to share experiences or to provide ACCC expertise to assist in the development of that authority. The following meetings and study visits took place this quarter:

- Officials from the UK Competition Commission in Canberra to discuss the UK's recent grocery inquiry.
- Met with participants of the Australia China Legal Exchange Program.

Capacity building activities

The ACCC has an active technical assistance program that is highly regarded internationally and ACCC involvement in technical assistance programs provides staff with valuable experience in training delivery. Capacity building activities that took place this quarter include:

- 4–7 March: presented at the OECD—Korea Regional Centre for Competition Regional Antitrust Workshop on Cartels and Immunity Programs.

6. Reviews, reports and inquiries

Legislative amendments

Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008 (Exposure Draft)

On 11 January 2008 the Minister for Competition and Consumer Affairs released for public consideration an exposure draft of the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008. The draft Bill proposes to create new criminal offences for serious cartel conduct in the *Trade Practices Act 1974*. It is proposed that those found guilty of serious cartel conduct will face up to five years imprisonment and/or fines of up to \$220 000 for individuals and \$10 million for corporations.

The minister sought written submissions in response to the draft Bill by 29 February 2008.

Trade Practices Amendment (Component Pricing and Other Measures) Bill 2008

On 30 March 2008 the Minister for Competition and Consumer Affairs released for public consideration an exposure draft of the Trade Practices Amendment (Component Pricing and Other Measures) Bill 2008. The draft Bill proposes a new section 53C of the *Trade Practices Act 1974*, which will require that, when a business advertises the price of a good or service to consumers, the total price of the good or service must be stated in the form of a single price to the extent that it is quantifiable at the time of the advertisement.

The minister sought written submissions in response to the draft Bill by 17 April 2008.

Wheat Export Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008

On 5 March 2008 the Department of Agriculture, Fisheries and Forestry released exposure drafts of the Bills which will remove the monopoly of the Australian Wheat Board and are seeking submissions from interested parties. Submissions close on 3 April 2008.

Inquiries

Productivity Commission inquiry into consumer policy

The ACCC lodged a supplementary submission in February 2008 in response to the Productivity Commission's 2007 *Review of Australia's consumer policy framework*, draft report. In its submission the ACCC reiterated its support for uniform generic fair trading and consumer protection laws modelled on the current provisions of the Trade Practices Act. The ACCC argued that in situations where conduct was national, such as product safety, the most appropriate enforcement arrangements involved a single national regulator. However in other circumstances, where the conduct was more localised, the states and territories would be better placed to enforce the uniform law. The ACCC also outlined its views on the proposal to introduce unfair contract terms legislation and the proposal to enhance the enforcement tools available to regulators.

Reports

During the March quarter the ACCC prepared the ninth Senate report on the private health insurance industry. The two main issues identified in the report were the availability of useful consumer information on private health insurance products and health services; and contract negotiations between health funds and health service providers. Complaints about the industry continued the downward trend of recent years.

7. Consultative committee liaison activities

Consumer Consultative Committee

The ACCC hosted a meeting of the Consumer Consultative Committee (CCC) on 3 March 2008 in Perth. The major theme at this meeting was disadvantaged and vulnerable consumers and businesses and how best to protect their rights under the Trade Practices Act. Special interest groups included Indigenous consumers, older Australians and young consumers. The CCC also discussed recent ACCC enforcement outcomes and recently released publications. CCC members then attended the National Consumer Congress hosted by the WA Department of Consumer and Employment Protection.

The next meeting is due in June 2008 in Melbourne.

Health Sector Consultative Committee

The next meeting of the Health Sector Consultative Committee will be held on 4 April in Canberra.

Infrastructure Consultative Committee

The next Infrastructure Consultative Committee meeting will be held on 16 May 2008 in Melbourne.

Small Business Advisory Group

The next Small Business Advisory Group meeting is due on 2 May 2008 in Canberra.

Appendix

Speeches during the March 2008 quarter

The Chairman, Commissioners and staff gave 31 addresses and presentations in the March 2008 quarter. Significant presentations included:

ACCC Chairman

13 March—Annual Conference of Australian Telecommunications Users Group, *Regulatory Update for 2008*.

28 March 2008—the 2008 Economic and Social Outlook Conference, *New Agenda for Prosperity in Communications*.

Commissioner Martin

22 March—POAAL National Conference 2008, *The Trade Practices Act and Postal Business*.

Commissioner King

28 March—The 2008 Economic and Social Outlook Conference, *Addressing the regulatory burden: the participants and the incentives*.

News releases during the March 2008 quarter

During the March 2008 quarter, the ACCC issued 86 news releases and the AER issued two news releases.

Publications released during the March 2008 quarter

Corporate

ACCCCount, December quarter (electronic only)

Who we are—what we do—how we work, booklet (update)

ACCC ejournal, issues 44–46 (electronic only)

ACCC update, issue 23

ACCC reports

Annual report 2006–07

Airport monitoring report for price monitored airports; Quality of service, price monitoring and financial reporting 2006–07

Assessing cross-subsidy in Australia Post 2006–07: an ACCC report

Telstra's compliance with price control arrangements, 2006–07

Report to the senate on anti-competitive private health insurance

Industry codes of conduct

Resolving franchising disputes, fact sheet

Disclosure under the Franchising Code of Conduct, fact sheet

Being smart about your new franchise and your retail lease, fact sheet

Overview of the Franchising Code of Conduct, fact sheet

For consumers

The little black book of scams, book (new edition)

Your consumer rights: environmental claims, fact sheet

Know how to complain: stand up for your consumer rights—Arabic (fact sheet)

Know how to complain: stand up for your rights—Vietnamese (fact sheet)

For small business

Outreach newsletter, January to March 2008 (electronic only)

Misleading claims about health and therapeutic benefits, fact sheet

Regulated industries

Network, issue 27 (electronic only)

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