

May 2008

From the Small Business Commissioner

The Rudd Government has moved to address competition issues of importance to small business with the announcement of a package of measures to amend the Trade Practices Act. The new measures are outlined in the first item of Briefing.

Other major matters reported in this edition of Briefing include:

- Enforcement action by the ACCC against fruit and vegetable wholesalers not acting in compliance with the Horticulture Code of Conduct in force since May last year
- Public information relating to several Franchising Code of Conduct investigations and enforcement actions
- A \$2.5 million penalty for a price fixing matter in the timber preservative industry.

John Martin
Small Business Commissioner

NEW DEVELOPMENTS

TPA policy initiatives for small business

On 28 April, the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen MP, announced jointly with the Minister for Small Business, the Hon. Craig Emerson MP, a package of TPA amendments to reinforce the role of small business in the process of open and fair competition.

The amendments to the TPA cover:

- Clarifying and strengthening section 46 of the TPA, which deals with misuse of market power and predatory pricing, to overcome past deficiencies relating to the 'recouping' of gains and the meaning of 'taking advantage' of market power
- Providing small business cheaper and more efficient access to the judicial system and the removal of the transaction threshold for protection under the unconscionable conduct provision (section 51AC)
- Creating a permanent additional Deputy Chairperson role in the ACCC to be filled by a person with knowledge of, or experience in small business.

Fraud Fortnight

The Australian Consumer Fraud Taskforce launched a two week campaign, Fraud Fortnight, aimed at raising awareness about the increasing dangers of scams and the steps

consumers can take to recognise, and protect themselves from, scams. The taskforce is comprised of 19 federal and state government regulatory agencies (including New Zealand) responsible for consumer protection in relation to frauds and scams.

MR 041/08

In addition, the ACCC announced changes to its SCAMwatch website. New initiatives are aimed at publishing 'mock' scams and examples of real scams on its website to educate consumers about the elements of common scams and the warning signs to look out for.

MR 051/08

MANDATORY CODES OF CONDUCT

WA fruit traders breach Horticulture Code

A Western Australian fruit merchant and grower admitted to a number of breaches of the Horticulture Code of Conduct, a mandatory industry code under the TPA. A.Giumelli and Sons traded with other growers without having a code compliant horticulture produce agreement in place, and did not prepare, publish or make publicly available its general terms of trade. The company also traded as a grower in its own right without having code compliant agreements with the merchants involved. The ACCC accepted court enforceable undertakings that the company will not trade without having code compliant agreements in place, will prepare and publish its terms of trade, will notify its growers of the contraventions and will also arrange a trade practices seminar on the code for its management and growers.

MR 094/08

Erceg Holdings, another Western Australian merchant, provided the ACCC with court enforceable undertakings after admitting breaches of the Horticulture Code of Conduct. Erceg acknowledged that it traded with growers without having a code compliant horticulture produce agreement in place as required by the code.

The company gave an undertaking that it will offer growers code compliant horticulture produce agreements and will not trade with growers who have not entered into a code complaint agreement.

MR 069/08

Franchisee Investigation Publicised

Following an in-depth investigation into allegations that Bakers Delight engaged in misleading, deceptive and unconscionable conduct towards franchisees in operating its franchise systems, the ACCC decided not to take any further action.

Allegations, predominantly from former franchisees, included

Some items in *ACCC briefing* refer to media releases (MR, with number and year shown). These can be found on the ACCC website <www.accc.gov.au>. Most other reports and documentation are also available on the website. Subscribe to *ACCC briefing* by emailing small.business@accc.gov.au. For information on the Trade Practices Act contact—ACCC Infocentre 1300 302 502 or the ACCC small business helpline 1300 302 021

‘churning’—that is, selling a franchise site repeatedly in circumstances where the franchisor is aware that it will fail—and collusion with banks. In the ACCC’s view, the evidence, from a number of parties, did not demonstrate that Bakers Delight engaged in unconscionable conduct or breached the Franchising Code.

MR 104/08

Action against Allphones Retail

The ACCC commenced proceedings against Allphones Retail alleging that, in operating its franchise system, it failed to comply with the Franchising Code of Conduct. Proceedings have also been taken against the CEO and CFO for allegedly being knowingly concerned in or party to the contravening conduct.

The ACCC claims that the company engaged in unconscionable conduct towards its franchisees by implementing policies targeting classes of franchisees, forcing them to acquiesce to Allphones’ will by threatening or engaging in a pattern of harsh conduct, and failing to disclose or pay certain income. In addition, the ACCC alleges that the company engaged in false or misleading and deceptive conduct towards current and potential franchisees by misrepresenting how it shares profits, bargains with third parties on behalf of its franchisees and operates its franchise system.

MR 084/08

CONSUMER AND SMALL BUSINESS PROTECTION

Undertakings over misleading job ads

Following an investigation by the ACCC, a small business owner, Mr Richard Robertson, admitted to misleading jobseekers about the availability of work in some parts of New South Wales.

Backpacker Employment Services published a number of advertisements in local newspapers offering fruit picking jobs, for a subscription fee that had to be paid to obtain employment as well as guaranteed employment for that season. The investigation revealed Mr Roberson had no reasonable grounds for making such representations. Mr Robertson provided a court enforceable undertaking that he will refrain from making such representations without reasonable grounds, will write to subscribers of the BES informing them of the outcome and provide refunds of the subscription fee.

MR 101/08

Jeweller ordered to correct advertising

The Federal Court of Australia ordered Prouds Jewellers to undertake corrective advertising after the ACCC successfully alleged misleading advertising in Prouds’ catalogues. The court ordered the company to place an A3 size corrective notice in all Australian stores for three months as well as corrective advertisements in a number of national and local newspapers.

MR 98/08

Yoghurt producers amends packaging

Natural-all, trading as Go Natural, will amend some packing after the ACCC expressed concerns that the overall impression on the product packaging may mislead consumers. The ACCC was concerned that the packaging was likely to have implied that the products were unprocessed berry and/or apricot pieces coated in yoghurt. In fact the product is a ball made from fruit-based mixture consisting of fruit concentrate, sugar and semolina.

The company undertook to amend the packaging, amend its website and publish an article for the food industry about the experience.

MR 093/08

Court orders against Duco Magic

The ACCC obtained final order by consent against Duco Magic and its director Mr Warwick Lindsay for misleading conduct in relation to business opportunity offers. The court declared that the company made false representation about the income that could be earned using Duco Magic kits for repairing damaged paint on motor vehicles. The court made a number of orders including injunctions restraining the company and Mr Lindsay from making representations about profitability without reasonable grounds for four years.

MR 090/08

Franchisor type systems misled small businesses

- **Imagine Essential Service**

The ACCC obtained orders by consent against Imagine Essential Services and its founder Mr Richard Evans for breaches of the TPA. The ACCC alleged Imagine made misleading representations in connection with the sale of licences to operate a system involving agreements which Imagine claimed to have negotiated with essential service suppliers (such as electricity and telephony). The ACCC alleged four key groups of false representations, namely misrepresentations about profitability, number of customers, number and variety of agreements with essential service providers and the level of savings these provided, and membership of certain professional associations.

The Federal Court declared that the company and its director breached the TPA by engaging in misleading or deceptive conduct. The company was ordered to publish outcomes of the proceeding and notify certain licensees about the proceeding. The court also accepted an undertaking from the company to implement and fund an alternative dispute resolution with all the licensees who have complained about the conduct.

MR 059/08 and MR 089/08

- **Original Mama’s Pizza and Ribs**

The ACCC obtained orders against Original Mama’s Pizza and Ribs, its managing director and its sales representative for breaching the TPA and the *Australian Securities and Investments Commission Act 2001*. The pizza oven provider was been found in breach of ss. 52 and 53(g) (or the

equivalent ASIC provisions), regarding misrepresentations made to small business owners about the terms and conditions of the financial agreements entered into to obtain the pizza oven systems.

The court also made a range of orders against the director and the sales representative, including injunctions, costs and corrective orders with an advertisement, advising people who may have suffered a loss of entitlement to seek damages.

MR 077/08

Fertility product company engaged in misleading behavior

The ACCC accepted court enforceable undertakings from Fertility Solutions Sunshine Coast for using false testimonials in their advertising. The company acknowledged that they contravened the TPA and have undertaken to ensure full compliance with the TPA in their advertising and other promotional materials, publish a corrective notice in local papers and implement a trade practices compliance program.

MR 087/08

Misled mobile phone consumers compensated

The ACCC accepted a court enforceable undertaking from Crazy John's that the mobile phone service provider is compensating customers who feel they were misled by the company's 'Free*' of '\$0*' handset advertising campaign.

The company admitted that it engaged in misleading or deceptive conduct by representing that handsets on certain Crazy John's plans were available free, when in fact consumers were paying for the equipment through higher call rates.

As a result of the ACCC's action, the company will provide credit to affected customers for the remainder of their contract and will notify them of the misleading conduct and inform them that they should contact Crazy John's to receive compensation.

MR 085/08

Changes to website following investigation

Expedia Inc. agreed to amend the wording and format of a hotel accommodation website following an investigation by the ACCC. The ACCC believed the American based company may have engaged in misleading and deceptive conduct regarding its business affiliation by listing accommodation services on its website where there was no business relationship between the companies.

The ACCC conducted inquiries following a complaint from a Sydney hotel, alleging that Expedia was misleading consumers into believing that they could book accommodation for their hotel services from the Expedia website. In full cooperation, Expedia will deactivate the availability message for all the Australian hotels with which it does not have any business relationship with or affiliation to.

MR 083/08

Jail for discredited cancer therapist

Mr Paul John Rana, director of NuEra Wellness Centre, was sentenced to six months imprisonment following the failure to comply with notices issued under s. 155 of the TPA. The provision gives the ACCC broad investigatory powers to obtain information and documents for possible contraventions of the TPA.

In late 2006 the ACCC issued a number of notices to Mr Rana and his associated companies for alleged contraventions of the Act concerning false, misleading and unconscionable conduct towards persons suffering terminal illnesses.

MR 081/08

Retailer responds to green claims concerns

Woolworths limited agreed to undertake steps to resolve ACCC concerns over labelling of Woolworths Select tissue products. In particular, the ACCC expressed concerns for representations relating to the sustainability of fibre used in the products and the environmental management record of the producers. Due to the complexity of the matters involving international certification issues and certification practices, Woolworths agreed to resolve the issue by placing stickers over the representations as a transitional measure before rolling out new packaging without the representations. In addition, the company has agreed to review its trade practices law compliance program.

MR 073/08

Fruit bar packing amended

Tasti Products Limited gave court enforceable undertakings to the ACCC agreeing to amend the packing of Weight Watchers fruit cereal bars. The ACCC raised concerns that the overall impression created by the wording and pictorial images used on the packing of the product may be misleading. The ACCC was concerned the representations implied a significant amount of some individual fruits, when they were listed at around 1 to 1.5 per cent of the total product.

MR 058/08

Introduction agency engaged in misleading conduct

Thirty-five members of an introduction agency will receive refunds of nearly \$120 000 after Rural Network was found to have engaged in misleading or deceptive conduct. The court declared the use of fabricated descriptions of women by the company and its director, Ms Leanne McDonald, was in breach of the TPA. The ACCC accepted a court enforceable undertaking from the firm and was awarded \$60 000 in costs. The court imposed injunctions on the company and Ms McDonald, including a seven-year restraint on the way in which Rural Network advertises.

MR 056/08

Refunds from introduction agency

Former members of an introduction agency will receive refunds totaling \$11 510 after it was discovered that Country Contacts International published advertisements depicting a

woman who was available to meet men in a local area when in fact it was often untrue. The investigation undertaken by the ACCC also found that CCI induced male customers to pay additional fees unnecessary. CCI and its director have undertaken to provide refunds to former members, only use images of women who have given written consent, not misrepresent certain fees and develop a complaints-handling system.

MR 043/08

Misleading Pre paid mobile phone representations corrected

Commoditel Pty Ltd, a provider of prepaid mobile telecommunication services, corrected a possible misleading representation on its website after the ACCC raised concerns. The company advertised its mobile phone charges at 9.9 cents per 30 seconds, when in fact it was rounded to the nearest cent, making it 10 cents per 30 seconds.

The ACCC was concerned that the conduct could possibly be in contravention of the TPA and may give an unfair commercial advantage over competitors.

In response to the ACCC's concerns, the company notified all the customers about the charge fault, compensated all existing customers that may have been overcharged, and donated \$21 674 to the Cancer Council Australia to ensure it did not gain from its conduct.

MR 054/08

Medical sheepskin industry on notice

Less than three months after sheepskin manufacturer Tasman Sheepskin Tannery gave a court enforceable undertaking for making false claims, the ACCC accepted court enforceable undertakings from Confident Care Products, which was supplied by Tasman. The ACCC considered that, due to the grass seeds found embedded in some of the products, they were likely to breach the standard they claimed they complied with. Whilst the standard is not mandatory, Confident Care Products risked breaching the TPA by misrepresenting its compliance with the standard. The court enforceable undertakings provide that the company will cease representing that their sheepskin products comply with the standards where they clearly do not and refund and replace products sold without the proper labelling required by the standard.

Due to growing concerns, the ACCC has now placed the medical sheepskin industry on notice, advising all manufacturers and suppliers to review claims of compliance with the voluntary standard.

MR 044/08

Court orders against LPG supplier

Following extensive investigation by the ACCC into Westfarmers Kleenheat Gas's pricing practices, the Federal Court found that the supplier of LPG engaged in misleading and deceptive conduct. The court declared that varying prices did not fluctuate according to Kleenheat Gas' supply cost, and that the company failed to disclose the actual basis for

price variations for some customers. The court granted consent injunctions restraining such conduct for three years.

The injunctions form a part of an agreed resolution between the ACCC and Kleenheat Gas. Under the agreement, court enforceable undertakings offered by the company provide for refunds to affected customers Australia-wide, investigation into any additional customers affected by the conduct, implementation procedures to inform customers about price variations and for a review of its trade practices law compliance program.

MR 037/08

PRODUCT SAFETY

Vehicle jacks not labeled properly

Caravan manufacturer Jayco Corporation gave a court enforceable undertaking over the supply of certain vehicle jacks with its caravans. The jacks were not marked with their 'safe working load' or 'working load' limit as required by the mandatory consumer safety standard prescribed under the TPA. The company agreed to undertake a national product safety recall and to upgrade its trade practices compliance program.

MR 095/08

Non-compliant bunks and toys removed from market

The ACCC accepted court enforceable undertakings from Australian Discount Retail Trading regarding the supply of two models of bunk beds and a military toy set. The ACCC was concerned that bunk beds failed to comply with the prescribed consumer product safety standard and posed a risk to infants because of the height of its corner posts.

The ACCC was also concerned that the toy set was supplied in breach of a banning order and contained lead exceeding the acceptable levels. ADRT cooperated with the ACCC, immediately ceasing supply of the bunk beds and toys and promptly conducting a national consumer recall.

MR 076/08

Baby cot fails mandatory safety standards

The ACCC accepted court enforceable undertaking from ATI Enterprise and its directors after it imported and sold baby cots that failed to comply with the mandatory product safety standard. The non-compliant cots were discovered during routine ACCC product safety surveys.

The company has undertaken to recall the unsafe cots and ensure compliance with the relevant mandatory standard in future sales. In addition, the company will publish corrective notices on its eBay website.

MR 075/08

Undertakings over lead in toy paint

The ACCC accepted court enforceable undertaking from an importer and supplier of children's toys after it was discovered that some toys contained too much lead. Tests undertaken by the ACCC indicated that some toy cars may contain lead in excess of 90 mg per kilo, therefore breaching the consumer protection notice introduced in 2007. Rite Price

Wholesalers voluntarily recalled the products and published a Product Safety Recall Notice in Western Australia.

The ACCC accepted court enforceable undertaking from Captain Choppers, trading as Red Dot Stores, for the same product, providing that it will not supply children's toys that do not comply with mandatory consumer product safety standards.

MR 049/08 and MR 068/08

Magazine publisher sunglasses gift recalled

Brown fashion sunglasses, supplied as a free gift with *Marie Claire* magazine, were voluntarily recalled by Pacific Magazines, the publisher of the magazine.

The sunglasses giveaway complemented the magazine's Sunsmart campaign. Testing commissioned by the ACCC indicated that some of the sunglasses did not meet the consumer safety standards for sunglasses and fashion spectacles. The TPA prohibits a corporation from supplying goods that do not meet the mandatory product safety standards.

Pacific Magazines cooperated with the ACCC, recalling the sunglasses and offering replacements.

MR 040/08

RESTRICTIVE TRADE PRACTICES

\$2.5 million penalties for price fixing

The Federal court found FChem (Aust) Ltd, Osmose Australia and its former director Mr Edward Mark Greenacre guilty of price fixing agreements in the timber preservatives industry for the supply of various preservative chemicals.

The ACCC instituted proceedings in 2006 when the conduct was exposed by Koppers Arch Wood Protection, which were granted a conditional immunity from prosecution under the ACCC's leniency policy. The ACCC alleged that the conduct initiated by Mr Greenacre was in operation a number of years before 1998 and persisted until 2001. Penalties of \$1.25 million were issued to each of the companies, and Mr Greenacre was fined \$120 000.

FChem, Osmose, Koppers, and Mr Greenacre have also been penalised in New Zealand for similar offences.

MR 082/08

Penalties for resale price maintenance

Hobie Cat Australia, a kayak and sailboat supplier, was penalised by the Federal Court for engaging in resale price maintenance in contravention of the TPA. The company was ordered to pay a \$168 000 fine for prohibiting dealers from selling or advertising Hobie products below, or no less than 10 percent below, the recommended retail prices.

MR 086/08

Music retailers entry into Ballarat rises competition concerns

The ACCC accepted a court enforceable undertaking for JB Hi Fi after concerns the national music retailer may have contravened s. 45 of the TPA, which prohibits making of

contracts, arrangements or understandings that restrict dealings or hinder competition.

JB Hi Fi approached Satisfaction Pty Ltd, a music retailer in Ballarat, to buy its business with the intention of trading from Satisfaction's premises. The sale fell through as Satisfaction's premises were too small. Instead, the parties executed a restriction agreement requiring Satisfaction to close its store by a specified date and arrange with its landlord not to re-let the premises to another retailer of CDs/DVDs or video games for 12 months.

JB Hi Fi provided undertakings agreeing not to enter into, for three years, any contracts, agreements or understandings with any person with whom it is (or is likely to be) in competition to ensure the person will cease trading.

MR 055/05

MERGERS AND ACQUISITIONS

Merger between imaging providers not opposed

The ACCC will not oppose the proposed merger between Lake Imaging and Western Medical Imaging. Initially, concerns were raised regarding the ability to compete of rival diagnostic imaging providers in the Ballarat area, and the extent to which Western Medical Imaging is likely to be perceived as a viable alternative service provider without the proposed merger.

Following an in-depth inquiry, the ACCC concluded that competitive constraints currently exercised by competitors are unlikely to significantly change.

MR 074/08

MDF manufacturer acquisition opposed

The ACCC will oppose Sumitomo Forestry Company's proposed acquisition of certain assets of Carter Holt Harvey Limited. After an initial investigation and extensive inquiries, the ACCC concluded that the proposed acquisition would, or would be likely to, substantially lessen the competition in manufacturing and supply of raw medium density fibreboard (MDF). In addition, the ACCC found that the merged entity would have a strong position in the market where barriers to entry are substantial. Other concerns included the ability of the merged entity to utilise their new power to foreclose downstream competition in the supply of value-added MDF.

MR 046/08

AUTHORISATIONS AND NOTIFICATIONS

Increase in the refrigerant gas levy authorised

The ACCC proposes to allow Refrigerant Reclaim Australia to increase the industry levy on refrigerant gas imported and sold in Australia from \$1.50 to \$2.00. Due to the increased volumes of refrigerant it is recovering, the ACCC is satisfied that the levy to fund the collection and disposal of ozone depleting substances and gases should be set to a higher rate. The proposed authorisation will be in place until 2010, pending the Australian Government's Emissions Trading Scheme.

MR 088/08

Wine growers to collectively negotiate sale of wine grapes

The ACCC granted authorisation to wine grape growers in Alpine Valley and King Valley region of north-east Victoria to appoint a common agent to negotiate wine grape supply contracts on their behalf in the 2007-08 harvest. The ACCC is satisfied that the arrangement will provide growers with greater input into contract terms and conditions and reduce transaction costs. Also, it is likely that collective-bargaining arrangements will introduce new buyers to the region. The ACCC considers that any anti-competitive effects are limited because of the voluntary nature of the agreement, the limited section of the industry covered by the agreement and competition from wine grape growers outside of the group.

MR 080/08

Authorisation granted to Rural Doctors

The ACCC proposes to grant authorisation allowing the Rural Doctors Association of Australia (RDAA) to collectively negotiate with state/territory health departments the terms of contracts for GP visiting offices in rural areas. The ACCC considers that the proposed collective-bargaining arrangements may result in some public benefit through transaction cost savings and enhanced support for doctors dealing with state and territory health departments.

Voluntary participation and restricted application of the authorisation to general practitioners will militate against the potential for anti-competitive impact. Health departments are not obliged to negotiate with the RDAA and are free to continue with their existing arrangements.

MR 064/08

Gas joint marketing authorisation revoked

The ACCC granted North West Shelf Gas Ltd's request to revoke the authorisation granted to it in 1977 by the Trade Practices Commission. The agreement allowed for the establishment of a joint venture for the sale of gas to the Western Australian domestic market. The authorisation permitted collective negotiations of common terms and conditions (including price), as well as joint marketing strategies targeting potential consumers. As there was no need to maintain the authorisation any longer, the ACCC revoked it.

The joint venturers intend to continue their joint marketing practices without the authorisation.

MR 061/08

TOTE Tasmania agreement authorised

The ACCC authorised certain provisions of an agreement between Tabcorp and TOTE Tasmania governing TOTE Tasmania's participation in the SuperTAB pool. TOTE Tasmania considers that it is commercially imperative for it to have access to the SuperTAB pool.

Pooling allows bets placed with smaller totalisators to be placed into a single larger pool therefore providing more stability and attraction to consumers. The agreement will allow TOTE Tasmania to offer enhanced wagering products to punters, not only benefiting customers but also the

Tasmanian racing industry through the funding it receives from TOTE Tasmania.

MR 060/08

Vessel queue management system extended

The ACCC granted authorisation to Dalrymple Bay Coal Terminal to extend their vessel queue managements system for a limited time. First granted in 2005, the system was proposed as a measure to reduce deadweight demurrage while investments and capacity expansions took place. The ACCC is still satisfied that, in the short term, the QMS is likely to result in a net benefit by reducing costs and enhancing economic efficiency. However, continuous operation of the QMS has the potential to impact investment in coal chain management and reduce incentives for the industry to develop a long-term solution. As such, the ACCC not sure whether the system will continue to deliver a net benefit beyond 2008.

MR 053/08

Port capacity balancing system to be authorised

In a decision similar to the Dalrymple Bay queue management authorization, a draft determination was issued by the ACCC proposing to grant authorisation to Newcastle Corporation and Donaldson Coal for a capacity balancing system at the Port of Newcastle. The system has been designed to address the imbalance between the demand for coal loading services at Port Newcastle and the capacity of the Hunter Valley coal chain. The ACCC considers that the proposed authorisation for the allocation of coal capacity will reduce significant demurrage costs. The ACCC is of the view that the queue management systems are appropriate only as short-term transitional measures only and has doubts whether the system is likely to result in a net public benefit beyond 2008.

MR 052/08

Authorisation granted to IT Recruitment Association

The ACCC granted authorisation to certain provisions of the code of conduct of the Information Technology Contract Recruitment Association. The code of conduct establishes standards of behaviour for ITCRA members when dealing with each other and clients and will assist members in conducting their business ethically and professionally. The ACCC is satisfied that the provisions of ITCRA's code will result in public benefit.

MR 048/08

Collective negotiation by removalists not opposed

The ACCC did not object to a collective-bargaining notification lodged by Nuss Removals on behalf of a group of four removalists, to negotiate on rail freight services with Pacific National. The notification will allow collective bargaining an annual volume growth rebate for rail freight services, as well as other terms and conditions such as the terms of the agreement.

The removalists are independently owned businesses located in the Australian Capital Territory, New South Wales, Victoria and Western Australia without nationwide presence.

Given the small size of the negotiation group and voluntary nature of the arrangement, the ACCC considers the anti-competitive effect would be limited. The three-year notification may enable the removalists to negotiate rebates that are more favourable, therefore resulting in better competitive strength against larger, national removalists.

MR 047/08

Interim approval of concrete carrier allocation system

To avoid the likelihood of service disruptions to commercial operations of Readymix Concrete and their independent contractors, the ACCC granted an interim authorisation to extend the operations of its cartage allocation system while the Commission assesses the merits of the substantive applications.

MR 038/08

REGULATED SERVICES

Telecommunication notification received from G9 consortium

The ACCC received formal notification from the G9 consortium of telecommunication companies withdrawing the special access undertaking lodged in 2007. The undertaking sets out proposed terms and conditions for third party access to a fibre-to-the-node network. G9 has advised that it will lodge a replacement special access undertaking that addresses the issues raised by the ACCC in its draft determination issued in December 2007.

MR 066/08

High Court validates telecommunication access regime

The High Court issued a unanimous decision confirming that Telstra's ownership of the public telephone network has always been subject to the rights of its competitors to gain access to and use it for the ultimate benefit of customers. The High Court also confirmed the constitutional validity of Part XIC of the TPA and, specifically, its application to the unconditioned local loop services (ULLS) and line sharing services (LSS).

The ACCC welcomed the decision as the telecommunications access regime is a key component of the regulatory framework supporting the development of a competitive telecommunications industry.

MR 062/08

Telstra's compliance with price controls

The ACCC issued its latest assessment of Telstra's compliance with its retail price control arrangements. The ACCC's report indicates that it is satisfied that Telstra has complied with its price control arrangements.

MR 078/08

Optus agrees to clarify representations

Following an intervention by the ACCC, SingTel Optus agreed to clarify a representation regarding their Optus Fusion bundled home phone and broadband and cap advertising campaign due to its potential to mislead

consumers. The company claimed that Fusion customers would enjoy the benefit of 'unlimited' local, national and calls to Optus mobile from their home phone service when in fact the offer only included 'standard' local calls and is not applicable to mobiles on the CDMA and MobileSat networks.

In response to the ACCC's concerns Optus agreed to notify all the customers connected to the Fusion plan that may have been misled, provide customers with account credit, and provide unsatisfied customers with the option to cancel the contract without any penalties.

MR 079/08

Final telco transmission cost model issued

The ACCC issued the final version of the telecommunications transmission cost model. The model has been designed with flexibility to calculate cost-based pricing for backhaul on any land based or under sea telecommunications transmission route in Australia. Transmission capacity services are a critical input to the supply of broadband to end users across Australia and with increased numbers of networks, the pricing of these services will become increasingly important.

Users of the model will need to supply equipment cost and dimensioning data for the particular transmission route they seek to access. The model is supplied with full user documentation and can be freely downloaded from the ACCC website.

MR 102/08

Declaration on FOXTEL's service undertaking

The Federal Court declared that FOXTEL's special access undertaking for its digital payTV set-top unit services is limited only to those set-top units that are actually in use by FOXTEL subscribers. This follows the court's decision in December 2007 to uphold the decision of the ACCC to accept the special access undertaking from FOXTEL. Seven network had applied to the court to have the ACCC's decision overturned and sought a declaration clarifying the scope of the undertaking.

MR 100/08

Regulation of DDAS and ISDN services to be reduced

The ACCC issued its *Draft report on declaring the digital data access and integrated services data network Services*. The report proposes to extend the declarations of the DDAS and ISDN services in regional areas for another 12 months. In the ACCC's view, the extended period will provide appropriate transition time for users to migrate to and adopt alternative technologies and services in regional areas. The declarations of the DDAS and ISDN services in CBD and metropolitan areas of the capital cities were removed June 2006, due to the rapid rise in new telecommunication technologies.

MR 071/08

Airport monitoring report

The ACCC released 2006-07 airport monitoring report, reporting on the quality of service and prices charged by various airports. The report indicates that airports are

continuing to benefit from strong growth in passengers and increasing prices. Again, as in previous years, the quality of service offered by the seven airports has shown a range of results varying from 'below satisfactory' to 'good'.

The government has announced changes to the ACCC's monitoring role that will apply for the 2007–2008 and subsequent reports. The new monitoring regime can be found on the ACCC website.

MR 070/08