

October 2007

From the Small Business Commissioner

In a significant development for small business Parliament has passed amendments to s. 46 (abuse of market power) and s. 51AC (unconscionable conduct) of the *Trade Practices Act 1974* (the Act). There has been a concern from big business representatives that some of the new terminology in the s. 46 amendments relating to 'substantial share' of the market and pricing 'below relevant cost for a sustained period' may prevent some businesses from matching competitors' price cuts or deter them from discounting.

The ACCC does not agree that such unintended consequence will occur and is working on providing guidance to big and small business alike. Ultimately it will be the Federal Court that clarifies the full implications of this strengthening of s. 46.

In respect of its franchising role the ACCC has taken the initiative via its website to be more transparent about how we investigate alleged breaches of the Franchising Code of Conduct and the Act more generally. The website demonstrates what actions have been taken in some high profile matters the ACCC has been investigating, but decided that no breach of the law can be identified.

In the past the ACCC did not comment on matters it had investigated, but taken no action on. However, public controversy over claims and demands by complainants has led to the conclusion that disclosure of what has occurred will assist the media and opinion leaders to get a balanced picture.

John Martin

Small Business Commissioner

ACCC publishes petrol price movements

The ACCC released a chart on its website indicating movements in domestic petrol prices compared with movements in international benchmark prices. The chart is designed to give consumers access to information about petrol price movements.

ACCC Chairman, Graeme Samuel, said the chart will enable consumers to see the extent to which retail petrol prices in Australia are moving in line with the international benchmark price that the refiner/marketers in Australia say they follow. The chart will be updated weekly.

MR 195/07

ACCC strengthens cooperation with Canadian and New Zealand counterpart agencies

The ACCC and the Canadian Competition Bureau (CCB) agreed to strengthen cooperation between their agencies. The two competition authorities will attack mass-marketing fraud, in partnership with other jurisdictions, sending the clear message to fraudsters that there is no place for them to work with impunity.

The ACCC and New Zealand's Commerce Commission also signed a cooperation agreement that will make it easier for the two commissions to coordinate activities. The new agreement replaces a 1994 memorandum of understanding between the Commerce Commission and the ACCC's predecessor, the Trade Practices Commission.

MR 196/07 and 215/07

MANDATORY CODES OF CONDUCT

Release of the franchisee manual

The ACCC launched a must read for all prospective franchisees—*The franchisee manual*—a comprehensive publication to assist people thinking about buying a franchise and also existing franchisees to understand and comply with the Franchising Code.

The manual will help prospective franchisees understand what franchising is all about, how to ensure they have researched an opportunity thoroughly and be aware of their rights and obligations when dealing with their prospective franchisor. The manual will assist existing franchisees in the exercise of due diligence when they are considering making changes to the franchise or any related agreements, and in understanding their ongoing rights and obligations with their franchisor.

A free copy of the publication is available by calling the ACCC small business helpline on 1300 302 021 or it can be downloaded from the ACCC website.

MR 211/07

NEW DEVELOPMENTS

ACCC petrol inquiry

In August the ACCC announced the schedule of public hearings to be held as part of its inquiry into the price of unleaded petrol.

The national round of public hearings was completed in Ballarat in late September. The ACCC inquiry visited all capital cities as well as a number of regional centres including Mt Gambier, Townsville and Wagga Wagga.

Key participants in the petrol industry and certain motoring and business associations were asked to attend the public hearings to discuss the issues covered by the inquiry. Members of the public were also welcome to attend the hearings.

The inquiry is to be completed and a report submitted to the Treasurer by 15 December 2007.

MR 212/07

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

Franchise fee refund for Quizno's franchisees

The former Australian master franchisee for the Quizno's Sub chain of quick service restaurants gave court enforceable undertakings after the ACCC raised concerns that Quizno's conduct may have breached the Act and adversely affected its franchisees.

As a result, franchisees who lodged complaints with the ACCC are being offered an amount depending on their level of involvement in the Quizno's franchise. This amount comprises at least a full refund of the standard franchise fee.

The ACCC alleged that while promoting and selling franchise territories between 2002 and 2006, Quizno's, which retails toasted bread rolls with various fillings, made various representations to franchisees and potential franchisees that were misleading and deceptive or likely to mislead or deceive in breach of s. 52 of the Act and may have caused loss or damage to these franchisees.

Quizno's, which had ceased trading, was unable to meet any claims for loss or damage by former franchisees. The ACCC and Quizno's agreed to resolve the matter through an undertaking under which payments will be procured by Quizno's from a party independent to both Quizno's and the Quizno's Sub franchise system and offered in accordance with terms of the undertaking.

MR 203/07

Compliant template agreements across horticulture industry

Compliant horticulture produce agreements are now available to growers and traders throughout the horticulture industry after cooperation between the ACCC, individual traders and trader associations.

The ACCC investigated complaints that produce agreements distributed by a number of individual traders (including Costa Exchange, Holman Fresh, LaManna Bananas, Verona Fruit and the Australian Banana Company) did not comply with the Horticulture Code. After discussions with the ACCC, these agreements have been revised to ensure compliance. The traders have also agreed to implement a Horticulture Code compliance strategy for their staff and growers.

Perhaps more important for the industry as a whole, the ACCC has also worked with trader associations, including Fresh State, Brismark, the Australian Chamber of Fruit and Vegetable Industries Limited and the Chamber of Fruits and Vegetable Industries in Western Australia to ensure their template horticulture produce agreements comply.

The ACCC will actively monitor the use of the template agreements and will not hesitate to quickly investigate and take enforcement action if necessary.

MR 271/07/07

Contempt of court proceedings against scamster

The ACCC instituted proceedings in the Federal Court of Australia against Mr Bon Levi for contempt of court. The ACCC alleges that Mr Levi has breached orders made against him by Justice Kiefel in the Federal Court on 28 February 2005.

The orders restrain Mr Levi from selling business opportunities unless he either (i) runs the business successfully for at least six months, or (ii) provides a copy of the orders and certain information about his business experience and aliases to the purchaser.

The ACCC claims that between December 2005 and September 2006 Mr Levi sold five business opportunities without complying with the orders involving photographic, gas conversion, and 'Little Joe's' snack food distribution businesses. The ACCC alleges that Mr Levi was paid over \$100 000 for these businesses, which did not come to fruition.

MR 194/07

Business opportunity alleged misleading representations

The ACCC instituted legal proceedings against Imagine Essential Services Limited, its former CEO and director, Mr Richard Evans, and its former marketing company, The Triumphant Group, for allegedly contravening the Act.

Imagine sold licences to operate a system involving agreements which Imagine claimed to have negotiated with essential service suppliers. It is alleged Imagine and Triumphant Events represented that these agreements could provide small to medium businesses savings off their bills for their essential services such as electricity, gas, water and telephone. Under Imagine's system, licensees would approach businesses to benefit from Imagine's agreements to obtain the claimed savings (earning commissions when businesses signed up).

The ACCC alleges that Imagine and Triumphant Events made false and misleading representations about:

- the earning ability of Imagine licensees
- the agreements that Imagine had with accountants and suppliers of essential services
- the existence of, and membership to, the Essential Services Advisory Association and the Telecommunications Technology Industry Advisory Association.

MR 173/07

CONSUMER AND SMALL BUSINESS PROTECTION

Exhibition promoters

The ACCC instituted proceedings in the Federal Court against Mr Gregory Millar, presently carrying on business as Australian Corporate Exhibitions, and Mr John Webb for promoting various industry exhibitions.

The ACCC alleges misleading or deceptive conduct in contravention of s. 52 of the Act including by representing that:

- a certain number of visitors and exhibitors would attend MineBox Expo 2006 and the Sydney International Mining & Engineering Expo 2006 (SIMEX 2006), without reasonable grounds or a reliable basis
- a small number of exhibitor stands were still available at SIMEX 2006 when at all times more exhibitor stands were available
- the former Premier of Western Australia and the Prime Minister of Australia had provided messages of support or consented to the publication of such messages regarding

MineBox Expo 2006 and SIMEX 2006 respectively, when that was not the case.

MR 225/07

Egg packer substituted non-organic eggs

An egg packer and supplier was found to have substituted and sold non-organically produced eggs as organic eggs over a two-year period. Justice Gray of the Federal Court, Melbourne made orders against G.O. Drew Pty Ltd and its manager and compliance officer, Mr Timothy Drew, over the substitution.

GO Drew self-reported the substitution and took significant steps to redress the matter, including setting aside \$270 000 to assist in the development of a national standard for organic and biodynamic produce and to enhance NASAA certification processes. This was noted by Justice Gray.

MR 221/07

Waterproof claim corrected

Uniden Australia Pty Ltd, a manufacturer and wholesaler of telecommunication products throughout Australia, offered court enforceable undertakings to the ACCC about claims that Uniden's Atlantis 250 marine radio was waterproof.

Uniden represented that its marine radio, a VHF handheld two-way radio, available to consumers since 31 August 2006, was waterproof as certified to meet the Japanese Industrial Standard level 4. The ACCC was concerned consumers would understand the term 'waterproof' to mean the marine radio could be immersed in water for any specific time and depth without the possibility of sustaining water damage when in fact the marine radio was only 'splash proof'.

Uniden acknowledged the ACCC's concerns and that it may have contravened the Act by its representations. As part of its undertakings, Uniden will provide owners of the marine radio represented as 'waterproof' with the option of a full refund.

MR 220/07

Retailer price comparisons

As part of court enforceable undertakings given to the ACCC, Lunel Pty Ltd, trading as Harvey Norman Electrical Noarlunga in the southern suburbs of Adelaide, admitted that representations in its promotional advertising may have misled consumers.

During 2005 and 2006 Lunel placed advertising on several occasions in a free community newspaper circulating in the Noarlunga region. The advertising promoted price savings on various electrical brown goods and white goods. This was done by means of price comparisons from a higher price, typically expressed as 'not \$X', to a claimed savings price expressed as 'YES \$Y'.

After a competitor complained that the 'not \$X' prices were unrealistic and improbable, the ACCC undertook an investigation into Lunel's advertising and raised its concerns with the company. The company admitted that most of the alleged savings were not based on its own actual sales records, or on verifiable comparisons with competitor's prices.

The company agreed to immediately stop the conduct, place corrective advertisement in the same newspaper and implement a trade practices compliance program.

MR 176/07

Guidance on fair debt collection

The ACCC and the Australian Securities and Investments Commission (ASIC) issued their joint consumer publication, *Dealing with debt: your rights and responsibilities*, in six new languages. The free booklet, designed to assist consumers who experience problems dealing with debt or with debt collectors, is now available in Arabic, Chinese, Greek, Italian, Turkish and Vietnamese.

Both ASIC and the ACCC continue to receive complaints about debt collection activity and are committed to ensuring that all consumers who find themselves in a difficult financial position can be confident they will be dealt with fairly and lawfully.

MR 207/07

Consumer rights: refunds, warranties, warranties for services

A new series of publications for consumers about refunds and warranties and warranties for services was issued by the ACCC. The flyers and a revised version of the popular refunds wallet card complement the ACCC's brochure, *Warranties and refunds*, and give consumers a snapshot of their rights under the Act.

MR 205/07

Mobile phone packages allegedly misleading

The ACCC instituted proceedings in the Federal Court, Darwin, against EDirect Pty Ltd trading as VIPtel Mobile for telemarketing calls for mobile phone packages.

It is alleged EDirect telemarketed mobile phone packages into areas where there was no relevant network coverage while failing to advise prospective customers of the lack of coverage, and provided consumers with misleading information regarding the costs and services included in the service plans in contravention of s. 52 of the Act. It is also alleged EDirect accepted payment from customers in circumstances when they were not able to supply the service packages in contravention of s. 58.

MR 192/07

Criminal proceedings against discredited cancer therapist

The ACCC instituted criminal proceedings in the Federal Court, Melbourne, against Mr Paul Rana, NuEra Wellness Centre and Mr Micheal Rana for allegedly refusing or failing to provide documents and information to the ACCC when legally required to do so under the Act.

MR 188/07

Alleged misleading conduct by Trading Post and Google

The ACCC instituted legal proceedings in the Federal Court, Sydney, against Trading Post Australia Pty Ltd, Google Inc., Google Ireland Limited and Google Australia Pty Ltd alleging

misleading and deceptive conduct in relation to sponsored links that appeared on the Google website.

The ACCC is alleging that the *Trading Post* contravened ss. 52 and 53(d) of the Act in 2005 when the business names 'Kloster Ford' and 'Charlestown Toyota' appeared in the title of Google sponsored links to Trading Post's website. Kloster Ford and Charlestown Toyota are Newcastle car dealerships who compete against Trading Post in automotive sales. The ACCC is also alleging that Google, by causing the links to be published on its website, engaged in misleading and deceptive conduct in breach of s. 52 of the Act.

The ACCC is also alleging that Google, by failing to adequately distinguish sponsored links from 'organic' search results, engaged and continues to engage in misleading and deceptive conduct.

This is the first action of its type globally. While Google has faced court action overseas, this generally has been for trademark use. Although the US anti-trust authority, the Federal Trade Commission, has examined similar issues, the ACCC understands that it is the first regulatory body to seek legal clarification of Google's conduct from a trade practices perspective.

MR 180/07

Airline to use all-inclusive price advertising

United Airlines provided court enforceable undertakings to the ACCC after concerns were raised about its airfare advertising, undertaking to include all taxes, levies and charges applicable to airline tickets in its advertising.

The ACCC became aware that United Airlines had been advertising headline airfares on its Australian-based website and in newspapers without including applicable taxes, levies and charges payable by a consumer as a precondition of receiving the services. Failing to make the total price to be paid clear in advertisements is likely to mislead consumers and breach the Act.

MR 177/07

Telstra withdraws and amends Next G advertisements

Telstra Corporation withdrew and amended a series of television advertisements promoting its Next G mobile network after the ACCC raised concerns that the advertisements may mislead consumers about the coverage available on the network.

The ACCC had particular concerns about Telstra's unqualified use of the taglines 'Everywhere you need it' and 'Get the coverage you need with Telstra's Next G network' when the whole of Australia is not covered and coverage is not always available where consumers need it. Telstra responded promptly, indicating that it will no longer use the taglines.

MR 229/07

PRODUCT SAFETY

Tests for formaldehyde in clothing

The ACCC began testing a range of clothing for significant residual formaldehyde following heightened public concerns. There is currently no evidence that clothing in the Australian

market contains unacceptably high levels of formaldehyde, but over recent months there have been two recalls of blankets that had residual amounts of formaldehyde, which may cause short-term skin or respiratory irritation for some individuals.

Formaldehyde is often used in the production process for clothing and other textiles. However, formaldehyde is both soluble in water and volatile and very little, if any, residual formaldehyde should remain in final textile products. The ACCC is working with the Department of Health and Ageing and seeking other expert advice on an appropriate maximum level for formaldehyde in clothing and textiles.

MR 227/07

Wooden rolling drum toys recalled

Early Learning Centre Australia issued a voluntary national recall of the Wooden Rolling Drum toy after an ACCC investigation and agreed to display notices in-store and on its website to warn parents of the potential dangers of the toy. ELC also offered full refunds or store credit to consumers.

The toy is a wooden drum with beads inside that has been marketed to children aged from 12 months to three years. The recall was undertaken after the ACCC raised concerns with ELC that the beads inside the drum could be dislodged and posed a potential choking hazard.

MR 216/07

Court orders against internet tobacco supplier

The Federal Court in Melbourne made orders and declarations by consent against Mr Mina Guirguis for contravention of the Act for failing to comply with the prescribed consumer product information standard for tobacco products.

The Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004, which are administered by the ACCC, require retail packages of tobacco manufactured in, or imported into, Australia to be labelled with prescribed warning, information and explanatory messages and graphic images.

Mr Guirguis arranged for the supply of offending tobacco products on various occasions in 2006 and 2007 via a website.

MR 189/07

Undertakings over Cricket Australia sunglasses

Cricket Australia sunglasses were withdrawn from sale until they were relabelled to comply with the mandatory Australian standards after ACCC intervention. Corpeyewear, supplied the sunglasses and offered the ACCC court enforceable undertakings to resolve the matter.

The ACCC believes the sunglasses breached s. 65C of the Act, which prohibits goods that do not meet the prescribed mandatory product safety standard being supplied to consumers. Corpeyewear will advise retail customers that the sunglasses were not labelled according to the standard as well as the remedial actions which are available. They will also publish an advertisement in Inside Cricket.

MR 169/07

Government procurement not exempt from competition law

The High Court upheld the ACCC's appeal against findings by the Full Federal Court that Baxter Healthcare, in supplying state health authorities, was protected from the operation of the Act by Crown immunity. On the basis of this judgment, all transactions by companies are subject to prohibitions in the Act against anti-competitive conduct.

At trial and on appeal, the Federal Court held that, if the state health purchasing authorities Baxter was dealing with were entitled to Crown immunity, Baxter was entitled to 'derivative' Crown immunity and was protected from the proceedings brought by the ACCC.

The majority of the High Court was of the view that the Act had changed since the time of the HC decision upon which the Federal court based its decision and held that the principle in that case regarding Crown immunity and the Act no longer accurately represented the state of the law.

With the High Court making it clear that Crown immunity does not apply to Baxter, the matter now returns to the Full Federal Court to consider the underlying issue: whether Baxter's conduct did constitute a misuse of market power or substantially lessened competition.

MR 236/07

Legal proceedings instituted against stevedores

The ACCC instituted legal proceedings against Patrick companies and a number of former P&O companies for alleged contraventions of s. 45 of the Act. The ACCC also instituted legal proceedings against Australian Amalgamated Terminals.

The ACCC alleges that in 2001 P&O and Patrick formed an agreement to share their motor vehicle wharf facilities around Australia and to jointly acquire other facilities. The ACCC alleges that the purpose and likely effect of this agreement was to substantially lessen competition between the companies in a number of markets in Sydney, Brisbane, Melbourne and Adelaide.

MR 233/07

ACCC institutes against bank over alleged price fixing agreement

The ACCC instituted proceedings against the Australian and New Zealand Banking Group Limited alleging that the ANZ Bank—in seeking to limit the level of refund Mortgage Refunds could provide to customers with ANZ home loans—breached s. 45 of the Act.

Mortgage Refunds was a mortgage broker which refunded to its customers a part of the commission it received from lending institutions. The ACCC alleges that the ANZ Bank sought to reach an agreement with Mortgage Refunds to limit its refunds to customers as a condition of it continuing to deal with the bank.

The ACCC is seeking a declaration that the ANZ Bank contravened the price-fixing provisions of the Act and penalties for its conduct.

MR 223/07

CEPU appeal against Trade Practices Act dismissed

The Full Federal Court in Melbourne dismissed an appeal by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia against a decision by the Federal Court earlier this year that it had procured and induced a power station operator to contravene the Act.

The CEPU also appealed against the level of penalty imposed against it alleging it was manifestly excessive.

The Full Court stated that the conduct by the CEPU constituted a serious contravention of s. 45E(3) and in rejecting the union appeal, upheld the penalty of \$125 000 imposed by the trial judge noting that 'had the matter been open to us to review ... we would observe the penalty was at the lower end of the range for behaviour of the kind in which the CEPU engaged.'

MR 222/07

Penalties for funeral celebrants attempted price fix

The Federal Court ordered total penalties of \$40 000 against Dally M Publishing and Research Pty Ltd, trading as the International College of Celebrancy, and its director Mr Dally Messenger for attempting to fix prices of funeral ceremonies in the Melbourne metropolitan area.

MR 213/07

Court enforceable undertakings from hotelier

The ACCC accepted court enforceable undertakings from a hotelier in Ayr who attempted to fix prices with other hoteliers in the town. Jordan Tatum Enterprises (JTE) is the proprietor of the Burdekin Hotel. Mr Nathan Hunt, director of JTE and manager of the hotel, arranged a meeting with five other hoteliers in Ayr to attempt to reach agreement on the price of various over-the-bar alcoholic beverages.

Although no agreement was reached between the hoteliers, the attempt to fix prices between competitors may contravene s. 45 of the Act, which prohibits price fixing.

JTE and Mr Hunt gave court enforceable undertakings that they will not engage in any activity constituting price fixing or attempting to fix prices, Mr Hunt will undertake annual trade practices compliance training for three years and they will implement and maintain a trade practices compliance program.

MR 201/07

Alleged resale price maintenance by Netti Atom

The ACCC instituted legal proceedings against Netti Atom alleging the company engaged in resale price maintenance in relation to the range of Scott branded bicycles which Netti Atom imports and distributes to retailers throughout Australia.

The ACCC alleges that Netti Atom contravened s. 48 of the Act by attempting to induce retailers it supplies Scott bikes to not to advertise the bikes on their websites below the recommended retail price specified by Netti Atom.

This is the first matter instituted by the ACCC in the Federal Court's new Fast Track List. The Fast Track List came into effect on 1 May 2007 and is currently only available in the

Victorian Registry. It is anticipated the Fast Track List will streamline court procedures, thereby reducing the time and cost of litigation.

MR 198/07

Skateboard company stops resale price maintenance

Kwala Skateboards, a wholesaler of skateboards and skateboard merchandise to a large number of retailers throughout Australia, gave the ACCC court enforceable undertakings over Kwala's pricing policy. In late 2006, the ACCC became aware that Kwala had advised a customer retailer that it would no longer be supplied with products unless the retailer raised the goods' price to at least Kwala's recommended retail price.

After being contacted by the ACCC, Kwala acknowledged that it may have breached the resale price maintenance provisions of the Act and cooperated with the investigation.

Kwala will refrain from the conduct and will not induce or otherwise set a minimum price at which retailers can not sell products below. It will also write to each of its retailers advising them of the ACCC's intervention, and reinforce that the retailers are free to set the pricing levels of the goods they sell without restraint from Kwala.

MR 193/07

\$9.1 million penalties for air conditioning cartels

Penalties of more than \$9.1 million have been imposed on 11 companies and 18 individuals for a series of bid-rigging and price-fixing cartels after Federal Court action by the ACCC.

The cartels existed between 1991 and June 2003. It involved companies tendering for commercial air conditioning and mechanical services projects in Western Australia agreeing on which would submit the lowest price for particular jobs and therefore be likely to win the tender.

MR 191/07

Surgeons penalised for moves to prevent competition

The Federal Court imposed penalties totalling \$110 000 on two Adelaide cardiothoracic surgeons over moves to prevent competition from two other cardiothoracic surgeons in the Adelaide metropolitan area.

The Federal Court declared that Mr John Knight and Mr Iain Ross made an arrangement that they would hinder or prevent a newly qualified surgeon from entering or supplying his services in the market before he had undertaken further surgical training, notwithstanding that he was legally qualified to practise as a cardiothoracic surgeon.

MR 175/07

MERGERS AND ACQUISITIONS

Acquisition of Alinta not opposed

The ACCC did not intervene in the acquisition of Alinta by a consortium involving Singapore Power and Babcock and Brown, after accepting court enforceable undertakings from Singapore Power and Babcock and Brown subsidiaries.

Under the proposed scheme of arrangement by which the consortium would acquire Alinta, a suite of assets—including

Alinta's gas and electricity assets, a 35 per cent interest in the Australian Pipeline Trust and shares in Australian Pipeline Limited—would be allocated between Singapore Power and Babcock and Brown.

MR 214/07

Acquisition of the Coles Group

The ACCC did not intervene in the proposed acquisition of the Coles Group by Wesfarmers Limited. The ACCC conducted a comprehensive review of the proposed acquisition, including extensive market inquiries with interested parties.

While these market inquiries revealed some concern from certain market participants about overlap in LPG, hardware, and related sectors, following further analysis, the ACCC concluded that there was not likely to be a substantial lessening of competition in any market due to constraints from other suppliers and competition from other players at the retail level.

MR 226/07

Divestitures accepted in Healthscope/Symbion merger

The ACCC did not oppose Healthscope Limited's proposed merger with Symbion Health Limited after accepting an undertaking from Healthscope to divest a number of pathology businesses in the north-eastern and Gippsland regions of Victoria.

The undertaking also requires Healthscope to preserve the divestiture business as a separate, fully operational and competitive going concern that is maintained and independently managed until it is sold.

MR 219/07

Book printing businesses joint venture opposed

The ACCC opposed the proposed joint venture between Griffin Press, a wholly owned subsidiary of PMP Ltd, and McPherson's Printing Division, a division of McPherson's Ltd.

After comprehensive investigation and conducting inquiries with industry participants, the ACCC formed the view that the proposed joint venture is likely to substantially lessen competition for the supply of mono (black and white) offset book printing. The ACCC considers that the reduction in competitive tension will likely lead to higher book printing prices (or lower service conditions) for publishers and, ultimately, consumers.

MR 218/07

Acquisition of Golden Casket not opposed

The ACCC did not intervene in Tattersall's acquisition of Golden Casket Lottery Corporation after accepting an undertaking to divest Golden Casket subsidiary, Bounty Limited.

Bounty and Tattersall's subsidiary, Maxgaming, are the only two suppliers of monitoring software to licensed electronic gaming machine monitors (LMOs) in Queensland.

The undertakings will ensure that Bounty continues to operate independently from Tattersall's as a viable, ongoing business until it is divested.

Assessment of proposed acquisition of Southern Cross Broadcasting

The ACCC is conducting a competition assessment of Macquarie Media Group's proposed acquisition of Southern Cross Broadcasting.

ACMA announced that it has approved applications from Macquarie Media Group to acquire Southern Cross Broadcasting and has accepted undertakings from Macquarie Media Group which require certain divestitures under the *Broadcasting Services Act 1992*.

While ACMA's assessment of the proposal has concluded, the ACCC has a separate role in assessing the proposal for any impact on competition under the Act.

The ACCC is also assessing Fairfax's proposed acquisition of Southern Cross Broadcasting's metropolitan radio stations and of Macquarie Media Group's acquisition of several regional radio stations from Fairfax.

MR 186/07

AUTHORISATIONS AND NOTIFICATIONS

ACCC allows citrus growers to collectively bargain

The ACCC allowed collective-bargaining notifications lodged by three Queensland citrus growers to stand. The growers, known as Abbotsleigh, Dermark and Bayntun, propose to collectively negotiate the price and quantity of their supply of citrus fruit to Woolworths and IGA Distribution.

The ACCC considers that the proposed collective-bargaining arrangement may enable the growers to supply supermarkets directly and more efficiently than is possible individually. There are a number of features of the arrangement which limit the potential for anti-competitive impact, including the respective bargaining positions of the growers and the supermarkets. Additionally, the arrangement impacts a limited section of the industry, is voluntary and does not involve potential boycotts.

These were the first notifications lodged under the collective bargaining notification process that was introduced on 1 January 2007. As intended, the process has offered a streamlined approach with the ACCC assessment being released in just over three weeks.

MR 230/07

Independent retailers allowed to collectively bargain

The ACCC issued a determination authorising Office Choice Limited, Office National Limited and Office Products Depot Limited—together, the Office Group—to collectively bargain the terms and conditions on which wholesale suppliers of stationery and office products will supply them and their franchisees.

Office Choice and Office National are franchisors of chains of independently owned franchises selling retail office supplies across Australia. Office Products Depot runs a similar franchise business in New Zealand, sourcing some of their stock from Australian suppliers.

Negotiating terms and conditions for the supply of office products through a single process may enable Office Group Members to source these products at a lower cost than they might otherwise be able to. It is also likely to result in transaction cost savings for the Office Group and wholesalers.

The ACCC believes that the potential anti-competitive effect of the arrangement is limited by the voluntary nature of the arrangement, the comparative size of the bargaining group and competition for office products at the wholesale and retail levels. Individual members of the Office Group remain free to negotiate individual agreements with suppliers outside of the collective-bargaining arrangement.

MR 258/07

Milk haulage arrangement authorised

The ACCC issued a determination granting authorisation to an agreement between National Foods and Dairy Farmers to jointly tender out their raw milk transportation requirements in some regions of South Australia.

The ACCC is satisfied that the benefits to the public will outweigh the potential anti-competitive detriment of proposed arrangements. The ACCC considers that there is benefit to the public associated with savings and efficiencies in milk collection and improvements to the efficiency, quality and productivity of the milk-processing businesses of National Foods and Dairy Farmers.

MR 248/07

SA potato growers allowed to collectively bargain

The ACCC issued a final determination authorising the South East Potato Growers Association to collectively bargain on behalf of its current and future members the terms and conditions of their contracts with two potato processors, McCain Foods and Safries.

The ACCC is satisfied that the collective-bargaining arrangements are likely to result in a number of public benefits, in particular that collective bargaining may provide the growers with a greater opportunity for input into contract terms and conditions, potentially leading to more efficient outcomes.

The ACCC believes that the potential for the arrangements to result in anti-competitive detriment is limited, given that the proposed arrangements are voluntary for all parties and do not include collective boycott activity.

MR 238/07

Casual Mall Licensing Code of Practice authorised

The ACCC authorised the Shopping Centre Council of Australia's Casual Mall Licensing Code of Practice. The SCCA is a representative body for shopping centres throughout Australia. Its code aims to provide balanced guidelines for casual mall licensing, which involves traders, generally for a short period, occupying part of the common area of shopping centres.

The code places some restriction on the circumstances in which a shopping centre proprietor can grant a casual mall license to a competitor of an existing tenant. However, the ACCC considers these restrictions to be minimal as they apply only in respect of granting a casual mall license that introduces a competitor

directly adjacent to or in front of an existing tenant and only in limited circumstances.

The ACCC considers that the provisions contained in the code are likely to provide a public benefit by balancing the reasonable and consistent treatment of permanent retail tenants with the introduction of casual mall licensees within a shopping centre. It is voluntary code and ultimately individual shopping centres retain the discretion over whether to adopt it.

MR 239/07

Star Alliance programs re-authorised

The ACCC issued a determination granting authorisation to the Star Alliance for its Corporate Plus and Conventions Plus programs for five years, enabling the Star Alliance's members to collectively offer discounts and incentives to potential corporate clients and convention organisers. The programs enable these clients to have access to the combined Star Alliance network through a single point of contact and a single agreement.

The ACCC is satisfied that the benefits to the public of potentially lower fares and increased competition, will outweigh the potential anti-competitive detriment of proposed arrangements.

MR 184/07

Collective society licensing arrangements allowed

The ACCC re-authorised the Phonographic Performance Company of Australia Limited's collective-licensing arrangements for the public performance or broadcast of sound recordings and music videos, subject to a number of conditions to ensure the arrangements result in a net public benefit.

PPCA is a copyright collecting society which represents the interests of record companies and Australian recording artists. Under PPCA's collective-licensing arrangements, owners of sound recordings grant PPCA a non-exclusive right to license the public performance and transmission rights of their sound recordings.

Among other things, the ACCC has imposed a condition requiring PPCA to make publicly available a list of sound recordings used in a distribution period identifying which sound recordings it did and did not distribute licence fees for, to allow users to better appreciate which sound recordings are covered and assist users in considering whether directly dealing with individual copyright owners is a viable option.

MR 262/07

Delays in flood definition not fault of ACCC

ACCC Chairman Mr Graeme Samuel rejected suggestions said to have been made by the insurance industry and the Insurance Council of Australia that industry moves to standardise definitions had been stalled by the ACCC on competition grounds.

From early 2006, the ACCC has responded to queries from the ICA seeking guidance on the application of the competition provisions of the Act. The ACCC has made it clear to the ICA that development of a standard definition would be unlikely to raise concerns where insurers were otherwise able to continue to offer different levels of coverage.

In the event that the industry had ongoing concerns over the application of competition laws, the ACCC has made the ICA aware of the public interest authorisation process; however, to this date, the ICA and the insurance industry have still not sought an authorisation for its proposed standard definition for flood.

MR 179/07

Proposed revocation of football uniform arrangements

The ACCC issued a draft notice proposing to revoke an exclusive dealing notification lodged by the Football Federation Victoria, removing the immunity for conduct associated with the FFV's apparel licensing program.

The FFV governs, administers and regulates football in Victoria and lodged the notification in respect of its requirement that the 450-plus football clubs competing in its various competitions only use uniforms manufactured by a restricted list of third party suppliers licensed by the FFV.

The ACCC recognises that the licensing program generates certain benefits, primarily in the form of generating revenue which may be available to promote and develop the sport; however, on the basis of the information before it, the ACCC was not satisfied that these benefits outweigh the likely detriment generated by the program.

MR 174/07

Sky and TVN to share racing content

A memorandum of understanding that will allow Tabcorp, Sky and TVN to share thoroughbred racing content has been granted final authorisation by the ACCC.

The ACCC is satisfied that the MOU is likely to result in a benefit to the public—in particular, an end to the split vision dispute which has led to a decrease in wagering revenue, punter confusion, pubs and clubs needing two channels to access all thoroughbred racing vision and a decrease in funding to the racing industry.

The ACCC considers that the MOU will have a competitive impact on the incentives of Sky and TVN to bid for future broadcasting rights; however, the ACCC acknowledges that sufficient commercial incentives exist which may counter the competitive impact resulting from content sharing under the MOU.

MR 172/07

REGULATED SERVICES

Guidance on reasonable terms of access to the line sharing service

The ACCC published final determinations made in two arbitrations concerning disputes over access to the line sharing service (LSS) involving Telstra's specific terms of supply to Primus Telecommunications and Request Broadband. The disputes relate to LSS rental charges and the terms on which LSS services are connected or disconnected, either individually or as part of a 'network migration'. The arbitrations result from the parties being unable to agree and then notifying disputes for ACCC arbitrations.

The ACCC also published a final determination specifying certain terms by which Telstra supplies the LSS to Chime Communications, following the parties being unable to agree on them and Chime notifying the dispute for ACCC arbitration.

MR 206/07 and 232/07

2005–06 telecommunications market indicator report issued

The ACCC issued its annual report on telecommunications market indicators to assist in assessing the state of telecommunications markets over time. It demonstrates that overall retail revenue earned by large service providers continued to increase in 2005–06.

The market indicator report shows that in 2005–06 the five largest service providers earned around \$18.1 billion from retail services and that internet and mobile services have each contributed to the continued growth in reported retail revenues and have offset reductions in fixed-line revenues.

The ACCC also issued its 15th imputation testing and non-price terms and conditions report under the enhanced accounting separation regime for Telstra, presenting data for the quarter ending March 31 2007.

This report presents an imputation analysis comparing the retail price charged by Telstra with the prices of the three core telecommunications access services. The analysis is designed to indicate whether margins are sufficient to allow efficient firms to compete against Telstra in the retail market. The report showed the imputed margins have increased in the quarter. The report also compares Telstra's customer service levels for wholesale and retail fixed-line telephony and ADSL customers and does not indicate any material discrimination by Telstra.

MR 202/07 and 181/07

Telstra's exemption applications

The ACCC published exemption applications made by Telstra in respect of its supply of wholesale line rental and local call resale services for a significant proportion of the Australian population.

In its applications, Telstra seeks ACCC orders exempting it from the obligation to supply these wholesale products to its competitors upon request. Under the Act, the ACCC must not make an order granting an exemption unless it is satisfied that the exemption will promote the long-term interests of end users.

The ACCC will shortly issue a discussion paper and set a time limit for submissions on the exemption applications by interested parties.

MR 178/07

Telecommunications access dispute

Under Part XIC of the Act, TPG Internet Pty Ltd notified the ACCC of an access dispute with Telstra Corporation Limited, relating to the monthly price for which Telstra supplies the unconditioned local loop service. The arbitration process for this access dispute has commenced.

MR 237/07

Final decision on Dawson Valley gas pipeline arrangement

The ACCC issued its final decision on the Dawson Valley gas pipeline access arrangement. The Dawson Valley pipeline is a small pipeline that transports coal seam methane from fields in the Dawson Valley in central Queensland to the Wallumbilla to Gladstone via Rockhampton pipeline.

When Anglo Coal submitted its proposed access arrangement the ACCC issued its draft decision expressing concern that Anglo Coal had overstated its non-capital costs and that this resulted in a tariff level that might deter development of competing coal seam methane fields in the Dawson Valley. Anglo Coal has addressed this concern and has submitted a revised access arrangement which the ACCC considers complies with the requirements of the gas code.

MR 228/07

Sydney water access dispute determination

The ACCC issued its arbitration report on an access dispute between Services Sydney Pty Ltd and Sydney Water Corporation. The dispute related to the methodology for pricing access to sewage transportation services supplied by Sydney Water. Services Sydney proposes to compete with Sydney Water to supply consumers connected to these three networks providing sewerage services.

The access pricing methodology promotes effective competition because it provides scope for an access seeker that is more efficient to enter and compete with Sydney Water. The ACCC's determination is the first application of access pricing to the water and sewerage industry in Australia. Services Sydney has applied to the Australian Competition Tribunal for review of the determination.

MR 185/07

REGIONAL OUTREACH

New South Wales

The regional outreach manager in Sydney, Dave Badewitz, recently attended Ag-Quip—the biggest rural event of its kind in the country—in Gunnedah. The three-day event included discussion on a range of issues, including competition, consumer rights and product safety. A range of relevant ACCC information was available from Pavilion One for the rural audience who attended, and visitors were also able to discuss their own circumstances in relation to the Act.

Victoria

Victorian outreach continued to assist fruit and vegetable farmers across Australia in understanding their rights and obligations under the Horticulture Code by delivering presentations on the subject across the state.

Outreach staff provided an informative presentation to Punjabi-speaking fruit and vegetable growers from Shepparton, Swan Hill and surrounding areas. Thanks are extended to the Victorian Department of Primary Industries for their assistance in organising this event.

Outreach staff also presented an informative session to avocado growers from Victoria, South Australia and New South Wales as part of the Avocado Growers Roadshow.

Outreach also attended Hamilton's annual agricultural field day, 'Sheepvention', providing trade practices information to the rural audience and answering questions relating to the Act.

The ACCC exhibited with the Office of the Victorian Small Business Commissioner at the Victorian Small Business Expo at the Melbourne Exhibition Centre and provided daily presentations at the theatre. Additionally Bob Weymouth, Regional Director for Victoria, launched the ACCC's new franchisee guide at the expo.

Queensland

The rural outreach manager for south-east Queensland and northern New South Wales participated in Farmfest, a three-day event held at Kingsthorpe, just outside of Toowoomba. He also conducted a number of presentations on the Horticulture Code to horticultural growers in parts of New South Wales and south-east Queensland.