

February 2008

From the Small Business Commissioner

Hot on the heels of the just completed public inquiry into the price of unleaded petrol, the ACCC has embarked on a major public inquiry into the competitiveness of grocery prices in Australia. The inquiry report, which will be of interest to small businesses through the whole supply chain as well as consumers, will be submitted to government by 30 June this year.

The ACCC is also working with interested stakeholders to identify acceptable approaches to representations about the greenhouse impact of goods and services. Following a series of workshops during January and February, the ACCC is now developing guidance on representations such as carbon offsets, carbon neutrality and greenhouse 'friendliness'.

Meanwhile this edition of *ACCC briefing* also reports on ACCC enforcement action in the area of greenhouse claims and the updating of the ACCC generic guidance for green marketers. Other developments reported in this edition include:

- Some successful notifications of collective bargaining by small business groups.
- ACCC success in court against Telstra for misleading claims relating to Next G mobile phone coverage.
- Large fines for two companies found guilty of retail price maintenance.

John Martin
Small Business Commissioner

NEW DEVELOPMENTS

Updated guidance for green marketers

The ACCC has updated its guidance for businesses and industry on the use of environmental claims in marketing. *Green marketing and the Trade Practices Act* was produced in response to the increasing use of green claims in advertising by businesses seeking to differentiate themselves and their products from their competition by means of environmental claims.

The publication aims to educate businesses about their obligations under the *Trade Practices Act 1974* (the Act) and to assist manufacturers, suppliers, advertisers and others to assess the strength of any green claims they make. This will help to improve the accuracy and usefulness to consumers of labelling, packaging and advertising claims.

The release of the guide follows recent ACCC action over potentially misleading environmental marketing claims in the energy industry.

The ACCC continues to scrutinise green claims made in a variety of markets and will take appropriate action against any

business making misleading or unsupportable environmental claims.

MR 025/08

ACCC inquiry into grocery prices

The Australian Government has directed the ACCC to hold a public inquiry into the competitiveness of grocery prices in Australia. The ACCC will shortly distribute an issues paper on matters relevant to the inquiry and will call for public submissions particularly to address issues raised in the paper.

On the basis of responses received, the ACCC will then hold a series of public hearings throughout Australia. This is a price inquiry under the prices surveillance provisions of the Act, which give the ACCC information-gathering powers and the ability to take evidence on oath from witnesses. The inquiry will be conducted by the Chairman of the ACCC, Mr Graeme Samuel, and commissioners Mr John Martin and Dr Stephen King.

MR 012/08

Petrol price discrepancies follow-up

The ACCC wrote to the chief executives of oil companies and the two major supermarket chains in Australia seeking an explanation of a divergence of Australian petrol prices relative to international price movements.

The ACCC expressed serious concern that a significant divergence has again occurred between the Australian retail price of unleaded petrol relative to the price of Singapore Mogas 95, the international indicator benchmark price. Similar discrepancies were cause for concern earlier 2007 and were a trigger for the recently completed public inquiry by the ACCC into the price of unleaded petrol.

The ACCC has also written separately to the oil companies and large petrol retailers putting them on notice that it will be seeking detailed information from them on their costs, prices and profits at all levels of the supply chain. Formal price monitoring powers were conferred on the ACCC by the government on the 17 December 2007.

MR 357/07 and 360/07

Public inquiry to review digital communications declarations

The ACCC is holding a public inquiry to review the digital data access service (DDAS) and the integrated services digital network (ISDN) declarations in regional areas.

The inquiry will determine whether the declaration of the ISDN and DDAS services should be re-made, extended, revoked, varied or allowed to expire. A discussion paper was issued that identifies issues relevant to the review and seeks comment on particular aspects of DDAS, ISDN and related markets, and on the impact of regulation on these markets.

MR 314/07

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

Action over 'green' motor vehicle claims

The ACCC instituted legal proceedings against GM Holden, which supplies and markets Saab motor vehicles in Australia and trades as Saab Australia, alleging misleading and deceptive conduct and false representations concerning 'green' claims made in the advertising of Saab vehicles.

In a number of 'Saab is Green' newspaper and magazine advertisements, Saab made various statements—including 'Grrrrreen', 'Every Saab is green', 'Carbon emissions neutral across the entire Saab range' and 'Switch to carbon neutral motoring'—to promote the green credentials of its motor vehicles. The advertisements also contained a statement that Saab would also plant 17 native trees as a carbon offset in the first year following the purchase of a Saab vehicle.

The ACCC considers that the advertisements represented to consumers that the net amount of carbon dioxide released into the atmosphere by any Saab vehicle would be zero and that planting 17 native trees would offset the carbon dioxide emissions for the life of the vehicle.

The ACCC alleges the advertisements are misleading as there would, in fact, be a net release of carbon dioxide into the atmosphere and planting 17 native trees would not provide a carbon dioxide offset for more than a year.

MR 008/08

Prouds' 'Was/Now' discount advertising misleading

The Federal Court of Australia found the 'Was/Now' discount advertising by Prouds Jewellers to be misleading and in breach of the Act.

Numerous jewellery items were advertised in the form of price comparisons such as 'Was \$199/Now \$99.50', which appeared in Prouds' mass distribution catalogues. The court concluded that the 'Was/Now' advertising conveyed to consumers that the jewellery items had been offered for sale for a reasonable period before the promotion at the 'Was' price when this was not the case. It was also concluded that the difference between the two prices would be seen by consumers as the savings available by purchasing an item during the sale period and that the advertising was therefore misleading.

MR 036/08

Proceedings instituted against mobile phone retailer

The ACCC instituted proceedings against Mobileworld Operating (trading as Crazy John's) alleging that Crazy John's had engaged in 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 that do not include a handset. The ACCC alleges that these representations contravene ss. 52 and 53 of the Act.

MR 006/08

Electricity supplier clears air about green electricity claims

EnergyAustralia agreed to provide the ACCC with an administrative undertaking to resolve concerns about representations which it made about its ClearAir and

GreenFuture non-accredited electricity products, without admission that its conduct constituted a contravention of the Act.

The ACCC investigated after a complaint from the Total Environment Centre about representations on EnergyAustralia's website and in promotional material that may have led consumers to believe that by signing up to the non-accredited ClearAir and GreenFuture products, they would be making equal or similar contributions to renewable energy generation as accredited renewable energy products when this was not the case.

EnergyAustralia acknowledged that representations on its website may have confused some consumers and agreed to a range of measures to reduce the level of confusion in the market, including providing \$100 000 towards an educational brochure and providing all former ClearAir customers with the benefits of the PureEnergy Premium (an accredited 100 per cent GreenPower energy product) applied to their current quarterly bill. In this way these customers will get the benefit of a 100 per cent accredited renewable energy product for one quarter as a form of redress.

MR 356/07

Green power television advertisement scrutinised

As part of its continuing scrutiny of 'green' marketing campaigns, the ACCC reached agreement with Origin Energy over a television advertisement representing that switching to Origin GreenPower would be the same as 'not driving your car for two years'.

Origin responded promptly and will not air such advertisements in future without making explicit the basis upon which the representations are made. It will also send a clarification letter to those 100 per cent and 20 per cent GreenPower customers who signed up during the period the advertisement was broadcast, to allow them to switch from those products without cost or delay.

MR 355/07

Court orders against Telstra for misleading Next G claims

The Federal Court granted the ACCC declaratory relief and made injunctions permanently restraining Telstra from making any representation relating to

- mobile coverage on the Next G mobile telephone network always being available to Next G customers everywhere the customer, from time to time, needs to use their mobile telephone
- a customer subscribing to the Next G mobile telephone network will receive the same or better coverage than is available currently on the CDMA network,
- without disclosing that coverage on the Next G network depends in part on where the person is, what particular handset the person is using and whether that handset has an external antenna attached.

MR 328/07 and 349/07

Sale of tainted fuel

Fines totalling \$470 000 were imposed after Dojoo Pty Ltd, formerly trading as Ballina Petroleum Distributors, and its

managing director, Mr Santo Pennisi, pleaded guilty and were convicted of falsely representing the quality and composition of fuel sold in northern New South Wales.

Until September 2007 Dojoo was an independent distributor and reseller of BP branded fuel. The ACCC alleged that the petrol sold often had a lower octane rating than represented. The defendants admitted to adulterating the fuel to maintain a competitive edge in the marketplace.

In addition to the fines Dojoo made a charitable donation of \$200 000 to Southern Cross LADS Inc and compensated BP Australia and identifiable BP account customers.

MR 342/07

Consumer rights and mobile phone handsets

The new fact sheet, *Your consumer rights: mobile phone handsets* issued by the ACCC explains what consumers can do when they are having problems with their mobile phone handset.

The fact sheet forms part of a suite of fact sheets developed by the ACCC to inform consumers about their rights.

MR 013/08

Undertakings accepted for incorrect country of origin claims

Mainstyle Holdings, which trades as Platinum Menswear, acknowledged it misrepresented the country of origin of suits to consumers during a suit sale. All suits on offer were advertised as made in Australia despite a number of those suits being made in China.

Platinum Menswear cooperated fully with the ACCC and immediately took action to ensure incorrect country of origin advertising would not occur again. Platinum Menswear gave court-enforceable undertakings that it will publish a corrective notice in various newspapers and in their shop front windows and offer a refund to all customers who purchased a Studio Italia suit the subject of the promotion who believe they were misled.

MR 340/07

Proceedings instituted for misleading price representations

The ACCC instituted proceedings against Harbin Pty Ltd, trading as Ray's Outdoors, alleging that it engaged in misleading conduct when it placed a newspaper advertisement promoting a sale for the opening of its Elizabeth Store in South Australia. The advertisement featured a Rio Grand barbeque for \$99 with a strike-through price of \$299.99.

The ACCC alleges that this advertising misrepresents what customers would have paid for the barbeque immediately before the sale and what customers buying the barbeque during the sale would have saved.

MR 339/07

Motor vehicle advertising declared misleading

The Federal Court declared that Audi Australia engaged in false, misleading or deceptive conduct in relation to advertisements for its Q7 Series motor vehicles and ordered that Audi Australia publish an advertisement in newspapers

referring to the civil proceedings and the orders made by the court.

The ACCC alleged Audi Australia represented the Audi Q7 Series motor vehicles had seven seats as a standard feature when in fact five seats was the standard configuration and that the Audi Q7 3.6SE was available for purchase from \$79 900 when in fact a purchaser would have to pay additional fees or charges for dealer delivery, statutory charges and two optional seats (to make it a seven-seater).

The ACCC had previously written to motor vehicle industry participants warning them that unless there was improvement in their level of compliance in advertising they risked formal legal action.

MR 329/07

Sheepskin manufacturer stops false claims

Australian manufacturer Tasman Sheepskin Tannery gave a court enforceable undertaking that it will cease claiming its medical sheepskins meet a voluntary standard when they do not.

Tasman has undertaken to replace or refund any medical sheepskins manufactured since 1 November 2005 that contain grass seeds or do not display the required labelling.

MR 325/07

Court action against biscuit manufacturer

The ACCC instituted proceedings in the Federal Court against Arnott's Biscuits for alleged contraventions of the Act regarding the packaging and labelling of Arnott's Snack Right fruit pillow and fruit slice biscuits. The ACCC alleges that Arnott's engaged in misleading or deceptive conduct by conveying to consumers an overall impression that the biscuit filling consists predominantly of the depicted fruits and that there is a significant amount of the depicted fruits in the fruit filling when this is not the case.

MR 312/07

Undertakings from health insurance broker over potential misrepresentations

The ACCC accepted court enforceable undertakings from iSelect Health following concerns about certain representations that it made in the promotion of its service recommending health insurance policies to the Australian public. iSelect can arrange for consumers to purchase a recommended policy and receives commissions in respect of these policies.

The ACCC was concerned that iSelect made representations which were likely to mislead consumers as to the range of insurance policies which it compared and in particular, that it misrepresented that it compared all the health insurance covers available to consumers and could find the best suited policy for a consumer's needs at the lowest price.

iSelect has undertaken to inform customers who purchased an arranged policy of the range of insurance policies which it compared for them.

MR 305/07

PRODUCT SAFETY

ACCC accepts undertakings in relation to sunglasses

A random ACCC survey of the Myer Bourke Street Mall, Melbourne store found that its Bloc and Stone branded sunglasses did not comply with the labelling requirements of the prescribed product safety standard. ACCC testing then indicated that some styles from the Bloc range may not comply with certain performance requirements of the standard, although the labelling on all the sunglasses represented that they were compliant. Further tests commissioned by Myer's supplier indicated that some pairs passed the standard's prescribed performance requirements, while other pairs failed.

The ACCC was concerned that Myer may have engaged in misleading conduct. When the concerns were raised with Myer and the supplier of the sunglasses, Inline, immediate corrective action was taken by withdrawing the products from sale nationally and conducting a voluntary national recall of the particular styles. Myer also gave a court-enforceable undertaking to the ACCC to address its concerns.

MR 354/07

Sunglasses product safety undertakings accepted

AFWM Pty Ltd, trading as Cosmetics Plus, gave court enforceable undertakings after sunglasses and fashion spectacles sold by it failed to comply with mandatory safety standards. A regular ACCC product safety survey identified a number of non-compliant sunglasses and fashion spectacles at various retail outlets which either had incorrect, obscured or absence of labelling as required by the standard.

MR 315/07

Bean bag covers allegedly contravene safety standard

Federal Court proceedings were instituted against Kmart Australia, alleging that Kmart supplied 'Elmo' shaped bean bag covers without the required warning label. The ACCC is seeking an injunction restraining Kmart from supplying bean bag covers that do not comply with the consumer product safety standard as well as a range of other orders.

MR 327/07

Product safety recall of bunk beds

The ACCC obtained interlocutory orders against Hercules Iron and its general manager, Mr Tom Hatz, regarding a product safety recall and continued supply of two models of bunk beds.

The ACCC alleged the Asteroid and Comet models fail to comply with the prescribed consumer product safety standard for bunk beds and therefore pose a serious potential hazard to users. Hercules Iron has been ordered to cease supply of these models where they do not comply with the standard and publish a consumer product safety recall notice in newspapers. They are also to send retailers a letter describing the problem and detailing the action to take regarding the beds and arrange and facilitate the return of the bunk beds to it from retailers and consumers nationally

MR 330/07 and 351/07

Lead caution on toy car set: military play set toy recalled

The ACCC issued a second advisory alert to consumers warning that a toy car set has been identified as having a potential lead content hazard. Preliminary assessment of the Auto Super Cars toy set indicated that some of the paint on the cars may represent a potential hazard and further tests are under way to determine whether the toys may have unacceptable lead levels. The retailer, Red Dot Stores, which operates a chain of variety stores throughout Western Australia, is cooperating fully with the ACCC and taking steps to remove the product from sale pending further test results.

Following earlier action on a different toy, the Special Mission Combat Force Military Play Set is being recalled by the supplier, Australian Discount Retail. Final test results received by the ACCC established that the paint on the toy contains unacceptable lead levels. A ban on products containing more than 90 milligrams per kilogram of lead was introduced on 17 September 2007.

MR 317/07 and 323/07

RESTRICTIVE TRADE PRACTICES

Record penalties against Visy: Calls for stronger cartel law

A record penalty of \$36 million was ordered against Visy Board and its director and owner, Mr Richard Pratt, following findings by the Federal Court that Visy Board engaged in price-fixing and market-sharing contraventions of the Act with its rival, Amcor Limited. This penalty incorporates a penalty against Mr Pratt for his role in approving the overarching understanding between Visy and Amcor.

The court also ordered separate penalties of \$1.5 million on Visy Board's former CEO, Mr Harry Debney, and \$500 000 on former Visy Board General Manager, Mr Rod Carroll, for their respective conduct in the contraventions by Visy Board.

Recent changes to the Act penalty regime mean that perpetrators of price-fixing, market sharing and other anti-competitive arrangements are now exposed to paying a much higher price: three times the benefit to the company attributable to the conduct or, if that cannot be determined, ten per cent of the corporate group's annual turnover.

The ACCC's success in this particular matter can be largely attributed to the ACCC's leniency policy which encouraged Amcor and former Amcor executives to come forward and provide information and evidence with the incentive of complete immunity from any resultant action by the ACCC.

MR 302/07

Anti-competitive concerns over agreements in tourism

The ACCC accepted court enforceable undertakings from the Korean Inbound Tour Operator Council of Australia Incorporated after concerns about agreements entered into by KITOCA members.

KITOCA together with the government, through the Korean Action Plan Implementation Group, launched a voluntary code of conduct for Korean inbound tour operators to comply with. This code sets out a minimum code of ethics in relation to pricing, factual itineraries, complaint handling, disclosure of shopping arrangements including commission payments and appropriate licensing requirements. However, the ACCC

became concerned that KITOCA and some of its members had reached agreements to not deal with certain Korean tour operators unless fees paid to Australian tour operators increased, arrange for certain duty free stores and restaurants to not allow entry to Korean tourists on tours operated by those tour operators, and impose sanctions via financial fines and boycotts on KITOCA members who refused to be part of these agreements.

The ACCC raised concerns that such agreements may contravene the price fixing and boycott provisions of the Act. Since becoming aware of the ACCC's concerns, KITOCA has cooperated with the investigations.

MR 002/08

Big penalties for resale price maintenance

Penalties totalling \$1.36 million were imposed by the Federal Court on Navman Australia and several employees for engaging in resale price maintenance. A penalty of \$1.25 million was imposed on Navman and penalties of \$80 000 and \$30 000 respectively were also imposed on Mr Christopher Baird, a former director and the former Australasian sales manager, Mr David King.

Navman is a supplier of marine, personal and in car navigational equipment and has dealership and retail arrangements across Australia. The penalty ordered by the court is one of the highest for resale price maintenance conduct and follows the record \$3.4 million penalties against the Jurlique cosmetics companies

In another matter the Federal Court imposed penalties of \$175 000 on TEAC Australia for engaging in resale price maintenance and \$15 000 on its national sales manager, Mr Warren Allison, for being knowingly concerned in the conduct. The ACCC instituted proceedings regarding conduct that sought to stop an independent retailer of electronic products from advertising prices below the 'go price' specified by TEAC. The court ordered TEAC send a letter to all their retail customers advising them that they are free to set the price of TEAC products they resell.

MR 321/07 and 359/07

Orthodontists price fixing, market sharing

The Federal Court found three orthodontic businesses, each operating in northern Tasmania, contravened s. 45 of the Act by engaging in price fixing and market sharing. The court found the orthodontists, in various combinations, entered into a series of illegal anti-competitive arrangements to fix the price of the orthodontic services they provided, restrict their respective supply of orthodontic services to new patients, restrict their ability to supply their services within 20 kilometres of the existing practices and stop another orthodontist from setting-up a competing practice.

The court heard that the co-location agreement, containing the majority of the illegal clauses, was drafted by a lawyer in 1992 and that the orthodontists relied on that lawyer's legal advice. Another orthodontist joined the agreement at a later date and also sought legal advice and the lawyer also failed to identify the illegal clauses.

In light of the repeatedly faulty legal advice and because the respondents cooperated with the investigation, the ACCC took the unusual step of not seeking a monetary penalty. The court

confirmed the ACCC's position when it found it was sufficient to grant a series of injunctions restraining the orthodontists from again engaging in the anti-competitive conduct.

MR 326/07

Colleges alter nuclear medicine credentialing criteria

The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Radiologists altered their Standards for Accreditation of Nuclear Medicine Practices after discussions with the ACCC. The ACCC was approached by the Townsville Hospital after two doctors providing nuclear medical services remotely to the hospital were denied re-credentialing under the standards as there was another nuclear medicine practice within 200 kilometres of the Townsville Hospital.

The ACCC was concerned that the standards may contravene s. 45(2) of the Act. In particular, the ACCC had concerns that the standards may create artificial boundaries that would protect service providers in particular geographical locations. After raising this with the colleges they agreed to review the standards and remove any unintended anticompetitive effects contained in the standards. Following this the colleges advised the ACCC that the credentialing criteria under the standards would now refer solely to the credentials of the nuclear medicine specialist without reference to the mode of conduct be it remote or otherwise, of a nuclear medicine practice.

Further, the Townsville Hospital doctors would retain their credentialed status and thus would continue to provide services to the Townsville Hospital, as well as at their Adelaide practice.

MR 322/07

Victorian abalone quota holders penalised over cartel

Penalties totalling \$927 500 were imposed on individuals and companies involved in a Victorian abalone cartel. The ACCC alleged an arrangement for collective action about the pricing and provision of abalone harvested from the central abalone fishery zone in Victoria by eight abalone quota holders.

Under the arrangement the parties would not supply a processor customer unless that processor paid a premium on top of an average 'beach' price (market price) and was a processor nominated by Australian Abalone, a corporate vehicle created to market the catch by the quota holder and others. The cartel arrangement provided for penalties if a quota holder supplied outside the arrangement. The court found that the conduct contravened the primary boycott and price fixing provisions of the Act and the code.

MR 318/07

MERGERS AND ACQUISITIONS

BUPA/MBF health insurance merger not opposed

The ACCC will not intervene in the proposed merger of BUPA Australia and MBF Australia, both registered providers of private health insurance. BUPA operates under the name HBA except in South Australia and Northern Territory where it operates under the name Mutual Community.

The ACCC conducted a comprehensive review of the proposed merger including extensive market inquiries with interested parties and carefully considered the likely effects of the proposed merger. The ACCC paid particular attention to

potential effects in the supply of private health insurance to South Australian consumers due to BUPA's strong position in that state. In reaching its decision the ACCC found that competition from a number of competing private health insurance providers in South Australia would be likely to continue to constrain BUPA in the foreseeable future.

MR 304/07

Monitoring of Newcastle and Hunter Valley community newspapers

The ACCC agreed with Fairfax Media interim arrangements regarding the operations of community newspapers in the Newcastle area which are designed to ensure the competitive viability of the community newspapers recently sold by Fairfax.

The ACCC had not opposed the proposed acquisition of Rural Press by Fairfax after an undertaking by Fairfax requiring the sale of *The Newcastle* and *Lake Macquarie Post* and *The Hunter Post*, which are free weekly newspapers circulating in the region. Fairfax were allowed to retain *The Newcastle* and *Lake Macquarie Star* and *The Lower Hunter Star*, which are free weekly newspapers with a similar circulation area to the *Post*, and which before the merger were owned by Rural Press.

Immediately before the sale of the *Post*, a number of changes were made by Fairfax to the format and content, which the ACCC considered were inconsistent with the terms of Fairfax's undertaking to the ACCC, and which may have affected the viability of the *Post*. The ACCC raised its concerns with Fairfax, which has now agreed to take steps to restore the *Post* to its pre-sale position.

The ACCC will continue to make inquiries into this matter and monitor the situation, to ensure that the *Post* is able to operate as a viable, competitive going concern.

MR 001/08

AUTHORISATIONS AND NOTIFICATIONS

Wangaratta Anaesthetist Group allowed to collectively bargain

The ACCC did not object to a collective bargaining notification lodged by the Wangaratta Anaesthetic Group (WAG); an associateship of anaesthetists. WAG's members propose to collectively negotiate with BUPA Australia Health (trading as HBA) a fee for the provision of no-gap billing to HBA members.

The ACCC considers that the proposed collective bargaining arrangement may result in some public benefits in the form of increased input into contracts and efficiency savings and that the voluntary nature of the proposed arrangements would militate against the potential for anti-competitive impact.

MR 353/07

Proposal for VMOs to collectively bargain opposed

The ACCC issued a final objection notice regarding the collective bargaining notification lodged by AMA Victoria on behalf of 39 visiting medical officers at Latrobe Regional Hospital. AMA Victoria proposed to collectively negotiate, on behalf of the doctors, contract terms and conditions, including fees, with the hospital.

The ACCC considers that the public benefit would be limited and that a potential price rise as a result of the proposed arrangements may force the hospital to operate with fewer medical practitioners, or rationalise services.

The ACCC also issued a draft objection notice to the collective bargaining notification lodged by AMA Victoria on behalf of 26 visiting medical officers at Werribee Mercy Hospital, proposing to collectively negotiate contract terms and conditions.

The size and composition of the group constitutes a significant proportion of the specialists that currently service the hospital and the ACCC is concerned that as a result of the hospital's location, facilities, and lack of affiliation with a larger teaching hospital there is not a strong case as to a disparity in bargaining position between individual doctors and the hospital. As a result, the ACCC considers that collective bargaining is not required to provide doctors with an efficient level of input into contracts.

Whilst the ACCC considers that the voluntary nature of the arrangements and the absence of collective boycott aspects would usually limit the detriment, it is concerned that the coverage and composition of the group is likely to lead to sufficient increases in doctor bargaining power, leading to potentially anti-competitive outcomes.

MR 343/07 and MR 306/07

Dried vine fruit growers allowed to collectively bargain

The ACCC issued a final determination authorising the Victorian Farmers Federation Sunraysia Branch members to collectively bargain the terms and conditions of their contracts with dried vine fruit processors, considering it is likely to provide growers with greater input into their contracts and leading to more efficient outcomes. The ACCC believes the possible anti-competitive effects are limited given the nature of the proposed arrangement, the structure of the industry and the limited size of the collective bargaining group.

MR 334/07 and MR 310/07

Collective sale of wine grapes to be approved

The ACCC issued a draft decision proposing to authorise 39 wine grape growers in the Alpine Valleys and King Valley region of north east Victoria, to appoint a common agent, North East Valleys Wine Group, to negotiate wine grape supply contracts.

The ACCC recently granted interim authorisation to allow NEV to negotiate wine grape supply contracts on behalf of the growers in respect of the current 2007–08 wine grape harvest.

The ACCC considers that negotiating through a common agent will provide growers with greater input into contract terms and conditions and reduce transactions costs for growers and wine grape buyers. Importantly, the arrangements do not reduce the ability of growers to negotiate individual agreements with buyers outside of the collective arrangement.

MR 033/08

Health food stores in the ACT to collectively bargain

The ACCC issued a final decision authorising current and future members of the ACT Health Food Co-operative to collectively bargain with suppliers of health food products.

The ACCC considers the arrangement may enable members of the cooperative to negotiate bulk discounts with suppliers of health food products. This may result in some public benefit.

Member health food stores will not be restricted to buying products through the cooperative and health food suppliers can choose not to participate in collective negotiations with the cooperative. The member health food stores of the cooperative will continue to individually set retail prices in respect of the goods subject to collective negotiations.

MR 022/08

Compulsory insurance proposal rejected

The ACCC revoked a notification lodged by Racing and Wagering Western Australia (RWWA) that would require thoroughbred horse trainers in Western Australia to obtain workers compensation insurance from a nominated insurer as a condition of their trainers licence.

While the ACCC acknowledges the benefits RWWA is hoping to achieve, there are concerns that they come at the cost of significant detriment by removing the ability of horse trainers to choose and negotiate with their own insurance provider, thereby eliminating competition between insurance providers and thus incentives for insurers to offer competitive premiums. The ACCC notes that the benefits which RWWA's proposal is designed to deliver may be achieved in other ways which do not involve the anti-competitive detriment associated with the notified conduct.

MR 363/07

Certain provisions of SuperTAB agreement to be authorised

The ACCC issued a draft determination proposing to authorise certain provisions of an agreement between Tabcorp and TOTE Tasmania governing TOTE Tasmania's participation in the SuperTAB pool.

Tabcorp is the host of the SuperTAB pool which pools bets placed through a number of totalisators. The ACCC considers certain provisions of the agreement may generate some public detriment, however overall it is of the view that the agreement will result in a net public benefit.

In particular, the ACCC considers that the agreement will allow TOTE Tasmania to offer enhanced wagering products to punters, provide a greater opportunity for TOTE Tasmania to compete and ensure that TOTE Tasmania is able to continue to fund the Tasmanian racing industry.

MR 015/08

IT contract and recruitment code to be authorised

The ACCC issued a draft determination proposing to authorise certain provisions of the code of conduct of the Information Technology Contract and Recruitment Association (ITCRA). The ACCC considers that certain provisions of ITCRA's code may generate some anti-competitive detriment, but that overall the provisions are likely to provide a benefit to the public. In particular, the provisions of ITCRA's code establish a minimum standard of conduct for ITCRA members, which can assist them conduct their business activities ethically and professionally reduce the risk that parties who deal with ITCRA members will be exposed to unscrupulous conduct.

MR 352/07

Underlying vessel queue causes not being addressed

The ACCC proposes to grant authorisation to Dalrymple Bay Coal Terminal's vessel queue management system (QMS) for a limited period only. The QMS has been operating for two years and the ACCC has not seen evidence that the underlying causes of the excessive vessel queue are being addressed. When authorisation was granted in 2005, the QMS was proposed as a short term measure to manage the vessel queue while investment and capacity expansions took place. However, the ACCC is concerned that the operation of the QMS for an extended period may hinder the development of a long term solution to address contracting issues that exist within the Goonyella coal chain. As such, the ACCC proposes to grant authorisation for 12 months only, to provide industry with the opportunity to develop and implement a solution to address these issues.

MR 348/07

Limited airline tariff agreements authorised

The ACCC issued a determination revoking an authorisation granting a substitute authorisation to Qantas Airways. Qantas applied for revocation and substitution of the authorisation regarding tariff arrangements with designated airlines that are required under Australia's air service agreements (ASAs) with other countries, subject to the authorisation only offering protection under certain circumstances.

An ASA specifies the terms and conditions of airline activity between two countries and a number of these require Qantas to reach agreement in limited circumstances with a competing foreign airline in relation to the establishment of tariffs. The ACCC considers that there are potentially significant anti-competitive detriments by allowing tariff agreements however the conduct is likely to result in benefits by ensuring Australia can meet its international obligations.

MR 345/07 and MR 313/07

Harness Racing Victoria rebate proposal approved

The ACCC did not oppose a new notification lodged by Harness Racing Victoria (HRV) proposing to offer a rebate to six nominated bookmakers who use Tabcorp or another Victorian licensed wagering operator to place bet-backs and layoffs on Victorian harness racing. The ACCC considers that the conduct will provide a small benefit to the nominated bookmakers by reducing the fee for access to Victorian race fields in recognition of the contribution they are making to the Victorian harness racing industry while the public detriment will be minor and notes that this notification does not prevent other parties from applying for race fields approvals and negotiating a fee and/or rebate with HRV.

MR 344/07

Immunity for advertising arrangements to be revoked

The ACCC issued a draft notice proposing to revoke a notification concerning advertising contracts the Wentworth Courier, a community newspaper delivered free to households in eastern Sydney, offers to real estate agents within its circulation area. Under the contracts real estate agents agree to place 75 per cent of their real estate advertising in its circulation area with the Wentworth Courier in consideration for significantly discounted advertising rates. The ACCC has formed the preliminary view that the 75 per cent requirement is

likely to have an anticompetitive effect and does not have net public benefits.

MR 331/07

Australian Property Institute authorisation varied

The ACCC issued a determination varying the authorisation granted to the Australian Property Institute (API), covering the API's code of ethics, rules of conduct and specific clauses of the API's constitution and by laws along with relevant definitions. The ACCC considers that the proposed changes lodged by the API are minor in nature and do not reduce the benefits associated with the authorisation.

MR 309/07

Retailer Alert Scheme for alcohol products authorised

The ACCC issued a final determination granting conditional authorisation to a Retailer Alert Scheme, which provides a national system for the removal of inappropriately named or packaged alcohol products from the market. If a complaint about an alcoholic beverage is made, and the product is found not to comply with the Alcohol Beverages Advertising (and Packaging) Code, then a retailer alert will be issued.

Retailers who are signatories to the code have agreed not to place further orders for that stock. Suppliers who are signatories to the code, have agreed to cease supplying non-compliant stock to the market, and to reimburse retailers for non-compliant stock returned to the supplier. The ACCC granted authorisation subject to three conditions including requiring the applicants to provide the ACCC with a report regarding the results of an independent review of the effectiveness of the scheme.

MR 301/07

Football Federation uniform arrangements allowed

The ACCC issued a decision concerning the exclusive dealing notification lodged by the Football Federation Victoria, deciding not to take further action at this time regarding the FFV's apparel licensing program. The FFV 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 issued a draft notice proposing to revoke the immunity for the program as it was not satisfied that the benefits outweighed the likely detriment. The FFV sought to address these concerns by increasing the number of licensed suppliers from four to eight where practical, thereby reducing the ACCC's concerns.

MR 300/07

REGULATED SERVICES

Reasonable terms of access set for local loop and line sharing services

The ACCC published final determinations made in the arbitration of disputes over access to the unconditioned local loop service and the line sharing service. The ULLS final determination specifies the monthly rental charge for which Telstra supplies the ULLS to Primus Telecom. This follows the parties being unable to agree on the ULLS monthly charge, and Primus notifying a dispute for ACCC arbitration.

The LSS final determination specifies terms of access on which Telstra supplies the LSS to Adam Internet. This follows the parties being unable to agree on those terms, and Adam Internet notifying a dispute for ACCC arbitration. Another five LSS access disputes, notified by Primus, Amcom, TPG, Agile and Network Technology, were resolved in a manner consistent with and on the same date as the Adam Internet determination.

The setting of reasonable terms of access for the ULLS and LSS continues to bring significant benefits to consumers of telecommunications services. The prices set by the ACCC will ensure that consumers receive higher quality services at more reasonable prices from a greater range of service providers. The ACCC continues to arbitrate several ULLS and LSS access disputes.

MR 007/08

Telstra submits new ULLS monthly charge undertaking

The ACCC published Telstra's latest unconditioned local loop service (ULLS) monthly charge access undertaking and is now preparing a discussion paper seeking submissions on the undertakings.

Telstra supported its undertaking with its Telstra Efficient Access Model. However, it has requested that the model itself remain confidential at this time. Telstra stated that it intends to make a version of the model available for analysis subject to appropriate arrangements being put in place with respect to confidentiality.

MR 361/07

Telstra application for exemption of transmission capacity

The ACCC has published Telstra's exemption applications made in relation to its supply of the domestic transmission capacity service (DCTS).

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 ensure interested parties have reasonable access to Telstra's submissions, to allow adequate examination and comment on the applications.

MR 364/07

Federal Court affirms invalidity of competition notice

The Federal Court handed down final orders affirming that the ACCC was not entitled to issue the Part A competition notice in December 2005, alleging that Telstra had acted anti-competitively by raising the wholesale price of its Home Access line rental service.

The court found that the competition notice differed from the consultation notice for two matters held to be of substance and as Telstra was not given details of those matters when the ACCC consulted with it, Telstra was not afforded procedural fairness.

The ACCC sought to uphold the majority of the competition notice to preserve the ability of affected third parties to seek damages against Telstra, however, the court found that severance was not appropriate and therefore quashed the competition notice.

The ACCC is concerned that the decision may encourage the recipient of a notice to challenge procedural aspects instead of addressing the substantive underlying conduct.

MR 332/07

Telecommunications infrastructure audit finalised

A record-keeping rule (RKR) was issued requiring 22 specified carriers to report on the locations of their core network and Customer Access Network infrastructure after recent ACCC reviews indicated that a consistent and coherent infrastructure database is needed to further inform the effectiveness and timeliness of future regulatory processes.

A number of carriers have indicated that they expect no burden in complying with the rule, as its required reporting format matches their internal record-keeping procedures. The ACCC also indicated to a further nine carriers that their proposals for alternative reporting formats can be accommodated through the flexibility in reporting provided by the infrastructure RKR.

MR 350/07

Communications access process simplified

The ACCC published a final determination made in an arbitration concerning a dispute over access to the unconditioned local loop service in multi-dwelling units such as those in an apartment block or a shopping centre.

The final determination provides further guidance to industry on the reasonable terms of access to the ULLS by specifying a process that could be used by access seekers to order and provision the ULLS in MDUs serviced by a main distribution frame (MDF) in the building.

The final determination specifies that where there is an existing pair of wires between Telstra's exchange and the customer's premise, Telstra must, if requested, re-use the existing wires to provide a ULLS. The current process is labour intensive, an inefficient use of resources and can involve significant delays for access seekers and is not customer friendly.

This decision will bring benefits to consumers by improving competition in the supply of broadband and voice services to residents in apartments and other multi-dwelling units.

MR 346/07

Views on next generation networks published

The ACCC for public consultation two papers related to next generation telecommunications networks.

The first is a draft decision on a 15-year special access undertaking given by the G9 for its proposed fibre-to-the-node network upgrade; it also provides guidance on access to FTTN networks more generally.

The ACCC also issued a position paper on the possible variation of the definition of the declared unconditioned local loop service. The position paper notes the need for the ULLS declaration to be updated to keep in step with on-going network modernisation, including the evolution of traditional switched telecommunications networks to internet protocol.

MR 338/07

Release of mobile terminating access pricing principles determination and rejection of Optus's undertaking

The ACCC issued the MTAS pricing principles determination relevant for 1 July 2007 to 31 December 2008, which the Act requires the ACCC to have regard to if the ACCC is required to arbitrate a MTAS access dispute.

The indicative prices have been informed by the WIK model, international cost benchmarks and other cost models. Any future pricing determinations will consider a range of factors as set out in the supporting documentation and will continue to consider efficiently incurred costs of mobile operators with reference to actual costs consistent with the Australian Competition Tribunal's position.

The ACCC also announced its final decision to reject the access undertakings submitted by Optus. The ACCC rejected the Optus 2007 undertaking because it could not be satisfied that the price terms and conditions were reasonable. The tribunal placed a clear obligation on providers to establish that their costs are efficient costs and Optus did not provide evidence to support the price in its undertaking.

MR 320/07

Decision on Foxtel digital Pay TV service upheld

The ACCC decision to accept a special access undertaking from Foxtel for its digital Pay TV set top unit service was upheld by the Federal Court. Seven Network applied to have the ACCC's decision overturned.

Foxtel's undertaking permits independent providers of digital content channels—for example, Setanta Sports—to offer their channels directly to Foxtel customers through Foxtel's digital set-top units.

MR 333/07

Draft decision on GasNet

The ACCC issued its draft decision on GasNet's revised 2008–12 access arrangement and while it considers some increase in investment and tariffs is appropriate, it proposes not to accept a number of aspects of the proposed GasNet revisions to the arrangement, which would have resulted in much more significant increases in gas transmission charges. The decision sets out 32 amendments GasNet must make to the access arrangement for approval by the ACCC.

MR 311/07