

**December 2006**

### From the Small Business Commissioner

During the year the ACCC continued to improve the efficiency of its enforcement processes while extending the guidance it provides to consumers and businesses, especially small business. This edition of *ACCC briefing* refers to the release of draft guides for:

- new merger clearance processes
- collective bargaining notifications and
- revised authorisation processes.

In addition, we have released a CD that compiles all the ACCC's small business guidelines, providing small business and its advisors with an 'all in one' source of information on rights and obligations under the Trade Practices Act.

With this final edition of *ACCC briefing* for 2006, on behalf of the Chairman, Graeme Samuel, and all at the ACCC, I would like to wish readers the best for the festive season and the coming year.

**John Martin**

**Small Business Commissioner**

### NEW DEVELOPMENTS

#### 'All in one' TPA resource for small business

Small business people seeking information on their rights and obligations under the Trade Practices Act can now find everything they need in one simple source. *TPA matters for small business* is a mini-CD compilation of all the ACCC's small business publications.

ACCC Commissioner Mr John Martin launched the disc at the Small Business Coalition meeting and said it was developed in response to feedback gathered from the ACCC's National Outreach Team in their discussions with small business people and franchisees around Australia.

Small business people said that they need easy access to up-to-date and concise information on the Act but do not have the time to spend hours looking for it. *TPA matters for small business* contains the information small businesses need in the form of the ACCC's small business publications and links to relevant pages on the ACCC and other websites on a single disc.

MR 242/06

#### Guide for descriptors in the food and beverage industry

The ACCC called on food and beverage manufacturers to curb their use of potentially misleading labels and other representations when marketing goods to customers. ACCC Commissioner Mr John Martin launched a new food descriptors guideline and said it was the responsibility of every member of the \$90 billion a year sector to ensure they were complying with consumer protection laws.

The guideline is designed to help businesses understand what is considered acceptable and unacceptable labelling under the national competition and consumer protection laws requirements in the TPA. It sets out the ACCC's views around claims that describe a product's quality, quantity, composition and/or origin. It also includes several examples of the industry-specific enforcement matters the ACCC has undertaken.

The ACCC is particularly concerned by the apparent upswing in terms like 'organic' and 'free-range' where business seeks to take advantage of strong consumer demand and where the absence of regulation may provide opportunity for some businesses to engage in unlawful conduct. The ACCC believes that consumers would have a reasonable expectation that a food described as 'natural' or 'pure' should not contain food additives or artificial preservatives. Unfortunately in the past this has not always been the case.

MR 276/06

#### Draft guides issued for new merger clearance, collective bargaining notification and authorisation processes

The ACCC issued for public comment three draft publications on changes to processes resulting from the recent amendments to the TPA. The amendments follow recommendations of *The review of the competition provisions of the Trade Practices Act* (the Dawson review).

*Formal merger review process guidelines* is a guide to the formal merger clearance process and the new merger authorisation process. It is designed to provide guidance to the business community, their advisors and the public generally. It outlines the approach the ACCC proposes to take in assessing applications for formal clearance and the requirements on applicants for merger clearances.

*Guide to collective bargaining notifications* is a guide to the new collective bargaining notification process and is targeted mainly at small businesses seeking to collectively negotiate with another business. Under this process, small businesses may obtain immunity from legal action to engage in collective bargaining conduct by lodging a notification under the Act.

The guide aims to promote awareness of the new notification process and help small businesses identify when it may be appropriate to lodge a collective bargaining notification. It aims to help small businesses understand the process and explains

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](http://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](mailto:small.business@accc.gov.au)>. **For information on the Trade Practices Act contact the ACCC Infocentre 1300 302 502 or the ACCC small business helpline 1300 302 021.**

how the ACCC assesses collective bargaining notifications and what information applicants will need to provide to the ACCC.

*Authorisation—new processes from 2007* concerns changes to the authorisation process and sets out the practical implications of these changes for potential applicants, parties affected by an authorisation application and the ACCC.

MR 269/06

### **Draft copyright licensing guide issued for comment**

The ACCC issued for public comment a draft guide to copyright licensing and collecting societies. This follows the introduction to parliament of the *Copyright Amendment Bill 2006* which proposes two amendments that are relevant to the ACCC and its functions:

- the Copyright Tribunal may have regard to guidelines (if any) made by the ACCC, and
- the Copyright Tribunal will be able to make the ACCC a party to a matter before the tribunal (if the ACCC applies and the tribunal is satisfied that it would be appropriate to do so).

Once these proposed amendments come into effect, the ACCC intends to issue a general information guide to users of copyright material to help explain their rights and obligations under the *Copyright Act 1968*.

MR 286/06

## **FRANCHISING**

### **Franchising Consultative Panel**

The ACCC established the Franchising Consultative Panel to promote greater awareness and compliance with the Franchising Code of Conduct and the TPA, while increasing the ACCC's knowledge and understanding of current issues within the franchise sector through liaison with industry representatives. Panel representatives include franchisors, franchisees, lawyers, franchise associations and Commonwealth government agencies with responsibilities for franchising policy development.

FCP meetings involve frank, informal dialogue between the ACCC and industry representatives. The most recent meeting was held on 13 October 2006, when issues on the review of the disclosure provisions of the code and the review of the Office of the Mediation Adviser were discussed. The ACCC also facilitated a roundtable discussion and provided an update on information and outreach initiatives.

### **Undertakings from pet food franchisor**

The ACCC accepted court enforceable undertakings from Scotty's Premium Pet Foods following swift action about concerns that Scotty's may have breached the Franchising Code of Conduct and acted unconscionably towards franchisees.

Scotty's sent existing franchisees notices alleging that they had breached their franchise agreements and requiring them to remedy the alleged breaches within 14 days or their franchises would be terminated. The ACCC considered that, if Scotty's had concerns about its franchisees' conduct, the notices did not appear to provide a reasonable timeframe or contain sufficient details of the alleged breaches and the remedial steps needed.

The ACCC was also concerned that Scotty's attempted to supply product, allegedly without reasonable excuse, directly to an existing business customer of a franchisee within the franchisee's exclusive territory, possibly in contravention of s. 51AC of the TPA which prohibits unconscionable conduct in business dealings. When contacted by the ACCC, Scotty's withdrew the breach notices and provided court enforceable undertakings to ensure that similar issues will not arise in future.

MR 261/06

## **CONSUMER AND SMALL BUSINESS PROTECTION**

### **New SCAMwatch website launched for consumers**

The ACCC launched a new look SCAMwatch website, [www.scamwatch.gov.au](http://www.scamwatch.gov.au), designed to educate and assist consumers about scams and the steps they can take to protect themselves. The new SCAMwatch website lists 39 different types of scams, ranging from pyramid schemes to office supply scams, along with warning signs to look out for.

Most scams rely on looking or sounding like genuine offers. To find out if something is a scam, consumers should do their homework: ask questions and think carefully before deciding what to do. The aim of SCAMwatch is to provide information to consumers and small business about how to recognise, avoid and report scams.

MR 248/06

### **Injunctions over cancer treatment system**

The Federal Court made orders by consent against several NuEra companies, Mr Paul Rana and his sons Christopher and Micheal, restraining them from making any representations on cancer cure claims promoted under The RANA System until judgment in the proceedings or further order.

The RANA System is described as '...an alternative approach to cancer care which offers HOPE to cancer sufferers'. The RANA System is provided through programs costing up to \$35 000. The RANA System offers a variety of products including vitamin and mineral supplements, Zen Chi Massages Magnetic Pulsers, coffee enemas, ozone therapy, diets described as 'eating according to blood type' and thermal imaging.

The ACCC alleges the NuEra companies, largely through the agency of Mr Paul Rana and with the assistance of his sons, engaged in conduct in breach of the TPA by representing to persons suffering terminal illnesses (including cancer) and to their families that The RANA System can cure cancer, can reverse stop or slow its progress or will prolong the life of a person suffering cancer, when this is not the case.

MR 280/06 and 284/06

### **Undertakings on air conditioner 'environmentally friendly' claims**

Hagemeyer Brands Australia, trading as Hagemeyer Appliances, offered a court enforceable undertaking to the ACCC over 'environmentally friendly' claims made about its Dimplex air conditioning products.

Hagemeyer advertised particular models of Dimplex air conditioners through its websites and also through a brochure titled *Come home to cool*. Dimplex claimed that the air

conditioners were ‘environmentally friendly’ when in fact they contained R407C—a potent greenhouse gas which will contribute to global warming if released into the atmosphere.

Following complaints, the ACCC advised Hagemeyer Appliances of its concerns that the advertisements contained false and misleading representations in breach of the TPA. Hagemeyer Appliances acknowledged that R407C is not appropriately described as ‘environmentally friendly’ and accordingly agreed to cease making this claim and to implement a number of corrective measures.

*MR 266/06*

### **Internet service provider acted unconscionably**

The Federal Court of Australia declared that Dataline.net.au Pty Ltd engaged in unconscionable and misleading and deceptive conduct in connection with the supply of internet-related services to small businesses and consumers throughout Australia.

The court also declared that Australis Internet Pty Ltd and World Publishing Systems Pty Ltd engaged in misleading and deceptive conduct and that Mr John Russell, managing director of Dataline and Australis, was knowingly concerned in the contraventions by all three companies.

The business of Dataline (in liquidation) included the sale of wholesale internet provider services to small businesses, called Virtual Internet Service Providers (VISP), for resale by VISPs to their customers.

The court declared that Dataline engaged in unconscionable conduct in contravention of s. 51AC of the Act by:

- not permitting the VISPs to obtain legal advice before signing their initial legal contract with Dataline, and
- threatening VISPs with disconnection of their internet service if they did not sign further agreements with Dataline.

*MR 265/06*

### **Misleading personal introduction service**

Mr Eugeni Tsvetnenko, trading as Mobile Alerts, provided court enforceable undertakings to the ACCC not to engage in misleading and deceptive conduct with respect to the promotion of personal introduction services.

Mr Tsvetnenko advertised a service named SecureDate in the ‘she seeks him’ section of a classifieds newspaper and online service and represented that SecureDate was a personal introduction and dating service where consumers could request to list their own profile and that the maximum call cost was \$4.99.

Following complaints to the ACCC, Mr Tsvetnenko was advised the advertisements appeared to contain false and misleading misrepresentations that may contravene the TPA. He accepted the ACCC’s concerns and cooperated fully, immediately taking action to ensure that similar advertisements would not appear again.

*MR 235/06*

### **Traders respond to ‘real’ tone queries**

The ACCC became aware that a large number of traders are marketing what they call ‘real’ or ‘true’ tones in a way that may

mislead consumers into believing they are buying a ring tone of their favourite artists singing, when consumers are really downloading a ‘cover’ version performed by unknown or sound-alike artists.

In most cases, the conduct of concern involved the use of well-known artists’ names and/or images next to the song titles. Without an effective disclaimer, the ACCC believes such conduct is likely to lead consumers to conclude that the named/pictured artist performed the ring tone. The ACCC has written to the operators of more than 20 local and international sites to put them on notice.

Ring tone promoters were asked to replace the words ‘real’ or ‘true’ tones with the term ‘cover tones’ to better reflect the ring tones being sold. The ACCC also asked that disclaimers be provided to dispel any misimpressions likely to arise. The results were very positive, with most traders willing to comply with the ACCC’s request.

*MR 233/06*

## **PRODUCT SAFETY**

### **Cigarette wallet packs withdrawn from sale**

Following court action by the ACCC, British American Tobacco Australia (BATA) offered the Federal Court undertakings that it will immediately cease supply of its Limited Edition Dunhill cigarette wallet packs and notify its resellers to remove the wallet packs from sale.

The ACCC alleged that BATA breached s. 65D of the TPA in supplying Dunhill wallet packs that allegedly do not comply with the prescribed consumer product information standard for tobacco labelling requirements. The ACCC sought an injunction that BATA be restrained from supplying the packs and take reasonable steps to ensure packs already supplied be immediately removed from retail sale. These undertakings will remain in place until the matter is finally determined by the court.

*MR 267/06 and 270/06*

### **Household furniture safety guide issued**

The ACCC launched a ‘safety alert’ highlighting potential household furniture hazards for children at the Safe Communities Conference in Townsville. The guide outlines potentially dangerous situations in the home and provides simple safety precautions that parents and carers of children should follow to avoid risk of serious injury to children.

Thousands of children have been seriously injured (including some fatalities) over the past six years in Australia as a result of falling domestic furniture or fittings. The campaign aims to alert everyone to the risks posed by children playing with and climbing on furniture and how those risks can be eliminated.

*MR 238/06*

### **ACCC calls ‘time out’ on unsafe basketball rings**

The ACCC uncovered widespread non-compliance with the mandatory safety standard for basketball backboards and rings during recent surveys and showed that many suppliers and retailers were failing to comply with the new Consumer Product Safety Standard. All basketball rings and backboards must have

a safety warning that ‘improper installation or swinging on the ring may cause serious injury or death’.

The ACCC has:

- directed retailers to withdraw the offending basketball rings from sale
- contacted all suppliers to ensure that no more non-compliant basketball rings were distributed to retailers and
- directed suppliers to prepare appropriate warnings which comply with the mandatory standard for the relabelling of stock that was already in retail stores.

All stores approached by the ACCC quickly removed the unsafe products. Given the survey findings, the ACCC is undertaking a widespread awareness raising campaign on the basketball standard.

*MR 263/06*

### **Fines for dangerous baby walkers and cot**

A specialist nursery retailer was fined \$860 000 and convicted of breaching a mandatory consumer product safety standard for baby walkers and of misrepresenting the cot’s compliance with the Australian standard.

Skippy Australia’s ‘Brand New Baby Walker with Push Bar’ and ‘Brand New Baby Walker and Rocker 2 in 1’ did not have the required automatic braking mechanism to prevent the baby walkers from falling down steps or stairs. The walkers also lacked any of the prescribed warning labels.

Skippy Australia was also convicted of having misrepresented to consumers that its ‘Mahogany Finish Baby Cot’ model TZC-512 complied with the Australian standard for cots. The company was also charged with having displayed a ‘no refund’ sign that misled consumers as to their statutory rights.

*MR 241/06*

### **Luggage straps fail safety standard**

The ACCC accepted a court enforceable undertaking from Asia Source Australia to stop the supply of elastic luggage straps with warning labels that failed the mandatory product safety standard. The labels warn users about the risk of facial and eye injuries when using the straps. Asia Source Australia supplied the non-compliant elastic luggage straps, imported from China under the brands Porta Hardware and Bilst, mainly to discount variety shops.

*MR 240/06*

### **Recall of unsafe children’s swim vests**

The ACCC accepted a court enforceable undertaking from Brand Direct International after it supplied Maui brand children’s swimming aid vests which did not comply with the mandatory product safety standard.

The ACCC found the vests during a routine product survey. Contrary to the standard, the vests were not marked with the intended body mass range, and the safety warning on one of the vest types was difficult to read. After ACCC contact, Brand Direct withdrew the vests from sale and conducted a product safety recall.

Big W, which sold the vests, has entered into a separate administrative resolution with the ACCC. The ACCC was particularly concerned that Big W, once alerted by Brand Direct

that there may have been a problem with the vests, continued to sell them for another week until it received written notification from Brand Direct requesting that they be withdrawn from sale.

*MR 234/06*

## **RESTRICTIVE TRADE PRACTICES**

### **Proceedings against education consultants**

The ACCC instituted proceedings in the Federal Court, Perth, alleging that a number of education consultants providing services to Korean students engaged in price fixing and other anti-competitive conduct. The consultants include Kokos International, IAE Edu Net Perth, a business known as the Nanuri Education Centre and a number of individuals. The consultants provide information and advice on available courses of study to Korean students and facilitate enrolment in courses of study at various education institutions.

Among other things, the ACCC alleges that the parties breached s. 45 of the TPA and/or the Competition Code of WA by entering into arrangements or understandings in which they agreed not to offer or accept discounted school tuition fees from Korean students. It is also alleged that the parties gave effect to those arrangements.

*MR 257/06*

### **Alleged resale price maintenance by set-top box distributor**

The ACCC instituted legal proceedings in the Federal Court, Melbourne, alleging that Digital Products Group engaged in resale price maintenance on certain Topfield branded digital set-top boxes.

The ACCC alleged that Digital Products Group contravened s. 48 of the TPA by attempting to induce and inducing a certain retailer not to advertise certain set-top boxes below their recommended retail prices. The ACCC also instituted proceedings against Mr Jai Kemp, Digital Products Group’s sole director, and Mr Mark Dopson, its national sales manager, alleging that they were knowingly concerned in and party to certain alleged contraventions.

*MR 232/06*

## **MERGERS AND ACQUISITIONS**

### **Undertaking on gas merger proposal accepted**

The ACCC accepted Alinta’s offer of revised new court enforceable undertakings about its proposal to potentially retain an interest in APT.

On 8 November 2006, the ACCC commenced market inquiries about a new draft undertaking. After considering comments from market participants and significant improvements to it, the ACCC will now accept the new undertaking.

The previous undertaking required Alinta to divest APT and the former AGL-Agility contracts for the provision of management and operational services to the Moomba to Sydney Pipeline and the Parmelia Pipeline. The new undertaking also requires these divestments, but with one exception. In the event that APT divests its interests in these pipelines and GasNet, Alinta will not have to divest its interest in APT.

*MR 279/06*



### **Statement of issues on proposed healthcare business acquisition**

The ACCC issued a statement of issues on the proposed acquisition of the consumer healthcare business of Pfizer Inc by Johnson & Johnson. The statement of issues invites further information on market definition and a number of competition issues the ACCC has identified.

*MR 281/06*

### **Proposed acquisition of hospital**

The ACCC issued a statement of issues on the proposed acquisition by Healthe Care Australia of Brisbane Waters Private Hospital from Healthscope Limited. The statement invites further information and comment on the supply of private hospital services in Gosford, on the New South Wales Central Coast.

*MR 259/06*

### **Proposed acquisition of chemical business**

The ACCC issued a statement of issues on the proposed acquisition by Hexion Specialty Chemicals of Orica Australia Ltd's formaldehyde resins business. The statement invites further information and comment on the manufacture and supply of amino and phenolic resins in Australia.

*MR 251/06*

### **Proposed acquisition of gas company**

The ACCC issued a statement of issues on the proposed acquisition of Queensland Gas Company Limited by Santos Limited. The statement of issues seeks further information on market definition and a number of competition concerns the ACCC has identified.

*MR 245/06*

## **AUTHORISATIONS AND NOTIFICATIONS**

### **Qantas/Air New Zealand Tasman Agreement denied**

The ACCC issued a draft decision proposing to deny authorisation of the Tasman Networks Agreement between Qantas and Air New Zealand. The agreement would allow Qantas and Air New Zealand to coordinate all activities in respect of any flight on the trans-Tasman, including regular meetings to determine schedules and prices.

Qantas and Air New Zealand are the largest competitors on the trans-Tasman. Combined, they account for around 80 per cent of trans-Tasman passengers. The ACCC considered that authorisation of the agreement would fundamentally change the competitive process on the trans-Tasman.

The ACCC considered that the agreement would only result in limited public benefits in the form of cost savings to the airlines as well as marginal improvements in schedule spread, connectivity and frequent flyer options for consumers.

Subsequently Qantas and Air New Zealand announced they would not be proceeding with the agreement.

*MR 254/06*

### **Price guide authorisation revoked**

The ACCC revoked an authorisation granted to the South Australian Mixed Business Association in 1979 which enabled it to publish and circulate a price guide suggesting retail prices for grocery items to members. SAMBA has since changed its name to the State Retailers Association of South Australia, which has continued to publish the price guide.

While some members were likely to value the guide and the assistance it provided in setting retail prices, it did not result in a public benefit that would outweigh the anti-competitive detriments from a reduction in price competition.

*MR 282/06*

### **Interim approval to joint waste collection tender process**

The ACCC granted interim authorisation to the St George Region of Councils to allow them to begin a tender process for joint kerbside waste and recycling collection services in their local government areas. The ACCC does not consider that the market dynamics will be permanently altered by the councils commencing a joint tender process.

*MR 278/06*

### **Energy joint negotiation authorised**

The ACCC issued a decision authorising CS Energy Limited and Callide Power Management to jointly negotiate a price review with Anglo Coal. CS Energy and CPM propose to agree to use the same data as the basis for the review, to engage joint experts and consultants and to jointly conduct negotiations with Anglo Coal.

There appears to be little, if any, public detriment from the joint negotiation process, as the quantities of coal purchased will not be altered and, therefore, demand within the market will not be significantly impacted. Additionally, Anglo Coal, the party most likely to be affected by the proposed conduct, does not oppose the joint review.

*MR 239/06 and 272/06*

### **Proposed removal of immunity for surgeons' training intake**

The ACCC issued a draft determination proposing to remove parts of the Royal Australasian College of Surgeons' authorisation that relate to the college's training program.

The draft determination follows a review instigated by a request from health ministers in February 2006. The ACCC considered that a material change of circumstances had occurred since the authorisation was granted. The ACCC was satisfied that governments have increased their capacity for, and involvement in, health workforce planning since the college was granted authorisation in June 2003.

The ACCC remains concerned that the college's ability to restrict surgical training intakes increases the detriment flowing from its arrangements. The effect of removing the authorisation will be to expose the college to the application of the TPA in the event that the college restricts training intakes in an anti-competitive manner.

*MR 262/06*

## **IATA transition arrangements approved**

The ACCC issued a determination granting the International Air Transport Association (IATA) authorisation for most of its programs on a transition basis. This determination provides for the phased removal of the current immunity covering most of IATA's programs within the next 20 months.

IATA has high airline industry coverage and the involvement of its members in jointly determining many arrangements in the aviation industry can naturally raise competition concerns. Recently, IATA asked the ACCC to provide it with a replacement authorisation which would see immunity for all covered programs progressively expire.

The granting of this authorisation provides IATA with an opportunity to address concerns raised by the ACCC and other parties and reduce its reliance on authorisation.

*MR 260/06*

## **Collective tenders for bus shelters**

The ACCC granted interim authorisation to the Municipal Association of Victoria, on behalf of a group of Melbourne metropolitan councils, to allow them to collectively tender for bus shelter installation and maintenance services, including offering an advertising licence.

Interim authorisation extends to allowing participating councils to enter into a memorandum of understanding with the Director of Public Transport to transfer their responsibilities for the provision of bus shelter services. The director would then be responsible for the subsequent tender process.

Interim authorisation was requested so that the director could begin the tender process promptly to ensure that a contract could be awarded before an existing bus shelter agreement expires in July 2007.

*MR 258/06*

## **Restrictions in coal supply agreement authorised**

The ACCC issued a draft decision proposing to grant authorisation to certain restrictions within a coal supply agreement between Tarong Energy Corporation Limited, New Acland Coal Pty Ltd and New Hope Corporation Limited.

Under the agreement, Tarong has been granted an option to buy 5.7 million tonnes of coal annually from the New Acland mine in Queensland for 25 years, starting in 2011. The agreement contains restrictions which limit the quantity of coal that New Acland can sell each year to parties other than Tarong and limit Tarong's ability to on-sell coal to third parties.

Public benefits flow from the restrictions by providing Tarong with a secure and efficient long-term supply of coal for its production of electricity. The ACCC is currently satisfied that the public benefits likely to flow from the restrictions outweigh potential anti-competitive detriment.

*MR 256/06*

## **Industry refrigerant gas levy allowed**

The ACCC will allow importers of refrigerant gas to increase a levy on refrigerant gas imported and sold in Australia from \$1 to \$1.50 per kilogram. This levy contributes towards the cost of recovering and disposing of ozone-depleting refrigerant gases used in Australia.

The industry, through Refrigerant Reclaim Australia, has submitted that the increased demand for the disposal of refrigerant gases has impacted on the recovery and disposal program's cash assets and that the increase is necessary to ensure that the program is sustainable in the long term.

The ACCC considers that the ongoing operation of the program is likely to result in efficiency and environmental benefits, as well as assisting Australia in its efforts to comply with its international greenhouse gas commitments, and that the impact on consumers will be minimal.

*MR 255/06*

## **Revised capped fees for CALMS to be authorised**

The ACCC issued a draft decision proposing to grant authorisation to a revised capped fee structure for the Canberra After Hours Locum Medical Service. Under the capped fee structure, the fees charged by doctors on the CALMS roster to patients seeking after hours care will not exceed a certain level.

The ACCC originally authorised CALMS to use a capped fee structure in 2005. Since then, the Australian Government has made some clarifications and changes to the Medicare Benefits Schedule which affect CALMS' fee structure. CALMS seeks authorisation of a revised fee structure to reflect the changes.

The ACCC considers that the capped fee structure promotes transparency and certainty regarding fees for patients seeking after hours primary medical care in the ACT. The ACCC considers that competition concerns are limited by doctors' discretion to charge lower fees or bulk-bill where appropriate.

*MR 230/06*

## **REGULATED SERVICES**

### **2005–06 stevedoring monitoring report**

The ACCC issued its eighth annual monitoring report covering prices, costs and profitability of container terminal operations in Australia's major ports for 2005–06. The report shows that at Australia's largest container terminals stevedoring unit revenues and costs both increased while productivity fell. This contrasts with a pattern of declining real unit revenue and costs and increasing productivity that occurred in the late 1990s following waterfront reform.

*MR 252/06*

### **Airports quality monitoring report issued**

The ACCC released its *Quality of service—price-monitored airports* report on the availability and standard of airport facilities at Australia's major airports.

The report found that over the past four years Brisbane has been the top-ranked airport, achieving an overall rating of good. Melbourne and Sydney airports rated at the mid-point between satisfactory and good. Perth airport has been rated between satisfactory and good. Both Canberra and Darwin have generally rated at the satisfactory level overall, with Darwin's overall rating decreasing this year to just below satisfactory. Following ratings of satisfactory over the reporting period, Adelaide's overall rating increased significantly, up to just below good—which appears to follow the opening of the new Multi User Integrated Terminal in 2005–06.

*MR 247/06*

## **Declared waste water services access dispute**

Services Sydney Pty Ltd has notified the ACCC, under Part IIIA of the TPA, of an access dispute with Sydney Water Corporation. The dispute relates to the pricing methodology to be used to determine access prices to be paid by Services Sydney for the certain declared services provided by Sydney Water. The ACCC has commenced the arbitration process for this access dispute.

*MR 268/06*

## **Tribunal affirms decision to reject mobile phone access undertaking**

The ACCC welcomed a decision by the Australian Competition Tribunal to reject Optus's proposed undertaking for the supply of its Domestic GSM Terminating Access Service.

Optus had sought a decision from the tribunal to overturn an ACCC decision that the terms and conditions on which Optus proposed to supply the service were unreasonable and that the access undertaking should be rejected. The decision by the tribunal affirmed the ACCC's decision to reject the access undertaking.

*MR 275/06*

## **Discussion paper on analogue pay-TV service declaration**

The ACCC issued a discussion paper on the declaration for the analogue pay-television service. The paper marks the start of a public inquiry into whether the declaration should be continued, varied or revoked.

The ACCC proposes the preliminary view that continued declaration of the analogue pay-TV service is unlikely to promote the long-term interests of end-users and that therefore it should not be continued. Given the continuing digitalisation of pay-TV networks around Australia, it seems that the majority of pay-TV subscribers will no longer be served by analogue networks after March 2007.

*MR 271/06*

## **Report issued on Telstra's compliance with its price controls**

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

*MR 249/06*

## **Telecommunications arbitrations interim determinations**

The ACCC confirmed that interim determinations were made in five telecommunications disputes regarding monthly charges for the supply of the unconditioned local loop services (ULLS).

The interim determinations were made in arbitrations between Telstra and the following parties: Primus Telecommunications Pty Ltd, Optus Networks Pty Ltd, XYZed Pty Ltd, Request Broadband Pty Ltd and PowerTel Ltd.

*MR 246/06*

## **Telecommunications access disputes**

NEC Australia Pty Ltd and Optus Networks Pty Ltd have notified the ACCC of several access disputes with Telstra

Corporation Limited under Part XIC of the TPA. The access disputes relate variously to Telstra's provision of the Unconditioned Local Loop Service, the Local Carriage Service and the Wholesale Line Rental service. The ACCC has commenced the arbitration process for these access disputes.

*MR 236/06, 250/06 and 264/06*

## **Final decision on South West Queensland Gas Pipeline**

The ACCC issued its final decision on Epic Energy's proposed revised access arrangement for the South West Queensland Pipeline. The Australian Energy Regulator has advised the ACCC in this review.

Epic proposed that the current provisions of its access arrangement for the SWQP would continue for another two years with some minor variations. The ACCC concluded that a two-year regulatory period backed by the possibility of early review is appropriate, given uncertainty about the likely usage of the pipeline over the next few years.

*MR 253/06*

## **REGIONAL OUTREACH**

### **National outreach conference**

A national outreach conference was held early in December, bringing together the outreach and small business managers from each state to discuss new developments, small business issues and recent amendments to the Act.

Topics of discussion included the new collective bargaining notification and revised authorisation processes and the oil and horticultural industry codes of conduct. The workshop gave the outreach and small business managers the opportunity to familiarise themselves with the amendments and to discuss current and emerging small business issues to enable them to better provide information and answer queries from small business people and consumers in rural and regional areas.

### **Queensland**

The Queensland rural and regional team held presentations of the Competing Fairly Forum DVD, *Scam, fraud and your business* in Ballina and MacLean in Northern NSW and in Warwick and Toowoomba in Queensland during October and November 2006.

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