

May 2007

From the Small Business Commissioner

Small business throughout the country will be aware of the public debate conducted by Telstra critical of ACCC regulation affecting how they price wholesale services to competitors. With the cost of telecommunications services such a vital element in small business costs, we are doing all we can to provide clear information to users so they can understand the issues involved in the current debate on broadband services. We welcome feedback from small businesses and its representatives.

The ACCC has continued to expand its role with small business through its administration of the newly introduced Oilcode, a mandatory code dealing with relationships between players in the petroleum industry. A further new mandatory code, the Horticulture Code of Conduct, was scheduled to apply from May 2007.

The ACCC Codes Unit has been engaged in major outreach and consultation with the respective industries to assist a smooth introduction of the two new codes. I have been particularly involved in the dialogue with growers and traders in the horticultural supply chain.

This edition of *ACCC briefing* also reports on the new DVD produced by the ACCC to assist small business groups that may be interested in the new collective bargaining notification process introduced earlier this year.

John Martin

Small Business Commissioner

The ACCC has issued its latest Competing Fairly Forum DVD, *Collective bargaining*, which applies recent amendments to the TPA that allow for a new notification processes for small businesses looking to collectively negotiate with suppliers or customers. The Competing Fairly Forum was developed as part of the ACCC's continuing efforts to educate businesses about their rights and obligations under the Act.

The forum examines the collective bargaining notification process from the perspective of small business collectives and the big businesses that may be the 'target' of those collectives. It also outlines the ACCC's role in assessing applications seeking immunity from legal action to engage in collective bargaining. These topics are considered by a panel featuring ACCC Chairman Graeme Samuel and representatives of big and small business.

MR 058/07

Meat prices report

The ACCC issued a report examining the relationship between livestock prices and retail meat prices. The report was issued following a request from the Minister for Agriculture, Fisheries and Forestry, who was concerned about an apparent increase in the margin between prices being paid to farmers for livestock and retail prices for meat.

The report found that short-term movements in the margin between livestock and retail prices do not necessarily mean that market conditions are moving in ways that are out of the ordinary or caused by weaknesses in competition.

MR 036/07

ACCC and AUSTRAC sign MoU

A new memorandum of understanding to facilitate cooperation and the exchange of information between the ACCC and the Australian Transaction Reports and Analysis Centre (AUSTRAC) was signed in Melbourne by ACCC Chairman, Mr Graeme Samuel, and AUSTRAC CEO, Mr Neil Jensen. AUSTRAC is Australia's anti money laundering and counter-terrorism financing regulator and specialist financial intelligence unit.

The two agencies have agreed to provide each other with assistance in relation to the exchange of information, appropriate referral of matters and cooperation in regulation, compliance and enforcement, consistent with relevant laws.

MR 072/07

Scams target you! Protect yourself

The Australasian Consumer Fraud Taskforce (ACFT) launched a four-week campaign to help consumers recognise and avoid scams with the strong message 'SCAMS TARGET YOU! Protect Yourself.'

NEW DEVELOPMENTS

The new Oilcode, a mandatory code of conduct

An Oilcode has been introduced by the Australian government as a mandatory code of conduct under the TPA. The ACCC will promote compliance with the Oilcode and the Act through education, providing access to information and, where necessary, enforcement action.

The ACCC issued material to assist the petrol wholesale, retail and distribution industry to understand its rights and responsibilities under the new Oilcode. The Oilcode regulates the conduct of industry participants and encourages greater transparency of terminal gate pricing and fuel reselling agreements, greater certainty for industry participants regarding supply of petroleum products and tenure under agreements. It provides an effective and relatively inexpensive way of resolving disputes that may arise between suppliers, distributors or retailers.

MR 049/07

Collective bargaining—a Competing Fairly Forum

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

The taskforce activities complement the work being done by all the agencies involved. The ACCC is particularly active in its

work on scams. Last year it took court action against a number of scams targeting small businesses and took out an injunction against a business claiming to cure cancer.

MR 052/07, 053/07, 068/07, 074/07 and 079/07

FRANCHISING

Mobile telephone franchise undertakings

The ACCC accepted court enforceable undertakings from JV Mobile after concerns that the company may have breached the Franchising Code of Conduct. The ACCC was concerned that JV Mobile had promoted and advertised its business network as a franchise and sought or received payments pertaining to a franchise business from JV Mobile retailers without giving them all the safeguards available under the Franchising Code.

JV Mobile undertook to, in accordance with the Franchising Code, formally structure all new agreements with JV Mobile retailers as franchise agreements and provide the opportunity for existing JV Mobile retailers to structure their existing agreements as franchise agreements

MR 107/07

CONSUMER AND SMALL BUSINESS PROTECTION

Misrepresentations alleged against rug and manchester selling group

The ACCC instituted legal proceedings against Terania Pty Ltd, trading as Barry Solomon Gouger Rugs and Australian Rug Expos Pty Ltd, for alleged misleading or deceptive conduct and false or misleading representations about sales conducted at the Darwin showgrounds and at Exhibition Park in Canberra in 2005 and 2006. The ACCC alleges breaches of ss. 52 and 53(e) of the TPA by falsely representing, through labelling manchester products with sale price and 'was' price stickers, that these products had previously been sold at the higher 'was' prices.

MR 055/07

Vitamin C claims may have misled

Claims about the vitamin C content of Ribena blackcurrant fruit drink products may have misled consumers its manufacturer, GlaxoSmithKline Australia Pty Limited, admitted.

GSK Australia self-reported and cooperated with the ACCC's inquiries and took a number of steps to address concerns. GSK Australia also undertook to publish an article for industry on the importance of being accurate when making representations to consumers. It will express 'the importance of companies who become aware of potential false or misleading representations voluntarily approaching the ACCC so that they can work cooperatively to resolve the issue.'

MR 075/07

Actions against website cigarette supplier

The ACCC instituted legal proceedings in the Federal Court against Mr Mina Guirguis, the registrant of the website www.cheapcigarettes.com.au, about the alleged supply by him of tobacco products which did not meet labelling requirements. It is alleged that Mr Guirguis supplied in his own right, or as

agent for another person, cartons of cigarettes and packets of cigarettes through the website.

It is alleged the products did not include the warning, explanatory and information messages and graphic images required by the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004. The ACCC is seeking an injunction restraining Mr Guirguis from supplying tobacco products that do not include the required labelling.

MR 108/07

Cigarette wallet packs removed from sale

The Federal Court, Sydney, made orders by consent in the ACCC's proceedings against British American Tobacco Australia Limited for alleged breaches of the TPA.

The ACCC took action against BATA alleging that its limited edition Dunhill wallet packs did not comply with regulations relating to the labelling of tobacco products. The consent orders made by the court include an undertaking from BATA that it will not in the future supply the Dunhill wallet packs, or any type of similar pack, in Australia. As a result of the orders made by the court the ACCC has discontinued the proceedings.

MR 106/07

PRODUCT SAFETY

Unsafe toy recalled

Socrates Enterprises Pty Ltd, trading as Socrates for curious minds, has issued a national recall of the Pound the Ball toy as part of administrative undertakings given to the ACCC. The ACCC was concerned the wooden toy contained small balls which may cause a choking hazard and therefore fails to comply with the mandatory consumer product safety standard. Socrates promptly removed the toy from sale when notified of the ACCC's product safety concerns.

MR 041/07

Nursery goods under scrutiny

The ACCC accepted a court enforceable undertaking from Ausia Australia Pty Ltd and its directors after concerns that it had sold baby cots and baby walkers on its eBay website, Oz-Auction, that may not have complied with mandatory product safety standards.

Under the undertaking Ausia will complete a voluntary recall of the baby walkers and cots it sold, publish disclosure notices alerting parents to the dangers of buying products for children that do not meet product safety standards and implement and maintain a trade practices law compliance program.

MR 059/07

Supply of high lift jacks stopped

The Federal Court in Sydney stopped Beaver Sales Pty Limited from supplying general purpose jacks that do not comply with the prescribed consumer product safety standards.

The ACCC had alleged that Beaver supplied Black Rat Power Lifter high lift jacks that could not lift their nominated weight. The court ordered that Beaver Sales conduct a consumer recall of the Black Rat Power Lifters and pay the ACCC legal costs.

MR 078/07

Swimming armbands undertakings

The ACCC accepted a court enforceable undertaking from U Games Australia over swimming armbands that did not comply with the marking requirements under the mandatory standard for flotation toys and swimming aids for children. Approximately 3000 armbands were imported and distributed by U Games Australia to wholesalers and retailers throughout Australia.

U Games Australia has withdrawn the armbands from sale and notified their wholesalers, retailers and the manufacturer. U Games Australia has undertaken to refrain from supplying any flotation toys or swimming aids that do not comply with the relevant mandatory consumer product safety and to post in-store recall notices in stores that received the product as well as on their website.

MR 097/07

RESTRICTIVE TRADE PRACTICES

Resale price maintenance finding against power tool importer

The Federal Court of Australia ordered a penalty of \$125 000 for anti-competitive conduct against Tooltechnic Systems (Aust) Pty Ltd, the importer of Festool power tools. The court declared that Tooltechnic engaged in resale price maintenance in 2001 and 2002.

Resale price maintenance is prohibited under s. 48 of the TPA, and occurs when suppliers prevent or discourage retailers from discounting their prices. In settling the proceedings, Tooltechnic consented to court orders against it and also gave a court enforceable undertaking that it would implement a trade practices compliance program. The court also granted injunctions against further similar conduct by the company and ordered it to pay \$25 000 in costs.

MR 076/07

Alleged price fixing in funeral celebrants market

The ACCC instituted legal proceedings against Dally M Publishing and Research Pty Ltd and its director, Mr Dally Messenger, for allegedly contravening the Competition Code of Victoria. The ACCC alleges that the company and Mr Messenger attempted to make an arrangement with or to induce funeral celebrants to collectively adopt and charge an increased fee for civil funeral ceremonies. The ACCC alleges such conduct had the purpose or was likely to have the effect of fixing the price for such services.

MR 085/07

Sports clothes supplier resale price maintenance undertaking

Jaggad Pty Ltd, a manufacturer and wholesaler of Jaggad branded cycling, triathlon and multisport clothing, has provided the ACCC with court enforceable undertakings preventing Jaggad from setting minimum resale prices for Jaggad Apparel. Jaggad required 11 of its resellers—identified as premium dealers—to sell at recommended retail prices set by premium dealer agreements. Jaggad acknowledged the ACCC's concerns that the conduct may have amounted to resale price maintenance in contravention of s. 48 of the TPA.

MR 088/07

MERGERS AND ACQUISITIONS

ACCC and ACMA to share media merger information

The ACCC and the Australian Communications and Media Authority (ACMA) intend to facilitate the flow of information between the two agencies during media merger investigations in a way that protects confidential information while helping to ensure that each agency's investigations are fully effective.

In particular, the ACCC and ACMA will ask parties that are involved in a media merger and providing confidential information to either agency to agree to that information being provided to the other agency.

MR 054/07

NT fuel acquisition not opposed

The ACCC will not oppose the proposed acquisition of the Northern Territory fuel retail and distribution assets from Octagon Pty Ltd by Ausfuel Holdings Pty Ltd. Ausfuel operates service stations in the greater Darwin region as well as a fuel distribution business that supplies fuel to industrial customers and service stations operated by third parties in the Northern Territory, Queensland and north-eastern Western Australia.

Ausfuel is proposing to acquire the leaseholds in three service stations located in Darwin and fuel distribution assets from Octagon. It became apparent that post-acquisition Ausfuel will continue to be constrained by alternative fuel retailers in the Northern Territory. The ACCC considers the proposed acquisition is unlikely to substantially lessen competition in fuel retail and distribution markets.

MR 093/07

Purchaser of rail assets from Toll approved

The ACCC decided not to object to SCT Logistics obtaining a selection of East West Rail Assets in accordance with the Toll Undertakings. Toll, in connection with its acquisition of Patrick Corporation in 2006, agreed to make the assets available to a competing rail operator. The ACCC was satisfied that, in accordance with the criteria in the undertakings, there were no grounds upon which to object to SCT Logistics.

MR 038/07

Toll to divest Tasmanian businesses to Chas Kelly Group

The ACCC will not object to the proposed sale of the Patrick Bass Strait Shipping and Tasmanian Freight Forwarding businesses to the Chas Kelly Transport Group.

Toll agreed to divest these businesses pursuant to undertakings given to the ACCC in connection with Toll's acquisition of Patrick Corporation in 2006. The undertakings provide that the ACCC can object to a purchaser proposed by Toll for the Patrick businesses if the sale to that party was likely to result in a substantial lessening of competition in relevant markets.

MR 065/07

Clean break between Toll Logistics and infrastructure companies

The ACCC decided to consent to a variation to Toll Holdings' undertakings in connection with a proposed restructure of Toll's business that requires Toll make a clean break of its logistics

and infrastructure assets into two separate and unrelated companies.

Toll offered the original undertakings to the ACCC in March 2006 in connection with Toll's takeover of Patrick Corporation. The original undertakings were designed to address the ACCC's competition concerns with that transaction. Under the variation, if the restructure proceeds, Toll will be relieved of its obligations to divest the vehicle transport business and the PrixCar interest. As Toll will cease to have any ownership interest in the rail operator Pacific National (PN) operator Pacific National (PN), it will also be relieved of its obligation to divest a 50 per cent interest in PN to a third party.

MR 101/07

Proposed gas acquisition opposed

The ACCC will oppose Santos' proposed acquisition of QGC. Having withdrawn a previous proposal, Santos approached the ACCC with a revised proposal that included undertakings which it submitted would preserve the competitive structure of the wholesale gas supply industry in southern Queensland.

The ACCC was not satisfied that the proposal would sufficiently resolve substantial competition concerns. The ACCC took into consideration information provided by Santos, QGC and many other market participants, including customers, competitors, gas aggregators and pipeline operators and developers.

MR 042/07

Proposed acquisition of Qantas Airways cleared

The ACCC will not intervene in the proposed acquisition of Qantas Airways Ltd by the consortium represented by Airline Partners Australia Ltd. The ACCC conducted a comprehensive review of the proposed acquisition, including extensive market inquiries with interested parties, and concluded the proposed acquisition is unlikely to substantially lessen competition under s. 50 of the TPA.

MR 050/07

Proposed acquisition of bulk liquid terminals not opposed

The ACCC will not intervene in the proposed acquisition of bulk liquid terminals in the ports of Brisbane and Burnie from Craig Mostyn & Co by Pacific Terminals (Australia). Pacific Terminals and Craig Mostyn both provide customers with tallow and vegetable oil storage in their bulk liquid storage terminals in Brisbane and Tasmania. They are the only providers of waterfront storage for these products in Brisbane. Pacific Terminals also provides storage for hazardous liquids.

The ACCC formed the view that the proposed acquisition is unlikely to substantially lessen competition in any of the markets for tallow and vegetable oil storage with access to shipping. Market inquiries revealed that there are a number of potential entrants to the market which are likely to be a constraint on Pacific Terminals post the acquisition.

MR 061/07

Hospital merger not opposed

The ACCC will not oppose Mater Misericordiae Hospital Townsville Ltd's proposed acquisition of the Wesley Hospital Townsville. Market inquiries revealed a widespread view in the market that the Wesley has been declining in terms of

occupancy rates, standard of facilities and financial viability for several years. The ACCC formed the view that, in the absence of the merger, the Wesley was not likely to continue operating in its present form and would not be a vigorous and effective competitor to the Mater in the future.

In making its decision not to oppose the transaction, the ACCC took into consideration information provided by the Mater and the Wesley as well as specialists, health funds, private hospital operators, industry bodies and a number of other market participants during two rounds of extensive market inquiries.

MR 063/07

Proposed acquisition of Sydney Roads Group not opposed

The ACCC will not intervene in the proposed acquisition of Sydney Roads Group Ltd by Transurban Group Ltd. The ACCC has concluded that the proposed acquisition is unlikely to substantially lessen competition under s. 50 of the TPA. As a result of Transurban and Interlink's tag issuing interests and associated charging of roaming fees to toll-road owners, the ACCC's market inquiries focused on how the proposed acquisition might affect competition in the tender process for future toll-roads, particularly in New South Wales.

The ACCC received a number of divergent submissions from interested parties on the materiality of roaming fees to consortia bidding on new toll-road projects. However, Transurban's increased control over roaming fees will be in New South Wales where the materiality of roaming fees is mitigated by the presence of competing tag issuers with a significant tag issuing base and the fact that new toll-road owners have some potential to establish their own tag issuing business.

MR 064/07

Proposed acquisition of bakery not opposed

The ACCC will not intervene in the proposed acquisition of Good Stuff Bakery by George Weston Foods Limited. Market inquiries confirmed that Good Stuff Bakery is a vigorous and effective competitor, supplying 'price-fighting' bread to small retailers including independent supermarkets, fruit barns and other route trade retailers. However, the removal of Good Stuff Bakery, as an independent supplier, is unlikely to substantially lessen competition for the wholesale supply of bread in southern Queensland and northern New South Wales.

MR 069/07

Newspaper divestitures will ensure continuing competition

The ACCC will not oppose Fairfax Media Limited's proposed merger with Rural Press Limited after accepting an undertaking to divest two free community newspapers in the Hunter Valley region. Following market consultations on the undertaking, it appears that the divestiture will ensure continuing competition in the relevant markets. Overall, the ACCC was satisfied that the undertaking would address the ACCC's competition concerns.

MR 102/07

Proposed acquisition of steel drum manufacturers

The ACCC issued a statement of issues on the proposed acquisition of Greif Australia Pty Ltd by Drum Makers Pty Ltd (a subsidiary of Visy Steel Products Pty Ltd, which is itself a subsidiary of Visy Industrial Packaging Holdings Pty Ltd). The

statement of issues seeks further information on a number of competition issues which have arisen from the ACCC's market inquiries.

MR 103/07

AUTHORISATIONS AND NOTIFICATIONS

Proposed removal of Agsafe's trading sanctions

The ACCC issued a draft decision proposing to remove Agsafe's ability to impose trading sanctions on businesses who are not accredited through its industry program. However the ACCC will provide an 18-month transitional period.

Agsafe is an industry association established by manufacturers of agricultural and veterinary chemicals. Agsafe sought authorisation for its Code of Conduct, which requires businesses that trade in agricultural and veterinary chemicals to obtain accreditation through the industry program known as the Guardian Program. The code also allowed Agsafe to impose trading sanctions on businesses that are not accredited under the program. Agsafe's Code of Conduct had previously been authorised by the ACCC up to July 2007.

MR 084/07

Australian Property Institute authorisation varied

The ACCC issued a determination varying an authorisation granted to the Australian Property Institute (API) following a request from API to authorise proposed changes to its complaint regime. The API authorisation covers 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 considered the new regime had improved the appeals process and simplified it to remove unnecessary layers and included tight timeframes, which would likely reduce costs.

While the ACCC authorised the majority of changes, it declined to authorise proposed changes to the appeal processes in relation to lower level complaints.

MR 044/07

Authorisations for councils to jointly contract waste service

The ACCC issued a final determination granting authorisation to the St George Region of Councils allowing them to jointly tender and contract for the provision of all waste and recycling collection services in their combined local government areas.

The ACCC considers that the anti-competitive detriment arising from the collective arrangements is likely to be minimal. Another tender process will be conducted at the end of the authorisation period. The ACCC is satisfied that the collective arrangements are likely to generate several public benefits, including collection efficiencies and cost savings, improved service delivery and better education programs for residents in the relevant municipalities.

MR 047/07 and 077/07

IATA travel agency authorisations extended

The ACCC proposes to grant authorisation to the International Air Transport Association (IATA) for certain aspects of the IATA Passenger Agency Program on a transition basis. The program provides a system for the sale and distribution of air transport through travel agencies. The program was previously

re-authorised in 2002. Authorisation for some aspects of the program ended in December 2006. IATA has sought an extension of authorisation for 18 months.

The ACCC accepts there are overall net benefits in allowing a transition period until the end of February 2008 which will allow IATA to assess the program and possibly implement changes with a view to reducing the extent to which it relies on authorisation.

MR 083/07

Amended system to reduce coal ship queue

The ACCC issued a draft determination proposing to grant authorisation to Port Waratah Coal Services (PSCS) to reinstate an amended capacity balancing system at the Port of Newcastle. The ACCC originally granted conditional authorisation to the capacity balancing system in 2005, with that approval not due to expire until 31 December 2007. In September last year, however, Hunter Valley coal producers voted to switch off the system for 2007.

In order to reduce and manage the large queue that has subsequently reformed—at times reaching 70 ships—and, therefore, to reduce the resultant high demurrage costs, PWCS now seeks authorisation to reinstate a modified system for the balance of 2007.

MR 070/07 and 089/07

GP's fee-setting and hospital agreements authorised

The ACCC issued a draft determination proposing to authorise certain general practitioners to agree on the fees they charge their patients and to collectively negotiate hospital agreements. In 2002 the ACCC granted authorisation to the Royal Australian College of General Practitioners (RACGP) for GPs intra-practice price-setting arrangements. The authorisation covers GPs in a single practice operating as a team.

The RACGP sought to renew the authorisation and extend it to allow GPs in the relevant practices to collectively negotiate on the terms and conditions, including fees, of their service contracts with public hospitals as visiting medical officers. The ACCC is satisfied that the proposed arrangements are likely to result in a net benefit to the public. In particular, the proposed arrangements are consistent with a team approach to patient care and are likely to result in future efficiency gains in negotiations with hospitals.

MR 094/07

Promotion of MTAA 'real times' guide to be authorised

The ACCC proposes to grant authorisation to allow the Motor Trades Association of Australia (MTAA), and its member associations, to promote a 'real times' guide to automotive smash repairers and providers of motor vehicle insurance.

A Productivity Commission inquiry in 2005 recommended that the quoting practice known as 'funny time, funny money'—where smash repairers, with the knowledge of insurers, extend the number of hours quoted for smash repair work to compensate for what may be considered to be a low hourly rate—be abandoned. The MTAA has stated that its guide has been developed to reflect the true time taken to remove and replace parts, and paint accident damaged motor vehicles.

MR 095/07

Limited collective negotiations by auto industries authorised

The ACCC proposes to allow the Federal Chamber of Automotive Industries (FCAI) to negotiate model terms and conditions on behalf of its members with port facility managers and automotive stevedores for the use of their facilities at Australian ports. The FCAI's membership comprises Australia's four domestic passenger motor vehicle manufacturers and all major international brands importing vehicles into Australia.

The FCAI also sought authorisation to negotiate model terms with shipping lines, pre-delivery inspection and land transport service providers; however, the ACCC proposes to deny authorisation of these arrangements. The ACCC was concerned that in these markets, where there are a number of competing buyers and sellers, the aggregation of the bargaining power of FCAI members could be used to force service providers to accept terms and conditions that they may not otherwise.

MR 100/07

Authorisation for Western Australian real estate agents

The ACCC issued a final determination granting authorisation to the Real Estate Institute of Western Australia (REIWA), which updates a number of previously authorised arrangements such as its members Code of Conduct and also includes a new Auction Code of Conduct for its members. While the ACCC considers that certain aspects of REIWA's arrangements may generate some anti-competitive detriment, overall it is of the view that the arrangements are likely to provide a benefit to the public.

The REIWA's new Auction Code, which prohibits activities such as dummy bidding and places restrictions on sellers bidding for their own properties, is a positive initiative that is likely to provide additional protection for consumers.

MR 104/07

REGULATED SERVICES

Airport price monitoring report issued

The ACCC issued the *Airports price monitoring and financial report 2005–06*, which reports on the prices charged by Adelaide, Brisbane, Canberra, Darwin, Melbourne, Perth and Sydney airports. It shows that prices airlines pay Australia's major airports for aeronautical services, such as use of runways and passenger processing facilities, have continued to increase.

The ACCC report shows that total aeronautical airport costs have risen at most airports by between 1.2 and 12 per cent. A significant cost driver has been the need for greater security requirements at airports since September 11 2001.

MR 045/07

Government issues ACCC medical indemnity report

The Australian Government issued the ACCC report monitoring medical indemnity insurance premiums, *Medical indemnity insurance: Fourth monitoring report, March 2007*. The ACCC monitors medical indemnity premiums to assess whether they are actuarially and commercially justified. The report found that the premiums written in 2006–07 (2006 in the case of Australasian Medical Insurance Limited) were considered to be both actuarially and commercially justified for all six medical indemnity providers.

The report also examined the actuarial and commercial justification of premiums within each jurisdiction and found that, based on the information available, jurisdictional relativities were justified.

MR 096/07

Australia Post report issued

The ACCC issued its second report on whether Australia Post is subsidising its competitive activities with revenue from its monopoly activities. The report analyses the 2005–06 regulatory accounts of Australia Post. The results of the analysis were similar to last year. The regulatory accounts do not provide evidence that Australia Post is subsidising its non-reserved services from its reserved services.

Logistics, which is one of the non-reserved services, was again the recipient of a subsidy in 2005–06, but the source of the subsidy appears to be the other non-reserved services, not the reserved services.

MR 082/07

Roma to Brisbane pipeline revised arrangement approved

The ACCC approved APT Petroleum Pipelines Ltd's (APTPPL) access arrangement for the Roma to Brisbane gas pipeline. APTPPL submitted an amended, revised access arrangement to the Australian Energy Regulator which complied with the ACCC's requirements.

The outcome follows extensive consultation with users and APTPPL and demonstrates that the interests of both have been balanced in the regulatory process. The ACCC agreed to set the value of the pipeline \$45.3 million above the amount it determined in its earlier decision because APTPPL had satisfied it that users who had made capital contributions as part of past expansions of the pipeline can negotiate for discounts below the reference tariff in the future. The revised access arrangement will have effect from 12 April 2007.

MR 081/07

Digital pay TV undertaking from Foxtel accepted

The ACCC accepted a special access undertaking from Foxtel for its digital PayTV set-top unit service. The undertaking will permit independent providers of digital content channels—including interactive digital channels—to offer their channels directly to Foxtel customers through Foxtel's digital set-top units.

The special access undertaking provisions were added to Part XIC of the TPA to allow companies to obtain regulatory certainty as to the terms and conditions of access they must provide on their telecommunications infrastructure.

MR 073/07

Broadband network continues to grow rapidly

The Australian broadband network continues to grow rapidly despite the current 'noise and bluster' about telecommunications competition and access regulation. At present, around 91 per cent of the population is connected via the copper network to local exchanges offering ADSL or ADSL2+ broadband, with speeds of up to 8 Mbps to 20 Mbps.

Increased competition has spurred carriers, including Telstra, to roll out ADSL2+ services. These are now available to around

46 per cent of households. In addition, mobile broadband is now available to 98 per cent of the population. Based on ABS figures, household broadband penetration has now reached 42 per cent—an increase of around 130 per cent over the past 18 months.

As at 30 September 2006, there were 3 639 700 total broadband connections across Australia. DSL-based services remain the most popular type of broadband adopted by Australians, comprising approximately three-quarters of all broadband service connections. However, take-up of all other forms of broadband measured in the September quarter—including cable, satellite and wireless—continues to increase.

MR 048/07 and MR 062/07

Optus access undertaking

The ACCC issued a discussion paper on an access undertaking lodged by Optus Mobile Pty Ltd and Optus Networks Pty Ltd in relation to its domestic GSM terminating access service (DGTAS). Optus's undertaking specifies certain terms and conditions upon which Optus undertakes to supply the DGTAS. Under the TPA the ACCC must accept or reject an undertaking based on whether it considers the terms and conditions to be reasonable.

MR 060/07

Telstra accounting separation report

The ACCC issued its 14th imputation testing and non-price terms and conditions report under the enhanced accounting separation regime for Telstra. The report presents data for the quarter ending 30 December 2006.

The report presents an imputation analysis that compares Telstra's retail prices to the prices of three core telecommunications access services. The analysis is designed to indicate whether there is likely to be sufficient margins to allow efficient firms to compete at the retail level. The report does not indicate systematic discrimination by Telstra against its wholesale customers.

MR 092/07

Telstra competition notice lifted

The competition notice issued in relation to Telstra's wholesale line rental price increase was revoked by the ACCC. The competition notice was issued because the ACCC had reason to believe that Telstra's wholesale and retail pricing was anti-competitive. In light of the changing regulatory circumstances, including the declaration of the wholesale line rental service, it was not necessary to keep the notice in force. This decision followed consultation with industry about developments since the service was declared, and the ACCC also took into account some changed market circumstances that were reported in this consultation.

In administering the competition notice provisions of the TPA, the ACCC's primary objective is stopping and preventing any anti-competitive conduct. The more involved regulatory processes attached to declaration of the service now enable competitive outcomes to be achieved.

MR 051/07

Court finds against ACCC on Telstra competition notice

The ACCC was disappointed with a Federal Court decision that it was not entitled to issue a Part A competition notice in April 2006. In December 2005, the ACCC issued a consultation notice to Telstra because it increased its wholesale prices for line rental above the vast majority of its retail prices for the line rental component of fixed-line plans. In April 2006, the ACCC issued a competition notice that provided some information that was not in the consultation notice. The ACCC considered that the differences between the consultation notice and competition notice were not substantial.

The court found that the ACCC was not entitled to issue the competition notice because it differed from the consultation notice in respect of only two matters held to be of substance. The court also found that because Telstra was not given details of those matters when the ACCC consulted with it, that Telstra was not afforded the opportunity to address relevant issues.

MR 091/07

Interim determinations in telecommunications access disputes

The ACCC published interim determinations, together with a statement of reasons, in two telecommunications access disputes regarding the supply of the mobile terminating access service (MTAS) by Optus Mobile Pty Limited and Optus Networks Pty Limited (together, the Optus entities) to Telstra Corporation Ltd (Telstra).

The interim determination sets out the charges to be paid by Telstra to the Optus entities for the supply of the MTAS, except where agreed otherwise by the parties.

MR 035/07

Interim determinations in telecommunications arbitrations

The ACCC published further details of interim determinations made in two telecommunications disputes regarding the supply of the line-sharing service (LSS). The publication relates to the terms to apply on an interim basis to the connection and disconnection of the LSS (either on an ad hoc basis or as part of a managed network migration) and the basis upon which those terms have been specified.

The interim determinations were made in arbitrations between Telstra and Chime Communications Pty Ltd and Request Broadband Pty Ltd.

MR 046/07

Notification of telecommunications access disputes

Primus Telecommunications Pty Ltd and Chime Communications Pty Ltd notified the ACCC of telecommunications access disputes with Telstra Corporation Limited under Part XIC of the TPA. The disputes relate variously to the price for the supply of the local carriage service and the price for the supply of the wholesale line rental service from Telstra.

Netspace Pty Ltd also notified the ACCC of a telecommunications access dispute with Telstra Corporation Limited, relating to the price for the supply of domestic transmission capacity between Melbourne and Hobart. The domestic transmission service is a service for the carriage of voice, data or other communications using wideband or broadband carriage.

TPG Internet Pty Ltd and Network Technology (Aust) Pty Ltd have also each separately notified the ACCC of an access dispute with Telstra Corporation Limited. These disputes are in relation to the line-sharing service (LSS) supplied by Telstra. The three disputes were notified under Part XIC of the TPA. The ACCC has commenced the arbitration process.

MR 57/07, MR 98/07 and MR 080/07

Guidelines on deferral of arbitrations

The ACCC issued guidelines concerning changes to arbitration processes which result from recent amendments to the TPA. These guidelines give effect to the Trade Practices Amendment (National Access Regime) Act 2006, which commenced on 1 October 2006.

Among other things, this Act amended Part IIIA by providing the ACCC with mechanisms to defer arbitration of an access dispute where it is also considering an access undertaking on related issues and backdate a final determination and apply payment of interest to a backdated determination.

MR 087/07

Review of existing telecommunications regulation

The ACCC issued a position paper outlining a robust framework for the review of existing regulation and the principles that will guide future regulatory decisions. The ACCC considers that regulation should be targeted at 'enduring bottlenecks' in fixed-line markets and removed where it is not required to promote the long term interests of end users.

The ACCC has consistently recognised that infrastructure competition in telecommunications markets is likely to emerge unevenly across different geographic regions and that the regulatory regime needs to be flexible enough to adapt to changes in the competitive landscape.

MR 099/07

Tenders for the development of a telecommunications cost model

The ACCC called for tenders for the development of a fixed network services cost model to inform its regulatory decisions in the future. The continuing inadequacy of industry's models has led to the view that the ACCC needs to have its own cost models. This would assist the ACCC in its decision making on all regulated fixed services such as the ULLS, PSTN O/TA services, LSS and LCS, which are important to the competitive provision of a range of services including broadband services.

The ACCC will consult with interested parties at relevant stages in the development of the cost model and its use in regulatory decision-making processes.

MR 043/07

Queensland

During late February to mid April, the Queensland outreach team conducted a number of presentations to people in the horticulture industry on the role of the ACCC in administering the new mandatory Horticulture Code, which came into effect on 14 May 2007. Presentations were held at Applethorpe, Atherton, Ayr, Boonah, Bowen, Brisbane, Bundaberg, Caboolture, Gatton, Gayndah, Gympie, Innisfail, Mareeba, Mooloolabah, Nambour, St George, Toowoomba, Tully and Yeppoon in Queensland and in Alstonville and Coffs Harbour in New South Wales.

New South Wales

The ACCC had a stand at the Franchising and Business Opportunities Expo in Sydney towards the end of March. Martino Santi, the New South Wales Small Business Manager, gave presentations on the mandatory Franchising Code of Conduct. Around 1000 copies of the *ACCC guide to the Franchising Code* were distributed, together with other ACCC publications relevant to prospective franchisees and small business owners.

In early April the small business manager and the regional outreach manager gave presentations on the new Horticulture Code in Camden, Richmond, Young, Orange, Griffith and Batlow to inform growers and traders of their rights and responsibilities under the new code.

Victoria

Gina D'Ettore and Celia Himmelreich attended AusIndustry's annual meeting with Victoria's Small Business Field Officers early in April. Gina presented an overview of the new notification process regarding collective bargaining, while Celia spoke to staff about the upcoming Horticulture Code, providing details of upcoming presentations across the state to growers.

In late April Frank Lilley and Celia Himmelreich attended the Victorian department of industry's monthly meeting with Vietnamese horticulture growers to provide a brief overview of the Horticulture Code and to distribute the ACCC's in-language written publications.