

## October 2006

### From the Small Business Commissioner

As reported previously, the ACCC is putting considerable effort into combating scams and frauds against people in or considering entering small business. The latest ACCC Competing Fairly Forum DVD has now been released to help inform small business avoid these dangers (see first item).

Among the enforcement actions reported in this edition are the steps taken by the ACCC to have a leading scam perpetrator declared bankrupt. Only by such tough action can the ACCC hope to effectively close down extreme scammers.

A range of enforcement matters are reported in this edition including:

- proceedings against a union and construction company for an alleged secondary boycott agreement
- proceedings against a supplier in the timber preservatives industry for alleged price fixing which potentially affected many thousands of business customers
- a Federal Court finding of \$1.5 million penalties for a market sharing arrangement.

Trade practices amendment legislation, including the new collective bargaining notification processes, is likely to pass through parliament in the current session and the outcome of a review of the Franchising Code of Conduct is also expected before the end of the year.

**John Martin**

**Small Business Commissioner**

### NEW DEVELOPMENTS

#### Scams, frauds and your business: Competing Fairly Forum

The latest of the ACCC's Competing Fairly Forums, *Scams, frauds and your business*, which is recorded on DVD, is currently being shown at business seminars throughout Australia. The DVD can also be downloaded from the ACCC website.

There are three main types of scams most likely to impact on small businesses:

- false invoicing scams
- business start-up scams
- e-commerce scams.

Each of these is examined in detail in the CFF and discussed by

a panel of prominent small business, franchising and e-commerce industry representatives.

The ACCC urges all businesses and consumers to be alert and protect themselves by doing research and seeking advice when they are considering new offers or opportunities. A key message of this forum is that, if an opportunity looks too good to be true, it usually is.

*MR 205/06*

#### ACCC and ACMA to work together

The Australian Communications and Media Authority and the ACCC have agreed to work together to streamline and coordinate industry data collection practices.

Both agencies need to directly source data from industry in order to fulfil their statutory obligations and to monitor and report on industry performance. The two agencies will identify overlap in industry data requests, develop proposals for sharing data and explore opportunities for joint reporting.

Both ACMA and the ACCC will initiate discussions with industry on ways to streamline industry information requests. As part of this collaborative process, ACMA and the ACCC are proposing to produce an inaugural joint report on communications infrastructure that will focus on the location of infrastructure and the state of the market for telecommunications services.

*MR 181/06*

### CONSUMER AND SMALL BUSINESS PROTECTION

#### Court declares business scam perpetrator bankrupt

The Federal Magistrates Court of Australia has declared Mr Bon Levi bankrupt. The ACCC filed a creditor's petition against Mr Levi following his failure to pay \$38,000 in costs to the ACCC pursuant to an order of the Federal Court of Australia.

The order was made after proceedings were brought against Mr Levi for breaches of the Act. Injunctions were granted against Mr Levi for a period of five years requiring him to provide a copy of the orders and certain information, including details of his previous business experience and aliases, to prospective investors. Mr Levi is now also required to comply with obligations under the *Bankruptcy Act 1959*.

*MR 227/06*

#### Compensation over misleading energy ratings

Up to \$3.1 million is available in rebates for eligible consumers who bought five popular LG Electronics air conditioner models that did not comply with the energy efficiency values claimed on rating labels. LG sold more than 15 000 mislabelled air conditioners.

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—ACCC Infocentre 1300 302 502 or the ACCC small business helpline 1300 302 021

LG gave court enforceable undertakings to the ACCC after it raised concerns about the accuracy of energy claims on the five models. LG will implement new testing procedures to ensure that the energy efficiency of its air conditioners matches the performance indicated by their stated energy efficiency star rating and, where applicable, meets 'minimum energy performance standards'.

*MR 226/06*

#### **Power tool country of origin claims corrected**

Black & Decker (Australia) changed the labelling on a number of its sanding disc products to remove the words 'Made in Australia' following concerns raised by the ACCC. Four types of sanding discs were sold in packaging which represented that the discs were made in Australia when they were actually imported.

Black & Decker acknowledged that its conduct is likely to have contravened the Trade Practices Act and has offered court enforceable undertakings.

*MR 213/06*

#### **Food manufacturer stops 'real fruit' claims**

Major Australian food manufacturer Uncle Tobys Foods stopped representing that its Roll Ups products are 'Made with 65% real fruit' and are made by converting fruit into a Roll Up with minimal processing.

Uncle Tobys has given court enforceable undertakings to the ACCC after it raised concerns about the marketing. The ACCC was concerned that the Roll Ups' composition was being misrepresented to consumers.

*MR 212/06*

#### **Petrol discount signage altered**

BP Australia altered signage about its new petrol discount offer after concerns consumers may have been confused about the offer's nature.

BP recently joined the competitive discount petrol market and as part of the promotion used signage above some roadside petrol price displays at service stations. The signage contained large lettering noting the '5% Off Petrol' and '5% Off Everything' offer. It also indicated at the foot of the signage that conditions applied. These included that consumers must obtain a BP Citibank Mastercard before being entitled to the 5% discount.

The ACCC raised concerns with BP about the small size of the print that referred consumers to the terms and conditions. BP has responded promptly and adopted larger font in its advertisement to ensure that consumers are not confused.

*MR 211/06*

#### **Résumé business gives undertakings**

Burnan Pty Ltd, trading as Resume Service, and a director, Mr Keith Rolston, have given court enforceable undertakings about claims made in the sale and promotion of its résumé service process that it could be operated as a home-based business opportunity.

The ACCC was concerned that Burnan and Mr Rolston may have breached the Trade Practices Act by making false or misleading representations about the business opportunity. These included claims about the demand for the services and

their profitability, when there may not have been reasonable grounds to support these claims.

*MR 210/06*

#### **Waste collector's conduct misleading and unconscionable**

The Federal Court of Australia has declared that BIS Cleanaway Limited, formerly Brambles Australia, engaged in misleading and unconscionable conduct in waste collection services in Rockhampton.

The court declared that Cleanaway engaged in misleading and deceptive conduct in contravention of s. 52 of the Trade Practices Act during November and December 2001, at which time Cleanaway's agent:

- visited 18 customers and stated that the purpose was to either gauge customer satisfaction or check equipment etc.
- requested the customer sign a service agreement form to acknowledge the visit
- did not disclose any of the terms of the agreement
- did not give the customer an opportunity to determine independently the nature of the agreement
- did not inquire whether the representative of the customer had authority to sign a contract on behalf of the customer.

The court declared that Cleanaway also engaged in unconscionable conduct in contravention of s. 51AC of the Trade Practices Act in that the conduct occurred in circumstances where unfair tactics were used and where Cleanaway did not act in good faith.

*MR 208/06*

#### **Advanced Medical Institute's advertising 'misleading'**

Advertisements using 'TV Star's amazing CONFESION!' of erectile dysfunction and premature ejaculation (impotence) featuring Mr Ian Turpie have been declared to be misleading and deceptive by the Federal Court.

The court declared that Advanced Medical Institute engaged in conduct that was misleading or deceptive in breach of s. 52 of the Trade Practices Act by having advertisements published in major newspapers containing representations including:

- that Mr Turpie had undertaken an interview during which he disclosed, in the presence of his wife, that he was losing his sexual potency
- AMI nasal delivery system had cured or alleviated Mr Turpie of the effects of impotence or erectile dysfunction.

The court also declared that Mr Philip Somerset, of ColbyCo Media, the advertising agent for AMI, had been knowingly concerned in the contraventions, as he knew the representations were not true. Justice Lindgren declined to make any orders as to injunction and corrective advertising as he thought the conduct of the parties had ceased and there was no longer any threat of repetition. The ACCC granted Mr Turpie partial immunity in return for his cooperation.

*MR 183/06*

#### **ACCC action against Menopause Institute of Australia**

The ACCC has instituted legal proceedings against Menopause Institute of Australia and its managing director, Dr Gary Aaron,

alleging misleading and deceptive conduct in the advertising and promotion of its natural hormone replacement therapy program for the treatment of menopause.

The ACCC has alleged in the Federal Court that Menopause Institute breached s. 52 of the Trade Practices Act by making misleading and deceptive representations about:

- the safety and effectiveness of its NHRT program as a treatment for symptoms of menopause and other diseases
- the safety and effectiveness of NHRT in comparison to conventional HRT.

The ACCC is seeking court orders including injunctions preventing Menopause Institute and Dr Aaron from engaging in such misleading or deceptive conduct in the future.

*MR 173/06*

## PRODUCT SAFETY

### Recall of promotional bicycle

The ACCC has accepted a court enforceable undertaking from Hagemeyer Asia Pacific on the supply of pedal bicycles which did not comply with the mandatory product safety standard.

Hagemeyer supplied about 800 Lawrence & Hanson branded mountain bicycles throughout Australia between October 2005 and May 2006. Most bicycles were part of a promotional offer by Hagemeyer. Customers meeting the terms of the offer were supplied with a free bicycle.

The bicycles were supplied unassembled. They did not comply with the mandatory standard in a number of ways. The ACCC believes the bicycles' supply was likely to have breached s. 65C of the Trade Practices Act.

*MR 194/06*

### Green cosmetic claims corrected

A Sydney cosmetics manufacturer, Environmental Marketing, has admitted to the ACCC that ingredients listed on the packaging of some of its EnviroCare brand products were incomplete and incorrect. They also did not comply with the mandatory Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991.

The regulations are intended to ensure accurate and adequate disclosure of ingredients to consumers. This is particularly important for those who may suffer from allergic reactions.

An ACCC investigation showed that some of the EnviroCare cosmetics contained ingredients not listed on the labelling, such as foaming agent, preservatives and emulsifiers. In response to ACCC concerns Environmental Marketing has instructed all distributors and retailers to remove existing stock from sale and return it to the company. The company has also entered into a court enforceable undertaking with the ACCC in which it has agreed, among other things, to ensure all future supplies of its cosmetic products are correctly labelled and comply with the regulations.

*MR 184/06*

## RESTRICTIVE TRADE PRACTICES

### Crown immunity High Court appeal

The ACCC has sought special leave to appeal to the High Court following the decision of the Full Federal Court to dismiss its appeal against a decision by Justice Allsop that Baxter Healthcare Pty Ltd was protected from the Act by Crown immunity.

The Act generally applies to governments when those governments are carrying on a business. The Full Court concurred with the findings of the trial judge that, because Baxter was supplying state purchasing authorities which were not carrying on a business and therefore entitled to Crown immunity, Crown immunity extended to protect Baxter from the proceedings brought by the ACCC.

The ACCC sought findings that Baxter Healthcare had breached the exclusive dealing and misuse of market power provisions of the Trade Practices Act when it entered long-term contracts with state purchasing authorities bundling the supply of sterile fluids with peritoneal dialysis products used by people with kidney failure.

*MR 189/06 and 225/06*

### \$1.5 million penalties for market sharing arrangement

Barton Mines Corporation and Barton International Inc., two US companies operating in Australia, have been ordered to pay penalties totalling \$1.525 million by the Federal Court after they admitted entering into an illegal market sharing arrangement for the supply of alluvial garnet in Australia.

The court declared that the two companies breached s. 45 of the Act by entering into an agreement with one another by which they agreed to restrictions on the geographic territories in which each would be permitted to supply alluvial garnet.

*MR 224/06*

### Secondary boycott allegations against union and construction company

The ACCC has instituted proceedings against the Construction, Forestry, Mining and Energy Union, Bovis Lend Lease Limited and two individuals associated with the CFMEU for allegedly engaging in conduct leading to a secondary boycott contravening the Act.

The ACCC is alleging an agreement between the CFMEU and Bovis affecting Bovis' acquisition of plasterboard services from a contractor, Bernmar Projects, during the construction of medium density apartments in a development known as 'Landmark' in the ACT in 2003. The ACCC alleges that the agreement contravened s. 45E of the Act and resulted in the termination of Bernmar's contract, which is prohibited under s. 45EA.

*MR 192/06*

### Proceedings against skincare company

The ACCC instituted proceedings against four Jurlique companies and founder Dr Jurgen Klein, alleging resale price maintenance in the sale of Jurlique skincare, cosmetic and herbal products.

The ACCC has alleged in the Federal Court, Brisbane, that the Jurlique companies and Dr Klein breached s. 48 of the Act by:

- inducing or attempting to induce retailers and franchisees not to sell Jurlique products at a discounted price

- entering, and offering to enter into, agreements which included terms that Jurlique products were not to be sold at a price less than a price specified by the Jurlique companies
- withholding supply and making it known to retailers and franchisees that Jurlique products would not be supplied unless they agreed not to discount the products.

*MR 186/06*

### **Bamix distributor penalised \$280 000**

A penalty of \$280 000 has been imposed on Cambur Industries, the sole Australian distributor of Bamix and Magimix branded kitchen products, for engaging in resale price maintenance.

A Cambur sales and marketing manager, Mr John (Sean) Caulfield, admitted that he was directly and knowingly concerned in and party to each and every contravention by Cambur and was fined \$32 000. The penalties were imposed by the Federal Court, Adelaide, following action taken by the ACCC in September 2005. Cambur had earlier admitted to the court that, in its dealings with two Adelaide-based authorised stockists, it had breached s. 48 of the Trade Practices Act by:

- inducing or attempting to induce stockists not to sell and advertise Cambur products at prices less than those specified by Cambur
- making it known that supply would be withheld if stockists agreed to discount the products.

*MR 178/06*

### **Alleged price fix in timber preservatives industry**

The ACCC has instituted proceedings in the Federal Court, Sydney, against FCHEM (Aust) Limited, Osmose Australia and Mr Edward Mark Greenacre, the former Managing Director of Osmose Australia, alleging cartel behaviour in the timber preservatives industry.

The ACCC's allegations are about conduct over a number of years involving price fixing of the supply of various wood preservative chemicals used widely in the timber industry.

*MR 170/06*

## **MERGERS AND ACQUISITIONS**

### **ACCC guidance on assessment of media mergers**

The ACCC issued a paper providing guidance on how it will assess any proposed media mergers. The ACCC's paper discusses how the ACCC might consider such issues as the various dimensions of media markets—products, geographic and functional—as well as the relevant time frame for considering media mergers.

It does not and cannot provide set rules about the impact of specific media mergers on competition. Individual circumstances and competitive implications of any merger proposals will need to be considered during a comprehensive and public clearance process.

*MR 177/06*

### **Tabcorp proposed acquisition of UNiTAB opposed**

The ACCC opposed the proposed acquisition of UNiTAB by Tabcorp as it considers the acquisition is likely to substantially lessen competition in wagering markets in Australia and therefore would breach s. 50 of the Act.

Tabcorp is the largest wagering operator in Australia, currently holding exclusive totalisator (that is, pari-mutuel) wagering licences in Victoria and New South Wales. UNiTAB is the second-largest wagering operator in Australia, currently holding exclusive totalisator licences in Queensland, South Australia and the Northern Territory. If the proposed acquisition were to proceed, Tabcorp would control all the major totalisator pools in Australia.

Tabcorp offered an undertaking to address the competition concerns. However, the undertaking is behavioural—that is, Tabcorp has offered to take certain commercial actions that it believes would remedy the ACCC's concerns. The ACCC has serious concerns about the practical operation of the undertaking and is not satisfied that it would resolve the competition concerns.

*MR 182/06*

### **ACCC institutes proceedings against Alinta**

The ACCC has instituted proceedings against Alinta in the Federal Court regarding the court enforceable undertaking it gave the ACCC on 22 October 2004 on its acquisition of the Dampier to Bunbury Natural Gas Pipeline (DBNGP).

The ACCC alleges that an Alinta employee was seconded to DBNGP Holdings and involved in commercial negotiations between DBNGP and other shippers in breach of the undertaking requirement that no member of staff of Alinta be involved in such negotiations.

*MR 218/06*

### **ACCC not to relieve Alinta of its undertaking to divest**

The ACCC has decided not to relieve Alinta of the requirement to divest the Agility service contracts which operate over the Moomba to Sydney and Parmelia Pipeline.

On 2 August 2006 the ACCC approved the Alinta AGL joint merger proposal subject to Alinta's eventual divestiture of its interest in the Australian Pipeline Trust and divestiture of the Agility service contracts which operated over the MSP and Parmelia Pipeline.

While Alinta has since proposed alternative undertakings, the ACCC agreed to consider whether it was necessary for Alinta to divest the Agility service contracts. The ACCC has concluded that the contracts would allow Alinta significant scope for control of the MSP and Parmelia Pipeline even in the absence of any direct ownership and would alter the competitive incentives in relation to the pipelines.

*MR 229/06*

### **Undertaking on Alinta/APT merger proposal rejected**

The ACCC has decided that it did not accept Alinta's offer of varied undertakings on Alinta's proposal to take an increased interest in APT and subsequently control APT.

On 8 September 2006 the ACCC commenced market inquiries on the draft varied undertaking. The draft proposal put forward would allow Alinta to retain its ownership of APT on condition that certain assets, including the Moomba to Sydney pipeline, Parmelia pipeline and GasNet, are divested.

The ACCC will not accept the current offer of a varied undertaking from Alinta as it has significant concerns in relation to the structure and enforceability of the varied undertaking as it stands.



### **Baby car restraint merger not opposed**

The ACCC will not intervene in the proposed acquisition of BabyLove Products by Britax Childcare as it considers that the proposed acquisition is unlikely to substantially lessen competition in the markets for the manufacture and supply of infant wheeled goods (strollers and prams) in Australia.

The market for car restraints for children aged up to four years in Australia caused the ACCC the greatest concern. The ACCC conducted a comprehensive investigation and concluded that only the high-end segment of this market could cause concerns. It became apparent, however, that Britax is the very clear leader in this market segment. BabyLove is not a significant competitor in this segment, so the acquisition will only marginally increase Britax's share of sales.

MR 220/06

### **OneSteel and Smorgon request pause of ACCC assessment**

At the request of OneSteel and Smorgon, the ACCC agreed to pause its assessment of OneSteel's proposed acquisition of Smorgon.

The ACCC has identified potentially significant competition concerns regarding the proposed acquisition. In particular, the ACCC has formed the preliminary view that the proposed acquisition will merge the two major domestic producers of long steel products and will result in a supplier that is vertically integrated from ore mining and steel production through to processing, distribution, engineering support and retail for most long steel products.

The ACCC will form a new timeline for consideration of the matter, including a new indicative decision date.

MR 179/06, 199/06 and 219/06

### **Acquisition of GasNet approved**

The ACCC decided not to take action to prevent APT acquiring GasNet. It did so because, if the proposed Alinta/AGL joint merger proposal schemes go ahead, the Australian Pipeline Trust (APT) proposed acquisition of GasNet is not likely to lead to a substantial lessening of competition in breach of s. 50 of the Act.

If the Alinta/AGL joint merger proposal schemes proceed, AGL will no longer hold an interest in APT and as a result GasNet will remain as an independent Victorian gas transmission network without significant vertical links to Victorian and NSW gas retailers. If events unfold such that the Alinta/AGL joint merger proposal schemes do not go ahead, the ACCC will take appropriate action on the GasNet acquisition.

MR 214/06

### **Childcare centre divestitures accepted**

ABC Learning Centres Limited has provided a court enforceable undertaking to divest seven long day childcare centres in regional areas, mainly in Queensland, to obtain ACCC approval for its acquisition of Hutchison's Child Care Services.

The ACCC considers that this undertaking is necessary to ensure that prices for long day childcare services in these areas do not rise as a result of the merger and that, in particular,

parents in regional areas continue to have a choice of long day childcare services for their children.

The ACCC conducted a comprehensive consultation process to assess the proposed transaction and has determined that, subject to the divestitures required by the undertaking, the acquisition will not lead to a substantial lessening of competition in any relevant market.

MR 207/06

### **Travel industry acquisitions not opposed**

The ACCC did not intervene in the recent and proposed acquisitions by S8 Limited in the travel industry. S8 acquired Harvey World Travel in late 2005 and recently acquired, or proposes to acquire, Transonic Travel, Travelscene and Gullivers Travel Group. All the target firms are involved in providing travel retail and wholesale services in Australia.

The ACCC considers that the recent and proposed acquisitions are unlikely to substantially lessen competition in markets for these services.

MR 203/06

### **Divestiture in international gas merger accepted**

Linde AG and Linde Gas have provided a court enforceable undertaking to divest the business of Linde Gas in Australia in order to allay the ACCC's competition concerns about the effect of the international merger on Australian markets.

The undertaking is necessary to ensure that prices for industrial, medical and specialty gases in Australia do not rise as a result of the acquisition. The ACCC conducted extensive market inquiries on the effect of the transaction on competition in local markets. It has decided that, subject to the divestitures, the acquisition will not lead to a substantial lessening of competition in any relevant market.

MR 202/06

### **Acquisition of saleyards to go ahead**

The ACCC will not oppose recent saleyard acquisitions by Victorian Livestock Exchange (VLE). The ACCC has now reached the view that the existence of alternative saleyard facilities in the Victorian Gippsland region, particularly Warragul and Bairnsdale, and to a lesser extent the potential and existing use of alternative livestock selling methods would provide a degree of competitive constraint on VLE.

Market responses confirmed that regular users of saleyard services, including agents, buyers and some large sellers, are able to exercise countervailing power in their dealings with VLE.

MR 185/06

## **AUTHORISATIONS AND NOTIFICATIONS**

### **Proposed changes to surgeons' authorisation**

The ACCC has proposed changes in the way the Royal Australasian College of Surgeons determines the number of surgical trainees and issued a notice proposing to revoke the college's current authorisation and replace it with a new one.

The health ministers contacted the ACCC requesting a review of the authorisation because of a material change in circumstances.

The proposed new authorisation is identical to the original but changes the consultation process between the college and governments when determining the intake of basic surgical trainees. The college currently determines the number of trainees with limited input from governments. The ACCC now proposes an increased involvement by the governments in determining this number. It encourages consultation between the college and governments but ultimately recognises that training numbers should be determined by governments, reflecting community requirements, and not limited by the college.

*MR 197/06*

#### **ACCC revokes Nestlé notification with full reasons**

The ACCC issued a notice revoking a notification lodged by Nestlé Australia on 2 December 2005. Nestlé Australia lodged the notification after it learned that ALDI was selling NESCAFE brand instant coffee manufactured in Indonesia and Brazil.

The notification concerns a refusal by Nestlé Australia to supply Nestlé branded products and private label products to ALDI stores unless ALDI complied with Nestlé Australia's condition on the presentation and advertising of the products. Nestlé Australia told the ACCC that it wanted consumers to know that the imported products were not the coffee brands they were familiar with and that they tasted different. However, the ACCC believes that Nestlé Australia went further than was required to sufficiently inform consumers and that the refusal to supply ALDI was likely to have an anti-competitive purpose and effect and does not have public benefits.

*MR 176/06*

The ACCC also released its full reasons for revoking a notification lodged by Nestlé Australia. On 9 August 2006 the ACCC issued a version of its reasons with some paragraphs masked, pending resolution of a legal issue with Nestlé. The ACCC has now had time to consider the concerns raised by Nestlé and has decided to remove the masking, except in two minor cases, to ensure the public is fully informed of the ACCC's reasons for taking its decision.

*MR 185/06*

#### **IATA requests phased removal of immunity**

The ACCC welcomed an International Air Transport Association proposal for the phased removal of the current immunity covering most of IATA's activities. The ACCC has been reviewing a 1985 indefinite authorisation granted to IATA for all of its activities, apart from its travel agency program which was reviewed in 2002.

IATA recently asked the ACCC to provide a replacement authorisation which would progressively expire over the next two years. IATA stated in making the request that elements of its conduct did not raise significant issues in competition law in Australia and could be undertaken without authorisation either in their current form or after modification. In the draft determination, the ACCC recognises the significant transition benefits in allowing IATA time to assess and adjust its conduct before immunity lapses.

*MR204/06*

#### **Collective negotiations by major sport bodies denied**

The ACCC issued a draft decision denying an application from the Coalition of Major Professional Sports (COMPS) to collectively negotiate with licensed sports betting operators such as Tabcorp, Betfair and members of the Association of Australian Bookmaking Companies.

In its application, COMPS sought authorisation to collectively negotiate for the payment of a product fee by sports betting operators. COMPS members, which include Cricket Australia and the National Rugby League, claim that the sports betting operators are currently using information generated by their sports but do not have to pay for it.

The ACCC does not oppose the sports trying to obtain a payment for their product. However, because of the diversity across the sports, it appears unlikely that they would be able to collectively achieve any better or more efficient outcomes than they could individually. The ACCC is also concerned that by allowing collective negotiation it may be hindering a growing area of competition between sports to supply information and data to betting agencies.

*MR 223/06*

#### **Increase in the refrigerant gas levy to be allowed**

The ACCC issued a draft decision allowing Refrigerant Reclaim Australia to increase the levy on refrigerant gas imported and sold in Australia from \$1.00 to \$1.50.

The RRA has had an authorisation since 1994 for industry to impose a levy to fund the collection and disposal of ozone depleting substances and synthetic greenhouse gases. The levy was initially set at \$1.00 per kilogram but the RRA has sought to increase the levy to allow it to cope with increased demand for disposing of refrigerant gases.

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 222/06*

#### **Interim authorisation to commence coal price negotiation**

The ACCC granted interim authorisation to Callide Power Management and CS Energy to begin joint negotiations for a price review with Anglo Coal.

In August 2006 the ACCC received an application from CS Energy and CPM for authorisation to jointly negotiate the price review mechanism under the existing coal supply agreements between each of the applicants and Anglo Coal. CS Energy and CPM also applied for interim authorisation for the arrangements while the ACCC considers the substantive application. The ACCC has granted interim authorisation to commence joint negotiations; however, interim authorisation is not granted to the applicants to conclude the joint negotiation and enter into arrangements.

*MR 217/06*

#### **Qantas-Orangestar cooperation agreement authorised**

The ACCC issued a determination authorising Qantas Airways Ltd to enter into a cooperation agreement to coordinate its flying operations and activities with Orangestar Investment Holdings, the holding company of Jetstar Asia and Valuair.

The ACCC is satisfied that there are likely to be limited anti-competitive detriments arising from the cooperation agreement. In particular, the ACCC notes that there is limited overlap on current routes operated by Qantas and Orangestar and it is expected that there would not be extensive competition between the two entities in the future.

*MR 216/06*

#### **Australian Baseball Federation notification revoked**

The ACCC issued a notice revoking the exclusive dealing notification lodged by the Australian Baseball Federation Inc., thereby removing the immunity for conduct associated with the ABF's merchandise licensing program.

The ABF is a national body which supplies services including affiliation, registration, management, player development and administration to state and territory baseball associations, regional associations, clubs and players. The ABF lodged the notification as it offers these services on condition that players wear certain uniform components and use baseballs bearing the Australian Baseball Federation logo. These items are only available from third party suppliers that have entered into a licence agreement with the ABF.

The ACCC is concerned with this arrangement because it forces players, clubs and associations to acquire products from certain suppliers. This reduces competition and restricts consumer choice in price, quality and service. The ACCC is satisfied that the benefits do not outweigh the likely detriment generated by the program.

*MR 200/06*

### **REGULATED SERVICES**

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

The ACCC issued a draft decision on Epic Energy's proposed access arrangement revision for the South West Queensland Pipeline. The Australian Energy Regulator is advising the ACCC in this review.

The ACCC is satisfied that the revisions proposed by Epic are consistent with the provisions and principles of the national gas code. The revisions relate to the supply of five transportation services currently available, other than the main forward haul service.

*MR 221/06*

#### **Federal Court final orders on gas access arrangement**

The Federal Court of Australia issued its final orders on the Australian Competition Tribunal's decision on ACCC's access arrangement for the Moomba to Sydney gas pipeline.

The court has confirmed its orders setting aside the tribunal's decision in relation to the regulatory value of the Moomba to Sydney pipeline. The interpretation that the court has provided on the task of setting a regulatory value of a pipeline under the gas code is consistent with the approach taken by the ACCC in its December 2003 decision.

The matter will now go back to the tribunal for reconsideration in accordance with the law and the court's reasons for judgment.

*MR 187/06*

#### **Roma to Brisbane gas pipeline revised access arrangement**

The ACCC issued its draft decision on the Roma to Brisbane pipeline revised access arrangement. In its draft decision, the ACCC proposed amendments to APT Petroleum Pipelines Limited's access arrangement.

Under the draft decision, the ACCC accepted an APTPPL proposal that access to the expanded capacity of the pipeline be negotiated with users. This was accepted as the best way to achieve the timely expansion of the pipeline, reflecting the current uncertainty with costs, timing and capacity of expansions.

For the first time since the gas code began in 1998 the reference tariff for the pipeline is being set by the ACCC and the proposed tariff is 10 per cent less than that proposed by the APTPPL. The lower tariff reflects the ACCC's decision that the pipeline's initial capital base should be lower than that proposed by APTPPL, to better reflect the requirements of the gas code and allow APTPPL to more than recover its investment in the pipeline.

*MR 193/06*

#### **Broadband take-up strong and steady**

Take-up of broadband services continues to increase, according to the latest ACCC *Snapshot of broadband deployment*. The report shows that, in the quarter ending at 30 June 2006, there were 3 518 000 broadband services connected across Australia. Once again, this represents an increase of over one million customers, or 67 per cent, over the preceding 12-month period.

*MR 215/06*

#### **Telstra accounting separation report issued**

The ACCC issued its twelfth imputation testing and non-price terms and conditions report under the enhanced accounting separation regime for Telstra. The report presents key performance indicators comparing particular aspects of Telstra's customer support services when supplied to wholesale and retail customers. Key performance indicators for fixed-line telephony and ADSL services are also reported. The report does not reveal any systematic discrimination by Telstra against its wholesale customers.

The report also presents an imputation analysis that compares Telstra's retail prices to the prices of three core telecommunications access services. The analysis is designed to reveal whether there are sufficient margins between Telstra's retail prices and the prices it charges service providers to use the core services to allow efficient firms to compete at the retail level. The results for fixed-line voice services show that imputed margins have declined for all services, except for fixed-to-mobile calls and residential international calls, which have remained the same.

*MR 228/06*

#### **Public consultation on Telstra's undertakings**

The ACCC issued its draft decision to reject Telstra's public switched telephone network originating and terminating access services and local carriage service undertakings.

These services are used by competitors to provide voice services in competition with Telstra. Telstra's proposed undertaking prices would substantially reduce the headline LCS prices and substantially increase the PSTN OTA prices.

The ACCC is not satisfied that Telstra's proposed prices, which have been presented to the ACCC as a package, are reasonable as they would significantly disadvantage facilities-based access seekers while providing an advantage to resellers of Telstra's end-to-end local call services.

*MR 209/06*

#### **Draft decision to reject undertakings**

The ACCC issued its final decision on Telstra's unconditioned local loop service monthly charges undertakings, confirming its draft decision issued on 15 June 2006. The ACCC is continuing to arbitrate prices for the ULLS in access disputes before it as required by the law.

*MR 190/06*

#### **ACCC issues Telstra retail pricing protocol**

The ACCC published an information paper on the pricing of Telstra's key wholesale services and dependent retail services. The paper comprises a 'retail pricing protocol' and is published as part of the government's operational separation regime.

It outlines the ACCC's views on assessing potentially anti-competitive behaviour in telecommunications markets and seeks to promote equivalent pricing across Telstra's wholesale and retail businesses. It is envisaged that as a result of publishing the protocol Telstra will be better able to assess whether particular pricing is likely to be anti-competitive and to be avoided when making pricing decisions.

*MR 191/06*

#### **ACCC 'perplexed' by Telstra fibre-to-the-node announcement**

The ACCC is perplexed by Telstra's announcement that it has unilaterally decided to discontinue talks with the ACCC over Telstra's proposed fibre-to-the-node network upgrade.

The ACCC last received documentation from Telstra on a FTTN access service and its pricing for this new service in late June and was awaiting details on a transition plan for access seekers from current unconditional local loop arrangements. Given that Telstra only recently said that the discussions between it and the ACCC were '98 per cent' complete, the ACCC is perplexed that Telstra has now chosen to discontinue these discussions and withdraw its proposed fibre rollout.

Telstra has indicated that 'the major stumbling block was the ACCC's unwillingness to recognise the actual costs that Telstra incurs in providing its services' but, from the commencement of the ACCC's discussions with Telstra, the ACCC accepted that 'Telstra should be entitled to recover its actual costs arising from the FTTN upgrade' and that 'Telstra faces a significant risk that should be reflected in the cost of capital used to calculate access prices'.

*MR 175/06*

#### **Digital set-top box service undertaking rejected**

The ACCC announced a draft decision to reject the special access undertaking submitted by Foxtel in relation to its digital set-top unit service.

Digital set-top units are used to receive, decrypt and display pay-TV content (including interactive television content) at the customer's premises. Foxtel's undertaking would allow content providers to use its digital pay-TV platform to sell their own channels direct to Foxtel subscribers.

The ACCC commends Foxtel on its use of the special access undertaking provision to voluntarily offer access to its digital pay-TV platform. Had the undertaking been limited to that, the ACCC's draft view would have been to accept it. However, the undertaking also prevents competing TV firms from using the Act to access the individual component services that make up the digital set-top unit service from Foxtel on a stand-alone basis. Unfortunately, therefore, the ACCC's draft view is that it is not able in law to accept the undertaking.

*MR 196/06*

#### **Telecommunications arbitration determination**

The ACCC published an interim determination, together with a statement of reasons, in a telecommunications arbitration about the supply of the unconditioned local loop service from Telstra to Chime Communications. The publication will assist in informing the debate on the ULLS and to encourage reasonable ULLS prices to apply across the market. The ACCC will now move to a final determination, taking into account a broader and more complex range of issues than is required for an interim determination.

*MR 195/06*

#### **Telecommunications access disputes**

Telstra Corporation notified the ACCC of an access dispute with Optus Networks. The dispute relates to the price paid by Optus for access to telecommunications towers owned or operated by Telstra and the sites of such towers.

Macquarie Telecom has notified the ACCC of an access dispute with Telstra Corporation under Part XIC of the Act. The dispute relates to the price paid by Macquarie for the unconditioned local loop service supplied by Telstra. The ACCC has commenced the arbitration process for these access disputes.

*MR 180/06 and 201/06*

#### **ACCC issues Australia Post cross-subsidy report**

The ACCC issued its first report on whether Australia Post is subsidising its competitive activities from its monopoly activities. The ACCC has found that Australia Post's 2004–05 regulatory accounts do not provide any evidence of cross-subsidy from its reserved services to its non-reserved services.

The ACCC has not finalised its views on the appropriate level of disclosure in these reports and will determine this after it has finalised consultations with interested parties.

*MR 169/06*

### **REGIONAL OUTREACH**

#### **New South Wales**

The Rural and Regional Program in NSW hosted a stand at the AgQuip agricultural expo held outside Gunnedah, in north-



western NSW. AgQuip is billed as Australia's largest rural field day and, over the course of the three-day event, it regularly attracts crowds of around 100 000 people. Attendance at AgQuip provided the opportunity to talk directly to a wide range of rural consumers and business people. Discussions covered all of the ACCC's areas of interest: competition issues for the business community, the rights of consumers (particularly relating to scams) and product safety.

In September the small business program in NSW participated in the South Sydney Small Business Expo in Hurstville and delivered a presentation on the ACCC and the Trade Practices Act to people interested in starting a small business.

### **Queensland**

During September the Rural Outreach Manager for South East Queensland conducted presentations to the Gympie and Yeppoon Rotary Clubs on the roles and functions of the ACCC. The Competing Fairly Forum DVD, *Scams, frauds and your business*, was shown in Gladstone and Rockhampton during September and received very positive feedback. Future screenings of this DVD will be held in Warwick during October and in Hervey Bay and Ballina in November.

### **Northern Territory**

The Northern Territory office held a series of presentations of the Competing Fairly Forum DVD, *Scams, frauds and your business*, in Tennant Creek, Alice Springs and Katherine.

A presentation on small business and the Trade Practices Act was given in Mataranka in conjunction with the Department of Business, Economic and Regional Development.

### **Victoria**

The Victorian Outreach team shared a stand with the Office of the Victorian Small Business Commissioner at the Retail Technology Expo and Shopfit & Design Expo 2006, as well as at the Franchising and Business Opportunities Expo.

The ACCC Victorian Outreach Manager attended the Elmore Field Days to discuss small business and consumer protection Trade Practices matters. A joint presentation with Consumer Affairs Victoria was also given to LJ Hooker real estate agents.

Regional Director Bob Weymouth sat on a panel with other regulatory agency representatives during a small business 'hypothetical' session at the West End Business Association's 'Life of a Business' Forum at the Melbourne Town Hall.